

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.146 OF 2013

DISTRICT : - AURANGABAD.

SunilkumarDattatrayaBanginwar
Age: 52 years, Occu.: Service as
Assistant Engineer Grade II,
ShivnaTakli Project Subdivision No.2,
Aurangabad.

.. APPLICANTS.

V E R S U S

1. The State of Maharashtra,
Through: Secretary GAD,
Water Resources Department,
Mantralaya, Mumbai 32.
(Copy to be served on the
C.P.O., MAT, Aurangabad)
2. The Superintending Engineer,
Aurangabad Irrigation Circle,
Aurangabad.
3. The Executive Engineer,
Minor Irrigation Division No. 1,
Aurangabad.

.. RESPONDENTS

APPEARANCE : Smt. Suchita A. Dhongde – learned
Advocate for the Applicant.

: Shri V.R. Bhumkar – learned
Presenting Officer for resp. No. 1.

: Shri D.T. Devane – learned Advocate
for respondent Nos. 2 & 3.

CORAM : **HON'BLE SHRI RAJIV AGARWAR,**
VICE CHAIRMAN (A).
AND
: **HON'BLE SHRI J.D. KULKARNI,**
MEMBER (J)

PER : **Hon'bleShri J.D. Kulkarni,**
Member (J)]

J U D G M E N T

[Delivered on this 13th day of December, 2016]

1. The applicant is an Assistant Engineer in the office of respondents. On 1.10.2008 one advance increment was granted to the applicant for his best performance. In 2011 the applicant has filed O.A. No. 578/2011 as wrong date of annual increment was given. The said Original Application was allowed. Suddenly on 20.11.2012 the respondents cancelled the order of grant of advance increment to the applicant in view of the Circular dated 3.7.2009 issued by the Government of Maharashtra in its General Administration Department. According to the applicant, the said action on the part of the respondents is arbitrary and illegal and against the principles of natural

justice. The Circular dated 3.7.2009 is also arbitrary. The applicant has challenged the impugned order of cancellation of advance increment dated 20.11.2012 and has requested to quash and set aside the said impugned order, as well as, Circular dated 3.7.2009 and also requested for direction to the respondents not to withdraw the advance increment given to him. It seems from the record that the recovery was also ordered, but the said recovery has been stayed by the Government in view of letter dated 27th September, 2013.

2. The respondent No. 1 resisted the claim by filing affidavit in reply and submitted that the applicant has received the benefit of revised pay scale with one additional increment w.e.f. 1.10.2008. However, in view of the policy decision taken by the Government and in view of Government Resolution dated 30.7.2009, the applicant is not entitled to get the benefit of advance increment and, therefore, excess amount paid to the applicant by way of advance increment is required to be recovered. The

Government has, however, decided not to recover the excess amount.

3. The applicant has filed rejoinder affidavit and submitted that as per Government Circular dated 14.12.2006, 5% employees are entitled to get the benefit of additional increments depending upon classification of their annual performance. It is stated that the Annual Confidential Reports of the applicant for the year 2008-09 to 2011-12 are Excellent (A+) and, therefore, the applicant is entitled to get two additional increments and a proposal for grant of additional increment since 1.10.2013 has been submitted through proper channel on 26.8.2013. However, the same has not been submitted to the Government.

4. The learned Advocate for the applicant submits that Writ Petition No. 6052/2014 was filed before the Hon'ble Bombay High Court Bench at Aurangabad, in which an order has been passed on 10th June, 2015, whereby the following order was passed : -

“ORDER

I. The respondents shall expedite the decision with regard to the advance increment as contemplated vide circular dated 3rd July, 2009. The decision in that regard be taken expeditiously. Of course, we are aware that it would require some time, however, the State is expected to address the said issue also considering the fact that more than 6 years have lapsed. Though we do not expect the State to adhere to the time by mathematical precision, still it is expected that the State would take decision expeditiously, preferably within a period of 9 months from today.

II. Writ Petition stands disposed of. No costs.”

5. It is submitted that the contempt petition is also pending against the State for not implementing the said order.

6. From the aforesaid facts, it will be clear that the respondents have been directed to expedite the decision with regards advance increment as contemplated in the

Circular dated 3rd July, 2009 and the said decision was expected to be taken within a period of 9 months as per order dated 10th June, 2015. The contempt petition is already pending before the Hon'ble High Court in this regard and, therefore, no further direction can be given by this Tribunal in this regard. The applicant is however, entitled for direction not to recover the amount paid due to advance increment given to him till decision is taken by the Government in this regard. If the Government takes favourable decision to the applicant, the applicant will be entitled to revise pay with retrospective effect.

7. In view of the above, we pass the following order: -

ORDER

- (i) The present Original Application is partly allowed.
- (ii) The respondents are directed not to recover the amount of advance increment paid to the applicant till the decision is taken by the

respondents in view of the direction in W.P. No.
6052/2014.

There shall be no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NO.146-2013(hdd)-2016(DB)