BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.06.2021**

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.1892 of 2018

S.Krishnasamy ... Petitioner

Vs.

1.The Secretary to Government,
Finance Department, Secretariat,
Chennai-600 009.

2.The Chief Internal Auditor,
Statutory Board & Audit Department,
Sengalvarayan Maligai, Chennai-600 002.

3.The Assistant Director,
Internal Audit Department,
19, Natchi Street, Gound Floor,
Virudhunagar. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent i.e., the Secretary to Government, Finance Department, Chennai to sanction the petitioner's last increment which fell due on 01.10.2011 as per the specific provision contained in the FR 26 (a) Appendix (IX) and as per the positive orders passed in number of writ petitions and to send revised pension proposals to the Accountant General, Chennai, within a specified time frame fixed by this Court.

For Petitioner : Mr.S.Visvalingam
For Respondents : Mr.K.S.Selvaganesan
Government Advocate

ORDER

This writ petition is filed for a direction to the first respondent i.e., the Secretary to Government, Finance Department, Chennai, to sanction the petitioner's last increment, which fell due on 01.10.2011, as per the specific provision contained in the FR 26 (a) Appendix (ix) and as per the positive orders passed in number of writ petitions and to send revised pension proposals to the Accountant General, Chennai, within a specified time frame fixed by this Court.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and

perused the materials available on record.

3. According to the petitioner, he was working as Office Assistant in the Office of Assistant Director, Internal Audit Department, Virudhunagar and retired on 30.09.2011 on attaining the age of superannuation. His next increment fell due on 01.10.2011. As per FR 26(a) Appendix (ix), the increment of a Government Servant which falls due in a quarter may be sanctioned on the first day of that quarter even though he retires from service.

4. The learned counsel appearing for the petitioner submitted that the relief now sought for was granted to the similarly placed persons, like the petitioner. He relied on the order of this Court, dated 15.07.2016 in W.P(MD)No.10630 of 2016 [K.Alagumuthu vs. The Secretary to Govt., Adi Dravidar Welfare Department and another] and the relevant portion of the said order is extracted hereunder:-

> "***5.*** *This Court is not inclined to grant time to file counter since the issue raised in this writ petition in the light of G.O.Ms.No.311 Fince (CMPC) Department dated 31.12.2014 is rightly answered by this Court in W.P.Nos.7903 and 15538 of 2012 dated 14.11.2014.*
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> ***6.*** *It is pertinent to extract the relevant portion of the order passed in W.P.Nos.7903 and 15538 of 2012 in paragraph Nos.3 to 5, which read as follows:*
>
> *3. The issue involved herein is already answered by the learned single Judge of this Court in N.S.Rengaswamy vs. Director of High School Education and three others reported in 2011 W.L.R. 728. The petitioner was paid salary for the period from 01.01.1994 to 31.12.1994. Thereafter, the petitioner completed one year service from 01.01.1995 to 31.12.1995. The payment of annual increment was due on 01.01.1996. On which date, the petitioner was not in service. When the petitioner made a representation for payment of increment on the ground of completion of one year from 01.01.1995 to 31.12.1995, the same was rejected on the ground that he was not in service on 01.01.1996. While dealing with the issue, the learned single Judge has categorically held that the petitioner having rendered service for one year from 01.01.1995 to 31.12.1995, the right to get annual increment is already accrued to him and what remains to be fulfilled is only in the form of payment and the same cannot be denied to him on the ground that he ceased to be in service. The learned single Judge has held so by applying the ratio laid down by the Honourable Apex*

Court reported in AIR 1990 SC 285 (S.Banerjee Vs. Union of India) and the decision of the Honourable Division Bench of Andhra Pradesh High Court reported in 2002(4) ALT 550 (D.B) (Union of India vs. R.Malakondaiah). The learned Single Judge has, in the above case, observed that the petitioner having completed one year service and the right having been accrued and the same having not been withheld for any other reason, the petitioner is entitled to the same even on equitable grounds and the same cannot be denied to the petitioner. Accordingly, the writ petition was allowed by setting aside the impugned order and by directing the respondent to grant time scale of pay increment to the petitioner for the period in question with all benefits. The order was challenged by the Government by way of writ appeal in W.A.No.2095 of 2011 before the Honourable Division Bench and the Division Bench of our High Court has declined to interfere with the order of the learned single Judge and the order of the learned single Judge as confirmed by the Division Bench was again challenged by way of Special Leave Appeal in C.C.No.10842 of 2013 before the Honourable Apex Court. The Honourable Apex Court also declined to interfere with the impugned order and accordingly dismissed the Special Leave Petition.

4. When that being the legal position, this Court has no hesitation to hold that the petitioners in both the writ petitions are entitled to the relief as sought for herein. The petitioners in both the writ petitions, like that of the other writ petitioners in the case cited supra have also completed one year service and the annual increment for the previous one year service fell due on the next date which happened to be their date of retirement. As the petitioners have already completed their service, the petitioners cannot be denied what is due to them legally for the service already rendered by them and the writ petitioners are hence entitled to the monetary relief as sought in both the writ petitions.

5. In the result, both the writ petitions stand allowed by setting aside the impugned orders with further direction issued to the respondents to sanction annual increment due to the petitioners for the period in question with consequential monetary benefits. The above exercise shall be completed within eight weeks from the date of receipt of a copy of this order. No costs.

7. Since the issue is squarely covered and answered by this Court, the impugned order is set *aside and the respondents are directed to sanction annual increment due to the petitioner for the period in question with consequential monetary benefits. The above exercise shall be completed within eight weeks from the date of receipt of a copy of this order.*

Further, the learned counsel appearing for the petitioner relied on the order of this Court, dated 17.07.2017 made in W.P(MD)No.12636 of 2016 [L.Rainold vs. The Secretary to Government and two others]. The relevant portion of the said order is extracted hereunder:-

> *"9. Admittedly the petitioner after serving as Special Grade Accountant in the District Treasury, Sivagangai, retired from service, on reaching the age of superannuation for having 30.06.2010. When he was not paid with the increment for having served from 01.07.2009 till 30.06.2010, as per F.R.26(a) Appendix (ix), which is extracted as above, the increment for the said year deserves to be sanctioned. A perusal of F.R.26(a) Appendix (ix) shows that the increment of a Government Servant which falls due in a quarter to be sanctioned on the first day of that quarter even though he retires from service. Therefore when F.R.26(a) Appendix (ix) candidly makes it clear that the increment of the Government servant which falls due in a quarter to be sanctioned on the first day of the quarter even though retires from the service, in the instant case, the petitioner, having served continuously from 01.07.2009 till 30.06.2010, on attaining the age of superannuation on 30.06.2010, retired from service, therefore he will not be able to work on 01.07.2010. Hence, the ground taken by the respondents that since he is not in service on 01.07.2010, not entitled to the increment, is wholly running contrary to F.R.26(a) Appendix (ix)."*

5. The issue in the present writ petition was already considered by this Court in the earlier writ petitions and the relief now sought for was granted to the similarly placed persons. The issue now raised in the present writ petition is squarely covered by the earlier order of this Court in W.P(MD)No.10630 of 2016, dated 15.07.2016 and W.P(MD)No.12636 of 2016, dated 17.07.2017.

6. In view of the above, the writ petition is allowed. The first respondent is directed to sanction the petitioner's last increment, which fell due on 01.10.2011 as per the specific provision contained in FR 26(a) Appendix (IX) and to send revised pension proposals to the Accountant General, Chennai, within a

period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Secretary to Government,
Finance Department, Secretariat,
Chennai-600 009.

2.The Chief Internal Auditor,
Statutory Board & Audit Department,
Sengalvarayan Maligai, Chennai-600 002.

3.The Assistant Director,
Internal Audit Department,
19, Natchi Street, Gound Floor,
Virudhunagar.

4. The Accountant General,
O/o Accountant General,
Teynampet, Chennai.

+1 CC to M/s.SPL GP (SR-20328[F] dated 25/06/2021)

+1 CC to M/s.S.VIVALINGAM, Advocate (SR-20386[F] dated 28/06/2021)

W.P.(MD)No.1892 of 2018

24.06.2021

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