

(247)

2023:PHHC:075560

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

CWP No. 18104 of 2020

Date of decision : 24.05.2023

Yash Paul Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr.N.S. Dadwal, Advocate
for the petitioner.

Mr. Aman Dhir, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

By way of present writ petition filed under Article 226/227 of the Constitution of India, petitioner prays for issuance of a writ in the nature of certiorari for setting aside the order/letter dated 04.09.2020 (Annexure P-8) issued by respondent No.4, whereby the claim of the petitioner for grant of increment has been rejected.

2. Learned counsel for the petitioner would submit that the issue stands settled in favour of the employees.

3. *Per contra*, Mr. Dhir, learned State counsel, however, submits that view similar to that of Madras High Court was taken by Single Bench of this Court in judgment dated 16.02.2022, which is subject matter of LPA-922-2022, wherein the judgment passed by the Single Bench has been stayed vide order dated 21.10.2022 and is now pending for consideration on 17.08.2023.

4. I have heard counsel for the parties and have gone through records of the case.

5. The precise issue involved is as under:-

“Where the petitioner has worked for full year but retired on attaining the age of superannuation, a day prior to when the increment was to be paid to him whether he would be entitled for the such annual increment or not?”

6. This Court must notice that the aforesaid issue already stands finally concluded by the Apex Court in the case of ***Director (Admin. and HR) KPTCL and others Vs. C.P. Mundinamni and others, 2023 SCC On Line SC 401***, holding as under:-

“13.The short question which is posed for the consideration of this Court is whether an employee who has earned the annual increment is entitled to the same despite the fact that he has retired on the very next day of earning the increment?

14. In the present case, the relevant provision is Regulation 40(1) of the Regulations which reads as under: -

“Drawals and postponements of increments

40(1) An increment accrues from the day following that on which it is earned. An increment that has accrued shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from an employee by the competent authority, if his conduct has not been good, or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.”

15. It is the case on behalf of the appellants that the word used in Regulation 40(1) is that an increment accrues from the day following that on which it is earned and in the present case the increment accrued on the day when they retired and therefore, on that day they were not in service and therefore, not entitled to the annual increment which they might have earned one day earlier. It is also the case on behalf of the appellants that as the increment is in the form of incentive and therefore, when the employees are not in service there is

no question of granting them any annual increment which as such is in the form of incentive.

16. At this stage, it is required to be noted that there are divergent views of various High Courts on the issue involved. The Full Bench of the Andhra Pradesh High Court, the Himachal Pradesh High Court and the Kerala High Court have taken a contrary view and have taken the view canvassed on behalf of the appellants. On the other hand, the Madras High Court in the case of *P. Ayyamperumal (supra)*; the Delhi high Court in the case of *Gopal Singh Vs. Union of India and Ors.* (Writ Petition (C) No. 10509/2019 decided on 23.01.2020); the Allahabad High Court in the case of *Nand Vijay Singh and Ors. Vs. Union of India and Ors.* (Writ A No. 13299/2020 decided on 29.06.2021); the Madhya Pradesh High Court in the case of *Yogendra Singh Bhadauria and Ors. Vs. State of Madhya Pradesh*; the Orissa High Court in the case of *AFR Arun Kumar Biswal Vs. State of Odisha and Anr.* (Writ Petition No. 17715/2020 decided on 30.07.2021); and the Gujarat High Court in the case of *State of Gujarat Vs. Takhtsinh Udesinh Songara* (Letters Patent Appeal No. 868/2021) have taken a divergent view than the view taken by the Full Bench of the Andhra Pradesh High Court and have taken the view that once an employee has earned the increment on completing one year service he cannot be denied the benefit of such annual increment on his attaining the age of superannuation and/or the day of retirement on the very next day.

17. Now so far as the submission on behalf of the 6.4 Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day in that case also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted.

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 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 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.”

19.The Allahabad High Court in the case of Nand Vijay Singh (supra) while dealing with the same issue has observed and held in paragraph 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 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 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.”

20. 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 hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpreted 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 hereinabove, 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).

21. 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.

I.A. No. 149091/2022 stands disposed of in terms of the above.”

7. Thereby approving the view already taken by *Gujarat High Court, Madhya Pradesh High Court, Orissa High Court and Madras High Court.*

8. In view of the above, present writ petition is allowed. The objection taken by the State counsel with respect to there being an interim order by a Division Bench in a similar case cannot be looked at in view of

the fact that the issue has been laid to rest finally by the Apex Court in favour of the employee.

9. Necessary consequential relief be released in favour of the petitioners within a period of 08 weeks from the date of receipt of a certified copy of this order.

May 24, 2023	(Pankaj Jain)
Anjal	Judge
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No