IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.12016 of 2019

K.Raghavan ... Petitioner

Vs.

1. The Principal Secretary to Government,
   Financial Department,
   Fort St.George,
   Chennai – 600 009.

2. The Secretary to Government,
   Transport Department,
   Fort St.George,
   Chennai – 600 009.

3. The Administrator,
   Tamil Nadu state Transport Corporation Employees
   Post Retirement Welfare Fund Scheme Trust,
   Thiruvalluvar House,
   Pallavan Salai,
   Chennai – 600 002.

4. The Managing Director,
   Tamil Nadu State Transport Corporation,
   (Salem) Ltd.,
   12, Ramakrishna Road,
   Salem – 636 007. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus, directing the Respondents to extend the benefit of G.O.Ms.No.311 FINANCE (CMPC) Department dated 31.12.2014 to the petitioner without giving any consideration to its prospective nature as clarified and out-lined in the subsequent Government Order issued in G.O.Ms.No.140, FINANCE (PAY CELL) Department dated 25.04.2018 extending the benefit of G.O.Ms.No.311 (FINANCE) (CMPC) to all the employees who had retired prior to 31.12.2014 also, and pass any such further orders.

For Petitioner	: M/s.S.Girija
For Respondents	:
For R1 & R2	: Mr.R.P.Murugan Raja Government Advocate
For R3	: Mr.C.S.K.Sathish
For R4	: Mr.R.Babu

ORDER

The relief sought for in the present writ petition is to direct the Respondents to extend the benefit of G.O.Ms.No.311 FINANCE (CMPC) Department dated 31.12.2014 to the petitioner without giving any consideration to its prospective nature as clarified and out-lined in the subsequent Government Order issued in G.O.Ms.No.140, FINANCE (PAY CELL) Department dated 25.04.2018 extending the benefit of G.O.Ms.No.311

(FINANCE) (CMPC) to all the employees who had retired prior to 31.12.2014 also, and pass any such further orders.

2. The petitioner joined as a Record Clerk on 05.07.1984 under the Service of the respondent/Corporation. Subsequently, the post was upgraded and re-designated as Junior Assistant on 05.07.1985. Thereafter, during the course of service, he was promoted as Assistant Selection Grade Assistant and thereafter, as Superintendent on 17.08.2009. He was retired from service on attaining the age of superannuation on 30.09.2013.

3. The grievance of the writ petitioner is that the benefit of annual increment granted in G.O.Ms.No.311, Finance (CMPC) Department dated 31.12.2014 was not extended to him.

4. This Court has elaborately considered the issues regarding the eligibility of the employees for grant of notional increment on completion of one year of service and retired one day prior to the increment due date. In this regard, this Court passed an order on 22.09.2017 in W.P.No.25590 of 2017 and the relevant paragraphs are extracted hereunder:

"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 Government Advocate 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 Government Advocate further contended that based on G.O.Ms.No.311 dated 31.12.2014, the writ petitioner 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 their service records and the particulars therein.

15. In this view of the matter, the claim set out in the writ petitioner 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, the writ petitioner who is falling in the category as stipulated in G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, are eligible to get their 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 writ petitioner and pay the monetary benefits prospectively with effect from 31.12.2014. "

5. The Government thereafter issued an amendment of Rule 26-A of Fundamental Rules vide G.O.Ms.No.98, Human Resources Management (FR.II) Department dated 21.09.2021. Accordingly, the following amendments are effected as under:

Amendment

"In the said Fundamental Rules, for rule 26-A, the following rule shall be substituted, namely:-

"26-A. The Government servant, who retires on or after the 31st December 2014 and whose increment falls due on the next day following the date of superannuation, in accordance with the provisions under rule 26, shall be sanctioned with one increment at the eligible rate, notionally on the afternoon of the date of retirement, purely for pensionary benefits only.

Provided that the Government Servant, who retired prior to 31st December 2014, is also eligible for sanction of annual increment notionally on the afternoon of the date of retirement for the purpose of revision of pension with monetary benefit with effect from 31st December 2014. The rate of notional increment shall not exceed the eligible rate based on the basic pay drawn by the Government Servant as on the date of retirement."

6. In view of the amendment issued by the Government, the petitioner is also eligible for notional annual increment. Accordingly, the respondents are directed to extend the benefit of G.O.Ms.No.311, Finance (CMPC) Department dated 31.12.2014 in favour of the writ petitioner and grant one notional annual increment for the purpose of retirement benefits. The said exercise is directed to be done within a period of eight (8) weeks from the date of receipt of a copy of this order.

7. With these directions, the writ petition stands allowed. No costs.

30.11.2022

Index:Yes/No
Speaking order/Non-speaking order
rgm

S.M.SUBRAMANIAM, J.

rgm

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