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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.07.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.10630 of 2016

and W.M.P. (MD) No. 8244 of 2016

K.Alagumuthu

..Petitioner

Vs.

1.The Secretary to Government,
Adi Dravidar Welfare Department,
Secretariat, Chennai 600 009.

2.The Secretary to Government,
Finance (CMPC) Department,
Secretariat, Chennai - 600 009.

..Respondents

PRAYER: 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 second respondent i.e., the Secretary to Government, Finance (CMPC) Department, Chennai relating to G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014 and the records of the first respondent i.e the Secretary to Government, Adi-Dravidar Welfare Department, Chennai in Government Letter No.150/ADW7/2016 dated 10.05.2016 and quash the same and consequently direct the respondents to sanction increment to the petitioner which fell due on 01.04.2014 and to send revised pension proposals within a specified time frame that may be fixed by this Court.

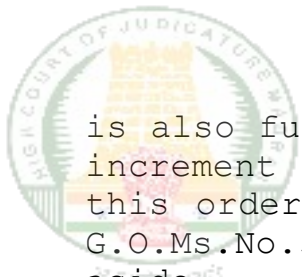
For Petitioner : Mr.S.Visvalingam

For Respondents : Mr.M.Murugan

Government Advocate

ORDER

The present writ petition has been filed under Article 226 of Constitution of India challenging the Government Letter dated 10.05.2016 in and by which the request of the petitioner to sanction one annual increment for the service rendered from 01.04.2013 to 31.03.2014 which fell due on 01.04.2014 was rejected on the ground that the said Government Letter is running contrary to G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014 in and by which the Government has directed that the Government servants whose increment falls due on the day following superannuation on completion of one full year of service, such service which are countable for increment under Fundamental Rules 26, be sanctioned service counts for pensional increment at the rate as described under Rule 6 of Tamil Nadu Revised scales of pay Rules, 2009, purely for the purpose of pensionary benefits and not for any other purpose. It



is also further stated that the concession of sanction of notional increment shall take prospective effect from the date of issue of this order. Since the impugned order is completely overlooked the G.O.Ms.No.311 dated 31.12.2014 and the same is liable to be set aside.

2. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondents.

3. The learned counsel for the petitioner submitted that the issue is squarely covered by the order passed in W.P.Nos.7903 and 15538 of 2012 dated 14.11.2014.

4. Mr. M.Murugan, learned Government Advocate appearing for the respondents takes notice and he sought time to file counter.

5. This Court is not inclined to grant time to file counter since the issue raised in this writ petition in the light of G.O.Ms.No.311 Fince (CMPC) Department dated 31.12.2014 is rightly answered by this Court in W.P.Nos.7903 and 15538 of 2012 dated 14.11.2014.

6. It is pertinent to extract the relevant portion of the order passed in W.P.Nos.7903 and 15538 of 2012 in paragraph Nos.3 to 5, which read as follows:

3. The issue involved herein is already answered by the learned single Judge of this Court in N.S.Rengaswamy vs. Director of High School Education and three others reported in 2011 W.L.R. 728. The petitioner was paid salary for the period from 01.01.1994 to 31.12.1994. Thereafter, the petitioner completed one year service from 01.01.1995 to 31.12.1995. The payment of annual increment was due on 01.01.1996. On which date, the petitioner was not in service. When the petitioner made a representation for payment of increment on the ground of completion of one year from 01.01.1995 to 31.12.1995, the same was rejected on the ground that he was not in service on 01.01.1996. While dealing with the issue, the learned single Judge has categorically held that the petitioner having rendered service for one year from 01.01.1995 to 31.12.1995, the right to get annual increment is already accrued to him and what remains to be fulfilled is only in the form of payment and the same cannot be denied to him on the ground that he ceased to be in service. The learned single Judge has held so by applying the ratio laid down by the Honourable Apex Court reported in AIR 1990 SC 285 (S.Banerjee Vs. Union of India) and the decision of the Honourable Division Bench of Andhra Pradesh High Court reported in 2002(4) ALT 550 (D.B) (Union of India vs. R.Malakondaiah). The learned Single Judge has, in the above case, observed



that the petitioner having completed one year service and the right having been accrued and the same having not been withheld for any other reason, the petitioner is entitled to the same even on equitable grounds and the same cannot be denied to the petitioner. Accordingly, the writ petition was allowed by setting aside the impugned order and by directing the respondent to grant time scale of pay increment to the petitioner for the period in question with all benefits. The order was challenged by the Government by way of writ appeal in W.A.No.2095 of 2011 before the Honourable Division Bench and the Division Bench of our High Court has declined to interfere with the order of the learned single Judge and the order of the learned single Judge as confirmed by the Division Bench was again challenged by way of Special Leave Appeal in C.C.No.10842 of 2013 before the Honourable Apex Court. The Honourable Apex Court also declined to interfere with the impugned order and accordingly dismissed the Special Leave Petition.

4. When that being the legal position, this Court has no hesitation to hold that the petitioners in both the writ petitions are entitled to the relief as sought for herein. The petitioners in both the writ petitions, like that of the other writ petitioners in the case cited supra have also completed one year service and the annual increment for the previous one year service fell due on the next date which happened to be their date of retirement. As the petitioners have already completed their service, the petitioners cannot be denied what is due to them legally for the service already rendered by them and the writ petitioners are hence entitled to the monetary relief as sought in both the writ petitions.

5. In the result, both the writ petitions stand allowed by setting aside the impugned orders with further direction issued to the respondents to sanction annual increment due to the petitioners for the period in question with consequential monetary benefits. The above exercise shall be completed within eight weeks from the date of receipt of a copy of this order. No costs.

7. Since the issue is squarely covered and answered by this Court, the impugned order is set aside and the respondents are directed to sanction annual increment due to the petitioner for the period in question with consequential monetary benefits. The above exercise shall be completed within eight weeks from the date of receipt of a copy of this order.



8. In the result, the Writ Petition is allowed. No costs. Consequently, connected W.M.P.(MD) No.8244 of 2016 is closed.

Sd/-

Assistant Registrar(P&A)

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Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

1.The Secretary to Government,
Adi Dravidar Welfare Department,
Secretariat,Chennai 600 009.

2.The Secretary to Government,
Finance (CMPC) Department,
Secretariat,Chennai - 600 009.

+1cc to M/s.S.Visvalingam, Advocate in SR.36999

+1cc to the Special Government Pleader, in SR.37262

W.P(MD)No.10630 of 2016
and W.M.P.(MD) No. 8244 of 2016
15.07.2016

cm.

PBK/NGM-MP/SAR-I 21/07/2016 ::4P-5C::