



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 12744 OF 2023

1. Baburao s/o. Mohanrao Bawane .. Petitioners  
Age.49 years, Occ. Service,  
R/o. At Post Bhopala, Nanded,  
Tq. Naigaon (Khai) Dist. Nanded,
2. Veena Hanmantrao Kotgire  
Age. 54 years, Occ. Service,  
R/o. Near Vitthal Mandir, Shivaji Nagar, Dharmabad,  
Tq. Dharmabad, Dist. Nanded.
3. Sunanda Bhaurao Kalyankasture  
Age. 52 years, Occ. Service,  
R/o. Chaitanya Nagar, House No.21, Shreelaxmi  
Niwas, Ashirwad Nagar, Taroda,  
Tq. & Dist. Nanded.
4. Sanjeev s/o. Gangaram Ganjagude  
Age. 44 years, Occ. Pensioner,  
R/o. At Karla Kh. Post Karla Bk.  
Tq. Biloli, Dist. Nanded.
5. Gangadhar s/o. Ramchandra Tode  
Age. 48 years, Occ. Service,  
R/o. Near Grampanchayat, Shankarrao Mali Patil  
Nagar, Tq. Naigaon, Dist. Nanded.
6. Uttam s/o. Vishwanathrao Kshirsagar  
Age. 53 years, Occ. Service,  
R/o. House No.73, Ardhapur Nanded,  
Tq. & Dist. Nanded.

7. Dinesh s/o. Sidram Indurkar  
Age. 52 years, Occ. Service,  
R/o. Near Dr. Chandrakant Kalaskar,  
Geeta Nagar, Nanded,  
Tq. & Dist. Nanded.
8. Mahada Laxmanrao More  
Age. 46 years, Occ. Service,  
R/o. Sai Niwas, Near Renuka Mata Mandir,  
Gopal Nagar, Sangvi-Nanded,  
Tq. & Dist. Nanded.
9. Bhausaheb s/o. Mohanrao Jadhav  
Age. 55 years, Occ. Service,  
R/o. Mu. Andegaon, Post Walage, Mukhed  
Nanded, Tq. & Dist. Nanded.
10. Maroti s/o. Tukaram Pawar  
Age. 60 years, Occ. Pensioner,  
R/o. Somesh Colony, Beside Nilkamal General  
Stores, Nanded, Tq. & Dist. Nanded.
11. Eknath s/o. Ibraji Kalyankar  
Age. 61 years, Occ. Pensioner,  
R/o. Near Hanuman Mandir,  
At. Post Mudkhed, Tq. Mukhed,  
Dist. Nanded.

Versus

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| <ol style="list-style-type: none"> <li>1. The State of Maharashtra<br/>Through its Secretary<br/>Rural Development &amp; Water Conservation<br/>Department, Mantralaya, Mumbai.</li> <li>2. The Chief Executive Officer,<br/>Zilla Parishad Nanded,<br/>Dist. Nanded.</li> </ol> | .. | Respondents |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|-------------|

3. The Education Officer (Primary)  
Zilla Parishad Nanded,  
Dist. Nanded.

Mr.S.B. Sontakke, Advocate for the Petitioners.

Mr.A.B. Girase, Government Pleader for Respondent/State.

Mr.S.B. Pulkundwar, Advocate for Respondent Nos. 2 and 3.

**CORAM : SMT. VIBHA KANKANWADI,  
KISHORE C. SANT &  
ARUN R. PEDNEKER, JJJ.**  
**RESERVED ON : 05.04.2024**  
**PRONOUNCED ON: 19.08.2024**

**J U D G M E N T [PER : KISHORE C. SANT, J.] :-**

01. A reference being made by a Division Bench of this Court on the following issues of law by an order dated 17.10.2023, this Full Bench is constituted by the Hon'ble Chief Justice.

“(a) Whether the view taken in Ganesh Mohan Bagul (supra) lays down the correct position of law in the light of the language used in Clause 12 of the Government Circular dated 12/12/2000, considering the Government Resolution dated 04/09/2018, which discontinues the monetary benefits?

(b) Considering Clause 12 of the Government Circular dated 12/12/2000, whether the view taken in Sarjerao Shamrao Gadade (supra) and Waseem Farhat Khalil Farhat (supra), can be said to lay down the correct position of law?”

02. The above questions were formulated as the Division Bench noticed contradictory views of two Division Benches in **Ganesh Mohan Bagul & Ors. Vs. The State of Maharashtra & Ors. in WP No.15209 of 2019** decided on 24.08.2022 (Aurangabad Bench) and in **Waseem Farhat Khalil Farhat & Ors. Vs. State of Maharashtra & Ors., in Writ Petition No. 94 of 2021** decided on 24.01.2023 [Nagpur Bench].

03. The conflict in the views expressed in these two decisions is in regard to the effect of deletion of Clause 12 of the Government Circular dated 12.12.2000 and 04.09.2018 deleting said clause. To appreciate the issues as involved in the proceedings, the relevant facts are required to be stated, which are as follows :-

04. The Government in its Circular dated 12.12.2000 notified its decision to grant “one advance increment” to a Zilla Parishad teacher, receiving “the best teacher award” at the district level. The scheme to confer an award, namely “the national teacher award” is being implemented since 1958-59, through the School Education Department. A scheme to grant award at the State level is also being implemented through the School

Education, Higher Education and Technical Education Departments since 1962-63; whereas the scheme to confer an award at the “district level” is being implemented by Zilla Parishads. The expenses being incurred to hold award ceremony at the district level are also borne by the concerned Zilla Parishad. It is stated that such awards are given to the teachers on the basis of recommendations, which are made by the Head Master and the Block Development Officer. Its one of the concerns while making such recommendations, is that no care is taken to verify as to whether, any offence is registered or pending against such a person. The circular in question was therefore, issued to provide for certain guidelines. As per Clause 10 of the circular, Commissioner is to grant approval by verifying that said teacher is not involved in any offence or in any corruption case and no departmental enquiry is pending or proposed against him/her. Clause 12 is material to consider this reference, which provides that a teacher who is conferred the best teacher award at the district level, should be given one advance increment in addition to regular increment. If the teacher has reached the level of stagnation, it is provided that such teacher, as a one time measure, be given 24 times the amount of earlier increment, before achieving stagnation. The awards are to be given on the Teachers’ Day i.e. 5<sup>th</sup> September.

05. We note the relevant portion of Clause 12, which reads as follows  
(official translation):-

“12. Awarded teachers should be given an advance salary increment. The date of increment will not be changed and regular increment (annual) will continue to be admissible to them. Teachers who have reached the upper limit of pay scale will be admissible an amount of twenty four times the increase in pay of pay scale of the upper limit of their pay scale and it should be in lump sum. The final implementation of this award is at the District Level.

The final execution of this award should be on Teachers' Day on 5<sup>th</sup> September every year with the consent of the Divisional Commissioner. There is no need to send the proposal to the government. In this regard, any representation/complaints received by the Government will be forwarded to the respective Zilla Parishads for the final execution/reference. However, if any questions are received regarding the functioning of Legislative Council, they will be taken into consideration and the execution should be taken at the Government Level.

The Zilla Parishad should bring the instructions in the above sheet to the notice of all the concerned.

By order and in the name of the Governor of Maharashtra.”

06. On the above guidelines the scheme has continued to operate for all these years. However, it has so transpired that on 04.09.2018 i.e. just a day before the Teachers' Day, of the year 2018, the Government issued a new circular. As per the said Circular, based on a policy decision taken by the Government in view of the 6<sup>th</sup> Pay Commission recommendations, namely, of the “Vetan Sudhar Samiti” (Committee for removal of anomalies in pay scale), the Government decided not to grant advance increment for the period

01.10.2006 to 01.10.2015. Pursuant thereto it was decided to delete Clause 12 from the Circular No. Misc-1000/Pra.Kra./3241/15 dated 12.12.2000. Except the variation in Clause 12, the other contents of the circular of the year 2000 were kept intact. The benefits as per policy are also kept intact. Thus, only benefit of grant of one advance increment was taken away.

07. We also note the contents of circular dated 04.09.2018, which reads as below (official translation):-

Government Circular :

1. The District Level Teacher Award is given on September 5 on Teachers' Day to the teachers who have performed excellent work in the field of education from amongst the teachers working on the Zilla Parishad establishment in Maharashtra. Guideline No.12 in Government Circular No. Misc. 1000/PNo.3241/15 dated 12<sup>th</sup> December, 2000 of the Rural Development Department regarding the said scheme is being omitted.
2. Apart from the above amendments, no changes have been made in the other guidelines in the Government Circular dated December, 12, 2000.
3. As per the above Government Circular dated 12/12/2000 of the Rural Development Department, there will be no change in the increase in wages given earlier.
4. Also, if the Hon'ble Court has already given an order regarding salary increase, this Government Circular will not come in the way of the Zilla Parishads from taking decision regarding salary increase as per that order.

The said Government Circular is available at the Maharashtra Government Website [www.maharashtra.govt](http://www.maharashtra.govt). In and the code is 201809041140197220. The said Government Circular is digitally signed.

By order and in the name of the Governor of Maharashtra.”

08. Thus, henceforth the teachers recipients of district level awards as 'best teachers' will not be entitled to receive one advance increment from the date of said notification. The effect of the notification being prospective is not in dispute. Thus, the teachers who were selected by the Committee for receiving award on the Teachers' Day prior to 4<sup>th</sup> September, 2018 were entitled and eligible to receive advance increment, if nominated and their proposals were approved by the Divisional Commissioner. In some cases, though the selection committee recommended names of the teachers for receiving award prior to 4<sup>th</sup> September, 2018, but no approval from the Divisional Commissioner prior to 5<sup>th</sup> September, 2018 were being granted as an advance increment. Some of the teachers approached the High Court by filing writ petitions. In some of the cases, the Court adopted a view and strictly construing Clause 12 to hold that as on 4<sup>th</sup> September, 2018, such teacher must have received award as a best teacher and rejected petitions.

09. On the other hand, in the case of Waseem Farhat Khalil Farhat (supra) the Court took a view that what is material is the selection and recommendation of such teacher as a best teacher. The approval to be granted by the Commissioner was a mere formality. Thus, even if there is



recommendation by the Committee constituted as per Circular dated 12.12.2000, such person would be entitled to receive increment and the Government was directed to grant such increment though he has not actually received an award prior to 4<sup>th</sup> September, 2018.

10. In the above circumstances, we are called upon to consider as to which of the views is correct view, namely, whether as held in Ganesh Mohan Bagul (supra), the benefit of advance increment is not given; or in Waseem Farhat Khalil Farhat (supra), this Court allowing the petitions and directing to give advance increment.

11. In the case of Ganesh Mohan Bagul (supra), this Court took a view that as per Clause 12, considering that on the date of the circular dated 04.09.2018, the petitioners were not in receipt of awards, which was a mandatory condition and held that the petitioners were not entitled to receive advance increment. Para 6 of the judgment reads as under :-

“6. It is an admitted position that as on date of issuance of the circular dated 04.09.2018, the petitioners were not in receipt of the award, which was a mandatory condition for grant of increment under the circular dated 12.12.2000. We are not impressed by the submission of Mr. Mathpati that since the proposal for grant of award was already sanctioned, the petitioners are required to be treated as deemed awardees. We, therefore, reject the said

contention.”

12. The Court negated the submissions of the petitioner that though the actual award was not granted, entire process of grant of award was complete. In that case the Divisional Commissioner had in-fact sanctioned the proposal for grant of award on 04.09.2018 i.e. on the day the State Government withdrew the scheme of granting advance increment to such teacher. The Court also considered the decision in Ananta Sakharam Jadhav and Ors. Vs. The State of Maharashtra & Ors., (Writ Petition No.14330/2017 decided on 09.06.2022), in which the Government Resolution dated 07.02.2014 had fell for consideration of the Court. The petitioners therein were declared as State/National awardees prior to Government Resolution dated 07.02.2014. The said Circular, however, was issued after their selection but prior to Government Resolution dated 07.02.2014, and the award ceremony was to be held on 05.09.2014 being the teachers day. It was in such facts, held that the official programme though was not held by that time, the selection was already done. The writ petitions were accordingly allowed granting benefits of advance increments to the teachers, who were State/National awardees.

13. In the case of Sarjerao Shamrao Gadade & Ors. Vs. The State of Maharashtra through its Secretary and Ors. (Writ Petition No. 3283 of 2023 decided on 21.03.2023) (Aurangabad Bench), the Selection Committee had already selected the teachers in its meeting dated 01.09.2018. This Court took a view by considering judgment in the case of Limbajirao Kisanrao Hajare & Ors. Vs. State of Maharashtra in Writ Petition No.3193 of 2020 and many such cases holding that the persons who are selected prior to Circular dated 04.09.2018, need to be considered for additional increment. In this case the Divisional Commissioner, by the time Circular was issued, had not rejected the proposals. The Divisional Commissioner subsequently approved the decision of the Selection Committee and ratified the selection of the petitioners by directing the Zilla Parishad to verify that the decision to award with honour was approved prior to 04.09.2018. On verifying the above aspects, the teachers were held to be entitled to receive additional increment in terms of Clause 12 of the Circular dated 12.12.2000.

14. In the cases of Waseem Farhat Khalil Farhat (supra) with Writ Petition No.487 of 2020 in the case of Arunkumar Yadorao Baghele & Ors. Vs. The State of Maharashtra & Ors., (Nagpur Bench) of this Court, the selection

was made by the Committees prior to 04.09.2018. However, the Divisional Commissioner had given approval after 04.09.2018. In that view, the concerned teachers were not given benefits of Clause 12 by respondents. The Court considered that the selection of eligible teacher is an important stage for being eligible to receive an award. Its selection by the Committee is pre-requisite for sending proposal to the Divisional Commissioner. What is important is the selection by the Committee. Once the approval is given, it relates back to the date of selection/approval of such teacher. In that case, the approvals were given on 28.11.2018. However, the names were forwarded for approval prior to 04.09.2018. In that view it was held that non-receipt of approval prior to 04.09.2018 will not disentitle the petitioners from the benefits of Clause 12, when the proposals were sent prior to 04.09.2018.

15. Clause 2 of the Circular further clarifies that except deletion of Clause 12, there is no change in the circular dated 12.12.2000. It thus appears that in the case of Waseem Farhat Khalil Farhat (supra), the Court was under impression that though there is selection of teacher, such teacher will not get an award. From the wording of the Circular, it is clear that the award to the teacher is required to be granted. The benefit taken away is only of the

advance increment. The judgment of Aurangabad Bench in the case of **Ganesh Mohan Bagul (supra)** was not placed before the Court while deciding the case of **Waseem Farhat Khalil Farhat (supra)**, the court therefore did not have advantage to consider judgment in the case of **Ganesh Bagul**.

16. Thus, what is the exact effect of deletion of clause-12 of the circular is the question. Clause 12 has clearly provided that the teacher who is recipient of the award will be granted an additional increment. For grant of such benefit the teacher needs to be recipient of the award.

17. The decision of the Supreme Court in the case of **Sethi Auto Service Station Vs. Delhi Development Authority & Ors., (2009) 1 SCC 180** is considered in the case of **Waseem Farhat Khalil Farhat (supra)**. The Apex Court in the case of **Sethi Auto (supra)** considered somewhat similar question as to whether the procedure followed till taking of the decision can be considered while considering the rights of the parties. There the petitioner had approached the Court by invoking principle of legitimate expectation. The petitioner was entitled, as per his contention, for an award of a petrol pump, based on an old policy. However, while allotting petrol pump, the

benefit of such policy was not granted. The petitioner in that case sought to rely upon notings of the concerned authorities on the files. He claimed that although earlier endorsements and remarks by the authorities favour the petitioner, still while taking decision, his claim was not considered. The Apex Court referring to the judgment in the case of Bachhittar Singh Vs. State of Punjab, AIR 1963 SC 395, held that the order of the Minister could not amount to an order by the State Government, unless it was expressed in the name of the Rajpramukh, as required by the article and then communicated to the party concerned. It was held that the opinion becomes a decision of the Government only when it is communicated to the person concerned. Paragraph Nos.14, 17 and 19 of the judgment of Sethi Auto (supra) is reproduced as under :-

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned.

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17. In view of the above legal position and in the light of the factual scenario as highlighted in the order of the learned Single Judge, we find it difficult to hold that the recommendation of the Technical Committee of the DDA fructified into an order conferring legal right upon the appellants.

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19. Some time in July, 2004 after the conclusion of certain inquiries into the complaints regarding resettlement, the issue of relocation was again taken up and a detailed note was made on 12th August, 2004, recounting the steps taken including the discussion of the Screening Committee in its meeting on 21st November, 2003. It is pointed out that the note records that the proposals for resettlement were not finally approved.”

18. From the above paragraphs, it is clear that mere recommendation or the proposals are not the decisions, if not finally approved and no right is created merely on the basis of such recommendation or the proposals. Paragraph No. 33 of the judgment in the case of Sethi Auto (supra) is in respect of concept of legitimate expectations, which is reproduced below :-

“33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. [Vide Hindustan Development Corporation (supra)]”

19. Having considered the judgment in ‘Sethi Auto’ (supra) we need to see whether the ratio of the said decision is applicable to the present case. This court finds that in **Sethi Auto** it is clearly held that unless there is proper

communication to a person, no right would accrue in his favour. It is not sufficient only to claim that earlier noting or selection is in favour of petitioner till actual and formal order is passed in the name of proper authority. In this case selection of a teacher by the committee is not final. It is only an approval of Divisional Commissioner that puts finality to the decision of the selection committee.

20. Another aspect which needs to be considered is that whether the teachers were assured of such award or advance increment on receiving such award? Answer is clearly 'No'. There is also no case of the petitioner that because of certain promise or assurance by the Government or by the Zilla Parishad, they have done something in furtherance thereof.

21. Thus, after considering the position in law, as discussed hereinabove, we proceed to answer the issues/questions posed for consideration of this Full Bench. It is quite clear that there are two contradictory views taken by this Court.

22. In the case of Waseem Farhat Khalil Farhat (supra), the Court



considered that earlier a view was taken that the Government Resolution dated 04.09.2018 is not applicable with retrospective effect. In the case of **Shamrao Gadade (supra)**, this Court had kept the question open to be decided as to whether the teacher would be entitled to the benefit, where the Commissioner has granted approval subsequently. It is, no doubt, clear that the conferment of the award takes place every year on 5<sup>th</sup> September which happens to be Teachers' Day. The selection is thus necessarily made prior to 4<sup>th</sup> September every year. By the impugned Circular, no change is introduced in the process of selection of the teacher. It only takes away the benefit of advance increment as was made applicable by Circular of the year 2000 by its Clause 12. The Circular, thus, has effect only upon advance increment. For conferment of the award, the selection procedure is the same.

23. Thus, considering the above position, we examine as to whether selection of the teacher by the Selection Committee itself makes a teacher entitled to conferment of an award sans approval by the Commissioner and further although actual award not being received, whether such teacher is entitled to get an advance increment on the basis of completed procedure. In the decisions, which are referred to above, in some cases approval is granted

even after ceremony of Teachers' Day is over. In the present case, there is averment that the Commissioner has later-on granted approval. It is, no doubt, clear that receiving such honour is a lifetime achievement. It is an encouragement to others also. Giving advance increment in itself is a reward. This award is not for particular work/performance of the teacher, but for his lifetime contribution in the field of education. For such recognition and selection, a committee is established.

24. The Court in the case of Waseem Farhat Khalil Farhat (supra) considered all these aspects. The Court, however, made some observations about the Selection Committee itself in para 7, when it was observed that from 04.09.2018 onwards, the Committee would cease to identify eligible teachers for such awards. In the said case, further it is observed that the teacher is deprived of such award. In-fact, the above Circular is not about the award, but only takes away benefit of advance increment. So the observations to that extent appear to be not relevant.

25. While considering such writ petitions, the Court needs to consider as to whether there is violation of any fundamental right or whether there is

any arbitrary action by the State authorities or the instrumentality of the State. In this case to receive the award or to get advance increment cannot be said to be a an absolute legal right or a service condition conferring any service entitlement. The present case is a case where only the benefit of advance increment is taken away. It is clear that the Government granting benefit also has the power to take away the benefits. What is to be seen is that the benefits are not taken away with retrospective effect. Another aspect which needs to be seen is that whether the Government has given any promise to the petitioners that upon performance of something, they will be given advance increment.

26. Considering the facts involved in the present petition, it is seen that the recommendation by the Selection Committee becomes final only after approval by the Divisional Commissioner. No decision becomes final till approval is granted by the Divisional Commissioner. Another aspect is that the scheme of giving award is basic scheme that was started even prior to year 2000. Grant of award still continues as already stated. Circular of the year 2000 merely introduced some procedure, to have more objectivity in the process. Grant of advance increment was a policy decision taken by the

Government. The Government has always the authority to take a new policy decision or to change the existing policy decision or cancel a policy. When a policy decision is changed, no person can claim right under the old policy.

27. Thus, after considering both the judgments and in the light of discussion made above, this Court finds that the view taken by the Division Bench in the case of Ganesh Mohan Bagul (supra) is the correct view. Therefore, the issues reproduced above are answered as under :-

(i) Issue (a) is answered that the view taken in Ganesh Mohan Bagul (supra) is a correct position of law in the light of the language used in Government Circular dated 12.12.2000 and the Government Resolution dated 04.09.2018.

(ii) Insofar as Issue (b) is concerned, it is answered that the view taken in the case of Sarjerao Shamrao Gadade (supra) and Waseem Farhat Khalil Farhat (supra) cannot be said to be a correct position of law.

28. The Writ Petition be placed before the appropriate Bench for further consideration.

[ARUN R.PEDNEKER,J.] [KISHORE C.SANT,J.] [VIBHA KANKANWADI,J.]