IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5759 OF 2022

1) Sanjay Ramchandra Wankhede,
Aged 60 yrs, Occ. Retired Gr. Teacher,
R/o. Patnagar Nears O.S. Malkapur,
Taluka Malkapur, District Buldhana.

2) Prabhakar Onkar Janjalkar,
Aged 66 yrs, Occ. Retired Gramsevak,
P. S. Malkapur, Prashant Nagar
Municipal School No.4, Malkapur,
Taluka Malkapur, District Buldhana.

3) Bhagwan Raoji Sambhare,
Aged 62 yrs, Occ. Retired Head Master,
P. S. Malkapur At Post – Belad,
Taluka Malkapur, District Buldhana.

4) Jyoti Mohan Ambekar,
Aged 60 yrs, Occ. Retired Head Master,
P. S. Buldhana, R/o Laxminagar Buldhana,
At Post, Taluka, District Buldhana.

5) Suresh Shaligram Junare,
Aged 67 yrs, Occ. Kendra Pramukh,
P.S. Malkapur, R/o At Shelapur Br.
Taluka Motala, District Buldhana.

6) Shivshankar Namdeo Ingle,
Aged 61 yrs, Occ. Retired Assistant
Teacher, P. S. Segaon,
R/o. At Post Matargaon Br.,
Taluka Shegaon, District Buldhana.

7) Ku. Subhadra Pundlik Rajput,
Aged 60 yrs, Occ. Retired A.D.I.
P. S. Mehkar, R/o Khandala Road,
Near Dudh Dairy Chikhali,
Taluka Chiktali, District Buldhana.

8) Sanghamitra Kisanrao Kshirsagar,
Age 65 yrs, Occ. Retired Asst.
Teacher, P. S. Chikhali, R/o Shivneri
Nagar, Loard -7 Kashinath Baba
Matha Buldhana, Taluka Buldhana,
District Buldhana.

9) Jagdeo Pundlik Jadhav,
Aged 62 yrs, Occ. Retired Head
Master P. S. Chikhali, R/o Pundlik
Nagar, Ward No.5, Chikhali,
Taluka Chikhali, Buldhana.

10) Madhukar Pundlik Jadhav,
Aged 62, Occ. Retired Assit. Teacher,
P. S. Chikhali, R/o Pundlik Chikali,
Taluka Chikhali, District Buldhana.

11) Ashok Damodhar Kharche,
Aged 62 yrs, Occ. Retired Asst.Teacher,
P. S. Malkapur R/o Anand Society Plot
No.38, Near Bodade Flour, Malkapur,
Taluka Malkapur, District Buldhana.

12) Pramod Onkar Warade,
Aged 62 yrs, Occ. Retired Jr. Account
Officer, P. S. Malkapur R/o Plot No.124/2
Harikiran Soceity Malkapur, Taluka Malkapur,
District Buldhana. ..... **PETITIONERS**

// VERSUS //

1) The State of Maharashtra,
Through, The Secretary Rural
Development Department Mantralaya,
Mumbai – 32.

2) Zilla Parishad, Buldhana,
Through, The Chief Executive Officer. .... **RESPONDENTS**

Shri. Pradeep S. Kshirsagar, Advocate for petitioners.
Mrs. T. H. Khan, AGP for respondent No.1.
Mrs. Sangeeta S. Jachak, Advocate for respondent No.2.

CORAM : AVINASH G. GHAROTE AND URMILA JOSHI-PHALKE, JJ.
RESERVED ON : 24.08.2023
PRONOUNCED ON : 01.09.2023

JUDGMENT : [PER: URMILA JOSHI-PHALKE, J.]

1. **RULE.** Rule made returnable forthwith.

2. The matter is finally heard at the request and by the consent of the parties.

3. All the petitioners are retired employees of the Zilla Parishad, Buldhana who were working on the post of Graduate Teacher, Gram Sevak, Head Master, Kendra Pramukh, Assistant Teacher and Accountant. They all are retired between 30.06.2017 to 2021.

4. As per the contention of the petitioners, they all retired on 30th June and therefore, the annual increment which is given on the 1st July of the every year has been denied. They further contended that as they have rendered the service for entire year, therefore, they are entitled for the annual increment which is due on 1st July, though they retired on 30th June. They have made representations and requested to grant the benefit, however, their representations are not considered, and therefore, they approached to this Court.

5. In response to the notice, the respondents denied the contentions of the petitioners on the ground that as they are already retired from the service from 30th June, and therefore, they are not entitled for any increment.

6. Heard learned Counsel Mr. Pradip S. Kshirsagar for the petitioners. He submitted that, this Court in various judgments have already taken the view that Zilla Parishad or any other department are liable to pay the annual increment as the employees had completed work of 365 days. In view of the said judgments, present petitioners are also entitled for the said increment. In support of his contentions, he placed reliance on the decision of this Court, in **Writ petition No.3028 of 2021 Kailash Gulabchand Sahuji and others vs. The State of Maharashtra and others decided on 02.05.2022** (Aurangabad Bench), wherein this Court has interpreted Rule 10 of Maharashtra Civil Services (Revised Pay) Rules, 2009 and held that the petitioners are entitled for the annual increment which is due on 1st July. It is held that considering the dates of superannuation of these petitioners as being 30th June of the respective years, the increment payable to them on 1st July of the concerned year, would be reckoned with for notionally calculating the pensionary benefits, which would have been payable to them from 1st July, but for their superannuation on 30th June. This notional inclusion

of the annual increment would be considered for calculating their pension, gratuity, earned leave, commutation benefits etc.

7. Learned AGP reiterated the contentions and submitted that as petitioners retired on 30th June, they are not entitled for any annual increment. As per Rule 10 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 (hereinafter referred as “Rules of 2009”), annual increment is due and payable of a uniform date i.e. 1st July of every year.

8. Rule 10 of Maharashtra Civil Services (Revised Pay) Rules, 2009 reads as under:

> ***Rule 10.- Date of next increment in the revised Pay Structure.***
> *This rule prescribes the manner in which the next increment in the new Pay Structure should be regulated. The provisos to this rule are intended to eliminate the anomalies of junior Government servants drawing more pay than their senior by the operation of substantive part of this rule and also taking care of the Government servants who have been drawing pay at the maximum of the existing scale for more than one year as on 1.1.2006 and also those Government servant who have been stagnating at the maximum of the scale.*
>
> *The increment as on 1.7.2006 under this rule as well as subsequent annual increments thereafter are admissible subject to the provisions contained in the rule 36 and 39 of the Maharashtra Civil Services (Pay) Rules, 1981.”*

9. The petitioners despite rendering one full year of service were not granted annual increment only because they had retired on 30th June of respective years. It is submitted that the petitioners were receiving annual increment regularly when they were in service, except the last annual increment which fell due on 1st July, as they retired on 30th June of respective years.

10. By this petition, the petitioners are claiming annual increment for having completed, one year of service and for the revision of their pay, pension and consequential benefits accordingly.

11. It is submitted by the learned Counsel for the petitioners that payment of increment on 1th July is a statutory formality but the entitlement and eligibility, therefore, is completion of one year of service i.e. 365 days of service, prior to that date. The Maharashtra Civil Services (Pay) Rules, 1981, came to be amended from time to time and in view of Maharashtra Civil Services (Revised Pay) Rules, 2009, the recommendation of 6th Pay Commission came to be accepted and made applicable to the State Government Employees. In view of Rule 10 of the Rules of 2009, the annual increment is due and payable on 1st July of every year. The said Rule 10 of the Rules of 2009 is by and large similar to Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008.

12. In view of both these rules, being pari materia what has been held in **Kailash Gulabchand Sahuji and others (supra)** would apply with full vigour to the present matter, the annual increment will be due and payable to an employee on 1st July of every year for having been completed one year of service. The petitioners who retired on 30th June in different years, but they have completed their one year service on the date of their retirement. But only because they were not in service on 1st July, they are declined the benefits of the said annual increment. Consequently, their pay, pension and other retiral benefits are fixed on disadvantages position.

13. The learned Counsel Shri Kshirsagar placed reliance on the judgment of this Court at Aurangabad Bench in **Writ Petition No.3028 of 2021 Kailash Gulabchand Sahuji and others** along with the connected petitions (supra), which considered the judgment of the Madras High Court dated 15.09.2017 in **Writ Petition No.15732/2017 in P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal and others** and in Paragraph Nos.5, 6 and 7 held as under:-

> *"5. The petitioner retired as Additional Director General, Chennai, on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied*

the last increment, though he completed a full one year in service, i.e. from 01.07.2012 to 30.06.2013. Hence, the petitioners filed the original application in OA No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.

6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep. by its Secretary to Government, Finance Department and others Vs. M. Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P. No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed, one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.

7 The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next date of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent–Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, *for the purpose of pensionary benefits and not for any other purpose. No costs."*

14. There is no dispute that Rule 10 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 is identical, to the amended Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008 in relations to the uniformity in annual increment, and therefore, what has been held in **Kailash Gulabchand Sahuji and others** (supra) would apply with full vigour to the present matter.

15. In the present petition, all these petitioners have superannuated on 30th day of June of the particular years as they were due for superannuation. 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 date as 1st day of July of each year. That prior thereto, the employees used to earn their annual increment by calculating 12 calendar months from the dates of their appointment for each succeeding year. Thus, the reference of 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. By the recommendations of the 6th pay Commission uniformity was decided to

be introduced and 1st of July of each year was considered to the date on which the annual increment for completing the 12 calendar months preceding 1st July, would be payable. Thus, 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 this peculiar circumstances that, these petitioners after having superannuated on 30th June of the respective year retired on 30th June, 2021, would have earned the annual increment which became payable to them on 01.07.2021. As they were superannuated on 30th June, 2021, they were not granted the notional benefit of the increment which would have been payable on 1st July for the work performed for the earlier year.

16. It is in these circumstances, we find that the present petitioners who are superannuated on 30th June of the respective years are also entitled to receive the increment which was due on 1st July of the concerned year, after 2006, and it would be reckoned for calculating the pensionary benefits, which would have been payable to them from 1st July, but for their superannuation on 30th June. This notional inclusion of the annual increment would be considered for calculating their pension, gratuity, earned leave, commutation benefits etc.

17. Considering these aspects, we are of the view that the arrears of such benefits as granted by us could be restricted for a reasonable period. These petitioners would be entitled for the arrears of such benefits for a period of three years preceding the dates of their superannuation or as per actuals, which ever is less. We direct the payment of such arrears accordingly, and such payment to be made to these petitioners on or before 30.09.2023.

18. The Writ Petition is disposed of in the above terms. Rule accordingly. No order as to costs.

(URMILA JOSHI-PHALKE, J.) **(AVINASH G. GHAROTE, J.)**

Sarkate.