

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13915 OF 2021

1. Umesh s/o Raghunath Khose
Age 37 years, Occ. Service as
Assistant Teacher at Zilla Parishad
Primary School, Jagdambanagar
Kaddora, Tq. Omerga
District Osmanabad
 2. Pushpalata Sidram Kamble
Age 47 years, Occ. Service as
Graduate Teacher at Zilla
Parishad High School, Jalkot
Tq. Tuljapur, Dist. Osmanabad
 3. Kashinath s/o Limbaji Nirmale
Age 63 years Occ. Retired
R/o. Murum, Tq. Omerga
District Osmanabad
 4. Vijaykumar Gurunath Deshmane
Age 44 years, Occ. Service as
Assistant Teacher at Zilla
Parishad High School, Murum
Tq. Omerga, District Osmanabad
 5. Pramod s/o Baburao Anpat
Age 51 years, Occ. Service as
Assistant Teacher at Zilla
Parishad Primary School,
Khamgaon,
Tq. and District Osmanabad
 6. Arun Narhari Kamble
Age 50 years, Occ. Service as
Assistant Teacher at Zilla Parishad
Primary School, Khanapur
Tq. and Dist. Osmanabad
- ...Petitioners

versus

1. The State of Maharashtra
Through its Secretary

General Administration and
Rural Development Department,
Mantralaya, Mumbai 32
(Copy to be served on G.P.
High Court of Bombay
Bench at Aurangabad)

2. The Deputy Commissioner
(Establishment),
Aurangabad Division, Aurangabad
 3. The Chief Executive Officer,
Zilla Parishad, Osmanabad
Tq. and Dist. Osmanabad
 4. The Education Officer,
Zilla Parishad, Osmanabad
Tq. and Dist. Osmanabad
 5. The Block Education Officer,
Panchayat Samiti, Omerga
Dist. Osmanabad
 6. The Block Education Officer,
Panchayat Samiti, Tuljapur
District Osmanabad
- ...Respondents

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Mr. Sanjay B. Bhosale, advocate for petitioners
Mr. S.B. Yawalkar, A.G.P. for respondent Nos. 1 and 2
Mr. S.B. Ghute, advocate for respondent Nos. 3 to 6

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**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.
DATED : 7 OCTOBER 2022.**

ORAL JUDGMENT (PER SANDEEP V. MARNE, J.) :

. Rule.

2. Rule made returnable forthwith. With the consent of the learned Advocates for the respective parties, heard finally at the stage of admission.

3. The issue involved in the present petitions is about grant of advance/additional increments as District Awardee Teachers vide Government Resolution dated 31.10.1989. It is the case of all the petitioners that on the basis of confidential reports of relevant time, they are entitled to be granted advance/additional increments, but the same were not extended on account of issuance of the Circular dated 03.07.2009 and the Government Resolution dated 24.08.2017.

4. The issue is no more *res-integra* and in various judgments of this Court, it has repeatedly been held that the Government Resolution dated 24.08.2017 would operate prospectively and would not have the effect of denial of advance increments prior to issuance thereof. The State Government and various Zilla Parishads had filed Review Petitions seeking review of various orders passed by this Court. It was *inter alia* sought to be contended in the said review petitions that even though the ultimate decision for stoppage of the scheme for advance increments might have been taken on 24.08.2017, it was earlier directed by way of Circular dated 03.07.2009 to undertake the exercise of pay fixation in 6th Pay Commission pay scales without taking into consideration the advance increments.

5. We had the occasion to consider the entire issue in detail while deciding such review petitions. By judgment and order dated 30.08.2022, we have rejected the review petitions after considering

all the objections raised by the State Government and Zilla Parishads. We have held that no specific instructions were issued before 24.08.2017 for discontinuation of the scheme of advance increments. We reproduce paragraph nos.12 to 15 of the judgment and order dated 30.08.2022 passed in Review Application (Civil) No.170 of 2022 in Writ Petition No.13760 of 2019 (The State of Maharashtra and Anr. Vs. Rupchand S/o. Narayan Shinde and Ors.):

‘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. Thus, it is now a well settled position that the scheme of grant of advance increments was discontinued for the first time by Government Resolution dated 24.08.2017 and that such decision would operate only prospectively.

7. In view of the above, the Writ Petition is allowed. The respondents are directed to consider the case of the petitioners for grant of advance / additional increments as per the Government Resolution dated 31.10.1989 and subsequent applicable Government Resolutions and Circulars. Their cases shall not be rejected only on the ground of Circular dated 03.07.2009 and Government Resolution dated 27.02.2009 or by applying Government Resolution dated 24.08.2017 retrospectively. If the petitioners are found eligible for grant of such increments, consequential monetary benefits be extended to them within a period of eight weeks from today.

8. Rule is made absolute.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)