IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.Nos.11288 and 11293 of 2024 and

WMP No.12380 and 12383 of 2024

Pdmanabhan, G.D. ... Petitioner in W.P.No.11288/2024

N.Jayakanthan ... Petitioner in W.P.No.11293/2024

Vs.

Union of India,
rep. by the Senior Superintendent of Post,
Department of Postal, Tambaram Division,
Tambaram, Chennai 600 045. ... Respondent in both writ petitions

Prayer in W.P.No.11288 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the Central Administrative Tribunal, Madras Bench pertaining to its order in O.A.No.369 of 2019 dated 27.03.2019 and quash the same and also by directing the respondent to extend the benefits of the order dated 15.09.2017 passed by this Court in W.P.No.15732/2017 to the petitioner, grant him annual increment for the year 2013 and refix his pensionary benefits.

Prayer in W.P.No.11293 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, calling for the records of the Central Administrative Tribunal, Madras Bench pertaining to its order in O.A.No.368 of 2019 dated 27.03.2019 and quash the same and also by directing the respondent to extend the benefits of the order dated 15.09.2017 passed by this Court in W.P.No.15732/2017 to the petitioner, grant him annual increment for the year 2013 and refix his pensionary benefits.

In both writ petitions

For Petitioner : Mr.V.Raghupathi

For Respondent : Mr.V.Balasubramanian,
Senior Panel Counsel

ORDER

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

Both the writ petitions have been filed to quash the order passed by the Tribuanl in O.A.No.368 & 369 of 2019 dated 27.03.2019 and consequently, direct the respondent to grant annual increment for the year 2013 and re-fix the pensionary benefits of the petitioner by extending the benefits of the order dated 15.09.2017 passed by this Court in W.P.No.15732/2017.

2. The petitioners had joined as Postman in the Postal Department in the year 1979 and 1980 and they had retired from service on attaining the age of superannuation on 30.06.2013. During their service, they got annual increment in the first July of every year. However, since they had retired from service on 30.06.2013, the department has not granted annual increment for the service rendered by them for about 12 months from first July of the particular year to 30th June of the following year. Therefore, the petitioners had filed the original applications before the Tribunal, but the Tribunal has dismissed the above applications. Challenging the same, this writ petition has been filed.

3. The learned counsel appearing for the petitioners fairly submitted that, the issue involved in these writ petitions are squarely covered by the

earlier decision of this Court in ***T.Mani and others Vs. Union of India and others (W.P.No.176 of 2019 dated 05.07.2023)***, wherein, this Court, by relying upon a decision of the Hon'ble Supreme Court, has passed the following order.

> 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 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 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."

6.6 The Allahabad High Court in the case of **Nand Vijay Singh (supra)** while dealing with the same issue has observed and held inparagraph 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 herein above, 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.

The learned counsel for the petitioners submitted that in the light of the aforesaid decision, the petitioners are also entitled to the similar relief and hence, the same may be granted them. The learned Standing Counsel appearing for the respondent has not disputed the above said fact.

4. In the light of the aforesaid decision of this Court, these writ petitions are allowed and the impugned orders passed by the Tribunal are set aside. The respondent is directed to grant one increment for the service rendered by them in the preceding year and consequently revise and refix the retirement benefits, including pension and to pay arrears of pension to the petitioners, within a period of tweleve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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

26.04.2024

Internet: Yes/No
Index : Yes/No
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To

The Senior Superintendent of Post,
Union of India, Department of Postal,
Tambaram Division, Tambaram,
Chennai 600 045.

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

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