

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 115 OF 2012**

1. Union of India through Secretary,
Ministry of Defense,
Room No.198, South Block,
New Delhi – 110011.
2. The Flag Officer Goa Area,
Head Quarters,
Western Naval Command,
Vasco Da Gama, Goa 403 802. ... Petitioners

Versus

Shri Arezhi Sreedharan,
Flat No.1, Villa Bambina,
Mangor Hill,
Vasco Da Gama,Goa 403 802. ... Respondent

Mr. M. Amonkar, Central Government Standing Counsel for the
Petitioner.

None for the Respondent.

**Coram:- M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date:- 25th February, 2020

Oral Judgment (Per M. S. Sonak, J)

Heard Mr. M. Amonkar, learned Standing Counsel for the
Union of India – Petitioner herein.

2. The challenge in this petition is to the judgment and order dated 15th March, 2011 made by the Central Administrative Tribunal, Bombay, allowing the Original Application No.444/2010 instituted by the Respondent, *inter alia* for payment of appropriation of retiral benefits.

3. The only controversy in this case is whether the Respondent was entitled to the increment of pay upon his promotion to the post of Superintendent with effect from 28th May, 2008.

4. Mr. Amonkar, learned Standing Counsel submits that the increment usually accrues on 1st May of each year. However, in so far as the year 2009 was concerned, there was issue of application of VIth Pay Commission and in order to achieve uniformity it was made clear that the increment was to be drawn on 1st July, 2009.

5. Mr. Amonkar submits that the Respondent retired on attaining the age of superannuation on 30th June, 2009 i.e. a day prior to 1st July, 2009. He relies on F.R. 17.(1) to submit that the Government servant shall cease to draw any pay or allowances as soon as he ceases to discharge his duties as Government servant. On this basis, Mr. Amonkar submits that the Respondent was not entitled to draw the last increment which become due and payable only on 1st July, 2009 i.e. one day post

retirement of the Respondent. Mr. Amonkar submits that inasmuch as the Tribunal has taken a contrary view, the same, warrants interference in exercise of powers under Articles 226 and 227 of the Constitution of India.

6. The Respondent though served, is not present.

7. We have given anxious consideration to the contentions of the learned Standing Counsel for the Union of India. However, with respect, we do not feel that this is a matter, in which the view taken by the Tribunal is required to be upset in exercise of our extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India.

8. In the first place, the Tribunal, has relied upon the rulings of its Full Bench in the case of ***Venkatram Rajagopalan and Another Vs Union of India and others***, disposing of OA Nos. 459/97 and 460/97 decided on 15th October, 1999. There is nothing on record to indicate that the Union of India, though a party to this decision, had at any time taken out any proceedings to challenge the decision of the Full Bench. In these circumstances, there is really no reason to allow the present petition and that too, to deny the Respondent, who had rendered 40 years of service prior to his superannuation, the benefit of one increment

granted by the Tribunal.

9. Secondly, even otherwise the view taken by the Tribunal is a plausible view. The Tribunal has reasoned that the Respondent worked till 30th June, 2009 and at the end of the day the increment accrued to him. Mr. Amonkar contends that the increment accrues at the beginning of the next day. Whilst, both the views may be plausible, taking into account the circumstance that the Respondent has retired after rendering 40 years of service and was awarded this benefit way back on 15th March, 2011, cannot be said that the view taken by the Tribunal suffers from some jurisdictional error or perversity so as to warrant interference. Besides, it is accepted that normally the increments are to be paid on 1st May of each year. However, only in the year 2009 and that too, in order to achieve uniformity post implementation of VIth Pay Scale, the date for award of increment was postponed to 1st July, 2009. This is purely fortuitous circumstance, which ought not to result in denial of increment to the Respondent who has completed almost 40 years of service prior to his superannuation on 30th June, 2009. The view taken by the Tribunal in the impugned judgment and order or the view taken by the Full Bench of the Tribunal, which was not even challenged by the Union of India cannot be said to be a view which is not even a plausible one.

10. The provision of F.R. 17.(1) upon which the reliance is placed by Mr. Amonkar only provides that subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge his duties. No doubt, this is the general rule that has to be applied. However, when, there is no specific rule dealing with the contingency which has arisen in the facts of the present case, we cannot say that the view taken by the Tribunal in the impugned judgment and order or the view taken by the Full Bench of the Tribunal, which has not even been challenged by the Union of India is a perverse view so as to warrant interference, particularly in exercise of equitable jurisdiction.

11. Finally, in our opinion the view taken by the Tribunal in the facts and circumstances of the present case promotes substantial justice. It is well settled that the extraordinary and equitable jurisdiction under Articles 226 and 227 of the Constitution of India is discretionary. The discretion is not required to be exercised in every case merely upon the Petitioner making out some point. Time and again the Apex Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution of India is to advance justice and not to thwart it. The very purpose of such constitutional powers

being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of the High Court therefore, should not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. *If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.* [See Roshan Deen Vs Preeti Lal (2002) 1 SCC 100.]

12. In *Sangram Singh Vs Election Tribunal*,¹ the Apex Court has held that '*though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued or likely to ensue*'.

13. In *Veerappa Vs Raman & Raman Ltd.*² the Apex Court has observed that the writs referred to in Article 226 '*are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an*

¹ AIR 1955 SC 425

² AIR 1952 SC 92

error apparent on the fact of the record, and such act, omission, error or excess has resulted in manifest injustice'.

14. In *D. N. Banerjee Vs P. R. Mukherjee*³ the Apex Court has observed that '*unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere*'.

15. The aforesaid principles also dissuade us from interfering with the view taken by the Tribunal, particularly since the view taken promotes substantial justice. Besides, we have also to keep in mind that the Respondent herein retired almost a decade ago after rendering 40 years of service. The relief granted by the Tribunal relates to only one increment. The view taken by the Tribunal is not only plausible view but also promote substantial justice. Therefore, applying the aforesaid principles, we are satisfied that this is not a matter where discretion is required to be exercised in favour of the Petitioner.

16. For all the aforesaid reasons, we dismiss this petition. There shall be no order as to costs.

³ AIR 1953 SC 58

17. All concerned to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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