BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.07.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD).No.9356 of 2014

K.Raja Rajeswari ...Petitioner

Vs.

1. The Secretary to Government,
   Educational Department,
   Secretariat,
   Fort St.George,
   Chennai 600 009.

2. The Director of School Education,
   College Road, DPI Complex,
   Chennai-600 006.

3. The Chief Educational Officer,
   Virudhunagar District,
   Virudhunagar -626 002. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent relating to Na.Ka.No.2264/A2/2014 dated 10.05.2014 and quash the same and consequently direct the respondents to sanction increment to the petitioner for the service rendered by her for the period from 01.01.2010 to 31.12.2010 and consequently revise her pension based on the last increment sanctioned within a specified time frame that may be fixed by this Court.

For Petitioner :Mr.S.Visvalingam
For Respondents :Mr.D.Muruganantam,
Additional Government Pleader.

O R D E R

The present Writ Petition is directed against the impugned order dated 10.05.2014 passed by the Chief Educational Officer, Virudhunagar District, Virudhunagar based on Na.Ka.No.226/A2/2014 to quash the same with consequential direction to the respondents to sanction increment to the petitioner for the service rendered by her for the period from 01.01.2010 to 31.12.2010 and to revise her pension based on the last increment sanctioned within a stipulated time to be fixed by this Court.

2.The learned Counsel for the petitioner would submit that K.Raja Rajeswari after serving as B.T.Assistant in the T.A.S. Government Hr.Secondary School, Meesalur, Virudhunagar District, was allowed to retire peacefully on 31.12.2010 on attaining the age of superannuation. Her last increment fell due on 01.01.2011. Therefore as per the provisions contained in F.R 26(a) Appendix (ix), the increment of a Government Servant which falls due in a quarter may be sanctioned on the first day of that quarter even though the said employee retires from service prior to the actual date of accrual of increment.

3. In view thereof, the petitioner made representation on 04.03.2014 requesting them to allow the same as per F.R 26(a) Appendix (ix). But the third respondent has rejected the request of the petitioner, taking a stand that as per G.O.Ms.No.311, Finance (CMPC) Department, dated 31.12.2014, the concession of the notional increment shall take prospective effect from the date of issue of the Government Order and therefore, the request of the petitioner cannot be considered.

4. Assailing the reasonings given therein, the learned Counsel for the petitioner would further submit that it is an admitted case that the petitioner has put in 12 clear months of service from 01.01.2010 to 31.12.2010. When the petitioner has put in 12 clear months of service, she should be paid with the increment for the said 12 months of service rendered. The date of completion in the present case is 31.12.2010, but the petitioner, on reaching the age of superannuation, retired from service on 31.12.2010. She was allowed to retire by the Competent Authority. Therefore the right to enjoy the increment having been acquired by the petitioner legally is entitled to the increment, which is due on 01.01.2011. Therefore, on the ground that the petitioner retired on 31.12.2010 and not working on 01.01.2011, the accrued rights of the petitioner cannot be denied, it is pleaded.

5. Heard the parties.

6. Let me refer F.R.26(a) Appendix (ix) which is extracted as follows:

> *"The increment of a Government Servant which falls due in a quarter may be sanctioned on the first day of that quarter even though he retires from service prior to the actual date accrual of increments."*

7. A mere perusal of the above shows that the increment of the Government Servant falling due in a quarter to be sanctioned on the first day of that quarter even though he retires from service

prior to the actual date of accrual of increments. Now the petitioner retired on 31.12.2010.

8. In a similar circumstances, referring to the same F.R.26 (a), this Court has passed an order in W.P.(MD)No.22589 of 2010 dated 03.08.2011 giving direction to the respondents therein to pay the last increment. The said order was also affirmed on Appeal in W.A.No.2095 of 2011 dated 10.11.2011. Again on further Appeal to the Honourable Supreme Court in S.L.P.C.C.No.10842 of 2013, dated 04.07.2013, the Judgment passed by the Honourable Division Bench of this Court in W.A.No.2095 of 2011 has been affirmed, therefore the respondents cannot hesitate to pay the last increment fell due on 01.01.2011 on the basis of F.R 26(a) Appendix (ix) as cited above.

9. Admittedly the petitioner after serving as B.T.Assistant in T.A.S.Government Hr. Secondary School, Virudhunagari, retired from service, on reaching the age of superannuation on 31.12.2010. When she was not paid with the increment for having served from 01.01.2010 to_31.12.2010, as per F.R 26(a) Appendix (ix), which is extracted as above, the increment for the said year deserves to be sanctioned. A perusal of F.R26(a) Appendix (ix) shows that the increment of a Government Servant fell due in a quarter to be sanctioned on the first day of that quarter even though he retires from service. Therefore when F.R 26(a) Appendix (ix) candidly makes it clear that the increment of the Government Servant falls due in a quarter to be sanctioned on the first day of the quarter even though retires from the service, in the instant case, the petitioner, having served continuously from 01.01.2010 to 31.12.2010, on attaining the age of superannuation on 31.12.2010, retired from service, therefore she will not be able to work on 01.01.2011. Hence, the ground taken by the third respondent that since she is not in service on 01.01.2011, not entitled to the increment, is wholly running contrary to F.R 26(a) Appendix (ix).

10. In the similar circumstances, I have also held in W.P.(MD) No.10630 of 2016, dated 15.07.2016 that the annual increment for the service rendered from 01.04.2013 to 31.03.2014 which fell due from 01.04.2014 should be granted.

11. In view of the above, the Writ Petition is allowed and the impugned order is set aside. No costs. It is needless to mention that the first respondent is hereby directed to sanction the last increment which fell due on 01.01.2011, within a period of six weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
   Educational Department,
   Secretariat,
   Fort St.George,
   Chennai 600 009.

2. The Director of School Education,
   College Road, DPI Complex,
   Chennai-600 006.

3. The Chief Educational Officer,
   Virudhunagar District,
   Virudhunagar -626 002.

+1cc to Mr.S.Visvalingam, Advocate Sr.No.65799
+1cc to Spl.Government Pleader Sr.No.65991

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VB/SV/MMS/SAR3/01.11.2017/4P/6C

W.P.(MD).No.9356 of 2014
17.07.2017.