

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 116/ 2020 (S.B.)

Sunil Nilkanthrao Zade,
Aged about 59 years, Occ. Retired,
R/o Buty Plot, Near Gurudwara,
Rajapeth, Amravati, Tq. & Dist. Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Soil & Water Conservation Department,
Mantralaya, Mumbai- 32.
- 2) Regional Water Conservation Officer,
Soil & Water Conservation Department,
Commissioner Office Premises, Amravati,
Tq. and Dist. Amravati.
- 3) District Water Conservation Officer,
Soil & Water Conservation Department,
Jail Road, Camp, Amravati,
Tq. & Dist. Amravati.
- 4) Account Officer, Pay Verification Unit,
University Road, Amravati,
Tq. and Dist. Amravati.

Respondents

Shri P.S.Patil, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the Respondents.

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

Dated :- 13.06.2023.

JUDGEMENT

Heard Shri P.S.Patil, ld. counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the Respondents.

2. Case of the applicant in short is as under:-

The applicant was appointed as an Assistant Engineer, Grade-II in the Water Conservation Department in the year 1984. Looking to the excellent work of the applicant, the department of the respondent has granted one advance increment to the applicant as per order dated 06.05.2008. It was made applicable from 01.10.2007.

3. The applicant was retired from the service by attaining the age of superannuation on 29.06.2019 as on 30.06.2019 was government holiday.

4. The respondents have recovered the amount of advance increment and not paid pensionary benefits, therefore, applicant approached to this Tribunal for following relief.

5. O.A. is strongly opposed by the respondents. It is submitted that as per G.R. dated 24.08.2017 i.e. after the 6th pay commission, the advance increment is to be recovered. The pension case was forwarded to the A.G., but objection was raised on the ground that advance increment was not recovered and, therefore, pension could not be paid to the applicant.

6. During the course of argument, ld. P.O. has submitted that respondents have paid the pensionary benefit to the applicant by deducting the amount of advance increment. Ld. Counsel for the applicant submits that applicant is entitled for interest, because he is not at fault. Issue in respect of interest is required to be kept open because separate enquiry is required that who was at fault. Whether applicant is at fault or respondents is at fault for not processing the pension papers. It appears that the pension was not paid because Pay Verification Unit has raised objection for not recovering the advance increment. Respondents have granted pensionary benefit after deducting the advance increment as per G.R. dated 24.08.2017.

7. In respect of recovery of advance increment, ld. Counsel for the applicant has pointed out **Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 12293 of 2019 with other connected matters decided on 09.10.2019**. The Hon'ble High Court in para no. 3 of the judgment has held as under:-

"I. It is submitted that, petitioners in these Writ Petitions are awarded certificate of excellent work and advance increments in the year 2006 to 2008. 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 of excellent work in the year 2006, 2007 and 2008, the same cannot be withdrawn retrospectively on the basis of subsequent Government Resolution.

II. 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.

III. The Government Resolution dated 24.08.2017 will have prospective effect and not retrospective and if benefit was accorded to petitioners of excellent work in the year 2006, 2007 and 2008, shall not be withdrawn and if any recovery is made pursuant to the same, same shall be refunded to the petitioners."

8. Advance increment was granted to the applicant because of his excellent work. Hence, the advance increment cannot be recovered which was granted in the year 2008 it was made applicable from 01.10.2007. Hon'ble Bombay High Court in the above cited judgment has held that the G.R. dated 24.08.2017 will have prospective effect and not retrospective effect, therefore, advance increment was granted to the applicant in the year 2008 cannot be recovered. Therefore, the respondents cannot recover, the amount of advance increment

granted to the applicant, as per G.R. dated 24.08.2017. The said G.R. is having the prospective effect and not retrospective effect.

9. The applicant came to be retired on the last day of June, 2019. The respondents have not granted the increment which falls due on 01st July, 2019. As per the **judgment of Division Bench of Hon'ble Madras High Court in the case of P.Ayyamperumal** for the first time it was held that employee who is retired on the last date 30th of June of the year is entitled for advance increment which falls due on 01st July of the same year. The said judgment was challenged before the Hon'ble Apex Court in S.L.P. No. 22008/2018. The said S.L.P. was dismissed by the Hon'ble Supreme Court. Hence, the following order:-

A. O.A. is allowed.

B. Respondents are directed to refund the amount of recovery of advance increment granted to the applicant as per order dated 06.05.2008 which was made applicable from 01.10.2007.

C. The respondents are directed to pay increment which falls due on 01st July, 2019.

D. Respondents are further directed to comply this order **within a period of three months** from the date of receipt of this order.

E. No order as to costs.

(Shri Justice M.G.Giratkar)
Vice Chairman

Dated :- 13/06/2023.
aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 13/06/2023.
and pronounced on

Uploaded on : 13/06/2023.