

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 140 of 2022 (S.B.)

Kiran S/o Rajaram Deshkar,
Aged 61 years, Occ. Retired,
R/o 84/2, Somwar Peth, Budhwar Bazar Square,
Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Agricultural Department,
Mantralaya, Fort, Mumbai-32.
- 2) Commissioner of Agriculture,
Maharashtra State,
Pune-411 001.
- 3) Divisional Joint Director of Agriculture,
Nagpur Division, Nagpur.
- 4) District Superintendent of Agriculture,
Nagpur District Nagpur.
- 5) Taluka Agriculture Officer,
Kamptee, Dist. Nagpur.

Respondents.

S/Shri N.D. & T.N. Thombre, Advocates for the applicant.
Shri H.K. Pande, learned P.O. for respondents.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 28/09/2022.

JUDGMENT

Heard Shri N.D. Thombre, learned counsel for applicant
and Shri H.K. Pande, learned P.O. for respondents.

2. The case of the applicant in short is as under –

The applicant was working on the post of Tracer with respondent no.5. The applicant came to be retired on 31/12/2018 on superannuation. When the applicant was working on the post of Agriculture Assistant, he was granted one advance increment for excellent work by order dated 27/01/2009.

3. After retirement, the respondent no.5 by impugned order dated 20/10/2021 informed the applicant that he was given excess amount in terms of advance increment from 01/10/2007 and therefore recovery of Rs. 20,950/- was directed. Hence, the present O.A. challenging the impugned order of recovery. It is also submitted that the applicant was given wrong fixation. He should have been given proper fixation as per the G.R. dated 06/09/2014.

4. The O.A. is strongly opposed by the respondents. It is submitted that as per the impugned order dated 20/10/2021, the applicant was directed to refund the amount of Rs.1,45,708/-.

5. Heard learned counsel for applicant Shri N.D. Thombre. He has pointed out the Judgment of this Tribunal in O.A.No.828/2021 and submitted that once the advance increment is given, it cannot be withdrawn.

6. Heard learned P.O. Shri H.K. Pande. As per his submission, the Review petition is filed before the Maharashtra Administrative Tribunal, Aurangabad Bench and after the decision, the matter will be decided at the level of Government.

7. This Tribunal relying on the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.115131/2019 come to the conclusion that once the advance increment given for excellent work, it cannot be withdrawn. The Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.115131/2019 has held as under –

“1. It is submitted that petitioners in these writ petitions are awarded certificate of excellent work and advance increments in the year 2006 to 2009. They were given benefit of advance increments and same was also paid. However, now for some of the petitioners' recovery is claimed and for some of the petitioners benefit is not extended. If the petitioners are already granted certificate/order of excellent work in the year 2006 to 2009, then same cannot be withdrawn retrospectively on the basis of subsequent Government Resolution.

2. The same view was taken by us in Writ Petition no.1954 of 2018 with other connected Writ Petitions under order dated 25.01.2019.

3. The Government Resolution dated 24.08.2017 will have prospective effect and not retrospective and in that case benefit that was accorded to petitioners of excellent work in the year 2006 to 2009, shall not be withdrawn and if any recovery is made pursuant to the same, same shall be refunded to the petitioners.

4. In the light of the above, Writ Petitions are disposed of. No costs”.

8. The same issue was raised in the Writ Petition No.12531/2019. The said Writ Petition along with connected W.Ps. were decided by the Hon'ble Bombay High Court on 04/05/2021 and

held that “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 revised Sixth Pay Scale without giving any effect of subsequent Circular dated 3rd July 2009 and G.R. dated 24th August 2017.”

9. There is no dispute that the applicant was given the benefit granting advance increments. Once the advance increment was given to the applicant for his excellent work, it cannot be withdrawn by the Government / authorities. Hence, in view of the Judgment of Hon'ble Bombay High Court in above W.Ps., the recovery initiated by the impugned order dated 20/10/2021 is liable to be quashed and set aside. The applicant prayed to grant pay as per the G.R. dated 06/09/2014. Hence, the following order –

ORDER

- i) The O.A. is allowed.
- ii) The impugned order of recovery dated 20/10/2021 for directing recovery of Rs. 1,45,708/- is hereby quashed and set aside.
- iii) The respondents are directed to fix the pay of the applicant as per G.R. dated 06/09/2014.

iv) If the amount is recovered from the applicant, same be refunded to the applicant within a period of three months from the date of receipt of this order.

v) No order as to costs.

Dated :- 28/09/2022.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/09/2022.

Uploaded on : 30/09/2022.

ok