

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 867/2022(S.B.)**

- 1) Pradip Anandrao Nimbhorkar,
Aged about 59 years, Occu.: Retired
R/o. Near Dr.Udhake Dog Clinic,
Rathi Nagar, Computer Circle Road,
Amravati-444603.
- 2) Purushottam Wasudevarao Gale,
Aged about 58 years, Occu.: Retired,
R/o. Dhanwantary Colony,
V.M.V. Road, Amravati.
- 3) Narayan Kashigir Giri,
Aged about 59 years, Occu.: Retired,
R/o. Sagar Vihar, Behind Hanuman Mandir,
Arun Colony, V.M.V. Road,
Amravati.

Applicants.**Versus**

- 1) The State of Maharashtra,
Through its Secretary,
Water Resources Department,
Mantralaya, Mumbai – 400032.
- 2) Chief Engineer,
Water Resources Department,
Sinchan Seva Bhavan, Shivaji Nagar,
Amravati-444603.
- 3) Superintendent Engineer,
Water Resources Department,
Vigilance Cell, Amravati Circle,
Sinchan Seva Bhavan, Shivaji Nagar,
Amravati – 444603.

- 4) Executive Engineer,
Upper Wardha Irrigation Division,
Amravati Division, Sinchan Seva Bhavan,
Shivaji Nagar, Amravati-444603.

Respondents

Shri R.M.Fating, Ld. counsel for the applicants.
Shri M.I.Khan, Ld. P.O. for the respondents 1 to 3.
Shri T.M.Zaheer, Ld. counsel for the respondents 2 and 4.

Coram:-Hon'ble Shri M.A.Lovekar, Member (J).

Dated: - 16th February 2023.

JUDGMENT

Judgment is reserved on 14th February 2023.

Judgment is pronounced on 16th February, 2023.

Heard Shri R.M.Fating, learned counsel for the applicants, Shri M.I.Khan, learned P.O. for the respondents 1 and 3 and Shri T.M.Zaheer, Ld. counsel for the respondents 2 and 4.

2. The applicants 1 and 3 retired on 30.06.2021 and applicant no.2 retired on 30.06.2022 from the respondent department. It is their case that they were entitled to get benefit of one increment falling notionally due on 1st July of respective year of their retirement.

3. In support of aforesaid submission the applicants have relied on the Judgment of Hon'ble Bombay High Court delivered on 02.03.2022 in Writ

Petition No.5864/2019 **(Pandurang Vithobaji Dhumne and Others Versus the State of Maharashtra and Others)**. In this case it is held-

The Hon'ble Madras High Court in similar set of facts relying on the judgment reported in CDJ 2012 MHC 6525, State of Tamil Nadu, rep. by its Secretary to Government, Finance Department and Others Vs. M. Balasubramaniam held in P.Ayyamperumal (supra) that when the date of increment of a Government Servant falls due on the day following superannuation on completion of one full year of service, the said service may be considered for benefit of notional increment, purely for the purpose of pensionary benefits and not for any other purpose. In the present matter, the petitioners have completed one full year service on 30th June of their respective years of retirement, but, the increment fell due on 1st July, the date of which they were not in service. Thus, what is important in the present matter, the petitioners have completed one full year service on 30th June of the respective years of retirement, however they were denied the benefit of the increment that fell due on 1st July, just because on the date of the increment falling due they were not in service. In the judgment of the Hon'ble

Madras High Court, which was confirmed by the Apex Court, the petitioners were treated as having completed one full year service, though the date of their increment fell on the next day of their retirement. Though as per Rule 10 the increment falls due on 1st July but entitlement and eligibility therefore, is a completion of one year of service prior to that date. Thus, increment is drawn on 1st July of every year which causes increase in the payment and Grade pay last drawn as on 30th June. A salary increment or salary raise, typically represents a portion of what an employee earns in a year. Thus, all the petitioners though fulfil that criteria of entitlement their service up to 30th June ought to be considered for grant of benefit of notional increment if they are eligible otherwise.

4. The applicants have further relied on the Judgment of Hon'ble Aurangabad Bench of this Tribunal delivered on 23.11.2022 in a batch of 7 Original Applications. In this judgment it is observed-

9. I deem it appropriate to reproduce herein below para nos. 3 & 4 of the judgment delivered by the Hon'ble Bombay High Court, Bench at Aurangabad on 12.10.2022 in the

case of Shri Ramesh Eknath Suryawanshi and Others (cited supra), which read thus :-

“3. The issue raised is no longer res integra, having been concluded by the learned Division Bench of the Madras High Court, vide judgment dated 15.09.2017, in WP No.15732/2017, filed by P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal and others, which judgment has been sustained by the Hon’ble Supreme court, vide order dated 23.07.2018, in Special Leave Petition (Civil) Diary No.22283/2018. Even this Court has passed several orders granting such benefits, which have been sustained by the Hon’ble Supreme Court.

4. In view of the above, this petition is partly allowed. The petitioners are entitled to the notional addition of the last yearly increment for the purpose of calculating their pension, gratuity, earned leave, commutation benefits etc. In so far as arrears of the benefits are concerned, the petitioners would be entitled for the same for a period of three years, preceding the date of filing of this petition or as per actuals, whichever is less. Such arrears should be calculated and be paid to the petitioners, on or before 30.12.2022.”

10. It will also be useful to refer to the discussion made by the principal seat of this Tribunal at Mumbai in the case of Shri Sadashiv Kashinath Inamke & Ors. Vs. the State of Maharashtra & Ors., O.A. No.950/2019 with other OAs on 05.07.2022. Considering the earlier judgments on the issue the Tribunal has recorded following finding in para 15 of the said judgment, which reads thus :-

“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.”

5. Though respondent no.3 has resisted the O.A. on the grounds that the applicants were no longer in service on the date on which they became entitled to one notional increment, and the Judgment of Hon’ble Madras High Court dated 15.09.2017 was delivered in a case of Central Government employees and hence it will not apply to the persons who were State Government employees, neither of these grounds can be accepted in view of above referred Judgments.

6. In the Judgment of Aurangabad Bench of this Tribunal dated 23.11.2022 there is a reference to an order of stay passed by the Hon’ble Supreme Court in S.L.P. (Civil) No.4722/2021 in identical matters in which issue of grant of benefit of one notional increment due on 1st July to those who retired on 30th June is involved.

7. For the reasons discussed hereinabove I pass the following order.

ORDER

The O.A. is allowed in the following terms-

Applicants 1 and 3 are held entitled to one increment notionally falling due on 01.07.2021 and applicant no.2 is held entitled to one increment notionally falling due on 01.07.2022 - with all consequential benefits. The same shall be paid to them within three months from today subject to their furnishing an undertaking that in case the issue relating to entitlement to one notional increment which is pending in the Hon'ble S.C. in S.L.P. is decided in the negative, they shall refund the amount received in excess. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 16/02/2023

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 16/02/2023.
and pronounced on