

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

WRIT PETITION NO.9967 OF 2021

DATTATRAY YASHWANT PANSARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Sunil B. Sontakke
AGP for Respondent / State : Mrs. M.A. Deshpande

...

AND

WRIT PETITION NO.9968 OF 2021

CHUDAMAN MAHARU DESALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. S.B. Sontakke
AGP for Respondent / State : Mrs. M.A. Deshpande

...

AND

WRIT PETITION NO.13804 OF 2021

SANJAY VENKATRAO KANDKURTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Sandeep B. Sontakke
AGP for Respondent / State : Mrs. M.A. Deshpande

...

AND

WRIT PETITION NO.13817 OF 2021

ANIL GANPATRAO SAMINDRE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

...

Advocate for Petitioner : Mr. Sandeep B. Sontakke

AGP for Respondent / State : Mrs. M.A. Deshpande
Advocate for Respondent No.5 : Mr. S.S. Bora

...

AND

WRIT PETITION NO.13885 OF 2021

SHIVDAS YADAVRAO JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Sandeep B. Sontakke
AGP for Respondent / State : Mrs. M.A. Deshpande

....

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

DATE : 06-10-2022

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

1. In both the petitions, the petitioners were sanctioned advance / additional increments for excellent work. However, on account of issuance of the Circular dated 03.07.2009 and Government Resolution dated 24.08.2017, their pay fixation has not been done by taking into consideration the benefit of advance / additional increments.

2. We reproduce paragraph nos.2 to 5 of the order passed by this Court on 06.09.2022 in Writ Petition No.9591 of 2019 with connected writ petitions:

‘2. The dispute has essentially arisen on

account of Government Resolution dated 24.08.2017, by which a decision was taken not to grant the benefit of advance increments during 6th Pay Commission regime from 01.10.2006 to 01.10.2015.

3. In various judgments of this Court it was repeatedly held that the Government Resolution dated 24.08.2017 would operate prospectively and would not have the effect of retrospective denial of advance increments prior to issuance thereof. The State Government and various Zilla Parishads 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.

4. 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 pass 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.35 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 detail.

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.”

5. 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.’

3. In view of the above, we allow the present petitions by directing the respondents to restore the benefit of advance / additional increments sanctioned in favour of the petitioners. Necessary pay fixation in the case of each of the petitioner be made within a period of four months from today. Monetary benefits arising out of such refixation may also be paid to them within a period of four months from today. In respect of those petitioners from whom any recoveries have been effected on account of withdrawal of additional/ advance increments, the action of recovery is set aside. The recovered amount be refunded to the such petitioners within a period of four months from today.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)