IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.39194 of 2015

B.V.Dharmalingam ... Petitioner

Vs.

1.State of Tamil Nadu rep. by its
Secretary, Finance (Pension Department)
Fort. St. George, Chennai 600 009.

2.The District Educational Officer
Tiruvallur District
Tiruvallur. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the 2nd respondent in அ.தி.மு.எண் 1971/அ1/2015, dated 25-05-2015 and quash the same thereby consequently direct the respondents to sanction increment on 01-01-2014 and revised the Pensionary benefits with arrears along with interest.

For Petitioner : M/s.A.R.Nixon

For Respondents : Mr.K.H.Ravi Kumar
Government Advocate

O R D E R

The petitioner herein, who worked as Assistant in the office of the 2nd respondent, retired from service on 31.12.2013. The next increment that was due for the petitioner was on 01.01.2014. However, in view of the superannuation of the petitioner on 31.12.2013, the petitioner was not granted increment that was due on 01.01.2014. It was thereafter, the petitioner, having come to know about the orders issued in G.O.Ms.No.311, Finance (CMPC) Department, dated 31.12.2014, made a representation for grant of increment that was due on 01.01.2014, before the 2nd respondent. However, the 2nd respondent rejected the claim of the petitioner on the ground that the orders issued in G.O.Ms.No.311 dated 31.12.2014 are prospective in nature and therefore, the petitioner is not entitled for the award of increment as claimed by him. It is aggrieved by the said order dated 25.05.2015, the petitioner approached this Court by filing the present writ petition.

2. The learned counsel for the petitioner contended that the said G.O.Ms.No.311 dated 30.12.2014 only declared the law as laid down by the Hon'ble Apex Court, however, erroneously it was given effect prospectively from

the date of said Government order. But the petitioner is entitled for grant of increment in the light of law declared by the Hon'ble Apex Court. He also placed reliance on the decision of Hon'ble Apex Court in the case of ***The Director (Admn. And Hr) Kptcl Vs C.P.Mundinamani*** reported in Civil Appeal No.2471 of 2023 dated 11.04.2023. The Hon'ble Apex Court, after having taken note of the decisions rendered by the Delhi High Court, Allahabad High Court and various other High Courts on the identical issue held as under:

> *"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 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."

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 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."

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 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 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."*

This Court has carefully gone through the above decision of the Hon'ble Apex Court, and is fully convinced that the said decision has direct application to the case on hand.

3. In the light of the law laid down by the Hon'ble Apex Court as above, even in the absence of G.O.Ms.No.311 dated 30.12.2014, the petitioner is entitled for grant of increment that was due on 01.01.2014, as the petitioner has completed a full year of service on 31.12.2013 i.e., by the date of his superannuation.

4. In the light of the above, the impugned order is quashed and the respondents are directed to grant one annual increment, that was due on 01.01.2014, to the petitioner and accordingly calculate all the consequential

terminal and other benefits and pay to the petitioner together with arrears, if any. The entire exercise, as directed above, shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

5. Accordingly, this writ petition is allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

28.10.2024

dpa
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1.The Secretary, Finance (Pension Department)
State of Tamil Nadu
Fort. St. George, Chennai 600 009.

2.The District Educational Officer
Tiruvallur District
Tiruvallur.

MUMMINENI SUDHEER KUMAR, J.

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