

RA-CW-74-2024 in
CWP-19142-2020

-1- 2024:PHHC:034182

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RA-CW-74-2024 in
CWP-19142-2020
Date of Decision :06.03.2024

Rajesh Kumar and others

...Petitioners/
non-applicants

Versus

State of Haryana and others

....Respondents/applicants

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Deepak Balyan, Advocate
for the review-applicant/respondents.

* * *

Harsimran Singh Sethi, J. (Oral)

1. Present review application has been filed on the ground that when the main writ petition was decided by this Court on 12.10.2023, learned counsel appearing on behalf of the review-applicant had wrongly conceded the fact that the issue raised in the writ petition is covered by the judgment of the Hon'ble Supreme Court of India in **Civil Appeal No.2471-2023 titled as The Director (Admn. And HR) KPTCL and others vs. C.P. Mundinamani and others decided on 11.04.2023.**

2. Learned counsel for the review-applicant submits that an appeal was preferred by the respondent-department against the order dated 12.10.2023, which was dismissed by the Division Bench of this Court vide order dated 08.02.2024 and the order dated 12.10.2023 has been upheld but

as the permission has been given to file the present review application, the same has been filed.

3. It may be noticed that the grievance which was raised in the writ petition was that the employee concerned had completed 12 months of service before attaining the age of superannuation but the increment for the said service period was not granted, which was being claimed by the employee concerned.

4. The claim of the petitioner was objected by the respondents in the written statement on the ground that the increment was to be granted on the next date of the retirement of the employee concerned hence, as on the date of the grant of the increment, the employee concerned was not in service, no benefit of the increment could be granted.

5. It may be noticed that the said question came up for consideration before the Hon'ble Supreme Court of India in **Civil Appeal No.2471-2023 titled as The Director (Admn. And HR) KPTCL and others vs. C.P. Mundinamani and others** wherein, the Hon'ble Supreme Court of India has held that an annual increment which the employee therein earned on the last day of service, for rendering service for a period of one year upto the date of retirement is admissible. The ground raised on behalf of the department that increment only accrues from the date following the date on which the same is earned and the employee had already retired on the said date was rejected by the Hon'ble Supreme Court of India. Relevant paragraph of the judgement in **C.P. Mundinamani (supra)** is as under:-

3.3 On merits, Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants has vehemently submitted that the words used in Regulation 40(1) of the Regulations are very clear and unambiguous. It is submitted

that it categorically provides that “an increment accrues from the day following that on which it is earned.” It is submitted that therefore, when the right to get the increment is accrued the employee must be in service. It is submitted that in the present case when the right to get the increment accrues in favour of the respective respondents they were not in service but on their superannuation retired from the services. It is submitted that therefore, they shall not be entitled to the annual increment which might have been earned one day earlier i.e., on the last day of their service.

3.4 It is further submitted by Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants that the annual increment is in the form of a good service and it is an incentive so that the concerned employee may serve effectively and may render good services. It is submitted that therefore, when the concerned employees are not in service due to their retirement there is no question of grant of any annual increment which as such is in the form of incentive to encourage the employee for better performance.

3.5 Shri Ahmadi, learned Senior Advocate appearing on behalf of the appellants has also taken us to the definition of the word “accrue” in the Law Lexicon (the encyclopaedic law dictionary) and the definition of the word “increment.” It is submitted that as per the Law Lexicon, “increment” means a unit of increase in quantity or value. It means a promotion from a lower grade to a higher grade. As per the definition “increment” means an upward change in something. It is submitted that as per the Law Lexicon the word “accrue” means to come into existence as an enforceable claim or right. It is submitted that therefore, on true interpretation of Regulation 40(1) of the Regulations, an increment accrues from the day following that on which it is earned. It is submitted that therefore, the Division Bench of the High Court has materially erred. It is submitted that therefore, the view taken by the Division Bench of the High Court and other High Courts that the concerned employees shall be entitled to the benefit of one annual increment which they earned one day prior to their retirement is erroneous and is on mis-interpretation of the relevant statutory provisions. Making the above submissions, it is prayed to allow the present appeal.

4. Learned counsel appearing on behalf of the respective employees – respondents, has heavily relied upon the decision of the Madras High Court in the case of P. Ayyamperumal (supra) and the decisions of the Gujarat High Court, the Delhi High Court, the Allahabad High Court, the Madhya Pradesh High Court and the Orissa High Court taking the view that the concerned employees who earned the annual increment for rendering one year service prior to their retirement they cannot be denied the benefit of the annual increment which they actually earned, solely on the ground that they retired on attaining the age of superannuation on the very next day. It is submitted that therefore, the Division Bench of the High Court has not committed any error in allowing one annual increment in favour of the respective employees which they actually earned.

4.1 Making the above submissions, it is prayed to dismiss the present appeal.

5. We have heard learned counsel appearing on behalf of the respective parties.

6. The short question which is posed for the consideration of this Court is 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?

6.1 In the present case, the relevant provision is Regulation 40(1) of the Regulations which reads as under: -

40(1) An increment accrues from the day following that on which it is earned. An increment that has accrued shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from an employee by the competent authority, if his conduct has not been good, or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.” 6.2 It is the case on behalf of the appellants that the word used in Regulation 40(1) is that an increment accrues from the day following that on which it is earned and in the present case the increment accrued on the day when they retired and therefore, on that day they were not in service and therefore, not entitled to the annual increment which they might have earned one day earlier. It is also the case on behalf of the appellants that as the increment is in the form of incentive and therefore, when the employees are not in service there is no question of granting them any annual increment which as such is in the form of incentive.

6.3 At this stage, it is required to be noted that there are divergent views of various High Courts on the issue involved. The Full Bench of the Andhra Pradesh High Court, the Himachal Pradesh High Court and the Kerala High Court have taken a contrary view and have taken the view canvassed on behalf of the appellants. On the other hand, the Madras High Court in the case of P. Ayyamperumal (supra); the Delhi high Court in the case of Gopal Singh Vs. Union of India and Ors. (Writ Petition (C) No. 10509/2019 decided on 23.01.2020); the Allahabad High Court in the case of Nand Vijay Singh and Ors. Vs. Union of India and Ors. (Writ A No. 13299/2020 decided on 29.06.2021); the Madhya Pradesh High Court in the case of [Yogendra Singh Bhadauria and Ors. Vs. State of Madhya Pradesh](#); the Orissa High Court in the case of AFR Arun Kumar Biswal Vs. State of Odisha and Anr. (Writ Petition No. 17715/2020 decided on 30.07.2021); and the Gujarat High Court in the case of [State of Gujarat Vs. Takhatsinh Udesinh Songara \(Letters Patent Appeal No. 868/2021\)](#) have taken a divergent view than the view taken by the Full Bench of the Andhra Pradesh High Court and have taken the view that once an employee has earned the increment on completing one year service he cannot be denied the benefit of such annual increment on his attaining the age of superannuation and/or the day of retirement on the very next day.

6.4 Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day [in that case](#) also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted. 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 crystallizes 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 d any object is to be achieved by it. The central government servant retiring on 30th June has already completed a year of service an

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 it 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 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 it 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 interpreted 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 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.

6. On being asked to point out as to how the judgment of the Hon'ble Supreme Court of India in [C.P. Mundinamani \(supra\)](#) does not cover the claim of the present petitioners, who had also rendered 12 months service on the date when they had attained the age of superannuation and retired, learned counsel for the review-applicant has not been able to point out any distinguishable fact except that Rule-10 of the Haryana Civil Service (Pay Rules), 2016 only envisaged the grant of increment from a particular date and the petitioner had retired one day prior to the said date fixed.

7. It may be noticed that in the case before the Hon'ble Supreme Court of India, the petitioner therein had also retired one day prior to the grant of increment but still entitlement of the petitioner therein for increment was upheld. No differentiating fact between the petitioners herein and the petitioner in the case before the Hon'ble Supreme Court of India has been brought to the notice of this Court.

8. It may be seem that a new trend has been brought into operation by the State by initially agreeing to the relief and, thereafter, filing a review petition. The present review petition has been filed even after the dismissal of the LPA by the Division Bench of this Court. The order sought to be reviewed in the present review petition was dictated in the Court itself and once, the counsel appearing for the review-applicant conceded the fact and even during the hearing of the present review petition, nothing has been brought to the notice of this Court as to how the judgment of Hon'ble Supreme Court of India in **C.P. Mundinamani (supra)** is not applicable upon the petitioners herein, still the review has been preferred.

9. Probably, review petitions are being preferred under the instructions of the department, even though, counsel addressing the review petition or main petition might not be convinced with the view of the department.

10. Keeping in view the facts and circumstance recorded hereinbefore, present review petition is dismissed with cost of Rs.10,000/- to be deposited with Prabh Aasra, (Unit of) u/o Universal Disabled Care Taker Social Welfare Society (who are maintaining Orphans) in Bank Account No.014894600000970, Yes Bank Branch, SCO 151/152, Sector 9-

C, Chandigarh or A/C No.100035657241 of Indusind Bank Sector 54 Phase II Mohali Branch by the officer, who had decided to file the present review petition, even after the dismissal of the LPA, from his own pocket, which amount will not reimbursed by the department concerned.

March 06, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No