IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 8TH DAY OF JUNE 2016/18TH JYAISHTA, 1938

OP (CAT).No.144 of 2016 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 180/00050/2014 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 9.2.2016

PETITIONERS :
---

1. M.SAKTHIVEL,
   RETIRED POSTMASTER,
   HEAD POST OFFICE ALAPPUZHA,
   RESIDING AT 'DWARAKA'THATHAMPALLY,
   ALAPPUZHA DISTRICT 688 013.

2. K.J.JOSEPH,
   RETIRED HEAD POSTMAN,HEAD POST OFFICE,
   ALAPPUZHA RESIDING AT KALLUVEETTIL HOUSE,
   POWER HOUSE WARD, ALAPPUZHA NORTH 688 007.

3. ANNAMMA THOMAS,
   RETIRED POSTMASTER,CHERTHALA HEAD POST OFFICE,
   RESIDING AT KALPALLIL,THATHAMPALLY, ALAPPUZHA 688 013,

4. A.ABDUL KARIM,
   RETIRED DEPUTY POST MASTER,
   ALAPPUZHA HEAD POST OFFICE,
   RESIDING AT THAHIRALAYAM, ALISSERY, ALAPPUZHA 688 001.

5. P.R.RADHAMANI,
   RETIRED SUB POSTMASTER,
   COLLECTORATE POST OFFICE, KOTTAYAM,
   RESIDING AT SAROVARAM, ITHITHANAM, KOTTAYAM DISTRICT 686 535.

6. G.RAJAMMA,
   RETIRED POSTAL ASSISTANT, THYCAUD HEAD POST OFFICE,
   THIRUVANANTHAPURAM,
   RESIDING AT T.C.19/1458, RAGAM, THAMALAM, POOJAPPURA,
   THIRUVANANTHAPURAM 695 012.

7. JACOB MAMMEN,
   RETIRED SENIOR SUPERINTENDENT OF POST OFFICES,
   ERNAKULAM DIVISION, RESIDING AT PAREPURACKAL, MELUKAV 686 652.

8. N.D.VASANTHAKUMARI,
RETIRED POSTMASTER, PUNALUR HEAD POST OFFICE,
RESIDING AT GOPAVADAM,THOLICODE, KOLLAM DISTRICT 691 333.

9. P.J.JOSE,
RETIRED POSTMASTER, KATTAPPANA HEAD POST OFFICE,
IDUKKI DISTRICT,
RESIDING AT PARAPURACKAL HOUSE, KANJAR,KUDAYATHOOR,
IDUKKI DISTRICT 685 590.

BY ADVS.SRI.B.UNNIKRISHNA KAIMAL
SRI.V.MADHUSUDHANAN
SRI.T.ISSAC

RESPONDENTS :
---

1. UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF COMMUNICATIONS,
DEPARTMENT OF POSTS, NEW DELHI 110 001.

2. THE CHIEF POSTMASTER GENERAL,
KERALA CIRCLE, THIRUVANANTHAPURAM 695 033.

3. THE DIRECTOR OF POSTAL SERVICES,
OFFICE OF THE POSTMASTER GENERAL ,
CENTRAL REGION, KOCHI 682 020

4. THE SUPERINTENDENT OF POST OFFICES,
ALAPPUZHA 688 012.

5. THE SENIOR SUPERINTENDENT OF POST OFFICES,
KOTTAYAM 689 645

6. THE SUPERINTENDENT OF POST OFFICES,
THIRUVANANTHAPURAM SOUTH DIVISION,
THIRUVANANTHAPURAM 695 036.

7. THE SUPERINTENDENT OF POST OFFICES,
PATHANAMTHITTA 689 645.

8. THE SUPERINTENDENT OF POST OFFICES,
IDUKKI DIVISION, THODUPUZHA 685 584.

R1-R8 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 08-06-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No.144 of 2016 (Z)

APPENDIX

PETITIONERS' EXHIBITS :-

EXHIBIT P1	COPY OF THE O.A.NO.180/00050/2014 FILED BY PETITIONERS BEFORE THE C.A.T.ERNAKULAM BENCH DATED 21/12/2013 TOGETHER WITH ITS ENCLOSURES.
EXHIBIT P2	COPY OF THE REPLY STATEMENT DATED 2/6/2014 FILED BY THE RESPONDENT BEFORE THE C.A.T. ERNAKULAMK BENCH IN O.A.NO.180/00050/2014.
EXHIBIT P3	COPY OF THE ORDER DATED 9/2/2016 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM IN O.A.NO.180/00050/2014.
EXHIBIT P4	COPY OF THE ORDER GO.Ms.No.311 DATED 31/12/2014 ISSUED BY THE GOVERNMENT OF TAMIL NADU.

RESPONDENTS' EXHIBITS : NIL.

True copy

P.A to Judge

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

O.P.(CAT)No.144 of 2016

Dated this the 8th day of June, 2016

JUDGMENT

Ramachandra Menon, J.

The petitioners have got a common grievance in not reckoning the increment which fell due on the first of July after their retirement from service pursuant to attaining the age of superannuation.

2. The factual position as disclosed from the proceeding is that, all the petitioners herein were serving the Postal Department under different capacities and they retired from the service on attaining the age of superannuation, i.e., 60 years, on the 30th of June of different years from 2007 to 2012. Pursuant to the 6th Pay Commission, the Central Government issued revised CCS (Revised Pay) Rules, 2008 which was to take effect from 1.1.2006. Pursuant to the said Rules, the increment payable could only be with effect from the first of July onwards. The pensionary benefits were calculated and disbursed to the petitioners reckoning their last drawn salary as in June, when

they retired from the service. They put up a contention that the increment which was due on first of July, ought to have been reckoned for the purpose of working out the service benefits. The claim was not acceded to by the Department, which made them to approach the Tribunal by filing the O.A.

3. The claim was resisted by the Department pointing out that there was absolutely no basis for the contention raised, as the applicants had already retired from service on the last day of June and that the master and servant relationship stood cut off when the increment fell due on the '1st of July' of the concerned years from 2007 to 2012. It was also pointed out that, the applicants had not chosen to challenge the Rule and in so far as the Rule was not under challenge, no relief could be extended by the Tribunal under any circumstance.

4. After hearing both the sides, the version put forward by the respondent/Government was accepted and it was accordingly, that interference was declined and the O.A. was dismissed, which in turn is under challenge in this Original Petition.

5. Heard Sri.B.Unnikrishna Kaimal, the learned counsel appearing for the petitioners, at length and also the learned Assistant Solicitor General who appeared on behalf of the respondents.

6. There is no dispute with regard to the Rule position. By virtue of F.R.56 and by virtue of the mandate under Rule 10 of the CCS (Revised Pay) Rules, 2008, which is based on the recommendation given by the 6th CPC (paragraph 11.5), the date of annual increment shall be 'first of July' in all cases. As borne by the detailed discussion made by the Tribunal in paragraph 6 and elsewhere of the order under challenge, such a date was fixed by the Government of India based on the suggestions/ recommendations made by an 'expert body' constituted by the Government and the rationale based such fixation was not under challenge and the same is not liable to be subjected to judicial review. The Fundamental Rule 56 says that, if the date of birth of a Government servant falls on the first day of particular month, he will have to retire from service on the previous day, after noon.

There is no challenge with regard to this Rule as well. The respondents have made it clear that computation of the retirement benefits has been done strictly in conformity with the mandate of Rule 55 of the CCS (Pension) Rules and that no mistake in this regard has been pointed out by the applicants.

7. The claim was preferred, on the strength of the contention as to the necessity for paying periodical increments on completion of the requisite extent of service, on an yearly basis. Reliance was also sought to be placed on the decision rendered by the Supreme Court in **S.Banerji Vs. UOI (AIR 1990 SC 285)**. The said decision was considered by the Tribunal and it has been held in categorical terms that the same is not applicable, in so far as it was a case where the Government employee had taken up voluntary retirement and sought to have such voluntary retirement with effect from first of January, 1986 and not from 31.12.1985. It was in the said circumstance, that the benefit was granted by the Supreme Court to the said Government employee; which does not come to the rescue of the applicants. The Tribunal

also made a reference to the judgment rendered by a Full Bench of the Andhra Pradesh High Court in **Principal Accountant General Vs. C.Subba Rao (2005 (2) ALT 25)** and the verdict passed by the Madras High Court in **UOI Vs. R.Sundara Rajan (W.P.No.28433/2005 & WPMP No.30978/2005)**.

8. After hearing the matter at length and after going through the reasoning given by the Tribunal and also considering the legal position explained by the Full Bench of the Andhra Pradesh High Court in **Principal Accountant General Vs. C.Subba Rao (2005 (2) ALT 25)** and the verdict passed by the Madras High Court in **UOI Vs. R.Sundara Rajan (W.P.No.28433/2005 & WPMP No.30978/2005)**, we find that there is absolutely no scope for any interference.

9. During the course of hearing, the learned counsel for the petitioners also sought to place reliance on Ext.P4, which is a copy of the order bearing G.O.Ms.No.311 dated 31.12.2014 issued by the Tamil Nadu Government. At the very out set, we would like to make it clear that the said order passed by the said

Government does not have any binding force to decide the issue at hand. Even going by the contents of Ext.P4, what has been provided by the said order is only a matter of 'concession' to the persons, by giving the benefit of notional increment purely for the purpose of pensionary benefits and not for any other purpose. Extension of such concession is a matter of consideration for the appropriate Government, which cannot be sought for as a matter of right or precedent, when the matter is adjudicated by a court of law.

10. We find that there is absolutely no merit in the Original Petition. It stands dismissed accordingly. We also make it clear that we have not dealt with the correctness or otherwise of Ext.P4 in this matter.

Sd/-
P.R.RAMACHANDRA MENON, JUDGE

Sd/-
ANIL K.NARENDRAN, JUDGE

skj

True copy

P.A to Judge