

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.941 OF 2021

Shri Madan Sadashiv Edake & Ors. ... Petitioners

Versus

The State of Maharashtra & Ors. ... Respondents

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Mr. Sachin Chavan, for the Petitioners.

Mrs. S.S. Bhende, AGP for State.

Mr. Sameer Tambekar, for Respondent Nos.5 & 6.

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**CORAM : K.K. TATED &
R.I. CHAGLA, JJ.
DATE : 1st APRIL, 2021.**

ORAL JUDGMENT (Per R.I. CHAGLA, J.) :-

1 By this Petition filed under Article 226 of the Constitution of India, the Petitioners are challenging the Government Resolution dated 24.08.2017 issued by Respondent No.1 – State of Maharashtra by which the State has decided that the additional increment will not be paid to the employees for the period in which revised pay has been given to them as per the VIth Pay Commission i.e. for the period 01.10.2006 – 01.10.2015. These Petitioners further seek directions against the Respondents to give / release the benefits of one or two additional increments to the Petitioners forthwith as per the earlier existing policy of the Government /

Resolutions issued by the Respondent Authority.

2. The Petitioners are duly appointed as Assistant Teachers in their respective places/primary/girls primary school run by the Zilla Parishad. The Petitioners are admittedly working in the said schools run by the Zilla Parishad, Kolhapur but some of them have retired from service.

3. It is the case of the Petitioners that in the year 1974 and thereafter in the year 1989, there were Government Resolution issued by the State of Maharashtra by virtue of which the employees who had rendered outstanding work were decided to be given certain incentives by the Government. These Government servants whose work was found to be outstanding for a period of three years, would be eligible for one advance increment and those whose work were found to be outstanding for a period of five years, were eligible for two advance increments. By virtue of Government Resolution dated 31.10.1989, the employees of the Zilla Parishad were also to be given two advance increments. The Government Resolution dated 31.10.1989, inter alia, provided that for granting advance increment to the employees of the Zilla Parishad, a Committee has to be formed which would be presided under the chairmanship of the Chief Executive Officer of the Zilla Parishad. The

Petitioners have relied upon the Government Resolutions dated 20.06.1989; 29.10.1989/90; 05.11.1992; 04.08.1994 18.04.1996; 22.11.2000 and 14.12.2006 which all concerned the incentives/advance increments which were to be given to the Government employees for their excellent/outstanding work.

4. The Petitioners have been recommended pursuant to the verification Committee of the Zilla Parishad, Kolhapur, having verified the C.R. reports of the Petitioners on the basis of the then existing policy, for grant of one or two advance/ additional increments for their excellent work. Respondent No.5 - the Chief Executive Officer, Kolhapur, had granted/sanctioned the benefit of one or two advance/additional increments in favour of the Petitioners vide orders issued in the year 2009 and declared that the Petitioners were entitled for the benefits which will be different from the regular yearly increments.

5. The Central Government then introduced the VIth Pay Commission. The State of Maharashtra on the recommendation of the Central Government, appointed a Committee under the Chairmanship of P. M. Hakkim on 23.09.2008 which is the State Pay Amendment Committee, 2008. The Committee presented its report on 20.12.2008 to the Principal Secretary, Finance Department, State of Maharashtra being

Respondent No.2 herein. Government Resolution dated 27.02.2009 was issued by Respondent No.2 accepting the recommendations of the Hakkim Committee report with certain modification in respect of revised pay structure and revised pension formula as per the VIth pay Commission. Clause No.3.24 of the Government Resolution dated 27.02.2009 provided that “other employees except PB - 4 5% Officers / employee for the excellent work in their field instead of 3% general rate, 4% additional pay should be sanctioned. These additional increments will be paid once within five years. So additional increment as referred by higher rate will be granted in favour of the employee, therefore, method of one or two additional increments should be closed”. As against this Clause, it was noted that separate action will be taken by the General Administration Department.

6. A Circular was issued dated 03.07.2009 by the State of Maharashtra through its Secretary, General Administrative Department, State of Maharashtra being Respondent No.3 herein, by which it was pointed out that the VIth Pay Commission was sought to be implemented and considering the various facts and circumstances, it was decided that the payment to the concerned employees who were already granted advance increments as on 01.10.2006, 01.10.2007 and 01.10.2008 should be made without taking into consideration those advance increments. It

was further mentioned that the Government would take appropriate decision with respect to those employees for the purpose of fixation of the payment and payment schedule would be revised thereafter.

7. The Government of Maharashtra failed to take any decision on Clause No.3.24 of the Government Resolution dated 27.02.2009 till 24.08.2017. This resulted in fixation of pay of some of the Petitioners which was done with additional increments being refixed without additional increments. The Petitioners have relied upon the copies of the service book in this context.

8. Respondent No.5 had orally communicated to the Petitioners that the provision of advance/additional increment is not available in the VIth Pay Commission and that issue was pending before the Government and as and when Government takes decision, the benefit of the advance/additional increment will be provided to the Petitioners. On the basis of the recommendations of Clause No.3.24 of the State Pay Revised Committee, 2008 and Government Circular dated 03.07.2009, Respondent No.3 issued the impugned Government Resolution dated 24.08.2017 by which the benefits of additional increments were denied by giving retrospective effect. The said Government Resolution provided that the “Benefits of additional increments should not be granted to those

employees, revised pay has been paid as per Sixth Pay Commission (01.01.2006 to 01.10.2015)". The Petitioners being aggrieved by the issue of the impugned Government Resolution by which the benefits of additional increments have been denied by giving retrospective effect, has filed the present Petition.

9. Mr. Sachin Chavan, the learned Counsel appearing for the Petitioners has submitted that the issue whether the impugned Government Resolution dated 24.08.2017 is prospective or retrospective is no longer res-integra. He has relied upon the decision of this Court (Aurangabad Bench) where similarly situated employees/ teachers approached this Court by filing Writ Petition No.14950 of 2017 challenging the Government Resolution dated 24.08.2017 to the extent of its applicability and seeking extension of benefits, restoration of orders passed by the competent authority on the basis of existing Government Resolutions and continuity of them up to the issuance of Government Resolution dated 24.08.2017 and for grant of the benefits of advance increments. This Court (Aurangabad Bench) disposed of the Petitions by observing that the Government Resolution dated 24.08.2017 will have prospective effect and not retrospective effect and in the case that benefits have been afforded to the Petitioners therein for excellent work in the years 2006, 2007 and 2008, such additional increments shall not be

withdrawn and if any recovery is made pursuant to the same, the same shall be refunded to the Petitioners. This Court disposed of the Writ Petition by judgment and order dated 03.04.2019 passed in Writ Petition No.14950 of 2017 and other connected matters. The same view has been taken by this Court i.e. Aurangabad Bench in ***Ganpat Vitthal Dapute and Ors. v/s. The State of Maharashtra and Ors***¹. which has also held that the Government Resolution dated 24.08.2017 will have prospective effect. Accordingly, it has been held that as the benefit of advance increments was granted as per policy of the Government prevailing at that time, the same would not be withdrawn on the basis of subsequent Government Resolution dated 24.08.2017.

10. The learned Counsel for the Petitioners have also relied upon the decisions of this Court in Writ Petition No.4050 of 2017 in the matter of ***Uday J. Godave & Ors. Vs. The State of Maharashtra & Ors.***², which has been followed by this Bench in the order dated 24.03.2021 in ***Shri Appasaheb N. Mali and others vs. State of Maharashtra and others.***³. He has submitted that it has been the consistent view of this Court that the Government Resolution dated 24.08.2017 which has been impugned herein will have prospective effect and the benefit of additional

1 Writ Petition No.14797 of 2017 decided on 11th June, 2019.

2 Writ Petition No.4050 of 2017 decided on 22nd October, 2020.

3 Writ Petition (St.) No.532 of 2021 decided on 24th March, 2021.

increments granted to the Petitioners as per the then prevailing policy of Respondent-State dated 11.02.1974 and 31.10.1989 ought to be given effect to in the revised VIth Pay Scale and cannot be withdrawn by virtue of the Circular dated 12.07.2009 and the Government Resolution dated 24.08.2017. He has accordingly submitted that similar cause of action be adopted by this Court in this matter.

11. We have heard the learned Counsel for the parties and with their assistance perused the papers and proceedings in the matter. This Court has considered the submissions made on behalf of the Petitioners as well as taken into consideration the various orders passed by this Court in the various Writ Petitions referred to and relied upon by the learned Counsel for the Petitioners and the fact that the Respondents have already implemented the orders passed in those Writ Petitions by affording the benefit of advance increments granted to the Petitioners.

12. We have noted that the Zilla Parishad, Kolhapur - Respondent Nos.5 and 6 opposed this Petition and maintained that they are not ready to give the same benefits / advance increments to these Petitioners. In response to this, this Court had directed the learned Advocate for the Respondent Zilla Parishad, Kolhapur, to take instructions from his client whether the Zilla Parishad is ready and willing to afford benefits of one or

two advance increments to the Petitioners therein as per the policy of the State Government dated 11.02.1974 and 31.10.1989 in the revised VIth pay scale without giving the effect to the Circular dated 03.07.2009 and Government Resolution dated 24.08.2017. Respondent Nos.5 and 6 - Zilla Parishad, Kolhapur, have filed their Affidavit dated 22.03.2021. Respondent Nos.5 and 6 - Zilla Parishad, Kolhapur, have stated that neither any representation nor any communication has been made by the Petitioners for grant of similar benefits, as afforded to the Petitioners in Writ Petition No.4050 of 2017. However, taking into consideration the order dated 22.10.2020 passed by this Court, the Zilla Parishad, Kolhapur, shall follow all the directions if given by this Court in the instant Writ Petition. Paragraphs 3 and 4 of the affidavit of Respondent Nos.5 and 6 Zilla Parishad, Kolhapur, dated 22.03.2021 reads thus :

“3. I say that this Hon’ble Court vide order dated 22nd October, 2020 was pleased to direct the Zilla Parishad to accord benefits of one or two advance increment to the petitioners therein as per policy of State Government dated 11/02/1974 and 31/10/1989 in revised Sixth Pay Scale without giving effect to circular dated 03/07/2009 and G.R. dated 24/08/2-17. I say that said order has been complied with and all the petitioners therein were granted benefit as per the policy of State Government.

4. As far as present petitioners are concerned neither any representation nor any communication has been done by them in respect of granting similar benefits as accorded to the petitioners in W. P. No.4050 of 2017. Still taking into consideration the order dated 22/10/2020 passed by this Hon’ble Court, the Zilla Parishad shall follow all the directions

if given by this Court in the instant Writ Petition.

13. It is beyond our comprehension as to what is the necessity for the Petitioners to file a representation/communication to Respondent - Zilla Parishad, Kolhapur, to follow the directions given by this Court by order dated 22.10.2020 in Writ Petition No.4050 of 2017 in the case of similarly placed Petitioners. This would cause unnecessary burden on the Petitioners who have already been made to wait for long.

14. We have also perused the order dated 22nd October, 2020 of the Division Bench of this Court in Writ Petition No. 4050 of 2017 (where one of us K. K. Tated, J was a member) which is quoted as under:-

“1. Rule.

2 By consent of the parties, the matter is heard finally.

3 By this Petition under Article 226 of the Constitution of India, the Petitioners are challenging the Circular dated 3rd July, 2009 and Government Resolution (G.R.) dated 24th August, 2017.

4 The Petitioners are employees of Zilla Parishad, Kolhapur. Pursuant to the G. R.s dated 11th February, 1974 and 31st October, 1989, the Petitioners in view of their outstanding work were granted either one or two advance increments as on 1st October 2006, 1st October, 2007 and 1st October, 2008. The Petitioner state that the Respondent – State, however, by Circular dated 3rd July, 2009 instructed to fix the pay in a revised pay scale as per the recommendation of sixth pay commission without taking into consideration advance increments granted on 1st October, 2006, 1st October, 2007 and 1st October, 2008. It is stated that the Respondent – State then issued the G. R. dated 24th August, 2017 and reiterated the instructions issued by Circular dated 3rd July,

2009. The contention is accrued and vested rights of the Petitioners cannot be taken away by the impugned G. R.

5. On 14th November, 2019, Smt. Geeta R. Kulkarni, Deputy Secretary, General Administration Department, Mantralaya, Mumbai filed an additional Affidavit-in-Reply on behalf of Respondent No.1. Paragraph Nos.3,4 and 5 of the said additional Affidavit-in-Reply read thus:-

“3. I further say and submit that this Hon’ble Court at Aurangabad Bench in Writ Petition No.10348 of 2019 (Dilip Sambhaji Malve and others) has given judgment on 21.08.2019. In said judgment their Lordships has mentioned that the Government Resolution dt. 24.08.2017 will have prospective effect that not retrospective and in that case if benefits was accorded to petitioners of excellent work in the year 2006 to 2009, then same shall not be withdrawn and if any recovery is made pursuant to the same, shall be refunded to the petitioners. The copy of the said judgment hereto Annexed and marked as Exhibit-1.

4 I say and submit that this Hon’ble Court at Aurangabad bench in its another judgment in W.P. No.11599/2019 on the subject of Advance Increment to District Awardee Teachers dated 21.09.2019 has given six months period for considering the claim of petitioners. The copy of the said Judgment hereto annexed and marked as Exhibit-II.

5 I say and submit that the Government, in view of this 6 months period granted by this Hon’ble Court, has undertaken steps, to take necessary steps in the issue as stated above. The matter is not only related with petitioners but also all such state employees. Therefore, in this matter, the policy decision has to be taken at the level of Government in consultation with Law and Judiciary Department and Finance Department. For this more time is required. Therefore, by considering period given by the Hon’ble High Court, at Aurangabad bench in above mentioned Writ Petition No.11599 of 2019, I urged this Hon’ble Court to grant period of six months to settle the matter.”

In view of paragraph No.5 of additional Affidavit-in-Reply, it was incumbent upon the Respondent -State to take a policy decision with regard to issue in question, within six months. However, no policy decision is placed on record till date.

6. *This Court (Aurangabad bench) in Writ Petition No.14797 of 2017 (Ganpat Vitthal Dapute and Ors. v/s. The State of Maharashtra and ors) vide its order dated 11th June, 2019, held that the G. R. dated 24th August, 2017 will have prospective effect. This Court, accordingly, held that the benefit of advance increments granted as per the policy of the Government prevailing at that time, the same would not be withdrawn on the basis of subsequent G.R. dated 24th August, 2017. Considering the fact that the Respondent – State has not yet taken any policy decision with regard to the issue in question, we are constrained to pass similar order. In the result, we pass the following order:-*

- “(a) The Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the Respondent- State dated 11th February, 1974 and 31st October, 1989 in the revise Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July, 2009 and G. R. dated 24th August, 2017.*
- (b) Recovery, if any, made pursuant to the Circular dated 3rd July, 2009 or G. R. dated 24th August, 2017 from the Petitioners shall be refunded to them.*
- (c) Rule made absolute accordingly.*
- (d) No order as to costs.”*

15. It is observed that the issue of challenge to Circular dated 3rd July, 2009 and G. R. dated 24th August, 2017 issued by Respondent No.1 – State Government in this Petition, has already been decided by this Court in the case of **Uday J. Godave (supra)** and **Shri Appasaheb M. Mali (Supra)** as well as the other decisions of this Court referred to above. Being in respectful agreement with the same, the Petitioners being similarly placed, we pass the following order:-

- (a) Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the

Respondent-State dated 11th February, 1974 and 31st October, 1989 in the revised Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July, 2009 and G. R. dated 24th August, 2017.

- (b) Recovery, if any, made pursuant to the Circular dated 3rd July, 2009 or G. R. dated 24th August, 2017 from the Petitioners shall be refunded to them.
- (c) Rule is accordingly made absolute in the above terms.
- (d) No order as to costs.

(R.I. CHAGLA, J.)

(K.K. TATED, J.)