



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.18946 of 2017

R. Sundaramurthy

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Youth Welfare, Sports and Development Department,
Fort St. George,
Chennai – 600 009.

2.Deputy Director
National Cadet Crops Directorate,
Tamil Nadu, Puducherry & Andamans,
Fort St. George,
Chennai – 600 009.

3.The Commanding Officer-2 (TN),
Air Squadron N.C.C.,
Coimbatore – 641 018.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in No.1496/1/SC/1719 dated 27.03.2017 passed by the 2nd respondent and to quash the same and consequently, direct the respondents to sanction an increment taking into one year of service



rendered by the petitioner from 01.10.2013 to 30.09.2014 and revise the pension to the petitioner.

For Petitioner .. Mr. M. Muthupandian

For Respondents .. Mr. R. Neethi Perumal, Govt. Advocate

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking the records relating to an impugned order dated 27.03.2017 in No.1496/1/SC/1719 passed by the 2nd respondent, the Deputy Director, National Cadet Corps Directorate, Tamil Nadu, Puducherry and Andamans, Chennai and direct the respondents to sanction one increment to the petitioner for the period between 01.10.2013 and 30.09.2014 and calculate that increment notionally with only for the pensionary benefits.

2. The petitioner had joined service as Junior Assistant on 17.02.1997. He got promotion to various posts and finally retired on attaining the age of superannuation on 30.09.2014 as Assistant (SG). Since he retired on attaining the age of superannuation on 30.09.2014 and an increment fell due on 01.10.2014, only the next day, he was not provided



with increment for that particular last year of service. Raising this as a grievance, the petitioner had given a representation to the respondent, which came to be rejected by the impugned order. It had been stated that particular increment which fell due on 01.10.2014 cannot be paid to the petitioner herein and he is not eligible for that increment.

3. The learned counsel for the petitioner placed reliance on GO.Ms.No.98, Human Resources Management (FR.II) Department dated 21.09.2021. Let me extract the Government order in entirety, as it provided much clarity to the issue raised by the petitioner:

“ORDER:

The following notification will be published in the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution of India and of all other powers hereunto enabling, the Governor of Tamil Nadu hereby makes the following amendment to the



Fundamental Rules.

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2.The amendment hereby made shall be deemed to have come into force on the 31st December, 2014.

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 fall 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 31 December 2014. The rate of notional increment shall not exceed the eligible rate based on the basis pay drawn



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by the Government Servant as on the date of retirement.”

(BY ORDER OF THE GOVERNOR)

MYTHILI K. RAJENDRAN

SECRETARY TO GOVERNMENT”

4. The Government order is clear. It is very simple. It had amended the Fundamental Rule 26-A. The Fundamental Rule 26-A was relied on by the respondents. In that, if a public servant retires on attaining the age of superannuation and even if his increment fall on the next working date, he would not be eligible for the same.

5. But the above particular Government order had come to the rescue of Government servants, who had so retired. The petitioner had retired on attaining the age of superannuation on 30.09.2014. By the earlier Rule 26-A, benefit for the increment, which falls on the next date was extended only for those who retired after 31.12.2014. By GO.Ms.No.98 Human Resources Management (FR.II) Department dated 21.09.2021 that benefit was extended to those who had retired prior to 31.12.2014. The Government order is directly applicable to the petitioner.



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6. Therefore, the impugned order is set aside and a direction is given to the respondents to apply GO.Ms.No.98 Human Resources Management (FR.II) Department dated 21.09.2021 to the petitioner and grant one increment only for the purpose of calculation of pension. Accordingly, this Writ Petition stands allowed. No costs.

02.08.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
Speaking order: Yes/No
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To

- 1.The Principal Secretary to Government,
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7

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