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Commander vs P.R. Sreekumar,

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Court : Kerala

Decided On : Feb-14-2025

Judge : Honourable Mr. Justice Amit Rawal,Honourable Mr.Justice K. V. Jayakumar

Appeal No. : OP (CAT)/208/2020

Appellant : Commander

Respondent : P.R. Sreekumar,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL & THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR FRIDAY, THE 14TH DAY OF FEBRUARY 2025 / 25TH MAGHA, 1946 OP (CAT) NO. 208 OF 2020 AGAINST THE ORDER IN OA NO.654 OF 2019 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH PETITIONERS/RESPONDENTS IN THE ORIGINAL APPLICATION: 1 COMMANDER, CDR (CP)-PAY AND FP, DIRECTORATE OF CIVILIAN PERSONNEL, INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (NAVY), NEW DELHI-110 001. 2 THE FLAG OFFICER COMMANDING IN CHIEF, HEADQUARTERS, SOUTHERN NAVAL

COMMAND, KOCHI-4. 3 UNION OF INDIA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF DEFENCE, NEW DELHI-110001 Sri.T.C.Krishna ,(DSGI incharge) RESPONDENTS/APPLICANTS IN THE ORIGINAL APPLICATION: 1 P.R. SREEKUMAR, AGED 62 YEARS S/O.LATE R.RAGHAVAN NAIR, UDC(RETIRED), COMMAND TRANSPORT WORKSHOP, NAVAL BASE, KOCHI-4, RESIDING AT SREYAS, HOSUE NO.26/985, NEAR KASABA THEATRE, THEVARA-13. 2 K.MUKTHA BAI, AGED 62 YEARS D/O.LATE K.KESAVA SHENOI, OFFICE SUPERINTENDENT (RETIRED), MATERIAL ORGANIZATION, NAVAL BASE, KOCHI-4, RESIDING AT HOUSE NO.4/869, NORTH STREET, NORTH CHERLAI, KOCHI-2. THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 14.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

K. V. JAYAKUMAR, J Feeling aggrieved by the order of the Central Administrative Tribunal in O.A.No.654/2019 dated 03.12.2019, Union of India and its officers preferred this OP(CAT).

2. Succinctly, the facts in brief are as follows: The respondents/applicants are retired as Upper Division Clerks

(UDC) and Office Superintendent on attaining the age of superannuation on

30.06.2017. On the implementation of the 6 th CPC, a uniform date of annual increment was formulated viz, 1st July of every year. The claim of the applicants was that, had they been in service on 1 st July 2017, they would have received an increment. The contention of the petitioners/Union of India was that, as per Central Civil Service (Revised Pay) Rules, 2008, annual increment accrues on 1st July every year. As per that Rule, employees completing six months and above service in the revised pay structure as on 1 st July will become eligible for one increment. The applicants can only be treated as retired Government servants and not as Government servants on 1st July.

3. The respondents and the similarly placed employees

knocked the doors of the Central Administrative Tribunal claiming one increment. The Tribunal, as per the common order, allowed all the original applications and directed to grant one increment to the applicants.

4. Impugning the said order, Union of India and its officers preferred this OP(CAT).

5. The short question involved in this case is, whether a Government employee retiring on 30th June is entitled to claim an increment?.

6. The Tribunal, placing reliance on the decision in

P.Ayyamperumal v. The Registrar and Ors. [CDJ 2017 MHC 6274], which was later confirmed by the Honourable Apex Court, allowed the claim of the applicants and granted one notional increment for calculating pensionary benefits and not for any other purpose. The relevant paragraphs of the Tribunals order are extracted hereunder: 8. In P. Ayyamperumal's case (supra) the Hon'ble Madras High Court held as under:

4. Heard the learned Senior Panel Counsel appearing for the respondents 2 to 4 on the submissions made by the petitioner and perused the materials available on record.

5. The petitioner retired as Additional Director

> General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied the last increment, though he completed a full one year in service, ie., from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the

Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.

6. In the case on hand, the petitioner got retired

> on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep.by its Secretary to Government, Finance Department and others v. M.Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.

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.

The Hon'ble apex court vide order dated 23.7.2018 in SLP

(Civil) Diary No.(s) 22283/2018 confirmed the judgment

passed by the Hon'ble Madras High Court and dismissed the SLP.

9. We find that the Hon'ble Madras High Court had already considered the issue raised by the applicants in the

present OAs are we are in full agreement with the judgment

passed by the Hon'ble Madras High Court in P. Ayyamperumal's case (supra) upheld by the Hon'ble apex court.

10. Therefore, the impugned orders of rejection

Annexure A4 in OA No. 180/654/2019 and Annexures A5 in OAs Nos. 180/1055/2018 and 180/61/2019 are quashed and set aside. The applicant in OA No. 180/109/2019 had sought

> relief to quash Annexure A6 which is only a reply to the question posed by a Member of Parliament in Lok Sabha. The applicants shall be given one notional increment for the purpose of calculating the pensionary benefits and not for any other purpose as held by the Hon'ble Madras High Court in P. Ayyamperumal's case (supra) upheld by the Hon'ble apex court. The respondents shall implement the order of this Tribunal within three months from the date of receipt of a copy of this order. There shall be no order as to costs.

7. The issue involved in this matter has already been

pondered by the Division Bench of this Court in OP(CAT) No.65/2023 dated 10.08.2023. In that case, this Court considered the matter in extenso, and granted one notional increment to the applicants who are similarly placed. The relevant paragraphs are extracted hereunder:

12. The argument raised based on the proviso to Note I of Rule 33 of the Central Civil Service (Pension) Rules is that any increment other than the one referred to in Note 4, which is not actually drawn, shall not form part of the emoluments for the purpose of pension. We notice that the said argument is attractive in the first blush. Rule 33 of the CCS (Pension) Rules is extracted below:-

"Rule 33

33. Emoluments

The expression emoluments means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to Medical Officer in lieu of private practice. Explanation:-Stagnation increment shall be treated as emoluments for calculation of retirement benefits. Note 1 - If a Government servant immediately before his retirement or death while in service had been absent from duty on leave for which leave salary is payable or having been suspended had been reinstated without forfeiture of service, the emoluments which he would have drawn had he not been absent from duty or suspended shall be the emoluments for the purposes of this rule: Provided that any increase in pay (other than the increment referred to in Note 4) which is not actually drawn shall not form part of his emoluments.

Note 2 - Where a Government servant immediately before his retirement or death while in service had proceeded on leave for which leave salary is payable after having held a higher appointment, whether in an officiating or temporary capacity, the benefit of emoluments drawn in such higher appointment shall be given only if it is certified that the Government servant would have continued to hold the higher appointment but for his proceeding on leave.

Note 3 - If a Government servant immediately before his retirement or death while in service had been absent from duty on extraordinary leave or had been under suspension, the period whereof does not count as service, the emoluments which he drew immediately before proceeding on such leave or being placed under suspension shall be the emoluments for the purposes of this rule.

Note 4 - If a Government servant immediately before his retirement or death while in service, was on earned leave, and earned an increment which was not withheld, such increment, though not actually drawn, shall form part of his emoluments: Provided that the increment was earned during the currency of the earned leave not exceeding one hundred and twenty days, or during the first one hundred and twenty days of earned leave where such leave was for more than one hundred and twenty days.

13. Here again, we cannot appreciate and recognise

the argument of the learned counsel for the respondents, inasmuch as the Hon'ble Supreme Court has recognised the right of the employees based on a purposive interpretation based on the object and concept based upon which an annual increment is granted. This is all the more so, in view of the findings of the Hon'ble Supreme Court that, depriving the benefit, which emanates from a service which has been admittedly rendered, would lead to arbitrariness and unreasonableness, in the light of which, we can only find that the argument based on the proviso to Note I of Rule 33 is also squarely in the teeth of the arbitrariness and unreasonableness, as found by the Hon'ble Supreme Court.

14. In the result, these original petitions succeed

and the impugned Common Order of the Tribunal is hereby set aside. We direct the respondents to grant one notional increment to the petitioners, as also, to revise their retiral benefits after including such annual increment. We direct that the above direction shall be complied within a period of two months from the date of receipt of a copy of this judgment.

8. The Honourable Apex Court in Civil Appeal

No.2471/2023 pondered the same issue and upheld the dictum laid down in P.Ayyamperumals case (supra) of the Madras High Court. The issue involved in this matter is no longer res integra. In view of the judgment in OP(CAT) No.65/2023, OP(CAT) No.208/2020 fails and it is liable to be dismissed in our view. Therefore, OP(CAT) is dismissed. Sd/- AMIT RAWAL JUDGE Sd/- K. V. JAYAKUMAR JUDGE Sbna/ APPENDIX OF OP (CAT) 208/2020 PETITIONER ANNEXURES ANNEXURE A4 TRUE COPY OF THE LETTER NO.CP(P)/2080/COURT CASE DATED 26.04.2019 BY THE COMMANDER CDR (CP)-PAY AND FP. ANNEXURE A1 TRUE COPY OF THE JUDGMENT DATED 15.09.2017 IN WPC 15732 OF 2017 ISSUED BY THE HON'BLE HIGH COURT OF MADRAS. ANNEXURE A2 TRUE COPY OF THE ORDER DATED 23.07.2018 IN SLP(C0 DIARY NO(S) 22283/18 ON THE FILE OF THE APEX COURT. ANNEXURE A3 TRUE COPY OF THE REPRESENTATION DATED NIL JANUARY 2019 SUBMITTED BY MR.P.R. SREEKUMAR TO THE FLAG OFFICER COMMANDING IN CHIEF. ANNEXURE A5 TRUE COPY OF THE REPRESENTATION DATED 29.03.2019 SUBMITTED BY MR.P.R.SREEKUMAR TO THE FLAG OFFICER COMMANDING IN CHIEF. EXHIBIT P1 TRUE COPY OF THE OA NO.180/00654/2019 FILED BY THE PETITIONER DATED 08.08.2019 FILED BEFORE THE CAT, ERNAKULAM BENCH. EXHIBIT P2 TRUE COPY OF THE ORDER ISSUED BY THE CAT, ERNAKULAM BENCH IN OA NO.180/00654/2019 DATED 03.12.2019. EXHIBIT P3 TRUE COPY OF LETTER F.NO.A-23011/136/2013-

AD.IIIA DATED 18.10.2019 OF THE MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, NEW DELHI.

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