

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

WRIT PETITION No.35549 of 2016

G.Karuppasamy

... Petitioner

vs.

1. The Principal Secretary to Government,
Finance Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.
2. The Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St. George,
Chennai 600 009.
3. The Director of Medical Education,
Kilpauk, Chennai 600 010. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 1st respondent pertaining to G.O.Ms.No.311, Finance (CMPC) Department, dated 31.12.2014 and quash a portion of the order sanctioning of notional increment taking prospective effect from the date of issue of the order and direct the respondents to sanction an increment to the petitioner for having rendered one year of continuous qualifying service during the period from 01.07.2010 to 30.06.2011, notionally for pensionary benefits.

For Petitioner : Mr.R.Ramachandran

For Respondents: Mr.K.Dhananjayan
Special Government Pleader

O R D E R

The petitioner has come up with this Writ Petition challenging the order dated 31.12.2014 passed by the 1st respondent vide G.O.Ms.No.311, Finance (CMPC) Department, seeking to quash a portion of the order sanctioning of notional increment taking prospective effect from the date of issue of

the order and for a consequential direction to sanction an increment to him for having rendered one year of continuous qualifying service during the period from 01.07.2010 to 30.06.2011, notionally for pensionary benefits.

2. According to the petitioner, he entered into the Government service on 17.04.1973 as Junior Assistant in the Department of Medical Education and retired from service on superannuation on 30.06.2011 A.N. as Administrative Officer in the Directorate of Medical Education, Kilpauk, Chennai, after rendering an unblemished service of 38 years 2 months and 14 days. He was lastly sanctioned with an annual increment on 01.07.2010 with a rise in his pay from Rs.18,660/- to Rs.19,390/- + Grade Pay Rs.5,400/-. After sanction of his annual increment on 01.07.2010, he had been on duty for the period from 01.07.2010 to 30.06.2011, for which, annual increment was not sanctioned to him in the pretext, that he retired from service on 30.06.2011 A.N.

3. The petitioner has further stated that according to the Government Order vide G.O.Ms.No.311 Finance (CMPC) Department, dated 31.12.2014, a Government Servant whose increment falls due on the day following superannuation, on completion of one full year of service which are countable for increment under Fundamental Rules 26 be sanctioned with one notional increment at the rate as described under Rule 6 of Tamil Nadu Revised Scales of Pay Rule, 2009 purely for the purpose of pensionary benefits and not for any other purpose and it shall take prospective effect from the date of issuance of the order. It is the case of the petitioner that the said Government Order takes care of the employees who retired on 31.12.2014 or would be retiring after 31.12.2014, and as such, the prospective nature of the order has weakened his position to get the annual increment, which he is entitled to upto the date of his retirement.

4. In support of his case, the petitioner has relied on a decision of this Court in the case of N.S.Rengasamy vs. Director of High School Education & others, (2011) Writ L.R. 728, wherein, taking into account the principle laid down by the Apex Court in the case of S.Banarjee vs. Union of India, AIR 1990 SC 285 and a Division Bench decision of the Andhra Pradesh High Court in the case of Union of India vs. R.Malakondaiah, 2002 (4) ALT 550 (DB), it observed as follows:

".... (12) It is pertinent to note that as far as Tamil Nadu is concerned, there is no rule which stipulates that an employee must continue in service for getting the benefit of increment for the services already rendered by him. This Court is of the considered view that though the petitioner was not in service, i.e. on 01.01.1996, still he can seek the benefit of payment of increment for the completed period of one service, i.e. from 01.01.1995 to 31.12.1995 even on equitable grounds. Therefore, this Court has no hesitation to hold that the petitioner having rendered the service for one year i.e. from 01.01.1995 to 31.12.1995, his accrued right cannot be denied."

5. Taking a cue from the said judgment, the petitioner made a representation to the 2nd respondent on 06.08.2015 with a copy of it marked to respondents 1 and 3 with a request to sanction an increment for having completed one year of continuous qualifying service during the period from 01.07.2010 to 30.06.2011 notionally for pensionary benefits. Pending consideration of the said representation, the petitioner is before this Court.

6. Learned counsel for the petitioner submitted that if the petitioner's representation is directed to be considered by the respondents, his grievance would be redressed.

7. In the light of the judgment rendered in the case of N.S.Rengasamy vs. Director of High School Education & others (2011 Writ L.R.728), this Court is of the view that it is not necessary now to entertain the prayer in the Writ Petition. However, this Court directs the petitioner to send a fresh representation to the 1st respondent along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the 1st respondent is directed to consider the petitioner's representation on merits and in accordance with law within a period of six weeks.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected W.M.P.No.30570 of 2016 is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1. The Principal Secretary to Government,
Finance Department,
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3. The Director of Medical Education,
Kilpauk, Chennai 600 010.

+1 cc to M/s.R.Ramachandran Advocate sr 623661
+1 cc to Government Pleader sr 62833

W.P.No.35549 of 2016

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