

F. No. A-23011/36/2013-Ad.IIA
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs

North Block, New Delhi,
Dated the 18 October, 2019.

To,

All Pr. Chief Commissioners/ Chief
Commissioners/Director General under CBIC,

Subject: Grant of notional increment/re-fixation of pensionary benefits as per Hon'ble Madras High Court Order in WP No. 15732/2017 in the case of Sh. P. Ayyamperumal -regarding.

Sir/Madam,

1. I am directed to inform that the Order dated 15.09.2017 of the Hon'ble High Court passed in the matter of P. Ayyamperumal's case (WP No. 15732/2017) is **in personam and not in rem**. Therefore, the CBIC has implemented the High Court's order in personam after dismissal of review petition filed in the Supreme Court. for petitioner only which would not be quoted as precedent in future.

2. A number of cases on the similar grounds are pending at various fora and similar demands from other similarly placed officers could also arise after Hon'ble Supreme Court's Order dated 08.08.2019 in R.P.(C) No. 1731/2019. Keeping this in mind, a request was made to DoPT seeking their opinion about the future course of action to be taken in case pertaining to similarly placed applicants and non-applicants.

3. DoPT has now informed that Deptt. of Legal Affairs have observed that:

"It is very clear that the judgment of Hon'ble High Court of Madras passed in the matter of Sh. P. Ayyamperumal is in personam and not in rem."

4. Based on the above, DoPT has informed that in so far as other similar cases are concerned, the same may be defended on following grounds:-

4.1 In so far as P. Ayyamperumal case is concerned, it is stated that the judgment of Hon'ble High Court of Madras is in personam.

4.2 Further, the case of Sh. M Balasubramaniam referred by Hon'ble High Court in its judgment in P. Ayyamperumal case is related to Fundamental Rules of Tamilnadu Government whereas P. Ayyamperumal case relates to Central Government Rules.

4.3. It is relevant to mention here that in a similar matter, Hon'ble High Court of Andhra Pradesh at Hyderabad in year 2005, in C. Subbarao case, has inter-alia observed as under:

In support of the above observations, the Division Bench also placed reliance on Banerjee case (supra). We are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulations) as a periodical rise to a Government employee for the good behaviour in the service. Such increment is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated Fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (See Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because, as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly overrule the judgment in Malakondaiah case (supra).

4.4 In addition, subsequent to the judgment of Hon'ble High Court of Madras in P. Ayyamperumal's case, Hon'ble CAT Madras Bench vide its orders dated 19.03.2019 in O.A. No. 310/00309/2019 and O.A. No. 310/00312/2019 and Order dated 27.03.2019 in O.A. No. 310/00026/2019 has also dismissed the similar requests related with notional increment for pensionary benefits.

5. Accordingly, it is requested that all the pending/future court cases on the similar issue should be defended/dealt with adequately on the above lines.

Yours faithfully,

A. K. Mishra

(A.K. Mishra)

Under Secretary to the Government of India