IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2017

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25315 of 2017

S.Madhan .. Petitioner

Vs.

The Deputy Director of Medical Services,
(Leprosy), Coimbatore - 18. ..Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the Respondent to sanction increment taking into one year of service rendered by the Petitioner from 1.4.2013 to 31.3.2014 and consequently revise the pension and pay the terminal benefits to the Petitioner along with arrears therefor within a time frame as may be fixed by this Hon'ble Court.

For Petitioner : Mr.M.Muthupandian

For Respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

The relief sought for in this writ petition is to quash G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, in respect of grant of annual increment.

2. The learned counsel appearing for the writ petitioner contended that the grant of annual increment was adjudicated before this Court as well as before the Hon'ble Supreme Court. After adjudication of this issue, the Government accepted the legal proposition and referred the matter to the Pay Grievance Redressal Cell constituted by the Government on 10th April 2012 in G.O.Ms.No.123, Finance Department. The Pay Grievance Redressal Cell has recommended that "when the date of increment of a Government Servant falls due on the day following superannuation on completion of one full year of service, such service may be considered for the benefit of a notional increment purely for the purpose of pensionary benefits and not

for any other purpose. Such concession may be made applicable prospectively."

3. Accepting the recommendations made by the Pay Grievance Redressal Cell, the Government issued G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014. In the said G.O., the Government in paragraph Nos. 3 & 4, has ordered as follows:

> "3.After careful consideration, the Government have decided to accept the above recommendation of Pay Grievance Redressal Cell. Accordingly, the Government direct that 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 Rule 26, be sanctioned with one notional increment at the rate as described under rule 6 of Tamil Nadu Revised Scales of Pay Rules, 2009, purely for the purpose of pensionery benefits and not for any other purpose. The above concession of sanction of notional increment shall take prospective effect from the date of issue of this order.
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> 4.Necessary amendment to the Fundamental Rules shall be issued by Personnel and Administrative Reforms Department separately."

4. The learned counsel appearing for the petitioner contended that the rights of the writ petitioner for annual increment is accepted and ensured by the Government in G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014.

5. When the grant of annual increment is ensured by the Government, such a concession cannot be denied to the pensioners who retired prior to 31.12.2014. Further, it is stated that the G.O., does not fix any cut-off date of retirement and as per the G.O., all the State Pensioners who fall in this category are eligible to get their respective annual increments, in the event of fulfilling the conditions stipulated in the said G.O.Ms.No.311.

6. In the absence of any cut-off date in G.O.Ms.No.311, all the pensioners are to be treated as homogeneous class and who ever falls in the category of serving one year and retiring next date of the crucial date for grant of annual increment are entitled for the benefits notionally with effect from the date of retirement and the actual benefits to be paid prospectively from the date of issue of G.O.Ms.No.311 dated 31.12.2014.

7. The learned counsel further taken this Court to paragraph No.8 of the counter affidavit filed by the respondents, which reads as follows:

> "8.It is submitted that in Government Letter No.5085/CMPC/2015-1, Finance Department, Dated 01.06.2015, it has been clarified that the benefit ordered in G.O.Ms.No.311, Finance (CMPC) Department, Dated 03.12.2014, shall be taken into account for calculating the terminal leave salary as the same is also a retirement benefit. Further, it is submitted that in continuation of the above clarification in Government Letter No.52367/CMPC/2015-1, Finance Department dated 21.09.2015, it has been clarified that the benefit of notional increment sanctioned in the G.O.Ms.No.311 Finance (CMPC) Department, Dated 31.12.2014, shall take prospective effect from the date of issue of the order i.e. 31.12.2014 only and the employees whose increment falls due on completing one year of service on the day following superannuation and retired prior to 31.12.2014 are not entitled for the benefit of sanction of notional increment for the purpose of pensionary benefits."

8. Though the last line of the counter states that the persons retired prior to 31.12.2014, are not entitled for the benefit of sanction of notional increment for the purpose of pensionary benefits, the same is not supported by the Government Order issued in G.O.Ms.No.311. What is not contemplated in G.O.Ms.No.311, cannot be substituted by the respondents through their counter affidavit. Going by the spirit of G.O.Ms.No.311, it is clear that prospective effect can be given only for the purpose of disbursing the monetary benefits and in respect of the eligibility, there is no cut-off date prescribed in the said Government Order. This Court is of the firm view that counter-affidavit cannot improve the contents of the Government Order issued in G.O.Ms.No.311, since no cut-off date or otherwise is contemplated in the said Government Order. Thus, the respondents cannot substitute by prescribing that the persons retired prior to 31.12.2014, are not entitled for the benefit of sanction of notional increment.

9. The very sanction of increment was granted in accordance with the Fundamental Rules. Once the benefit is granted based on the Fundamental Rules, the increment granted to employees retired after 31.12.2014, cannot be denied to employees retired prior to 31.12.2014. This apart, the date of 31.12.2014, is only an acceptance of the grant of increment to the employees in G.O.Ms.No.311. Thus, there is no sanctity or relevance in respect of adopting the date of 31.12.2014, with regard to the eligibility of employees to draw their increment otherwise in accordance with the Fundamental Rules.

10. The very concept of increment is that on completion of one year of satisfactory service, an employee is eligible to draw the increment. Such being the concept, the date of retirement, as stated in the counter i.e., 31.12.2014, has no nexus or object sought to be achieved. Since such a date is not contemplated in the Government Order, the statement made in the counter, cannot be considered by this Court. Accordingly, all the employees, who retired prior or after 31.12.2014, are eligible to draw their notional increment for the purpose of pensionary benefits and the disbursement of monetary benefit shall be given only with effect from 31.12.2014.

11. Thus, the writ petitioner claim for grant of annual increments notionally with effect from the date of retirement and actual monetary benefits with effect from the date of G.O.Ms.No.311, is justifiable. Nowhere in the counter statement, more specifically in paragraph No.8, the Government did not deny the benefit to the State pensioners. Contrarily, it is stated that some officials of the Department were restricting the claim by wrongly interpreting G.O.Ms.No.311, as if it is applicable only to the employees who retired after 31.12.2014, which is incorrect.

12. The purport of the G.O., is to grant benefits in accordance with the Fundamental Rules and the Government in G.O.Ms.No.311, further issued directions to carry out necessary amendment to the Fundamental Rules in this regard. Such being the factum of the case, the claim with regard to the grant of annual increments for the retires prior to and after G.O.Ms.No.311 dated 31.12.2014, is to be affirmed by the State.

13. The learned Government Advocate also fairly submitted that there is no cut-off date fixed in G.O.Ms.No.311. The Government has already extended the benefit of annual increment as interpreted by the Pay Grievance Redressal Cell and the recommendation of the Redressal Cell was also accepted by the Government and G.O.Ms.No.311 was issued. Thus, the eligibility of the writ petitioner in respect of the annual increments cannot be denied. Further, the date of retirement is not prescribed as a cut-off date in the G.O., regarding eligibility.

14. The learned Government Advocate further contended that based on G.O.Ms.No.311 dated 31.12.2014, the writ petitioner is eligible in the event of fulfilling the conditions stipulated in G.O.Ms.No.311. However, the eligibility of the respective writ petitioner is to be found based on their service records and the particulars therein.

15. In this view of the matter, the claim set out in the writ petitioner deserve consideration. Quashing of G.O.Ms.No.311 does not arise at all, in view of the fact that there no cut-off date is fixed in the said G.O. and only monetary benefits alone is directed to be paid prospectively, with effect from 31.12.2014, i.e. the date of the G.O.

16. Accordingly, the writ petitioner who is falling in the category as stipulated in G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, are eligible to get their annual increments, notionally with effect from the date of retirement and the monetary benefits will be granted with effect from 31.12.2014, the date of G.O.Ms.No.311 Finance (CMPC) Department. With this clarification, the respondents and the competent authorities are directed to implement G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, by granting the benefit of annual increments, by verifying the respective Service Records of the writ petitioner and pay the monetary benefits prospectively with effect from 31.12.2014.

17. With this direction, the Writ Petition stands disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
The Deputy Director of Medical Services,
(Leprosy), Coimbatore - 18.

+1cc to Mr.M.Muthupandian, Advocate, S.R.No.69149
+1cc to the Government Pleader, S.R.No.69864

W.P.No.25315 of 2017

CB(30/10/2017)