

(2024) 01 GUJ CK 0099

In the Gujarat High Court

Case No : R/Special Civil Application No. 15673 Of 2023

Bharatkumar Mohanbhai Desai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2024) 01 GUJ CK 0099

Hon'ble Judges : Aniruddha P. Mayee, J

Bench : Single Bench

Advocate : NK Majmudar, Hetal Patel

Final Decision : Allowed/Disposed Of

Judgement

Aniruddha P. Mayee, J

1. Learned advocate Mr. Shivam Majmudar appearing on behalf of learned advocate Mr. N. K. Majmudar for the petitioners has submitted a draft amendment seeking to add the District Development Officer, Sabarkantha as respondent No.3. The draft amendment is allowed and the same be carried out forthwith. Learned advocate Ms. Archana Acharya accepts notice on behalf of the newly added respondent No.3 and she is permitted to file her Vakalatnama.

2. The present Special Civil Application is filed praying for the following reliefs:-

"A. YOUR LORDSHIP may be pleased to admit this petition;

B. YOUR LORDSHIP may be pleased to issue appropriate writ, order or direction and quash and set aside the action of the respondent authorities of not releasing the periodical / yearly increment preceding for discharge of duties by the petitioners for a period preceding the one year preceding the 1st week of July of respective calendar year in which the petitioners attended the age of superannuation and therefore the said action of the respondent authorities for not releasing the last yearly/ periodical increment to the petitioners though the

petitioners have attended the age of superannuation on 30th June of the respective calendar year and became eligible and entitled to get yearly increment. the aforesaid action for not releasing the yearly increment is arbitrary and illegal;

C. Be pleased to direct the respondent authorities to pass appropriate order for making payment/for releasing the periodical yearly increment/increments which has become due and payable to the petitioners as the basis of discharge of duties from the 1st week July of respective calendar year in which the petitioners attended the age of superannuation and the Hon'ble Court may issue further direction to the respondent authorities or may kindly be directed to recalculate "Last Pay" drawn by the petitioners after addition of yearly/ periodical increment in the "Salary & Wages" of the petitioners and the Hon'ble Court May kindly direct the respondent authorities to recalculate/revise the pension/gratuity/leave encashment and other consequential benefits after addition of the aforesaid increment in the "Last pay drawn" by the petitioners and the difference of salary may kindly be ordered to be paid with 12% interest from the respective date of superannuation of the petitioners;

D. by way of interim order be pleased to direct the respondent authorities to take decision to release the Last earned yearly increment to the petitioners;

E. Pass such orders as thought fit in the interest of justice."

3. The factual matrix in the present case is that the petitioners retired from the service on 30th June on attaining the age of superannuation. It is the case of the petitioners that they have rendered one full year of service before their retirement and therefore, they were entitled to get the benefit of annual increment for the said period of service. That, as per the policy of Government, the said increments fall due on 1st July in respect of the petitioners. However, as the petitioners had retired from service on 30th June, they were not granted the said benefit of annual increment for the said period. The learned advocate for the petitioners has given the service details of the petitioners as per Annexure-A in tabular form. Aggrieved, the petitioners have preferred the present Special Civil Application.

4. Learned advocate appearing on behalf of the petitioners submits that the issue with respect to grant of increment after retirement has now been settled in the decisions by the Division Bench of this Court as well as by the Hon'ble Supreme Court. He submits that in the case of State of Gujarat vs. Takhtsinh Udesinh Songara and anr., being Letters Patent Appeal No.868 of 2021 decided on 27.04.2022, the Division Bench of this Court has held that the government servant is entitled to increment becoming payable on 1st July and the retirement of the government servant on the day prior to the increment becoming payable is only fortuitous circumstance. He submits that the said judgment was challenged before the Hon'ble Supreme Court by way of preferring Special Leave Petition (Civil) Diary No. 26295 of 2022 and the Hon'ble Supreme Court was pleased to dismiss the Special Leave Petition since the order of the Division Bench was

complied with by the State Government and the issue was kept upon as the issue was at large in other matters pending before the Hon'ble Supreme Court. He further submits that the Hon'ble Supreme Court in the case of Director (Admn. And HR) KPTCL and ors. vs. C. P. Mundinamani and ors. being Civil Appeal No.2471 of 2023 by its judgment dated 11.04.2023, has upheld the view of the Division Bench of this Court in Takhatsinh Udesinh Songara (supra). It has been held that 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, would be arbitrary and unreasonable. It was held that 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. It was further held that 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 that for rendering the services over a year with good behaviour and efficiently and therefore, such a narrow interpretation should be avoided. He further submits that the Division Bench of this Court in the case of State of Gujarat vs. Prahladbhai Haribhai Patel and ors. being Letters Patent Appeal No.277 of 2023 and connected appeals decided on 19.04.2023, relying upon the judgment of the Hon'ble Supreme Court in Director (Admn. And HR) KPTCL [supra] has dismissed the said Letters Patent Appeals involving the same issue.

5. Per contra, learned Assistant Government Pleader submits that in view of the decision in the case of Takhatsinh Udesinh Songara (supra), the State Government had implemented the decision of this Court and the Special Civil Application came to be dismissed keeping the question of law open. He does not dispute that thereafter, the Hon'ble Supreme Court has since settled the issue and held that the government servant is entitled to one increment after his retirement and that the learned Division Bench has also dismissed the Letters Patent Appeals involving the same issue.

6. Heard learned advocates for the respective parties and perused the documents on record.

7. The Hon'ble Supreme Court in the case of Director (Admn. And HR) KPTCL [supra] has held as under :-

"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 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 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)."

7.1 The Division Bench of this Court in Prahladbhai Haribhai Patel (supra) has held as under:-

"11. We have perused the documents which are placed on record and we have also considered the submissions canvassed by the learned advocates for the respective parties. It is not in dispute that the learned Single Judge has allowed all the captioned petitions after placing reliance upon the order dated 27.04.2022 rendered by the Division Bench of this Court in Letters Patent Appeal No.868 of 2021 in the case of State of Takhatsinh Udesinh Songara (supra), wherein the Division Bench of this Court has observed as under:

"5.2 The view taken by the Madras High Court in P.Ayyamperumal (supra) and by Delhi High Court in Gopal Singh (supra) and other High Courts as above, holding that the government servant is entitled to increment becoming payable on 1st July, even though he has retired on 30th June, is required to be accepted. This

court is in concurrence with the view taken in the aforesaid decisions by the Madras High Court and the Delhi High Court and the reasons supplied therein. This court is unable to subscribe to the converse view taken by High Courts of Himachal Pradesh and Rajasthan.”.

8. In view of aforesaid decisions and the law laid down, the petitioners are held to be entitled to one increment due on 1st July of the respective years of retirement in respect of the petitioners. The respondent authorities are directed to revise the pension and other retirement benefits of the petitioners accordingly. The revised pension, arrears and the retirement benefits shall be paid to the petitioners within a period of twelve weeks from the date of receipt of this order, failing which, the said amount shall carry interest at the rate of 6% per annum till the same is paid.

9. In view of the aforesaid observations, the Special Civil Application is allowed and disposed of accordingly. No order as to costs. Direct service is permitted.