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

WRIT PETITION NO. 3695 OF 2022

1. Arun S/o. Ganpatrao Pogale,
Aged about 62 yrs., Occu.: Retired,
R/o. Behind Ramesh Caudhari's Galli,
Ward No.7, Camp Area,
Gadchiroli – 442605.

2. Ansar Ahmed S/o. Nisar Ahmed Qureshi,
Aged about 61 yrs., Occu.: Retired,
R/o. Near Aftab Alam Khan's House,
House No.363, Jawahar Ward,
Desaiganj, (Vadasa),
Gadchiroli – 441207.

3. Shankar S/o. Baliram Pise,
Aged about 61 yrs., Occu.: Retired,
R/o. Om Niwas, Kasturba Ward,
Desaiganj (Vadasa),
Gadchiroli – 441207.

4. Pandurang S/o. Lakshman Peshane,
Aged about 59 yrs., Occu.: Retired,
R/o. Near Chamorshi Naka, Sai Nagar,
Gadchiroli – 441207.

5. Namdeo S/o. Chattiji Shettiwar,
Aged about 58 yrs., Occu.: Retired,
R/o. Near Manoj Muppidwar,
Ayodhya Nagar, Ward No.15,
Gadchiroli – 442605.

6. Shobha W/o. Prabhakar Pazare,
Aged about 58, Occu.: Retired,
R/o. In front of Lital Flower Convent,
Rasekar Chowk, Ward No. 6,
Armori, Gadchiroli – 441208.

7. Bhomeshwar S/o. Vasudeo Ambekar,
Aged about 61, Occu.: Retired,
R/o. Behind Manwatha Primary School,
Near Kali Mata Mandir,
Hanuman Ward, At.Po. Desaiganj (Vadsa),
Tah. Armori, Dist. Gadchiroli.

8. Wasudeo S/o. Mukunda Tunkalwar,
Aged about 61, Occu.: Retired,
R/o. C/o. Mukunda Tunkalwar, Sai Nagar,
Gadchiroli – 442605.

9. Umaji S/o. Ganuji Shivarkar,
Aged about 59, Occu.: Retired,
R/o. Chamorshi Road, Near Co-operative Bank, Jayguru Nagar, Ashti,
Gadchiroli – 442707.

10. Mrs. Kalyani W/o. Devendra Hiwase. (Shakuntala S. Sorte),
Aged 59 yrs. Occupation: Retired,
R/o. Chath Complex, adjacent to L.I.C. office, Gadchiroli – 442605.

11. Lakhama S/o. Yenkataya Chaudhari,
Aged about 62, Occu.: Retired,
R/o. C/o. Raju Atkamwar, Marar Mohalla,
at Po. ta. Etapalli, Gadchiroli – 442704.

12. Ashokkumar S/o. Tukaramji Titarmare,
Aged about 62 yrs., Occu.: Retired,
R/o. C/o. Ashok Pullurwar,
Indira Ward No.1, at. po. ta. Etapalli,
Gadchiroli – 442704.

13. Shrikant S/o. Shamrao Challelwar,
Aged about 63 yrs., Occu.: Retired,
R/o. In front of Paper Mill Office,
Ashirwad Nagar, Ward No.22,
Chamorshi Road, Gadchiroli – 442605.

14. Ratiram S/o. Maniram Chaudhari,
Aged about 60 yrs., Occu.: Retired,
R/o. Behind Jangal Kamgar Society,
Chamorshi Road, Vivekanand Nagar,
Ward No. 21, Shradha Colony,
Gadchiroli – 442605.

15. Satyawan S/o. Sawji Walke,
Aged about 63 yrs., Occu.: Retired,
R/o. Ambedkar Ward No.6, at po. ta. Chamorshi, Gachiroli – 442603.

16. Pandurang S/o. Chindhuji Parate,
Aged about 58 yrs., Occu.: Retired,
R/o. Near Government College,
Nandanvan Nagar, Ward No. 21,
Gadchiroli – 442605.

17. Ramdas S/o. Mahaguji Bhandekar,
Aged about 58 yrs., Occu.: Retired,
R/o. C/o. Balaji Mandir, Behind Talaw, Mul Road, Gadchiroli – 442605.

18. Vasundhara W/o. Suryakant Gundpawar,
Aged about 60 yrs., Occu.: Retired,
R/o. New Potegaon Road,
Kannamwar Ward, Gadchiroli.

19. Gajanan S/o. Motiramji Dahikar,
Aged about 62 yrs., Occu.: Retired,
R/o. In Front of Radhe Building,
Gokul Nagar, Ward No.22,
Chamorshi Road, Gadchiroli – 442605.

20. Lata W/o. Subhash Hemke,
Aged about 61 yrs., Occu.; Retired,
R/o. Ashirwad Nagar, Behind Canera Bank, Chamorshi Road,
Gadchiroli – 442605. **…PETITIONERS**

...VERSUS…

1. State of Maharashtra,
   Through its Chief Secretary,
   Mantralaya, Mumbai – 32.

2. The Principal Secretary,
   Finance Department, Mantralaya,
   Mumbai – 32.

3. The Principal Secretary,
   General Administration Department,
   Mantralaya, Mumbai – 32.

4. The Principal Secretary,
   Rural Development Department,
   Mantralaya, Mumbai – 32.

5. Chief Executive Officer,
   Zilla Parishad, Gadchiroli. **...RESPONDENTS**

Mr. N. D. Thombre, Advocate for Petitioners.
Ms K. S. Joshi, Addl.G.P. for Respondents 1 to 4/State.
Mr. A. W. Paunikar, Advocate for Respondent 5.

CORAM: ROHIT B. DEO AND MRS. VRUSHALI V. JOSHI, JJ.
DATE: 25.04.2023

ORAL JUDGMENT : (PER ROHIT B. DEO, J.)

1. Heard. **Rule**. Rule made returnable forthwith by consent of the learned counsel for the parties.

2. The petitioners have superannuated from Zilla Parishad, Gadchiroli on various dates.

3. The common grievance of the petitioners is that the Zilla Parishad, Gadchiroli refused to grant the annual increment in the pay scale which was and is due on the 1st day of July of the relevant year, in accordance with the recommendations of 6th Pay Commission, on the premise that the petitioners who have retired on 30th June of the relevant year have ceased to be employees and are not as such entitled to the increment which fell due on the 1st day of July. It is not in dispute that several decisions of the Co-ordinate Bench at the Aurangabad Bench, and at the Nagpur Bench, have answered the issue involved in favour of the petitioners.

4. Suffice it would to extract the relevant observations in the judgment dated 02.03.2022 rendered by the Co-ordinate Bench in *Writ Petition 5864/2019 (Pandurang Vithobaji Dhumne and Ors. Vs. The State of Maharashtra and Ors.),* which reads thus *:*

> *"11. The case of the petitioners is that all the petitioners are retired/superannuated employees of the Zilla Parishad-respondent No.4 and were*

holding different posts, but, they all retired on 30th June in different years. Each of the petitioners have one thing in common i.e. they all retired on 30th June, but, in different years. They are beneficiaries of 6th Pay Commission Recommendations made applicable vide Rule 10 of the Rules of 2009. They were denied annual increment which was due and payable, though they have completed one full year of service but have retired on 30th June. The Hon'ble Madras High Court in similar set of facts relying on the judgment reported in CDJ 2012 MHC 6525, State of Tamil Nadu, rep. by its Secretary to Government, Finance Department and Others Vs. M. Balasubramaniam held in P. Ayyamperumal (supra) that when the date of increment of a Government Servant falls due on the day following superannuation on completion of one full year of service, the said service may be considered for benefit of notional increment, *purely for the purpose of pensionary benefits and not for any other purpose. In the present matter, the petitioners have completed one full year service on 30th June of their respective years of retirement, but, the increment fell due on 1st July, the date of which they were not in service. Thus, what is important in the present matter, the petitioners have completed one full year service on 30th June of the respective years of retirement, however they were denied the benefit of the increment that fell due on 1st July, just because on the date of the increment falling due they were not in service. In the judgment of the Hon'ble Madras High Court, which was confirmed by the Apex Court, the petitioners were treated as having completed one full year service, though the date of their increment fell on the next day of their retirement. Though as per Rule 10 the increment falls due on 1st July but entitlement & eligibility therefore, is a completion of one year of* *service prior to that date. Thus, increment is drawn on 1st July of every year which causes increase in the payment and Grade pay last drawn as on 30th June. A salary increment or salary raise, typically represents a portion of what an employee earns in a year. Thus, all the petitioners though fulfill that criteria of entitlement their service up to 30th June ought to be considered for grant of benefit of notional increment if they are eligible otherwise".*

5. We did not dispose of the present petition earlier, although the decisions of the Co-ordinate Bench were brought to our notice, inasmuch as one decision which was rendered in the *Writ Petition 5864/2019* in the case of the *Pandurang Vithobaji Dhumne and Ors. Vs. The State of Maharashtra and Ors.* was carried to the Hon'ble Apex Court and we were informed that the decision of the Co-ordinate Bench is stayed.

6. However, our attention is now invited to a

relatively recent decision of the Hon'ble Apex Court which is rendered on 11.04.2023 in ***Civil Appeal 2471/2023*** (***The Director (Admn. and HR) KPTCL & Ors. Vs. C. P. Mundinamani & Ors.)*** in which the Hon'ble Apex Court has answered an identical issue and has upheld the view of the Madras High Court.

7. We may notice the relevant observations of the Hon'ble Apex Court in *the Directors (Admn. and HR)* which reads thus :

> *"6.6 The Allahabad High Court in the case of* ***Nand Vijay Singh (supra)*** *while dealing with the same issue has observed and held in paragraph 24 as under: -*
>
> > *"24. Law is settled that where entitlement to receive a benefit crystallises in law its denial would be arbitrary unless it is for a valid reason. The only reason for denying benefit of increment, culled out from the scheme is that the central government servant is not holding the post on the day when the increment becomes payable. This cannot be a valid ground for denying*

increment since the day following the date on which increment is earned only serves the purpose of ensuring completion of a year's service with good conduct and no other purpose can be culled out for it. The concept of day following which the increment is earned has otherwise no purpose to achieve. In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central government servant retiring on 30th June has already completed a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the increment earned by the central government employee on the basis of his good conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable. In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable looses significance and must give way to the right of the government servant to receive increment

> *due to satisfactory services of a year so that the scheme is not construed in a manner that if offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remains protected and are not denied due to a fortuitous circumstance."*

6.7 Similar view has also been expressed by different High Courts, namely, the Gujarat High Court, the Madhya Pradesh High Court, the Orissa High Court and the Madras High Court. As observed hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpretated would lead to arbitrariness and denying a government servant the benefit of annual increment which he has already earned *while rendering specified period of service with good conduct and efficiently in the last preceding year. It would be punishing a person for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently. Any interpretation which would lead to arbitrariness and/or unreasonableness should be avoided. If the interpretation as suggested on behalf of the appellants and the view taken by the Full Bench of the Andhra Pradesh High Court is accepted, in that case it would tantamount to denying a government servant the annual increment which he has earned for the services he has rendered over a year subject to his good behaviour. The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day. In the present case the word "accrue" should be understood liberally and would mean payable on the succeeding day. Any contrary view would lead to arbitrariness and unreasonableness and denying a government servant legitimate one annual increment though he is entitled to for rendering the services over a year with good behaviour and efficiently and therefore, such a* *narrow interpretation should be avoided. We are in complete agreement with the view taken by the Madras High Court in the case of* ***P. Ayyamperumal (supra);*** *the Delhi High Court in the case of* ***Gopal Singh (supra)****; the Allahabad High Court in the case of* ***Nand Vijay Singh (supra)****; the Madhya Pradesh High Court in the case of* ***Yogendra Singh Bhadauria (supra)****; the Orissa High Court in the case of* ***AFR Arun Kumar Biswal (supra)****; and the Gujarat High Court in the case of* ***Takhatsinh Udesinh Songara (supra)****. We do not approve the contrary view taken by the Full Bench of the Andhra Pradesh High Court in the case of* ***Principal Accountant-General, Andhra Pradesh (supra)*** *and the decisions of the Kerala High Court in the case of* ***Union of India Vs. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022)*** *and the Himachal Pradesh High Court in the case of* ***Hari Prakash Vs. State of Himachal Pradesh & Ors. (CWP No. 2503/2016 decided on 06.11.2020)****"*

8. The learned Additional Government Pleader Ms Joshi and the learned Counsel for the Zilla Parishad, Gadchiroli fairly do not disagree with the submission of the learned Counsel for the petitioners that the issue involved is

squarely covered by the said decision of the Hon'ble Apex Court as regards the entitlement of employees who retired on 30th June of the year to receive the increment which falls due on the first of July. The learned Additional Government Pleader Ms Joshi however, submits, that the aspect of delay will have to be looked into by the High Court considering that the petitioners herein have superannuated between 2016 to 2021.

9. While in fairness to the learned Additional Government Pleader Ms Joshi, we have considered the said submission, we are not persuaded to refuse the relief to the petitioners on the ground of delay. The situation was fluid. However, once the law was crystallized by the Co-ordinate Bench decision of the Hon'ble High Court, as model employer the Zilla Parishad, was expected to fall in line with the decision rendered by more than one benches of the High Court. Even *de hors* the said aspect, considering that the denial of the increment will have a cascading effect on the quantum of pension, we are not inclined to hold the delay, even if arguendo, it is assumed, there is any delay, against the

petitioners. We therefore allow the petition in terms of prayer clauses (i) and (ii), which read thus :

> *"(i) Issue the Writ of Mandamus or any other appropriate Writ, Order or directions to the Respondents to grant one notional increment to the Petitioners of 1st July immediately after their retirement on 30th of June in concerned year;*
>
> *(ii) After one notional increment of 1st July is granted, direct the Respondents to revise the pension and pensionary benefits of the Petitioners and release the arrears arising out of the same within stipulated period of 3 months."*

10. Rule accordingly. No costs.

(MRS. VRUSHALI V. JOSHI, J.) **(ROHIT B. DEO, J.)**

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