IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4880 OF 2021

1. Shrikrishna Dadarao Khamkar
Age : 60 years, occ : Retired
R/o Flat No.205, Jay Anand Residency,
Kaji Nagar, Jalna Road, Beed.

2. Prakash Pandharinath Huljute
Age : 59 years, occ : Retired
R/o Mondha Road, Georai,
Beed. Petitioners

Versus

1. The State of Maharashtra
Through it's Principal Secretary,
School and Sports Department,
Education Department, Mantralaya,
Mumbai.

2. The State of Maharashtra
Through its Principal Secretary,
Central Administration Dept.
Mantralaya, Mumbai.

3. The State of Maharashtra
Through it's Principal Secretary
Finance Department, Mantralaya,
Mumbai.

4. The Director of School Education,
M.S., Central Building, Pune-01.

5. The Education Officer, Education
Department, Zilla Parishad, Beed.

6. Jai Bhavani High School, Shivaji
Nagar, Gadhi, Taluka Georai,
District Beed.
Through it's Headmaster Respondents

WITH

WRIT PETITION NO.4883 OF 2021

Shridhar Shripatrao Khamkar
Age : 61 years, occ : Retired
R/o Avadumbar, Jijau Nagar,
Old Dhanora Road, Beed. Petitioner

Versus

1. The State of Maharashtra
Through it's Principal Secretary,
Higher and Technical Education,
Department, Mantralaya,
Mumbai – 32.

2. The State of Maharashtra
Through its Principal Secretary,
Central Administration Dept.
Mantralaya, Mumbai -32.

3. The State of Maharashtra
Through it's Principal Secretary
Finance Department, Mantralaya,
Mumbai – 32.

4. The Director Higher Education,
Dept. Maharashtra State, Pune-01.

5. The Joint Director, Nanded
Region, Nanded.

6. Shri Shivaji College of Arts,
Commerce and Science, Shivaji
Nagar, Kandhar, Taluka Kandhar,
District Nanded
Through it's Principal Respondents

WITH

WRIT PETITION NO.4896 OF 2021

1. Laxman Bhanudas Bahir
Age : 62 years, occ : Retired
R/o Rajarshi Sahu Naga, Behind
Ashirwad Hotel, Ambad Road,
Jalna.

2. Bhimrao Sampatrao Jadhav
Age : 66 years, occ : Retired
R/o Shital Niwas 30, Yeshwant
Nagar, Ambad Road, Jalna. Petitioners

Versus

1. The State of Maharashtra
Through it's Principal Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai.

2. The State of Maharashtra
Through its Principal Secretary,
Central Administration Dept.
Mantralaya, Mumbai.

3. The State of Maharashtra
Through it's Principal Secretary
Finance Department, Mantralaya,
Mumbai.

4. The Director of Higher Education,
M.S., Central Building, Pune-01.

5. The Joint Director of Higher
Education, Aurangabad Region,
Aurangabad.

6. Matsyodari Shikshan Sanstha,
Jalna, Near Motibagh, Jalna
Through it's Secretary.

7. Matsyodari Shikshan Sanstha's
Arts, Commerce and Science
College, Ambad, District Jalna.
Through its Principal. Respondents

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Mr. Abhishek C. Deshpande, Advocate for the petitioners.
Shri K.N. Lokhande, A.G.P. for the respondents.

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

DATE : 6 JULY 2022

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

Rule made returnable forthwith. The learned A.G.P. waives service for the respondents. Heard finally by consent of parties.

2. In all these petitions the petitioners are claiming addition of annual increment falling on 1 July after their retirement on 30 June of the respective years. The issue of grant of such notional annual increment on the next day of retirement of an employee on 30 June has already considered and decided by this Court by an order dated 24 June 2021 in Writ Petition No. 6396 of 2020 in the case of ***Prakash Tulshiram Choudhari vs. State of Maharashtra and others***. The aforesaid decision has been taken by this Court by placing reliance on the judgment of the learned Division Bench of Madras High Court 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***. It is to be noted here that both the aforesaid decisions were in fact challenged before the Hon'ble Supreme

Court by filing Special Leave Petitions, but the Hon'ble Supreme Court refused to interfere with both these decisions and accordingly the Special Leave Petitions were dismissed.

3. We would like to reproduce paragraph Nos. 5 to 7 of the judgment dated 15 September 2017 passed by the learned Division Bench of Madras High Court in the case of ***P. Ayyamperumal vs. The Registrar, Central Administrative Tribunal and others***, as below :

> *"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.*
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> *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".

4. It is significant to note that 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 Services (Revised Pay) Rules, 2008 in relation to the uniformity in annual increment.

5. Out of the above three writ petitions, the petitioners in Writ Petition No. 4880 of 2021 have retired from service on 30 June 2019 and 30 June 2020 respectively on attaining the age of superannuation from their respective post of Teacher and Head Clerk. Further, the petitioner in Writ Petition No. 4884 of 2021 has retired on 30 June 2020 on attaining the age of superannuation while working as a Lecturer. Likewise, the petitioners in Writ Petition No. 4896 of 2021 have retired from their post of Associate Professor respectively on 30 June 2018 and 20 June 2014 on attaining the age of superannuation. As such, in view of the consistent view taken by this Court and by the learned Division Bench of Madras High Court in the aforesaid cases, the petitioners in all these petitions are entitled for notional annual increment falling on 1 July after they got retired on 30 June of the respective last years of their service, since they had worked for the entire last year of their service, entitling them to earn the notional annual increment falling on immediate next day of their retirement.

6. Thus, considering the dates of superannuation of all the petitioners being on 30 June, we are of the considered opinion

that the notional increment for calculating pensionary benefits, which would be payable to them on 1 July after their superannuation on 30 June, can be granted to them.

7. Accordingly, we allow these petitions by granting the petitioners additional increment falling on the next day of their respective retirements on 30 June of the respective years. It is made clear that grant of this notional annual increment would be considered for calculating pensionary benefits and other monetary benefits of the petitioners as may be permissible under Rules.

Rule is made absolute in the aforesaid terms.

SANDIPKUMAR C. MORE, J. **C.V. BHADANG J.**

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