



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2018

CORAM

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

W.P. (MD) No.2604 of 2013

WEB COPY

1.Late.A.Balakrishnan

2.B.Rajammal

W/o.Late.A.Balakrishnan

(Second Petitioner substituted as per order of
this Court made in M.P(MD)No.1 of 2014,
dated 25.6.2014)

.....Petitioner

-vs-

1.The Managing Director,

M/s.Tamil Nadu State Transport Corporation

(Madurai)Limited,

Bye-Pass Road,

Madurai - 625 016.

2.The General Manager,

M/s. Tamil Nadu State Transport Corporation

(Madurai)Limited,

Virudhunagar Region,

Madurai Road,

Virudhunagar - 626 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to sanction the annual increment to the Petitioner for the service rendered by him for the period from 1.2.2005 to 31.1.2006 along with consequential benefits.

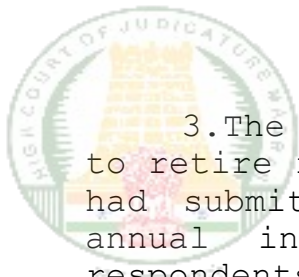
For Petitioner : M/s.C.Thangamani

For Respondents : M/s.A.Jeyaraman
1 and 2

O R D E R

The relief sought for in this Writ Petition is for a direction to sanction the annual increment to the Petitioner for the service rendered by him for the period from 1.2.2005 to 31.1.2006 along with consequential benefits.

2.The Writ Petitioner was appointed as Junior Assistant on 22.7.1974 and retired from service on 31.1.2006 on attaining the age of superannuation. The Petitioner retired as Selection Grade Section Officer from Virudhunagar Region, Virudhunagar. The Petitioner was receiving the annual increment periodically on completion of every year of service taking into consideration the 31.1.2006 of every year into account.



3.The grievance of the Writ Petitioner is that he was allowed to retire from service after the closure of work on 31.1.2006 and he had submitted a representation to respondents to sanction the annual increment which falls due on 1.2.2006. However, the respondents had not considered the same by stating that the Petitioner was not in service as on 1.2.2016 and therefore the annual increment cannot be paid.

4.The learned counsel for the respondents states that the Writ Petitioner was not in service as on 1.2.2006 and he was relieved from service on 31.1.2006. Since the Writ Petitioner was allowed to retire from service on 31.1.2006, he is not eligible to receive the annual increment as on 1.2.2016.

5.This Court is of an opinion that the annual increment is paid on 1.2.2016 in respect of the completed one year of service as on 31.1.2006. The Writ Petitioner has served till the end of 31.1.2006.Thus he is eligible for annual increment for the completed year of service. The issue was already considered by this Court in the case of *N.S.Rangaswamy .vs. The Director of High School Education,College Road, Chennai-6 and others reported in 2011 Writ LR 728* and the relevant paragraphs are extracted hereunder:

8.The core question involved in this matter is whether the Petitioner is entitled to claim for the payment of increment for the completed period of one year from 01.01.1995 to 31.12.1995, the day on which he has retired and the increment was due on 01.01.1996.

9. At the outset, it is to be stated that admittedly the Petitioner received the increment periodically after the completion of every year taking 31st December of the year into account and he was also paid the increment for the period from 01.01.1994 to 31.12.1994. The undisputed fact remains that the Petitioner had completed one year service from 01.01.1995 to 31.12.1995 and as such, he claims the increment for that period. But the said claim of the Petitioner was rejected on the ground that on 01.01.1996, the day on which the payment of increment was due, the Petitioner was not in service. The perusal of the impugned orders dated 17.05.2010 and 13.07.2010 reveals as if the Petitioner claims the relief on the ground of his re-employment from 01.01.1996 to 31.05.1996, but the Petitioner has not made any such request at all by placing reliance on his re-employment from 01.01.1996 to 31.05.1996. It is specifically stated by the Petitioner in his representation dated 15.02.2010 addressed to the Director of High School Education, the first Respondent herein to the effect that he had completed one year service, though he was not in service on the due date for the payment of increment i.e., on



01.01.1996. The earlier order passed by the third Respondent dated 09.12.2009 also clearly shows that the Petitioner sought for the relief of payment of increment on the ground of completion of one year from 01.01.1995 to 31.12.1995. Even in the counter filed by the third Respondent, it is seen that the third Respondent proceeded on the wrong assumption as if the Petitioner claimed the relief of the payment of increment by placing reliance on the extended period of service i.e., from the date of re-employment from 01.01.1996 to 31.05.1996.

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 MANU/SC/0472/1989 : 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 ? The answer must be in the negative. Indeed, Mr. Anil Dev Singh, learned Counsel appearing on 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 MANU/AP/1265/2001 : 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.

6. In view of the fact that the Writ Petitioner had served till 31.1.2006 and his annual increment due was 1.2.2016, this Court is of an opinion that the said benefit cannot be denied to the Writ Petitioner. However, the original Writ Petitioner Shri.A.Balakrishnan passed away and his legal heir/wife has been already impleaded in this Writ Petition. Thus the respondents are directed to grant the annual increment due to the deceased employee for the period from 1.2.2005 to 31.1.2006 and disburse the same to the impleaded Petitioner and revise the pension arrears and terminal benefits and pay the same to the impleaded Writ Petitioner within a period of 12 weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/



To

1.The Managing Director,
M/s.Tamil Nadu State Transport Corporation
(Madurai)Limited,
Bye-Pass Road,
Madurai - 625 016.

2.The General Manager,
M/s. Tamil Nadu State Transport Corporation
(Madurai)Limited,
Virudhunagar Region,
Madurai Road,
Virudhunagar - 626 001.

+1cc to Mr.C.THANGAMANI,Advocate,SR.50132

W.P. (MD) No.2604 of 2013
19.02.2018

VSN

KK/JC/SAR 3/28.02.2018/ 6P- 4C/