IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24-04-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.14851 of 2016 &
W.M.P.No.6155 of 2018

T.Subramanian .. Petitioner

versus

1. The Principal Secretary to Government,
Revenue Department,
Fort.St.George,
Chennai-600 009.

2. The Additional Director of Survey and
Land Records,
Chepauk, Chennai-600 005.

3. The Assistant Director of Survey and
Land Records,
Thiruvannamalai. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned orders issued by the 3rd respondent in proceedings O.Mu.(E) 4195/2015 dated 22.09.2015 and the subsequent impugned order issued by 2nd respondent in proceedings Na.Ka2/28651/15 (Ni.A) dated 27.10.2015 and quash these orders and consequently direct the respondents to grant the annual increment to the petitioner as on 1.1.2005 and revise the pension and pensionary benefits and pay the arrears with interest.

For Petitioner : Mr. Swathi Subramaniam for
M/s.R.Prem Narayan

For Respondents: Mr.J.Pothiraj, Spl.GP

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

ORDER

The petitioner has approached this Court, seeking the following relief:

> "To issue of Writ of Certiorarified Mandamus, to to call for the records in pursuant to the impugned orders issued by the 3rd respondent in proceedings O.Mu.(E) 4195/2015 dated 22.09.2015 and the subsequent impugned order issued by 2nd respondent in proceedings Na.Ka2/28651/15 (Ni.A) dated 27.10.2015 and quash these orders and consequently direct the respondents to grant the annual increment to the petitioner as on 1.1.2005 and revise the pension and pensionary benefits and pay the arrears with interest.

2. The petitioner was working as Technical Manager in the Office of the Assistant Director of Survey, Thiruvannamalai. After attaining the age of superannuation, he retired from service on 31.12.2004. Before his retirement, he has drawn his annual increment as on 1st January of every year. The petitioner having rendered service for a period of one year from 1.1.2004 till 31.12.2004, was entitled to annual increment which fell due on 1.1.2005. However, the increment fell due on 1.1.2005 was denied to the petitioner on the ground that he retired on previous day, i.e. 31.12.2004 and therefore, he was not entitled to annual increment. The denial of increment by the respondents was put to challenge in the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that in similar circumstances, this Court has passed an order allowing the claim of the petitioner therein in W.P.No.22589 of 2010 dated 3.8.2011, which was also implemented by the Government. Even otherwise, the petitioner is entitled to annual increment since admittedly he had rendered full year of service from 1.1.2004 till 31.12.2004. However, the claim was negatived by the respondents only on the ground that the benefit as envisaged in G.O.Ms.No.311 Finance dated 31.12.2014 is implemented only prospectively and cannot be applied to the case where the retirement had taken place prior to the date of issuance of the said G.O. In this case, the petitioner, according to the respondents, had retired on 31.12.2004 and therefore, he was not entitled to the relief.

4. The learned counsel appearing for the petitioner would submit that similar issue came up for consideration before a learned single Judge of this Court in W.P.No.23119 of 2017 and by order, dated 29.08.2017, while disposing of the Writ

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Petition, the learned Judge has held in paragraphs 9 to 15, as under:

> "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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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."

5. According to the learned counsel, the above decision would squarely apply to the factual matrix of the present case. The learned counsel placed reliance on a decision rendered by a Division Bench of this Court in W.A.No.1241 of 2016, dated 08.06.2017. In the said order, while upholding the decision of the learned single Judge in regard to similar claim, had passed the order holding that the Government servant, whoever rendered service for a period of one year and retired before the date of annual increment, is entitled to annual increment. The relevant portion of the order of the learned Division Bench as found in paragraphs 3 to 11, is extracted as under:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"3. The respondent retired from service on attaining the age of superannuation on 30.6.2009. After four years of his retirement, the respondent submitted a representation to the first appellant to sanction one increment for the service rendered by him during the preceding year, namely 01.7.2008 to 30.6.2009 and consequently, to revise his pensionary benefits, which was turned down. Assailing the said order, the respondent filed W.P.No.24549 of 2014.

4. The learned single Judge, taking note of the fact that the increment is granted for the services rendered for the previous year and that the third appellant had also recommended to the second appellant for granting increment to the respondent, allowed the writ petition filed by the respondent. Aggrieved by the said order, the Government has come up with the above appeal.

5. The respondent retired on attaining the age of superannuation on 30.6.2009 and the date of increment fell due on 01.7.2009, the day next to the date of superannuation. According to the respondent, since he had worked for the preceding one year, he is entitled to the increment accrued for the services rendered during the preceding year. In this regard, he relied upon the benefit granted to the similarly placed person by name V.P.Somasundaram, by order of this Court dated 22.02.2012 in W.P.No.14401 of 2002.

6. It is to be noted that subsequent to the order impugned in this writ appeal, the Government, by G.O.Ms.No.311, Finance (CMPC) Department, dated 31.12.2014, taking note of the fact that the annual increments of the Government servants are regulated in four quarters, namely 1st January, 1st April, 1st July and 1st October, as per 26(a) of the Fundamental Rules and that there is no provision in the Fundamental Rules to sanction increment for the Government servant who retires on 31st March, 30th June, 30th September and 31st December and whose due date for increment falls on the next day of superannuation, directed that the Government servant whose increment falls due on the day following superannuation, on

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

completion of one full year of service, be sanctioned one notional increment for the purpose of pensionary benefits.

7. It is, thus, clear that the Government Order cited above is in consonance with the order impugned in this writ appeal.

8. In the decision relied upon by the respondent in W.P.No.14401 of 2002, this Court, after referring to the decision in N.S.Rangaswamy v. Director of High School Education [2011 WLR728], in which the decision of the Apex Court in S.Banjerjee v. Union of India [AIR 1990 SC 285] was followed, held that since the Government servant has rendered service for a period of one year on the date of attaining the age of superannuation and as such, his right to get increment has already accrued, the benefit of payment of annual increment for the comple ted period of one year of service cannot be denied to him.

9. The learned Special Government Pleader submitted that no appeal was filed against the order of this Court dated 22.02.2012 made in W.P.No.14401 of 2002. Therefore, the said order has attained finality.

10. In the above backdrop, we are of the considered view that the learned single Judge is right in holding that the respondent is entitled to claim the benefit of increment and therefore, the order of the learned single Judge warrants no interference.

11. In view of the above, the writ appeal is dismissed, upholding the order of the learned single Judge. However, there shall be no order as to costs. Consequently, CMP Nos.16037 and 16038 of 2016 are closed."

6. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the respondents and filed a counter affidavit. In the counter, the only material objection was that G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014 will be applied prospectively with effect from the date of issue of the order and the same cannot be applied to the present case. However, such contention has been repeatedly discountenanced by this Court as being invalid by passing various orders in favour of the Government employees for grant of annual increment which fell due on the next date of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

retirement. As rightly contended by the learned counsel for the petitioner, the issue has been squarely covered by the decision of the learned single Judge as well as the learned Division Bench of this Court and therefore, this Court is unable to appreciate as to how the petitioner in this case, can be treated differently.

7. For the above said reasons, this Court is of the considered view that the impugned orders denying the annual increment payable to the petitioner, viz., O.Mu.(E) 4195/2015 dated 22.09.2015 issued by the 3rd respondent and Na.Ka2/28651/15 (Ni.A) dated 27.10.2015 issued by 2nd respondent, are liable to be set aside and hence, the same are set aside. The respondents are directed to grant annual increment which fell due on 1.1.2005 to the petitioner and recalculate the pension on such basis and pay the pensionary benefits with arrears of pension from the date when it became payable, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
1. The Principal Secretary to Government,
Revenue Department,
Fort.St.George,
Chennai-600 009.

2. The Additional Director of Survey and
Land Records,
Chepauk, Chennai-600 005.

3. The Assistant Director of Survey and
Land Records,
Thiruvannamalai.

+1cc to Mr.Prem Narayan, Advocate sr.no.30279
+1cc to Government Pleader in sr.no.30705

W.P.No.14851 of 2016

nr 11/05/2018

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/