



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3300 OF 2024

Shivaji Rambhau Kirnale

VERSUS

The State Of Maharashtra Through Its Chief Secretary And Others

Mr. E. S. Murge, Advocate for the Petitioner

Mr. V. M. Kagne, AGP for Respondent Nos.1 and 2

Mr. A. G. Vasmatkar, Advocate for Respondent Nos. 3 to 7

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

DATE : 1st April, 2024

PER COURT :-

1. The Petitioner has put forth prayer clauses 'B', 'C' and 'D' as under:

"B) This Hon'ble court it is hold and declares that, the Government Resolution dt. 24/08/2017 issued by the Res. No.2 shall not be made applicable to the petitioners.

C) This Hon'ble court by issuing writ of certiorari or any appropriate writ, order or direction in like nature, impugned decision dt. 29/07/2017 passed by the Res. No. 5 thereby withdrawing 2 additional increment granted to the petitioner for excellent work and recovering amount of Rs.1,18,019/- from salary of the petitioner may kindly be quash and set aside.

D) This Hon'ble court by issuing writ of mandamus or any other appropriate writ, order or direction in like nature the respondent No. 4 to 7 may kindly be directed to refund recovered amount of Rs.1,18,019/- to the petitioner and pay all the consequential retirement benefit by adding benefit of 2 additional increment to the petitioner."

2. Since this Court has dealt with hundreds of identical matters, we requested the learned Advocate representing Respondent Nos. 3 to 7 (Maharashtra Jeevan Pradhikaran), to cause his appearance. On request, he has appeared in this matter.

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 01/10/2006 to 01/10/2015.

4. In various judgments of this Court, it was consistently held that the Government Resolution dated 24/08/2017 would operate prospectively and would not have the effect of retrospective denial of advance increments. 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 ultimate 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 as per the 6th Pay Commission Pay scales without taking into consideration the advance increments.

5. By judgment and order dated 30/08/2022, this Court has

rejected the Review Petitions after considering all the objections raised by the State Government. 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 as under :-

"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. 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 6 th 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, it is now a well settled position 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. This Writ Petition is, therefore, disposed off with the declaration that the Government Resolution dated 24/08/2017 would apply prospectively. The Petitioner is held to be eligible for grant of advance increments for outstanding work prior to 24/08/2017. Since the Petitioner is not claiming interest, the recovered amount shall be paid to the Petitioner within a period of 45 days, failing which, the amount shall carry interest at the rate of 6% from the date of recovery till it is actually paid. All consequential benefits be calculated by adding up the said advance increments. Since the Petitioner has superannuated, all consequential benefits post recalculation, be paid to the Petitioner within 90 days.

(R. M. JOSHI, J.)

(RAVINDRA V. GHUGE, J.)

ssp