

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20181 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 2714 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 2730 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 2737 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3291 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3344 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3345 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3878 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3880 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3881 of 2022
With
R/SPECIAL CIVIL APPLICATION NO. 3882 of 2022

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

JAYANTIBHAI BAHECHARBHAI PATEL
Versus
STATE OF GUJARAT

Appearance:

MR VAIBHAV A VYAS(2896) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

MR UTKARSH SHARMA, MR KURVEN DESAI, MR SOAHAM JOSHI, AGPs

for the Respondent(s) No. 1,2,3
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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
Date : 20/06/2022
COMMON ORAL JUDGMENT

1. *Rule* returnable *forthwith*. Respective learned Assistant Government Pleaders waives service of notice of Rule for and on behalf of the respondent - State in all these petitions.
2. With the consent of the learned advocates for the respective parties, all these petitions are taken up for final hearing today.
3. In all these petitions, under Article 226 of the Constitution of India, the prayer of the petitioners is to direct the respondents to grant the benefit of one increment and further to direct the respondents to revise the pension and other retirement benefits of the petitioners.
4. For the benefit of this common oral judgment, the facts of SCA No.20181 of 2021 is considered.
 - 4.1. The grievance of the petitioner is that he has

been denied yearly increment for one full year of service rendered by the petitioner for the period from 1.7.2015 to 30.6.2016.

5. The issue of granting increment as prayed for by the present petitioners was a subject-matter of challenge before this Court. A Division Bench of this Court on 27.4.2022 in *Letters Patent Appeal No.868 of 2021 in the case of **State of Gujarat v. Takhatsinh Udesinh Sonagara*** noticing the facts of the respondent therein, who too prayed for increment for one full year of service and revision of pension accordingly, considering the decision of the Madrash High Court in the case of ***P. Ayyamperumal v. The Registrar and others*** being Writ Petition No.15732 of 2017 decided on 15.9.2017 as well as the decisions of the Himachal Pradesh High Court as well as Rajasthan High Court in the cases of ***Hari Prakash and others v. State of Himachal Pradesh and others*** being Civil Writ Petition No.2503 of 2016 decided on 6.11.2020 and

Safi Mohammad and others v. State of Rajasthan and others decided on 1.12.2021 and also of Rajasthan High Court in **Ramji Lal Kulhari and others v. State of Rajasthan and others** being Civil Writ Petition No.85 of 2020 and group of petitions decided on 10.1.2022 respectively held as under:

“5. The Delhi High Court in Gopal Singh (supra) taking same view as that of Madras High Court in P.Ayyamperumal (supra) explained that the entitlement of government servant to receive the increment, though may not be a matter of course, but is dependent upon good conduct of the central government servant and that he earns increment on the basis of his good conduct for specified period. (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."

5.1 It was stated that where a government servant observes good conduct for entire year before increment accrues, it is logical and normal that he earns the increment. Dealing with the situation where the government servant has retired on 30th June and the increment is payable on 1st July, the High Court stated thus, (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.”

5.1.1 It was further observed by the Delhi High Court that denial of the entitlement to receive benefit when is crystallized in law could be arbitrary if it is denied unless there is valid reason. Though the increment was earned for past period it is denied on the ground that on the date when the increment becoming payable the government servant was not holding the post as he had retired, such has to be viewed to be not the valid ground to deny the increment. The High Court observed that ‘the concept of day following which the increment is earned has otherwise no purpose to achieve’. It was stated, (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.”

5.1.2 The retirement of the government servant on the day prior to the increment becoming payable is only fortuitous circumstance, it was rightly expressed, (Para 24)

“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.”

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.

5.3 Furthermore the Supreme Court has dismissed the Special Leave Petition (Civil) Dairy No.22283 of 2018 against the decision of the Madras High Court in P.Ayyamperumal (supra) as per the order dated 23.7.2018.

5.4 Besides above, the Division Bench of this court in Union of India Vs. Laxmanbhai Kalabhai Chavda being Special Civil Application No.10751 of 2020 decided on 27.1.2021, dealing with the same issue accepted the interpretation of the Rule 10 made by the High Court of Madras High Court in P.Ayyamperumal (supra). The Division Bench of this court dealt with the legality of the order of the Central Administrative Tribunal which had granted the benefit. In that learned standing counsel could not dispute the judgment of the Madras High Court in P.Ayyamperumal (supra) confirmed by the Apex Court in the Special Leave Petition as above.

5.4.1 In Laxmanbhai Chavda (supra), the Division Bench of this court observed that reading of Rule 10 of the Rules would make it clear that the government servant is entitled to the increment becoming payable on 1st July. (Para 5)

“...Rule 10 of the Rules, which speaks of uniform date of annual increment, which is 1st July of every year. It says that the employees completing six months and above in the revised pay structure as on 1st July, will be eligible to be granted the increment. The first increment, after fixation of pay as per the said Rules is on 1.1.2006 in the revised pay structure which shall need to be granted on

1.7.2006 for those employees for whom the date of next increment was between 1.7.2006 to 1.1.2007.”

5.4.2 It was further stated, (Para 6)

“...the interpretation of Rule 10 of the Rules made by High Court of Madras in W.P. No.15372/2017, where the Court held from the factual details that the employee before it since had completed one full year service as on 30.6.2013, i.e. the date of which he was superannuated, but the increment fell due on 1.7.2013, on which date he was not in services and therefore, it interpreted that he shall have to be treated as having completed one full year of service, though the date of increment fell on the next day of his retirement. Accordingly, the court had allowed the petition and directed that the petitioner before the High Court of Madras be given one notional increment for the period from 1.7.2012 to 30.6.2013, on his having completed one full year of service.”

5.5 As a Co-ordinate Bench, we are bound by the aforesaid view taken in Laxmanbhai Chavda (supra), and stand in agreement with the same.

6. For the aforesaid reasons and the discussion, the present challenge to the order of the learned Single Judge in this Letters Patent Appeal stands meritless.

7. The present Letters Patent Appeal is dismissed. Notice is discharged. Interim orders stand vacated. The directions issued in paragraph No.12 of the order of

learned Single Judge regarding grant of benefits to the petitioner- respondent herein, the same shall be granted within six weeks from today and the direction shall be complied with.

In view of disposal of the main appeal, the Civil Application will not survive. Accordingly, it is disposed of.”

6. Accordingly, all these petitions are *allowed*. Thereby, the respondents are directed to grant the benefit of one increment to the petitioners and accordingly, revise their pension. Appropriate order shall be passed within a period of *twelve weeks* from the date of receipt of the judgment of this Court.
7. *Rule* is made absolute. *Direct Service* is permitted. No order as to costs.

VATSAL S. KOTCHA

[BIREN VAISHNAV, J.]