BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.06.2019
CORAM
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P[MD]No.23149 of 2015

A.P.Narambunathan ... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
School Education,
Fort St. George,
Chennai.

2.The Director,
School Education,
College Road, Chennai - 6.

3.The Joint Director,
(Secondary Education),
College Road, Chennai - 6.

4.The Chief Educational Officer,
Tirunelveli.

5.The District Educational Officer,
Cheranmahadevi Educational District,
Tirunelveli.

6.Theerthapathy Higher Secondary School,
Rep. by its Secretary,
Ambasamudram,
Tirunelveli District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in O.Mu.No.087792/D2/E3/2014, dated 09.04.2015 and quash the same and direct the respondents to grant one notional increment at the rate as described under Rule 6 of Tamil Nadu Revised Scale of Pay Rules 2009 for the purpose of the pensionary benefit of the petitioner for his having rendered one full year of service which are countable for increment from 01.07.2011 to 30.06.2012.

For Petitioners : Mr.R.Subramanian
For Respondents 1 to 5 : Mrs.S.Srimathy
Special Government Pleader
For Respondent No.6 : No appearance

ORDER

The relief sought for in the present writ petition is to call for the records pertaining to the third respondent in O.Mu.No.087792/D2/E3/2014, dated 09.04.2015 and to quash the same and further to direct the respondents to grant one notional increment as described under Rule 6 of Tamil Nadu Revised Scale of Pay Rules 2009 for the purpose of the pensionary benefit of the petitioner for his having rendered one full year of service which are countable for increment from 01.07.2011 to 30.06.2012.

2.The impugned order states that the writ petitioner is not extended the annual increment in view of the fact that he was allowed to retire from service on 30.06.2012. The writ petitioner was not in service on 01.07.2012 and on that ground, the grant of annual increment for the services rendered for one year had been denied. The ground taken is that annual increments are granted for the services already rendered. The writ petitioner had already completed one year of service as on 30.06.2012. Thus, the annual increment is to be granted with effect from 01.07.2012.

3.The issue in this regard is already settled by this Court with reference to the Government order issued in G.O.Ms.No.311, Finance (CMPC) Department dated 31.12.2014, for grant of annual increment in W.P.No.12700 of 2016 dated 16.08.2017. The relevant paragraphs are extracted hereunder:

> *"2.The learned counsel appearing for the writ petitioner - Association contended that the grant of annual increment was adjudicated before this Court as well as before the Hon'ble Supreme Court. After adjudication of this issue, the Government accepted the legal proposition and referred the matter to the Pay Grievance Redressal Cell constituted by the Government on 10th April 2012 in G.O.Ms.No.123, Finance Department. The Pay Grievance Redressal Cell has recommended that "when the date of increment of a Government Servant falls due on the day following superannuation on completion of one full year of service, such service may be considered for the benefit of a notional increment purely for the purpose of pensionary benefits and not for any other purpose. Such concession may be made applicable prospectively."*
>
> *3.Accepting the recommendations made by the Pay Grievance Redressal Cell, the Government issued G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014. In the said G.O., the Government in paragraph Nos. 3 & 4, has ordered as follows:*
>
> *"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 Rule 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 pensionery 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.

4.Necessary amendment to the Fundamental Rules shall be issued by Personnel and Administrative Reforms Department separately."

4.The learned counsel appearing for the petitioner – Association contended that the rights of the members of the writ petitioner – Association for annual increment is accepted and ensured by the Government in G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014.

5.When the grant of annual increment is ensured by the Government, such a concession cannot be denied to the pensioners who retired prior to 31.12.2014. Further, it is stated that the G.O., does not fix any cut-off date of retirement and as per the G.O., all the State Pensioners who fall in this category are eligible to get their respective annual increments, in the event of fulfilling the conditions stipulated in the said G.O.Ms.No.311.

6.In the absence of any cut-off date in G.O.Ms.No.311, all the pensioners are to be treated as homogeneous class and who ever falls in the category of serving one year and retiring next date of the crucial date for grant of annual increment are entitled for the benefits notionally with effect from the date of retirement and the actual benefits to be paid prospectively from the date of issue of G.O.Ms.No.311 dated 31.12.2014.

7.The learned counsel further taken this Court to paragraph No.8 of the counter affidavit filed by the respondents in WP.No.36386/2016 etc., batch, which reads as follows:

"8.It is submitted that in Government Letter No.5085/CMPC/2015-1, Finance Department, Dated 01.06.2015, it has been clarified that the benefit

ordered in G.O.Ms.No.311, Finance (CMPC) Department, Dated 03.12.2014, shall be taken into account for calculating the terminal leave salary as the same is also a retirement benefit. Further, it is submitted that in continuation of the above clarification in Government Letter No.52367/CMPC/2015-1, Finance Department dated 21.09.2015, it has been clarified that the benefit of notional increment sanctioned in the G.O.Ms.No.311 Finance (CMPC) Department, Dated 31.12.2014, shall take prospective effect from the date of issue of the order i.e. 31.12.2014 only and the employees whose increment falls due on completing one year of service on the day following superannuation and retired prior to 31.12.2014 are not entitled for the benefit of sanction of notional increment for the purpose of pensionary benefits."

8.Though the last line of the counter states that the persons retired prior to 31.12.2014, are not entitled for the benefit of sanction of notional increment for the purpose of pensionary benefits, the same is not supported by the Government Order issued in G.O.Ms.No.311. What is not contemplated in G.O.Ms.No.311, cannot be substituted by the respondents through their counter affidavit. Going by the spirit of G.O.Ms.No.311, it is clear that prospective effect can be given only for the purpose of disbursing the monetary benefits and in respect of the eligibility, there is no cut-off date prescribed in the said Government Order. This Court is of the firm view that counter-affidavit cannot improve the contents of the Government Order issued in G.O.Ms.No.311, since no cut-off date or otherwise is contemplated in the said Government Order. Thus, the respondents cannot substitute by prescribing that the persons retired prior to 31.12.2014, are not entitled for the benefit of sanction of notional increment.

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's claim for grant of annual increments to its members/pensioners 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 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 Special Government Pleader 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 Special Government Pleader further contended that based on G.O.Ms.No.311 dated 31.12.2014, the members of the writ petitioner - Association 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 his service records and the particulars therein.

15.In this view of the matter, the claim set out in this writ petition 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.

16.Accordingly, if the members of the writ petitioner - Association falls in the category as stipulated in G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, he is eligible to get his annual increments, notionally with effect from the date of retirement and the monetary benefits will be granted with effect from 31.12.2014, the date of G.O.Ms.No.311 Finance (CMPC) Department. With this clarification, the respondents and the competent authorities are directed to implement G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, by granting the benefit of annual increments, by verifying the respective Service Records of the members of the writ petitioner - Association and pay the monetary benefits prospectively with effect from 31.12.2014.

With this direction, the Writ Petition stands disposed of. No costs."

4.In view of the above judgment, the case of the writ petitioner is also to be considered. Accordingly, the impugned order passed by the third respondent in proceedings No.O.Mu.No.087792/D2/E3/2014 dated 09.04.2015 is quashed. The respondents are directed to implement G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, by granting the benefit of annual increment by verifying the service records of the writ petitioner and pay monetary benefits prospectively with effect from 31.12.2014.

5.With these directions, the writ petition stand allowed. No costs.

Sd/-
Assistant Registrar (Crl.side)

/ True Copy /

Sub Assistant Registrar(CS-)

To

1.The Principal Secretary,
Government of Tamil Nadu,
School Education,
Fort St. George,
Chennai.

2.The Director,
School Education,
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3.The Joint Director,
(Secondary Education),
College Road, Chennai – 6.

4.The Chief Educational Officer,
Tirunelveli.

5.The District Educational Officer,
Cheranmahadevi Educational District,
Tirunelveli.

+1 CC to M/s.R.SUBRAMANIAN,Advocate(SR-72110[F] dated 28/06/2019)
+1 CC to M/s.SPL GP (SR-72145[F] dated 28/06/2019)

W.P[MD]No.23149 of 2015
27.06.2019

MR
ES/24.07.2019/7P/8C