

(2023) 10 MP CK 0113
In the Madhya Pradesh High Court
Case No : Writ Petition No. 26986 Of 2023

Dr. Ashok Verma

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 25-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005
— Section 2(A)

Citation : (2023) 10 MP CK 0113

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Neerja Patne, Koustubh Pathak

Final Decision : Disposed Of

Judgement

Subodh Abhyankar, J

This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

"(a) - to call for the relevant records of the case from the respondents;

(b) to command the respondents to add one annual increment payable to the petitioner w.e.f 1.7.2022 for the purpose of calculation of his retiral benefits such as Pension, Gratuity, Leave Encashment etc. and to revise the retiral benefits payable to the petitioner and to release arrears thereof along with interest @ 12% per annum, by a 'writ of MANDAMUS or any other appropriate writ, direction or order;

(c) 'allow this petition with costs;

(d) pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the petitioner."

Counsel for the petitioner submits that the case of the petitioner is squarely

covered by the order passed by the Division Bench of this Court at Gwalior in the case of Yogendra Singh Bhadauria and Ors. Vs. State of Madhya Pradesh and Ors. W.A. No.645 of 2020 dated 22.09.2020 , which reads as under:-

"The instant writ appeal has been filed under Section 2(A) of M.P. Uchcha Nyayalay (Khand Peeth Ko Appeal) Adhiniyam, 2005 assailing the final order dated 06.03.2020 passed in WP 25702/2019 by learned Single Judge while exercising writ jurisdiction under Article 226 of the Constitution, disposing of the petition in question whereby the following reliefs have been made :

"(i) Provide benefit of annual increment to petitioners; (ii) Re-fix the pension and pay the differential amount of pension and other arrears such as Gratuity and Leave Encashment with interest.

(iii) Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case may also kindly be granted."

Learned writ court directed the official respondents to consider the claim of petitioners/appellants for grant of one increment which shall due on 1st of July which was a day after the date of superannuation of each of the petitioners, after taking into account the order passed by the Madras High Court in the case of P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal & ors. (writ petition No.15732 of 2017) which was affirmed by the Supreme Court in SLP (Civil) Diary No.22283/2018 and as per the entitlement under the service Rules. A further direction was given that in case petitioners are entitled for payment of one annual increment, then the same be released or else reasons for denial be communicate by a speaking order.

While so disposing of the petition in question, the writ court though recognized the cause raised by the petitioner to be recurring in nature but declined grant of consequential benefits of arrears of pension and interest on the ground of the petitioners having approached to the court with delay and latches.

The instant appeal is filed for seeking arrears of pension and interest.

After hearing learned counsel for the rival parties, this Court is of the considered view that petitioners/appellants are entitled to the arrears of pension and so also to interest for the reasons infra.

(i) It is not disputed at the bar that the cause of non grant of increment due on 1st of July in different years in case of the petitioners had direct effect of proportionately reducing the pension which was being paid to the petitioner on the monthly basis since their retirement. Thus the cause raised was of a recurring nature.

(ii) The issue of entitlement of an employee retiring on 30th June to an increment which was due w.e.f. 1st July, came to be adjudicated by the Division Bench of Madras High Court for the first time on 15.09.2017 in the case of P. Ayyamperumal Vs The Registrar & Ors (WP 15732 of 2017) vide P/4 interpreting

the Central Civil Services (Revised Pay) Rules, 2008 held that the entitlement of one annual increment to an employee is dependent upon the employee completing one year of service. It was thus held that an employee superannuating w.e.f. 30th June had completed one year of service on 30th June and therefore, became entitled to the increment. The Division Bench held that whether the increment becomes due from 1st of July or from any subsequent date is irrelevant once the employee has completed one year of service. Thus it was held by the Division Bench that just because Rule stipulates that increment would be due from 1st of July, it does not mean that an employee who had superannuated on 30th June would not be entitled to the said increment merely because he was not in service on 1st July. The Division Bench of Madras High Court therefore, quashed the order of Central Administrative Tribunal Madras Bench and granted relief to the employee therein to the following effect:

"7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs"

Learned counsel for the State has raised objection as to grant of arrears of pension and interest by submitting that six petitioners/ appellants herein had superannuated on 30th June but in different years ranging from 2010, 2012, 2013, 2014 and 2015. It is submitted that the cause of non grant of increment due from 1st of July i.e. a day after their retirement became known to them on the receipt of depressed pension immediately after their retirement. Thus the objection is that the petitioners who have approached this court late by filing the petition in the year 2019 without explaining delayed approach are not entitled to the arrears of pension and interest.

The question of delay causing an adverse effect to the claim of consequential benefit of arrears would arise only if the cause raised is a one time cause of action. Undoubtedly the cause of receipt of depressed pension on account of non grant of increment is a recurring cause of action which arose to the petitioner every month they received proportionately depressed pension. Thus in the considered opinion of this court all the petitioners/appellants are entitled to arrears of pension.

A further argument/objection which was raised by the State was that the quantum of arrears at best cannot be more than 3 years prior to the date of filing of petition, which is the period under the Limitation Act prescribed for raising money claim, in a civil court.

This argument of the State is heard to be rejected since denial of even a fraction of arrears of pension would amount to denial of right to livelihood which is a part and parcel of the right to life a fundamental right in the Constitution. Undeniably there is no limitation fixed for invoking power of judicial review under Article 226 of the Constitution but the petitioner concerned has to satisfy the Court if the approach to the court is delayed. Once it is held (supra) that the cause of action raised by the petitioner is a recurring cause of action then the question of restricting the arrears of pension does not arise.

Another objection raised by the learned counsel for the State and its functionaries is that assuming without admitting that petitioners are entitled to arrears of pension but the same cannot be granted for a period prior to the Supreme Court dismissed the SLP filed against the order of Division Bench of Madras High Court passed in P. Ayyamperumal (supra).

The argument/objection raised appears to be ostensibly plausible and attractive but in actuality is not. Since this Court has already held that the Madras High Court for the first time and later different High Courts including this Court merely explained correct meaning and purpose of the Rule and did not interpret Rule in the manner for the first time which was never understood earlier. The Rule as stood since its inception was clearly understood to mean that increment becomes due on completion of one year of service. Since there was no further requirement of the entitlement to reach the beneficiaries only when the beneficiary is in service on the due date of increment, it was incumbent upon the employer to understand the plain meaning of the Rule. Instead the employer interpreted the Rule on its own interest which led to financial benefit to the employer and corresponding pecuniary loss to the employee. In this manner, the benefits of arrears of pension which fell due even prior to the dismissal of SLP filed against the order of Division Bench of Madras High Court cannot be denied to the petitioners.

Thereafter comes to the question of entitlement of interest over the arrears of pension. The interest over a particular monetary claim is ordinarily granted where it was found that the claim due under the law was wrongfully denied. Thus just to compensate the petitioner for the financial loss owing to the devaluation of the currency and the delayed grant of justice from the period of arising of the cause till the grant of relief, courts do grant interest.

In the instant case, the Central Civil Services (Revised Pay) Rules, 2008 provides that an increment would become due to an employee on completion of one year of service. However, for administrative and accountancy purposes the employer fixes a particular date for grant of increment, which in the instant case was 1st of July. The Rules nowhere stipulate that on the due date of increment i.e. 1st of July, the employee concerned must be in service. Thus in the case of petitioner, the employer without any supportive statutory provision was interpreting the Rule in a manner which financially benefited the employer by denying one increment due on the 1st of July to all those employees/officers who retired on

30th June. This act on the part of employer was not only against the spirit of Rules but also in defiance of its claim of being a welfare State.

Consequently, the picture that emerges from the act of employer in the present case is that the increment due to the petitioner on 1st July was withheld not only against the Rules but by twisting and misinterpreting the Rule to suit the employer to the detriment of petitioner.

Moreso the Division Bench of Madras High Court on 15.09.2017 and thereafter the Apex Court on 23.07.2018 while declining to admit the SLP of Union of India, merely explained the rule position without causing any normal interpretation or carving out a new meaning of rule which could not be deciphered earlier by truthful and honest interpretation of the Rule. Thus the decision of the Madras High Court and all the subsequent decisions of this Court following the Madras High Court verdict gave correct meaning of the rule position which was being misinterpreted by the employer and therefore, the Rule regarding grant of increment on completion of one year of service and not on deem in service on the due date of increment could very easily be understood by any man of ordinary prudence by truthful and honest reading of the Rule.

Accordingly, the judgment of Madras High Court and all subsequent judgments in the same lines are retrospective in nature as they did not work out any new interpretation of the rule which was not understood earlier. The judgments merely explain the Rule as stood since the beginning. From the above discussion, it is clear that non-grant of increment to the petitioners was due to the misinterpretation of the rule position by the employer and therefore, the employees i.e. petitioners/appellants ought not to be suffered because of the same. Thus the entitlement of the interest over the arrears of pension cannot be taken away from the petitioners.

Accordingly, this Court allows this WA in the following terms:

(i) The official respondents are directed to release the increment due to the appellants w.e.f. 01.07.2014, 01.07.2010, 01.07.2013, 01.07.2012, 01.07.2015 and 01.07.2015 respectively.

(ii) The pension be refixed after adding the grant of aforesaid increment and the arrears of pension be paid to the petitioners.

(iii) The petitioners are entitled to interest over the aforesaid arrears of pension @ 10% p.a. from the date the arrears became due till their payment.

(iv) Despite the rule position having been explained by the Division Bench of Madras High Court on 15.09.2017 against which Supreme Court declined to entertain the SLP of the employer on 23.07.2018, the official respondents ought to have offered the benefit of one increment to the petitioners without compelling the petitioners to approach the court in the evening of their life. Not having done so,

the official respondents have failed to adhere to the policy of the Government of being a welfare State and therefore, respondents are liable to pay cost of this litigation to the petitioners which are quantified at Rs. 5000/- to each of the petitioners.

(v) The aforesaid direction be complied with within a period of 60 days from the date of receipt copy of this order."

Counsel for the State has not disputed the same.

Having considered the submissions made by the counsel for the parties, the present petition stands disposed of on the same terms by holding that the direction issued in the case of Yogendra Singh Bhadauria & Ors. (supra), except the cost, will apply mutatis mutandis in the present case also.

C.c. as per rules.