

Neutral Citation No. - 2024:AHC:66579

Reserved

A.F.R.

Case :- WRIT - A No. - 13858 of 2023

Petitioner :- Shri Pal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi,Rajesh Kumar
Pandey

Counsel for Respondent :- Pankaj Srivastava

Hon'ble J.J. Munir,J.

1. This writ petition is directed against the order dated 28.12.2019 passed by the Nagar Ayukt, Nagar Nigam, Meerut declining to grant the petitioner annual increment for the period 1st July, 2018 to 30th June, 2019. The petitioner prays that a *mandamus* be issued to the respondent-Nagar Nigam to pay his due increment for the period 01.07.2018 to 30.06.2019, payable on 01.07.2019.

2. When this petition came up for admission on 22.08.2023, this Court passed the following order:

"The grievance of the petitioner is that he retired on 30.06.2019. He has been denied his increments from 01.07.2018 to 30.06.2019, which was due on 01.07.2018, The petitioner's claim has been rejected by the order impugned dated 28.12.2019 passed by the Nagar Aayukt, Nagar Nigam, Meerut.

The Nagar Aayukt, Nagar Nigam, Meerut will file an affidavit, showing cause why his order dated 28.12.2019 be not quashed being prima facie in the teeth of holding of the Supreme Court in **Director (Admn. HR) KPTCL and others v. C.P. Muddinamani and others, 2023 SCC OnLine SC 401.**

The affidavit shall be filed within ten days indicating how he has denied the petitioner's increments in the teeth of the holding of the Supreme Court in Re: **C.P. Muddinamani** (supra).

Lay this writ petition as fresh on **04.09.2023.**

Let this order be communicated to the Nagar Aayukt, Nagar Nigam, Meerut by the Registrar (Compliance) **within 48 hours.**"

3. On the next date, that is 04.09.2023, the following order was made which effectively granted time to the Nagar Ayukt, Nagar Nigam, Meerut to comply with the order dated 22.08.2023 and show cause why the order impugned be not held contrary to the law laid down by the Supreme Court

in Director (Admn. HR) KPTCL and others v. C.P. Mundinamani and others, 2023 SCC OnLine SC 401:

"This matter was heard on 22.08.2023 and order of date recorded.

Today when the matter is called on, no one is present on behalf of the petitioner and the private respondents.

Mr. Yashwant Singh, learned Counsel is present on behalf of the State.

This matter is adjourned as fresh to **14.09.2023**.

In the meantime, the order dated 22.08.2023 shall be complied with and the Registrar (Compliance) shall submit a report regarding service of the order dated 22.08.2023. "

4. Since, there was no affidavit filed by 04.09.2023, while adjourning the matter, this Court called for a report from the Registrar (Compliance) in the matter.

5. The matter next came up on 14.09.2023, when this Court recorded the following order which also makes a verbatim reference to the report of the Registrar (Compliance):

"Perused the report dated 13.09.2023 submitted by the Registrar (Compliance) and the office report dated 14.09.2023. The relevant part of the report submitted in compliance with this Court's order dated 04.09.2023 and in turn, the earlier order dated 22.08.2023, reads:

As per the direction contained in Hon'ble Court's order dated 22.08.2023 (copy at flag 'A'), the order dated 22.08.2023 was duly communicated to the Nagar Ayukt, Nagar Nigam, Meerut, Through, The District Magistrate, Meerut for ensuring strict compliance, via email and Speed Post as well along-with D.O. letter No. 7909/RC (Civil) dated 24.08.2023 (copy at flag 'B'). The email receipt and Speed Post Track regarding the communication of the order dated 22.08.2023 is enclosed herewith (flag 'C') for Hon'ble Court's kind perusal.

The District Magistrate, Meerut, vide his letter No. 3478/O.S.D.-Camp/2023 dated 12.09.2023 (flag 'D') has submitted a report mentioning that the aforesaid Hon'ble Court's order dated 22.08.2023, has been communicated to the Nagar Ayukt, Nagar Nigam, Meerut in due course.

Mr. Pankaj Srivastava, learned Counsel for respondent No. 4, has appeared via video conferencing, but, due to slow internet speed, his voice could not be heard. Mr. Srivastava, however, conveyed through a text message that this matter may be taken up in the next week.

Lay as fresh on 28.09.2023, by which time the requisite personal affidavit shall be filed. "

6. A reading of the order dated 14.09.2023 shows that Mr. Pankaj Srivastava, learned Counsel appearing on behalf of the Nagar Nigam, again sought time in the matter praying that it may be taken up in the next week. It was then posted on 28.09.2023 with a direction that by the said date the requisite personal affidavit (of the Nagar Ayukt, Nagar Nigam, Meerut) shall be filed.

7. When the matter was taken up on the fourth occasion on 03.10.2023, a reconstructed copy of the affidavit of compliance was placed on record by Mr. Pankaj Srivastava. It was accepted on record and treated as the original. A statement was made by Mr. Pankaj Srivastava that he does not want to file any further affidavit on behalf of the respondents. Learned Counsel for the petitioner stated that he does not wish to file a rejoinder. Accordingly, this petition was admitted to hearing which proceeded forthwith. Judgment was reserved.

8. Heard Mr. Agnihotri Kumar Tripathi, learned Counsel for the petitioner, Mr. Pankaj Srivastava, learned Counsel appearing on behalf of respondent nos. 2, 3 and 4 and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of respondent no.1.

9. The petitioner was appointed a Clerk in the one time Municipality of Meerut, since upgraded to a Nagar Nigam. The petitioner says that he discharged his duties honestly and to the best of his abilities throughout his career, retiring from service on 30.06.2019. The petitioner says that he attained the age of superannuation on 03.06.2019 and served with a notice of retirement dated 26.02.2019 which said that he would retire on 30.06.2019. The date of retirement is apparently a little later than the petitioner's superannuation, going by the rule providing for retirement on the last day of the month.

10. The petitioner says that upon receipt of the notice of retirement he submitted an application to the *Nagar Ayukt*, received by his office on 17.05.2019, requesting that he may be paid his increment for the period

01.07.2018 to 30.06.2019. All his retirement dues were paid except his annual increment for the period 01.07.2018 to 30.06.2019. In these circumstances, the petitioner moved this Court by means of Writ-A No. 18405 of 2019 with a prayer that going by the settled law, to which allusion would shortly be made, the respondent-Nagar Ayukt be directed to pay the petitioner's increment for the period 01.07.2018 to 30.06.2019.

11. This Court, upon hearing learned Counsel for the petitioner, passed an order on 19.11.2019, disposing of Writ-A No. 18405 of 2019 in terms of directions that would be evident from the order, quoted in *extenso*:

"Petitioner submits that he is entitled to notional increment for the period 1.7.2018 to 30.6.2019, in light of the judgment of the Madras High Court dated 15.9.2017 passed in Writ Petition No.15732 of 2017 (P. Ayyamperumal Vs. The Registrar, Central Administrative Tribunal and others), against which a special leave petition filed before the Supreme Court has been rejected on 23rd July, 2018. It is stated that denial of annual increment to the petitioner, in the facts and circumstances, is wholly arbitrary. It is also urged that various representation made in that regard have not been bestowed any consideration and hence this writ petition.

Learned Standing Counsel submits that claim of petitioner shall be examined in accordance with law by the authority concerned. In the facts and circumstances, noticed above, this writ petition stands disposed of with a direction upon the respondent no.2 to accord consideration to petitioner's claim for grant of notional increment w.e.f. 1.7.2018 to 30.6.2019, keeping in view the law laid down in the matter, by passing a reasoned order, within a period of two months from the date of presentation of certified copy of this order. "

12. The Nagar Ayukt, Nagar Nigam, Meerut, one Arvind Kumar Chaurasia, proceeded to pass an order dated 28.12.2019, that is to say, the impugned order rejecting the petitioner's claim, on ground that the petitioner had retired from service on 30.06.2019 whereas increments are payable to employees who are in service. After retirement from service, there is no provision for the award of increment. This is particularly so as no Government Order has been issued by the Government of Uttar Pradesh. It has also been said in the impugned order, most inappropriately, that since there is no Rule or Government Order authorising the payment of increment after retirement, the petitioner is not entitled to it. The

increment for the period 01.07.2018 to 30.06.2019 would fall due on 01.07.2019 and the petitioner had retired a day earlier.

13. The Madras High Court, in a Bench decision of their Lordships in **P. Ayammperumal v. The Registrar, Central Administrative Tribunal and others** in Writ Petition No. 15732 of 2017 decided on 15.09.2017, to which reference was made in this Court's order dated 19.11.2019 passed in Writ-A No. 18405 of 2019, had squarely dealt with the issue in a writ petition arising out of an order passed by the Central Administrative Tribunal.

14. In **P. Ayammperumal (supra)**, the short facts were that the petitioner had joined the Indian Revenue Service in the Customs and Excise Department in the year 1982 and retired as the Additional Director General, Chennai on 30.06.2013 upon attaining the age of superannuation. The 6th Pay Commission came in and the Central Government fixed 1st of July as the date on which increment for all employees would be payable, amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. It was in view of the said amendment that the petitioner was denied his last increment though he had completed a full year in service from 01.07.2012 to 30.06.2013. The petitioner moved the Central Administrative Tribunal, Madras Bench which rejected the petitioner's claim going by the book, like the *Nagar Ayukt* here, that the increment fell due on the 1st of July and since the petitioner had retired a day prior to that date, he was not entitled. This order was challenged before the Madras High Court. The Division Bench allowed the writ petition referring to an earlier judgment of the High Court in **State of Tamil Nadu, represented by its Secretary to Government, Finance Department and others v. M. Balasubramaniam, CDJ 2012 MHC 6525**, holding:

"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, service, though 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."

15. A Special Leave Petition, carried against the said decision, was dismissed by the Supreme Court on 23rd July, 2018. This judgment of the Madras High Court, against which Special Leave had been declined by the Supreme Court, was clearly referred to by the learned Single Judge in his order dated 19.11.2019 passed in Writ-A No. 18405 of 2019, when his Lordship issued a direction to the *Nagar Ayukt* to consider the petitioner's claim for the grant of notional increment, with effect from 01.07.2018 to 30.06.2019. Now, the position of the law was well settled by time **P. Ayammperumal** was decided and that should have put an end to the controversy.

16. It appears that the issue arose before the Bombay High Court, the Delhi High Court and the Armed Forces Tribunal, Regional Bench, Lucknow, besides the Madras High Court who were unanimous in saying that the increment earned up to 30th June of a given year but falling due under the rules on 1st of July is already earned and has to be paid to the retired employee notionally, to be accounted towards the reckoning of his pension.

17. The issue arose before a Division Bench of this Court in a bunch of writ petitions entitled **Writ-A No. 14527 of 2022, Union of India and 3**

others v. Shiv Balak and 2 others decided on 15.12.2022 preferred by the Union of India from various judgments of the Central Administrative Tribunal, challenging similar orders, directing the grant of notional increment that had been earned up to the 30th of June of a particular year involved and where the employees had retired on 30th June before the increment actually fell due on the 1st of July. A Division Bench of this Court formulated the question involved in paragraph no. 2 of the judgement in **Shiv Balak (supra)** thus:

"The short **question involved** in this bunch of writ petitions is as under:

"Whether employees who retired on 30th June are entitled to the last annual increment made effective from on 1st July?"

18. After noticing the consistent opinion of the Madras High Court, the Bombay High Court, the Delhi High Court and the Armed Forces Tribunal, Regional Bench, Lucknow, all affirmed by the Supreme Court, their Lordships held:

"18. In view of the facts and legal position noted above, since the controversy/question involved in the present writ petitions is squarely covered by the judgments/orders of Hon'ble Supreme Court affirming the judgment of Madras High Court, Bombay High Court, Delhi High Court and the Armed Forces Tribunal, Regional Bench, Lucknow, therefore, all the Writ Petitions deserve to be dismissed and the impugned orders of the Tribunal deserve to be affirmed.

20. For all the reasons aforesaid all the writ petitions are **dismissed** and it is held that the employees who retired on 30th June are entitled to the last increment made effective on 1st July. "

19. Still later, the issue again arose before the Supreme Court in **C.P. Mundinamani (supra)** where the employers, who had joined a similar issue with employees, lost before the Division Bench of the Karnataka High Court and moved the Supreme Court by Special Leave.

20. In **C.P. Mundinamani**, the facts show that the employees of the Karnataka Power Transmission Corporation Limited, the writ petitioners-respondents in that case, had retired a day before the annual increment accrued in accordance with Regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations, 1977. The said Regulation made

provision that an increment earned would accrue on the day following and since the employees in that case had retired on the day it was earned, the Karnataka Power Transmission Corporation Limited, going by the book, denied the increment that the retiring employees had earned up to the last day of their service.

21. Their Lordships of the Supreme Court, as the report in **C.P. Mundinamani** would show, formulated the following question:

“**13.** The short question which is posed for the consideration of this Court is whether an employee who has earned the annual increment is entitled to the same despite the fact that he has retired on the very next day of earning the increment?”

22. In answering the question, their Lordships surveyed the divergent opinions of the Full Bench of the Andhra Pradesh High Court, the Himachal Pradesh High Court and the Kerala High Court, that would support the employer’s contention and the other views favouring the employees expressed by the Madras High Court, the Delhi High Court, this Court, the Madhya Pradesh High Court, the Orissa High Court and the Gujarat High Court, and held:

“**15.** It is the case on behalf of the appellants that the word used in Regulation 40(1) is that an increment accrues from the day following that on which it is earned and in the present case the increment accrued on the day when they retired and therefore, on that day they were not in service and therefore, not entitled to the annual increment which they might have earned one day earlier. It is also the case on behalf of the appellants that as the increment is in the form of incentive and therefore, when the employees are not in service there is no question of granting them any annual increment which as such is in the form of incentive.

16. At this stage, it is required to be noted that there are divergent views of various High Courts on the issue involved. The Full Bench of the Andhra Pradesh High Court, the Himachal Pradesh High Court and the Kerala High Court have taken a contrary view and have taken the view canvassed on behalf of the appellants. On the other hand, the Madras High Court in the case of *P. Ayyamperumal* (supra); the Delhi high Court in the case of *Gopal Singh v. Union of India* (Writ Petition (C) No. 10509/2019 decided on 23.01.2020); the Allahabad High Court in the case of *Nand Vijay Singh v. Union of India* (Writ A No. 13299/2020 decided on 29.06.2021); the Madhya Pradesh High Court in the case of *Yogendra Singh Bhadauria v. State of Madhya Pradesh*; the Orissa High Court in the case of *AFR Arun Kumar Biswal v. State of Odisha* (Writ

Petition No. 17715/2020 decided on 30.07.2021); and the Gujarat High Court in the case of *State of Gujarat v. Takhatsinh Udesinh Songara* (Letters Patent Appeal No. 868/2021) have taken a divergent view than the view taken by the Full Bench of the Andhra Pradesh High Court and have taken the view that once an employee has earned the increment on completing one year service he cannot be denied the benefit of such annual increment on his attaining the age of superannuation and/or the day of retirement on the very next day.

17. Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day in that case also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted.

18. Now, so far as the submission on behalf of the appellants that as the increment has accrued on the next day on which it is earned and therefore, even in a case where an employee has earned the increment one day prior to his retirement but he is not in service the day on which the increment is accrued is concerned, while considering the aforesaid issue, the object and purpose of grant of annual increment is required to be considered. 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. In the case of *Gopal Singh* (supra) in paragraphs 20, 23 and 24, the Delhi High Court has observed and held as under:-

(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."

(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."

(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."

"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."

19. The Allahabad High Court in the case of Nand Vijay Singh (supra) while dealing with the same issue has observed and held in paragraph 24 as under: -

"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 if 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."

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)."

23. It is in view of the law laid down by the supreme Court in **C.P. Mundinamani** that this Court required the Nagar Ayukt, Nagar Nigam, Meerut to file an affidavit of compliance showing cause why the impugned order be not quashed as it decides in the teeth of what their Lordships of the Supreme Court have held in **C.P. Mundinamani**. Instead of showing cause, in the affidavit of compliance that has been filed, all that is said finds mention in paragraph nos. 4 and 5, which read:

"4. That pursuant to the aforesaid directions of this Hon'ble Court the deponent had sent a communication on 12.09.2023 to the Director, Local Bodies, U.P. at Lucknow for issuing

appropriate direction so that the order of this Hon'ble Court may be complied in letter and spirit. True copy of the communication dated 12.09.2023 sent by the deponent to the Director, Local Bodies, U.P. at Lucknow is being filed herewith and marked as **ANNEXURE NO. AOC-1** to this affidavit of compliance.

5. That till this date no direction has been issued by the Director, Local Bodies, U.P. The deponent is ready to comply any direction of this Hon'ble Court issued in this case.”

24. It is interesting to notice that these two paragraphs of the affidavit, sworn by the Nagar Ayukt, Nagar Nigam, Meerut himself, have been verified on the basis of “information received from the records”. The communication to the Director, Local Bodies, U.P. dated 12.09.2023, that had been sent by the Nagar Ayukt, Nagar Nigam, Meerut, is a document that the *Nagar Ayukt* sent himself to the Director, Local Bodies. One is left to wonder why this averment would be sworn on the basis of information received from records. That apart an averment in an affidavit is sworn either on the ‘basis of record’ or ‘information received from a person’. There is no swearing on the basis of ‘information received from records’. These kinds of things happen where official respondents intermeddle with learned Counsel’s draft and attempt vetting draft pleadings or affidavits by applying their ‘common sense’ to the expert field of the law.

25. The other noticeable feature is that the *Nagar Ayukt* is the man competent on behalf of the Nagar Nigam to sanction and grant increment to the petitioner. Why has he then made a reference of the matter to the Director, Local Bodies is difficult to explain. If, under the law, the Nagar Ayukt, Nagar Nigam could reject the petitioner’s claim for grant of the annual increment for the period 01.07.2018 to 30.06.2019, notionally, it was for him to explain why his order be not quashed and a *mandamus*, as prayed, issued. The *Nagar Ayukt* is not a child or a ward sitting in the Director’s lap seeking directions, as if it were, from his guardian or a parent figure, what to do in the matter. We strongly disapprove of the aforesaid course of action adopted by the Nagar Ayukt, Nagar Nigam, Meerut and caution him to be careful in future.

26. The merits of the matter now lie beyond the realm of cavil. Once the majority of the Constitutional Courts of the country, including the Supreme Court of India, have unequivocally held that a Regulation, that denies the benefit of an increment earned by an employee for the year merely because it technically accrues on the day following his retirement, would be arbitrary and unreasonable, there is no option for the *Nagar Ayukt* but to notionally grant the increment. This is what has been held by the Supreme Court in **C.P. Mundinamani**, as also the majority of the High Courts in the country. In the face of the holding of the Constitutional Courts, including the Supreme Court of India, no Government Order or Rule to the contrary can be given effect to. It is not open to the *Nagar Ayukt* to have referred to Government Orders in the face of the law laid down by High Courts across the country, which at the time the impugned order was passed, had met with approval of the Supreme Court, may be by a summary refusal of leave.

27. The *Nagar Ayukt* as well as the State Government are cautioned in the matter not to act pedantically following Government Orders on issues that are governed by judgments of the High Court or the Supreme Court, rendered after considering such Government Orders or Rules holding them to be arbitrary. Apparently, it seems that the *Nagar Ayukt* has thought it safer to go by a Government Order and seek instructions from the Government, ignoring judgments of this Court and the Supreme Court. This kind of an impression as well as course of action has to be firmly discouraged and put down. The impugned order being clearly one in the teeth of the consistent law laid down by the High Courts and finally approved by the Supreme Court in **C.P. Mundinamani**, it cannot be sustained.

28. In the result, this petition **succeeds** and is **allowed**. The impugned order dated 28.12.2019 passed by the Nagar Ayukt, Nagar Nigam, Meerut is hereby **quashed**. A *mandamus* is issued to the respondents to grant annual increment to the petitioner for the period 01.07.2018 to 30.06.2019

notionally with effect from 01.07.2019. The petitioner's pension shall be revised accordingly and arrears of pension paid to the petitioner within a period of eight weeks of the receipt of a copy of this judgment, failing which the arrears will carry simple interest at the rate of 6% per annum for the period of delay. A revised Pension Payment Order shall be issued within the aforesaid period of time. The petitioner will be entitled to costs in the sum of Rs. 10,000/- payable by the Nagar Ayukt, Nagar Nigam, Meerut. It will be open to the Nagar Nigam, Meerut to recover these costs from the Nagar Ayukt who passed the impugned order.

29. Let this judgment be communicated to the Nagar Ayukt, Nagar Nigam, Meerut by the Registrar (Compliance).

Order Date :- 1.4.2024

Prashant D.

(J.J. Munir,J.)