



Reserved on 20.05.2026
Delivered on 31.07.2026



2026:AHC:160460-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 650 of 2012

Viddya Dhar Shukla

.....Appellant(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Appellant(s)	: Adya Prasad Tiwari, B.m.pandey, Meni Madhav Pandey, Mithilesh Kumar Tiwari, Pradeep Kumar Jain, S.s. Tripathi, Sheo Shankar Tripathi, Vikram D. Chauhan
Counsel for Respondent(s)	: C.S.C.

A.F.R.

Court No. - 1

HON'BLE AJIT KUMAR, J.
HON'BLE INDRAJEET SHUKLA, J.

Per: Indrajeet Shukla, J.

1. Heard Shri N.K. Chaturvedi, learned Counsel along with Shri Manoj Kumar Tiwari, learned Counsel appearing for the petitioner and Shri Pradeep Singh, learned Standing Counsel for the State-respondents.

Facts

2. Present intra-court appeal has been filed by writ petitioner/appellant, inter-alia challenging the order dated 08.02.2012 passed by Writ Court in Civil Misc. Writ Petition No.6984 of 2012 titled as Vidyadhar Shukla Vs. State of U.P. and others dismissing the writ petition with following observation:

“Heard learned counsel for the parties.

Vidyadhar Shukla, the petitioner, an Assistant Clerk Working in the U.P. Board of High School and Intermediate, Allahabad has again approached this Court by filing this writ petition in the same series of litigation claiming certain service benefits admissible to him. Criminal as well as Departmental enquiries were initiated against the petitioner. In the criminal trial the petitioner was acquitted giving benefit of doubt by the competent Court vide judgment dated 1.6.1994. During Certain period, that is from 27.12.1977 to 28.7.1981, the petitioner has remained absent from duty. Further, on submitting representations and approaching this Court, this issues was dealt with by the aforementioned Board and the petitioner was granted extraordinary leave without pay vide order dated 4.12.2004. As far as departmental enquiry is concerned, the petitioner was given a serious warning and an adverse entry was also recorded in his Character Role after assessment of his work, conduct and performance from the period 1977 to 1994-95. However, the period of absence from duty (later on regularised by granting leave without pay) was ordered to be counted for the purposes of allowing pension to the petitioner. It was also indicated in the order dated 4.12.2004 that "Sewa Sambandhi Anumanya Sabhi Labh Ukt Nirnay ke Ashin Niyamausar Dai Honge". The order dated 4.12.2004 has been passed in furtherance of a judgment rendered by this Court on 16.7.2004 while disposing of the Writ Selection Grade as claimed by the petitioner from the year 1982 to 1992 and take an appropriate decision in accordance with law by passing a reasoned and speaking order within three months from the date of presentation of a certified copy of this order after taking into consideration judgement and order passed by the Court as well as the order dated 4.12.2004 passed by the Board.

Pursuant to the said order in question, claim of the petitioner has been considered and it has been found that as his work and conduct has not been found to be satisfactory, as such he is not entitled for Selection Grade and Promotional pay scale. Opinion formed cannot be said to be incorrect opinion for the simple reason that at point of time when the punishment order has been passed, petitioner has given warning not to repeat such activity and further precise mention was that his work and conduct was not at all befitting conduct of government servant and same forms part of the Character Roll of the petitioner. One such was the factual situation in respect of the petitioner wherein petitioner's record has not at all been found to be satisfactory, then in view of this, refusal to accord selection grade and promotional pay scale suffers from to infirmity

whatsoever as pre requisite terms and conditions for getting said benefit is satisfactory service, which admittedly is lacking and missing in the fact of the case.

(Emphasis supplied)

Consequently, present writ petition is dismissed.”

3. Facts in brief relevant for adjudication of instant appeal are recapitulated as under:

Undoubtedly, the writ petitioner/appellant was appointed as a Routine Grade Clerk in the office of second respondent/Madhyamik Shiksha Parishad Uttar Pradesh, Allahabad, on 14.06.1969. The Petitioner was charged with offences punishable under Section 420, 467, 468, 471 of IPC with the imputation that petitioner manipulated/forged certain mark sheets. The two trials conducted by virtue of Criminal Case No.4/1981 and 635/1987 ended in acquittal vide judgments dated 18.05.1984 and 01.06.1994. The judgments of acquittal have been brought on record along with the writ petition. It is an admitted position between the parties that the said judgments of acquittal have attained finality. The appellant/writ petitioner remained absent from duty for the period of 27.12.1977 till 28.07.1981. The case set up by appellant as writ petitioner is that the mental trauma faced by him compelled his absence. On the basis of medical certificate, appellant was permitted to resume his duties with effect from 1981. Appellant/writ petitioner thereafter claimed salary for the period of his absence i.e., from 27.12.1977 to 28.07.1981 as well as promotion to the next higher post but the claim for promotion and salary set up by writ petitioner was rejected. Thereafter, he filed successive writ petitions and ultimately, this Court, vide order dated 16.07.2004 passed in Writ Petition No.18773/2000 directed second respondent to pass a fresh order pertaining to grant of selection grade and promotional pay scale.

4. Pursuant to the aforesaid directions, the Respondent-Board considered the merits of claim set up by appellant-writ petitioner, in detail and refused the same vide order dated 04.12.2004. The

conclusions drawn by Additional Secretary (Administration) Madhyamik Shiksha Parishad refusing claim of Selection Grade and promotional pay scale are extracted as under:

"(4) यह कि स्पष्ट किया जाता है कि उनका आचारण वर्ष 1977 से 1994-95 तक सरकारी सेवक के अनुकूल नहीं पायी गयी है। अतः यह प्रविष्टि उनकी गोपनीय आख्या में रखी जाय।

(5) उक्त सम्पूर्ण अवधि दिनांक 27/12/77 से 28/07/81 तक को पेंशन हेतु सेवा से जोड़ने के लिए नियमों के अनुसार माना जायेगा

(6) सेवा सम्बन्धी अनुमन्य सभी लाभउक्त निर्णय के अधीन निमानुसार देय होंगे

उच्च न्यायालय के आदेश दिनांक 16-7-2004 के समादर में श्री शुक्ल के प्रत्यावेदन दिनांक 31/7/2004 को निस्तारित किया गया।"

5. It is strange enough that despite the rejection of claim of petitioner to accord promotional pay scale and selection grade by virtue of order dated 4.12.2004, the same was not challenged by appellant-writ petitioner, in any manner.

6. The appellant/writ petitioner was admittedly issued warning and his conduct was not found to be befitting the Government servant for the period from 1977 to 1994-95. The said entry was directed to be kept in confidential record of petitioner.

7. In absence of any challenge to the order dated 04.12.2004, the issue of warning, the entry qua period from 1977 to 1994-95 holding petitioner not at all befitting the conduct of Government servant attained finality and as such petitioner is precluded to claim any benefit for aforesaid period so long the order dated 04.12.2004 passed by third respondent/Additional Secretary (Administration) Madhyamik Shiksha Parishad, Allahabad remains intact. Without challenging the order dated 04.12.2004 passed by Additional Secretary (Administration) Madhyamik Shiksha Parishad, Allahabad, petitioner instituted another writ petition bearing number 76756 of 2005, which was disposed of by this Court with following observations:

"The petitioner has filed this writ petition seeking relief for allowing him promotional grade from the year 1982 and the Selection Grade from the year 2000. The main thrust of the submission of the learned counsel for the petitioner during the course of the argument is that criminal trial and departmental enquiry both have come to an end. Criminal trial has resulted in acquittal and the departmental enquiry has also concluded by awarding an adverse entry and issuance of a warning to the petitioner. The Board has overlooked these reliefs which were sought by the petitioner, that is, Promotional Grade and the Selection Grade with effect from the aforementioned years. Since in Clause (6) the Secretary of the U.P. Madhyamik Shiksha Parishad, Allahabad has already indicated that the other benefits may be admissible to the petitioner in the light of the decision taken on 4.12.2004, it would be appropriate that the matter may be reconsidered as far as grant of promotional grade and Selection Grade to the petitioner is concerned.

Accordingly, the writ petition is disposed of finally with a direction to the Secretary, U.P. Board of High School and Intermediate, Allahabad to reconsider the matter of the petitioner in respect of grant of Promotional Grade and Selection, Grade as claimed by the petitioner from the year (illegible) and 1997 and take an appropriate decision in accordance with law by passing a reasoned and speaking order within three months from the date of presentation of a certified copy of this order after taking into consideration judgment and order passed by the Court as well as the order dated 4.12.2004 passed by the Board."

8. In compliance of order dated 18.05.2009 passed in Writ Petition No.76756 of 2005, respondent authority decided the claim of petitioner afresh vide order dated 30.11.2009. The relevant excerpt of order dated 30.11.2009 passed by Secretary Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad is being reproduced as under:

‘इस विषय में उल्लेखनीय है कि माननीय उच्च न्यायालय, इलाहाबाद द्वारा पारित निर्णय दिनांक 15-05-2009 में याची के सेलेक्शन ग्रेड एवं प्रमोशनल ग्रेड पर विचार किया गया। इस सम्बन्ध में यह अनुपालन पाया गया है कि माननीय उच्च न्यायालय इलाहाबाद द्वारा पारित निर्णय दिनांक 16-07-2004 के अनुपालन में पुष्पांकन संख्या: मा०शि०प०/नियक्ति /अ०स० (प्र०) / 3765-4 दिनांक 04-12-

2004 द्वारा याची के प्रकरण में विचारोपरान्त लिये गये निर्णय के अनुसार इनकी सेवायें सेलेक्शन ग्रेड एवं पदोन्नति ग्रेड सम्बन्धी निर्गत शासनादेशों में निहित प्राविधानों के अन्तर्गत संतोषजनक नहीं बन रही है. जिस कारण समयमान वेतनमान एवं पदोन्नति वेतनमान की देयता पर विचार किया जाना सम्भव नहीं हो पा रहा है। याची श्री विद्याधर शुक्ल जिस रूप में कार्य किये है, उस सेवा अवधि के लिये उन्हें देय वेतन आदि का भुगतान किया जा चुका है। ”

9. The appellant/writ petitioner challenged the order dated 30.11.2009 before the Writ Court and, inter alia, claimed the benefit of the promotional pay scale and selection grade. The reliefs claimed by the appellant/writ petitioner are extracted hereunder:

"(i) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 30.11.2009 passed by the respondent no.2.

(ii) Issue a writ order or direction in the nature of mandamus commanding the respondent no.2 to ensure the payment of promotional grade to the petitioner since 1982 and the selection grade since 1992 till the date of his retirement and the pension may be paid accordingly. "

10. The Learned Single Judge dismissed the writ petition, affirming the twin-fold reasoning set out in the order challenged in the writ petition i.e. adverse order dated 16.07.2004 passed under the mandate of this Court. The said order specifically records that “सेवा सम्बंधित अनुमन्य सभी लाभ उक्त निर्णय के अधीन नियमानुसार देय होंगे ”.

11. There being order dated 4.12.2004 intact, writ court refused to exercise discretion vested in it. Consequently, the writ petition was dismissed vide judgment and order dated 08.02.2012.

12. Being embittered with the order dated 08.02.2012 passed by Writ Court, the petitioner invoked the intra court appellate jurisdiction of this Court.

Submission Advanced on behalf of Appellant

13. Learned counsel for the appellant vehemently argued that though he failed to challenge the order dated 04.12.2004 passed by the respondent authority, concluding that the period of absence is to be treated as leave without pay for the purpose of pension and the serious warning with an adverse entry recorded in his character roll after assessment of his work, conduct and performance for the period from 1977 to 1994-95 would not be an impediment for grant of promotional pay scale and selection grade since with effect from 1982 and 1992, respectively as despite the order dated 04.12.2004 subsisting this Court directed for consideration of the claim afresh as such the order dated 04.12.2004 was not found to be impediment in the grant of service benefit claimed by appellant/writ petitioner.

14. The aforesaid submission is completely misplaced as this Court while passing the order dated 18.05.2009 in writ petition no.76756 of 2005 has not mandated the authorities to ignore the order dated 04.12.2004, rather same remained intact for want of interference by Writ Court in earlier round of litigation.

15. Further, contention raised by learned counsel for the appellant that the adverse entries recorded vide order dated 04.12.2004, were never communicated to the appellant-writ petitioner appears to be prima facie, fallacious on the face of the record as while instituting fresh writ petition by virtue of Writ A No.76756 of 2005 it was always open to the Appellant to lay challenge against order dated 4.12.2004, which itself records about adverse entry but counsel for appellant had fairly conceded that the order dated 4.12.2004 was not challenged, as such we failed to understand that the relief claimed by petitioner for grant of promotional pay scale and selection grade with effect from 1982 and 1992 respectively can be accorded in absence of any challenge to the order dated 04.12.2004, but at this stage appellant/writ petitioner submits that relief as prayed for, before Writ Court, may be modified by this

Court for substantial justice and Respondent State may be directed to grant Selection grade by calculating 10 years satisfactory service after 1995, as the adverse entry in terms of order dated 4.12.2004 was limited only for the period of 1977 to 1994-95 (which ended on 30th June, 1995).

16. If service rendered by the appellant from 1 July 1995 to 30th June 2005 is calculated for purposes of grant of selection grade it would be 10 years satisfactory service since petitioner demitted office on 30th June 2005 and by that time has completed 10 years satisfactory service.

17. We cannot lose sight of the admitted position of law that intra court appeal as well as Writ Court exercises one and same jurisdiction as such we are vested with the power to modify the relief if it may not be granted in the manner it has been prayed for.

18. While deciding an intra court appeal under Rules 1952, the power of the Division Bench are coextensive with the powers of Hon'ble Single Judge while deciding the writ petition. In **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others**, (1996) 3 SCC 52, the Supreme Court held that "*it is the internal working of the High Court which splits it into different 'Benches' and yet the court remains one. A letters patent appeal, as permitted under the letters patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench.*"

19. Now the only question survives for consideration in the shape of moulded relief is, whether the benefit of the selection grade to the appellant-writ petitioner is permissible on conjoint reading of Government orders dated 09.05.1984, 08.03.1995 & 02.12.2000 or not by computing unblemished services rendered from 01 July 1995 to 30 June 2005, which would amount to 10 years satisfactory service.

20. The Government Order dated 09.05.1984 and its translated version reads as under:

"मुझे यह कहने का निर्देश हुआ है कि उपरोक्त विषयक शासनादेश सं०-वे०आ०-2-210/दस-सं०व्य० (सा०)-82, दिनांक 4 फरवरी, 1983 का आंशिक संशोधन करते हुए राज्यपाल महोदय ने आदेश प्रदान किया है कि उसके संलग्नक-1 के क्र०सं० 1, 2(1), 2(3), 3, 4(1), 4(3), 5(1), 6(1), 6(3), 7(1), 8, 9(1 से 4) तथा 10 तक उल्लिखित पदों पर मौलिक नियुक्त की दशा में 10 वर्ष की नियमित सेवा के बाद सेलेक्शन ग्रेड अनुमन्य होगा। यदि कोई पद पदोन्नति से भरा जाता है तो उस पर यह आदेश लागू नहीं होगा और उस पर शासनादेश दिनांक 4 फरवरी, 1983 की व्यवस्था के अनुसार ही सेलेक्शन ग्रेड अनुमन्य होगा। यह संशोधन दिनांक 1 मई, 1984 से प्रभावी होगा और उक्त शासनादेश में उल्लिखित अन्य शर्तें पूर्ववत् लागू रहेंगी।

I am directed to say that, in partial amendment to the Government Order No. वे०आ०-2-210/दस-सं०व्य० (सा०)-82, dated February 4, 1983, on the subject cited above, the Governor has been pleased to order that in the case of substantive appointment to the posts mentioned under Sl. Nos. 1, 2(1), 2(3), 3, 4(1), 4(3), 5(1), 6(1), 6(3), 7(1), 8, 9(1 to 4), and up to 10 of Annexure-I thereof, the selection grade shall be admissible after completing 10 years of regular service. If any post is filled by promotion, this order shall not apply to it, and the selection grade shall remain admissible on such post strictly in accordance with the provisions of the Government Order dated February 4, 1983. This amendment shall come into force with effect from May 1, 1984, and all other terms and conditions specified in the aforementioned Government Order shall remain applicable as heretofore."

(translation by Court)

21. The relevant portion of Government Order dated 08.03.1995 and its translated version reads as under:

"2. ऐसे कर्मचारी जिनके पुनरीक्षित वेतनमान का अधिकतम रु० 03500/-तक है और जो संबंधित पद पर नियमित हो चुके हैं, उनकी जब 6 वर्ष की संतोषजनक सेवा सेलेक्शन ग्रेड के लाभ की तिथि को सम्मिलित करते हुए कुल 14 वर्ष की पूर्ण हो जाती है, प्रोन्नति का अगला वेतनमान वैयक्तिक रूप से अनुमन्य किया जाये। वैयक्तिक प्रोन्नत वेतनमान देने के लिये सेलेक्शन ग्रेड के लाभ के अंतर्गत देय एक वेतनवृद्धि की 6 वर्ष का संतोषजनक सेवा अनिवार्य है। किन्तु सेलेक्शन ग्रेड के लाभ

को सेवा गणना हेतु पूर्व में इसके अंतर्गत यदि एक वेतन वृद्धि मिल चुकी है तो उस वास्तविक दिनांक से गिनी जायेगी। उदाहरण के लिये यदि किसी पदधारक को 10 वर्ष की संतोषजनक सेवा के आधार पर एक वेतन वृद्धि का लाभ 1-4-89 को मिल चुका था और उसकी सेवा इसके बाद संतोषजनक अनवरत रही है और वह नियमति है। हो जाता है तो 1-4-95 को वैयक्तिक प्रोन्नत वेतनमान मिलेगा। ऐसे संवर्ग पद जिनके लिये प्रोन्नति का कोई पद नहीं है, उनको उस वेतनमान से अगला वेतनमान देय होगा। उदाहरण स्वरूप ऐसा पदधारक जो पुनरीक्षित वेतनमान रु० 1200-2040 में है, उसे रु० 1350-2200 का पुनरीक्षित वेतनमान वैयक्तिक वेतनमान के रूप में देय होगा।

3. ऐसे कर्मचारी, जिनके पुनरीक्षित वेतनमान का अधिकतम रु० 3500/- तक है जब वैयक्तिक रूप से अनुमन्य प्रोन्नत/अगले वेतनमान में 6 वर्ष की निरन्तर संतोषजनक सेवा तथा कुल 20 वर्ष की सेवा पूरी कर लेते हैं, को प्रोन्नति/अगले वेतनमान में वेतन उस तिथि को अगले प्रक्रम पर निर्धारित कर दिया जाये अर्थात् उसे एक वेतन वृद्धि का लाभ उसी वेतनमान में अनुमन्य होगा। किन्तु यदि किसी नियमित पदधारक को पूर्व व्यवस्था के अंतर्गत 16 वर्ष की सेवा के आधार पर वैयक्तिक रूप से प्रोन्नत वेतनमान अगला वेतनमान पहले मिल चुका है तो 6 वर्ष की निरन्तर संतोषजनक सेवा की गणना में पूर्व में जिस दिनांक से यह लाभ मिला है उसे संज्ञान में लिया जायेगा। उदाहरण स्वरूप यदि पदधारक को वैयक्तिक प्रोन्नत वेतनमान / अगला वेतनमान 1-2-89 को मिल चुका था तो 1-3-95 को उक्त व्यवस्था के अधीन एक अतिरिक्त वेतन वृद्धि अनुमन्य होगी।”

"2. In respect of such employees whose maximum of the revised pay scale is up to Rs. 03500/- and who have been regularized on the concerned post, upon completion of a total of 14 years of satisfactory service, inclusive of 6 years of satisfactory service calculated from the date of grant of selection grade, the next personal promotional pay scale shall be admissible to them. For granting the personal promotional pay scale, a 6-year satisfactory service from the grant of one increment under the selection grade benefit is mandatory. However, for the purpose of service calculation, if an increment under the selection grade benefit has been granted earlier, it shall be counted from that actual date. For example: If an incumbent was granted the benefit of one increment on 01-04-89 on the basis of 10 years of satisfactory service, and his service thereafter has remained continuously satisfactory and he is regular/ gets regularized, then the personal promotional pay scale shall be admissible to him with effect from 01-04-95. For such cadres/posts where no promotional post is available, the pay scale next to the current pay scale shall be admissible. For example, an incumbent who is in the revised pay

scale of Rs. 1200-2040 shall be granted the pay scale of Rs. 1350-2200 as a revised personal pay scale."

"3. In respect of such employees whose maximum of the revised pay scale is up to Rs. 3500/-, upon completing 6 years of continuous satisfactory service in the personally admissible promotional/next pay scale and a total of 20 years of service, their pay in the promotional/next pay scale shall be fixed at the next level with effect from that date; that is to say, the benefit of one increment shall be admissible to them in the same pay scale. Provided that if a regular incumbent has already been granted the personal promotional pay scale / next pay scale on the basis of 16 years of service under the earlier provision, the date from which such benefit was previously granted shall be taken into account for calculating the 6 years of continuous satisfactory service. For example, If an incumbent was granted the personal promotional pay scale / next pay scale on 01-02-89, then an additional increment under the said provision shall be admissible to him with effect from 01-03-95."

(translation by Court)

22. Similarly, Government Order dated 02.12.2000 and its translated version provides for extension of benefit of selection grade reads as under:

"2) प्रथम वैयक्तिक प्रोन्नतीय/अगला वेतनमान - उपर्युक्त श्रेणी के ऐसे अधिकारी/कर्मचारी जिन्होंने सेलेक्शन ग्रेड के लाभ की तिथि से 6 वर्ष की अनवरत संतोषजनक सेवा सहित कुल 14 वर्ष की अनवरत संतोषजनक सेवा पूर्ण कर ली हो और सम्बन्धित पद पर नियमित हो चुके हों, को प्रोन्नति का अगला वेतनमान वैयक्तिक रूप से अनुमन्य किया जाय। ऐसे संवर्ग पद जिनके लिए प्रोन्नति का कोई पद नहीं है, उनको उस वेतनमान से अगला वेतनमान वैयक्तिक रूप से देय होगा। उपर्युक्त वैयक्तिक प्रोन्नतीय अगला वेतनमान देने के लिये सेलेक्शन ग्रेड के लाभ के अन्तर्गत देय एक वेतनवृद्धि की तिथि से 6 वर्ष की संतोषजनक सेवा अनिवार्य हैं, किन्तु यदि किसी कर्मचारी को सेलेक्शन ग्रेड का लाभ पूर्व में 10 वर्ष की सेवा के आधार पर मिला हो तो उक्त प्रयोजनार्थ सेलेक्शन ग्रेड के लाभ की अवधि का प्रतिबन्ध 4 वर्ष रखा जायेगा। उपर्युक्त वैयक्तिक प्रोन्नतीय/अगले वेतनमान की अनुमन्यता हेतु अधिकारी/कर्मचारी का सम्बन्धित पद पर नियमित होना आवश्यक है। अन्य शर्तों की पूर्ति पर भी सम्बन्धित पद पर नियमित न होने की दशा में पदधारक को यह लाभ उस

तिथि से ही अनुमन्य होगा, जिस तिथि से सम्बन्धित पद पर वह नियमित किया जायेगा।”

"2) First Personal Promotional / Next Pay Scale- Such officers/employees of the aforementioned category who have completed a total of 14 years of continuous satisfactory service, inclusive of 6 years of continuous satisfactory service calculated from the date of grant of selection grade benefit, and have been regularized on the post concerned, shall be granted the next personal promotional pay scale. For such cadres/posts where no promotional post is available, the pay scale next to that pay scale shall be admissible personally. For granting the aforesaid personal promotional/next pay scale, a 6-year satisfactory service calculated from the date of grant of one increment under the selection grade benefit is mandatory; provided that if an employee was granted the benefit of selection grade earlier on the basis of 10 years of service, the restriction on the period of selection grade benefit for the said purpose shall be kept at 4 years. For the admissibility of the aforesaid personal promotional/next pay scale, it is essential for the officer/employee to be regularized on the post concerned. Even upon fulfilling other conditions, in the event of not being regularized on the post concerned, this benefit shall be admissible to the incumbent only with effect from the date on which he/she is regularized on the post concerned."

(translation by Court)

23. Further Government Order dated 05.11.2014 provides that the period of unsatisfactory service is to be excluded for grant of financial upgradation. Since the petitioner attained the age of superannuation in the year 2005, thus, aforesaid Government Order is hardly of any assistance directly of any consequence but the practice consistently being followed by the State Government is, where an employee is granted a financial upgradation after a delay on account of not having rendered satisfactory service, such delay shall have a corresponding effect on all subsequent financial upgradations. In other words, for the purpose of determining eligibility for the next financial upgradation, the prescribed qualifying period shall stand extended by the period that was

excluded while computing the employee's entitlement to the previous financial upgradation. The relevant extract of the said Government Order and its translated version is extracted as under:

"(4) सन्तोषजनक सेवा पूर्ण न होने के कारण यदि किसी कार्मिक को वित्तीय स्तरोन्नयन विलम्ब से प्राप्त होता है तो उसका प्रभाव आने वाले अगले सभी वित्तीय स्तरोन्नयन पर भी पड़ेगा। अर्थात् अगले वित्तीय स्तरोन्नयन की अनुमन्यता हेतु निर्धारित अवधि की गणना में उतनी अवधि बढ़ा दी जायेगी जितनी अवधि पूर्व वित्तीय स्तरोन्नयन प्राप्त होने की गणना में नहीं ली गयी है।"

"(4) If an employee receives a financial upgradation with delay on account of non-completion of satisfactory service, its effect shall also fall upon all subsequent financial upgradations. That is to say, for determining the admissibility of the next financial upgradation, the prescribed period of service shall be extended by such period as was not taken into account for the calculation of the grant of the preceding financial upgradation."

(translation by Court)

Analysis

24. Undisputed fact is the petitioner was enrolled in service on 14 June, 1977 and attained the age of superannuation on 30.06.2005. The adverse remark as per order dated 04.12.2004 was for the specific period from 1977 to 1994-95, meaning thereby since 01.07.1995 till 30.06.2005, petitioner had rendered unblemished service of 10 years(from 1 july 1995 to 30 june 2005) and his increment/selection grade having been due on 01.07.2005 would be admissible to petitioner despite his superannuation on 30.06.2005, in the light of judgment of Hon'ble Supreme Court rendered in the case of **The Director (Admn. And Hr) Kptcl vs C.P. Mundinamani** reported in **(2023) 14 SCC 411**. The Relevant excerpt are extracted as under:

6. 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?

6.6 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 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.”

6.7 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.

Conclusion

25. The completion of 10 years unblemished service from 01.07.1995 till 30.06.2005 went unnoticed by Hon’ble Writ Court and resultantly,

error crept in the order impugned. Accordingly, the impugned order dated 8.02.2012 passed by Writ Court is hereby set aside. The molded relief for consideration of selection grade/financial upgradation on account of computation of 10 years of service w.e.f. 01.07.1995 in the light of relevant government orders is hereby extended to the appellant-writ petitioner.

26. This intra court appeal is being disposed of directing the state-respondent to accord selection grade/requisite financial upgradation treating 10 years service rendered by petitioner since 01.07.1995 till 30.06.2005 as and when it is due strictly in the light of relevant government orders. The necessary exercise shall be undertaken and appropriate orders shall be passed within four weeks from the date of production of certified copy of this order.

27. The writ petition as well as instant intra court appeal is **disposed of** accordingly.

28. No order as to costs.

(Indrajeet Shukla,J.) (Ajit Kumar,J.)

July 31, 2026

Mohit