

CWP-6420-2021

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

2023:PHHC:128288

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DECIDED ON: 19th JULY, 2023

RULDU RAM

.....PETITIONER

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LTD. AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Digvijay Singh, Advocate
for the petitioner.

Mr. Naman Jain, Advocate
for the respondents.

SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 of the Constitution of India has been invoked for issuance of a writ in the nature of '*Mandamus*' directing the respondents to grant notional increment for the purpose of pensionary benefits on completion of twelve months of service i.e., during the period of 01.07.2013 to 30.06.2014. The refixation of pension and the benefits accruing therefrom has also been sought alongwith arrears with interest @ 18 % per annum.

2. The case set forth by the petitioner through Mr. Digvijay Singh, learned Advocate is that the petitioner joined the services with the Uttar Haryana Bijli Vitran Nigam-respondent in the year 1973 on work charge basis as team mate and subsequently were regularized on 08.08.1980. Thereafter having served the respondent-Nigam for 41 years, he finally retired after

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attaining the age of superannuation on 30.06.2014 as Foreman, after having earned promotions in his service career from time to time.

3. It is argued on behalf of the petitioner that the last increment for the year 2013-14 has been declined, despite completion of 12 months in that calendar year, which became actually due on next day of his retirement i.e., 01.07.2014. The benefit of annual increment on notional basis is not being granted to the petitioner merely on the surmise that he was not in service on 01.07.2014.

4. Notice of motion was issued on 19.03.2021 subsequent thereto a written statement on behalf of all the respondents was filed through Executive Engineer, Sub Urban, Division No.1, UHBVN, Karnal.

5. Mr. Naman Jain, Advocate for the respondents contend that the revised pay scale of its employees is being made as per recommendations of 6th pay commission as per HCP (RP) Rules, 2008 and HCP (ACP) Rules, 2008 as notified on 30.12.2008, which envisaged the concept of uniform date of annual increment as 1st July every year. Further reliance has been made to Rule 10 of HCP(RP) Rules, 2008, which reads as under alongwith Rule 20 of HCS (ACP) Rules, 2008:-

" Rule 10: There will be uniform date of annual increment, viz. 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 1.1.2006 in the revised pay structure will be granted on 1.7.2006 for those employees also for whom the date of next increment was between 1st July, 2006 to 1st January, 2007"

"Rule 20: There will be an uniform date of annual increment, viz. 1st July of every year. Employees completing 6 months and above in the revised ACP pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of

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pay on 01.01.2006 in the revised ACP pay structure will be granted on 01.07.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1" January, 2007."

6. Further attention of this Court to Rule 3.26 (a) of the Punjab Civil Services Rules, (Volume -1 Part-1), which stipulate that:

"Except as otherwise provided in other clause of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age fifty-eight years. He must not be retained in service the age of fifty-eight years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing (provided that the age of compulsory retirement for the members of the (judicial Service, blind and Class-IV Government employee shall be sixty years).

Provided further that a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifth eight or sixty years, as the case may be."

7. Lastly the contention on behalf of the respondents relates to another preliminary objection seeking rejection of the writ petition is on account of delay and laches stating that the petitioner retired on 30.06.2014 and has approached this Court after a gap of 7 years in the year 2021, while relying upon the ratio laid down by the Supreme Court in ***M.R. Gupta vs. Union of India & Ors., 1995 AIR 669.***

8. In rebuttal, learned counsel for the petitioner has argued that a legal notice dated 15.11.2020 (Annexure P-1) was served upon the respondents and, therefore, the ground of delay and laches cannot be a reason to deny the legitimate claim qua annual increment to the petitioner, while relying upon a

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judgment on merits to claim the benefit that his case is squarely covered having completed one year service in the preceding year on 30.06.2014 i.e., during the year 2013-14 as was the dictum in ***The Director KPTCL & Ors. Vs. C.P Mundinamani and Ors Civil Appeal No. 2471 of 2023*** wherein it has been held that :-

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.

9. Having heard, learned counsel for respective parties.

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10. On merits it can be inferred that after scrutiny of the Rules 10 & 20 of HCP(RP) Rules, 2008, there are two set of Government employee/petitioner which can be found as per their date of retirement;

a. First set of Government employee/petitioner, who had earned their last annual increment on 1st July and got retired after completing one-year satisfactory service on 30.06.2014 and are claiming the benefit of annual increment, which was otherwise due to them had they not retired and remained in service on 1st July.

b. Second set of Government employee/petitioner are those, who had earned their last annual increment on 1st July and thereafter retired after completing six months or more satisfactory service, but less than one year service on attaining the age of superannuation i.e., 58/60 years and claiming the benefit of proportionate increment as was made available vide Finance Department letter dated 07.01.2016.

11. This Court is conscious of the fact that the 1st set of Government Employees/petitioner (as described in sub-para 4 (a) above have filed various writ petitions claiming therein annual increments) which otherwise fell due on next day of their retirement i.e. 1st July had they not retired from Govt. service on 30th June. In terms of the rules referred above in para No. 2 & 3, such government Employees/Petitioners are not entitled for next annual increment even on completion of 12 months of their regular satisfactory service on the day of their retirement. The petitioners are relying upon the judgment dated 15.09.2017 passed by Madras High Court in ***CWP No. 15732 of 2017-P. Ayyamperumal Vs. Union of India decided on 15.09.2017*** which was upheld by the Hon'ble Supreme Court of India in ***SLP No. 22283 of 2018 Union of India V/S P. Ayyamperumal decided on 23.07.2018.***

12. Even our own High Court had decided a bunch of 18 CWP's on 22.04.2019 and in lead case ***CWP No. 29465 of 2018 titled as Rajinder Singh***

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Kuhar & Others V/S State of Haryana & Others had observed and directed the State Government as under:-

"Vide the aforesaid letter (dated 28.03.2019), a request has been made to the Central Government to provide at the earliest the information sought and the relevant documents in connection therewith to enable the Government of Haryana to take an appropriate decision in all the pending cases accordingly. It may be relevant to note that rule 10 of the Haryana civil Services (Revised Pay) Rules, 2008, is parimateria to the rules framed by the Central Government for its employees in this regard. Shri Balyan further states that as soon as the relevant information is received from the Central Government, an appropriate decision shall be taken by the State of Haryana at the earliest.

In view of the above, learned counsel for the parties have reached a consensus that all these petitions be disposed of with a direction to the State of Haryana to take an appropriate decision with regard to the issue involved in these petitions soon after receiving the requisite information sought from the Central Government.

13. Accordingly, the matter was taken up with Government of India. Now, the requisite information has been received on 08.10.2020. A copy of the office memorandum issued by the Government of India is annexed herewith as (Annexure R-1) for the kind perusal of this Hon'ble Court, wherein, GOI has intimated as under:-

2. In this matter, with reference to central Government employees, the following is hereby stated:

2.1 In so far as P.Ayyamperumal case is concerned, referred in the instant case also, it is stated that the judgment of Hon'ble High Court of Madras in P.Ayyamperumal case is in personam. Further, the case of Sh. M Bala Subramaniam referred by Hon'ble High Court in its judgment in P.Ayyamperumal case is related to fundamental Rules of Tamilnadu Government whereas P. Ayyamperumal case relates to Central Government Rules.

2.3 It is relevant to mention here that in the similar matter; Hon'ble High Court of Andhra Pradesh at Hyderabad in year 2005, in C. Subbarao case, has inter-alia observed as under:-

"In support of the above observations, the Division Bench also placed reliance on Banerjee case (Supra), we are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulation) as a periodical rise to a Government employee for the good behavior in the service. Such increment is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day & payable next day thereafter (See Article 151 of CA Regulations), because he would not answer the test in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to the pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondalah case (supra).

" 2.4 In addition, subsequent to the judgment of Hon'ble High Court of Madras in P. Ayyamperumal case, Hon'ble CAT Madras Bench vide its Orders dated 19.03.2019 in O.A. No. 310/00309/2019 and O.A. No. 310/00312/2019 and order dated 27.03.2019 in O.A. No. 310/00026/2019 has also dismissed the

similar requests related with notional increment for pensioner benefits.

2.5 The Hon'ble Supreme Court, vide judgment dated 29.03.2019, while dismissing the SLP (C) Dy. No.6468/2019 filed by D/O Telecommunications against the judgment dated 03.05.2017 of Hon'ble High Court, Lucknow Bench in WP No. 484/2010 in the matter of UOI & Ore. Vs. Sakha Ram Tripathi & Ors., has inter-alia observed the following.' "There is delay of 566 days in filling the special leave petition. We do not see any reasons to condone the delay. The Special Leave Petition is dismissed steeping all the questions of law open.

14. The Madras High Court in **A.V. Thiyagarajan Vs the Secretary to Government (W.P. No. 20732/ 2012 dated 27.11.2012)** and **Union of India V.R. Sundara Rajan (WP 28433/05)** and the Hon'ble Karnataka High Court in **Union of India & 3 Others v. YNR Rao (WP18186/2003)** have held that:-

"But for the provisions of FR 56, which provides that a Government Servant shall retire from service on the afternoon of last date of the month in which he had attained the age of 58 years, the respondent, who was born on 9.3.1937 would have retired on 8.3.1995. The provision for retirement from service on the afternoon of the last date of the month in which the Government Servant attains the age of retirement instead of on the actual completion of the age of retirement in FR 56 was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to clause(a) of FR 56 which provides that an employee whose date of birth is first of a month, shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 58 years. Therefore, if the date of birth of a government servant is 1.4.1937 he would retire from service not on 30.4.1995, but on 31.3.1995. If a person born on 1.4.1937 shall retired on 31.3.1995, it would be illogical to say a person born on 9.3.1937 would retire with effect from 1.4.1995. That would be the effect, if the decision of the full bench of the CAT, Mumbai, is to be accepted. Therefore, a Government servant

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retiring on the afternoon of 31.3.1995 retires on 31.3.1995 and not from 1.4.1995. We hold that the decision of the Full Bench (Mumbai) of the CAT that a government servant retiring on the afternoon of 31st March is to be treated as retiring with effect from the first day of April, that is same as retiring on the forenoon of first of April, is not good law."

15. Lastly coming to the question of delay and latches, which is also a vital aspect to be borne in mind by the Courts while exercising discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.

16. It would be relevant to refer to the Apex Court in ***Northern Indian Glass Industries vs. Jaswant Singh & others 2002 Supp(3) SCR 534***, wherein the Court cautioned that the High Court cannot ignore the delay and latches in approaching the writ court and there must be satisfactory explanation by the petitioner as why there is a such long and unreasonable delay in approaching the court.

17. This Court is also obvious of the specific stand taken by the respondents, who had denied receipt of any legal notice dated 15.11.2020 (Annexure P-1) in para 5 of its written statement on merits and there is no rebuttal to the said denial by the petitioner. The perusal of legal notice also does

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not indicate any supporting receipt in the office of respondents either by way of post or by hand or any other mode whatsoever.

18. In light of the observation made hereinabove well supported with the catena of judicial dictum, the claim of the petitioner deserves to be rejected not only on merits, but also on the ground of inordinate delay in approaching the Court. The law is to be set in motion for a vigilant litigant and not for the one's, who keep sleeping for years together and then approach the Court without clean hands and such an attempt has been made in the instant petition to cover up the delay by creating a smart device in the form of alleged legal notice that too only in November 2020, which was never served upon the respondents. At the same time, the petitioner has failed to show any reasonable explanation for such delay of 7 years for his rights accrued in the year 2014. Hence, the writ petition fails on merits as well as delay and latches.

19. Therefore, the petition stands dismissed with no order as to costs.

19th JULY, 2023

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**(SANDEEP MOUDGIL)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No