IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2024

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No. 4259 of 2024
and WMP.No. 4572 of 2024

1.The Chief Postmaster General,
Tamilnadu Circle,
Anna Salai,
Chennai-600002.

2.The Senior Superintendent of Post Offices,
Thanjavur Division,
Thanjavur-613001. ..Petitioners

Vs

P.Dakshinamoorthy ..Respondent

Prayer : Writ petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari, calling for the records pertaining to the order dated 08.02.2023 in O.A.No. 379 of 2021 on the file of Central Administrative Tribunal, Regional Bench, Chennai and quash the same.

For Petitioners : Mr.S.Janarthanam
For Respondent :

ORDER

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

Challenging the order passed by the tribunal /5th respondent in O.A.No. 379 of 2021 dated 08.02.2023, the present writ petition has been filed.

2. Brief facts of the case:

The respondent who worked in the petitioners-department had retired from service on 30.06.2008 and was denied one increment though he completed one year of service. The respondent had made representation to the petitioners-department seeking benefit of one increment and the same was rejected by the petitioners-department. Challenging the same, the respondent has filed an application in O.A.No. 379 of 2021 before the tribunal and the same came to be disposed of, directing the petitioners-department to extend the increment payable on 1st July of the perspective year and consequently, revise the pension. Challenging the said order of the tribunal, the present writ petition is filed by the petitioner-department.

3. The similar issue has already been decided by the Hon'ble Division Bench of this Court in W.P.No.16030 of 2019, dated 08.08.2023 by following the decision of the Hon'ble Supreme Court in Civil Appeal No.2471 of 2023 dated 11.04.2023 (The Director (Admn.& HR), KPTCL and others v. C.P.Mundinamani and others). The relevant portion of the judgment is extracted below;

> "3. The issue raised in this writ petition is squarely covered by the judgment of the Hon'ble Supreme Court in Civil Appeal No.2471 of 2023 dated 11.04.2023 (The Director (Admn.& HR), KPTCL and others v. C.P.Mundinamani and others), wherein the Hon'ble Supreme Court has held as follows:-
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> > "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 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."

6.6 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 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 hereinabove, 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).

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."

4. Following the decision of the Hon'ble Supreme Court cited supra, we have also, by order dated 05.07.2023, allowed a similar Writ Petition No.176 of 2019 filed by T.Mani and others by directing the respondents therein to grant one increment for the service rendered by them in the preceding year and also to grant them the revised pensionary benefits along with arrears of pension.

5. The learned Senior Panel Counsel appearing for the respondents 1 to 3 also has not controverted the above cited decision rendered by this Court.

> 6. In the light of the above, even though the petitioner in this case attained the age of superannuation on 30.06.2018, he is entitled to the grant of one increment for the service rendered by him in the preceding year before his retirement i.e., for the period from 01.07.2017 to 30.06.2018 with the consequential retirement benefits i.e., re-fixation of his pension and also for payment of arrears of pension. In fine, the order passed by the Central Administrative Tribunal, Chennai Bench as well as the orders passed by the respondents 2 & 3 are set aside and the writ petition stands allowed by directing the respondents 1 to 3 to grant one increment for the service rendered by the petitioner in the preceding year of his retirement and consequently pay the revised pension along with the arrears to the petitioner, within a period of four months from the date of receipt of a copy of this order. There shall be no order as to costs."

4. In view of the aforesaid decision of the Hon'ble Supreme Court, the order of the tribunal directing the petitioner-department herein to grant one increment to the respondent herein for the service rendered by them in the preceding year and also to grant the revised pensionary benefits as applicable is perfectly valid and does not require any interference by this Court.

5. In the result, the writ petition filed by the department is dismissed. The petitioner-department is directed to grant one increment for the service rendered by the respondent in the preceding year of his retirement and consequently pay the revised pension along with the arrears to the petitioner, within a period of twelve (12) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

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Internet: Yes
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