

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO.2457 OF 2023

VIJAY GOVINDRAO KHANDARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS CHIEF OFFICER AND
OTHERS

Mr.Y.B.Bolkar h/f Mr.K.B.Jadhav, Advocate for the Petitioners.
Mr.V.M.Kagne, AGP for the Respondent/State.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : FEBRUARY 28, 2023

PER COURT :

1. In this petition, the issue that has been raised by the Petitioners is as regards the notional addition of an annual increment, while computing their pension and pensionary benefits. Such increment became due and payable on the last day before their superannuation, on completion of one year service. The Petitioners have superannuated on the 30th day of June of a particular year, as they were 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 AGPs strenuously submit that this Court may consider the delay and laches on the part of the petitioners in approaching this Court. They further submit that no litigant can take advantage of his own wrong. Delay and laches ought not to benefit the Petitioners by grant of arrears.

4. We find that several litigants, as like the Petitioners, 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 Petitioners are entitled to the notional addition of the last yearly increment for the purpose of calculating their pension, gratuity, earned leave, commutation benefits etc. In so far as arrears are concerned, the Petitioners would be entitled for arrears for the period of three years preceding the date of the filing of the petition or as per actuals, whichever is less. Such

arrears should be calculated and be paid to the Petitioners, on or before 30.04.2023.

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

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)