

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 828 of 2021 (S.B.)

Shriprakash S/o Narayanrao Tongse,
Aged 58 years, Occ. Retired,
R/o 42, MHADA Colony, Davlameti, 8th Mile,
Amravati Road, 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, Nagpur.

Respondents.

Shri N.D. Thombre, Advocate for the applicant.
Shri A.P. Potnis, learned P.O. for respondents.

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

Dated :- 13/07/2022.

JUDGMENT

Heard Shri N.D. Thombre, Id. counsel for the applicant and
Shri A.M. Khadatkhar, Id. P.O. for the respondents.

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

The applicant was working as Agricultural Supervisor with the respondent no.5. The applicant is retired on 31/03/2021. When the applicant was working with the respondents, his work was excellent and therefore respondent no.2 by order dated 13/02/2008 granted two advance increments. After the retirement of the applicant, respondent no.5 by order dated 08/09/2021 started recovery of excess payment given to the applicant for the period from July,2007 to March, 2021 in respect of the advance increments granted to him. Therefore, the applicant approached to this Tribunal for the following reliefs –

“ (i) Quash and set aside the impugned order dated 9/8/2021 issued by the respondent no.5, Taluka Agriculture Officer, Nagpur being illegal and violative of provisions of law;

(ii) Direct the respondents to release pension and pensionary benefits to the applicant within stipulated period of 3 months ;

(iii) Saddle the cost of Rs.40,000/- upon the respondents as litigation charges and compensation for mental agony ”

3. The O.A. is strongly objected by respondent nos.1 to 5 by filing reply. It is submitted that the applicant was given two advance increments. After 6th Pay Commission, the applicant is getting more pay and therefore advance increments granted to the applicant cannot be taken into consideration in the revised pay as per 6th Pay Commission. Therefore, the respondents have started the recovery.

4. Heard learned counsel for applicant Shri N.D. Thombre. He has pointed out the decision of this Tribunal in the case of **Ratan S/o Dattatraya Dake Vs. State of Maharashtra & Ors.**, in O.A. 993/2021 with other connected matters decided on 7/7/2022 and in O.A. 75/2020, decided on 25/1/2022.

5. The learned counsel for applicant has submitted that the advance increments granted to the employee for his excellent work and those advance increments cannot be recovered after fixation of salary as per 6th Pay Commission. This issue is already decided by the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.11531/2019. The Id. counsel has submitted that in view of the Judgment of this Tribunal in O.A. 993/2021 and in O.A. 75/2020, the present O.A. be allowed and the respondents be directed to release pension and pensionery of the applicant and impugned communication dated 9/8/2021 be quashed and set aside.

6. Heard Id. P.O. Shri A.M. Khadatkhar. The Id. P.O. has pointed out Govt. Notification dated 24/08/2017. He has submitted that as per this Notification, the respondents have started the recovery in respect of the advance increments given to the applicant. There is nothing illegal on the part of the respondents. Hence, O.A. is liable to be dismissed.

7. 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 Writ Petition No. 12531/2019. The said Writ Petition along connected WPs. were decided by Hon'ble Bombay High Court on 4/5/2021 and held as under –

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

9. The applicant was granted advance increments as per order dated 13/02/2008. The name of the applicant is at sr.no.51. He was granted advance increments from 01/10/2006. In O.A. 993/2021

and in O.A. 75/2020 this Tribunal has decided this issue holding that once the advance increment is granted to the employee about his excellent work, that cannot be recovered. In view of the Judgment of Hon'ble Bombay High Court cited supra and Judgment of this Tribunal in O.A. 993/2021 and in O.A. 75/2020, the following order—

ORDER

- (i) The O.A. is allowed.
- (ii) The impugned order dated 9/8/2021 issued by respondent no.5 Taluka Agricultural Officer, Nagpur is hereby quashed and set aside.
- (iii) The respondents / authority are directed to accord the benefit of advance increments granted to the applicant in the revised 6th Pay Scale without giving effect to the circular Govt. G.R. 24/08/2017.
- (iv) The respondents are directed to release pension and pensionery benefits to the applicant within three months from the date of the receipt of this order.
- (V) No order as to costs.

Dated :- 13/07/2022.

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 : 13/07/2022.

Uploaded on : 18/07/2022.

ok