

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

and

The Hon'ble Justice Md. Shabbar Rashidi

MAT No. 2526 of 2023

Damodar Valley Corporation and Ors.

Vs

Shri Jyotirmoy Sarkar

For the appellants : Mr. Achintya Kumar Banerjee, Adv.

: Mr. Dipankar Ghosh, Adv.

For the writ petitioner/

Respondent : Mr. Puspall Chakraborty, Adv.

: Ms. Prishanka Ganguly, Adv.

Heard on : August 30, 2024

Judgment on : September 10, 2024

Md. Shabbar Rashidi, J.

1. Appeal at the behest of Damodar Valley Corporation is in assailment of judgment and order dated September 29, 2023 passed in WPA No. 18560 of 2021.
2. By the impugned order, the learned Single Judge allowed the Writ Petition and set aside the order of the Executive Director (Finance) DVCL September 27, 2021. The impugned order also directed the authorities to give one notional increment to the writ petitioner for the services rendered by him during the period of July 1, 2018 to June 30, 2019. The respondent authorities were further directed, in terms of the aforesaid order, to recalculate the pensionary benefits of the writ petitioner and to pay current pension and the differential amount on account of arrear pension, if any. The entire exercise of recalculation and payment in terms of the directions passed in the writ petition was to be completed as expeditiously as possible and positively within a period of four weeks.
3. It was the contention of the writ petitioner that he was posted as Deputy General Manager (Finance), Finance Department, DVC

and superannuated from the aforesaid post on June 30, 2019. It was further contended that in terms of the recommendations of 6th pay commission of the central government in the year 2006, the central government amended Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008 and declared the date of awarding annual increment to overall central and state government employees to be on July 1 of each year. The recommendations also provided that an employee will be eligible to receive the annual increment on 1st July of every year on completion of six months and above in the revised pay structure and on 1st July.

4. The appellants, being an autonomous body under Union of India, duly adopted the recommendations and shifted the date of grant of annual yearly increment to July 1 of every year which resulted in deprivation to all the employees who, on account of having put in satisfying services on completion of service of six months and above between July 1 of a particular year and June 30 of the following year, became eligible to receive the annual yearly increment.

5. In view of his superannuation on June 30, 2019, the petitioner by a representation dated June 3, 2019, requested the authorities

to grant him the annual increment due on July 1, 2019 but such representation was never considered by the appellant authorities and the petitioner was allowed to superannuate on June 30, 2019. The petitioner also lodged a representation with the Ministry and the appellant authorities on June 4, 2020, June 25, 2020 and January 27, 2021.

6. Having failed to get any consideration on his representations, the petitioner approached this Court by way of Writ Application being WPA 11445 of 2021. The said writ petition was disposed of in terms of an order dated August 3, 2021 directing the Executive Director, Accounts and Finance Department, Damodar Valley Corporation, to consider and decide the petitioner's representations within a period of eight weeks and pass a reasoned order upon affording the petitioner an opportunity of hearing.
7. In pursuance of the directions in WPA 11445 of 2021, the Executive Director, Accounts and Finance Department, Damodar Valley Corporation, considered the representation of the writ petitioner and passed a reasoned order on September 9, 2021 rejecting his claim. Challenging such reasoned order, the writ

petitioner came up before this Court in WPA No. 18560 of 2021 which resulted in the impugned judgment and order.

8. Learned advocate for the appellant submitted that the judgment passed by the Hon'ble Supreme Court in the case of Ayyamperumal, on the basis of which the respondent had staked his claim was rendered in altogether different factual perspective. It was contended that, the Hon'ble Supreme Court while dealing with the aforesaid case considered Regulation 40 (1) of the Karnataka Electricity Board Regulations, 1997. The Supreme Court also considered Article 43 and Article 151 of the Civil Service of Regulation. However, the learned Single Judge, in the impugned order, considered Rule 10 of Civil Services Rule, 2008 whereas as on the date superannuation, Rule of 2016 was governing the field. On such proposition, Learned advocate for the appellant relied upon **(2004) 8 Supreme Court Cases 579 (Bharat Petroleum Corpn. LTD. And Anr. vs. N.R. Vairamani)**

9. Relying upon **(2009) 7 Supreme Court Cases 165 (Government of Andhra Pradesh vs. N. Ramanaiah)** Learned advocate for the appellant also contended that the employees of DVC were not civil servants within the meaning of Article 309 and

311 of the Constitution. It was submitted that a separate Service Regulations, being in place, Civil Services Rule had no manner of application in the case of the petitioner. In support of such contention, learned advocate for the appellant relied upon **(2009) 7 Supreme Court Cases 165**. It was also contended that although, DVC adopts the regulation of the central government but it doesn't mean to attract Article 311 of the Constitution of India. Learned advocate for the appellant also submitted that Regulations 43 and 151 of the Civil Service Regulations were not attracted in the facts and circumstances of the present case.

10. Learned advocate for the appellant referred to Regulation 10 of the Central Civil Services (Revised Pay) Rules, 2008 and Regulation 10 of the Central Civil Services (Revised Pay) Rules, 2016 vis-à-vis Regulation 40 (1) of the Karnataka Electricity Board Employees Service Regulations, 1997.

11. Learned advocate for the appellant submitted that neither the Hon'ble Supreme Court, while rendering judgement in **2023 SCC OnLine SC 401**, nor the learned Single Judge considered the provisions of pension rules which provided for the termination of average emoluments. It was submitted that since the employer

employee relationship came to an end with effect from June 30, 2019 (AN), the petitioner was not entitled to draw the pay and allowances. Learned advocate for the appellant also referred to several provisions of the General Clauses Act, 1897.

12. Learned advocate for the appellant further submitted that the annual increment in the pay is granted to an employee in a routine manner subject to his good conduct unless it is withheld for some reason. An employee, having been superannuated cannot claim pay and allowances after the date of superannuation.

13. Learned advocate for the appellant also submitted that learned Single Judge did not consider the pronouncements of the Supreme Court which ordains that the courts should go slow in interfering in the policy matters. Learned advocate for the appellant relied upon **(1990) 3 Supreme Court Cases 368 (State of Bihar vs. Ramjee Prasad & Ors)**, **(1996) 10 Supreme Court Cases 536 (University Grants Commission vs. Sadhana Chaudhary and Ors.)**, **(2008) 14 Supreme Court Cases 702 (Government of Andhra Pradesh vs. N. Subbaryudu and Ors)**, **(2004) 2 Supreme Court Cases 76 (Ramrao and Ors. Vs. All India Backward Class Bank Employees Welfare Association and Ors)**, **(2005) 6**

Supreme Court Cases 754 (State of Punjab and Ors. Vs. Amar Nath Goyal and Ors) and (2022) SCC online 809 (State of Madhya Pradesh and Ors. Vs. Seema Sharma).

14. Per contra, learned advocate for the respondent has also drawn our attention to Regulation 10 of the Civil Services Rules, 2008. It was the contention of the respondent/writ petitioner that the respondent rendered satisfactory service of one year till June 30, 2019 i.e. in excess of six months as required in the Regulations and as such, he earned the annual increment, he ought to have been granted notionally, since he superannuated on June 30, 2019. The increment he earned on completion of one year of satisfactory service was liable to be credited on July 1, 2019 in usual course, as per the mandate of the Regulations. In support of his contention, learned advocate for the respondent relied upon **2023 SCC OnLine SC 401 (Director (Admn. And H.R) KPTCL and Ors. Vs. C.P. Mundinamani and Ors).**

15. Learned advocate for the respondent submitted that the impugned judgment and order is well reasoned based on sound principles of law. It does not deserve interference in the appeal.

16. Admittedly, the writ petitioner was an employee of the Damodar Valley Corporation and after a considerable length of service, superannuated from the post of Deputy General Manager (Finance), Finance Department, DVC on June 30, 2019. It is also not in dispute that in terms of the recommendations of the 6th Pay Commission, the date of annual increment of pay was fixed on 1st of July every year. Owing to his superannuation on June 30, 2019, the writ petitioner/respondent was not granted the annual increment.

17. According to the respondent, he had earned the annual increment upon rendering one year of satisfactory service between July 1, 2018 and June 30, 2019. It was the submission of the writ petitioner/respondent that he earned the annual increment rendering one year of satisfactory service, though, by reason of its accrual on the 1st day of July, 2019, as per the recommendations, he was disentitled from the fruits of his earned increment, at least notionally, which would result in some benefits in his post retiral emoluments.

18. To the contrary, the appellants came up with a case that as on the date of accrual of the annual increment i.e. 1st day of July,

2019, the writ petitioner was no longer an employee of the corporation and as such he could not claim the increment.

- 19.** At one point, the appellant claimed that DVC often resorted to the Central Civil Services Rules, 2008 or Central Civil Services Rules, 2016, as the case may be, where DVC Regulations were silent but in course of hearing it was also submitted that the employees of DVC are not the employees as contemplated under Article 309-311 of the Constitution. There are separate Service Regulations in place; Central Civil Services Rule had no manner of application in the case of the petitioner. It was also contended that although, DVC adopts the regulation of the central government but it doesn't mean to attract Article 311 of the Constitution of India. Learned advocate for the appellant also submitted that Regulations 43 and 151 of the Civil Service Regulations were not attracted in the facts and circumstances of the present case. It was also admitted by the parties that the Rules and Regulations governing the service conditions of the employees of DVC, was absolutely silent on the eventuality that had arisen in the case of the writ petitioner/respondent.

20. Both the parties have referred to the provisions of the Rule 10 of the Central Civil Service (Revised Pay) Rules, 2008 and that of the Central Civil Service (Revised Pay) Rules, 2016. The Rules of 2008 is as follows:

10. Date of next increment in the revised pay structure - There will be a 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 for whom the date of next increment was between 1st July, 2006 to 1st January, 2007..

21. The provisions of Central Civil Service (Revised Pay) Rules, 2008 were, partially modified in 2016 providing for two dates instead of one date of increment. Regulation 10 of the Central Civil Service (Revised Pay) Rules, 2016 reads as follows:

*10. Date of next increment in revised pay structure.-
(1) There shall be two dates for grant of increment namely, 1st January and 1st July of every year, instead of existing date of 1st July:*

Provided that an employee shall be entitled to only one annual increment either on 1st January or 1st July depending on the date of his appointment, promotion or grant of financial upgradation.

(2) The increment in respect of an employee appointed or promoted or granted financial upgradation including upgradation under Modified Assured Career Progression Scheme (MACPS) during the period between the 2nd day IOfJanuary and 1st day of July (both inclusive) shall be granted on 1st day of January and the increment in respect of an employee appointed or promoted or granted financial up gradation includirig up gradation under MACPS during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on 1st day of July.

illustration

(a)In case of an employee appointed or promoted in the normal hierarchy or under MACPS during the period between the 2nd day of July, 2016 and the 1st d day of anuary, 2017, the first increment shall accrue on the 1st day of July, 2017 and thereafter it shall accrue after one year on annual basis.

(b) In case of an employee appointed or promoted in the normal hierarchy or under MACPS during the period between 2nd day of January, 2016 and 1st day of July, 2016, who did not draw any increment on 1st day of July, 2016, the next increment shall accrue on 1st day of January, 2017 and thereafter it shall accrue after one year on annual basis:

Provided that in the case of employees whose pay in the revised pay structure has been fixed as on 1st day of January, the next increment in the Level in which the pay was so fixed as on 1st day of January, 2016 shall accrue on 1st day of July, 2016:

Provided further that the next increment after drawal of increment on 1st day of July, 2016 shall accrue on 1st day of July, 2017.

(3) Where two existing Grades in hierarchy are merged and the junior Government servant in the lower Grade happens to draw more pay in the corresponding Level in the revised pay structure than the pay of the senior Government servant, the pay of the senior government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with this rule.

22. The aforesaid provisions of the Central Service Rules deals with the eventualities of annual increment in case of fixation of pay on revision. It does not deal with a situation where an employee is entitled for an increment if he superannuates one day prior to the accrual of the incremental benefits. In facts, the parties have referred to several provisions of different Rules and Regulations but none of such provisions specifically dealt with the situation which has arisen in the present case.

23. Such situation was considered by the Hon'ble Supreme Court in **C.P. Mundinamani (Supra)**. The facts of the said case are very much identical to that of the present case. In the facts of the said case one day earlier than the retirement and on completion of one year service preceding the date of retirement all the employees earned one annual increment. However, taking into consideration Regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations, 1997, which provided that an increment accrues from the day following that on which it is earned, the appellants were denied the annual increment on the ground that the day on which the increment accrued the respective employees - original writ petitioners were not in service.

24. Supreme Court in **C.P. Mundinamani (Supra)** taking note of the various pronouncements of different High Courts held that,

“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 v. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022) and the Himachal Pradesh High Court in the case of Hari Prakash v. State of Himachal Pradesh (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.”

25. In the instant case also, the respondent/writ petitioner superannuated from service one day prior to accrual of his annual increment. The Rules provide for annual increment to be credited on 1st day of July, every year. Accordingly, the respondent was to get the benefits of annual increment on July 1, 2019 but he superannuated on June 30, 2019. Applying the principles laid down in **C.P. Mundinamani (Supra)**, the respondent earned the increment on June 30, 2019 which was to be credited to him with effect from July 1, 2019 but for his superannuation. Since the writ petitioner had already earned the increment on June 30, 2019, upon completion of one year of satisfactory service, he could not be denied the benefits thereof.

26. Moreover, Rule 10 of the CCS Rules provides that ‘in the case of employees whose pay in the revised pay structure has been fixed as on 1st day of January, the next increment in the Level in which the pay was so fixed as on 1st day of January, 2016 shall accrue on 1st day of July, 2016’. Applying the same principle, if an employee whose pay on revision, is fixed on 1st day of January, 2016 his next increment shall accrue on 1st day of July, 2016 i.e. on completion of six months, then there appears no reason why the

writ petitioner, who rendered satisfactory services for a period of one complete year, shall not be granted, in view of his superannuation, an increment which he actually earned.

27. In **N.R. Vairamani (Supra)**, the Hon'ble Supreme Court held that each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

28. In the facts of the present case, the issue which has fallen for our consideration is whether an employee can claim increment, which he earned on the date of his superannuation, a day thereafter. The facts of this case, so far as such issue is concerned, are altogether identical to that of **C.P. Mundinamani (Supra)**. As such, we find no reason not to rely upon such precedent.

29. **N. Ramanaiah (Supra)** deals with the issue of infliction of punishment against a public servant in the context of Article 309-311 of the Constitution of India. The ratio laid down in such case,

by any stretch, is not at all attracted in the facts of the present case.

30. In **Ramjee Prasad (Supra)**, there was a challenge of the fixation of the last date as arbitrary and violative of Article 14 of the Constitution. It was held by the Hon'ble Supreme Court that choice of date was within exclusive discretion of the government and the High Court was in error in striking down the same to be arbitrary. Similar view was expressed by the Supreme Court in **Sadhana Chaudhary (Supra)**. The Supreme Court laid down that it is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. In **N. Subbarayudu (Supra)** also the Supreme Court held that there may be various considerations in the mind of the executive authorities due to which a particular cut-off date has been fixed. These considerations can be financial, administrative or other considerations. The court must exercise judicial restraint and must ordinarily leave it to the executive authorities to fix the cut-off date. The Government must be left with some leeway and free play at the joints in this connection.

Ramrao (Supra) was also rendered in the context of exclusive discretion of the authorities with regard to fixation of cutoff date.

31. Amar Nath Goyal (Supra) was rendered in a case where the cut-off date was fixed as 1-4-1995 on the ground of financial constraints. The challenge to such action by the State was rejected negating the contention that fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offended Article 14.

32. In the case of **Seema Sharma (Supra)** the Supreme Court held that,

“26. This Court cannot interfere with the policy decision taken by the Government merely because it feels that another decision would have been fairer; or wiser as held by this Court in State of Madhya Pradesh v. Narmada Bachao Anadolan reported in (2011) 7 SCC 639 and relied upon and re-affirmed in Sudhir Budakoti (supra).”

33. The ratio laid down in the aforementioned cases, have no manner of application in the facts of the present case. As noted hereinbefore, the date of annual increment was fixed under the recommendations of the Pay Commission in consideration of the date of implementation of recommendations. The Rules provisioned

for satisfactory service for six months as qualifying service for accrual of the increment. The impugned judgment never sought to interfere with the administrative competence of the authorities to attract the ratio laid down in the aforementioned cases.

34. In the light of the discussions made hereinbefore, we find no reason to interfere with the impugned judgment and order. The same is hereby affirmed. Time to comply with the directions contained in the impugned order is extended to four weeks from date.

35. Consequently, the instant appeal being Mat 2526 of 2023 is hereby dismissed, however, without any order as to costs. In view of the disposal of the appeal, connected applications, if any, shall also stand disposed of.

36. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

37. I agree.

[DEBANGSU BASAK, J.]