IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.No.20569 of 2023 and

WMP No.19954 of 2023

1. Union of India,
   rep. by the Principal Chief Controller of Accounts,
   Central Board of Excise and Customs,
   IP Estate, AGCR Buildings (first floor),
   New Delhi 110 002.

2. Deputy Controller of Accounts,
   CBIC, Central Excise Buildings,
   Room No.202, II Floor, 26/1,
   Uthamar Gandhi Salai, Chennai 600 034.

3. Pay and Accounts Officer,
   O/o the Commissioner of Central Excise,
   6/7, ATD Street, Race Course,
   Coimbatore 641 018. ... Petitioners

Vs.

1. The Registrar, Central Administrative Tribunal,
   Madras Bench, High Court Building,
   Chennai-104.

2. P.Durairaj ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari, calling for the records of the Tribunal in its impugned order dated 10.02.2023 in O.A.No.370/2021 and quash the same.

For Petitioners : Mr.M.Karthikeyan

For Respondents : R1- Tribunal

R2- No appearance

ORDER

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

This Writ petition has been filed to quash the order passed by the Central Administrative Tribunal, Chennai in OA/370/2021, dated 13.01.2023.

2. The second respondent herein was working as Assistant Accounts Officer in the office of the Pay and Accounts Office, CBIC, Coimbatore and he had retired from service on superannuation on 30.06.2015. At the time of his retirement, the petitioners did not grant one notional increment with DA to the second respondent, though he was in continuous service for one year from 01.07.2014 to 30.06.2015, since Rule 10 of the Central Civil Services (Revised Pay) Rules, 2018 says the increment shall be granted on 1st July.

Hence, the second respondent had sent a representation to the department to grant one increment notionally, but the same was rejected, vide order dated 13.01.2023.

3. As against the above rejection order dated 13.01.2023, the second respondent filed O.A.No.370/2021 and it was allowed by the Central Administrative Tribunal, Chennai Bench, directing the Department to extent the increment payable on first July of the respective year and also to revise the pension, subject to fulfillment of other conditions. Further, the Tribunal has directed that Department that, while extending such benefits, a clause shall be incorporated to the effect that in case the Hon'ble Supreme Court takes a different view in the Civil Appeal arising out of SLP No.4722/2021, the second respondent shall be under obligation to refund the entire benefit without any demur. Challenging the above said order passed by the Tribunal, this Writ petition has been filed.

4. The learned counsel for the petitioners submitted that as against the

order passed by the Central Administrative Tribunal, Bangalore Bench in O.A.No.170/677/2019 dated 24.06.2021, which is similar to the facts of the present case, the Department had filed Writ Appeal before the Karnataka High Court and the Karnataka High Court had decided the matter in favour of the employees. Against which the Department had filed SLP No.4722/2021 before the Hon'ble Supreme Court and it was pending while passing the impugned order by the Tribunal .

5. He further submitted that, the said SLP (C) No.4722/2021 was disposed of on 19.05.2023 by the Hon'ble Supreme Court holding that the appeal is squarely covered by a judgment rendered in Civil Appeal No.2471/2023, dated 11.04.2023 titled as Director (Admn. and HR) KPTCL and others Vs. C.P.Mundinamani and others (2023) Online SC 401. He also produced the copy of the order in SLP No.4722/2021, dated 19.05.2023 as well as the Civil Appeal No.2471/2023 (arising out of SLP (C) No.6185/2020, dated 11.04.2023 before this court.

6. 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).**
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> 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.

7. It is to be noted that, a Division Bench of this Court, ***in a similar matter in W.P.No.176/2019 dated 05.07.2023,*** following the decision of the Hon'ble Supreme Court in C.A.No2471/2013, dated 11.04.2023 cited supra, has decided the matter in favour of the employee/writ petitioner. Therefore, in the light of the the above decision of the Hon'ble Apex Court, as well as the Division Bench of this Court, cited supra, we are of the view that the second respondent/writ petitioner is entitled for one increment for the service rendered by him in the preceding year along with DA and hence, we are not inclined to interfere with the orders passed by the Tribunal.

8. Accordingly, this writ petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed. The petitioners are directed to comply the order of the Tribunal, within a period of twelve weeks from the date of receipt of a copy of this order.

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

05.07.2024

Internet: Yes/No
Index : Yes/No
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To

The Registrar, Central Administrative Tribunal,
Madras Bench, High Court Building,
Chennai-104.

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

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W.P.No.20569 of 2023

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