IN THE HIGH COURT OF MADHYA PRADESH AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

ON THE 5th OF FEBRUARY, 2024

WRIT PETITION No. 2442 of 2024

BETWEEN:-

SHIVCHARAN KAILASIYA S/O LATE SHRI RAMCHARAN, AGED ABOUT 62 YEARS, OCCUPATION: ASSISTANT ENGINEER (RETIRED) PHE GWALIOR SARIKA NAGAR THATIPUR GWALIOR (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SARTAJ SINGH TOMAR - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**

2. **ENGINEER IN CHIEF PUBLIC HEALTH ENGINEERING DEPARTMENT JAL BHAWAN BANGANGA ROAD TT NAGAR (MADHYA PRADESH)**

3. **CHIEF ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT MORAR (MADHYA PRADESH)**

4. **EXECUTIVE ENGINEER PUBLIC HEALTH ENGINEERING DEPARTMENT MOTIJHEEL GWALIOR (MADHYA PRADESH)**

5. **DIST. PENSION OFFICER MOTI MAHAL GWALIOR (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI VIVEK KHEDKAR - AAG)

This petition coming on for admission this day, the court passed the following:

ORDER

1. The instant petition has been preferred by petitioner, under Article 226 of the Constitution of India, being aggrieved by the inaction of the respondents for not extending the benefit of increment. Petitioner, who retired on 30.06.2023, was denied increment on the pretext that he is not entitled.

2. Learned counsel for petitioner submits that whether a government employee retiring on 30th June of a year is entitled to avail the benefit of increment as fixed on 1st of July is being decided by the Supreme Court recently in the case of the **Director (Admn. and HR) KPTCL & Ors. vs. C.P. Mundinamani & Ors., Civil Appeal No.2471/2023 dated 11.04.2023,** wherein after considering the judgments of different High Courts including the Madhya Pradesh High Court it has been held that benefit of annual increment which is to be added on 1st of July every year shall be paid to the employee who is going to be retired on 30th June of the said year. It is further submitted that controversy is now no longer *res integra*. The present petitioner stood retired on 30th June, 2023, therefore, he is entitled to avail the benefit of annual increment which was to be added on 01.07.2023. The said aspect has also been dealt with by the Full Bench of this Court also in the case of **Ratanlal Rathore Vs. The State of Madhya Pradesh and others (Writ Petition No.4118 of 2020)** decided on **28.07.2023.**

3. Learned counsel for respondent/State could not dispute the passing of said order. However, he submits that it appears that SLP arising out of judgment of Division Bench of this Court is still pending consideration before the Supreme Court.

4. Heard the counsel for the parties and perused the documents appended thereto.

5. After going through the judgment delivered by the Apex Court in the

case of **C.P. Mundinamani (supra**), in para 6.3 and 6.7 it appears that the view of M.P. High Court in the case of **Yogendra Singh Bhadauria and ors. vs. State of Madhya Pradesh** has been considered in favour of employee who is retiring on 30th June of that year. Once the Apex Court as well as Full Bench of this Court in the case of **Ratanlal Rathore (supra)** has decided the controversy and found the employee entitled for the benefit of approval of entitlement to receive increment while rendering the services over a year with good behaviour and efficiency then it appears that petitioner has made out his case.

6. As per judgement of Apex Court in the case of ***Rushibhai Jagdishbhai Pathak Vs. Bhavnagar Municipal Corporation, AIR Online 2022 SC 735***, it is clarified that petitioner shall be entitled to arrears for three years prior to the date of filing of the Writ Petition.

7. Resultantly, respondents are directed to grant the benefit of annual increment which was to be added w.e.f. 01.07.2023 and recalculate the benefit of retiral dues and pension etc. and issue fresh pension payment order in favour of the petitioner, if not already issued, that too within a period of three months from the date of submission of certified copy of this order.

8. Petition stands **allowed and disposed of** in above terms.

(ANAND PATHAK)
JUDGE

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