IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

WP No.8982 of 2024

1.N.Sadaksharam
2.E.Ravindran
3.A.Palani
4.K.Raghupathy
5.R.Ramadoss ... Petitioners

versus

1.The Registrar,
Central Administrative Tribunal,
Chennai Bench,
Chennai- 600 104.

2.Union of India
Represented by the Secretary,
Department of Posts,
Dak Bhawan, Parliament Street,
New Delhi-110 001.

3.The Chief Postmaster General,
Tamilnadu Circle,
Anna Salai,
Chennai-600 002.

4.The Postmaster General,
Central Region,
Tamilnadu Circle,
Tiruchirapalli -620 001.

5.The Superintendent of Post Offices,
Cuddalore Division,
Cuddalore-607 001. ... Respondents

<u>PRAYER:</u> Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus to call for the records of the Central Administrative Tribunal, Chennai Bench pertaining to its common order dated 06.03.2019 in OA Nos.1710 of 2018, 1711 of 2018, 1712 of 2018, 1713 of 2018 and 1714 of 2018 and quash the same and consequently, direct the respondents to grant notional increment for one year service already rendered by the petitioners i.e. with effect from 01.07.2018 in the case of first petitioner, with effect from 01.07.2011 in the case of second petitioner, with effect from 01.07.2014 in the case of third petitioner, increment with effect from 01.07.2016 in the case of fourth petitioner and with effect from 01.07.2012 in the case of fifth petitioner and to refix all the pensionary benefits such as pension, gratuity, commutation etc.

For the Petitioners :Mr.S.Ramaswamyrajarajan

For the Respondents :first respondent-Tribunal
Mr.V.Balasubramanian
for respondents 2 to 5

ORDER

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

The writ petition is filed for the issuance of a certiorarified Mandamus to call for the records of the Central Administrative Tribunal, Chennai Bench pertaining to its common order dated 06.03.2019 in OA Nos.1710 of 2018, 1711 of 2018, 1712 of 2018, 1713 of 2018 and 1714 of 2018 and quash the same and consequently, direct the respondents to grant notional increment for one year service already rendered by the petitioners i.e. with effect from 01.07.2018 in the case of first petitioner, with effect from 01.07.2011 in the case of second petitioner, with effect from 01.07.2014 in the case of third petitioner, increment with effect from 01.07.2016 in the case of fourth petitioner and with effect from 01.07.2012 in the case of fifth petitioner and to refix all the pensionary benefits such as pension, gratuity, commutation etc.

2. Brief facts of the case:

2.1. The writ petitioners herein had joined as Postal Assistant/Postman in the Postal Department in the years 1976, 1974, 1978, 1997, and they have retired from service on 30th of June of respective years. During their service, they got annual increment on 1st of July every year. However, since they had retired from service on 30th June of respective years, the Department has not granted annual increment for the service rendered by them for about 12 months from 1st of July of the particular year to 30th of June of the following year. Hence, the petitioners have given representations to the Department to grant them notional increment, for the purpose of pensionary benefits, but the Department has denied to grant such increment, saying that the Department is governed by Fundamental Rules/Supplementary Rules, which is not yet amended by the Ministry of Finance. Aggrieved by the same, the petitioners have filed OA Nos.1710 of 2018, 1711 of 2018, 1712 of 2018, 1713 of 2018 and 1714 of 2018 before the Central Administrative Tribunal. The Tribunal, by a common order dated 06.03.2019, dismissed the said applications. Aggrieved by the common order of the Tribunal, the petitioners have filed the present writ petition.

3. The issue involved in the present writ petition is as to whether an employee, who has earned the increment one day prior to his retirement is entitled to the same despite the fact that he has retired on the very next day of earning the increment.

4. Learned counsel for the parties agreed that the said issue is squarely covered by a decision of a Division Bench of this Court in WP No.176 of 2019 dated 05.07.2023, wherein the Division Bench has considered the earlier decision of the Hon'ble Supreme Court in Civil Appeal No.2471 of 2023 dated 11.04.2023, and passed order as follows:

> *3. The learned counsel appearing for the petitioners submitted that, in similar matter, one P.Ayyamperumal has filed a writ petition inW.P.No.15732/2017 before this Court seeking annual increment as on first July 2013 and that writ petition was allowed, vide order dated 15.09.2017. Further, in similar matter, challenging the order passed by a Division Bench of Karnataka High Court at Bengaluru in W.A.No.4193/2017 granting one annual increment, the Department had filed Civil Appeal No.2471/2023 before the Hon'ble Supreme Court, wherein, the Hon'ble Supreme Court, vide judgment dated 11.04.2023, has dealt with the issue as to 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 and has decided the matter in favour of the employees, by relying upon the decisions of the various High Courts, including the decision of the Madras High Court in Ayyam Perumal case and dismissed the appeal. Therefore, in the light of the decision of the Hon'ble Apex Court, as stated supra, the petitioners are entitled for one increment as on first of July, since, they had completed one year service on the date, preceding to the date of retirement. He has also placed the above said judgment passed by the Hon'ble Supreme Court dated 11.04.2023.

4. At this juncture, it is useful to rely upon the relevant portion of the judgment of the Hon'ble Supreme Court dated 11.04.2023 in Civil Appeal No.2471/2023 before the Hon'ble Supreme Court, which is extracted hereunder.

> *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 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 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 fortuitouscircumstance."*

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 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.*

Therefore, in the light of the the above decision of the Hon'ble Apex Court,
the writ petitioners are entitled for one increment for the service rendered by them in the preceding one year to the succeeding day, when increment became payable.

5. Accordingly, this writ petition is allowed and the respondents are directed to grant one increment for the service rendered by them in the preceding year and consequently, revise and re-fix the retirement benefits including pension and to pay the arrears of pension to the petitioners, within four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed."

5. In the aforesaid decision of the Hon'ble Supreme Court cited supra, it has been specifically held that even in case where an employee has earned the annual increment one day prior to his retirement but he is not in service the day on which the increment is accrued is concerned, the employee 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.

6. Following the above said decision of the Hon'ble Supreme Court, the Division Bench of this Court in WP No.176 of 2019 dated 05.07.2023, has held in favour of the petitioner employee therein. Therefore, we are of the view that the judgment of the Hon'ble Supreme Court cited supra as well as the aforesaid judgment of the Division Bench of this Court squarely applies to the facts of the case on hand. Hence, we are of the view the order of the Tribunal is liable to be set aside.

7. In view of above, the common order of Tribunal in OA No.1710 of 2018, 1711 of 2018, 1712 of 2018, 1713 of 2018 and 1714 of 2018 dated 06.03.2019 is set aside and the writ petition stands allowed with a direction to the respondent Department to grant one annual increment for the services rendered by the petitioners in the preceding year and consequently, revise and re-fix the retirement benefits including pension and to pay the arrears of pension to the petitioners, 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.

[D.K.K., J.] **[K.B., J.]**

10.04.2024

Index : Yes/No
Neutral Citation : Yes/No
mrn

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D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.

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