

Court No. - 34**Reserved**
A.F.R.**Case :-** WRIT - A No. - 19066 of 2023**Petitioner :-** Chandrapal Singh**Respondent :-** State of U.P. and others**Counsel for Petitioner :-** Subash Chandra Srivastava,
Rampyare Lal Srivastava**Counsel for Respondent :-** C.S.C.**Hon'ble J.J. Munir,J.**

1. This writ petition prays that a *mandamus* be issued to the Chief Engineer, Minor Irrigation, Department of Irrigation, Government of U.P., Lucknow and the Executive Engineer, Minor Irrigation Wing, Hapur to sanction for the petitioner his third assured career progression.

2. The petitioner was appointed as an Assistant Boring Technician on 16.02.1986 in the office of the Chief Development Officer, Meerut *vide* letter dated 12.02.1986. He superannuated on 31.10.2019 from the post of a Junior Engineer, Minor Irrigation, posted at Hapur. The first Assured Career Progression (for short, 'ACP') was granted to the petitioner on completion of 14 years' satisfactory service and the first financial up-gradation was fixed on 01.11.2001. The second ACP was sanctioned and granted on 01.11.2009 upon completion of 16 years' satisfactory service. The second financial up-gradation was determined in the pay band of Rs.9300-34800/- with a grade pay of Rs.4600/-. The Chief Engineer, Minor Irrigation, Department of Irrigation issued an office order No. G-183/Estt.-03 (appointment post) 2018-19 dated 29.06.2018, promoting the petitioner from the post of a Boring Technician to that of a Junior Engineer. According to the petitioner, in terms of the rules applicable, he was entitled to a

third ACP on 05.11.2014 upon completion of 26 years of satisfactory service, which he did complete on 31.10.2019. The third financial up-gradation would place him in the pay band of Rs.9300-34800/-, with a grade pay of Rs.4800/-. The petitioner acknowledges that he was promoted by the Chief Engineer on 29.06.2018 from the post of a Boring Technician to a Junior Engineer, carrying Pay Band-II, Level-VI, analogous to the pay-scale of Rs.9300-34800/-, grade pay of Rs.4200/-. The revised pay-matrix for Level-VI carries the pay scale of Rs.35400-112400/- with a probation period of two years. The petitioner says that he has been deprived of his third ACP, ignoring his satisfactory service, which employees junior to the petitioner have been extended by office order dated 26.04.2023. The petitioner has completed 26 years' satisfactory service, entitling him to the third ACP, that has fallen due on 31.10.2019, as already said. There being inaction in the matter of award of the third ACP, the petitioner represented the matter both to the Chief Engineer, Minor Irrigation, Department of Irrigation, Government of U.P., Lucknow and the Executive Engineer, Minor Irrigation Wing, Hapur, but to no avail. The petitioner buttresses his claim to the third ACP at the end of the 26 years of satisfactory service, relying upon a Government Order dated 05.11.2014. There is a mention of this order in paragraph No.10 of the writ petition, but no copy thereof has been annexed.

3. This Court on 16.11.2023 issued notice of motion to the Chief Engineer, Minor Irrigation, Department of Irrigation, Government of U.P., Lucknow and the Executive Engineer, Minor Irrigation Wing, Hapur, requiring them to show cause by their separate affidavits within a week why the petitioner's third ACP had not been granted. In compliance, the Chief Engineer and the Executive Engineer, respondent Nos.2 and 3,

respectively, filed their affidavits, both dated 22.11.2023. These affidavits have been treated as counter affidavits. The petitioner has not filed a rejoinder. On the 24th of November, 2023, parties having exchanged pleadings, this petition was admitted to hearing, which proceeded forthwith. Judgment was reserved.

4. Heard Mr. Rampyare Lal Srivastava, learned Counsel for the petitioner and Mr. Pramod Kumar Srivastava, learned Additional Chief Standing Counsel appearing on behalf of the respondents.

5. In the affidavit filed on behalf of the Chief Engineer, Minor Irrigation, Department of Irrigation, Government of U.P., Lucknow, the relevant facts brought out are that the petitioner was appointed an Assistant Boring Technician on 17.02.1986 by the Chief Development Officer, Meerut *vide* his order dated 12.02.1986. The Executive Engineer, Minor Irrigation Division, Meerut, by his order dated 30.06.1995, granted a notional promotion to the petitioner on the post of a Boring Technician w.e.f. 01.11.1993. The Executive Engineer, Minor Irrigation Division, Meerut, by an order of 8th May, 2002, granted an additional increment to the petitioner upon completion of 8 years of regular satisfactory service on the post of a Boring Technician. This benefit was extended w.e.f. 01.11.2001. According to the Chief Engineer, in accordance with the Government Order dated 01.10.2009, the petitioner was extended the pay scale of Rs.5000-150-8000/- w.e.f. 01.11.2007 *vide* order dated 27.12.2007 passed by the the Executive Engineer, Minor Irrigation Division, Meerut on completing 14 years' regular satisfactory service. It was *vide* order dated 10.09.2012, the Executive Engineer, Minor Irrigation Division, Meerut granted the second ACP to the petitioner, relating to the post of a Boring Technician in the

grade pay of Rs.4600/-. This was granted to the petitioner w.e.f. 01.11.2009 on completing 16 years of regular service.

6. It is pointed out that the petitioner has come up with a grievance that certain records show that five Junior Engineers, whose details are given in the writ petition, have been granted the benefit of the third ACP on 01.11.2019. It is the respondents' case that out of the five Junior Engineers, three, that is to say, Om Prakash Singh, Brajpal Singh and Vinod Kumar Sharma, retired on 31.10.2020, 31.07.2021 and 31.03.2023, respectively. The two others, to wit, Mehak Singh and Tejpal Singh, are scheduled to retire on 30.11.2025 and 31.12.2025, respectively. They are still in service. Thus, the benefit of the third ACP, to each of the above mentioned five Junior Engineers, has been granted on account of each of them being in service on the date when the benefit was given. It is next averred on behalf of the respondents that the benefit of the third ACP was due to the petitioner on 01.11.2019, but he retired from service on 31.10.2019. It is for the said reason that benefit of the third ACP could not be extended to him.

7. The learned Counsel for the petitioner, however, argues that the principle applicable in case of increment, that is earned during the entire year and becomes payable on the following day after retirement, is granted notionally to the retiring employee for the purpose of determining his post retiral benefits, should also be extended to the case of award of the ACP. He submits that it is not disputed that the petitioner would have been entitled to his third ACP on 01.11.2019, but he retired from service on 31.10.2019. Learned Counsel for the petitioner has relied upon the authority of the Supreme Court in **The Director (Admn. and HR) KPTCL and others v. C.P. Mundinamani and others, 2023 SCC OnLine SC 401** in

support of his contention.

8. The learned Counsel for the respondents has, however, argued that the grant of an ACP is entirely different from earning of increments and the principle in **C.P. Mundinamani** (*supra*) would not apply to the case of award of ACP at all. The principle in **C.P. Mundinamani** regarding payment of annual increment to an employee, who had earned it throughout the year, but retires from service on the succeeding day, when it becomes payable, holding him entitled to it notionally, has been laid down by the Supreme Court thus:

"20. 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 interpreted 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 v. Pavithran* (O.P.(CAT) No. 111/2020 decided on 22.11.2022) and the Himachal Pradesh High Court in the case of *Hari Prakash v. State of Himachal Pradesh* (CWP No. 2503/2016 decided on 06.11.2020)."

9. An increment by its nature is generically different from ACP. An increment is part of a government servant's pay. It is an accretion to the pay that is earned during the course of employment over the period of one year, subject to good behaviour of the government servant concerned. An increment is a routine accretion, that accrues on regular interval, of which a government servant may be deprived in certain contingencies, such as the imposition of a minor punishment. Therefore, if a government servant works throughout the year, completing the period of time entitling him to increment but retires on the day it would actually be added to his salary, the principle of notionally granting that increment has been evolved by Courts, so as to eschew arbitrariness. If merely for the reason that a government servant retires on the day, when the increment would have been added to his salary, if he were in service, but is deprived of it due to retirement though he has already earned it over the period of time of one year, until the day preceding his retirement, he has been held entitled to it notionally by preponderant authority in the High Courts, and, of

course, the final approval of this view by the Supreme Court.

10. By contrast, to what an increment is, ACP is very different. It is not something provided in the routine, though it does come as an accretion to the emoluments payable at specified intervals. ACP is a device that has been invented by the Government, as the policy maker, to deal with the problem of stagnation of government employees. There are many cadres and posts in government service, where there are no promotional avenues. It is to remove stagnation that the benefit of ACP is given at specified intervals in three instances. It is a substitute for promotion, or so to speak, a kind of promotion itself. The essence of ACP, therefore, is stagnation of a government employee on a particular post with no avenues of promotion that entitles him to it at the end of a particular period of time. In the nature of things, therefore, a government servant, who retires from service, even a day before he becomes entitled to his next ACP, would not be entitled to it. We think that the test about entitlement to an ACP lies in the fact if on the date a government servant demands it, would he be entitled to a consideration for promotion. Therefore, a government servant, who has already become entitled to promotion, say a few weeks or days before his retirement from service and is wrongfully denied consideration, may enforce his right to be notionally considered for promotion. Such a government servant may also enforce his right to receive his ACP, if it is a case of stagnation and he is entitled to it under the rules.

11. Let us take the case of a government servant, who says that under the rules he would be entitled to promotion on the date following his retirement. Would he be entitled to enforce his right in a Court against the employers to consider his case

for promotion, albeit notionally. This Court is of opinion that the answer is an obvious no. If a government servant, who has already retired from service and becomes entitled to his ACP, a day after his retirement, he too has no right to it. The right to be considered for promotion under the rules has to be judged for a government servant, who is still in harness when the right accrues. Else, there is no such right. No authorities, apart from those relating to the grant of notional increments in the matter of annual increments, were brought to this Court's notice during the course of arguments and we do not think that the principle, governing the grant of notional increment in a case where increment falls due, a day after retirement, would apply to the case of grant of ACP.

12. In this view of the matter, there is no force in this petition. It fails and is **dismissed**.

13. There shall be no order as to costs.

Order Date :- 09.05.2024

Anoop

(J.J. Munir, J.)