IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4919 OF 2023

ABDUL SALEEM SIDDIQUI ABDUL RAHIM SIDDIQUI
AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL
SECRETARY AND OTHERS
...
Advocate for the Petitioners : Shri Zia Ul Mustafa
AGP for Respondent 1/State : Shri S.P. Tiwari
Advocate for Respondents 2 and 3 : Shri U.B. Bondar
...

CORAM : RAVINDRA V. GHUGE
&
SANJAY A. DESHMUKH, JJ.

DATE :- 27th April, 2023

Per Court :-

1. The Petitioners are identically placed. For clarity, the chart indicating their date of appointment, dates of last increment and dates of retirement, are as under:-

Sr. No.	Name of Petitioner	Date of Appointment	Date of last increment	Date of Retirement
1.	Abdul Saleem Siddiqui Abdul Rahim Siddiqui	05.03.1990	01.07.2021	30.06.2022
2.	Machindra Bhalerao Shewale	01.04.1995	01.07.2021	30.06.2022
3.	Vilas Jagannath Gaikwad	26.08.1986	01.07.2022	30.06.2023 (Due for retirement)

4.	Vishwanath Fakira Kakade	03.11.1978	01.07.2015	30.06.2016
5.	Radhakisan Bisanrao Todkar	22.11.1996	01.07.2020	30.06.2021

2. Thus, Petitioner Nos.1, 2, 4 and 5 retired on 30th June of their respective year of superannuation and Petitioner No.3 (Vilas Jagannath Gaikwad) is due for superannuation on 30.06.2023. Each of them had worked over a period of twelve calendar months immediately preceding the date of their superannuation. For example, if Petitioner-A retired on 30th June, 2022, he had worked for the period 01st July, 2021 to 30th June, 2022.

3. The claim for annual increment is not by way of any incentive or advance increment available to them. It is an increment, which they have earned for working over twelve calendar months preceding the date on which they superannuated.

4. By now, there have been hundreds of judgments and orders delivered in such matters by the Bombay High Court, the Karnataka High Court, the Madras High Court, the Delhi High Court, the Gujarat High Court, the Madhya Pradesh High Court,

the Allahabad High Court, the Orissa High Court, the Kerala High Court, the Himachal Pradesh High Court, etc..

5. Vide the judgment dated 02.05.2022 delivered at Aurangabad in Writ Petition No.3028/2021 filed by ***Kailash Gulabchand Sahuji and others vs. The State of Maharashtra and others***, this Court (Coram : Ravindra V. Ghuge and S.G. Dige, JJ) drew it's conclusions in paragraphs 6, 7 and 8 as under:-

> "*6. It is undisputed that the recommendations under the 6th Pay Commission altered the date on which the annual increment would have become payable, which was normally payable after putting in 12 months in continuous service preceding the date of reference and fixed the 1st day of July of each year. Prior thereto, the employees like these petitioners used to earn their annual increment by calculating 12 calendar months from the dates of their appointment for each succeeding year. As such, the reference period of 12 months for calculating the annual increment, was a period of 12 calendar months in each succeeding year from the date of appointment. For example, if person 'A' was appointed on 1st March, 2000, he would complete 12 months in employment on 28th February 2001. He, therefore, earned his annual increment on 1st March, 2001 for the work done in 12 calendar months preceding 1st March. This was the pattern of earning annual increments after 12 months in employment in each year.*
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> *7. By the recommendations of the 6th Pay Commission, uniformity was decided to be introduced and 1st of July of each year was considered to be the date on which the annual*

increment, for having worked for 12 calendar months preceding 1st July, would be payable. Consequentially, for the work performed in 12 calendar months till 30th June, the said employee would earn the annual increment on 1st July of the said year. It is in these peculiar circumstances that, these petitioners are before us, after having superannuated on 30th June of their respective year set out in the chart. For example, if person 'A' had retired on 30th June, 2021, he would have earned the annual increment which became payable to him on 01.07.2021. As he superannuated on 30th June, 2021, he was not granted the notional benefit of the increment which would have been payable to him on 01.07.2021 for the work performed from 01.07.2020 to 30.06.2021.

8. It is in these circumstances, that we found that the judgment delivered by the learned Division Bench of the Madras High Court in P.Ayyamperumal (supra) was an appropriate view. We delivered an order on 24th June, 2021 in Prakash Tulshiram Chaudhari (supra). The judgment of the Madras High Court in P.Ayyamperumal (supra) was challenged by the Union of India and others in Special Leave Petition (Civil) Diary No.22283/2018. By order dated 23.07.2018, the Hon'ble Supreme Court declined to interfere with the impugned judgment of the Madras High Court and dismissed the Special Leave Petition. Similarly, to the challenge to our order dated 24th June, 2021 in Prakash Tulshiram Chaudhari (supra), the Hon'ble Supreme Court dismissed the Special Leave Petition on 12.01.2022."

6. We are informed that the above judgment has been sustained by the Honourable Supreme Court.

7. This Court (Ravindra V. Ghuge and Avinash G. Gharote, JJ.) delivered the judgment on 24.06.2021 in Writ Petition No.6396/2020 filed by ***Prakash Tulshiram Chaudhari vs. The State of Maharashtra and others***, concluding that the employees would be entitled for annual increment which they have earned for working over a period of twelve calendar months preceding the date of their superannuation which is 30th June of the respective year. By the order dated 12.01.2022, the Honourable Supreme Court dismissed the Petition for Special Leave to Appeal (C) No.206/2022 filed by the ***State of Maharashtra and others vs. Prakash Tulshiram Chaudhari*** and sustained the said judgment of this Court.

8. Vide the judgment dated 11.04.2023 delivered in ***The Director (Admn. and HR) KPTCL and others vs. C.P. Mundinamani and others, Civil Appeal No.2471/2023 (@SLP (C) No.6185/2020)***, the Honourable Supreme Court has concluded that in such cases, those employees who had worked upto 30th June of the respective year, had earned their annual increment in view of having discharged duties over a period of twelve calendar months preceding the dates of their superannuation on 30th June.

9. In view of the above, the judgment of the Honourable Supreme Court dated 11.04.2023 settles the said issue. **This Writ Petition is, therefore, partly allowed**. The impugned communications/orders refusing monetary benefits to these Petitioners, stand quashed and set aside.

10. The learned AGP as well as the learned Advocate representing the Employers/ Zilla Parishad strenuously opposed the grant of interest on such monetary benefits. They submit that as there is delay in approaching the Court, the Petitioners should not be benefited from the delay that they have caused. They further submit that none of the High Courts, except the Bombay High Court and the Madhya Pradesh High Court, have granted interest on the unpaid annual increment. It is further submitted that even the Honourable Supreme Court did not grant interest vide the judgment dated 11.04.2023.

11. In view of the above, we issue common directions as under:-

(a) The employer of these Petitioners shall consider the annual increment duly earned by them for the purpose of calculating their pensionary/ retiral benefits, inclusive of gratuity. This exercise shall be completed within 45 (forty five) days from today.

(b) To balance the equities, we are granting arrears of such annual increment for three years preceding the date of the filing of the Writ Petition or as per the actuals, whichever is less. Let this amount be paid to these Petitioners within 60 (sixty) days after refixation of pay scale and pensionary benefits. If this amount is not paid within the time line, it would carry interest at the rate of 5% from the date of the passing of this order.

(c) The case of Petitioner no.3 Vilas Jagannath Gaikwad, would be considered when he retires on 30.06.2023.

kps **(SANJAY A. DESHMUKH, J.)** **(RAVINDRA V. GHUGE, J.)**