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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2021

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.4353 of 2021

and

W.M.P.No.4953 of 2021

P.Rajasekaran

.. Petitioner

Vs

1. The Union of India,
represented by Secretary to Government,
Ministry of Home Affairs,
New Delhi.
2. The Secretary,
Department of Personnel & Training (DoPT),
North Block, New Delhi.
3. The Director General,
Central Industrial Security Force,
CGO Complex Lodhi Road,
New Delhi 110 003.
4. The Special Director General,
Central Industrial security Force,
Airport Sector,
Mahipalpur,
New Delhi.
5. The Inspector General,
Central Industrial Security Force,
Airport Sector-II (South & West),
Bangalore.
6. The Deputy Inspector General,
Central Industrial Security Force,
South Zone Airport Head Quarters,
D Wing, 2nd Floor, Rajaji Bhawan,
Besant Nagar,
Chennai - 600 090.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by



the 6th respondent Ref.No.28099/CISF/APSZ/A/c/Pension/20220/1064 dated 08.06.2020 and quash the same and to direct the respondents to pay notional Increment for the year 2019 and revise the pension by taking the said increment in consideration and pay the arrears.

For Petitioner : Mr.R.Jayaprakash
For Respondents : Mr.B.Sudhir Kumar
Senior Panel Counsel

O R D E R

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 6th respondent Ref.No.28099/CISF/ASZ/A/c/Pension/20220/1064 dated 08/06.2020 and quash the same and to direct the respondents to pay notional Increment for the year 2019 and revise the pension by taking the said increment in consideration and pay the arrears.

2. The petitioner was appointed as Constable in CISF in 1983. In 2002, he was promoted as Sub-Inspector and in 2018 as Inspector and attained the age of superannuation. He retired from service on 30.06.2019 from the office of the 6th respondent with a qualifying service of 36 years.

3. After the implementation of the recommendation of VI Central Pay Commission from 01.01.2006, the grant of annual increment to the Government employee has been made uniformly from 1st of July every year. The minimum period prescribed is six months for grant of annual increment. Thus, an employee whose increment falls on 1st January, prior to the VI Pay Commission, his pay was fixed with effect from 01.01.2006, after grant of increment. On completion of six months period, he will be granted increment in July, 2006.

4. The petitioner had been granted annual increment in terms of revised pay rules in July every year till 2018. However, the grievance of the petitioner herein is that for the year 2019, he was not granted the annual increment, as he stood retired from service on 30.06.2019. When the petitioner sought fixation of his pension by granting annual increment in the year 2019 also which was due and payable on 01.07.2019, the same was rejected.

5. The issue whether an employee was entitled for grant of annual increment or not in the event of the employee retiring



the previous day was already dealt with by this Court and orders were issued in favour of several employees. In fact, this Court has followed one of the earlier orders passed by the Division Bench of this Court and allowed similar claims. Therefore, the issue as to the entitlement of the benefits is no more res integra. As far as the case on hand is concerned, the rejection order dated 08.06.2020 referred to the judgment of Ayyamperumal's case which was a forerunner on the subject matter but the authority speciously reasoned that the order was not rendered in rem and therefore, the ratio laid down therein could not be made applicable to this case.

6. This Court is unable to countenance the rigid stand taken by the respondent without appreciating that when the ratio is laid down by the Court on a particular subject matter, it should be made applicable across the spectrum to all similarly placed employee. The learned counsel appearing for the petitioner would also draw the attention of this Court to the Division Bench order in W.P.No.15732 of 2017 dated 15.09.2017 in Ayyamperumal case. He would also draw the attention of this Court to paragraph Nos.6 and 7 which are extracted hereunder.

6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep.by its Secretary to Government, Finance Department and others v. M.Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.

7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present



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case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs.

7. As against the order, a Special Leave Petition which was filed by the Department was dismissed by order of the Hon'ble Supreme Court dated 23.07.2018. The learned counsel would also refer to yet another order of this Court dated 03.12.2018 in W.P.No.23095 of 2017, following the earlier Division Bench order wherein similar claim was also allowed.

8. The learned counsel would also refer to the order passed by the Hon'ble Supreme Court in Review Petition which was filed against the dismissal of the SLP in the aforesaid matter which also came to be dismissed on merits, in the meanwhile, on 08.08.2019. The learned counsel further referred to the order of the learned Single Judge in W.P.No.28072 of 2019 dated 08.11.2019. The learned Judge has drawn reference to the earlier orders of this Court and has allowed one more similar claim as found in paragraph Nos.3 to 9 which are extracted hereunder.

"3. The case of the petitioner is that he had submitted the representations for the grant of notional increment on 28.11.2018 and 27.03.2019 to the 2nd respondent. However, the impugned order has been passed rejecting the representations of the petitioner without assigning any proper reason. It is his further case that in a similar case in W.P.15732 of 2017, the Division Bench of this Court by order dated 15.09.2017 has granted one notional increment. Hence, the petitioner is entitled to the benefit of order of this Hon'ble Court dated 15.09.2017 which has been confirmed by the Hon'ble Supreme Court by dismissing the SLP and Review Petition filed by the Union of India.

4. Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner would submit that the petitioner had retired on 30.06.2019. The notional increment to the petitioner for every year has been granted on 1st of July.



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Accordingly, the petitioner is entitled to the notional increment for the year 2019 only on 01.07.2019. He would also submit that in a very same issue in W.P.No.15732 of 2017, the Division Bench of this Court has allowed the petition and granted relief to the petitioner and the same was confirmed by the Hon'ble Supreme Court in S.L.P.No.(Civil).22008 of 2018 vide order dated 23.07.2018. Therefore, he implore this Court to issue direction to the respondents to pay the notional increment to the petitioner.

5. Mr.K.S.Jayaganeshan, learned Standing counsel appearing for the respondents did not dispute the facts of the case submitted by the learned counsel for the petitioner.

6. Heard the counsels and perused the papers.

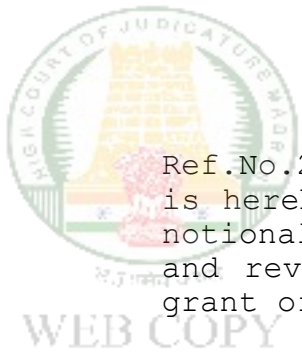
7. In the instant case, the petitioner had retired on 30.06.2019 and is entitled for one notional increment on or before 01.07.2019 however, the petitioners' claim was rejected.

8.Learned counsel appearing for the petitioner submitted that the Government of India has filed review petition against the Division Bench judgment of the Hon'ble Apex Court in R.P.(C).No.1731/2019 in S.L.P.(C).No.22008 of 2018 and the Hon'ble Apex Court has also dismissed the same.

9. In view of the above, the respondents are directed to pay the amounts to the petitioner within a period of eight weeks from the date of receipt of a copy of this order."

9. On behalf of the respondents, a counter affidavit has been filed. The same objection has been taken in the counter affidavit which was discountenanced and repulsed by the Courts earlier. In any event, it does not lie any more in the mouth of the respondents to put up any resistance to the claim of the petitioner which has been covered by various decisions rendered by the Courts.

10. In view of the above, this Court has no hesitation in allowing the Writ Petition. Accordingly, this Writ Petition is allowed. The impugned order passed by the 6th respondent



Ref.No.28099/ CISF/ASZ/ A/c/Pension/ 20220/1064 dated 08.06.2020 is hereby set aside and the 5th respondent is directed to grant notional increment for the year 2019 as payable on 01.07.2019 and revise the pension of the petitioner as consequence to the grant of such increment with arrears of pay and allowances.

11. The 5th respondent is directed to pass appropriate orders in this regard 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 (CS-III)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Secretary to Government,
The Union of India,
Ministry of Home Affairs,
New Delhi.
2. The Secretary,
Department of Personnel & Training (DoPT),
North Block, New Delhi.
3. The Director General,
Central Industrial Security Force,
CGO Complex Lodhi Road,
New Delhi 110 003.
4. The Special Director General,
Central Industrial security Force,
Airport Sector,
Mahipalpur,
New Delhi.
5. The Inspector General,
Central Industrial Security Force,
Airport Sector-II (South & West),
Bangalore.



6. The Deputy Inspector General,
Central Industrial Security Force,
South Zone Airport Head Quarters,
D Wing, 2nd Floor, Rajaji Bhawan,
Besant Nagar,
Chennai - 600 090.

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.61674

+1cc to Mr.B.Sudhir Kumar, Advocate, S.R.No.61343

W.P.No.4353 of 2021

GPL(CO)
SU(16/12/2021)