

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

989 WRIT PETITION NO.6699 OF 2021

SUBHASH BABULAL GUPTA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.D.R.Irale Patil, Advocate for the petitioner.

Mr.P.S.Patil, AGP for respondent No.1.

Mrs.Manjusha Deshpande, Advocate for respondent Nos. 2 and 3.

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

DATE : FEBRUARY 16, 2023

PER COURT :

1. The petitioner has put forth a solitary prayer at clause 'B', which reads as under :-

"B. The Hon'ble Court may be pleased to pass necessary order and quash and set aside the recovery order made by Respondent No.4, duly approved by respondent No.3 and refund an amount of Advance increments Rs.76,741/- recovered from the petitioner (Exhibit - F Colly) and restore the benefit of original order dt.06.01.2009 passed by Respondent No.2 and continue the benefit of advance increment already granted from 01.10.2007."

2. The issue raised by the petitioner is no longer *res-integra*. The

benefit of advance increment was granted by the Government and this Court has approved the said grant of advance increment in several matters, by concluding that the GR dated 24.08.2017, withdrawing the benefits in the light of the pay fixation as per the 6th Pay Commission Recommendations, would operate prospectively and would not operate retrospectively. Several candidates, whose advance increment amounts were withdrawn or recovered by the employer, have been returned with admissible interest.

3. It is not the case of the respondents that the petitioner played any fraud on the Establishment or himself manipulated his advance increment or involved himself in manipulating the pay fixation etc. Laches and oblique motives are not attributed to the conduct of the petitioner. The petitioner has already retired and an amount of Rs.76,741/- was deducted from the gratuity amount paid to the petitioner at the time of his superannuation on 31.03.2019.

4. In view of the above, the law laid down by the Hon'ble Supreme Court in Syed Abdul Qadir and others Vs.State of Bihar and others, 2009(3) SCC 475 and State of Punjab and others Vs.Rafiq Masih (White

Washer) etc., (2015) 4 SCC 334 = AIR 2015 SC 696 would apply to the case of the petitioner.

5. This petition is, therefore, allowed. The amount of Rs.76,741/- shall stand refunded to the petitioner alongwith admissible interest, since the said amount was deducted from his gratuity amount, to be paid to him on or before 30.04.2023.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)