



2024:CGHC:29471-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 479 of 2024

Registrar General High Court of Chhattisgarh, High Court Building,
Bodri, Post High Court Branch, Bilaspur, District Bilaspur (C.G.)

... **Appellant**

versus

1. Fanendra Kumar Bisen S/o Late Soman Lal Bisen, aged about 54 years, Presently Working as Section Officer in The High Court of Chhattisgarh, R/o F-3/4, High Court Colony, Post Chakarbhata, District Bilaspur (C.G.)
2. State of Chhattisgarh Through The Secretary, Law and Legislative Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur (C.G.)
3. Secretary General Administrative Department Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, District Raipur, (C.G.)

... **Respondents**

For Appellant	:	Mr. Manoj Paranjpe, Advocate
For Respondent No.1	:	Mr. C. Jayant K. Rao, Advocate
For Respondent No.2 &3 /State	:	Mr. Sangharsh Pandey, Govt. Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

07.08.2024

1. Heard Mr. Manoj Paranjpe, learned counsel, appearing for the appellant. Also heard Mr. C. Jayant K. Rao, learned counsel, appearing for respondent No.1 and Mr. Sangharsh Pandey, learned Government Advocate, appearing for the State/ respondent nos. 2 & 3.

2. This writ appeal is presented by the appellant assailing the order dated 15.06.2024 passed by the learned Single Judge in Writ Petition (S) No. 3617 of 2019, whereby the learned Single Judge has partly allowed the writ petition filed by the writ petitioner / respondent No.1 herein.
3. Brief facts of the case are that the petitioner was initially appointed as Assistant Grade-III vide order dated 24.01.1992. The wife of the petitioner had undergone family planning operation (Tubectomy) on 29.07.1999. On account of the family planning operation the benefit of two advance increments has been granted to the petitioner vide order dated 23.08.1999. The petitioner got the above benefit till December, 2004. Subsequently vide order dated 19.01.2005, the petitioner promoted to the post of Assistant Grade-II in the pay scale of Rs. 4000-100-6000, but the benefit of advance increment was not extended to the petitioner. Even vide order dated 28.12.2005 while the pay scale of the petitioner has been fixed, but the above benefit of two advance increments on account of family planning operation has not been granted and as such petitioner not getting the benefit of advance increments. The petitioner made a representation on 18.09.2018 before the respondent No.3 therein for continuance of the above two advance increments, which has been disposed by the respondent No.3 therein vide order dated 30.01.2019 giving the reference of order dated 28.12.2018 passed by Law Department. Hence, the petitioner has filed a writ petition being WPS No. 3617 of 2019 challenging the order dated 30.01.2019,

whereby the claim of the petitioner for continuance of two advance increments has been closed. The said writ petition was disposed of by the learned Single Judge vide impugned judgment dated 15.06.2024, directing the respondents to make fixation of petitioner's pay by taking into consideration the advance increments earned earlier by him till 07.10.2015. It has been further directed to pay arrears, if any, payable to him consequent upon such fixation of pay and other consequential benefits.

4. Being aggrieved by the said impugned judgment dated 15.06.2014 passed by the learned Single Judge, the appellant / respondent No.3 therein has filed the instant appeal.
5. Mr. Manoj Paranjpe, learned counsel for the appellant vehemently argued that the learned Single Judge has failed to appreciate that memo issued by the appellant High Court vide dated 30.08.2018, concerned department of respondent State Government, vide its letter/memo dated 28.12.2018 has communicated to the appellant High Court that as per the information/opinion given by the General Administration Department, GoCG, the benefit of advance increment which has been granted to the respondent No.1 as an incentive will be available only on the prevailing pay-scale till next re-fixation of pay-scale. Further, since there is no provision of continue the benefit of advance increment under the Rules in this regard, therefore, the proposal of the Administrative Department has been disapproved. He further argued that as per rules while granting advance increment on account of Family Planning Operation, the said increments were added to

respondent no.1 basic pay and accordingly the other benefits were granted to him on the said basic pay. Further, while granting of promotion/appointment on higher pay, his increments earlier granted to him including advance increments were taken into consideration and accordingly his pay was fixed at the stage where the same reached in the stage of pay scale of promoted post. Since advance increments were already included in the basic pay of his earlier post/pay scale and while fixing his pay on promoted post the said basic (including the advance increment) was taken into consideration and accordingly his pay was fixed, hence there is no question of grant of further advance increment.

6. Mr. Paranjpe further submitted that the learned Single Judge while deciding the writ petition has relied upon the judgment passed by this Court in WP(S) No. 4486/2005, ***A.K. Kesharwani Vs. State of Chhattisgarh & Others***, whereby this Court allowed the writ petition holding that the advance increment granted to the petitioner cannot be classified as personal pay granted to the petitioner under any of the circumstances enumerated in clause-9 (23) (a) & (b) of the Fundamental Rules. He also submitted that in the case of ***A.K. Kesharwani*** (supra), this Court had relied upon the decision of High Court of Madhya Pradesh in the case of ***Dr.Smt. Vijiya Kothalkar, Ujjain Vs. State of M.P. and three ors., reported in 2001(5) M.P.H.T. 295 (DB)***, whereby the same situation has been dealt with by the High Court of Madhya Pradesh. He contended that with regard to the issue involved in the ***Dr. Smt. Vijiya Kothalkar*** (supra), there was a contradictory

view of the Division Bench of the High Court of Madhya Pradesh in case of State of M.P. Vs. D.D. Dekhne and others in W.P. No. 2036 of 2002, wherein it has been held that two advance increments were given as benefit qua particular pay-scale and it cannot be said that a person who has been given a benefit qua particular pay-scale would avail the said benefit whenever there would be revision of pay-scale. In view of these conflicting opinions of two Division Benches, the another Division Bench has referred the following question of law to the Full Bench :

“Whether in the event of promotion or payment of higher pay-scale, employee is entitled for benefit of advance increments paid in previous scale of pay or cadre ?”

7. Mr. Paranjpe contended that in case of ***State of M.P. and others Vs. R..K. Chaturvedi and another***, reported in ***2006(2) M.P.L.J. 374***, the aforementioned question of law has been decided and it has been held that the employee cannot claim any further benefit of advance increments in the event of his promotion or in the event of payment of higher pay-scale and the same ratio will apply in the instant case also.
8. On the other hand, Mr. C. Jayant K. Rao, learned counsel, appearing for the respondent No.1 opposes the submissions made by the learned counsel for the appellant and submits that the case of the petitioner for continuance of the two advance increments has not been considered by the State Government and the main contesting party is the State Government and the

State has not filed any appeal against the impugned order. He also submitted that the benefit of revised pay-scale has been granted to the petitioner only upto the date i.e. 07.10.2015 when memo for stoppage of benefit of advance increments of government servants was issued by the State Government as such, the order passed by the learned Single does not warrant any interference.

9. We have heard learned counsel for the parties and perused the impugned order and other documents appended with writ appeal.
10. So far the argument advance by learned counsel, appearing for respondent No.1 that his case for continuance of the two advance increments has not been considered by the State Government and the main contesting party is the State Government and the State has not filed any appeal against the impugned order in concerned, on a pointed query being asked by this Court to learned counsel, appearing for respondent No.1 as to why after stoppage of two advance increments w.e.f. 19.01.2005, when the petitioner got promoted to the post of Assistant Grade-II, the same has not been challenged immediately and after lapse of 13 years, he has made representation only on 18.09.2018 that too being employee of the High Court, he has not offered any satisfactory explanation.
11. From perusal of the impugned order and materials available on record it transpires that learned Single Judge while deciding the writ petition has relied upon the judgment passed by Single Bench of this Court in WP(S) No. 4486/2005, ***A.K. Kesharwani Vs.***

State of Chhattisgarh & Others, whereby this Court allowed the writ petition holding that the advance increment granted to the petitioner cannot be classified as personal pay granted to the petitioner under any of the circumstances enumerated in clause-9 (23) (a) & (b) of the Fundamental Rules. It further transpires that in the case of **A.K. Kesharwani** (supra), Single Bench of this Court had relied upon the decision of High Court of Madhya Pradesh in the case of **Dr.Smt. Vijiya Kothalkar** (surpa) whereby the same situation has been dealt with by the High Court of Madhya Pradesh. As with regard to the issue involved in the **Dr. Smt. Vijiya Kothalkar** (supra), there was a contradictory view of the Division Bench of the High Court of Madhya Pradesh in case of **D..D. Dekhne** (supra), wherein it has been held that two advance increments were given as benefit qua particular pay-scale and it cannot be said that a person who has been given a benefit qua particular pay-scale would avail the said benefit whenever there would be revision of pay-scale. In view of these conflicting opinions of two Division Benches, the said issued has been referred to the Full Bench of the High Court of Madhya Pradesh and in the case of **R.K. Chaturvedi** (supra), the Full Bench of High Court of Madhya Pradesh, dealing with the said issue has observed as under :

“4. Before the Division Bench which was hearing the writ petition, a judgment of Division Bench of this Court in *Vijaya Kothalkar v. State of M.P. and Ors.*, 2001(5) M.P.H.T. 295 (DB) = 2001(3) MPLJ 469, was cited on behalf of the respondent No. 1 in which it

was held that at the time of fixing pay in the revised scale due weightage has to be given to the increments already acquired by incumbent and if that is not done, it would tantamount to denying the benefit which has been acquired by the incumbent to his prejudice. Before the Division Bench hearing the writ petition, another Division Bench judgment in *State of M.P. v. D.D. Dekhne and Ors.*, in *W.P. No. 2036/02* was cited on behalf of the petitioners in which it was held that two advance increments were given as benefit qua particular pay-scale and it can not be said that a person who has been given a benefit qua particular pay-scale would avail the said benefit whenever there would be revision of pay-scale. In view of these conflicting opinions of two Division Benches of this Court, the Division Bench has referred the following question of law to the Full Bench:

“Whether in the event of promotion or payment of higher pay-scale, employee is entitled for benefit of advance increments paid in previous scale of pay or cadre ?”

9. Rule 27 of the M.P. Fundamental Rules provides that an Appointing Authority may grant a pre-mature increment to a Government servant on time scale of pay, subject to general or special order issued by the Government. It is under this Rule 27 of the M.P. Fundamental Rules that the Government of Madhya Pradesh issued the circular dated 29-1-1979 granting two advance increments to a Government servant on time scale of pay for Family Planning Operations, such advance increments granted under the said circular dated 29-1-1979 are additional pay

granted to a Government servant and the consideration for granting such additional pay is personal to him i.e., the Family Planning Operation undergone by him or his wife. These advanced increments therefore constitute "personal pay" as defined in Rule 9. (23) of the M.P. Fundamental Rules quoted hereinbelow:

(23) "*Personal pay*" means an additional pay granted to a Government servant--

(a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure; or

(b) in exceptional circumstances, on other personal considerations.

The aforesaid definition of 'Personal Pay' also makes it clear that it is an additional pay granted to a Government servant to save him from a loss of substantive pay due to revision of pay. Hence, at the time of revision of pay he can not suffer loss of such advance increments granted to him.

12. In the result, our answer to the question referred to us by the Division Bench is that an employee whose pay is revised w.e.f. 1-1-1986 in accordance with Sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990 automatically gets the benefit of the advance increments given to him for Family Planning Operations under the Circular dated 29-1-1979 and once his revised scale of pay is fixed in accordance with the said provisions of Sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990, he can not claim any further benefit of advance

increments in the event of his promotion or in the event of payment of higher pay-scale.

12. Considering the aforesaid facts and circumstances of the case, particularly in the light of Full Bench judgment passed by the High Court of Madhya Pradesh in ***R.K. Chaturvedi*** (supra), it is quite clear that once the employee's revised scale of pay is fixed in accordance with the provisions of Sub-rule (1) of Rule 7 of the M.P. Revision of Pay Rules, 1990, he can not claim any further benefit of advance increments in the event of his promotion or in the event of payment of higher pay-scale. In the instant case, the petitioner was initially appointed as Assistant Grade-III vide order dated 24.01.1992. The wife of the petitioner had undergone family planning operation (Tubectomy) on 29.07.1999. On account of the family planning operation, the benefit of two advance increments has been granted to the petitioner vide order dated 23.08.1999. The petitioner got the above benefit till December, 2004. Subsequently, when vide order dated 19.01.2005, the petitioner was promoted to the post of Assistant Grade-II in the pay scale of Rs.4000-100-6000, two advanced increments granted earlier to him were taken into consideration and accordingly his pay was fixed at the stage where the same reached in the stage of pay scale of promoted post. Since advance increments were already included in the basis pay of this earlier post/pay scale and while fixing his pay on promoted post the said basic (including the advance increments) was taken into consideration and accordingly his pay was fixed, hence there is no question of grant of further

advance increment, therefore, we are of the considered opinion that the learned Single Judge while deciding the writ petition has not taken care of the aforesaid facts and circumstances of the case and as such, has committed grave illegality in passing the impugned order, which deserves to be set aside.

13. Accordingly, the writ appeal is **allowed** and the impugned order dated 15.06.2024 passed by the learned Single Judge in Writ Petition (S) No. 3617 of 2019 is hereby set aside and writ petition is accordingly dismissed.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Head-Note

Continuance of benefit of advance increment cannot be claimed by the employee after his promotion or after revision of pay.