



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHDEVAN**

W.P. (MD) No.3102 of 2015

S.Subramanian

... Petitioner

Vs

- 1.The Principal Accountant General (A&E)
361, Anna salai,
Chennai- 600 018.
- 2.The Director of Elementary Education (Personnel),
College Road,
Chennai - 600 006.
- 3.The District Elementary Educational Officer,
O/o. The District Elementary Educational Officer,
Madurai-635 001.
- 4.The Additional Elementary Educational Officer,
Assistant Elementary Educational Office,
Melur,
Madurai District - 625 106. ...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay the petitioner's increment to him for the period from 01.04.2008 to 31.03.2009 with all consequential revision in pension amount.

For Petitioner: Mr.L.Shaji Chellan
For R1 : Mr.P.Gunasekaran
For R2 to R4 : Mrs.S.Srimathy,
Special Government Pleader

ORDER

Seeking a direction to the respondents to pay the petitioner's increment for the period from 01.04.2008 to 31.03.2009, the petitioner is before this Court.

2.Heard the learned counsel for the petitioner; the learned counsel for the first respondent and the learned Special Government Pleader for the respondents 2 to 4.

3.According to the petitioner, he is a retired Secondary Grade Headmaster and his increment was being given in the 1st April of every year. The grievance of the petitioner is that since he got retirement on 31.03.2009, his next increment i.e., on 01.04.2009 was not given to him, in which period, the petitioner has rendered



service. Seeking such relief, the petitioner submitted a representation dated 05.02.2015 to the respondents. Finding no response on the said representation, he has come up with this writ petition before this Court.

4. The third respondent filed a counter affidavit *inter alia* stating that the petitioner is not entitled for such relief, which is refuted by the learned counsel for the petitioner. According to him, in an identical case in N.S.Rangaswamy Vs. Director of High School Education, Tamil Nadu, College Road, Chennai - 600 006, reported in 2011 Writ L.R.728, this Court passed the following orders at paragraph Nos.11 and 13:

"11. 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 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."

13. In view of the aforesaid reasons, this Court is constrained to set aside the impugned order of the second respondent dated 17.05.2010 in his proceedings in O.Mu.No.3397/A4/2010 and the order of the third respondent dated 13.07.2010 in his proceedings in O.Mu.No.4892/A5/2010, touching the rejection of the request of the petitioner for increment and the respondents are directed to grant time scale of pay increment to the petitioner for the period from 01.01.1995 to 31.12.1995 with all benefits in accordance with the recommendations of the VI Pay Commission. It is made clear that the above said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



5.The learned counsel appearing for the respective respondents have no serious objection for granting such relief to the petitioner.

6.Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, this Court, without going into the merits of the matter, directs the respondents to consider the representation of the petitioner dated 05.02.2015, in the light of the orders passed by this Court in N.S.Rangaswamy Vs. Director of High School Education, Thamizh Nadu, College Road, Chennai - 600 006, reported in 2011 Writ L.R.728 and pass appropriate orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order, after affording an opportunity of hearing to the petitioner.

7.The writ petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Accountant General (A&E)
361, Anna salai,
Chennai- 600 018.

2.The Director of Elementary Education (Personnel),
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3.The District Elementary Educational Officer,
O/o. The District Elementary Educational Officer,
Madurai-635 001.

4.The Additional Elementary Educational Officer,
Assistant Elementary Educational Office,
Melur,
Madurai District - 625 106.

+1cc to Mr.L.Shaji Chellan,Advocate, SR.No.57069

+1cc to Mr.P.Gunasekaran,Advocate, SR.No.56905

+1cc to Special Government Pleader, SR.No.57207

W.P. (MD)No.3102 of 2015
26.03.2019

SP/27.04.2019/ 4P/8C