



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2016

C O R A M

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD) No.20658 of 2016

S.Kandasamy

.. Petitioner

Vs.

1. The District Collector, Thuthukudi,
Thuthukudi District

2. The Tahsildar, Koilpatty Taluk,
Thuthukudi District

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order, in R.C.No.A4/2735/2016, dated 14.09.2016, passed by the second respondent, quash the same and consequently, to direct the respondents to sanction an increment, taking into one year of service rendered by the petitioner from 01.07.2007 to 30.06.2008 and revise the pension to the petitioner.

For petitioner : Mr. M.Saravanankumar

For Respondents : Mr. V.R.Shanmuga Nathan, Spl.G.P.,

O R D E R

For the completed period of one year service, namely service from 01.07.2007 to 30.06.2008, whether it is necessary that the petitioner should be in service as on 01.07.2008, to claim increment for the services already completed / rendered, is the issue raised in this writ petition.

2. This writ petition has been filed challenging the impugned order, dated 14.09.2015, passed by the second respondent, Tahsildar, Kovilpatti, declining increment in the pay.

Brief facts:-

3.1. The petitioner joined as Village Administrative Officer on 11.08.1982 and retired on superannuation on 30.06.2008.

3.2. As per the Fundamental Rules, Government Servants are entitled to draw annual increment for every year and the date of annual increment is fixed as 1st January / 1st April / 1st July and 1st October of every year.

<https://hcservices.ecourts.gov.in/hcsefiles> annual increment for the year 01.07.2007 to 30.06.2008 was not sanctioned to the petitioner on the ground that the petitioner attained the age of superannuation before



01.07.2008, i.e., just one day prior to 01.07.2008, i.e., on 30.06.2008.

3.4. The respondents failed to take into consideration the service of twelve months rendered by the petitioner prior to attaining the age of superannuation.

WEB COPY

4. The main grievance of the learned counsel for the petitioner is that the second respondent did not take into account either the factual aspects or the judgments rendered by this Court, in an identical set of facts and circumstances.

4.1. The following three decisions are relied upon by the learned counsel for the petitioner, in support of his contentions:-

(i) **2011 W.L.R. 728 (N.S.Rangaswamy v. The Director High School Education and three others), dated 30.08.2011:-**

"11. As far as the case on hand is concerned, it is to be reiterated that admittedly, the petitioner had completed one year service from 01.01.1995 to 31.12.1995 and as such, it is abundantly clear that the right already accrued during such period and only the enforcement in the form of payment remains to be fulfilled. The learned Senior Counsel for the petitioner rightly placed reliance on the decision of the Hon'ble Apex Court in S.Banerjee v. Union of India reported in AIR 1990 SC 285. In the said decision, the Hon'ble Apex Court dealt with a similar and identical situation wherein the petitioner therein sought voluntary retirement and was so retired on 31st December 1985. He claimed the benefit of the IV Pay Commission, which came into force with effect from 01.01.1986. The question was whether the petitioner therein could be said to have been in service on 01.01.1986 or ceased to be in service for all practical purposes on 31.12.1985 itself. Referring to that contention, the Hon'ble Apex Court held as under:

"The question that arises for our consideration is whether the petitioner has retired on 1-1-1986. We have already extracted the order of this Court dated 6-12-1985 whereby the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of 1-1-1986. It is true that in view of the proviso to Rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired. But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on 31-12-1985 ?



behalf of the respondents, frankly, conceded that the petitioner could not be said to have retired on 31-12-1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on 31-12-1985. Then it must be held that the petitioner had retired with effect from 1-1-1986 and that is also the order of this court dated 6-12-1985. It may be that the petitioner had retired with effect from the forenoon of 1-1-1986 as per the said order of this court, that is to say, as soon as 1-1-1986 had commenced the petitioner retired. But, nevertheless, it has to be said that the petitioner had retired on 1-1-1986 and not on 31-12-1985. In the circumstances, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission."

By following the principle laid down by the Hon'ble Apex Court in the above said decision, a Division Bench of the Andhra Pradesh High Court taken a similar view in respect of an identical matter in Union of India v. R.Malakondaiah reported in 2002 (4) ALT 550 (D.B). The Division Bench of the Andhra Pradesh High Court held hereunder:

"5. The fact that the emoluments of a Government servant have to be taken as the basic pay, which he was receiving immediately, before his retirement, is not at all in controversy. Similarly, the proposition that an increment accrues from the date following that on which it is earned is also not in dispute. Increment in pay is a condition of service. In a way, it is a reward for the unblemished service rendered by an employee, which gets transformed into a right. Once an employee renders the service for the period, which takes with it an increment, the same cannot be denied to him/her. It is not in dispute that both the respondents rendered unblemished service for one year before the respective dates of their retirements. The periodicity of increment in the service is one year. On account of rendering the unblemished service, they became entitled for increment in their emoluments.

6. The only ground on which the respondents are denied the increment is they were not in service to receive or to be paid the same. Strictly speaking, such a hyper-technical plea



cannot be accepted. As observed earlier, with the completion of one year's service, an employee becomes entitled for increment, which is otherwise not withheld. After completion of the one-year service, the right accrues and what remains thereafter is only its enforcement in the form of payment. Therefore, the benefit of the year long service cannot be denied on the plea that the employee ceased to be in service on the day on which he was to have been paid the increment. There is no rule, which stipulates that an employee must continue in service for being extended the benefit for the service already rendered by him."

The principles laid down by the Hon'ble Apex Court and the Division Bench of the Andhra Pradesh High Court in the decisions cited supra are squarely applicable to the facts of the instant case, as in this case also admittedly, the petitioner had completed one year service and as such the right already accrued and what remains thereafter is only the enforcement in the form of payment. The petitioner received the periodical increments during the previous years and even for the period 01.01.1994 to 31.12.1994. The increment of the petitioner was not withheld at any point of time. The petitioner has rendered unblemished record of service.

12. It is pertinent to note that as far as the Tamil Nadu State 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 on the due date for the payment of increment i.e., on 01.01.1996, still he can seek the benefit of payment of increment for the completed period of one year 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."

(ii) Yet another decision is the one rendered in W.A.No.1940 of 2012, dated 20.09.2012, wherein it was held that the writ petitioner is entitled to the benefit of increment for the completed one full year of service from 01.04.2002 to



(iii) The third decision is the one reported in **W.P.No.5277 of 2014, dated 24.02.2014 (Sathyamurthy v. Director of Treasuries and Accounts)**, wherein the decision reported in **2011 W.L.R. 728 (cited supra)** is relied upon.

5. The second respondent has chosen to decline the relief on the ground that, on the crucial date of increment, i.e., on 01.07.2008 the petitioner was not in service and he has already retired.

5.1. But the question is, whether it is necessary that the petitioner should have continued in service, in order to claim the benefit of increment in respect of the period for which his services have already been rendered. If the increment is pertaining to the period for which services are expected to be rendered in future, then the order passed by the second respondent may be right. But, when the services have already been rendered in respect of which, increment is asked for, it is the duty of the respondents to have granted or sanctioned the increment.

6. Considering the facts of the present case and in the light of the reported decisions, it is clear that the petitioner is entitled to the annual increment for the completed one full year service for the period from 01.07.2007 to 30.06.2008 and the order passed by the second respondent, declining such a relief is hereby quashed. The second respondent is directed to reconsider the petition, dated 29.03.2016, and to grant the relief, within a period of four weeks from the date of receipt of a copy of this order.

7. This writ petition is ordered accordingly. No costs.

Sd/-
Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector, Thuthukudi,
Thuthukudi District
2. The Tahsildar, Koilpatty Taluk,
Thuthukudi District

+1cc to Mr.Saravanakumar, Advocate Sr.No.63944

srk

sm:Bs-MR:24.2.2017:5P/4C