

Court No. - 19

Case :- WRIT - A No. - 2747 of 2024

Petitioner :- Kailash Nath Kanaujia

Respondent :- State Of U.P. Thru. Secy., Public Works Deptt., Lucknow And Others

Counsel for Petitioner :- Shivam Sharma

Counsel for Respondent :- C.S.C.

Hon'ble Subhash Vidyarthi,J.

1. By means of instant petition, the petitioner has prayed for issuance of a writ of mandamus commanding the respondents to grant him the benefit of annual increment which fall due on 30.06.2014, the date on which the petitioner retired after attaining age of superannuation, along with interest, in light of judgement and order dated 19.07.2023 passed by a Division Bench of this Court in Special Appeal Defective No.489 of 2023 (State of U.P. Vs. Deputy S.P. Chandra Pal Singh and 5 Others).

2. Shri Sandeep Sharma, learned Standing Counsel for the State has raised a preliminary objection against the maintainability of the writ petition stating that the petitioner suffers from laches as the petitioner retired from services on 30.06.2014 and the writ petition claiming benefits of annual increment payable with effect from 01.07.2014 has been filed in the year 2024. The writ petition filed after about a decade suffers from laches and the same is liable to be dismissed in limine. He has relied upon a decision of the hon'ble Supreme Court in the case of **Chairman/Managing Director, U.P. Power Corporation Ltd. and Others Vs. Ram Gopal, AIR online 2020 SC 93**, wherein the hon'ble Supreme Court held that:-

" 16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fencesitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On

multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala*², this Court observed thus:

"17. It is also well-settled principle of law that "delay defeats equity". ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment." (emphasis supplied)

.....

19. The order passed by the High Court for retention of Shyam Behari Lal in service, does not possess any ingredient of a Judgment in-rem. The above cited exception, therefore, does not come to the Respondent's rescue. It is also pertinent to mention that neither has it been pleaded nor is it apparent from the material on record that the Respondent was unable to approach the court-of-law in time on account of any social or financial disability. Had such been the case, he ought to have availed free legal aid and should have ventilated his grievances in a timely manner. Instead, he seems to be under the assumption that the termination order is illegal, that he consequently has a right to be reinstated, and that he can agitate the same at his own sweet-will. Neither of these three assumptions are true, as elaborated by us earlier."

3. Replying to the aforesaid preliminary objection, Shri Shivam Sharma, learned counsel for the petitioner has also relied upon the following passage from the judgement in the case of **Chairman/Managing Director U.P. P.C.L.** (*supra*):-

" 18. We may hasten to add that these principles may not, however, apply to judgments which are delivered in-rem. The State and its instrumentalities are expected In such category of cases to themselves extend the benefit of a judicial pronouncement to all similarly placed employees without forcing each person to individually knock the doors of courts. This distinction between operation of delay and laches to judgments delivered in-rem and in personam, is lucidly captured in State of Uttar Pradesh v. Arvind Kumar Srivastava⁴, laying down that:

" 22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those

persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see *K.C. Sharma v. Union of India* [*K.C. Sharma v. Union of India*, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence." (Emphasis applied)."

4. Learned counsel for the petitioner has submitted that the question of entitlement to receive the benefits of annual increment accruing on the date following the day of retirement was engaging attention of various High Courts and it was finally settled by the dictum of the hon'ble Supreme Court in the judgement dated 29.06.2021 rendered in **Civil Appeal No.2471 of 2023, (The Director (Admin. and HR) KPTCL & Others Vs. C.P. Mundinamani and Others)**.

5. Learned counsel for the petitioner has also placed reliance on a judgement and order dated 29.06.2021 passed by a Co-ordinate Bench of this Court sitting at Allahabad in **Writ A No.13299 of 2020, Nand Vijay Singh and 3 Others Vs. Union of India and 4 Others**, wherein it has been held that:-

" 22. Difficulty arises only when the central government servant also retires on the last day when he completes his yearly service required for grant of increment. Article 151 to 153 of the CSR explicitly provides that increment accrues from the day following that on which it is earned. Going by the plain reading of the applicable provisions

the benefit of annual increment would not be available to a government servant if he superannuates on 30th June since the increment became payable only on the 1st of July. It is on the basis of above reasoning that full bench of Andhra Pradesh High Court & Himachal Pradesh High Court rejected the claim for payment of increment to the government servant who retires on 30th of June. With utmost respects to the views expressed by the two Court's, I find myself unable to subscribe to it, for the reasons enumerated hereinafter.

24. Law is settled that where entitlement to receive a benefit crystallises in law its denial would be arbitrary unless it is for a valid reason. The only reason for denying benefit of increment, culled out from the scheme is that the central government servant is not holding the post on the day when the increment becomes payable. This cannot be a valid ground for denying increment since the day following the date on which increment is earned only serves the purpose of ensuring completion of a year's service with good conduct and no other purpose can be culled out for it. The concept of day following which the increment is earned has otherwise no purpose to achieve. In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central government servant retiring on 30th June has already completed a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the increment earned by the central government employee on the basis of his good conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable. In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remains protected and are not denied due to a fortuitous circumstance."

6. From the aforesaid judgments placed by the learned counsel for the petitioner, it appears that the question of eligibility of an employee to get the benefits of annual increment accruing on the day following the day of superannuation, has been decided. The aforesaid judgement of **Nand Vijay Singh** (*supra*) has been

quoted with approval by the hon'ble Supreme Court in the judgment of ***The Director (Admin. and HR) KPTCL (supra)***. Thus, the question of law has been decided by this Court and affirmed by the hon'ble Supreme Court holding that "In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole."

7. The aforesaid principles of law would be applicable to all the employees, including the petitioner. Therefore, in view of the law laid down by the hon'ble Supreme Court in ***State of U.P. Vs. Arvind Kumar Srivastava*** quoted in ***Chairman/Managing Director, U.P.P.C.L. (supra)***, the present case would fall within the exception to the cases where the petition would be barred by laches.

8. Accordingly, the preliminary objection that the petition is dismissed in limine has been barred by laches, is turned down and I proceed to examine the merits of the case.

9. The petitioner was appointed on the post of Junior Engineer by means of an order dated 20.08.1989 and he retired on 30.06.2014 upon attaining the age of superannuation. The annual increment fall due on 01.07.2014 but the benefit of the same was not given to the petitioner on the ground that he had retired from service prior to the accrual of the annual increment. By means of this writ petition, the petitioner has claimed the payment of benefits consequent to annual increments in the salary with effect from 01.07.2014

10. This issue has already been decided by a Division Bench of this Court as has already been observed in the preceding paragraphs:-

*"...the question of eligibility of an employee to get the benefits of annual increment accruing on the day following the day of superannuation, has been decided. The aforesaid judgement of **Nand Vijay Singh** (supra) has been quoted with approval by the hon'ble*

Supreme Court in the judgement of **The Director (Admin. and HR) KPTCL** (supra). Thus, the question of law has been decided by this Court and affirmed by the hon'ble Supreme Court holding that "In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole."

7. The aforesaid principles of law would be applicable to all the employees, including the petitioner."

11. Numerous other similar writ petitions have been allowed by Co-ordinate Benches of this Court, including Writ A No.1595 of 2024 decided on 04.03.2024.

12. As the question has already been settled by numerous pronouncement of this Court, there is no need for calling for any counter affidavit as the learned Standing Counsel also did not dispute the fact that the case of the petitioner is covered by the judgements referred to above but he has submitted that the petitioner has retired in the year 2014 and he has filed this petition after a delay of 10 years, he cannot be granted arrears of benefits for a period exceeding three years, which is the period of limitation for filing a money claim.

13. This objection raised by learned Standing Counsel is worth acceptance.

14. Accordingly, the writ petition is **allowed** in part. The respondents are directed to allow the benefits of annual increment declared on 01.07.2014 to the petitioner with the condition that although the benefits will be calculated with effect from 01.07.2014, the arrears will be payable to the petitioner only for a period of three years preceding the date of filing of the writ petition.

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[Subhash Vidyarthi, J.]

Order Date :- 5.4.2024

-Amit K-