

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13848 OF 2021

1. Madhukar Limbajirao Bhange
Age : 63 years, occ : Pensioner
R/o Near Priya Nagar, Satya Prabha
Niwas, Jirge Nagar, Parli, Dist. Beed.
2. Arvind Vitthal Marulkar
Age : 65 years, occ : pensioner
R/o Flat No. 21, Building No.1,
Karan Palms, Near Aditya Garden
City, Warje, Pune.
3. Madhav Bhiva Dhole
Age : 64 years, occ : Pensioner
R/o Flat No.5, Building No.3, Ganesh
Baug, Sinhgad Road, Off. Indian
Hume Pipe Company, Manik Baug,
Anand Nagar, Pune.
4. Sharad Rajaram Waikar
Age : 60 years, occ : Pensioner
R/o Flat No.B-2, Kasliwal Vihar,
Pratap Nagar, Aurangabad.
5. Dnyandev Ganpati Khade
Age : 59 years, occ : Pensioner
R/o 175/2, Plot No.4, Mahalaxmi
Colony, Panchgaon, Near Gajanan
Hall, R.K. Nagar, Kolhapur.
6. Shankar Kashinath Nighojkar
Age : 62 years, occ : Pensioner
R/o Survey No.1, Plot No. 89, 90,
91, 92, Wing B, Flat No. 203, Utsav
Residency, Infront of Anant Rushi
Maharaj School, Pune.
Taluka and District Pune

7. Sunil Prabhakar Soundankar
Age : 59 years, occ : Pensioner
R/o Gurukrupa Colony, Anand
Vihar, Bhistbag Road, Behind
Jaindharma Sthanak, Savedi,
Ahmednagar.
8. Mohini Sumant Kulkarni
Age : 61 years, occ : Pensioner
R/o Madhu Malti, Near Civil
Hospital, Overseer Colony, Sangli.
9. Gajanan Natthuji Bandewar
Age : 63 years, occ : Pensioner
R/o Plot No. 53, Sainath Society,
Wadgaon Road, Yavatmal.
10. Prakash Narhar Thakare
Age : 64 years, occ : Pensioner
R/o Alankar Palmspring, Sawarkar
Nagar, Gangapur Road, Nashik.
11. Gulab Damodhar Jadhav
Age : 62 years, occ : Pensioner
R/o Vyankat Raman Row House
No. 02, Dindori Road, Behind Akash
Petrol Pump, Near Vitthal Mandir,
Kalanagar, Nashik.
12. Syed Yahiya Quadri Mehmood
Quadri
Age : 61 years, occ : Pensioner
R/o 19/A, Mehboob Nagar, Near
Aref Colony, Aurangabad.
13. Keshav Ramrao Deshmukh
Age : 65 years, occ : Pensioner
R/o House No.7, Ring Road,
Behind Mukund Kirana, Narhar
Nagar, Post Taroda Khurd, Nanded.
Taluka and District Nanded.

14. Satish Murlidhar Malvankar
Age : 58 years, occ : Pensioner
R/o Savarkar Road, Chirebandi
Galli, A/P Akole, Taluka Akole,
District Ahmednagar.
15. Vishnu Sonaji Shevante
Age : 64 years, occ : Pensioner
R/o Rakshnagar Phase – 2
Society, 4/502, Kharadi By-Pass
Road, Chandan Nagar, Pune.
16. Bapu Shivram Shirude
Age : 64 years, occ : Pensioner
R/o Anusaya, Plot No. 85,
Mohan Nagar, Near Vrundavan
Gardan, Jalgaon.
17. Babasaheb Pandurang Lavate
Age : 62 years, occ : Pensioner
R/o Pujarwadi, At Post Aatpadi,
Taluka Aatpadi, District Sangli.
18. Vasant Vishwanathrao Nirgude
Age ; 72 years, occ : Pensioner
R/o Plot No.7, Niranjan Co-Hsg.
Society, Tilak Nagar, Aurangabad.

Petitioners

Versus

1. The State of Maharashtra
Through it's Secretary,
General Administration Dept.
Mantralaya, Mumbai.
2. The State of Maharashtra
Through its Secretary,
Water Resources Department,
Mantralaya, Mumbai.
3. The State of Maharashtra
Through it's Secretary
Soil and Water Conservation Dept.
Mantralaya, Mumbai

Respondents

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Mr. S.B. Sontakke, Advocate for the petitioners.
Smt. M.A. Deshpande, A.G.P. for the respondents.

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**CORAM : C.V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

JUDGMENT RESERVED ON : 22 JUNE 2022
JUDGMENT PRONOUNCED ON : 4 JULY 2022

JUDGMENT (PER SANDIPKUMAR C. MORE, J.) :

Rule. Rule made returnable forthwith. The learned A.G.P. waives service for the respondents. By consent of the parties, heard finally at the stage of admission.

2. The petitioners, in the present petition, are claiming one notional increment for the purpose of pensionary benefits payable on 1 July of their respective last years of service.

3. The petitioners belong to different posts, such as, Junior Engineer, Technical Assistant, Tracer, Junior Clerk and Peon in the Water Resources and Conservation Department, Mantralaya, Maharashtra and got retired from their respective services on 30 June of the years between 2007 and 2020 on

attaining their respective age of superannuation. We would like to reproduce the chart showing details in respect of their appointments and dates of superannuation as annexed at Exhibit-A, herein below :

Sr. No.	Name of the petitioners	Initial date of appointment	Date of superannuation
1.	Madhukar Limbajirao Bhangе	24.06.1980	30.06.2016
2.	Arvind Vitthal Marulkar	25.07.1979	30.06.2014
3.	Mhadhav Bhiva Dhole	22.06.1978	30.06.2015
4.	Shankar Rajaram Waikar	08.10.1980	30.06.2019
5.	Dnyandeo Ganpati Khade	11.04.1983	30.06.2020
6.	Shankar Kashinath Nighojkar	07.07.1977	30.06.2019
7.	Sunil Prabhakar Soundankar	02.01.1982	30.06.2020
8.	Mohini Sumant Kulkarni	16.04.1979	30.06.2018
9.	Gajanan Natthuji Bandewar	09.05.1978	30.06.2016
10.	Prakash Narhar Thakare	15.01.1984	30.06.2015
11.	Gulab Damodhar Jadhav	12.05.1980	30.06.2017
12.	Syed Yahiya Quadri Mehmood Quadri	28.08.1979	30.06.2018
13.	Keshav Ramrao Deshmukh	04.10.1976	30.06.2014
14.	Satish Murlidhar Malvankar	21.05.1980	30.06.2019
15.	Vishnu Sonaji Shevante	28.08.1984	30.06.2015
16.	Bapu Shivram Shirude	05.09.1977	30.06.2015
17.	Babasaheb Pandurang Lavate	24.09.1979	30.06.2017
18.	Vasant Vishwanathrao Nirgude		30.06.2007

4. For grant of such notional increment, which was due on the next day of the petitioners' respective retirement dates, they

have relied upon the judgment of the Hon'ble Supreme Court in Review Petition No. 1731 of 2019 in S.L.P. No. 22008 of 2018 in the case of **Union of India and others vs. P. Ayyamperumal**, dated 8 August 2019. In the said petition, the Hon'ble Apex Court has rejected the request of the Government and refused to interfere with the impugned judgment and order passed by the Madras High Court. The Madras High Court, under the said judgment dated 15 September 2017 in Writ Petition No. 15732 of 2017 in the case of ***P. Ayyamperumal vs. The Registrar, Central Administrative Tribunal and others***, has made the following observations :

"5. The petitioner retired as Additional Director General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied the last increment, though he completed a full one year in service, ie., from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.

6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013

itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep.by its Secretary to Government, Finance Department and others v. M.Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.

7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs”.

5. The present petitioners have claimed similar relief in the present petition invoking Rule 10 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 which is identical to the amended Rule 10 of the Central Services (Revised Pay) Rules, 2008, which has been discussed in the aforesaid judgment. Further, this Court under order dated 24 June 2021 in Writ Petition No.6396 of 2020 in the case of **Prakash Tulshiram**

Chaudhari vs. State of Maharashtra and others, has also taken similar view as that of the view taken by the Madras High Court in the aforesaid judgment. The Hon'ble Supreme Court has also refused to interfere with the judgment of this Court. Thereafter also the Division Bench of this Court has taken similar view in the later judgment in the group of petitions bearing Writ Petition Nos.3028 of 2021 and others on 2 May 2022. In para 10 of the said judgment, this Court has observed as follows :

“10. Considering the dates of superannuation of these petitioners as being 30th June of the respective years, we hold that the increment payable to them on 1st July of the concerned year, after 2006, would be reckoned with for notionally calculating the pensionary benefits, which would have been payable to them from 1st July, but for their superannuation on 30th of June. This notional inclusion of the annual increment would be considered for calculating their pension, gratuity, earned leave, commutation benefits, etc”.

6. The present petitioners are similarly situated, and therefore, in view of the aforesaid observations, they are entitled for the notional increment due on next day of their respective retirement on 30 June, as they worked fully in their last year of service, and thus, became entitled for such notional increment on immediate next day i.e. 1 July. Therefore, we pass the following order.

ORDER

- (i) Writ Petition is allowed in terms of prayer clause (B).
- (ii) Rule made absolute in above terms.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG J.