

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**Before:
The Hon'ble Justice Hiranmay Bhattacharyya**

**WPA 18560 of 2021
Shri Jyotirmoy Sarkar
Vs.
Damodar Valley Corporation & Ors.**

For the Petitioner : Mr. Puspall Chakraborty
Ms. Prisanka Gangulyadvocates

For the DVC : Mr. Ranjay De
Mr. Adityajit Abel Bose
Mr. Basabjit Banerjee ... advocates

Reserved on : 21.09.2023

Judgment on : 29.09.2023

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has prayed for issuance of a writ of mandamus to set aside and/or quash the order of the Executive Director (Finance), Damodar Valley Corporation dated September 27, 2021 and for a direction upon the respondent authorities to grant one notional annual increment which became due for the period from July 1, 2018 to June 30, 2019.
2. Petitioner, who was at the relevant point of time the Deputy General Manager (Finance), Finance Department, Damodar Valley Corporation (for short 'DVC') Kolkata, retired from service on superannuation with effect from June 30, 2019. The petitioner claims that he became eligible to receive the annual yearly increment on completion of one full year of regular service with effect from 1st July, 2018 till June 30, 2019. Petitioner claims to have submitted a representation dated June 3, 2019 before the respondent authority praying for grant of annual yearly

increment which fell due on July 01, 2019. Alleging inaction on the part of the respondent authorities, the writ petitioner approached this Court by filing a writ petition being WPA 11445 of 2021 which was disposed of by an order dated August 3, 2021 by directing the Executive Director, Accounts and Finance Department, DVC to consider and decide the representation of the petitioner by passing a reasoned order within a stipulated time. The Executive Director (Finance), DVC by an order dated September 27, 2021 rejected the prayer of the petitioner.

3. Challenging the said order of the Executive Director (Finance), DVC dated 27.09.2021, the petitioner has approached this Court by filing the instant writ petition. The ground on which the prayer of the petitioner was rejected by the Executive Director (Finance), DVC is that the Office Memorandum dated 19th March, 2012 read with the Central Civil Services (Pension) Rules, 1972 does not provide for grant of annual increment which falls due on a date subsequent to the date of retirement of an employee/ officer.
4. Mr. Chakraborty, learned Advocate for the petitioner submits that the petitioner having completed one year of service with effect from 1st July, 2018 till 30th June, 2019, is entitled to one notional annual increment which fell due on July 1, 2019. He submits that the Hon'ble High Court of Madras by an order dated September 15, 2017 in **WP No. 15732 of 2017** in the case of **P. Ayyamperumal vs. The Register, Central Administration Tribunal and others.** directed one notional increment to be given under similar circumstances. He also referred to the decision of the Hon'ble Supreme Court of India in the case of **Director (Admn. and HR) vs. C.P. Muddinamani and ors.** reported at **2023 SCC Online SC 401** for the same proposition.
5. Mr. De learned Advocate appearing for the respondent submits that the petitioner retired one day prior to the date of annual yearly increment. He submits that the petitioner is indirectly challenging the fixation of the cut-off date of annual yearly increment. Mr. De submits that fixation of

cut off dates is within the domain of the executive authority and the Court should not interfere with the fixation of cut-off date. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Government of Andhra Pradesh vs. N. Subbarayudu** reported at **Laws (SC) 2008 (3) 155**. By referring to a decision of the **Hon'ble Supreme Court in the case of State of Madhya Pradesh Through Principal Secretary and ors. vs. Seema Sharma** reported at **2022 SCC Online SC 809**. Mr. De submitted that the Court should not interfere with the policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser. He distinguished the decision of the Hon'ble Supreme Court in the case of **C.P. Mundinamani** (Supra) by contending that such decision was passed interpreting the regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations, 1997.

6. Petitioner retired from service on 30th June 2019 after completion of one year with effect from 01.07.2018 to 30.06.2019. Petitioner submitted a representation before the authority of DVC for grant of one notional annual increment. Such prayer of the petitioner was however, rejected by the order of the 3rd respondent dated 27.09.2021.
7. Heard the learned advocates for the parties and perused the materials placed.
8. The issue that falls for consideration is whether an officer/employee retiring on superannuation a day before the uniform date of annual increment is entitled to an increment.
9. The petitioner placed reliance upon the decision of the Hon'ble Madras High Court in the case of **P. Ayyamperumal** (supra) in support of his prayer for grant of one notional increment. The third respondent, in the order dated 27.09.2021, observed that Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008 (for short "2008 Rules") or the Memorandum dated 19.03.2012 has not been interfered with in the said decision. It was further observed by the 3rd respondent that nothing is

also evident from the said decision that the decision in the case of **State of Tamil Nadu, Rep. by its Secretary to Government, Finance Department and ors. vs. M. Balasubramaniam** reported in **CDJ 2012 MHC 6525** which was relied upon by the Hon'ble Madras High Court in the case of **P. Ayyamperumal** (supra) had the occasion to deal with Rule 10 of 2008 Rules or the Memorandum dated 19.03.2012. The 3rd respondent finally observed that in view of Regulation 6 of DVC Service Regulations, Rule 10 of the 2008 Rules is binding upon DVC and since the petitioner was not in service as on 01.07.2019, the prayer of the petitioner was not acceded to.

10. Regulation 6 of DVC Service Regulation states that any matter not provided in these regulations shall until requisite provisions in that behalf are made in these regulations be dealt with and disposed of, as far as may be, in accordance with the rules and orders issued from time to time by the Central Government in relation to similar matter.
11. Rule 10 of 2008 Rules speaks of date of next increment in the revised pay structure.
12. Relief claimed in this writ petition relates to interpretation of Rule 10 of 2008 Rules for which the same is extracted hereinbelow.

“10. Date of next increment in the revised pay structure- *There will be a uniform date of annual increment, viz. 1st July of every year. Employees completing 6 months and above in the revised pay structure as on 1st of July will be eligible to be granted the increment. The first increment after fixation of pay on 1.1.2006 in the revised pay structure will be granted on 1.7.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1st January, 2007:*

Provided that in the case of persons who had been drawing maximum of the existing scale for more than a year as on the 1st day of January, 2006, the next increment in the revised pay structure shall be allowed on the 1st day of January, 2006. Thereafter, the provisions of Rule 10 would apply:

Provided that in cases where an employee reaches the maximum of his pay band, shall be placed in the next higher pay band after one year of reaching such maximum. At the time of placement in the higher pay band, benefit of one increment will be provided. Thereafter, he will continue to move in the

higher pay band till his pay in the pay band reaches the maximum of PB-4, after which no further increment will be granted.

Note 1.- *In cases where two existing scales, one being a promotional scale for the other, are merged, and the junior Government servant, now drawing his pay at equal or lower stage in the lower scale of pay, happens to draw more pay in the pay band in the revised pay structure than the pay of the senior Government servant in the existing higher scale, the pay in the pay band of the senior Government servant shall be stepped up to that of his junior from the same date and he shall draw next increment in accordance with Rule 10.”*

13. As per Rule 10, an employee in order to be eligible for the next increment has to complete six months and above in the revised pay structure. Admittedly, the petitioner completed one year in the revised pay structure with effect from 01.07.2018 till 30.06.2019.
14. Mr. De would vehemently contend that an employee in order to be eligible for the next increment is to be in service as on 1st July. According to him, since the petitioner retired from service on 30.06.2019 i.e., one day prior to the uniform date of annual increment i.e., 1st July of every year, the petitioner is not entitled to the increment which was to fall due on 01.07.2019.
15. At this stage it would be relevant to take note of the observations of the Hon'ble Supreme Court in **C.P. Mundinamani** (supra) with regard to the object and purpose of grant of annual increment. The Hon'ble Supreme Court held thus-

“18.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.”

16. The Hon'ble Supreme Court also noted the observations of the Hon'ble Delhi High Court in the case of **Gopal Singh** (supra) wherein it has been held that the entitlement to receive increment crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day.
17. The Hon'ble Supreme Court further took note of the observations of the Hon'ble Allahabad High Court in **Nand Vijay Singh** (supra) which is extracted herebelow.

“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.”

18. In the case of **P. Ayyamperumal** (supra), the Hon'ble Madras High Court noted that the petitioner retired on 30.06.2013 and as per the 2008 rules, increment has to be given only on 01.07.2013, on which date the petitioner was not in service. The Hon'ble Madras High Court directed one notional increment be given 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 only for the purpose of pensionary benefits.

19. It further appears from paragraph 30 of **C.P. Mundinamani** (supra) that the Hon'ble Judges of the Supreme Court were in complete agreement with the views taken by the Madras High Court in **P. Ayyamperumal** (supra), the Delhi High Court in **Gopal Singh** (supra) and the Hon'ble Allahabad High Court in **Nand Vijay Singh** (supra).
20. The Hon'ble Supreme Court, however, while interpreting Regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations, 1997 observed that denying a government servant the benefit of annual increment which he has 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. The Hon'ble Supreme Court further observed that the increment can be withheld only by way of punishment or that he has not performed the duty efficiently.
21. From the aforesaid decisions, it follows that the annual increment is earned by a government servant for rendering specified period of service with good conduct and efficiently. The object behind fixing the date of annual increment on the day following the date on which increment is earned is only for the purpose of ensuring competition of a year's service with good conduct.
22. Coming to the case on hand, this Court finds that the petitioner has completed one year of service with effect from 01.07.2018 to 30.06.2019. It has not been alleged that the conduct of the petitioner was not good or that he did not perform his duties efficiently during the aforesaid period. In view of Regulation 6 of DVC Service Regulations, Rule 10 of 2008 Rules is applicable to the officers and employees of DVC. Therefore, the petitioner became eligible to one annual increment in view of Rule 10 of 2008 Rules read with Regulation 6 of DVC Service Regulations.

23. The primary objection of DVC against grant of one annual increment is that such increment became payable only on 1st July, 2019 i.e., a date when the petitioner was no longer in service.
24. The entitlement of the petitioner to receive the annual increment as per Rule 10 crystallised upon completion of one year of service for the period 1st July, 2018 to 30th June, 2019.
25. It is now settled that in case a government servant retires on 30th June the next day on which the increment falls due/ becomes payable loses significance and the scheme is to be construed in a manner that it does not offend the spirit of reasonableness enshrined in Article 14 of the Constitution of India.
26. The date of annual increment of the petitioner as per Rule 10 of 2008 Rules for rendering service from 01.07.2018 to 30.06.2019 is 01.07.2019. In a case of instant nature the date of annual increment has to be given a liberal interpretation. The date of annual increment has to be construed in a manner that it does not curtail the right of an eligible employee to the grant of one notional increment for pensionary benefits. Any contrary interpretation to the date of annual increment in a case of this nature would be violative of Article 14 of the Constitution of India. Therefore, denying the annual increment to the petitioner for the aforesaid period for which he became eligible only on the ground that the petitioner was not in service as on 01.07.2019 would amount to penalising the petitioner for no fault of his.
27. The Office Memorandum dated 19.03.2012 issued by the Ministry of Finance, Department of Expenditure, Government of India deals with grant of annual increment to Central Government employees under certain special circumstances. The said Memorandum does not deal with the case of annual increment when an officer/employee retires a day before the date of Annual Increment as per Rule 10. Therefore, the said Memorandum is of no relevance in the case on hand.

28. Mr. De would contend that the petitioner by his conduct waived his right to claim the annual increment. This Court is not inclined to accept such contention of Mr. De for the following reasons.
29. The grievance of the petitioner is for not allowing the annual increment for rendering one year of service till 30th June 2019. Petitioner submitted a representation dated June 3, 2019 at a point of time when he became eligible to claim the benefits of annual increment. Such claim, however, stood rejected by the impugned order which has been challenged by the petitioner immediately thereafter. Therefore, it cannot be said that the petitioner waived his right to claim annual increment as the petitioner became eligible to such increment upon completion of specified period of service as per the relevant rule.
30. There is, however, no quarrel to the propositions of law reiterated by the Hon'ble Supreme Court in **N. Subbarayudu** (supra) that the Court should not normally interfere with the fixation of cut-off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. The said decision does not have any manner of application as the date of annual increment specified in the relevant rules has not been challenged.
31. In the case of **Seema Sharma** (supra), the fixation of pay in a particular scale of pay was the subject matter of challenge wherein the Hon'ble Supreme Court observed that fixation of scales of pay is a matter of policy with which the courts can only interfere in exceptional case. The said decision being distinguishable on facts do not have any manner of application in the case on hand.
32. For all the reasons as aforesaid, this Court holds that the petitioner is entitled to one notional annual increment having completed one year of service with effect from 01.07.2018 till 30.06.2019 only for the purpose of pensionary benefits.

33. The issue is thus answered in the affirmative with a caveat that such increment shall be only for the purpose of pensionary benefits. The impugned orders thus calls for interference.
34. Accordingly the order of the Executive Director (Finance) DVC dated 27.09.2021 stands set aside and quashed. The respondent authorities are directed to give one notional increment to the petitioner for the service rendered by him during the period 01.07.2018 to 30.06.2019 only for pensionary benefits. The respondent authorities are further directed to recalculate the pensionary benefits of the petitioner in terms of the aforesaid direction and to pay current pension and the differential amount on account of arrear pension, if any. The entire exercise of recalculation and payment in terms of this direction shall be completed as expeditiously as possible but positively within a period of four weeks from the receipt of server copy of this order. The writ petition stands allowed. There shall be, however, no order as to costs.
35. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)