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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P (MD) No.9626 of 2018

and

W.M.P.No.8887 of 2018

S.Veeraiya

... Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited TANGEDCO (formerly TNEB)
Rep. by its Chairman/Director
144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer /Personnel,
Tamil Nadu Generation and Distribution Corporation Limited TANGEDCO,
144, Anna Salai, Chennai - 600 002.
3. The Chief Engineer/Distribution
Tamil Nadu Generation and Distribution Corporation Limited Circle, K.Pudur,
Madurai - 625 007.
4. The Superintending Engineer
Madurai Electricity Distribution Circle
Tamil Nadu Generation and Distribution Corporation Limited, K.Pudur
Madurai - 7

... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ka.No.002130 / 75 / Me. Po/ Ma. Mi.Pa.Va/ Pho.Na/ Ma.Thu/ Ni.Pil/ U4/A.No.174/ 2018 dated 31.03.2018 on the file of the respondent No.4 and quash the same as illegal and consequently for a direction, directing the respondent No.4 to sanction annual increment to the petitioner, which fell due on 01.04.2009 by considering the service rendered by the petitioner from 01.04.2008 to 31.03.2009 in accordance with the Rule 26(a) Appendix (ix) of the Fundamental Rules and refix the pension of the petitioner with all consequential benefits within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Dhayalan, standing counsel
for EB

**ORDER**

The prayer sought for in this writ petition is for a writ of Certiorari Mandamus, to call for the records pertaining to the impugned order in Ka.No.002130 / 75 / Me. Po/ Ma. Mi.Pa.Va/ Pho.Na/ Ma.Thu/ Ni.Pil/ U4/A.No.174/ 2018 dated 31.03.2018 on the file of the respondent No.4 and quash the same as illegal and consequently for a direction, directing the respondent No.4 to sanction annual increment to the petitioner, which fell due on 01.04.2009 by considering the service rendered by the petitioner from 01.04.2008 to 31.03.2009 in accordance with the Rule 26(a) Appendix (ix) of the Fundamental Rules and refix the pension of the petitioner with all consequential benefits

2.Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.S.Dhayalan, learned standing counsel for the respondents.

3.The case of the petitioner is that he was last serving at the fourth respondent office (Corporation) and he was superannuated on 31.03.2009. On his superannuation, the petitioner was allowed to retire peacefully and he has also received all his retirement benefits. However, his last increment, which fall due on 01.04.2009 was not sanctioned and paid to him. Hence, the petitioner has given a representation on 14.03.2018. However, the same has been rejected by the fourth respondent vide impugned order dated 31.03.2018. Challenging the same, the petitioner is before this Court with this writ petition.

4. The learned counsel for the petitioner, by relying upon G.O.Ms.No.311 Finance Department dated 31.12.2014, would submit that, as per the said G.O., the State Government has given retrospective effect to the employees covered under the said G.O. and the benefit of the sanctioning of notional increment, which falls on the next day of the superannuation, since has been extended in the TANGEDCO employees, like the petitioner and hence, the petitioner is also entitled to the benefit under the said G.O.

5. I have heard the learned standing counsel for the respondent Corporation, who would submit that, no doubt G.O.Ms.No.311 Finance Department dated 31.12.2014 was issued giving the benefit of sanctioning one notional increment, which falls on the next date of the superannuation of the employee. Following the same, TANGEDCO independently decided to follow the same pattern for sanctioning of increment. While taking a decision, TANGEDCO has given effect to the said Scheme only from the date of G.O.Ms.No.311 ie., only from 31.12.2014 and this has been reflected in the TANGEDCO proceedings No.14 dated 27.02.2015. In view of the said proceedings issued by the TANGEDCO on 27.02.2015, whereby, the effect of G.O.Ms.No.311 though has been inherited and implemented in the TANGEDCO also, the same shall be taken effect only from 31.12.2014 and admittedly, since the petitioner was retired in the year 2009, he shall not be



entitled to claim such sanctioning of notional increment and rightly, the fourth respondent has rejected the request of the petitioner and hence, no interference is warranted to the said impugned order passed by the fourth respondent.

6. I have considered the said rival submissions and perused the materials available on record.

7. This Court, in an earlier occasion, has considered the very same issue in W.P.(MD) No.7990 of 2018, by order, dated 16.04.2018, wherein, I have held as follows:

"10. The learned counsel for the petitioner has rightly contended that though G.O.No.311 has conferred the said benefit of sanctioning notional increment and the same was given only prospective effect, however, the said effect of prospectiveness given in the G.O., has been considered by this Court in number of cases and those cases, those who retired earlier to the date of G.O., the said benefit of sanctioning of notional increment has been extended. In order to appreciate the same, relevant portion of the G.O.No.311 is extracted hereunder:

"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 Rules 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 pensionary 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."

11. No doubt the G.O. says that concession of sanction of notional increment shall take prospective effect from the date of issue of the order, that means from 31.12.2014. However, when the said issue was put under consideration, this Court has taken a consistent stand in a row of cases and in one such case, a learned Judge of this Court has passed the following order:

"The present writ petition has been filed under Article 226 of Constitution of India challenging the Government Letter dated 10.03.2016 in and by which the request of the petitioner to sanction one annual increment



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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 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 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.

...

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



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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



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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."

12. The learned counsel for the petitioner also invited the attention of this Court to a Division Bench judgment on the very same issue in ***W.A.No.552 of 2017 dated 08.06.2017*** in the matter of ***State of Tamil Nadu represented by Secretary to Government, Agriculture Department and others v. R.Sundaram***.

13. Thereafter, I am able to see number of such judgments were rendered. In all those cases, the effect of prospectiveness, as has been given in G.O.Ms.No.311, has been turned down and Courts have taken this view that the benefits have been extended to the Government Servant, even prior to the date of issuance of G.O.Ms.311 dated 31.12.2014. Therefore, the issue raised based on G.O.Ms.No.311 that such benefit of sanctioning of notional increment was taken effect only from the date of G.O., has already been decided, and negated, as the same is no more res integra.

14. In that context, if we look into the present case, here also, TANGEDCO decided to extend the benefit, as has been conferred in G.O.No.311 to the Government servant, to the TANGEDCO employees also. In this regard, TANGEDCO issued proceedings No.14 dated 27.02.2015, whereby, the effect of such benefit is extended to TANGEDCO employees with effect from 31.12.2014, ie., the date of G.O.Ms.NO.311. Once the benefit was given to the Government servants under G.O.No.311, which has now been directed to be extended to those who retired even prior to the date of G.O.Ms.No.311 ie., dated 31.12.2014, in number of judgments, and it has been held that the persons, who retired even before 31.12.2014, should be given the



benefits retrospectively and it is informed that orders have been complied with by the respective parties, making such an argument based on TANGEDCO proceedings No.14 dated 27.02.2015 that the effect of such benefit to the TANGEDCO employees will be given only from 31.12.2014 would hold no water and therefore, the said argument can very well be rejected and accordingly, the same is rejected.

15. In view of the above said facts and circumstances and the discussions made above, this Court is of the considered view that the petitioner is entitled to seek such benefit of sanctioning of notional increment from 01.04.2005, as he superannuated on 31.03.2005 and therefore, the rejection made in this regard through the impugned order is liable to be interfered with.

16. Accordingly, the impugned order is quashed and the writ petition is allowed. The respondents are directed to consider the request of the petitioner for grant of notional increment for 01.04.2005 ie., the next day of superannuation ie., 31.03.2005 and based on such exercise, notional increments shall be calculated for the purpose of pension and accordingly, the pension of the petitioner shall be revised and difference of pension shall be paid to the petitioner. Such exercise shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order No costs."

8. In view of the same, this Court is of the view that the petitioner also shall be entitled to succeed to receive such benefit of sanctioning of notional increment, which falls on the next day of his superannuation, ie. 31.03.2009.

9. Accordingly, the impugned order is quashed and the writ petition is allowed. The respondents are directed to consider the request of the petitioner for grant of notional increment for 01.04.2009 ie., the next day of superannuation ie., 31.03.2009 and based on such exercise, notional increments shall be calculated for the purpose of pension and accordingly, the pension of the petitioner shall be revised and difference of pension shall be paid to the petitioner. Such exercise shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/



To

1. The Chairman/Director
Tamil Nadu Generation and Distribution
Corporation Limited TANGEDCO
144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer /Personnel,
Tamil Nadu Generation and Distribution
Corporation Limited TANGEDCO,
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Tamil Nadu Generation and Distribution
Corporation Limited
Circle, K.Pudur,
Madurai - 625 007.
4. The Superintending Engineer
Madurai Electricity Distribution Circle
Tamil Nadu Generation and Distribution
Corporation Limited, K.Pudur
Madurai.

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.63863

RR

VB/PM/SAR2/07.12.2018/8P/6C

**W.P(MD)No.9626 of 2018
and W.M.P.No.8887 of 2018
26.04.2018**