

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.465 OF 2021**

**DISTRICT: SATARA  
SUBJECT: PENSION AND  
RETIREMENT BENEFITS**

Shri Savata Mahadev Shinde, )  
Age: 60 years, Occ. Retired ACP )  
R/O at and post Vidani, Tal. Phaltan )  
Dist. Satara – 41552. )  
Mobile – 8108809000. )  
email id. smshinde1313@gmail.com )... **Applicant**

**Versus**

- 1) The State of Maharashtra )  
through Addl. Chief the Secretary, )  
Home Department, Mantralaya, Mumbai-32. )
- 2) The Commissioner for State Intelligence )  
Department (M.S.), Mubai, Mittal Tower, B-wing,)  
3<sup>rd</sup> Floor, Shahid Bhagat Singh Marg, Fort, )  
Mumbai-400 001. )
- 3) The State of Maharashtra )  
through the Secretary, )  
Finance Department, Mantralaya, Mumbai-32. )
- 4) The Addl. Commissioner, )  
SID, Thane, Near RTO office Thane, )  
in front of the Thane Hail, Thane – 400601. )... **Respondents**

**Shri Rajesh M. Kolge, learned Advocate for the Applicant.**

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.**

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 13.09.2022.**

### **JUDGMENT**

1. The Applicant stands retired from the post of Assistant Commissioner of Police (ACP), State Intelligence Department (SID) on 30.06.2019. At the time of retirement, he was on the establishment of Respondent No.4 – Divisional Commissioner, SID, Thane. In O.A. relief sought as per prayer clause 9 (a) is as under:-

“a) by suitable order and direction of this Hon’ble Tribunal be please to direct the respondent No.2 to release full Pension as per the 7<sup>th</sup> pay commission till today with the increment since from joining in June 2018 in the post of PI on one step ahead promotion to the post of ACP since from July 2018 and the increment on one step promotion of ACP at the time of retirement on 30/6/2019 and be pleased to fix the notional pay for the purpose of pension and the arrears thereto at the time of retirement of the applicant on 30/6/2019, and further be please to direct the respondents to pay the interest at the rate of 12% p.a. as per the G.R. dt.24/4/1995 and the G.R dt.22/11/1995 issued by the respondent No.3 on belated payment of GIS and gratuity (which not received as per the 7<sup>th</sup> pay commission) and O.A. be allowed accordingly.”

2. When the matter was taken up for hearing, learned Advocate for the Applicant Shri R.M. Kolge fairly stated that after filing of O.A. the Applicant is granted benefit of 7<sup>th</sup> Pay Commission. He fairly concedes that the Applicant cannot claim pensionary benefit of the post of ACP. He submits that the only grievance remains is grant of next increment due on 1<sup>st</sup> July 2019 i.e. on the next day of retirement. He therefore submits that O.A. can be disposed of with suitable direction to the Respondents to grant him increment which was due and payable on 1<sup>st</sup> July 2019 and to release the arrears. He placed reliance on the decision of Hon’ble High Court, Bench at Nagpur in ***Writ Petition No.5864 of 2019, Shri Pandurang V. Dhumne v/s. State of Maharashtra*** decided on 02.03.2022, wherein the benefits of increment due on 1<sup>st</sup> July was granted to the Applicants who have retired one day earlier i.e., on 30<sup>th</sup> June.

3. Undisputedly, the Applicant was serving in cadre of Police Inspector (PI) but he was deputed on the establishment of SID where he

was given one step promotion to the post of ACP till service period in SID. As such, once he is repatriated to the parent Department or stands retired, his pensionary pay has to be fixed on the post of PI and not ACP. Indeed, Shri R.M. Kolge fairly concedes this position. As such, grievance is restricted to the grant of benefits of increment which was due on 1<sup>st</sup> July 2019.

4. Learned P.O. though opposed the entitlement of the Applicant for the benefit of increment due on 1<sup>st</sup> July 2019, he also concedes the fact of the several decisions rendered in this behalf by the Tribunal wherein the benefit of increment due on 1<sup>st</sup> July of the concerned year was granted to the Government servant who retired one day earlier. However, according to him these Judgments are applicable only to the parties there too.

5. Indeed, the matter in issue about entitlement of a Government servant to increment which was due on next day on retirement is no more *res-integra* since it has attained finality upto Hon'ble Supreme Court. The Applicant being similarly situated person is definitely entitled for the same relief.

6. The Applicant stands retired on 30.06.2019 but he is deprived of increment due on 1<sup>st</sup> July 2019. In terms of recommendation of 6<sup>th</sup> Pay Commission by way of uniformity, the decision was taken to grant annual increment to all Government servant on 1<sup>st</sup> July of each year. Since, the Applicant retired one day earlier i.e., on 30<sup>th</sup> June of the concerned year, he could not get benefit of next increment, which was due and payable on 1<sup>st</sup> July 2019. Undisputedly, the Applicant has put in one-year complete service and was entitled for next increment due on 1<sup>st</sup> July 2019, but for retirement one day earlier. Since he is not granted benefit of next increment due on 1<sup>st</sup> July 2019 of the concerned year, it resulted into less retiral benefits.

7. This Tribunal while deciding O.A.No.950/2019 with other bunch of O.As has taken note of decisions of Hon'ble Supreme Court as well as High Court and held Applicants therein entitled for increment due on 1<sup>st</sup> July of the concerned year of their retirement. Para Nos.11 to 15 of the decision rendered by the Tribunal are material, which are as under :-

“**11.** Indeed, the issue as to whether the Applicants are entitled to the benefit of increment which was due on very next day of their retirement is no more res-integra in view of various decisions of the Hon'ble Supreme Court and High Court.

**12.** The issue was first considered by the Hon'ble Madras High Court in ***W.P.No.15732/2017 in case of P. Ayyamperumal v/s The Registrar, Central Administrative Tribunal & Ors, decided on 15.09.2017.*** In similar situation, the order of CAT granting benefit of increment which was due on very next day of retirement was confirmed by the Hon'ble High Court. The Special Leave Petition filed against it was dismissed by the Hon'ble Supreme Court. Similar issue was again raised before the Hon'ble Bombay High Court in ***W.P.No.6396/2020 (Prakash Choudhary V/s State of Maharashtra) decided on 24.06.2021.*** In Para Nos.4 to 7, the Hon'ble High Court held as under:-

4. The issue raised in this petition has been squarely covered by the judgment delivered by the learned Division Bench of the Madras High Court on 15.09.2017 in Writ Petition No.15732/2017 filed by P. Ayyamperumal vs. The Registrar, Central Administrative Tribunal and others. The facts in the case before the Madras High Court were set out in paragraphs 5 and 6 and the Madras High Court drew its conclusions in paragraph 7 and allowed the petition. Paragraphs 5 to 7 read as under :-

5. The petitioner retired as Additional Director General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied the last increment, though he completed a full one year in service, i.e. from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only

entitled to increment on 1st July if he continued in service on that day.

6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep.by its Secretary to Government, Finance Department and others v. M. Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.

7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs.”

5. The judgment of the Madras High Court in **P. Ayyamperumal** (supra) was carried in Special Leave Petition (Civil) Diary No.22283/2018. By order dated 23.07.2018, the Honourable Supreme Court dismissed the said Special Leave Petition.

6. There is no dispute that Rule 10 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 is identical to the amended Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008 in relation to the uniformity in annual increments.

7. Considering the above, this Writ Petition is allowed. As the petitioner is superannuated on 30.06.2019, we hold that he would be entitled to the last annual increment, which he has been deprived of and the respondents shall, accordingly, calculate the said monetary benefits expeditiously so as to be paid to the

petitioner on or before 30.09.2021. So also, as the grant of this annual increment would affect his pension, gratuity, earned leave, commutation benefits, etc., the respondents would recalculate the same and make the payment of arrears on or before 30.09.2021 and shall ensure that the revised pension is also paid to the petitioner accordingly.”

**13.** Again the same issue was considered by the Hon’ble High Court Bench Aurangabad in ***W.P.No.5864/2019 (Pandurang Vithobaji Dhumne & Ors. V/s State of Maharashtra & Ors.) decided on 02.03.2022***. The Hon’ble High Court held that the petitioners since have completed one full year service on the date of retirement on 30th Jun, they cannot be deprived of benefit due on 1st July.

**14.** The said issue again came up before the Hon’ble High Court Bench Aurangabad in ***W.P. No.3028/2021 (Kailash G. Sahuji & Ors. V/s The State of Maharashtra & Ors.) decided on 02.05.2022***. In Para Nos.11, 12 and 13 it has been held as under:-

“11. The learned Advocates for the petitioners have prayed for entire arrears from their dates of superannuation. The chart referred to below paragraph 5 indicates that some of the petitioners have superannuated in 2007. Some have superannuated in between 2008 and 2019. It is conceded that none of these petitioners have prayed for arrears of such addition of annual increments from the dates of their superannuation, in their petitions.

12. It is quite apparent that the judgment delivered by the Madras High Court in P.Ayyamperumal (supra), became a cause for these petitioners to approach this Court. None of them had challenged the non-inclusion of the annual increment in their pensionary benefits for calculation purposes, when they superannuated on 30th June of a particular year. As the judgment delivered in P. Ayyamperumal (supra) became known to all, that these petitioners have approached this Court. Some of the petitioners have superannuated in between 2016 and 2021.

13. Considering these aspects, we are of the view that the arrears of such benefits as granted by us in paragraph 10 hereinabove, could be restricted for a reasonable period. As such, these petitioners would be entitled for the arrears of such benefits for a period of three years preceding the dates of their superannuation or as per actuals, whichever is less. We direct the payment of such arrears accordingly and expect such payment to be made to these petitioners, on or before 30/08/2022.”

**15.** In view of the aforesaid legal position, the Applicants cannot be deprived of benefit of increment which was due on 1st July of the

concerned year. All that learned P.O. submits that since the Applicants have approached belatedly, the actual monetary benefits be restricted to three years preceding to filing of Original Applications. I find merit in her submission on the point of arrears. Indeed, the Applicants have filed these proceedings long after retirement when they got knowledge of the judgment of the Hon'ble Supreme Court giving benefit of increment due on next day of retirement. Be that as it may, insofar as arrears are concerned, it will have to be restricted to three years preceding to the date of filing proceeding."

8. Now turning to the facts of present case, indeed, the Applicants being similarly situated persons are entitled to the said benefit and Government ought to have taken cognizance of it by issuing suitable instructions. In this behalf, reference may be made to the decision of Hon'ble Supreme Court in **State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava** reported in **2015 (1) SCC 347** wherein following principle is laid down :-

*"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."*

9. Notably, Government of Maharashtra also issued Circular dated 28.02.2017 giving direction to the Departments for adherence to general judicial principles in service matters in view of observations made by the Tribunal in various service matters as well as on the basis of decision of Hon'ble Supreme Court in **Arvind Kumar Srivastava** (cited supra), but Respondents failed to implement it. Thus, if a principle of general applicability is culled out from particular pronouncement of the Tribunal which is based upon the Judgment of Hon'ble Supreme Court, then similarly placed employees though not before the Tribunal ought to be given the benefit thereof without requiring them to move the Tribunal for the relief. It is only in a case where relief is persons specific, in that

event, of course, direction will not apply to other cases. Whereas in the present case, there is no such persons' specific relief and it is principle of general applicability to similarly placed employees.

10. In this view of the matter, I have no hesitation to hold that the Applicant is entitled to increment which was due on 1<sup>st</sup> July 2019. Insofar as interest is concerned the Applicant can redress his grievance independently. Hence, the order.

**ORDER**

- A) Original Application is allowed partly.
- B) The Applicant is held entitled to the increment due on 1<sup>st</sup> July 2019. It shall be for the purpose of pension and other retiral benefits and arrears accordingly to be paid within three months from today.
- C) Liberty is granted to the Applicant to avail remedy independently for grant of interest on delayed payment in accordance to law.
- D) No order as to costs.

**Sd/-  
(A.P. Kurhekar)  
Member (J)**

Place: Mumbai  
Date: 13.09.2022  
Dictation taken by: N.M. Naik.

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