

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO.2604 OF 2023

ASHOK MAGAN PATIL
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

...

AND
909 WRIT PETITION NO.2607 OF 2023

VILAS ANANTRAO GUPTA
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

...

AND
910 WRIT PETITION NO.2608 OF 2023

YASHWANT BHIDAS SHINDE
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS OTHERS

...

AND
911 WRIT PETITION NO.2624 OF 2023

DHANRAJ SHANKAR PATIL
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL
SECRETARY AND OTHERS

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Advocate for Petitioner : Mr. Shaikh Ashraf Patel
AGPs for Respondents: Mr. S.K. Tambe, Mr. S.G. Sangle,
Mr. S.G. Karlekar and Mr. V.M. Kagne

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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 3rd MARCH, 2023.**

PER COURT :-

1. In these petitions, 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 increments 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 in different years, 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, **these Writ Petitions are 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 these petitions or as per actuals, whichever is less. Such arrears should be calculated and be paid to the petitioners, on or before 15.05.2023.

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.

8. The learned A.G.Ps. cites an order passed by the Hon'ble Supreme court on 10.02.2023, in ***Special Leave Petition (Civil) Diary No(s). 24204 of 2022 filed by the Zilla Parishad Yavatmal and another vs. Padurang Vithobaji Dhumne and Ors.*** The Hon'ble Supreme Court has held as under:-

"In the meantime, there will be stay of the operation of the impugned order. The petitioners shall however in the meanwhile without prejudice to the rights and contentions of the parties pay retiral dues of the respondent computed on the basis of the last pay drawn by him on the date of his retirement."

9. As such, needless to state, this order would be subject to the result of the pending S.L.P. filed by the Zilla Parishad, Yavatmal and the relief granted by this court would create no equities in favour of these Petitioners.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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