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

WRIT PETITION NO. 4515 OF 2022

1. Ramtirth Motiramji Bharne,
Aged about 69 Years,
Occ: Retired Headmaster,
R/o Suresh Nagar, Dhamangaon Road,
Yavatmal, Taluka and District :
Yavatmal – 445001.
2. Chandrakant Bhauraoji Talmale,
Aged about 62 Years,
Occ: Retired (Teacher), R/o. Ujwal
Nagar, Wadgaon Road, Yavatmal,
Taluka and District : Yavatmal – 445001.
3. Babarao Ramkrushna Didpaye,
Aged about 65 Years,
Occ: Retired (Teacher), R/o Veni Kotha,
Taluka Kalamb, District : Yavatmal.
4. Smt. Uma Keshavrao Kadu,
Aged about 69 Years,
Occ: Retired (Teacher)
R/o Pushpakunj Society,
Arni Road, Yavatmal,
Taluka and District : Yavatmal.
5. Kisan Malhari Panpatte,
Aged about 70 Years,
Occ: Retired (Teacher),
R/o Papinwar Layout,
Pusad, Taluka Pusad,
District : Yavatmal.

..... PETITIONERS

// VERSUS //

1. The State of Maharashtra,
Through its Secretary,
Rural Development, Bandhkam
Bhawan, 25, Marzban Road,
Fort Mumbai – 400001.

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2. State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai – 440 032.
3. Divisional Commissioner,
Amravati Division, Amravati,
Taluka and District : Amravati.
4. Zilla Parishad, Yavatmal through
its Chief Executive Officer, Yavatmal,
Taluka and District : Yavatmal.
5. Education Officer (Primary),
Zilla Parishad, Yavatmal,
Taluka and District : Yavatmal.

.... **RESPONDENTS**

Shri J. S. Wankhade, Advocate for the petitioners.
Mrs. Kalyani Deshpande, AGP for the respondent Nos.1 to 3/State.
Ms. Sweta Bhaisare, Advocate h/f Shri B. N. Jaipurkar, Advocate
for the respondent Nos.4 and 5.

**CORAM : AVINASH G. GHAROTE AND
URMILA JOSHI-PHALKE, JJ.
RESERVED ON : 05.09.2023
PRONOUNCED ON : 11.09.2023**

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.

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3. All the petitioners are the retired employees of the Zilla Parishad, Yavatmal and were serving on different posts. The petitioner No.5 Kisan Malhari Panpatte was working with the Secondary School namely, Koshatwar Daulatkhan Secondary School, Pusad, District Yavatmal. All the petitioners are retired on 30th June in different years. The following chart shows the date of retirement and their respective posts.

अ.क्र.	नांव	सेवानिवृत्त दिनांक	सेवानिवृत्त वेळी पद
1.	रामतिर्थ मोतीरामजी भरणे	30 / 06 / 2011	मुख्याध्यापक
2.	बाबाराव रामकृष्ण दिडपाये	30 / 06 / 2015	मुख्याध्यापक
3.	चंद्रकांत भाऊरावजी तलमले	30 / 06 / 2018	स.शिक्षक
4.	श्रीमती उमा केशवराव कडू	30 / 06 / 2011	मुख्याध्यापीका
5.	किसन मल्हारी पानपट्टे	30 / 06 / 2010	स.शिक्षक

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

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

6. Heard learned Counsel Shri Wankhede 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 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, for their superannuation on 30th June. This notional inclusion of the annual

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

7. Learned AGP reiterated the contentions and submitted that petitioners are not entitled for any annual increment. Learned Counsel for respondent Nos.4 and 5 endorsed the same contention.

8. 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. 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.”

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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. It is material to note 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.

11. 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, and the annual increment will be

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due and payable to an employee on 1st July of every year for having 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 placed in disadvantages position.

12. 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** in Paragraph Nos.5, 6 and 7 it has been 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

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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.”

13. There is no dispute that Rule 10 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 is identical, to the amended Rule 10

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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.

14. In the present petition, all these petitioners have superannuated on 30th day of June of the particular years as they were due for superannuation shown in the chart. 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 academic 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

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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 years, would have earned the annual increment which became payable to them on 1st of July. 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.

15. 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.

16. 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, whichever is less. We direct the

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payment of such arrears accordingly, and such payment to be made to these petitioners on or before 30.09.2023.

17. 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.)