

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

118 WRIT PETITION NO.8652 OF 2022

SHAIKH RAJJAK SHAIKH VAJIR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. D.R. Irale Patil
AGP for Respondent No.1: Mr. S.G. Sangle
Advocate for Respondent Nos. 2 to 4 : Mrs. Manjusha Deshpande
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 15th FEBRUARY, 2023.**

PER COURT :-

1. On 15.09.2022, we had passed the following order:-

"1. The Petitioner has put-forth prayer clauses 'B' and 'B1', as under:-

"B) The Hon'ble Court may be pleased to pass necessary order & quash and set aside the impugned order dt. 07.02.2022 passed by the Resp. No. 5 & approved accorded by Resp. no. 4 under order dt. 30.06.2022 & protect the benefit of advance increment granted under order dt. 01.01.2009 giving effect from 01.10.2007 and direct the respondent to make fresh revised pay fixation which includes the benefit of advance increments & determine the pensionary benefits.

B1) Quashing & setting aside the revised pay fixation & proposed recovery of Rs.584484/- under order dt. 30.06.2022 passed by Resp. No. 4 & determine the

pension, taking into consideration the benefits of advance increments from the date of its sanction i.e. 01.10.2007.”

2. *The Petitioner makes a categorical statement that he has not given any undertaking to the employer that if it is found that he has received any excess amount, that would be returned to the employer.*

3. *Issue notice to the respondents, returnable on 17.10.2022. The learned AGP waives service of notice on behalf of Respondent No.1.*

4. *The learned Advocate for the Petitioner submits that the Petitioner has been paid residual retiral benefits by deducting the amount of Rs.584484/- from the total retiral benefits payable to him. As such, the recovery has already been effected. Needless to state, the said recovery would be subject to the result of this Petition.*

5. *All office objections to be removed within three (03) weeks.*

6. *Copies of the Petition paper book for issuing notices to the Respondents shall be supplied, on or before 22.09.2022, failing which, the ad-interim relief shall stand vacated.”*

2. The learned advocate appearing on behalf of the Zilla Parishad, placed on record a recent Government Resolution, dated 15.12.2022, introduced by the General Administration Department of the State of Maharashtra, by which, those employees who were given advance increments, for performing excellent work, in between 1.10.2006 to 1.10.2008, would not be subjected to recovery. All

recoveries drawn or contemplated, would be aborted. It is also decided that the deducted amounts would be returned to the concerned employees. The said Government Resolution is marked as "X" for identification. For clarity, we are reproducing clause 1 of the Government Resolution, that is applicable to the case of the petitioner, hereunder:-

शासन निर्णय:-

“ मा. उच्च न्यायालयाच्या न्यायनिर्णयास अनुसरून शासकीय कर्मचाऱ्यांच्या सेवेतील अत्युत्कृष्ट कामाबद्दल दिनांक ०१.१०.२००६ ते ०१.१०.२००८ मधील आगाऊ वेतनवाढीची वसूल करण्यात आलेली अथवा प्रदान न करण्यात आलेली अनुज्ञेय आगाऊ वेतनवाढीची रक्कम अदा करण्याच्या अनुषंगाने खालील निर्णय घेण्यात येत आहे.

१. शासकीय सेवेतील अत्युत्कृष्ट कामासाठी ज्या शासकीय कर्मचाऱ्यांना सन २००६, २००७ व २००८ मध्ये पाचव्या वेतन आयोगाच्या वेतनश्रेणीनुसार प्रत्यक्षात आगाऊ वेतनवाढी अदा करण्यात आल्या होत्या तथापि, दि.०३.०७.२००९ च्या शासन परिपत्रकानुसार, सहाव्या वेतन आयोगाची वेतननिश्चिती करताना सदर आगाऊ वेतनवाढी विचारात घेतल्या नाहीत, त्यामुळे ५ व्या वेतन आयोगातील वेतनश्रेणीनुसार अनुज्ञेय झालेल्या आगाऊ वेतनवाढीच्या रकमा समायोजित झाल्या आहेत. ही बाब विचारात घेता ५ व्या वेतन आयोगाच्या वेतनश्रेणीनुसार दि.०१.१०.२००६, दि.०१.१०.२००७ व दि.०१.१०.२००८ रोजी आगाऊ वेतनवाढीच्या अनुषंगाने मंजूर करण्यात आलेली तथापि, दि.०३.०७.२००९ च्या शासन परिपत्रकानुसार ६ व्या वेतन आयोगातील वेतननिश्चिती करताना समायोजित झाल्यामुळे वसूल झालेली आगाऊ वेतनवाढीची रक्कम संबंधितांना ठोक स्वरूपात अदा करण्यात यावी.”

3. The learned advocate for the petitioner has prayed that, on the one hand, the recovered amount should be returned with interest and on the other hand, the advance increments, granted from 1.10.2007, should be continued to be included in the pay fixation.

4. The learned advocate for the Zilla Parishad submits that there was a delay in implementation of 6th Pay Commission recommendations. As the Government Resolution was introduced for recognition of the excellent work being done by the concerned employees, advance increment was paid. Once the 6th Pay Commission recommendations were made applicable from 2009, the pay fixation has already been carried out, minus the advance increment, as the benefits flowing from the 6th pay commission were included in the pay scale when such pay fixation was done.

5. We find that the submissions of the learned advocate for the Zilla Parishad are logical. The advance increments for the excellent work, that were paid to them, were in view of the Government Resolution dated 14.12.2006. By that time, the 6th Pay Commission recommendations were not made applicable. With such advance increments, the employees were given monetary benefits for having performed the excellent work. The Hakim Committee was constituted to take a decision on the advance increments by considering the payment made under the 6th Pay Commission recommendations. As the State Government noticed that there was

a substantive rise in the pay scale on account of implementation of 6th Pay Commission, continuing the advance increments for the Government employees, became unviable.

6. So also, this court has concluded in several matters that the Government Resolution dated 24.8.2017, pursuant to revising the pay scales in accordance with the Maharashtra Civil Services (Revised Pay) Rules, 2009 and 2019, available under 6th and 7th Pay Commissions recommendation, would be enforceable prospectively for stopping of the payment of advance increments for the excellent work performed in 2006, 2007 and 2008. This Court has directed that once these benefits have been given, they should not be recovered after passage of a decade. In this backdrop, we find that the stand taken by the Government can neither be said to be erroneous nor perverse.

7. In view of the above, as the Government has taken a decision to return the amount recovered from the employees, as like the petitioner, we direct that the amount of Rs.5,84,484/-, deducted from the gratuity amount of the petitioner, vide order dated 30.6.2022, shall be returned to him within 90 days.

8. Since the petitioner had given two undertakings that the excess amount paid to him can be recovered from him, that we are not granting any interest. The petitioner is agreeable.

9. Considering the several orders passed by this court approving pay fixation, post applicability of the 6th pay commission, this petition does not survive and stands disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

rlj/