Court No. - 8

Case :- WRIT - A No. - 3199 of 2023

Petitioner :- Sushil Pandey
Respondent :- State Of U.P. Thru. Its Prin. Secy. Home Deptt. Civil Sectt. U.P. Lko. And 3 Others
Counsel for Petitioner :- Anuj Kudesia,Himanshu Shukla
Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Mr. Anuj Kudesia, learned counsel for the petitioner, as well as Mr. Sandeep Chandra, learned Standing Counsel, for the respondents-State Authorities.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ of Mandamus, directing the respondents to grant him annual increment for the period 01.07.2021 to 01.07.2022 on the post of Assistant Radio Officer as the petitioner demitted office on 30.06.2022 on attaining the age of superannuation.

3. On behalf of the petitioner, it is submitted that the petitioner retired on 30.06.2022, however, the annual increment which fell due on 01.07.2021 was not paid to him. The learned counsel places reliance upon judgment reported in ***2023 SCC OnLine SC 401 (Director (Admn. and HR) KPTCL and others Vs. C.P. Mundinamani and others).***

4. On the other hand, on behalf of the respondents-State Authorities, the prayer is opposed, and it is submitted that the judgment in *Director (Admn. and HR) KPTCL and others Vs. C.P. Mundinamani and others'* case (supra) does not lay down any ratio inasmuch as the Supreme Court has only taken note of the different views of High Courts on this issue and in para-21 of the said judgment, it has simply said that the High Court has rightly granted one annual increment to the petitioners falling on 1st day of their retirement from service. It is further submitted that the increment is attached to the service of the employees. Once the employee demits the office on attaining the age of superannuation or otherwise, he no longer remains in service and, therefore, the annual increment, falling after the date of retirement, cannot be granted to such an employee. It is further submitted that Full Bench of Andhra Pradesh High Court in the case reported in ***2005 LAB I.C. 1223 (Principal Accountant General, A.P. and another Vs. C. Subba Rao)*** has decided the issue comprehensively. Though the Supreme Court has taken note of the judgment of the Full Bench of

the Andhra Pradesh High Court in *Principal Accountant General, A.P. and another Vs. C. Subba Rao*'s case (supra) in its judgment in *Director (Admn. and HR) KPTCL and others Vs. C.P. Mundinamani and others case* (supra), but the Supreme Court has not assigned any reason that how the said judgment is incorrect and, therefore, the judgment in *Director (Admn. and HR) KPTCL and others Vs. C.P. Mundinamani and others* case (supra) does not have any binding precedent as there is no ratio decidendi in the judgment.

5. I have considered the submission.

6. The Full Bench of the Andhra Pradesh High Court had considered two issues in its judgment in *Principal Accountant General, A.P. and another Vs. C. Subba Rao'* case (supra) which are; (i) *whether a Government servant who retires on the last working day of the preceding month and whose annual increment falls due on the first of the succeeding month is entitled for sanction of annual increment for the purpose of pension and gratuity? and (ii) whether a retired Government servant is entitled for revised rate of dear allowance which comes into force after such Government servant retires from service on attaining the age of superannuation?* The Andhra Pradesh High Court answered both these questions in negative. In para-38 of the judgment in *Principal Accountant General, A.P. and another Vs. C. Subba Rao's* case (supra), it has been held that the Government servant retiring on the last working day of the month shall be deemed to have ceased to the Government employee with effect from midnight of that day and immediately after commencement of the next day, i.e., after midnight 12' O clock he becomes pensioner. Though he is paid pension, he shall not be deemed to be on duty as a Government servant, and therefore annual increment cannot be sanctioned to such retired Government servant. It is true that in the judgment in *Director (Admn. and HR) KPTCL and others Vs. C.P. Mundinamani and others* case (supra) various judgments of the High Courts have been taken note of, but no reason has been assigned that how the judgment rendered by the Full Bench of the Andhra Pradesh High Court in *Principal Accountant General, A.P. and another Vs. C. Subba Rao's* case (supra) does not lay down the correct law except the reasoning assigned in para-20 of the judgment in *Director (Admn. and HR) KPTCL and others Vs. C.P. Mundinamani and others* case (supra), which would read as under:-

> *"**20.** Similar view has also been expressed by different High Courts, namely, the Gujarat High Court, the Madhya Pradesh High Court, the Orissa High Court and the Madras High Court. As observed hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpretated would lead to arbitrariness and denying a government servant the benefit of annual increment which he has already earned while rendering specified period of service with good conduct and efficiently in the last preceding year. It would be punishing a person*

for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently. Any interpretation which would lead to arbitrariness and/or unreasonableness should be avoided. If the interpretation as suggested on behalf of the appellants and the view taken by the Full Bench of the Andhra Pradesh High Court is accepted, in that case it would tantamount to denying a government servant the annual increment which he has earned for the services he has rendered over a year subject to his good behaviour. The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day. In the present case the word "accrue" should be understood liberally and would mean payable on the succeeding day. Any contrary view would lead to arbitrariness and unreasonableness and denying a government servant legitimate one annual increment though he is entitled to for rendering the services over a year with good behaviour and efficiently and therefore, such a narrow interpretation should be avoided. We are in complete agreement with the view taken by the Madras High Court in the case of P. Ayyamperumal (supra); the Delhi High Court in the case of Gopal Singh (supra); the Allahabad High Court in the case of Nand Vijay Singh (supra); the Madhya Pradesh High Court in the case of Yogendra Singh Bhadauria (supra); the Orissa High Court in the case of AFR Arun Kumar Biswal (supra); and the Gujarat High Court in the case of Takhatsinh Udesinh Songara (supra). We do not approve the contrary view taken by the Full Bench of the Andhra Pradesh High Court in the case of Principal Accountant-General, Andhra Pradesh (supra) and the decisions of the Kerala High Court in the case of Union of India v. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022) and the Himachal Pradesh High Court in the case of Hari Prakash v. State of Himachal Pradesh (CWP No. 2503/2016 decided on 06.11.2020)."

7. Be that as it may, as the Supreme Court has held in its judgment in *Director (Admn. and HR) KPTCL and others Vs. C.P. Mundinamani and others'* case (supra) that such a person would be entitled to the increment falling next day of his retirement, I **ALLOW** this petition and, direct the respondents to grant annual increment to the petitioner, which was granted to other employees, on 1st July, 2021.

[D.K. SINGH, J.]

Order Date :- 24.5.2023
MVS/-

Digitally signed by :-
MANOJ VIKRAM SINGH CHAUHAN
High Court of Judicature at Allahabad,
Lucknow Bench