

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

WRIT PETITION NO. 10530 OF 2022

Maya Mahadev Potdar

Age: 58 years, Occu: Retired
as Assistant Superintendent,
Civil Judge, Junior Division Omarga,
Dist. Osmanabad.

... Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai.

2. The Principal District Judge,
Osmanabad (Administrative Capacity)

3. Accountant General (A & E) Nagpur,
Through its Account Officer Pay
Unit Nagpur.

... Respondents

...

Mr. M. P. Tripathi, Advocate for the Petitioner

Mr. S. K. Tambe, AGP for the Respondents-State

Mr. R. J. Godbole, Advocate for Respondent No.2

...

**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 12th December, 2022

ORAL JUDGMENT : (Per Ravindra V. Ghuge, J.)

1. **RULE.** Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The petitioner has put forth prayer clauses - (C) & (D) as under;

“(C) The impugned communication dated 21.01.2020 issued by Registrar Principal District Judge Osmanabad may kindly be quashed and set aside and respondent may kindly be directed to grant annual increment in view of service rendered by petitioner for 2019-2020 which fell due on 01.07.2020

(D) To hold and declare that, the petitioner is entitle for annual increment for rendering of her service during the period of 2019-2020. And accordingly, respondents are directed to refix the pay scale of the petitioner by granting the pay scale fell due on 01.07.2020.”

3. The following aspects are undisputed :-

(i) The petitioner superannuated on 30.06.2020.

(ii) The petitioner received her last annual increment for having completed one year of service on 01.07.2019.

(iii) For working over a period of one year from 01.07.2019 till 30.06.2020, she was entitled for the one annual increment, since it is not payment of advance increment, but, payment of an annual increment after completing one year i.e. 30.06.2020.

(iv) The annual increment, which was earned by the petitioner, was payable for the year 01.07.2019 to 30.06.2020.

4. Respondent No.2 has entered a detailed affidavit-in-reply dated 09.12.2022. It is contended as under:

(a) Rule 10 of the Maharashtra Civil Services (Pension) Rules, 1982 deals with the age of retirement of a Government Servant.

(b) Rule 10(1) prescribes that every Government Servant, other than Class-IV employee, would retire from service after forenoon on the last day of the month, in which, he attains the age of 58 years.

(c) Rule 10 (2) provides that a Government Servant in Class-IV category would retire afternoon on the last day of the month, in which, he attains 60 years of age.

(d) In both the above cases, irrespective of the actual birthday of the employee, the retirement is scheduled on the last day of the month, in which, he completes the age of retirement.

(e) On account of the implementation of the 6th and 7th pay commission recommendations, annual increment of pay is to be released in favour of the Government Servant after completion of 12 months on the post.

(f) Proviso to sub-rule 1 of Rule 39 of the Maharashtra Civil Services (Pay) Rules, 1981 prescribes that the annual increment shall be admissible on the first day of the month, in which, it accrues.

(g) The increment of pay earned by an employee for working in the previous year, would be released on the first day of the month, in which, it accrues.

(h) The Finance Department of the Government of Maharashtra issued a notification dated 30.01.2019 for implementing the 7th pay commission recommendations with the introduction of the Maharashtra Civil Services (Revised Pay) Rules, 2019.

(i) Rule 10 of the revised rules 2019 provides that instead of 1st July, annual increment of pay shall be payable to the Government Servants every year either on 1st January or 1st July.

(j) Though the petitioner may have worked for one full year from 01.07.2019 till 30.06.2020, she would be entitled for the increment on 01.07.2020 and as she had retired from service, she was not paid such increment.

5. We find that the respondents are adopting a pedantic approach. It is not in dispute that the petitioner worked for one full year and after completing the work on 30.06.2020, she was entitled for the annual increment for having already performed her work from 01.07.2019 to 30.06.2020. We are unable to agree with the contention that as the petitioner was not in employment on 01.07.2020, the annual increment for the work performed from 01.07.2019 till 30.06.2020, would not be payable to her. It does not call for any debate that, any employee, who has worked for any duration, has a legal right to earn his wages. The petitioner worked in the last month of her service from 01.06.2020 to 30.06.2020. Her salary is payable on the pay date falling in the following month. She would have drawn her salary in the first week of July-2020. This was paid to her since she had worked from 01.06.2020 till 30.06.2020. Even after retiring on 30.06.2020, her salary was payable in July-2020. It appears illogical to us to deprive the petitioner of the annual

increment which she had earned by working from 01.07.2019 till 30.06.2020. It does not matter that she superannuated on 30.06.2020, as the increment would have been payable to her, having been earned for the one year she had worked previously, on 01.07.2020.

6. The Madras High Court has also taken such view in P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal and others, vide judgment dated 15.09.2017, delivered in Writ Petition No.15732/2017. This judgment has been sustained by the Hon'ble Supreme Court, vide order dated 23.07.2018, delivered in Special Leave Petition (Civil) Diary No.22283/2018.

7. This Court has consistently taken this view in such matters. By judgment dated 24.06.2021, delivered by this Court [Coram: Ravindra V. Ghuge & Avinash G. Gharote, JJ.], Writ Petition No.6396/2020, filed by Prakash Tulshiram Chaudhar Vs. The State of Maharashtra & others, was allowed. This was assailed before the Hon'ble Supreme Court.

8. The Hon'ble Supreme Court [Coram: Hon'ble Mr. Justice S. Abdul Nazeer & Hon'ble Mr. Justice Krishna Murari] has passed an order on 12.01.2022 as under;

“We not inclined to interfere with the impugned order. The special leave petition is, accordingly, dismissed. Pending application also stands disposed of.”

9. In an order dated 05.08.2022 passed by this Court, in Writ Petition No.2025/2020, filed by Ahelaji Chimaji Dudhe & Others Vs. The State of Maharashtra and others and connected matters, this Court observed in Paragraph Nos.6 to 12 as under:-

6. By the recommendations of the 6th Pay Commission, uniformity was decided to be introduced and 1st of July of each year was considered to be the date on which the annual increment, for having worked for 12 calendar months preceding 1st July, would be payable. Consequentially, for the work performed in 12 calendar months till 30th June, the said employee would earn the annual increment on 1st July of the said year. It is in these peculiar circumstances that, these petitioners are before us, after having superannuated on 30th June of their respective year set out in the chart. For example, if person 'A' had retired on 30th June, 2021, he would have earned the annual increment which became payable to him on 01.07.2021. As he superannuated on 30th June, 2021, he was not granted the notional benefit of the increment which would have been payable to him on 01.07.2021 for the work performed from 01.07.2020 to 30.06.2021.

7. It is in these circumstances, we found that the judgment delivered by the learned Division Bench of the Madras High Court in P. Ayyamperumal (supra) was an appropriate view. We delivered an order on 24th June, 2021 in Prakash Tulshiram Chaudhari (supra). The judgment of the Madras High Court in P. Ayyamperumal (supra) was challenged by the Union of India and others in Special Leave Petition (Civil) Diary No.22283/2018. By order dated 23.07.2018, the Hon'ble Supreme Court declined to interfere with the impugned judgment of the Madras High Court and dismissed the Special Leave

Petition. Similarly, to the challenge to our order dated 24th June, 2021 in Prakash Tulshiram Chaudhari (supra), the Hon'ble Supreme Court dismissed the Special Leave Petition on 12.01.2022.

8. *In view of the above, these Writ Petitions are allowed.*

9. *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.*

10. *The learned Advocates for the petitioners have prayed for entire arrears from their dates of superannuation. The chart referred to below in paragraph 4 indicates that the petitioners have superannuated in different years, from 2006 onwards.*

11. *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.*

12. *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 writ petitions or as per actuals, which ever is less. We direct the payment of such arrears accordingly and expect such payment to be made to these petitioners, on or before 30/11/2022."*

10. In view of the above, this petition is partly allowed in terms of prayer clause - (C).

11. The petitioner would be entitled for the increment payable for the year 01.07.2019 till 30.06.2020, which was payable to her from 01.07.2020. As the petitioner superannuated, she would be entitled to the arrears of the annual increment payable for the period 01.07.2019 to 30.06.2020. As the petitioner has superannuated on 30.06.2020, we grant her the arrears of unpaid annual increment, if any, for the period of two years from 01.07.2020 till the said amount is paid. The said last annual increment would be considered by the employer for recalculating the pensionary, gratuity and retiral benefits of the petitioner from the date of her retirement and the same shall be payable within three months.

12. Rule is made partly absolute in the above terms.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)