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

909 CIVIL APPLICATION NO.2477 OF 2023
IN RA/84/2023 IN WP/1260/2021

THE CHIEF EXECUTIVE OFFICER, ZP, HINGOLI
VERSUS
DEORAO KRISHNARAO KARDEKAR AND OTHERS

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Mr S. B. Ghute, Advocate for applicant;
Ms Megha Y. Mali, Advocate h/f Mr S. K. Mathpati, Advocate for
respondent No.1
Mr S. G. Sangle, A.G.P. for respondent Nos.2 to 5

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

DATE : 24th February, 2023

PER COURT:

1. Considering the remark of the Registry that there is no delay, this civil application is disposed off.
2. We have heard the learned Advocates for the respective sides and perused the grounds put forth by the review applicant.
3. In identical set of facts and circumstances concerning the Government Resolution dated 24/08/2017, this Court has delivered a judgment on 30/08/2022 in Review Application No.170/2022, filed by the State of Maharashtra and another Vs.

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Rupchand Narayan Shinde and others along with the connected review applications, filed by the State and the Zilla Parishads. It has been recorded in paragraph Nos. 15 to 18, as under :-

15. We have carefully gone through the Government Resolution dated 24.08.2017 and Circular dated 04.09.2018. By the Government Resolution dated 24.08.2017, final decision came to be taken in respect of recommendation made by the Hakim Committee in para 3.24 of its report directing that during the period from 01.10.2006 to 01.10.2015 when revised pay scales as per 6th Pay Commission were admissible, the benefit of advance increments should not be granted. Thus, the final decision on para 3.24 of Committees Report was taken by the State Government only on 24.08.2017. However, instead of simply directing that the scheme for grant of advance increments is discontinued, the State Government sought to give retrospective effect to its decision by directing that the benefit of such advance increments be not given during the period from 01.10.2006 to 01.10.2015. While issuing such orders having retrospective effect, the State Government lost sight of the fact that several employees were already granted the benefit of advance increments during the relevant period. As we have observed earlier, the deliberations for discontinuation of the scheme started only on 27.02.2009/03.07.2009 and prior to that, admittedly, the issue of discontinuation of the scheme for grant of advance increment was not even under consideration. The instructions for temporarily doing pay fixation without advance increments were issued on 03.07.2009. This means that several employees must have already been granted advance increments during the period from 01.10.2006 to 03.07.2009. We, therefore, fail to comprehend as to how the State Government could have issued directions on 24.08.2017 that the benefit of advance increments should

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not be granted from 01.10.2006 onwards. Even in respect of employees becoming eligible for grant of advance increments after 27.02.2009, we do not find any error in the view taken by this Court that the Government Resolution dated 27.08.2017 would only have prospective effect.

16. *Mr. Dixit relied upon the judgment of the Apex Court in Union of India Vs. M.V. Mohanan Nair, AIR Online 2020 SC 617 in support of his contention that, this Court should be loath in interfering with the recommendations of expert bodies like pay commission. We respectfully agree with the said proposition, but fail to comprehend as to how the said proposition can come to the aid of Mr. Dixit. In this case, the policy decision had been taken by the State Government which was discontinued in the year 2017-18. It is not that this Court has interfered in any of the policy decisions of the State Government nor has this Court shifted any cut off date. Therefore, the decision has no application.*

17. *Mr. Dixit also relied upon the judgment of the Apex Court in Parisons Agrotech (P) Ltd., Vs. Union of India, AIR 2015 SC 3335 in support of his contention that the decisions taken in public interest cannot be held to be arbitrary. However, we do not find that this Court has transgressed its boundaries in holding that the concerned Government Resolutions / Circulars would have prospective effect. Therefore, this decision also has no application to the facts and circumstances of the present case.*

18. *Mr. Mathpati appearing for the original petitioners relied upon several decisions of this Court relating to the same issue and submitted that the State Government has not sought review of those. He relied upon the decision of this Court in Raosaheb Shripati Desai & Ors. Vs. The State of Maharashtra, Writ Petition No.12531 of 2019 decided on 04.05.2021 by which this Court has granted the benefit of advance increments and has stopped the recovery. He*

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submitted that the Special Leave to Appeal filed by the Zilla Prishad against the said decision in Raosaheb Shripati Desai (supra) has been dismissed by the Apex Court by its order dated 20.07.2022. He also relied on the decision of this Court in Nitin Dattatraya Pawar and Ors Vs. The State of Maharashtra & Ors, Writ Petition No.8818 of 2018 decided on 10.03.2021 in respect of District Awardee Teachers, who were awarded certificates prior to 04.09.2018 and whose entitlement to the advance increments have been upheld by this Court. He further pointed out that in Special Leave to Appeal (C) No.19730 of 2021 filed by Zilla Prishad against the said order, the Hon'ble Apex Court passed the following order:

"It is not in dispute that, prior to 04.09.2018, the District Awardees were entitled to get the additional increment. It was only pursuant to the Circular dated 04.09.2018, the District Awardees were not entitled to get the additional increment. Therefore, for the period prior to 04.09.2018, the District Awardees were entitled to get the additional increment and, therefore, no error has been committed by the High Court in directing the benefit of additional increment to the District Awardees for the period prior to 04.09.2018.

We are in complete agreement with the view taken by the High Court. The Special Leave Petition stands dismissed."

Thus, one of the orders passed by this Court involving similar issue has already been upheld by the Apex Court. It is incomprehensible how State Government can seek review in present cases having unsuccessful in the challenge before the Apex Court."

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4. In view of the above, we do not find any such ground put forth in this petition, which would convince us to take a view that the Government Resolution dated 24/08/2017 can be made operable with retrospective effect. Hence, this review application stands dismissed.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)

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