IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7224 OF 2023

GULAM RAFIK DASTAGIR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND OTHERS
...
Advocate for Petitioner : Mr. Deshpande Abhishek C.
AGP for Respondent Nos. 1 to 3, 5 : Mr. A.S. Shinde
Advocate for Respondent No. 4 : Mr. S.B. Pulkundwar

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATED : 03 JULY 2023

PER COURT (PER : SHAILESH P. BRAHME, J) :

1. Heard learned counsel for the petitioner, learned AGP for respondent nos. 1 to 3 and 5 and learned counsel Mr. Pulkundwar for respondent no. 4.

2. With their consent the matter is decided finally at the admission stage.

3. Petitioner is praying for notional increment which was payable to him after his superannuation and the consequential revision of the retiral benefits.

4. The petitioner was appointed as a Junior Clerk on 16 October 1974, in the respondent no. 7 – School. He was

superannuated on 30 June 2010. He was entitled to annual increment as prescribed by Maharashtra Civil Services (Revised Pay) Rules, 2009 (for short 'the Rules'). As per Rule 10, the said increment would be payable on 01st July.

5. Due to superannuation on 30 June 2010, the petitioner was deprived of annual increment payable on 01 July, which was due after his superannuation. He was entitled to the increment because he has earned it by rendering service for one year preceding his superannuation.

6. The issue involved in this matter is no more *res integra*. It is settled by following judgments :

i. P. Ayyamperumal Versus The Registrar Central Administrative Tribunal and others, decided by Division Bench of Madras High Court on 15 September 2007 in Writ Petition No. 15732 of 2017;

ii. Prakash Tulshiram Chaudhari Versus Versus State of Maharashtra and others, decided by the Division Bench by order dated 24 June 2021, in Writ Petition No. 6396 of 2020;

iii. Director (Admn. and HR) KPTCL and others Versus C.P. Mundinamani and others, AIRONLINE 2023 SC 275.

7. Out of the above authorities, it is suffice to refer to

paragraph no. 18 in case of Director KPTCL which is as follows :

> "18. Now, so far as the submission on behalf of the appellants that as the increment has accrued on the next day on which it is earned and therefore, even in a case where an employee has earned the increment one day prior to his retirement but he is not in service the day on which the increment is accrued is concerned, while considering the aforesaid issue, the object and purpose of grant of annual increment is required to be considered. A government servant is granted the annual increment on the basis of his good conduct while rendering one year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a time scale, he is entitled to the annual increment and it can be said that he has earned the annual increment for rendering the specified period of service with good conduct. Therefore, as such, he is entitled to the benefit of the annual increment on the eventuality of having served for a specified period (one year) with good conduct efficiently. Merely because, the government servant has retired on the very next day, how can he

be denied the annual increment which he has earned and/or is entitled to for rendering the service with good conduct and efficiently in the preceding one year. In the case of *Gopal Singh* (supra) in paragraphs 20, 23 and 24, the Delhi High Court has observed and held as under : –

(para 20)

"Payment of salary and increment to a central government servant is regulated by the provisions of F.R., CSR and Central Civil Services (Pension) Rules. Pay defined in F.R. 9(21) means the amount drawn monthly by a central government servant and includes the increment. A plain composite reading of applicable provisions leaves no ambiguity that annual increment is given to a government servant to enable him to discharge duties of the post and that pay and allowances are also attached to the post. Article 43 of the CSR defines progressive appointment to mean an appointment wherein the pay is progressive, subject to good behaviour of an officer. It connotes that pay rises, by periodical increments from a minimum to a maximum. The increment in case of progressive appointment is specified in Article 151 of the CSR to mean that increment accrues from the date following that on which it is earned. The scheme, taken cumulatively, clearly suggests that appointment of a central government servant is progressive appointment and periodical increment in pay from a minimum to maximum is part of the pay structure. Article 151 of CSR contemplates that increment accrues from the day following which it is earned. This increment is not a matter of course but is dependent upon good conduct of the central government servant. It is, therefore, apparent that central government employee earns increment on the basis of his good conduct for specified period i.e. a year in case of annual increment. Increment in pay is thus an integral part of progressive appointment and accrues from the day following which it is earned.”

(para 23)

“Annual increment though is attached to the post and becomes payable on a day following which it is earned but the day on which increment accrues or becomes payable is not conclusive or determinative. In the salutatory scheme governing progressive appointment increment becomes due for the services rendered over a year by the government servant subject to his good behaviour. The pay of a central government servant rises, by periodical increments, from a minimum to the maximum in the prescribed scale. 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.”

(para 24)

"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 looses 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 if 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."

8. In the present case also, there is no dispute that the petitioner earned the increment by rendering the service with good conduct during the preceding year of his superannuation. He is entitled to benefit of the increment. The petition, therefore, deserves to be allowed.

9. Learned AGP pointed out that the petitioner was superannuated on 30 June 2010, by filing the petition in the year 2023, he seeks to claim notional increment and consequential revision of the pension. There are, therefore, laches in approaching High Court. He placed on record Government Circular dated 28 June 2023, to submit that the past benefit of revision of retiral benefits and the arrears should be restricted to preceding three years of the retirement.

10. In view of the policy stipulated in above referred circular, we propose to restrict the consequential benefits of revision of pension and the arrears thereof, for the preceding three years of the superannuation.

11. We, therefore, dispose of this petition as follows :

i. Writ Petition is allowed partly.

ii. The respondent nos. 1 to 5 shall confer notional annual increment to the petitioner.

iii. The petitioner shall be entitled to receive consequential benefits of revision of pension and its arrears for three years preceding the date of superannuation (30 June 2010).

(SHAILESH P. BRAHME, J.) **(MANGESH S. PATIL, J.)**

SPChauhan