

(2011) 08 MAD CK 0148
In the Madras High Court
Case No : Writ Petition No. 22589 of 2010

N.S. Rangaswamy

APPELLANT

Vs

Director of High School Education, District Chief Educational Officer, District Educational Officer and Principal Secretary to Govt.Finance (Pension) Department

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Citation : (2011) WritLR 728

Hon'ble Judges : K.N. Bashaw, J

Bench : Single Bench

Advocate : A.E. Chelliah, for C. Vasanthakumari Chelliah, for the Appellant; P.S. Sivashanmugasundaram Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.N. Bashaw, J.—The Petitioner has come forward with this petition challenging the order of the second Respondent in O. Mu. No.

3397/A4/2010 dated 17.05.2010 and of the District Educational Officer Coimbatore, the third Respondent herein, in O. Mu. No. 4892/A5/2010

dated 13.07.2010 touching the rejection of request of the Petitioner for increment and quash the same and direct the Respondents to pass order,

granting time scale of pay increment to the Petitioner for the period from 01.01.1995 to 31.12.1995 with all benefits in accordance with the

recommendations of the VI Pay Commission.

2. The case of the Petitioner is that he has joined the service as B.T. Assistant on 21.11.1964 in the Government High School, Karamadai with the

pay scale of 140-5-180-10-250 and from 21.11.1964 to 21.11.1965 one increment was given as 145/140-5-180-10-250. Similarly after the

completion of every year taking 31st December into account, increments were paid to the Petitioner. As per the Service Book, the records in Na.

Ka. No. 3/9011 dated 31.12.1994 have been verified and increments have been paid from 01.01.1994 to 31.12.1994. The service particulars for

the period from 01.01.1995 to 31.12.1995 have been verified with the Department records and found to be correct. The Petitioner, on reaching

the age of superannuation on 31.12.1995, retired as Headmaster, Government High School, Panimadai. However, on the basis of the Government

Order, his service was extended from 01.01.1996 to 31.05.1996 for the completion of the academic year.

3. As the Respondents have agreed that the Petitioner had served for the whole one year, the Petitioner is entitled to get the benefits of increment

of salary and other benefits. The second Respondent through his proceedings dated 9.12.2009 has informed that the Petitioner having retired on

31.12.1995 and as the Petitioner was not on duty on 01.01.1996, there are no Government rules to pay increment from 01.01.1996. Again his

proceedings dated 17.05.2010, rejected the request of the Petitioner holding that the Petitioner had asked for the increment based on his service

from 01.01.1996 to 31.05.1996, which is the re-employment period, but the Petitioner has not made any such request. The Petitioner sought for

the relief of payment of increment only for the period of one year he had already served from 01.01.1995 to 31.12.1995, but the pensionary

benefits were fixed without taking into account of the increment and the enhanced D.A due to the Petitioner as on 01.01.1996.

4. The first Respondent by its proceedings dated 10.05.2010 was pleased to send the representation of the Petitioner dated 15.02.2010 to the

third Respondent for appropriate action, but the third Respondent by its proceedings dated 13.07.2010, rejected the prayer of the Petitioner

stating that the Petitioner had already retired in the evening on 31.12.1995 and there is no provision for giving time scale of pay of increment on

01.01.1996. The Petitioner also made a further representation dated 15.02.2010 to the fourth Respondent herein, but there is no response.

Therefore, the Petitioner has been constrained to approach this Court by filing the present writ petition with the above said prayer.

5. Mr. A.E. Chelliah, learned Senior Counsel appearing for the Petitioner vehemently contended that the Petitioner is entitled to seek the relief of

increment, as he had already completed the service of one year from 01.01.1995 and 31.12.1995. It is pointed out by the learned Senior Counsel

that the impugned orders were passed on wrong assumption that the Petitioner sought for the relief of increment on the basis of his re-employment

from 01.01.1996 to 31.05.1996, as the Petitioner not at all made any such request. It is contended that the service record of the Petitioner was

verified and found to be correct to the effect that the Petitioner had served for the period from 01.01.1995 to 31.12.1995 and such being the

admitted position, increment to the Petitioner was denied on the ground that the Petitioner was ceased to be in service on the day on which the

increment was due. It is further contended that the Petitioner on completion of every one year, taking 31st December into account, increments

were paid and as such, he is entitled to seek the relief of increment for the period from 01.01.1995 to 31.12.1995 and such relief cannot be denied

merely because the Petitioner was not in service on 01.01.1996. It is brought to the notice of this Court by the learned Senior Counsel that the

Petitioner is a recipient of the Thamizh Naadu Government Best Teacher Award and he has rendered unblemished record of service. The learned

Senior Counsel would place reliance on the decision of the Hon'ble Apex Court in S. Banerjee Vs. Union of India (UOI) and Others, and the

Division Bench decision of the Andhra Pradesh High Court in Secretary Ministry of Personnel, Pension and Others Vs. R. Malakondaiah and

Another, .

6. Per contra, Mr. P.S. Sivashanmugasundaram, learned Additional Government Pleader submitted that there is no infirmity or illegality in the

impugned orders passed by the Respondents 2 and 3. It is contended that the Fundamental Rule 24 has not provided any provision to admit the

increments to the retired Government employees after attaining the age of 58. The learned Additional Government Pleader submitted that the

services of the Petitioner were not extended from 01.01.1996 to 31.05.2006 in a regular scale of pay by the Government and he was allowed to

serve in the re-employment period with effect from 01.01.1996 to 31.05.1996 and as such, he cannot claim the relief of increment on the basis of

his re-employment. Lastly, it is contended that in the absence of any service rules, the Petitioner cannot seek the relief of payment of increment

after his retirement on 31.12.1995, as the increment was due only on 01.01.1996.

7. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scrutinized the entire

materials available on record including the affidavit of the Petitioner and the counter affidavit of the third Respondent and perused the impugned

orders dated 17.05.2010 passed by the second Respondent and 13.07.2010 passed by the third Respondent herein.

8. The core question involved in this matter is whether the Petitioner is entitled to claim for the payment of increment for the completed period of

one year from 01.01.1995 to 31.12.1995, the day on which he has retired and the increment was due on 01.01.1996.

9. At the outset, it is to be stated that admittedly the Petitioner received the increment periodically after the completion of every year taking 31st

December of the year into account and he was also paid the increment for the period from 01.01.1994 to 31.12.1994. The undisputed fact

remains that the Petitioner had completed one year service from 01.01.1995 to 31.12.1995 and as such, he claims the increment for that period.

But the said claim of the Petitioner was rejected on the ground that on 01.01.1996, the day on which the payment of increment was due, the

Petitioner was not in service. The perusal of the impugned orders dated 17.05.2010 and 13.07.2010 reveals as if the Petitioner claims the relief on

the ground of his re-employment from 01.01.1996 to 31.05.1996, but the Petitioner has not made any such request at all by placing reliance on his

re-employment from 01.01.1996 to 31.05.1996. It is specifically stated by the Petitioner in his representation dated 15.02.2010 addressed to the

Director of High School Education, the first Respondent herein to the effect that he had completed one year service, though he was not in service

on the due date for the payment of increment i.e., on 01.01.1996. The earlier order passed by the third Respondent dated 09.12.2009 also clearly

shows that the Petitioner sought for the relief of payment of increment on the ground of completion of one year from 01.01.1995 to 31.12.1995.

Even in the counter filed by the third Respondent, it is seen that the third Respondent proceeded on the wrong assumption as if the Petitioner

claimed the relief of the payment of increment by placing reliance on the extended period of service i.e., from the date of re-employment from

01.01.1996 to 31.05.1996.

10. The perusal of the counter filed by the third Respondent discloses that the point raised by the Petitioner is not at all replied and on the other

hand, the third Respondent placed reliance on Rule 24 of Fundamental Rules. The said Rule relates to withholding the increment to the

Government Servant if his conduct is not good or his work has not been satisfactory. The said Rule also relates to the effect of stoppage of

increment on pension. The other Rules relied by the Respondents namely Rule 26 and Rule 87(8) of the Fundamental Rules are also not applicable

to the issue involved in this matter.

11. As far as the case on hand is concerned, it is to be reiterated that admittedly, the Petitioner had completed one year service from 01.01.1995

to 31.12.1995 and as such, it is abundantly clear that the right already accrued during such period and only the enforcement in the form of payment

remains to be fulfilled. The learned Senior Counsel for the Petitioner rightly placed reliance on the decision of the Hon''ble Apex Court in S.

Banerjee Vs. Union of India (UOI) and Others, . In the said decision, the Hon''ble Apex Court dealt with a similar and identical situation wherein

the Petitioner therein sought voluntary retirement and was so retired on 31st December 1985. He claimed the benefit of the IV Pay Commission,

which came into force with effect from 01.01.1986. The question was whether the Petitioner therein could be said to have been in service on

01.01.1986 or ceased to be in service for all practical purposes on 31.12.1985 itself. Referring to that contention, the Hon''ble Apex Court held

as under:

The question that arises for our consideration is whether the Petitioner has retired on 1-1-1986. We have already extracted the order of this Court

dated 6-12-1985 whereby the Petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from

the forenoon of 1-1-1986. It is true that in view of the proviso to Rule 5(2) of the Rules, the Petitioner will not be entitled to any salary for the day

on which he actually retired. But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the Petitioner

retired on 31-12-1985 ?The answer must be in the negative. Indeed, Mr. Anil Dev Singh, learned Counsel appearing on behalf of the

Respondents, frankly, conceded that the Petitioner could not be said to have retired on 31-12-1985. It is also not the case of the Respondents that

the Petitioner had retired from the service of this Court on 31-12-1985. Then it must be held that the Petitioner had retired with effect from 1-1-

1986 and that is also the order of this Court dated 6-12-1985. It may be that the Petitioner had retired with effect from the forenoon of 1-1-1986

as per the said order of this Court, that is to say, as soon as 1-1-1986 had commenced the Petitioner retired. But, nevertheless, it has to be said

that the Petitioner had retired on 1-1-1986 and not on 31-12-1985. In the circumstances, the Petitioner comes within the purview of paragraph

17.3 of the recommendations of the Pay Commission.

By following the principle laid down by the Hon"ble Apex Court in the above said decision, a Division Bench of the Andhra Pradesh High Court

taken a similar view in respect of an identical matter in Secretary Ministry of Personnel, Pension and Others Vs. R. Malakondaiah and Another, .

The Division Bench of the Andhra Pradesh High Court held hereunder:

5. The fact that the emoluments of a Government servant have to be taken as the basic pay, which he was receiving immediately, before his

retirement, is not at all in controversy. Similarly, the proposition that an increment accrues from the date following that on which it is earned is also

not in dispute. Increment in pay is a condition of service. In a way, it is a reward for the unblemished service rendered by an employee, which gets

transformed into a right. Once an employee renders the service for the period, which takes with it an increment, the same cannot be denied to

him/her. It is not in dispute that both the Respondents rendered unblemished service for one year before the respective dates of their retirements.

The periodicity of increment in the service is one year. On account of rendering the unblemished service, they became entitled for increment in their

emoluments.

6. The only ground on which the Respondents are denied the increment is they were not in service to receive or to be paid the same. Strictly

speaking, such a hyper-technical plea cannot be accepted. As observed earlier, with the completion of one year's service, an employee becomes

entitled for increment, which is otherwise not withheld. After completion of the one-year service, the right accrues and what remains thereafter is

only its enforcement in the form of payment. Therefore, the benefit of the year long service cannot be denied on the plea that the employee ceased

to be in service on the day on which he was to have been paid the increment. There is no rule, which stipulates that an employee must continue in

service for being extended the benefit for the service already rendered by him.

The principles laid down by the Hon"ble Apex Court and the Division Bench of the Andhra Pradesh High Court in the decisions cited supra are

squarely applicable to the facts of the instant case, as in this case also admittedly, the Petitioner had completed one year service and as such the

right already accrued and what remains thereafter is only the enforcement in the form of payment. The Petitioner received the periodical increments

during the previous years and even for the period 01.01.1994 to 31.12.1994. The increment of the Petitioner was not withheld at any point of

time. The Petitioner has rendered unblemished record of service.

12. It is pertinent to note that as far as the Tamil Nadu State is concerned, there is no rule which stipulates that an employee must continue in

service for getting the benefit of increment for the services already rendered by him. This Court is of the considered view that though the Petitioner

was not in service on the due date for the payment of increment i.e., on 01.01.1996, still he can seek the benefit of payment of increment for the

completed period of one year service i.e., from 01.01.1995 to 31.12.1995 even on equitable grounds. Therefore, this Court has no hesitation to

hold that the Petitioner having rendered the service for one year i.e., from 01.01.1995 to 31.12.1995, his accrued right cannot be denied.

13. In view of the aforesaid reasons, this Court is constrained to set aside the impugned order of the second Respondent dated 17.05.2010 in his

proceedings in O. Mu. No. 3397/A4/2010 and the order of the third Respondent dated 13.07.2010 in his proceedings in O. Mu. No.

4892/A5/2010, touching the rejection of the request of the Petitioner for increment and the Respondents are directed to grant time scale of pay

increment to the Petitioner for the period from 01.01.1995 to 31.12.1995 with all benefits in accordance with the recommendations of the VI Pay

Commission. It is made clear that the above said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy

of this order.

14. With this direction, the writ petition is allowed.

No costs.