



W.P.(MD)No.15178 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.15178 of 2020

A.Balasubramanian

... Petitioner

Vs.

1. The Additional Chief Secretary and Secretary
to Government,
Transport Department,
Fort St.George, Secretariat,
Chennai - 600 009.

2. State Express Transport Corporation (TN) Limited,
Represented by its Managing Director,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 600 002.

3. The General Manager,
State Express Transport Corporation (TN) Limited,
Thiruvalluvar Illam,
Pallavan Salai,
Chennai - 600 002.

4. The Administrator,
Tamil Nadu State Transport Corporation
Employees Pension Fund Trust,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 600 002.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the third respondent vide Letter No.020529/WAI/S.E.T.C./2019 dated 16.08.2019, quash the same as illegal, insofar as denying to sanction notional increment to the petitioner and in consequence, direct the respondents to sanction notional increment that falls on 01.07.2018 based on G.O.(Ms)No.140, Finance (Pay Cell) Department, dated 25.04.2018 and to pay the difference in terminal benefits such as Gratuity, Commutation, Unavailed Leave Salary and also to revise his pension with arrears, together interest at 18% per annum, from the date of his retirement, i.e., 30.06.2018 till the date of payment and all other attendant benefits to the petitioner.

For Petitioner : Mr.A.K.Thangavelu
For Respondent : Mrs.K.Christy Theboral
Addl. Govt. Pleader for R1
Mr.S.C.Herold Singh for R2 to R4

ORDER

This Writ Petition has been filed to call for the records of the impugned order passed by the third respondent vide Letter No.020529/WAI/S.E.T.C./2019, dated 16.08.2019, quash the same as illegal,



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insofar as denying to sanction notional increment to the petitioner and direct the respondents to sanction notional increment that falls on 01.07.2018 based on G.O.(Ms)No.140, Finance (Pay Cell) Department, dated 25.04.2018 and to pay the difference in terminal benefits such as Gratuity, Commutation, Unavailed Leave Salary and also to revise his pension with arrears, together with interest at 18% per annum, from the date of his retirement, i.e., 30.06.2018 till the date of payment and all other attendant benefits to the petitioner.

2. The case of the petitioner is that the petitioner was working as Assistant Manager in Head Quarters of State Express Transport Corporation (TN) Limited, Chennai and he retired from service on 30.06.2018, due to superannuation. As per G.O.(Ms)No.140, Finance (Pay Cell) Department, dated 25.04.2018, he is entitled to get the notional increment for the purpose of arriving the terminal benefits. Even though he had completed the qualifying service for the annual increment from 01.07.2017 to 30.06.2018, without any act of commission and omission, i.e., absent, suspension and leave on loss of pay etc., the annual increments due on 1st July 2018 was



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denied to the petitioner, due to his retirement on 30.06.2018. Hence, he has submitted a representation, dated 20.07.2019 to the second respondent. However, the said representation was rejected vide impugned order, dated 16.08.2019 by the third respondent on the ground that the notional increment falls on 01.07.2018 due on the next day following the date of superannuation on 30.06.2018. Challenging the same, the present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the issue that arises in the present Writ Petition is already decided by the Principal Seat of this Court in W.P.No.15107 of 2016, dated 16.08.2017, wherein, this Court held that *"when the grant of annual increment is ensured by the Government, such a concession cannot be denied to the pensioners who retired prior to 31.12.2014. Further, it is stated that the G.O., does not fix any cut-off date of retirement and as per the G.O.(Ms)No. 311, Finance (CMPC) Department, dated 31.12.2014, all the State pensioners who fall in this category are eligible to their respective annual increments, in the event of fulfilling the conditions stipulated in the said*



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G.O.(Ms)No.311" and such concession was not granted to the petitioner, but the third respondent has mechanically passed one line impugned order, which is not sustainable. Accordingly, he prayed for appropriate orders.

4. The learned counsel appearing for the respondents 2 to 4 would submit that the annual increment was due from 1st July 2018 and the petitioner retired from service on attaining the age of superannuation on 30.06.2018 and he was not paid the increment dated 01.07.2018 inasmuch as he was not in service on 01.07.2018. Hence, the claim of the petitioner was, therefore, rejected by the third respondent, vide order, dated 16.08.2019, wherein, it has been categorically stated that the said benefit was not applicable to the Transport Corporation employees. Therefore, he is not entitled to claim the same. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.



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6. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service as Superintendent (Company Trainee) in the second respondent Corporation and subsequently, acquired promotion as Assistant Manager in Head Quarters of State Express Transport Corporation (TN) Limited, Chennai and he retired from service on 30.06.2018 due to superannuation. The notional increment falls on 01.07.2018, since the petitioner retired prior to one day of eligibility and thereby the present impugned order is passed.

7. However, the fact remains that similar issue was discussed in G.O.(Ms)No.140, Finance (Pay Cell) Department, dated 25.04.2018 by relying on Rule 26-A of the Fundamental Rules, wherein, it is held that *“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, on completion of one full year of service which is countable for increment under Rule 26, shall be sanctioned with one increment at the rate of 3% of Pay + Grade Pay, notionally on the afternoon of the date of retirement, purely for pensionary benefits only”*.



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Though the respondents claimed that the said fundamental rule is applicable to the State Government only and not to the respondent Corporation. However, as per the Common Service Rules, wherein Note-2 of Clause 10 of Grant of Increments held that *“normally an increment can be granted only on completion of one year of qualifying service. However, when an increment accrues on any date in a quarter, that increment shall be granted on the first day of the quarter itself, even though he has put in less than a year's qualifying service on the 1st day of the quarter.”* In the present case, the petitioner retired from service on 30.06.2018, however, one full year falls on 01.07.2018 and for shortage of one day, he was denied notional benefits.

8. Applying the aforesaid ratio in Clause 10 of Grant of Increments in the Common Service Rules and G.O.(Ms)No.140, Finance (Pay Cell) Department, dated 25.04.2018 and the order in W.P.No.15107 of 2016, the impugned order passed by the third respondent is liable to be interfered with.



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9. Accordingly, the impugned order passed by the third respondent dated 16.08.2019 is set aside. It is needless to mention that the respondents are directed to sanction notional increment to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

10. With the above observations, this Writ Petition is allowed. No costs.

02.02.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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