IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No. 247 of 2022
and
C.M.P.No.1806 of 2022

1. Union of India
   Represented by Secretary to Government
   Ministry of Home Affairs, New Delhi

2. The Secretary
   Department of Personnel and Training
   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 ZoneAirport Headquarters
   D wing, 2nd Floor, Rajaji Bhawan
   Besant Nagar, Chennai-600 090

... Appellants

-vs-

P.Rajasekaran

.... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order passed by this Court in W.P.No.4353 of 2021 dated 26.11.2021 and allow this writ Appeal.

Prayer in W.P.No.4353 of 2021: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 / 2020/ 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 Appellants : M/S.B.Sudhir Kumar

For Respondent : Mr.R.Jayaprakash

J U D G M E N T

S.VAIDYANATHAN.,J
and
MOHAMMED SAFFIQ.,J

The present Appeal has been preferred against the order of the learned Single Judge in W.P.No.4353 of 2021 dated 26.11.2021, in allowing the Writ Petition filed by the Respondent.

2. The Writ Petitioner was appointed as a Constable in CISF in the year 1983 and he was promoted as an Inspector in the year 2018. At the time of superannuation i.e., on 30.06.2019, the Writ Petitioner has completed 36 years of service. After the implementation of the VI Central Pay Commission with effect from 01.01.2006, the notional pay to the Government employee by way of annual increment is increased with effect from 1^{st} July of every year and the increment was given twice a year namely on 1^{st} January and on 1^{st} of July of every year. Though, the Writ Petitioner's increment was due on 1^{st} July, he retired from service one day prior to the increment due date i.e, on 30.06.2019. When the Writ Petitioner requested for the fixation of the pension, based on the annual increment due for the year 2019 which was payable on 01.07.2019 from the period of service from 01.07.2018 to 30.06.2019, the same was rejected which was tested before this Court by way of Writ Petition in W.P.No.4353 of 2021 and the same was allowed vide order dated 26.11.2021. Challenging the same, the present Writ Appeal has been preferred by the Appellants/Respondents.

3. The learned counsel for the Appellants/Respondents submitted that a person, who is retiring on 30th June of every year or thereafter would not be entitled to any increment and that it is a recurring benefit. He further submitted that in an identical issue in the case of Union of India & Another Vs M.Siddaraj in W.P.No.146967/1010 (S-CAT), the Karnataka High Court has granted relief and when the same was challenged before the Hon'ble Apex Court, the Hon'ble Apex Court has granted interim order holding that the entire benefits can be extended to the employee based on the last drawn pay due to him which would be without prejudice to the contention of the parties.

4. The learned counsel appearing for the Respondent/Writ Petitioner submitted that an employee who is at the verge of retirement is entitled to annual increment on the last day viz., 30.06.2019 and the similar benefits have already been extended to the other employees who retired on or after 01.07.2019. This Court, in an identical issue in W.P.No.15732 of 2017 dated 15.09.2017 has held that the employee who retired on 01.07.2013 would be entitled to the monetary benefits including pensionary benefits in W.P.15732 of 2017 dated 15.09.2017. The order of this Court has been affirmed by the Hon'ble Apex Court as the Special Leave Petition filed by the Union of India which was dismissed on 23.07.2018 in SLP stage and the review petition filed as against the said order was also dismissed on 08.08.2019. Though the Karnataka High Court has taken a view pertaining to the railway services, the identical issue dealt with by this Court in W.P.No.15732 of 2017 pertains to Customs and Central Excise Department, in which the Respondents have extended the benefits of increment due on 01.07.2013 to all the employees, who retired on 30.06.2013 by taking into the fact that the persons were qualified and rendered one year service upto 30.06.2013. It is no doubt true that the date of retirement may be on 01.07.2013 and the main criteria to be looked into is as to whether the person has rendered 1 year qualified service prior to the date, when the increment is due. The Hon'ble Apex Court has also confirmed the order of this Court.

5.Heard both sides. Perused the materials available on records.

6. The fact that the employee has rendered one year of qualified service prior to the date of increment is not in dispute. The purpose of regulation is to extend the benefits and not to deprive the same. Hence, we are inclined to follow the decision of this Court in W.P.No.15732 of 2017 which has been affirmed by the Hon'ble Apex Court in SLP.No.22283 of 2018 and thereafter in review petition in R.P.(C) No.1731 of 2019.

7. Though, the order of this Court in W.P.No.15732 of 2017, has been followed by the Karnataka High Court, Dharwad Bench, which is the subject matter of SLP, the learned counsel appearing for the Writ Petitioner/Respondent on instructions would submit that the Writ Petitioner is willing to give an undertaking that in case order of the Dharwad Bench is reversed, the amount paid to him will be refunded and he is willing to restrict his claim based on the last drawn pay, without taking into account the increment due on 1st July 2019. He would further submit that in case of any unfortunate event, even the family pension can be reduced based on the last drawn pay, without taking into the account, the increment paid which was on 01.07.2019 taking into account the last one year service prior to the date of retirement.

8. Recording the undertaking given by the Respondent/Writ Petitioner, the Appellants are directed to grant notional increment to the Writ Petitioner for the year 2019 payable as on 01.07.2019 and in case, the order of the Karnataka High Court, Dharwad Bench is reversed, the amount paid to him shall be refunded to the Government without taking into account the increment due on 1st July 2019. It is also made clear that as per the undertaking, in case of any unfortunate event, even the family pension, if any can be reduced based on the last drawn pay received by the writ petitioner without taking into the account, the increment paid as on 01.07.2019.

9. With the above directions, this Writ Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nr/arr

To

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   Union of India
   Ministry of Home Affairs, New Delhi

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+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.9382

W.A.No. 247 of 2022
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NSK 18/03/2022