

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

951 WRIT PETITION NO.3853 OF 2020

**SHRIKANT SHRIPADRAO BORALKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Mr. Sontakke Sandeep B.
AGP for Respondent Nos. 1 to 6 : Mrs. R.P. Gaur

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**
DATE : 14.09.2022.

PER COURT : (PER : SANDEEP V. MARNE, J.)

We have heard both the sides.

2. By the present petition, petitioner assails order dated 27.02.2020 passed by the Maharashtra Administrative Tribunal in Original Application No. 922/2019. The Tribunal has proceeded to dismiss the Original Application on the ground of delay.

3. By order dated 03.04.2008 additional increments were sanctioned in favour of the petitioner for outstanding work. However, effect to the said order dated 03.04.2008 was not given. This was on account of a Circular dated 03.07.2009 issued by the State Government wherein it was directed that till a final decision was taken on implementations of recommendations of Hakeem Committee, pay fixation in the Sixth Pay Commission was to be made without considering the advance increments. The final decision for withdrawal of the scheme of advance increments was taken by way of Government Resolution dated 24.08.2017. We, therefore, find that on account of specific directions of the State Government in the form of the Circular dated 03.07.2009, the effect of advance increments was not granted.

4. We have already held in numerous decisions that the Government Resolution dated 24.08.2017 would apply prospectively and that the scheme of grant of advance increments would continue to operate till 23.08.2017. In these circumstances, we are of the view that the cause of action for filing the Original Application did not arise up to 24.08.2017. The Tribunal has, therefore, committed an error in dismissing the Original Application on the ground of delay.

5. In ordinary circumstances, we would have remanded the matter for reconsideration on merits. However, since the issue of grant of advance increments has already been dealt with by us in numerous decisions, we feel that a quibus can be given to the issue involved. By judgment and order dated 30.08.2022, we have rejected Review Applications after considering all objections raised by the State Government and Zilla Parishad about retrospective operation of the Government Resolution dated 24.08.2017. We, reproduce paragraph Nos. 12 to 15 of the judgment and order dated 30.08.2022 passed in Review Application (Civil) No. 170/2022 in Writ Petition No. 13760/2019 :

“12. After having heard learned Counsels at length, we find that the review applicants have not been able to point out any specific instructions issued prior to 24.08.2017/04.09.2018 for discontinuation of the schemes for grant of advance increments. Government Resolution dated 27.02.2009 and Circular dated 03.07.2009 do not indicate that any final decision was taken for discontinuation of schemes for advance increments. We proceed to examine the Government Resolution dated 27.02.2009 and Circular dated 03.07.2009 in details.

13. Government Resolution dated 27.02.2009 came to be issued by the State Government essentially for conveying the decision of the State Government about acceptance or otherwise of various recommendations made by the Hakim Committee constituted for implementation of recommendations of the 6th Central Pay Commission. In Annexure to the said Government Resolution, each recommendation and decision of the State Government thereon have been enumerated. So far as the scheme for advance increment

is concerned, the same is to be found at serial number 27 of the Annexure (para 3.24 of Committees Report). In that paragraph, the Committee recommended that for employees/Officers rendering outstanding service, increment @ 4% be awarded instead of 3% and such increment be granted once in 5 years. It was further recommended that since increment at higher rate was being granted, the then existing scheme for grant of one or two advance increments be discontinued. However, in the column 'Decision of State Government' against para 3.24, remark is made stating that 'separate action would be taken by General Administration Department'. As against various other recommendations, the remark 'accepted' has been made. The recommendation made in para 3.24 by the Hakim Committee was not accepted at least on the date of issuance of Government Resolution dated 27.02.2009 and General Administration Department was to take a decision thereon separately. Thus, it cannot be inferred that any specific decision was taken by the State Government on 27.02.2009 for discontinuation of scheme for grant of advance increment. Therefore, we do not find that the orders under review need to be disturbed on the basis of the Government Resolution dated 27.02.2009.

14. Now, we come to the Circular dated 03.07.2009. By the said Circular, it was directed that the issue of discontinuation of scheme for grant of advance increment was under consideration with the State Government and that some time was required for taking final decision. Therefore, it was further directed that temporarily the pay fixation of the employees in the 6th Pay Commission scales be made without considering the advance increments. Thus, the Circular dated 03.07.2009 was clearly issued as a temporary measure. The said circular did not communicate any decision to the effect that the State Government discontinued the scheme for grant of advance increments. Therefore, we find that the reliance of Mr. Dixit on the Circular dated 03.07.2009 is again of no avail.

15. We have carefully gone through the Government Resolution dated 24.08.2017 and Circular dated 04.09.2018. By the Government Resolution dated 24.08.2017, final decision came to be taken in respect of recommendation made by the Hakim Committee in para 3.24 of its report directing that during the period from 01.10.2006 to 01.10.2015 when revised pay scales as per 6th Pay Commission were admissible, the benefit of advance increments should not be granted. Thus, the final decision on para 3.24 of Committees Report was taken by the State Government only on 24.08.2017. However, instead of simply directing that the scheme for grant of advance increments is discontinued, the State

Government sought to give retrospective effect to its decision by directing that the benefit of such advance increments be not given during the period from 01.10.2006 to 01.10.2015. While issuing such orders having retrospective effect, the State Government lost sight of the fact that several employees were already granted the benefit of advance increments during the relevant period. As we have observed earlier, the deliberations for discontinuation of the scheme started only on 27.02.2009 / 03.07.2009 and prior to that, admittedly, the issue of discontinuation of the scheme for grant of advance increment was not even under consideration. The instructions for temporarily doing pay fixation without advance increments were issued on 03.07.2009. This means that several employees must have already been granted advance increments during the period from 01.10.2006 to 03.07.2009. We, therefore, fail to comprehend as to how the State Government could have issued directions on 24.08.2017 that the benefit of advance increments should not be granted from 01.10.2006 onwards. Even in respect of employees becoming eligible for grant of advance increments after 27.02.2009, we do not find any error in the view taken by this Court that the Government Resolution dated 27.08.2017 would only have prospective effect.”

6. In the present case decision to grant advance increments has already been taken on 03.04.2008 and therefore there is no dispute about the eligibility or entitlement of the petitioner to receive the benefit of advance increments. Only actual benefit by way of fixation of pay has not been granted.

7. We, therefore, allow the writ petition by directing the respondents to release all the monetary benefits arising out of advance increments sanctioned in favour of the petitioner by order dated 03.04.2008. Necessary monetary benefits be paid to the petitioner within a period of eight weeks from today.

(SANDEEP V. MARNE J.)

(MANGESH S. PATIL, J.)

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