

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

50 WRIT PETITION NO.1635 OF 2023

**GANGADHAR BHIMRAO DESHMUKH
VERSUS**

THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND OTHERS

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Advocate for Petitioner : Mr. L.H. Kawale h/f. Suryawanshi Kamlakar J.
AGP for Respondents/State : Mr. V.M. Kagne

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**CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.
DATE : 13th February, 2023**

PC. :-

1. The petitioner is a 70 years old citizen who prays for benefits of the order dated 16.05.2009 passed by the Commissioner for Co-operation and Registrar Co-operative, Maharashtra State, Pune holding him eligible for excellent work and the consequent grant of one advance increment. It is conceded that the petitioner did not demand this benefit till the GR dated 24.08.2017 was introduced by which said benefits were taken away from the candidates. This Court has consistently held that the benefit of advance increment for excellent work done is payable to the concerned employees and the GR dated 24.08.2017, taking away the said benefits in view of the 6th Pay Commission and 7th Pay Commission Recommendations, would be applicable prospectively.

2. In Writ Petition No.3300 of 2022 filed by **Gokul Vishawambhar Kapse V/s. The State of Maharashtra and Others**, this Court has delivered a judgment on 24.11.2022. The relevant paragraph nos.2 to 8 read as under:

“2. The petitioner is a pensioner, who has retired from service, as a Talathi. He was granted increments for excellent work by an order dated 07.06.2007. He has consistently received the said increments and has retired on 31.08.2013. After his retirement, by virtue of the Government Resolution dated 24.08.2017, the respondents have carried out recovery from the pensionary benefits of the petitioner, contending that he was never entitled for the advance increments in the light of the Government Resolution dated 24.08.2017.

3. The dispute has essentially arisen on account of the Government Resolution dated 24.08.2017, by which a decision was taken not to grant the benefit of advance increments during the 6th Pay Commission regime from 01.01.2006 to 01.12.2015.

4. In various judgments of this Court, it was repeatedly held that the Government Resolution dated 24.08.2017 would operate prospectively and would not have the effect of retrospective denial of advance increments prior to issuance thereof. The State Government and various Zilla Parishads had filed Review Petitions seeking review of various orders passed by this Court. It was inter alia sought to be contended in the said review petitions that even though the decision for stoppage of the scheme for advance increments might have been taken on 24.08.2017, it was earlier directed by way of a Circular dated 03.07.2009 to undertake the exercise of pay fixation in the 6th Pay Commission Pay Scales without taking into consideration the advance increments.

5. This Court had the occasion to consider the entire issue while deciding the Review Petitions. By judgment and order dated 30.08.2022, the Court has rejected the Review Petitions after considering all the objections raised by the State Government and Zilla Parishads. It was held that no specific instructions were issued before 24.08.2017 for discontinuation of the scheme of advance increments. Paragraph nos.12 to 15 of the judgment and order dated 30.08.2022 passed in Review Application (Civil) No.170 of 2022 in Writ Petition No.13760 of 2019 (The State of Maharashtra and Anr. Vs. Rupchand S/o. Narayan Shinde and Ors.), read thus:-

“12. After having heard learned Counsels at length, we find that the review applicants have not been able to point out any specific instructions issued prior to 24.08.2017 / 04.09.2018 for discontinuation of the schemes for grant of advance increments.³⁵ Government Resolution dated 27.02.2009 and Circular dated 03.07.2009 do not indicate that any final decision was taken for discontinuation of schemes for advance increments. We proceed to examine the Government Resolution dated 27.02.2009 and Circular dated 03.07.2009 in details.

13. Government Resolution dated 27.02.2009 came to be issued by the State Government essentially for conveying the decision of the State Government about acceptance or otherwise of various recommendations made by the Hakim Committee constituted for implementation of recommendations of the 6th Central Pay Commission. In Annexure to the said Government Resolution, each recommendation and decision of the State Government thereon have been enumerated. So far as the scheme for advance increment is concerned, the same is to be found at serial number 27 of the Annexure (para 3.24 of Committees Report). In that paragraph, the Committee recommended that for employees/Officers rendering outstanding service, increment @ 4% be awarded instead of 3% and such increment be granted once in 5 years. It was further recommended that since increment at higher rate was being granted, the then existing scheme for grant of one or two advance increments be discontinued. However, in the column ‘Decision of State Government’ against para 3.24, remark is made stating that ‘separate action would be taken by General Administration Department’. As against various other recommendations, the remark ‘accepted’ has been made. The recommendation made in para 3.24 by the Hakim Committee was not accepted at least on the date of issuance of Government Resolution dated 27.02.2009 and General Administration Department was to take a decision thereon separately. Thus, it cannot be inferred that any specific decision was taken by the State Government on 27.02.2009 for discontinuation of scheme for grant of advance increment. Therefore, we do not find that the orders under review need to be disturbed on the basis of the Government Resolution dated 27.02.2009.

14. Now, we come to the Circular dated 03.07.2009. By the said Circular, it was directed that the issue of discontinuation of scheme for grant of advance increment was under consideration with the State Government and that some time was required for taking final decision. Therefore, it was further directed that temporarily the pay fixation of the employees in the 6th Pay Commission scales be made without considering the advance increments. Thus, the Circular dated 03.07.2009 was clearly issued as a temporary measure. The said circular did not communicate

any decision to the effect that the State Government discontinued the scheme for grant of advance increments. Therefore, we find that the reliance of Mr. Dixit on the Circular dated 03.07.2009 is again of no avail.

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 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.”

6. Thus, by now it is well settled that the scheme of grant of advance increments was discontinued for the first time by Government Resolution dated 24.08.2017 and that such decision would operate only prospectively.

7. We, therefore, concur with the said conclusion and allow this writ petition.

8. The Government Resolution dated 24.08.2017, would apply prospectively. Since the petitioner was already paid the benefits of

the advance increments, which have been subsequently recovered, we direct the respondent authorities to calculate the entire recovered amount and repay the same to the petitioner on or before 28.02.2023, failing which, the amount shall carry interest @ 6% p.a.”

3. The instant case has peculiar facts. The petitioner was never paid the benefit of the said order dated 16.05.2009. He however kept quiet and did not assert his right under the said order dated 16.05.2009. Even after the GR dated 24.08.2017 was introduced, he has not demanded the benefits until the date of the said GR. This petition is filed practically after 13 years.

4. The learned AGP submits that the delay caused in demanding the said benefits lies with the petitioner. He cannot take advantage of his wrong.

5. In the peculiar facts as above, this petition, despite the delay caused, is partly allowed. The law is now well settled that these employees who were declared excellent workers, would be entitled for the advance increments.

6. As such, this petition is partly allowed.

7. The petitioner would be entitled for the advance increments vide order dated 16.05.2009 till 24.08.2017. As the petitioner has slept over his rights and approached this Court belatedly, we would grant him the benefit of interest @ 6 p.a. only for three years preceding the filing of this Writ Petition. Consequent to this order, the pay scale of the petitioner w.e.f. 01.10.2006

would be recalculated and the difference amount will have to be paid to the petitioner, including the direct benefit of one additional increment. Since he has slept over his rights, we are not granting interest even on these amounts for the entire period, save and except for the period of three years prior to this Writ Petition. Needless to state, his pensionary benefits will also have to be recalculated and so also his gratuity amount. On these amounts as well, we would not grant interest, but for a period of three years similar to the interest granted on the other amounts as noted above. Let this entire exercise be completed within a period of six months.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]