

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

994 WRIT PETITION NO.1195 OF 2022

BABASAHEB RAMBHAU DHOLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Salgare Vitthal G.
AGP for Respondents 1 to 3: Mr. S. K. Tambe
Advocate for Respondents 4 to 6 : Mr A.D. Aghav
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 4th JANUARY, 2023.**

PER COURT :-

1. The petitioner has put forth prayer clauses "B" and "C" as under :-

- "B) *By writ, order or directions the respondent No.4 and 5 may kindly be directed to extend the benefits of one advance increment granted to the petitioner by order dated 31.3.2010 from 1.10.2007 and to add one advance increment in his pay and to re-fix his pay and to pay the arrears on account of re-fixation as per 6th and 7th pay commission in the interest of justice.*
- C) *Pending hearing and final disposal of present writ petition respondent Nos. 4 and 5 may kindly be directed to extend the benefits of one advance increment granted to the petitioner by order dated 31.3.2010 in his pay and to re-fix his pay and to pay the arrears on account of re-fixation as per 6th and*

7th pay commission in the interest of justice.”

2. This petition is filed challenging the Government Resolution dated 24.08.2017 issued by the Government of Maharashtra by which, the additional increment payable on account of excellent work, is to be stopped.

3. An identical issue, fell for the consideration of this Court at the Principal Seat in Writ Petition (Stamp) No.1438/2021 filed by **Sanjiv R. Patil and others vs. the State of Maharashtra and others**. By an order dated 04.05.2021, this Court concluded in paragraphs 4 to 6 as under :-

“4. The Petitioners are employees of Zilla Parishad, Sangli. Pursuant to the G.Rs. dated 11th February 1974 and 20th June 1989, the Petitioners, in view of their outstanding work, were granted either one or two advance increments as on 1st October 2006, 1st October 2007 and 1st October 2008. The Petitioners state that the Respondent – State, however, by Circular dated 3rd July 2009 instructed to fix the pay in a revised pay scale as per the recommendation of Sixth Pay Commission without taking into consideration advance increments granted on 1st October 2006, 1st October 2007 and 1st October 2008. It is stated that the Respondent – State, then issued the G.R. dated 24th August 2017 and reiterated the instructions issued by Circular dated 3rd July 2009. The contention is accrued and vested rights of the Petitioners cannot be taken away by the impugned G.R.

5. 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. We have taken the similar view in Writ Petition No. 4050 of 2018 decided on 22nd October 2020.

6. *The learned counsel for respondent No.4 submits that respondent No.1 had by communication dated 4.12.2020 directed them to seek review of the order passed by this court in aforesaid writ petition. However, in absence of any interim stay order, we do not see any reason to refuse identical relief to the petitioners. 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 20th June 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 3 rd 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.”*

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 revised 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 the identical orders 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 the 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 advocate representing the Zilla Parishad 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, the petitioners/beneficiaries would refund the amounts received by them within four weeks.

7. In view of the above, this Writ Petition is partly allowed. The Zilla Parishads/concerned authorities would accord the benefit of advance increment to the petitioner as per the policy of the State Government 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. It is conceded that the Government Resolution dated 24.08.2017 will now have prospective effect. If such payments have been made earlier, there is no question of recovery of the amounts.

8. The petitioner would tender his affidavit-undertaking to the Zilla Parishad/concerned authorities stating therein that if the Review Petitions are allowed and if it is finally concluded that the petitioner is not entitled to the benefits received by him, the said amounts would be refunded within four weeks to the Zilla Parishad/concerned

authorities from the date of such order.

9. In the event of there being any recovery already carried out against the petitioner, we direct the Zilla Parishad/authorities to repay the said amounts to the petitioner 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 accounts of the officers, who may be responsible for the delay.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/