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

WRIT PETITION NO. 8766 OF 2018

Shri Prabhakar Ramchandra Kharbade
age : 79 years, Occ : Retired
R/o. Plot No.51-A, Kalyaneshwar
Nagar, Near Shiv Mandir,
Manewada-Besa Road, Nagpur – 27 **.. Petitioner**

Versus

1) The State of Maharashtra,
Through its Secretary,
Finance Department, Mantralaya,
Mumbai – 400 032

2) Superintendent of Police,
Railway, Ajni, Nagpur

3) Accountant General (A & E) – II,
Maharashtra, Civil Lines, Nagpur – 01

4) Senior Treasury Officer,
Office of the District Treasury,
Civil Lines, Nagpur – 440 001 **.. Respondents**

Mr. A.K. Waghmare, Advocate for the petitioner.
Mr. N.R. Patil, Assistant Government Pleader for the respondents**.**

CORAM : AVINASH G. GHAROTE AND ABHAY J. MANTRI, JJ.

DATED : APRIL 23, 2025

JUDGMENT (PER : ABHAY J. MANTRI, J.)

Heard. **Rule.** Heard finally with the consent of the learned counsel appearing for the parties.

(2) The petitioner challenges the judgments and orders dated 21/03/2018 and 05/10/2018, passed by the learned Maharashtra Administrative Tribunal, Nagpur, in Original Application No.117/2017 and Review Application No.05/2018, thereby dismissing the Original Application and Review Application, for the claim of fixation of the basic pay/pension as per Government Circulars dated 20/07/2004 and 05.05.2009.

(3) The petitioner, the original applicant, was appointed as a Constable in the Railway Police on 19/09/1960 and retired on 30/06/1991. He was getting the pay in the 4th Pay Commission, and his last pay was drawn as @Rs.751/-. After implementing the 5th Pay Commission, he received a proper pension, and his last pay as of 31/07/2004 was @Rs.2356/-. Thereafter, vide GR dated 20/07/2004, his basic pay scale was revised w.e.f. 01/08/2004. As per the said GR, the Government of Maharashtra has granted additional benefit by way of 50% Dearness Allowance (D.A.), considering the last pay drawn as on 31/07/2024. Therefore, the basic pay was revised to a pension of Rs. 3534/-, w.e.f. 01/08/2004 till the revision of 6th Pay Commission i.e. on 31/12/2005.

(4) On 05/05/2009, the Government of Maharashtra issued another GR revising the pension of the pensioners based on the last pay drawn as of 31/12/2005 and demonstrating the same in clause (3) of the said GR. Therefore, the petitioner applied to the authority for the grant of revised pension as per the G.R. However, the authorities have not considered his application. Consequently, he has filed O.A. No.77/2016 before the learned Tribunal.

(5) The learned Tribunal by order dated 27/10/2016 disposed of the O.A. and granted liberty to the applicant to file a comprehensive representation before the authorities and directed them to consider the same within three months from the date of receipt of the representation. Pursuant to the said order, the petitioner has filed a detailed representation before the authority. However, the respondent No.4 vide communication dated 01/12/2016 refused to revise the pension as claimed by the petitioner. Hence, being aggrieved by the same, he had filed O.A. before the learned Tribunal. Considering the facts of the case and GR, the learned Tribunal dismissed the application on 21/03/2018. Thereafter, the petitioner filed the Review Application bearing No.05/2018, which was also dismissed on 05/10/2018. Being aggrieved by the same, he preferred this petition.

(6) Learned counsel Mr. Waghmare has vehemently contended that the learned Tribunal has not considered the G.R. dated 20/07/2004 and 05/05/2009. He drew our attention to the language of those GR and submitted that the learned Tribunal has not considered the same in its proper perspective and erred in dismissing the O.A. and Review Application, and therefore, urged for allowing the petition.

(7) *As against*, Mr.N.R.Patil, learned Assistant Government Pleader strongly opposed the petition contending that the respondent authorities after considering both the GRs, have rightly calculated the revised pension of the petitioner and after considering the same, the learned Tribunal has rightly dismissed both the applications and therefore, no interference is required. During the argument, he invited our attention to the calculation sheet prepared by the Competent Authorities on pages 215, 216, and 224, as well as the calculation demonstrated in para 5 of the reply, along with GR. Thus, he submitted that no interference is required in view of the same.

(8) In support of his contention, he has relied upon the decision of the Hon'ble Apex Court in ***Union of India and others vs. D.G.O.F. Employees Association and another*** [Civil Appeal No.1663 of 2016] and pointed out para 9 of the said judgment and canvassed that the executives and expert bodies like the Pay Commission have appropriate authorities to calculate the pay structure, and as per GR, they have rightly calculated the same therefore, ordinarily the same would not be disturbed by the Court. Similarly, the Court has no jurisdiction to examine the pay structure. Hence, the order passed by the Tribunal is just and proper; therefore, it is submitted that no interference is required.

(9) We have considered the rival submissions of the parties and gone through the impugned orders, both GRs and the record.

(10) The short question that arises is '*whether the respondent authorities have considered the GRs dated 20/07/2004 and 05/05/2009 while re-fixing the petitioner's pension in its proper perspective*.'

(11) While dealing with the said controversy, it would be appropriate to reproduce the relevant clauses of the GR dated 20/07/2004 as under:-

> *"Government is pleased to decide that,* ***with effect from 1st August 2004****, Dearness Allowance equal to 50% of the basic pay shall be merged with the basic pay and shown distinctly as* ***Dearness Pay (D.P.),*** *which would be counted for the purpose of* ***retirement benefits****.*
>
> *2. Government is further pleased to decide that in case of existing pensioners, Dearness Relief equal to 50% of the present pension will, with effect* ***from 1st August 2004****, be merged with the pension and shown distinctly as* ***Dearness Pension****. Dearness Relief converted into Dearness Pension would be deducted from the existing rate of Dearness Relief (61%) i.e. Dearness Relief from 1st August 2004 would be payable at the rate of 11% on Basic Pension/family pension and Dearness pension/Dearness family pension."*

(12) Similarly, we would like to reproduce the relevant clauses of the GR dated 05/05/2009 as under:-

2. In these orders:-

*(a) **"Existing Pensioner"** means a pensioner **who was drawing/entitled to pension on 31st December 2005.***

*(b) **"Existing pension"** means **the basic pension**, **inclusive of commuted portion, if any**, **due on 31st December 2005**. It covers all classes of pension (except wound/injury pension) under the Maharashtra Civil Services (Pension) Rules, 1982 or any other pension rule under which the Government servant was governed at the time of retirement.*
*(c) **"Existing Dearness Relief"** means **the relief due to the pensioners as on 1st January, 2006 f**or the following period:-*

Sr. No.	Period	Monthly rates of D.A.
1	From 1st January 2006	0
2	From 1st July 2006	2%
3	From 1st January 2007	6%
4	From 1st July 2007	9%
5	From 1st January 2008	12%
6	From 1st July 2008	16%

*3. On the lines of the recommendations of Central sixth pay commission, **the State Govt has decided to revise the pension of the pensioners who retired before 1st January, 2006 by giving 40% increase on the basic pension** (basic pension which does not include D.A. & D.P.) vide G.R. dated 27th Feb.2009. Accordingly, pension in respect of the pensioners who retired before 1/1/2006 will be fixed as per the example given below :-*

A	Basic pension as on 1st January, 2006	Rs. 10,000/-
B	**D.P.**	**Rs. 5,000/-**
C	D.A. (24%)	Rs. 3,600/-
D	40% increase on basic pension (A above)	Rs. 4,000/-
E	**Pension as on 01/01/2006 (A+B+C+D)**	**Rs. 22,600/-"**

(13) Similarly, in the ***Union of India,*** the Hon'ble Apex Court has held that "*Though the equation of posts and the equation of pay structure being complex matters, they are generally left to the executive and expert* *bodies like the Pay Commission etc. and carefully evolved pay structure ought not to be ordinarily disturbed by the court as it may upset the balance and cause avoidable ripples in other cadres as well, nevertheless it will not to correct lay down as an absolute rule that merely because determination and granting of pay scales is prerogative of the executive, the court has no jurisdiction to examine any pay structure and aggrieved employee cannot be left with no remedy if he is unjustly treated by arbitrary state action or inaction, except to go on knowing at the doors of the executive or legislature."*

(14) As per the mandate in ***Union of India*** (supra), we are not disturbing the pay structure fixed by executive and expert bodies like the Pay Commission. However, while considering the claim, we are interpreting the language of the GRs dated 20/07/2004 and 05/05/2009 to determine the basic pay by keeping in mind the purpose and intent of the provision and the background in which it has been used, whether it includes the Dearness Pay (for short—' ***D***. ***P.***') or not.

(15) According to the learned Assistant Government Pleader, the D.P. is not a part of the basic pay and therefore, the petitioner is not entitled to the relief as claimed. On careful perusal of the GR dated 20/07/2004, ***it is evident that the Government decided to merge D.A. of 50% of the basic pay into the basic pay,*** but showed it distinctly as

Dearness Pay (D.P.), counting for the purpose of retiral benefits. The language of the said GR would clearly indicate that the D.A. equal to 50% is merged with the basic pay. That means, once merged, DP is treated as part of the basic pay for all practical purposes, like calculating HRA, pension, gratuity, and other benefits.

(16) The language of the G.R. thus makes it apparent that basic pay is revised by merging the D.A. into it. However, it is shown distinctly as D.P., which does not mean that the said D.P. is not part of the basic pay; on the contrary, when Dearness Pay was officially merged into Basic Pay, then indeed, it would be included in the basic pay only.

(17) It is pertinent to note that Dearness Pay is neither defined in The Maharashtra Civil Services (Pay) Rules 1981 nor The Maharashtra Civil Services (Pension) Rules, 1982. It was introduced to simplify pay structures and to make DA count towards other benefits like HRA, pension, etc. Likewise, DA is a separate component from basic pay. That means the regular Dearness Allowance is not part of Basic Pay. But when DA crosses a certain threshold (like 50% of basic pay), the government may decide to merge part or all of that DA into the basic pay. Thus, D.P. is part of Basic Pay once it is so declared and merged. That being so, 'D.P.' is to treat as part of the basic pay for all practical purposes, like calculating HRA, pension, gratuity, and other benefits**.**

(18) It is to be noted that, by G.R. dated 20/07/2004, the Govt. of Maharashtra, declared that from 01/08/2004, the D.A. equal to 50% of the then existing pension was merged with the pension. It is apparent from the extract of Dearness Relief/Dearness Allowance from January 1986 to July 2019 as available on the official website of the Principal Accountant General (A. & E) – II, Maharashtra, Nagpur, that in June 2004, D.A. was admissible to 61%; however, from August 2004 it was reduced to 11% from 61% as 50% D.A. was merged into then existing Basic Pay. The said fact itself indicates that 50% of D.A. was merged with the basic pay, which means that basic pay was revised from 01/08/2004, and D.A. was shown as 11%.

(19) In addition, Pension is to be calculated based on the last drawn Basic Pay + Dearness Allowance (DA) at the time of retirement. In such a case, even assuming that D.A. of 61% was shown in a bifurcating manner as {D.A. (11%) + D.P. (50%)} in such an eventuality, also on the last drawn date i.e. 31.12.2004 the admissible pension was Basic pay+ D.A. has to be taken into consideration while applying the pay scale of 6th pay commission instead of excluding the part of D.A. converting into D.P. Moreover, as per Rule 61 of the

Pension Rules, 1982, the Portion of D.A. treated as D.P. will be counted as “Pay” for the purpose of pension. Thus, DP would be treated as part of Basic Pay for pension and retirement benefits. Therefore, we are not inclined to accept the submissions of the learned AGP in that regard.

(20) Apart from this, the language embodied in para 3 of the GR dated 05/05/2009, clearly indicates that while calculating 24% D.A., the basic pay was considered as basic pay on the date of 01/01/2006, i.e. original basic pay + 50% D.A. It also reflects from the chart of the D.A. rates produced by the respondents (page 224), at the end of June 2004, the D.A. was shown as 61% and from August 2004, 50% D.A. had merged with the basic pay and the D.A. of August 2004 was shown as 11%, which merged with the basic pay. It could be gathered from the language of the GR dated 20/07/2004. The said fact itself shows that the authorities have reduced the D.A. from 61% to 11%. Had it been the fact that the D.A. would not have been reduced, then the question of showing the same as D.P. distinctly does not arise. Therefore, in our opinion, it would not be proper to show the said D.A. distinctly as D.P. as mentioned in the GR dated 05/05/2009, while revising the pensioner's pension, who retired before 01/01/2006.

(21) The learned Assistant Government Pleader also drew our attention to the pension payment order calculation sheet on pages 213 to 216. At page 216 and the calculation sheet also, it is mentioned that on 01/10/2005, the pension of Rs.2356/- and D.P. of Rs.1178/- i.e. total basic pay comes to Rs. 3534/-, therefore, in our view, the language of the GR about the merger of the D.A. equal to 50% in the basic pay would construed as the basic pay. Therefore, it cannot be shown distinctly as basic pay and D.P., but it should only be shown as basic pay.

(22) Perused the impugned order. However, it appears that the learned Tribunal has not considered the language of the GR in its proper perspective and erred in dismissing the applications. However, as discussed above, in our view, the expression embodied in the GR itself is clear. The merger of the D.A. into basic pay would be construed as the basic pay only and not as adverted by the learned Assistant Government Pleader. Similarly, we interpreted the expression embodied in the GR. We did not disturb the calculations made by the authorities. Therefore, the observations made in the ***Union of India*** (supra) hardly support the respondents' contentions.

(23) Thus, considering the above discussion, in our view, the impugned orders cannot be sustained in the eyes of the law and needs to be quashed and set aside.

(24) In the wake of the above, we partly allow the petition. The impugned orders passed by the learned Tribunal are hereby quashed and set aside. The Original Application no.117/2017 is partly allowed to the extent that basic pay as indicated in the GR dated 20/07/2004, be construed as "original basic pay + D.P." (2356+1178=3534) as on 31/12/2005, and calculate and determine the petitioner's pension and arrears, if any, eligible in accordance with the law. Rule is made partly absolute in the above terms. No order as to costs.

[ABHAY J. MANTRI, J.] **[AVINASH G. GHAROTE, J.]**

After pronouncement of judgment Mr. Patil, learned Assistant Government Pleader at this time makes a request for grant of stay to the effect and operation of the judgment, however, as no time period has been granted to implement the judgment, therefore, we decline the request.

[ABHAY J. MANTRI, J.] **[AVINASH G. GHAROTE, J.]**