

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**WRIT PETITION No.14306 OF 2010****ORDER:**

This writ petition is filed seeking to declare the action of the respondents in not releasing the annual grade increment which fell due on 1.7.2003, as arbitrary, illegal and unsustainable apart from being contrary to G.O.Ms.No.235, Finance & Planning (FW-FR.II) Department dated 27.10.1998, and consequently direct the respondents to release the increment, which fell due on 1.7.2003 in favour of the petitioner and on that basis revise his pension and pay the pension arrears with all consequential benefits.

Heard Sri M. Narsimloo, learned counsel for the petitioner and Sri Zakir Ali Danish, learned Standing Counsel for the respondents.

It has been contended by the learned counsel for the petitioner that while the petitioner was working as Additional Assistant Engineer, he has suffered severe setback of health and his case was referred to Medical Board and the Medical Board has opined that the petitioner is unfit to discharge the duties. Then based upon the opinion of the Medical Board, the Chairman and Managing Director of the respondents has considered the case of the petitioner and allowed him to retire on medical grounds vide proceedings dated 20.6.2003 and directed that the petitioner should be relieved from service on 20.6.2003. Accordingly, the services of the petitioner, were relieved on 20.6.2003.

It is the case of the petitioner that the competent authority has directed him to hand over the charge to the next incumbent and the then incumbent has taken over the charge from the petitioner on 30.6.2003 and for all practical purposes, it should be deemed that the petitioner is in service as on 30.6.2003 and the increment which is due to the petitioner on 1.7.2003, should be released and accordingly the said increment should be granted to the petitioner. It has been further contended that at the time of admission of this writ petition, this Court vide orders dated 23.6.2010, granted interim direction to consider the representation purported to have been made by the petitioner on 14.4.2007, in terms of G.O.Ms.No.235 dated 27.10.1998, and pass appropriate orders. The respondents have considered the said representation in compliance with the orders of this Court and rejected the case of the petitioner on 11.10.2010.

It is further contended by the learned counsel for the petitioner that the petitioner has filed I.A.No.1 of 2018, seeking amendment of the prayer in the writ petition to challenge the impugned rejection order dated 11.10.2010. The petitioner contends that normally whenever any employee whose date of birth is after the first of every month, is being allowed to retire on the last date of month as the petitioner was irrationally retired on 20.6.2003, by the competent authority, he lost his right to receive the increment and he has handed over the charge only on 30.6.2003 for all purposes, it should be treated that the petitioner was in service up to 30.6.2003, and the increment to which petitioner is entitled should be released.

This Court having considered the rival submissions made by the parties, is of the considered view that the Medical Board has declared that the petitioner is unfit to discharge the duties and when such is the finding of the Medical Board, the competent authority has rightly accepted the request of the petitioner to retire him on medical grounds, there is no illegality on the part of the competent authority in retiring the petitioner on 20.6.2003 and the argument of the learned counsel for the petitioner that every employee on attaining the age of superannuation will be allowed to retire on the last working day as per the G.O.Ms.No.235 dated 27.10.1998, cannot be applied in the instant case. There are no merits in the writ petition and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs. Miscellaneous Petitions, if any pending in this writ petition shall also stand closed.

ABHINAND KUMAR SHAVILI,J

Date:26.09.2018.

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