IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

THE HONOURABLE R.JUSTICE P.B.BALAJI

W.P.No.227 of 2019

P.Sadasivam ... Petitioner

Vs.

1. Union of India, Rep. by the Director General of Posts,
   Dak Bhavan, Sansad Marg,
   New Delhi 110 001.

2. The Chief Postmaster General,
   Tamilnadu circle, Anna Salai,
   Chennai 600 002.

3. The Postmaster General,
   Western Region (TN),
   Coimbatore 641 002.

4. Superintendent of Post Offices,
   Namakkal Division,
   Namakkal 637 002. .. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari Mandamus, calling for the records of the Central Administrative Tribunal, Chennai pertaining to its order, which is made in OA/310/00818/2013 dated 11.04.2017 in so far as the petitioner is concerned and quash the same, consequently direct the respondents to grant one increment for the service rendered by the petitioner for the period from 01.07.2008 to 30.06.2009 and further direct to revise and re-fix the retirement service benefits, including pension of the petitioner and to pay the arrears of pension to the petitioner.

For Petitioner : Mr.R.Malaichamy

For Respondents : Mr. S.Diwakar, Senior Panel Counsel

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

The unsuccessful petitioner before the Central Administrative Tribunal, Chennai Bench in O.A.No.310/00818/203, in and by which, his request to grant annual increment for the period from 01.07.2008 to 30.06.2009 and to re-fix terminal benefits, including pension, was dismissed, vide order dated 11.04.2017, has filed the present writ petition.

2. The brief facts leading to the filing of the writ petition is as

follows.

The petitioner was working as Sub Postmaster, Tiruchengodu North S.O under the fourth respondent herein and he retired from service on attaining the age of superannuation on 30.06.2009. While he was in service, he got annual increment on first July of every year. However, the annual increment for the period before the superannuation was not granted to him. According to the petitioner, annual increment for the period from 01.07.2008 to 30.06.2009 should be granted to him, as per the provisions contained in Rule 10 of CCS (RP) Rules, 2008 and hence, he gave a representation to grant annual increment. But it was not considered by the Department. Therefore, he filed an application before the Tribunal, and the same was dismissed. Challenging the order of the Tribunal, the present writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. It is the contention of the learned counsel for the petitioner

that, the annual increment is a reward for the unblemished service rendered by the employee for the period of 12 months and since the petitioner had completed one year service from 01.07.2008 to 30.06.2009, he is eligible for getting increment. However, the Tribunal has rejected the claim of the petitioner, stating that, while granting increment on 01.07.2009, the petitioner was not being in service and hence, he is not eligible to get increment. The further contention of the learned counsel for the petitioner is that the decision of the Tribunal is contrary to the law laid down by the ***Hon'ble Supreme Court in Civil Appeal No.2471/2023, dated 11.04.2023.***

5. He further relied upon a decision of the Division Bench of this Court ***in a similar matter in W.P.No.176/2019 dated 05.07.2023,*** wherein, following the decision of the Hon'ble Supreme Court in C.A.No2471/2013, dated 11.04.2023, the above writ petition came to be allowed and hence, he prayed to quash the order passed by the Tribunal.

6. At this juncture, it is useful to rely upon the relevant portion

of the judgment of the ***Hon'ble Supreme Court dated 11.04.2023 in Civil Appeal No.2471/2023 before the Hon'ble Supreme Court***, which is extracted hereunder.

> 6.5 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 a 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 & 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 statutory 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."

6.6 The Allahabad High Court in the case of **Nand Vijay Singh (supra)** while dealing with the same issue has observed and held inparagraph 24 as under: -

"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 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."

6.7 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 herein above, 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 herein above, 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 Vs. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022)** and the Himachal Pradesh High Court in the case of **Hari Prakash Vs. State of Himachal Pradesh & Ors. (CWP No. 2503/2016 decided on 06.11.2020).**
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> 7. In view of the above and for the reasons stated above, the Division Bench of the High Court has rightly directed the appellants to grant one annual increment which the original writ petitioners earned on the last day of their service for rendering their services preceding one year from the date of retirement with good behaviour and efficiently. We are in complete agreement with the view taken by the Division Bench of the High Court. Under the circumstances, the present appeal deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Therefore, in the light of the the above decision of the Hon'ble Apex Court, we have no hesitation to hold that the writ petitioner is entitled for one increment for the service rendered by him in the preceding one year to the succeeding day, when increment became payable. The above legal position has not been controverted by the learned Senior Panal Counsel appearing for the respondents.

7. Accordingly, this writ petition is allowed and the order passed by the Tribunal is set aside. The respondents are directed to grant one increment for the service rendered by the petitioner in the preceding year and consequently, revise and re-fix the scale of pay, including pension and to pay the arrears of pension to the petitioner, within four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K., J.) (P.B.B., J.)

27.09.2023

Index:Yes/No
Internet:Yes/No
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To

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   Dak Bhavan, Sansad Marg,

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D. KRISHNAKUMAR, J.
AND
P.B.BALAJI, J.
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