(2024) 11 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : CWP No.744, 2388 Of 2024

Surjit Singh APPELLANT

Vs

State Of H.P. & Ors RESPONDENT

Date of Decision : 26-11-2024

Acts Referred:

Citation : (2024) 11 SHI CK 0064

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Subhash Sharma, Prantap Sharma, Amandeep Sharma, Rangil Singh, Tek Ram Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. With the consent of learned counsel for the parties, both the matters are heard at this stage.

2. Both petitioners, Surjit Singh (aged 62 years) and Avtar Singh (aged 59 years), seek directions to the respondents to grant them one notional increment for the service rendered by them during the year preceding their respective retirements. Specifically:-

· Petitioner-Surjit Singh claims notional increment for the period 01.10.2018 to 30.09.2019, having retired on 30.09.2019.

· Petitioner-Avtar Singh claims notional increment for the period 01.05.2021 to 30.04.2022, having retired on 30.04.2022.

The petitioners challenge the rejection of their claims by the respondents through communications dated 20.09.2023 (Surjit Singh) and 04.10.2023 (Avtar Singh).

3. The grievance of the petitioners is that their representations seeking notional increment for the services rendered by them preceding one year before their

retirement have been wrongly rejected by respondent No.3 on 20.09.2023 (Surjit Singh) and 04.10.2023 (Avtar Singh). The contention raised for the petitioners is that such rejection is not in conformity with law laid down by the Hon'ble Apex Court in the Director (Admn. and HR) KPTCL & Ors. Vs. C.P. Mundinamani & Ors. Civil Appeal No. 2471/2023 & SLP(C) No. 6185/2020 decided on 11.04.2023.

4. Heard. Respondent No.3 while rejecting the cases of the petitioners under orders dated 20.09.2023 (Surjit Singh) and 04.10.2023 (Avtar Singh), has made a strange observation that "judgment passed by the Hon'ble Supreme Court of India is not applicable upon all Government employees of State/Centre". Respondent No.3 is the Additional Director General of Police (CID), Himachal Pradesh. It is expected from such a high ranking official to go through the judgment being relied upon by the petitioners before rejecting their cases. Respondent No.3's opinion is based upon following clarification offered on 26.08.2023 by the Deputy Secretary (Home) to the Government of Himachal Pradesh:-

"4. It is a general principle that a Government servant cannot be given annual increment after completion of 12 months if he ceases to be in Government service on 1st day of the next month. Moreover, there are numerous cases in the Government departments where Governments servants are not allowed annual increment after completion of 12 months due to retirement on the 1st day of the next month. If any Government servant is allowed annual increment who got retired on the 1st day of next month after completion of 12 months, it will invite representation of such similar cases from various departments of the State Government."

It is very sorry state of affairs that even the officials working in Home Department are also not aware of the legal position. It appears that without even going through the judgment a sweeping observation has been made by respondent No.3 in the impugned order that the judgment passed by Hon'ble Apex Court is not applicable upon all Government employees of State/Centre. Impugned order does not describe as to why the law declared in rem by Hon'ble Apex Court in the aforesaid case is not applicable to employees of respondents-State or as to whether the judgment is applicable to the cases of the petitioners or not, but rejects the cases of the petitioners. Even in the reply filed by the respondents in Surjeet Singh's case, the same stand has been mechanically reiterated.

5. Learned Senior Counsel for the petitioners submits that relief has been prayed by the petitioners on the strength of law laid down by Hon'ble Apex Court in Director (Admn. and HR) KPTCL & Ors.1 (supra), wherein it was held that an employee is entitled to the annual increment, which he earned on the last date of his service for rendering services preceding one year from the date of his retirement. Merely because the Government servant has retired on the very next day, he cannot be denied annual increment, which he has earned for rendering services with good conduct in the preceding one year. Relevant paras from the

judgment read as under:-

“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 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 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.”

It is not in dispute that the aforesaid order passed by the Hon'ble Apex Court was clarified under an interim order passed in Union of India & Anr. vs. M. Siddaraj Miscellaneous Application Diary No. 2400/2024 in Special Leave Petition (C) No.4722/2021 order dated 06.09.2024, more particularly, vis-a-vis its application to third parties. The order reads as under:-

"It is stated that the Review Petition in Diary No. 36418/2024 filed by the Union of India is pending.

The issue raised in the present applications requires consideration, insofar as the date of applicability of the judgment dated 11.04.2023 in Civil Appeal No. 2471/2023, titled "Director (Admn. and HR) KPTCL and Others v. C.P. Mundinamani and Others", to third parties is concerned.

We are informed that a large number of fresh writ petitions have been filed.

To prevent any further litigation and confusion, by of an interim order we direct that:

(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.

(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.

(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate preferred, court.

(d) In case any retired employee has filed any application for intervention/ impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed.

This interim order will continue till further orders of this Court. However, no person who has already received an enhanced pension including arrears, will be affected by the directions in (a), (c) and (d).

Re-list in the week commencing 04.11.2024."

In the above extracted order, direction has, inter alia, been issued that the judgment dated 11.04.2023 passed in Director (Admn. and HR) KPTCL & Ors.1 (supra) will be given effect to in case of third parties from the date of the judgment; that pension will be paid by taking into account one increment on or after 01.05.2023 and enhanced pension for the period prior to 31.04.2023 will not be paid.

In view of above, the impugned orders dated 20.09.2023 (Annexure P-7) in the case of Surjit Singh and dated 04.10.2023 (Annexure P-5) in the case of Avtar Singh passed by respondent No.3, rejecting the cases of the petitioners, are set aside with costs of Rs.10,000/- payable by the respondents to each of the petitioners. Respondents are directed to consider the cases of the petitioners keeping in view the above observations for grant of notional increment to them in light of the judgment dated 11.04.2023 passed by the Hon'ble Apex Court in Director (Admn. and HR) KPTCL & Ors.1 (supra) read with the directions issued in the order dated 06.09.2024 passed in Union of India & Anr. vs. M. Siddaraj2 (supra). This exercise shall be completed within six weeks. Copy of order so passed be also communicated to the petitioners.

The writ petitions stand stand disposed of in above terms. Pending miscellaneous application(s), if any, shall also stand disposed of.

Office of learned Advocate General to ensure that this judgment is brought to the notice of respondent No.3 as well as concerned officials in the Home Department.