

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 896 OF 2016  
(Subject – Withdrawing Advance Increment)**

**DISTRICT: NANDED**

**Shri Sheshrao S/o Tukaram Anchule,**  
Age: 60 years, Occu. : Pensioner, )  
R/o : C/o Dattatray Baburao Tikare, )  
Somesh Colony, House No. 2-9-1992, )  
Nanded, Dist. Nanded-431601. )

.. **APPLICANT**

**V E R S U S**

1) **The State of Maharashtra,** )  
(Through its Principal Secretary )  
Home Department, )  
Mantralaya, Mumbai. )

2) **The Director General of Police,** )  
Maharashtra State, )  
Mumbai. )

3) **The Special Inspector General** )  
**Of Police,** )  
Nanded Range, Nanded. )

4) **The Superintendent of Police,** )  
Nanded. )

5) **Accountant General of** )  
**Maharashtra,** )  
Nagpur-2<sup>nd</sup>. )

6) **Treasury Officer,** )  
Nanded. )

.. **RESPONDENTS**

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**APPEARANCE** : Shri Ajinkya S. Kale, Advocate holding for Shri  
S.B. Talekar, Advocate for the Applicant.

: Shri M.P. Gude, Presenting Officer for the  
Respondents.

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**CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J).**

**DATE : 20.04.2018.**

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**ORDER**

1. The applicant has challenged the communication dated 20.07.2015 issued by the respondent No. 2 withdrawing the advance increment granted to the applicant earlier for his outstanding work in pursuant to G.R. dated 18.12.2014 and also prayed to direct the respondents to pay arrears of advance increment for outstanding work granted to him as per earlier order dated 19.10.2007 issued by the respondent No. 4 i.e. the Superintendent of Police, Nanded and also prayed to direct the respondents to decide the representation filed by him expeditiously by filing the present Original Application.

2. The applicant was serving on the establishment of respondent No. 4. He retired as Assistant Police Sub Inspector. He is recipient of Rashtrapati Award for doing excellent work during the service.

3. On 24.09.1980, the Government issued the G.R. to grant advance increment to the Government servants whose work is found to be outstanding. In pursuant to the above said G.R. and Rule 40 of the Maharashtra Civil Services (Pay Scale) Rules, 1981, the respondent No. 2 decided to grant two advance increments to the applicant for his outstanding work vide official order dated 03.09.2007. In pursuant to the said order, the respondent No. 4 i.e. the Superintendent of Police, Nanded issued

order dated 19.10.2007 granting two advance increments to the applicant w.e.f. 01.10.2006. The applicant's grade pay, as well as, the deemed date came to be sanctioned vide order dated 31.12.2012 issued by the respondent No. 3. As per the provisions of Maharashtra Civil Services (Amendment Pay) Rules, 2009 the respondent No. 3 scrutinized the pay fixation as per 6<sup>th</sup> Pay Commission. It is contention of the applicant that, despite of two advance increments for outstanding work granted to him, the benefit of same was never given to him and the same was not considered while fixing his pay scale. Therefore, he filed several representations with the respondents, but the respondents had not considered it.

4. The respondent No. 2, as well as, respondent No. 3 vide order 20.07.2015 informed the applicant that the advance increments granted to him earlier for outstanding work are withdrawn vide G.R. dated 18.12.2014. Thereafter, the applicant made several representations with the respondents and brought to notice of the respondents that two advance increments for outstanding work cannot be withdrawn as per G.Rs. dated 16.11.2015 and 12.01.2016. The respondent No. 3 forwarded his grievance to the respondent No. 1 vide communication dated 21.11.2015. The respondent No. 1 directed the respondent No. 2 to take appropriate steps in respect of the grievance of the

applicant vide his letter dated 15.12.2015, but no appropriate action has been taken by the respondents.

5. It is contention of the applicant that once advance increment was granted to him by office order dated 03.07.2007 issued by the respondent No. 2 and the order dated 19.10.2007 issued by the respondent No. 3, right to receive the same was crystallized and the same cannot be withdrawn by the subsequent G.R. retrospectively. It is contention of the applicant that though he was entitled to receive advance increment from 01.09.2008 till 31.01.2015 i.e. till his date of retirement, the same was never received by the applicant and therefore, he is entitled to get it. Therefore, he has filed the present Original Application challenging the impugned order dated 20.07.2015 issued by the respondent No. 2 withdrawing advance increment granted earlier to him for outstanding work and prayed to issue directions to the respondents to pay arrears of advance increment granted earlier to him.

6. The Respondent Nos. 3 and 4 have filed their affidavit in reply and resisted the contentions of the applicant. They have denied that the communication dated 20.07.2015 withdrawing the advance increment granted earlier to the applicant is passed without application of mind. They have denied that the said action on the part of respondents is against the principle of

equity, justice, good conscience and arbitrary. It is their contention that the G.R. dated 27.02.2009 is regarding acceptance of the recommendation of 6<sup>th</sup> Pay Commission for fixation of pay. In the said G.R. at Sr. No. 27, it is specifically mentioned that excluding PB-4, five percent employees who comes under other pay band for outstanding performance instead of giving three percent increase of pay, four percent increase in pay will be granted and such increase of pay should granted once in a five year to the employees. It has been specifically mentioned that the scheme of granting one or two advance increments shall be stopped. It is their contention that the pay fixation has been done on the basis of query made by the Account Office, Pay Unit, Aurangabad. It is their contention that they had forwarded proposal for advance increment for outstanding work of officer vide letter dated 07.04.2015 to the Government. The said proposal sent to the Government and it was regarding grant of advance increments to Rashtrapati Police Award/Police Award recipients. But the Government vide letter dated 18.12.2014 intimated to the respondent No. 2 that there is no such policy regarding grant of advance increment and therefore, no question arises to give advance increment to the applicant. It is their contention that they forwarded grievance of the applicant to the respondent No. 1 vide communication dated 21.11.2015. The respondent No. 1 directed the respondent No. 2 to take

appropriate steps in the grievance of the applicant vide communication dated 15.12.2015. On 29.08.2016, the respondent No. 2 directed the respondent No. 4 to take appropriate steps on the applicant's representations dated 16.11.2015 and 12.01.2016 and intimate the applicant in respect of same. It is their contention that there is no illegality in the impugned communication withdrawing the advance increments granted to the applicant and therefore, they prayed to reject the present Original Application.

7. The respondent No. 5 has filed his affidavit in reply and resisted the contention of the applicant. It is his contention that the role of respondent No. 5 in respect of pension case is limited to scrutiny of proposals received from Heads of offices of Government of Maharashtra/Pension Sanctioning Authorities in respect of persons who retired from various State Government Offices situated in Vidarbha and Marathwada regions, with reference to the Rules of Maharashtra Civil Services (Pension) Rules, 1982 and other Government Resolutions issued from time to time and subsequently authorization of pensionary benefits, if found admissible. It is his contention that the office does not act on its own, but authorizes of pensionary benefits only on receipt of proper pension papers duly attested by the Head of Office/Pension Sanctioning Authority of the State Government. It

is not in a position to authorize pensionary benefits, if either the proposal is not received from the Head of Office/Pension Sanctioning Authority in prescribed format with requisite documents or if it is found not conforming to any provisions of Maharashtra Civil Services (Pension) Rules, 1982 and other Government Resolutions issued from time to time. It is his contention that the proposal of the applicant received to his office on 12.01.2015 before his retirement on superannuation on 31.01.2015 and accordingly, the pensionary benefits were issued on 11.02.2015. Since the grant and withdrawal of increments of the applicant was done before pension case was received by the respondent and accordingly, the pensionary benefits were reckoned and finalized. It is his contention that the matter regarding grant of two advance increments are within the perview of the State Government and therefore, he has no concern with it. Therefore, he prayed to reject the present Original Application.

8. The applicant has filed rejoinder affidavit to the affidavit in reply filed by the respondent Nos. 3 & 4 and contended that as regards item No. 27 in the G.R. dated 27.02.2009 the Government has not accepted recommendation and directed G.A.D. to take appropriate action. Therefore, the same is applicable in this case. Therefore, he prayed to allow the present Original Application.

9. I have heard Shri Ajinkya S. Kale, learned Advocate holding for Shri S.B. Talekar, learned Advocate for the applicant and Shri M.P. Gude, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

10. Admittedly, the applicant retired as Assistant Sub Inspector from the establishment of respondent No. 4 w.e.f. 31.01.2015. There is no dispute about the fact that the Rashtrapati/ Police Award has been awarded to the applicant on 26.11.2007. Admittedly, the respondent No. 2 decided to grant two advance increments to the applicant for his outstanding work by issuing official order dated 03.09.2007 and on the basis of said order, the respondent No. 3 issued order dated 19.10.2007 granting two advance increments to the applicant w.e.f. 01.10.2006. There is no dispute about the fact that thereafter grade pay, as well as, deemed date of the applicant came to be sanctioned vide order dated 31.12.2012 issued by the respondent No. 3. In pursuance of the recommendation of the 6<sup>th</sup> Pay Commission, the pay of the applicant has been fixed by respondent No. 3 on 21.02.2013. Admittedly, the applicant has not received the amount of two increments granted to him for outstanding work in spite of the orders issued by the respondent Nos. 2 and 3. Admittedly, on 20.07.2015, the respondent No. 2



informed the respondent No. 3 as well as applicant vide communication dated 20.07.2015 that advance increment granted to the applicant for outstanding work earlier had been withdrawn in view of the G.R. dated 18.12.2014.

11. Learned Advocate for the applicant has submitted that once advance increment has been granted to the applicant, the same cannot be withdrawn as a right of the applicant to receive increment was crystalized. He has submitted that the G.R. dated 18.12.2014 withdrawing the advance increments cannot be made applicable with retrospective effect. In support of his submissions, he has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Vice Chancellor, M.D. University, Rohtak Vs. Jahan Singh** reported in **(2007) 5 Supreme Court Cases page 77** in **Civil Appeal No. 853 of 2006**, on March 8, 2007 when it is observed as follows:-

***“ The Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The purported regulations, thus, could not have been given retrospective effect or retroactive operation as it is now well settled that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect. Therefore, the retrospective operation purported to have been given by the Executive Council is ultra vires the Act. (Paras 19 and 26)”***

12. He has also placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **All India Reserve Bank Retired Officers Association and Others Vs. Union of India and Another** reported in **1992 Supp (1) Supreme Court Cases 664.**

13. Learned Advocate for the applicant has submitted that two advance increments have been granted to the applicant because of his outstanding performance in view of the earlier G.R. and therefore, he is entitled to claim same as a matter of right. But the respondents have abruptly withdrawn the advance increments granted to the applicant and therefore, he prayed to direct the respondents to quash and set aside the impugned communication dated 20.07.2015 issued by the respondent No. 2 withdrawing the advance increments granted to the applicant in view of the G.R. dated 18.12.2014 and prayed to direct the respondents to pay increment and arrears thereof.

14. Learned Presenting Officer has submitted that the earlier advance increments were granted to the applicant in view of the G.R. dated 24.09.1980, but on implementation of recommendation of 6<sup>th</sup> Pay Commission, the issue regarding grant of advance increment is under consideration of the Government. The Government appointed a committee and the committee recommended not to grant advance increment to the employees

and instead of that, it was recommended to grant increase in the salary at the rate of 4% and such increase should be granted once in a five years. He has submitted that thereafter, G.R. dated 18.12.2014 came to be issued and it has been decided that no advance increment should be granted to the employees. He has submitted that in view of the G.R. dated 18.12.2014, the respondent No. 2 had withdrawn the earlier order dated 03.09.2007 issued by the respondent No. 2 and accordingly, impugned order has been passed. He has submitted that in spite of the order passed by the respondent Nos. 2 and 3 granting two advance increments to the applicant w.e.f. 01.10.2006, no benefits have been given to the applicant. Since it has been cancelled by the impugned order, the applicant is not entitled to get advance increments. He has submitted that it is not a policy of the Government to grant advance increment to the employees, who were awarded by Rashtrapati or Police Award etc. and therefore, the applicant is not entitled to get advance increments on that ground. He has submitted that the respondent Nos. 2 and 3 have rightly withdrawn the earlier order granting two advance increments to the applicant and there is no illegality in it. He has submitted that since the applicant is not entitled to get advance increment and there is no Government policy to that effect, no right in favour of the applicant accrues and therefore, he prayed to reject the present Original Application.

15. I have gone through the documents on record. Admittedly, in spite of the orders issued by the respondent Nos. 2 and 3 granting advance increments to the applicant w.e.f. 01.10.2006, the said orders have not been implemented and financial benefit has not been extended to the applicant. Admittedly, after implementation of the 6<sup>th</sup> Pay Commission, the Government reviewed the policy to grant advance increment to the employees and decided not to extend the said benefits to the employees. This fact evident from G.R. dated 27.02.2009 and the G.R. dated 18.12.2014. As there was no provision to grant advance increment, the benefit extended to the applicant has been withdrawn by the respondent Nos. 2 and 3 by issuing impugned communication. The impugned order issued by the respondents is in accordance with the G.R. dated 18.12.2014. Therefore, in my opinion, there is no illegality in the impugned order/communication and the respondents have rightly withdrawn the benefits extended to the applicant earlier.

16. I have gone through the above cited citations referred by the learned Advocate for the applicant. I have no dispute regarding settled legal principles laid down therein. The principles laid down in the above cited decisions are not attracted in the instant case, since the facts in that case and the facts in the present case are not identical.

17. In view of the provisions of G.R. dated 27.02.2009 and G.R. dated 18.12.2014, the earlier order granting advance increment to the applicant has been withdrawn by the respondents. As the earlier order was against the policy of the Government, it has been withdrawn. There is no illegality in it. Hence, no interference is called for in the impugned order. Therefore, in my opinion, there is no merit in the present O.A. Consequently, the O.A. deserves to be dismissed.

18. In view of the discussions in foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 20.04.2018.**

**(B.P. PATIL)**  
**MEMBER (J)**

**KPB** S.B. O.A. No. 896 of 2016 2018 Withdrawing Advance Increment