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W.P.No.28630 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.28630 of 2017
and W.M.P.No.30802 of 2017

N. Krishnan

... Petitioner

Vs.

1.The Government of Tamil Nadu
Rep. by the Secretary to the Government,
School Education Department,
Fort St. George, Chennai – 600 009.

2.The Chief Educational Officer,
Tiruppur, Tiruppur District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the second respondent in Roc.3752/A1/2015 dated 18.06.2015 and the first respondent in G.O.Ms.No.311, Finance, (CMPC) Department dated 31.12.2014 and quash the same insofar as it directs that the said order shall take prospective effect from the date of issue of the order and direct the second respondent to grant the petitioner, the annual increment due on 01.04.2014 with all consequential benefits.

For Petitioner : Mr.P. Rajendran



W.P.No.28630 of 2017

For Respondents : Mr.T. Chezhiyan,
Additional Government Pleader

ORDER

The petitioner herein, had retired from the services on 31.03.2014. His annual increment was due on 01.04.2014. Since he had retired one day prior to the date of his increment, he has been denied with the same. In this regard, he has challenged the proceedings of the second respondent dated 18.06.2015 as well as G.O.Ms.No.311, Finance (CMPC) Department, dated 31.12.2014, for the purpose of granting of the next increment.

2. Today, when the matter was called, the learned Additional Government Pleader appearing for the respondents has produced a copy of G.O.(Ms) No.98, Human Resources Management (FR.II) Department, dated 21.09.2021, which has brought in an amendment to the Fundamental Rule 26-A in the following manner:-

AMENDMENT.

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



W.P.No.28630 of 2017

WEB COPY

“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”.

3. In view of the aforesaid manner, the petitioner herein, who was due to receive the next increment on the next day of his retirement, would be entitled for the same. As such, the grievance of the petitioner has been met.

4. The learned Additional Government Pleader appearing for the respondents would submit that G.O.Ms.No.311, dated 31.12.2014, has to



W.P.No.28630 of 2017

be applied prospectively and therefore, cannot be issued in the case of the petitioner herein.

5. The learned counsel for the petitioner placed reliance on the decision of this Court dated **16.08.2017** in the case of '**S.Srinivasan Vs. The Principal Secretary to Government, Chennai & another**' passed in '**W.P.No.15107 of 2016**', wherein, it was held that a similarly placed employee would be entitled for notional increment from the date of his retirement and monetary benefits would be granted from the date of G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014. The relevant portion of the order reads as follows:-

“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 retirees prior to and after G.O.Ms.No.311 dated 31.12.2014, is to be affirmed by the State.

13.The learned Additional Government Pleader also fairly submitted that there is no cut- off date fixed in



W.P.No.28630 of 2017

WEB COPY

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 Additional Government Pleader 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 his service records and the particulars therein.

15.In this view of the matter, the claim set out in this writ petition 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, if the writ petitioner falls in the



W.P.No.28630 of 2017

WEB COPY

category as stipulated in G.O.Ms.No.311 Finance (CMPC) Department dated 31.12.2014, he is eligible to get his 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 petitioners and pay the monetary benefits prospectively with effect from 31.12.2014.”

6. In the light of the above findings, there shall be a direction to the first respondent herein, to issue appropriate orders granting the notional increment which was due to the petitioner on 01.04.2014, from the date of his retirement i.e., from 31.03.2014 and granting monetary benefits from the date on which G.O.Ms.No.311 Finance (CMPC) Department was passed i.e., from 31.12.2014. Such order shall be passed within a period of four (4) weeks from the date of receipt of a copy of this order.



W.P.No.28630 of 2017

7. With the above directions, this Writ Petition stands disposed of.

No costs. Connected miscellaneous petition is closed.

07.12.2022

Speaking/Non-speaking order

Index : Yes/No

Internet: Yes/No

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To

1.The Secretary to the Government of Tamil Nadu,
School Education Department,
Fort St. George, Chennai – 600 009.

2.The Chief Educational Officer,
Tiruppur, Tiruppur District.



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W.P.No.28630 of 2017

M.S.RAMESH,J.

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W.P.No.28630 of 2017

07.12.2022