

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

63 WRIT PETITION NO. 9797 OF 2022

LAKHAJI DIGAMBAR PATIL AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Ankush N. Nagargoje
AGP for Respondent-State : Mr. A. R. Kale
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**CORAM : RAVINDRA V. GHUGE AND
ARUN R. PEDNEKER, JJ.**

DATED : 26 SEPTEMBER 2022

PER COURT :-

1. The petitioners have put forth prayer clauses (A) to (C) as under : -

- A) Issue writ of mandamus, or any other writ to hold and declare that, the Government Resolution dated 24.08.2017 withdrawing the two advanced increments during the period 01.10.2006 to 01.10.2015 is ultra virus and unconstitutional of Article 12, 14 and 16, to the extent of petitioners.
- B) To hold and declare the petitioners are entitled and valid for getting the benefit of two advanced increments as per the order dated 27.02.2009 and to grant one increment on the date of retirements of petitioners i.e. petitioner No.1 on 30.06.2012 and the petitioner No.2 on 30.06.2015 and both will be entitled for the increments on 01.07.2012 and 01.07.2015 respectively and further to re-fix the last pay of the petitioners by including the two advanced increments and one increment from 1st July and for

that purpose necessary orders may kindly be passed.

- C) Pending hearing and final disposal of the present writ petition, the respondent authorities may be directed to re-fix the last pay of the petitioners by including the two advanced increments and one increment from 1st July and to forward the revised pension papers to the office of Accountant General (A.G.-II), Nagpur.”

2. The issues raised in this petition are no longer *res integra*.

3. As regards the benefit of two advance increments, vide order dated 14.11.2019 in Writ Petition No. 13760 of 2019, this Court had concluded that the circular dated 14.12.2006 would continue to apply and the G.R. dated 24.08.2017 would apply prospectively and cannot be granted a retrospective effect. Subsequent to the above, review applications were filed and by judgment and order dated 30.08.2022 in review application no. 170 of 2022 and other connected applications, this Court has concluded that there is no merit in the review applications. With a reasoned order, the review applications are dismissed and it is concluded that though the increments have been discontinued vide G.R. dated 24.08.2017, this cannot be given effect to, retrospectively from 2006 onwards.

4. As regards the issue of notional addition of an annual increment while computing pension and pensionary benefits,

petitioner no.1 has retired on 30.06.2012 and was eligible for annual increment for having discharged his duties from 01.07.2011 till 30.06.2012. Petitioner No.2 superannuated on 30.06.2015. He was also entitled for an annual increment for having worked from 01.07.2014 to 30.06.2015.

5. This issue has been considered by the Madras High Court on 15.09.2017 in **Writ Petition No.15732/2017** filed by **P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal and others**. The view taken by the Madras High Court in the above case has been sustained by the Honourable Supreme Court. This Court (Coram : Ravindra V. Ghuge and Anil L. Pansare, JJ.) has also delivered the judgment dated 23.06.2022 in **Writ Petition No.6256/2022** filed by **Changdeo Genuji Dudhat and others vs. State of Maharashtra and others** and connected petitions. We have corrected paragraph 10 of our judgment dated 23.06.2022 vide order dated 13.07.2022.

6. The case of the petitioners, to the extent of notional addition of annual increment, is squarely covered by the said order dated 23.06.2022 and they stand entitled for the benefits as ordered in paragraph 9 and corrected paragraph 10 of the order dated

23.06.2022 in **Changdeo Genuji Dudhat** (supra), which read as under :-

“9. It is quite apparent that the judgment delivered by the Madras High Court in P.Ayyamperumal (supra), became a cause for these petitioners to approach this Court. None of them had challenged the non-inclusion of the annual increment in their pensionary benefits for calculation purposes, when they superannuated on 30th June of a particular year. As the judgment delivered in P. Ayyamperumal (supra) became known to all, that these petitioners have approached this Court. Some of the petitioners have superannuated in between 2016 and 2021.

10. Considering these aspects, we are of the view that the arrears of such benefits as granted by us in paragraph 9 hereinabove, could be restricted for a reasonable period. As such, these petitioners would be entitled for the arrears of such benefits for a period of three years preceding the dates of their filing of the writ petitions or as per actuals, whichever is less. We direct the payment of such arrears accordingly and expect such payment to be made to these petitioners, on or before 30.08.2022.”

7. In view of the above, this petition is partly allowed. In the event, no increments have been paid to the petitioners from the date of their eligibility till the introduction of the G.R. dated 24.08.2017, the petitioner would be entitled to such increments.

8. Needless to state, the employer shall carry out the verification exercise and after considering the record and upon finding that the petitioners were eligible for these increments, shall make such payment, expeditiously and preferably before 30.12.2022.

9. The respondents would also re-calculate the pensionary benefits as directed in paragraphs 9 and 10 (reproduced above) of **Changdeo Genuji Dudhat** (supra), on or before 30.12.2022.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

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