

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

916 WRIT PETITION NO.522 OF 2022

**DIGAMBAR RAMBHAU LANGADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioners: Mr. Mathpati Shivkumar K
AGP for Respondent Nos.1 to 3: Mr. P. S. Patil

...

**CORAM: RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE: 15th SEPTEMBER, 2022

PER COURT:

1. The Petitioners have put-forth prayer clauses 'B' and 'C', as under:-

"(B) The Government Resolution dated 24th August, 2017 may kindly be quashed & set aside to the extent of denial of benefits of one or two advance increments to the employees who has been given benefits of sixth pay commission it means its applicability of retrospective in nature By issuing the writ of certiorari or mandamus, or any other appropriate writ or order as the case may be:

(C) The respondent No 4 & 5 may kindly be direct to give/release the

benefits of one/two advance increments with arrears to the petitioners forthwith as per existing earlier policy or the G.R. issued by the respondent authority By issuing the writ of mandamus or any other appropriate writ or order as the case may be:

OR

The resp. authority may kindly be direct to restoration/extension & continuation of earlier order dated 01.12.2007 & 04.01.2010 passed by the Resp. No. 4, as per existing G.R. By issuing the writ mandamus or any other appropriate writ or order as the case may be:"

2. The learned Advocate for the Petitioner submits that this Court has delivered an order on 01.08.2022, in a group of Writ Petitions viz. Writ Petition No.3620 of 2020, filed by ***Khushal Kisanrao Khavane Vs. The State of Maharashtra and others*** and connected matters. This Petition could have been disposed off alongwith these matters, but, was not on Board. For the reasons set out in the order dated 01.08.2022, this Petition can be similarly allowed.

3. The learned AGP appearing on behalf of the Respondents submits that the view taken by this Court in *Khushal Kisanrao Khavane (supra)*, would be applicable to this case.

4. In yet another Writ Petition No.4050/2017 filed by ***Uday J. Godave and vs. The State of Maharashtra and others*** and connected petitions, this Court, at the Principal Seat, vide judgment dated 22.10.2020, held in paragraph 6 as under :-

"6. This Court (Aurangabad Bench) in Writ Petition No. 14797 of 2017 (Ganpat Vitthal Dapute and Ors vs. The State of Maharashtra and ors) vide its order dated 11th June 2019, held that the G.R. dated 24th August 2017 will have prospective effect. This Court, accordingly, held that the benefit of advance increments granted as per the policy of the Government prevailing at that time, the same would not be withdrawn on the basis of subsequent G.R. dated 24th August 2017.

Considering the fact that the Respondent – State has not yet taken any policy decision with regard to issue in question, we are

constrained to pass similar order. In the result, we pass the following order.

a. The Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the Respondent – State dated 11th February 1974 and 31st October, 1989 in the revise Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July 2009 and G.R. dated 24th August 2017.

b. Recovery, if any, made pursuant to the Circular dated 3rd July 2009 or G.R. dated 24th August 2017 from the Petitioners shall be refunded to them.

c. Rule made absolute accordingly.

d. No order as to costs.

e. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order."

5. Considering that identical orders have been passed earlier, this Court at the Principal Seat, in ***Raosaheb Shripati Desai and others vs. The State of Maharashtra and others***, vide judgment dated 01.04.2021 delivered in Writ Petition No.12531/2019, granted reliefs to the petitioners. The Zilla Parishad, Kolhapur,

assailed the said judgment dated 01.04.2021 before the Honourable Supreme Court by preferring Petition for Special Leave to Appeal (Civil) No.10789/2022. By the order dated 20.07.2022, the Honourable Supreme Court dismissed the SLP with the following order :-

"1. We are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.

2. The Special Leave Petitions are accordingly dismissed.

3. Pending application, if any, stands disposed of."

6. The learned AGP representing the Respondent / State, submits that the Review Petitions for reviewing the similar orders have been filed and the same are pending. He draws our attention to the order passed by this Court on 18.07.2022 in Writ Petition No.6856/2022 filed by *Sayed Nazir Ahmed Syed Hameed vs. The State of Maharashtra and others*, wherein, we have directed the petitioners therein to file individual affidavit-undertakings to the Chief Executive

Officer, Zilla Parishad, that in the event of the Review Petitions being decided in favour of the Zilla Parishad / State, the petitioners / beneficiaries would refund the amounts received by them within four weeks. It is conceded that the Government Resolution dated 24.08.2017 will now have prospective effect.

7. In view of the above, the Writ Petition is partly allowed. The concerned authorities would accord the benefit of advance increment to the petitioners as per the policy of the State vide Government Resolutions dated 11.02.1974 and 31.10.1989 in view of the 6th pay commission recommendations, without giving effect to the circular dated 03.07.2009 and Government Resolution dated 24.08.2017. If such payments have been made earlier, there is no question of recovery of the amounts.

8. These petitioners would tender their individual affidavit-undertaking to the concerned authorities stating therein that if the Review

Petitions are allowed and if it is finally concluded that these petitioners are not entitled to the benefits received by them, the said amounts would be refunded within four weeks to the concerned authorities from the date of such order.

9. In the event of there being any recovery already carried out against any of the petitioners, we direct the concerned authorities to repay the said amounts to such petitioners within a period of six weeks from today, failing which, the amounts shall carry interest at the rate of 6% per annum from the date of recovery and the interest component shall be paid from the salary amount of the officers, who may be responsible for the delay in such refund.

[ARUN R. PEDNEKER, J.]

[RAVINDRA V. GHUGE, J.]

marathe