

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

WRIT PETITION NO.1753 OF 2023

**SIKANDAR KHAN AYUB KHAN PATHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE
SECRETARY AND OTHERS**

...
Advocate for the Petitioner : Shri Salgar Suresh Prabhakar
AGP for Respondents 1 to 4 : Shri S.G. Sangle
...

**CORAM : RAVINDRA V. GHUGE
&
SANDIPKUMAR C. MORE, JJ.**

DATE :- 14th February, 2023

Per Court :-

1. In this petition, the issue that has been raised by the petitioner is as regards the notional addition of an annual increment, while computing his pension and pensionary benefits. Such increment became due and payable on the last day before his superannuation, on completion of one year service. The petitioner has superannuated on the 30th day of June of a particular year, as he was due for superannuation.

2. The issue raised is no longer res integra, having been concluded by the Madras High Court vide judgment dated 15.09.2017, in WP No.15732 of 2017, filed by *P. Ayyamperumal*

Vs. The Registrar, Central Administrative Tribunal and others, which judgment has been sustained by the Hon'ble Supreme Court vide order dated 23.07.2018, in Special Leave Petition (Civil) Diary No.22283/2018. Even this Court has passed several orders granting such benefits, which have been sustained by the Hon'ble Supreme Court.

3. The learned AGP strenuously submits that this Court may consider the delay and laches on the part of the petitioner in approaching this Court. He further submits that no litigant can take advantage of his own wrong. Delay and laches ought not to benefit the petitioner by grant of arrears.

4. We find that several litigants, as like the petitioner, have started approaching this Court after the judgment of the Madras High Court in *P. Ayyamperumal* (supra) and subsequent orders passed by the Aurangabad Bench, the Principal Seat and the Nagpur Bench. Since the judgment of the Madras High Court led to the Special Leave Petition before the Honourable Supreme Court, which settled the law on this point by sustaining the judgment of the Madras High Court, this Court has also delivered several judgments, which have also been sustained by the Honourable Supreme Court. To balance the equities, this Court

has granted arrears only for 3 years from the date of the filing of the petition or as per actuals, whichever is less.

5. In view of the above, **this Writ Petition is partly allowed.**

6. The petitioner is entitled to the notional addition of the last yearly increment for the purpose of calculating his pension, gratuity, earned leave, commutation benefits etc. In so far as arrears are concerned, the petitioner would be entitled for arrears for the period of three years preceding the date of the filing of this petition or as per actuals, whichever is less. Such arrears should be calculated and be paid to the petitioner, on or before 15.04.2023.

7. Needless to state, by including the last earned increment, the appropriate authorities shall recalculate the pensionary benefits of the petitioner and accordingly, pay the pension as per the recalculated amounts along with the arrears.

8. In the light of the above, the impugned communication dated 30.11.2022 at Exhibit F is, therefore, quashed and set aside.