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

908 WRIT PETITION NO. 11038 OF 2021

GOPAL VASANTRAO KULKARNI
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioner : Mr.S.K.Mathpati
AGP for Respondent-State : Mrs.M.A.Deshpande
Advocate for Respondent nos.3 and 4 : Mr.S.R.Yadav-Lonikar
…

**AND**
943 WRIT PETITION NO.2855 OF 2021

RAMRAO NANABHAU NAGARGOJE & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioners : Mr.S.K.Mathpati
AGP for Respondent-State : Mrs.M.A.Deshpande
Advocate for Respondent nos.4 to 6 : Mr.P.D.Suryawanshi
…

**AND**
946 WRIT PETITION NO. 3124 OF 2021

DHARMRAJ KONDIBA RASAL & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioners : Mr.S.K.Mathpati
AGP for Respondent-State : Mr.S.R.Yadav
Advocate for Respondent nos.3 to 5 : Mr.P.D.Suryawanshi
…

**AND**
947 WRIT PETITION NO.3159 OF 2021

BHAISAHEB HIRAJI PATIL
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioner : Mr.S.K.Mathpati
AGP for Respondent-State : Mr.P.K.Lakhotiya
Advocate for Respondent nos. 3 & 4 : Mr.Avinash D.Aghav
...

**AND**
964 WRIT PETITION NO.5595 OF 2021

PANDIT JANARDHAN MUNDE & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioners : Mr.S.K.Mathpati
AGP for Respondent-State : Mr.S.G.Sangle
Advocate for Respondent nos.4 and 5 : Mr.L.H.Kawale
...

**AND**
965 WRIT PETITION NO.5613 OF 2021

RAMCHANDRA PUNDLIK GIRI & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioners : Mr.S.K.Mathpati
AGP for Respondent-State : Mr.P.K.Lakhotiya
...

**AND**
966 WRIT PETITION NO.5722 OF 2021

ABHANG GOPAL SURYAWANSHI & OTHERS
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioners : Mr.S.K.Mathpati
AGP for Respondent-State : Mrs.R.P.Gaur
…

**AND**
967 WRIT PETITION NO. 5724 OF 2021

SHIVRAJ GOVINDRAO KAMBLE
VERSUS
THE STATE OF MAHARASHTRA & OTHERS
...
Advocate for the petitioner : Mr.S.K.Mathpati
AGP for Respondent-State : Mr.S.G.Sangle
…

**CORAM : RAVINDRA V. GHUGE & S.G.DIGE, JJ.**

DATE : 27.04.2022

**P.C.** :

1. Leave to add Secretary, Rural Development Department, State of Maharashtra as a respondent. Addition be carried out forthwith. Issue notice to the added respondents. The learned AGPs appearing in these matters, waive service of notice on behalf of the added respondent.

2. In all these petitions, the issue that has been

raised by the petitioners is as regards the notional addition of an annual increment, while computing their pension and pensionary benefits. Such increment became due and payable one day after their superannuation. This issue has been considered and decided by this Court [Coram : Ravindra V.Ghuge & Avinash G. Gharote, JJ.] by order dated 24th June, 2021 in Writ Petition No.6396 of 2020 filed by ***Prakash Tulshiram Chaudhari Vs. State of Maharashtra and others***. This order was assailed by the State of Maharashtra before the Hon'ble Supreme Court of India in Special Leave to Appeal (C) No. 206 of 2022. The Hon'ble Apex Court [Coram : Hon'ble Mr. Justice S. Abdul Nazeer & Hon'ble Mr. Justice Krishna Murari] passed an order on 12.01.2022 concluding as under:-

> *"We are not inclined to interfere with the impugned order. The Special Leave Petition is, accordingly, dismissed.*
>
> *Pending application also stands disposed of."*

3. This Court had based it's order dated 24th June,

2021, on the conclusions arrived at by the learned Division Bench of 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**. We had referred to the said judgment in our order dated 24.06.2021 and had concluded as under:-

> *3. The petitioner has raised a very short issue before us. His retirement fell on 30.06.2019 and had he retired on 01.07.2019, he would have been entitled for annual increment as is provided under Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. Considering this provision, the Government of Maharashtra revised the Maharashtra Civil Services (Revised Pay) Rules, 2009 and brought uniformity in the payment of annual increments. There is no dispute that the petitioner had worked up to 30.06.2019. He has thus, completed one year prior to his retirement. He would be entitled for an annual increment, but for the fact that the Rules prescribed that he would be entitled to such increment if he has worked on 01.07.2019, when it became payable.*

*4. The issue raised in this petition has been squarely covered by the judgment delivered by the learned Division Bench of 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 facts in the case before the Madras High Court were set out in paragraphs 5 and 6 and the Madras High Court drew it's conclusions in paragraph 7 and allowed the petition. Paragraphs 5 to 7 read as under :-*

> *"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, i.e. 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 judgment of the Madras High Court in* ***P.Ayyamperumal*** *(supra) was carried in Special Leave Petition (Civil) Diary No.22283/2018. By order dated 23.07.2018, the Honourable Supreme Court dismissed the said Special Leave Petition.*

*6. There is no dispute that Rule 10 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 is identical to the amended Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008 in relation to the uniformity in annual increments.*

*7. Considering the above, this Writ Petition is allowed. As the petitioner is superannuated on 30.06.2019, we hold that he would be entitled to the last annual increment, which he has been deprived of and the respondents shall, accordingly, calculate the said monetary benefits expeditiously so as to be paid to the petitioner on or before 30.09.2021. So also, as the grant of this annual increment would affect his pension, gratuity, earned leave, commutation benefits, etc., the respondents* *would recalculate the same and make the payment of arrears on or before 30.09.2021 and shall ensure that the revised pension is also paid to the petitioner accordingly.*

4. In all these matters, all these petitioners have superannuated on the 30th day of June of the particular years, as they were due for superannuation. For the sake of clarity, the names of the petitioners and their dates of superannuation are mentioned in a chart hereunder :-

Name of the petitioners, initial date of appointments of,
Date of last increment & Date of superannuation of petitioners

| Sr. No | W.P.No. | Name of the Petitioners | Date of Appointment | Date of Last increment | Date of Superannuation /Retirement |
|---|---|---|---|---|---|
| 1. | 11038/2021 Parbhani | Gopal S/o Vasantrao Kulkarni | 02.11.1996 | 01.07.2020 | 30.06.2021 |
| 2. | 2855/2021 Beed | Ramrao S/o Nanabhau Nagargoje | 28.07.1980 | 01.07.2006 | 30.06.2007 |
| | | Guruling S/o Shivling Sonwane | 11.07.1995 | 01.07.2012 | 30.06.2013 |
| | | Smt. Kazi Shaukat Sultana Allouddin | 20.02.1981 | 01.07.2012 | 30.06.2013 |
| | | Ganpat S/o Ramrao Dolash | | 01.07.2013 | 30.06.2014 |
| | | Sahebrao S/o Vitthalrao Kekan | 31.08.1977 | 01.07.2008 | 30.06.2009 |
| | | Bhasakar S/o Raghunathrao Jadhavar | 12.06.1984 | 01.07.2015 | 30.06.2016 |
| | | Bharat S/o Nivratti Bondge | 17.11.1978 | 01.07.2009 | 30.06.2010 |
| 3. | 3124/2021 Beed | Dharmraj S/o Kondiba Rasal | 30.11.1981 | 01.07.2019 | 30.06.2020 |
| | | Suresh S/o Masunath | 01.12.1981 | 01.07.2019 | 30.06.2020 |

| | | | | | |
|---|---|---|---|---|---|
| | | Bahir | | | |
| | | Keru S/o Rambhau Chaure | 07.08.1985 | 01.07.2019 | 30.06.2020 |
| | | Changdev S/o Ramchandra Bedre | 28.11.1981 | 01.07.2017 | 30.06.2018 |
| | | Uddhav S/o Rambhau Bahir | 06.08.1985 | 01.07.2019 | 30.06.2020 |
| | | Smt. Nalubai Bapurao Sangale | 04.10.1983 | 01.07.2015 | 30.06.2016 |
| | | Smt. Mangal Sudamrao Shirsat | 29.04.1981 | 01.07.2019 | 30.06.2020 |
| | | Rangnath S/o Dagdu Bangar | 03.10.1983 | 01.07.2017 | 30.06.2018 |
| 4. | 3159/2021 Jalgaon | Bhaisaheb S/o Hiraji Patil | 03.12.1984 | 01.07.2016 | 30.06.2017 |
| 5. | 5595/2021 Beed | Pandit S/o Janardhan Munde | 10.12.1983 | 01.07.2015 | 30.06.2016 |
| | | Suresh S/o Tulashidas Shete, | 10.12.1983 | 01.07.2016 | 30.06.2017 |
| | | Subhash S/o Mukindrao Ajabe, | 21.11.1986 | 01.07.2018 | 30.06.2019 |
| | | Madhukar S/o Vitthalrao Morale | 12.10.1985 | 01.07.2018 | 30.06.2019 |
| 6. | 5613/2021 Latur | Ramchandra S/o Pundlik Giri | 01.06.1986 | 01.07.2018 | 30.06.2019 |
| | | Nivruti S/o Dhondiba Malse | 10.11.1982 | 01.07.2016 | 30.06.2017 |
| | | Shaikh Ismail Mahmadsab | 17.04.1982 | 01.07.2014 | 30.06.2015 |
| | | Murlidhr S/o Nagnat Nirne | 28.09.1985 | 01.07.2014 | 30.06.2015 |
| | | Balaji Madhavrao Sontakke | 24.10.1990 | 01.07.2018 | 30.06.2019 |
| | | Kumar Dhulayya Mathapati | | 01.07.2018 | 30.06.2019 |
| 7. | 5722/2021 Latur | Abhang s/o. Gopal Suryawanshi | 01.07.1988 | 01.07.2015 | 30.06.2016 |
| | | Vishwanath S/o Shankarrao Narwate | 06.11.1987 | 01.07.2017 | 30.06.2018 |
| | | Baswaraj S/o Laxmanrao Handrale | 01.08.1985 | 01.07.2017 | 30.06.2018 |
| 8. | 5724/2021 Parbhani | Shivraj S/o Govindrao Kamble | 24.07.1990 | 01.07.2017 | 30.06.2018 |

5. It is undisputed that the recommendations under the 6$^{th}$ Pay Commission altered the date on which the

annual increment would have become payable, which was normally payable after putting in 12 months in continuous service preceding the date of reference and fixed the 1st day of July of each year. Prior thereto, the employees like these petitioners used to earn their annual increment by calculating 12 calendar months from the dates of their appointment for each succeeding year. As such, the reference period of 12 months for calculating the annual increment, was a period of 12 calendar months in each succeeding year from the date of appointment. For example, if person 'A' was appointed on 1st March, 2000, he would complete 12 months in employment on 28th February 2001. He, therefore, earned his annual increment on 1st March, 2001 for the work done in 12 calendar months preceding 1st March. This was the pattern of earning annual increments after 12 months in employment in each year.

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 this circumstances, that 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 paragraph 4 indicates that some of the petitioners have superannuated in 2007. Some have superannuated in 2010, 2013, 2014 and 2016 and on-wards. It is conceded that none of these petitioners have prayed for arrears of such addition of annual increments from the dates of their superannuation, in their petitions.

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. Some of the petitioners have superannuated in between 2016 and 2021.

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 superannuation 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 30/08/2022.

**[S.G.DIGE, J.]** **[RAVINDRA V. GHUGE, J.]**

DDC