

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

(116) WRIT PETITION NO.3267 OF 2023

Bindiya Suresh Kamble and Ors.Petitioners

Versus

The State of Maharashtra and Ors.Respondents

AND

(197) WRIT PETITION NO.16777 OF 2024

Rajan Sadanand Patil and Ors.Petitioners

Versus

The State of Maharashtra and Ors.Respondents

Mr. Shivkumar K. Mathpati for the Petitioners in both the Petitions.

Mrs. Nisha Mehra, AGP for the State in both the Petitions.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 18th NOVEMBER, 2024

P.C. :-

1. In both these Petitions, the Petitioners are identically placed. For reference, prayer clauses (B), (C) and (D), from the first Petition, are reproduced as under :

(B) The G. R. dated 24th August, 2017 may kindly be quashed & set aside to the extent of denial of benefits of one or two advance increments to the employees who has been given benefits of sixth pay commission it means its applicability of retrospective in nature by issuing the writ of certiorari or mandamus or any other appropriate writ or order as the case may be.

(C) The respondent No.4 may kindly be direct to give/release the benefits of one or two advance increments with arrears/difference amount to the petitioners forthwith as per existing earlier policy of the G. R. issued by the respondent authority by issuing writ of mandamus or any other appropriate writ or order as the case may be.

OR

The respondent authority may kindly be direct to restoration, extension & continuation of earlier order dated 29.07.2009, 17.08.2009 & 14/16.11.2009 passed by the Resp. No. 4 as per existing G.R. & along with all consequential service benefits, by issuing the writ mandamus or any other appropriate writ or order as the case may be.

(D) By issuing writ of mandamus or any other appropriate writ or order may kindly be direct to the respondent authority to repay monetary benefits in case withdrawn any amount till today.

2. All these Petitioners are before this Court challenging the Government Resolution dated 24th August, 2017 issued by the Government of Maharashtra by which, the additional increment payable on account of excellent work, has been stopped with retrospective effect.

3. An identical issue, fell for the consideration of this Court at the Principal Seat in Writ Petition (Stamp) No.1438 of 2021 filed by ***Sanjiv R. Patil and others vs. the State of Maharashtra and***

others. By an order dated 4th May, 2021, this Court concluded in paragraphs 4 to 6, as under :

“4. The Petitioners are employees of Zilla Parishad, Sangli. Pursuant to the G.Rs. dated 11th February 1974 and 20th June 1989, the Petitioners, in view of their outstanding work, were granted either one or two advance increments as on 1st October 2006, 1st October 2007 and 1st October 2008. The Petitioners state that the Respondent – State, however, by Circular dated 3rd July 2009 instructed to fix the pay in a revised pay scale as per the recommendation of Sixth Pay Commission without taking into consideration advance increments granted on 1st October 2006, 1st October 2007 and 1st October 2008. It is stated that the Respondent – State, then issued the G.R. dated 24th August 2017 and reiterated the instructions issued by Circular dated 3rd July 2009. The contention is accrued and vested rights of the Petitioners cannot be taken away by the impugned G.R.

5. This Court (Aurangabad Bench) in Writ Petition No.14797 of 2017 (Ganpat Vitthal Dapute and Ors vs. The State of Maharashtra and Ors) vide its order dated 11th June 2019, held that the G.R. dated 24th August 2017 will have prospective effect. This Court, accordingly, held that the benefit of advance increments granted as per the policy of the Government prevailing at that time, the same would not be withdrawn on the basis of subsequent G.R. dated 24th August 2017. We have taken the similar view in Writ Petition No.4050 of 2018 decided on 22nd October 2020.

6. The learned counsel for respondent No.4 submits that respondent No.1 had by communication dated 4.12.2020 directed them to

seek review of the order passed by this court in aforesaid writ petition. However, in absence of any interim stay order, we do not see any reason to refuse identical relief to the petitioners. In the result, we pass the following order.

a. The Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the Respondent – State dated 11th February 1974 and 20th June 1989 in the revise Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July 2009 and G.R. dated 24th August 2017.

b. Recovery, if any, made pursuant to the Circular dated 3rd July 2009 or G.R. dated 24th August 2017 from the Petitioners shall be refunded to them.

c. Rule made absolute accordingly.

d. No order as to costs.”

4. In yet another Writ Petition No.4050 of 2017 filed by ***Uday J. Godave and others vs. The State of Maharashtra and others*** and connected petitions, this Court, at the Principal Seat, vide judgment dated 22nd October, 2020 held in paragraph 6 as under :

“6. This Court (Aurangabad Bench) in Writ Petition No.14797 of 2017 (Ganpat Vitthal Dapute and Ors vs. The State of Maharashtra and ors) vide its order dated 11th June 2019, held that the G.R. dated 24th August 2017 will have prospective effect. This Court, accordingly, held that the benefit of advance increments granted as per the policy of the Government prevailing at

that time, the same would not be withdrawn on the basis of subsequent G.R. dated 24th August 2017. Considering the fact that the Respondent – State has not yet taken any policy decision with regard to issue in question, we are constrained to pass similar order. In the result, we pass the following order.

a. The Respondents are directed to accord the benefit of advance increments granted to the Petitioners as per the policy of the Respondent – State dated 11th February 1974 and 31st October, 1989 in the revise Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July 2009 and G.R. dated 24th August 2017.

b. Recovery, if any, made pursuant to the Circular dated 3rd July 2009 or G.R. dated 24th August 2017 from the Petitioners shall be refunded to them.

c. Rule made absolute accordingly.

d. No order as to costs.

e. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.”

5. Considering the identical orders passed earlier, this Court at the Principal Seat, in ***Raosaheb Shripati Desai and others vs. The State of Maharashtra and others***, delivered a judgment dated 1st April, 2021 in Writ Petition No.12531 of 2019, and granted the reliefs to the Petitioners. The Zilla Parishad, Kolhapur, assailed the

said judgment dated 1st April, 2021 before the Hon'ble Supreme Court by preferring Petition for Special Leave to Appeal (Civil) No.10789 of 2022. By the order dated 20th July, 2022, the Hon'ble Supreme Court dismissed the SLP with the following order :

“1. We are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.

2. The Special Leave Petitions are accordingly dismissed.

3. Pending application, if any, stands disposed of.”

6. The learned Advocates representing the respective Zilla Parishads submit that the Review Petitions for reviewing the similar orders have been filed. We are informed that the Review Petitions are dismissed.

7. They draw our attention to the order passed by this Court on 18th July, 2022 in Writ Petition No.6856 of 2022 filed by ***Sayed Nazir Ahmed Syed Hameed vs. The State of Maharashtra and others*** wherein, we have directed those Petitioners to file individual affidavit-undertakings to the Chief Executive Officer, Zilla Parishad, stating that, in the event of the Review Petitions being decided in

favour of the Zilla Parishad, the Petitioners/beneficiaries would refund the amounts received by them within four weeks.

8. In view of the above, **these Writ Petitions are partly allowed**. The respective Zilla Parishads/concerned authorities would accord the benefit of advance increment to the Petitioners as per the policy of the State vide Government Resolutions dated 11th February, 1974 and 31th October, 1989 in view of the 6th pay commission recommendations. It is conceded that the Government Resolution dated 24th August, 2017 will have prospective effect. If such payments have been made earlier, there is no question of recovery of the amounts.

9. These Petitioners would tender their individual affidavit-undertaking to the respective Zilla Parishads/concerned authorities stating therein that if any pending Review Petitions are allowed and if it is finally concluded that these Petitioners are not entitled to the benefits received by them, the said amounts would be refunded within four weeks to the respective Zilla Parishads/concerned authorities from the date of such order.

10. In the event of there being any recovery already carried out against any of the Petitioners, we direct the concerned Zilla Parishads/authorities to repay the said amounts to such Petitioners within a period of six weeks from today, failing which, the amounts shall carry interest at the rate of 6% per annum from the date of recovery and the interest component shall be paid from the salary amount of the officers, who may be responsible for the delay in such refund.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)