



MOST URGENT/DATE BOUND/COURT CASE

No. 6/183/2018-4PR(FD)/29978

From

Additional Chief Secretary to Govt. Haryana,
Finance Department.

To

1. All of the Administrative Secretaries in Haryana State.
2. All of the Head of the Departments in Haryana State.
3. All of the Divisional Commissioners in Haryana State.
4. All of the Deputy Commissioners in Haryana State.
5. All of the SDOs in Haryana State.

Dated, Chandigarh the **04.01.2024**

Subject:- Course of action regarding filling of appeal/LPAs on the issue of notional increment falling due on 1st July on completion of 12 months of service on 30th June of calendar year or regarding pro-rata increment for the purpose of pension etc.

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I have been directed to invite your attention on the subject noted above and to state as under:-

1. that various writ petitions were filed in the Hon'ble Court(s), who retired on 30th June {of different year(s)} with the prayer to grant the notional increment alongwith all benefits including interest in view of the orders dated 15.09.2017 passed by the Hon'ble Madras High Court, as the same has attained finality because the Hon'ble Apex Court dismissed the SLP and the RA vide orders dated 23.07.2018 and 08.08.2018.
2. That the matter in question was examined in length and accordingly, some clarification was sought from the Government of India.
3. That on receipt of said reply/ comments from Government of India, the State Government issued general circular dated 25.11.2020 stating course of action to contest such cases.
4. That the Finance Department filed the reply in the leading CWP No. 11318 of 2019 – Birbal Singh & Others Vs. State of Haryana. The bunch of CWPs in lead case i.e. CWP No. 11318 of 2019 are being fixed for regular hearing before the double bench of Hon'ble High Court.
5. Further, the Hon'ble Madras High Court in A.V. Thiyagarajan vs the Secretary to Government (W.P. No. 20732/ 2012 dated 27.11.2012) and Union of India v. R. Sundara Rajan (WP 28433/05) and the Hon'ble Karnataka High Court in Union of India & 3 Others v. YNR Rao (WP18186/ 2003) have held that:-

"But for the provisions of FR 56, which provides that a Government Servant shall retire from service on the afternoon of last date of the month in which he had attained the age of 58 years, the respondent, who was born on 9.3.1937 would have retired on 8.3.1995. The provision for retirement from service on the afternoon of the last date of the month in which the Government Servant attains the age of retirement instead of on the actual completion of the age of retirement in FR 56 was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to clause (a) of FR 56 which provides that an employee whose date of birth is first of a month, shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 58 years. Therefore, if the date of birth of a government servant is 1.4.1937 he would retire from service not on 30.4.1995, but on 31.3.1995. If a person born on 1.4.1937 shall retired on 31.3.1995, it would be illogical to say a person born on 9.3.1937 would retire with effect from 1.4.1995. That would be the effect, if the decision of the full



bench of the CAT, Mumbai, is to be accepted. Therefore, a Government servant retiring on the afternoon of 31.3.1995 retires on 31.3.1995 and not from 1.4.1995. We hold that the decision of the Full Bench (Mumbai) of the CAT that a government servant retiring on the afternoon of 31st March is to be treated as retiring with effect from the first day of April, that is same as retiring on the forenoon of first of April, is not good law."

6. Further, in a similar matter, Kerala High Court vide judgment dated 22.11.2022 after mentioning/considering the judgments of various courts, **choose to follow the judgment dated 28.03.2008 of the Division Bench of Kerala High Court, the operative part of the judgment dated 22.11.2022, is as under:-**

xxxxxxx A similar view has been taken by the Division Bench of this Court also in **Union of India and Others v. K.R. Sanal Kumar and Another - [2008 (2) KHC 761]**, following the judgment of the Supreme Court in **Achhaibar Maurya v. State of U.P. And Others - [(2008) 2 SCC 639]**. At paragraphs 8 and 9 of the Kerala High Court judgment, it is observed as follows:

"8. We find that the recent judgment of the Apex Court in Achhaibar Maurya's case, 2008 KHC 4391 : 2008 (2) SCC 639 clearly applies to the facts of this case. There, the claim raised by a teacher who retired on 30/06/2003 was for getting Session benefits of the next session commencing on 01/07/2003. It was held that the appellant who was born on 01/07/1943 would retire on 30/06/2023. Their Lordships held that "a person retires automatically on the day when he completes the age of superannuation. A person attains a specified age on the day next before the anniversary of his birth day or in other words, on the day preceding that anniversary." It was therefore held that the appellant was not entitled for the benefit of special benefit of the next session commencing on 01/07/2003. The decision of Apex Court in S. Banerjee v. Union of India, 1989 KHC 800 : 1990 SCC (L&S) 160 : AIR 1990 SC 285 : 1989 Supp (2) SCC 486 was distinguished.

9. We find that on the facts of this case, the said dictum will squarely apply here. As on 01/01/1986, the day when the annual increment fell due, the applicant was not in service. He became a pensioner already. He cannot draw any pay and allowances from 01/01/1996. In that view of the matter, he will not be entitled to claim any annual increment which fell due on 01/01/1996 as he had already retired from service. The employer employee relationship has already ceased. The view taken by the Tribunal, therefore, cannot be accepted."

7. **We are therefore of the view that the issue of whether a Government servant who retired on the last working day of the preceding month and whose annual increment falls due on the first day of the succeeding month is entitled for sanction of annual increment for the purpose of pension and gratuity must be answered in favour of the petitioners herein and against the respondents. We do so by setting aside the impugned orders of the Tribunal and allowing these O.P.(CAT)'s.**

8. Before parting with these cases, we might only add that we are mindful of the fact that the decision of the Madras High Court in **P.Ayyamperumal [supra]** that was relied upon by the Tribunal and the SLP against which was dismissed by the Supreme Court, takes a different view. We are also aware that other High Courts have since followed the Madras High Court judgment [See **Union of India and Others v. Pravesh Chandra Gupta and Others - [judgment dated 28.7.2021 of the Allahabad High Court in**



W.A.No.7911 of 2021], Mahesh Kumar and Another v. Union of India and Others - [judgment dated 23.12.2021 of the Allahabad High Court in W.A.No.17601 of 2021], Arun Chhibber v. Union of India and Others - [order dated 13.1.2020 of the Delhi High Court in W.P.(C).No.5539 of 2019], Union of India v. Lazmanbhai Kalabhai Chavda – [order dated 27.1.2021 of the Gujarat High Court in R/Special Civil Application No.10751 of 2020, Union of India and Another v. M. Siddaraj – [order dated 22.10.2020 of the Karnataka High Court in Writ Petition No.146967 of 2020 (S-CAT)] and SLP's against the said orders/judgments are pending consideration before the Supreme Court. **We have chosen however to follow the Division bench judgment of our own Court,**

which, in our view, accords with the Scheme of the Fundamental Rules and the CCS (Pension) Rules, as enunciated by the Full Bench of the Andhra Pradesh High Court in **Principal Accountant General and Others v. C. Subba Rao – [2005 (2) ALT 25].**

The O.P.(CAT)'s are allowed.

7. However, the Karnataka High Court in CWP No. 4193 of 2017—**C.P.Mundinamani & Others Vs. The Director (Admn. and HR) KPTCL & Others** has passed orders dated 23.01.2020. The concluding para is as under:-

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11. The learned Single Judge erred in concluding that Malakondaiah's case has no relevance to the present case. In fact, the said case examines a very similar provision as in the instant case. The said case also pertains to whether an employee could be entitled to an increment, if it were to accrue on the next day of his retirement and the relevant provision therein states "an increment accrues from the day following that on which it is earned" and **the Andhra Pradesh High Court has observed that "after completion of one year service, the right accrues and what remains thereafter is only its enforcement in the form of payment".** It is further observed that "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".

8. A Civil Appeal No. 2471 of 2023-- **The Director (Admn. and HR) KPTCL & Others Vs. C.P.Mundinamani & Others** was filed in the Apex Court. The same was disposed off vide orders dated **11.04.2023**, the same are reproduced as under:-

"Hon'ble Mr. Justice M.R. Shah has pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice C.T. Ravikumar.

The appeal is dismissed and I.A. No. 149091/2022 stands disposed of in terms of the signed reportable judgment.

Pending applications, if any, stand disposed of."

9. Now, the Learned Counsel for the petitioners are praying in the Hon'ble Court(s) that the issue raised in petition(s) is/are covered by the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 2471 of 2023-The Director (Admn. And HR) KPTCL & Others Vs. C.P. Mundinamani and others, decided on 11.04.2023 and the present petition be also disposed of in the same terms and conditions.

10. The Hon'ble Court has disposed of the CWP No. 12453 of 2017—**Satyapal & Others Vs. State of Haryana & Others** on 12.10.2023, in the following manner:-

"Learned Counsel for the parties concede the factum that the issue raised in the present petition is covered by the judgment



of the Hon'ble Supreme Court of India in Civil Appeal No. 2471 of 2023-The Director (Admn. And HR) KPTCL & Others Vs. C.P. Mundinamani and others, decided on 11.04.2023 and the present petition be also disposed of in the same terms and conditions.

Ordered accordingly."

11. It is worthwhile to mention here that similar CWPs are also being disposed of on the same terms of Civil Appeal No. 2471 of 2023-The Director (Admn. And HR) KPTCL & Others Vs. C.P. Mundinamani and others, decided on 11.04.2023
12. As being an important issue which involves heavy financial implications, the case was sent to office of the Ld. Advocate General, Haryana for obtaining opinion regarding filling of LPA against the orders dated 12.10.2023 of the Hon'ble High passed in CWP No.12453 of 2017.
13. Now, the Ld. Advocate General, Haryana vide detail opinion dated 21.12.2023 has opined that these cases are fit cases for filling LPA(s) in the Hon'ble High Court.

Therefore, a copy of the opinion dated 21.12.2023 of Ld. Advocate General, Haryana is sent herewith with an advice to immediately file LPA(s) in the Hon'ble High Court in the relevant case(s) pertaining to your respective department(s) against the Judgment passed by the Hon'ble High Court/Ld. Court(s) in the above subject cited matters to avoid any Contempt Petition at belated stage otherwise adverse action, if any, is taken by the Hon'ble High Court, the complete onus thereof shall be upon Administrative Department.

Further, the pending court cases/legal notices be defended/examined as per opinion dated 21.12.2023 of the Ld. Advocate General, Haryana.

Uandh
Chief Accounts Officer,

for Additional Chief Secretary to Government Haryana,
Finance Department *4/1*

Endst. No. No. 6/183/2018-4PR(FD)/29978

Dated 04.01.2024

A copy is forwarded to O/o the Advocate General, Haryana w.r.t. their letter bearing Memo No. 84816, dated 22.12.2023 (opinion dated 21.12.2023) for information.

Uandh
Chief Accounts Officer (PR)

for Additional Chief Secretary to Government Haryana,
Finance Department *4/1*

Endst. No. No. 6/183/2018-4PR(FD)/29978

Dated 04.01.2024

A copy is forwarded to the Director Prosecution Department with the request to bring the same into the notice of all the officers of Attorney Cadre under their control so that the subject cited cases could be defended efficiently in the court of law.

Uandh
Chief Accounts Officer (PR)

for Additional Chief Secretary to Government Haryana,
Finance Department *4/1*

53-

LEGAL OPINION

**Subject: - C.W.P. No. 12453 of 2017
Satyapal Vs. State of Haryana and ors.
CWP No.6647 of 2021
Laxmi Chand and another Vs. State of Haryana and others.
CWP No.5905 of 2022
Jeet Singh and others Vs. State of Haryana and others
CWP No.6873 of 2022
Ajit Singh and another Vs. State of Haryana and others.
CWP No. 19142 of 2020
Rajesh Kumar and others Vs. State of Haryana and others.
CWP No.11255 of 2023
Ram Singh and others Vs. State of Haryana and others
CWP No. 11460 of 2023
Lado Devi Vs. State of Haryana and others
CWP No. 12537 of 2023
Ranvir Singh and another Vs. State of Haryana and others.**

....

I have gone through the order dated 12.10.2023 passed by Ld. Single Judge, order dated 11.04.2023 passed by Hon'ble Supreme Court in case titled as The Director KPTCL & others Vs. C.P. Mundinamani and others decided on 11.04.2023, relevant Rule 10 of HCS (Revised Pay) Rules 2016 and the other material available in the file and also the contents of the writ petition, reply filed by the department and the additional affidavit filed and the opinion that it is a fit case for filing LPA in the Hon'ble High Court. Brief facts and the reasons are as follows:

1. The petitioner herein filed the present writ petition in which he prayed for issuance of a writ of mandamus directing the respondents to give the benefit of increment to the letter dated 07.01.2015 (Annexure P-5) as reiterated in the subsequent clarification dated 16.02.2017 (Annexure P-6) and pleaded that he should be granted annual increment as per Rule 10 of the HCS (Revised Pay) Rules 2016. The petitioner alleged that he was inducted in service on 19.08.1989 and thereafter appointed on 22.01.1996 on adhoc basis as teacher in DAV High School (Udaipur), Ambala and subsequently his service was regularized as Sanskrit teacher. He mentioned that he retired from service after rendering 27 years service and his date of retirement is 30.06.2016. He mentioned that lastly he was granted annual increment on 01.07.2015 and thereafter he completed 12 calendar months upto 30.06.2016 but annual increment was not granted on

account of his superannuation. Petitioner further alleged that had he been granted annual increment on 01.07.2016 then his pension and other retiral benefits was required to be calculated on the enhanced pay but on account of non grant of annual increment upto last 12 calendar months upto 30.6.2016 merely on the count that on 1.7.2016 he was not in service is illegal, arbitrary action.

2. The claim of the petitioner was contested by the department by filing the written statement and mentioned that the annual increment cannot be granted to him on account of the fact that the petitioner retired on attaining the age of superannuation i.e. 30.06.2015 and the increment can be granted only if an employee is in service and on 1.7.2016 he was not an employee but a pensioner, therefore, HCS (RP) Rules 2016 are not applicable upon him on 1.7.2016. It was further pleaded that since the petitioner was not in service hence rightly not granted annual increment. It was further pleaded that even the notification Annexure P-5 issued on 7.1.2015 is not applicable as pro rata increment is payable under this instruction to such employee who were directly recruited after 1.1.2006 and that was only a one time measure and directly recruited employee granted pro rata annual increment upto June of the respective year, thereafter his annual increment would automatically ensue and accrue from 1st July to onward on the respective years. Thus the notification Annexure P-5 & P-6 relied by the petitioner is not applicable to the facts and circumstances of the case and the department rightly passed the speaking order.

3. That the above stated writ petition listed for hearing on 12.10.2023 and the Hon'ble Single Judge has allowed the writ petition by relying upon the decision of the Hon'ble Supreme Court in Civil Appeal No. 2471 of 2023 titled as The Director KPTCL & others Vs. C.P. Mundinamani and others decided on 11.04.2023.

4. Now the file has been sent to this office by the Finance Department to solicit the opinion as to whether what action is required to be taken as to whether the case is fit for filing LPA or the order is passed by the Ld. Single Judge is required to be implemented. The Finance Department also pointed out that the

- 55 -

above stated decision relied by the Ld. Single Judge only the pay rules has been considered and the pension rules has not been considered as pension is payable on the last drawn salary and even if an employee is granted notional annual increment after his retirement but he never draws his last drawn salary on the enhanced notional increment therefore, the petitioner is not entitled and the decision is having far reaching financial implications qua retirees who retire prior to 1.1.2006 or even thereafter i.e. how the file has been sent to this office to solicit the opinion.

OPINION

(i) After going through the relevant rules of HCS (Pension) Rules 2016 especially Rule 8(7) which defines emoluments for the purpose of release of DCRG & Pension same is reproduced as below:

“emoluments” for the purpose of—

(a) death-cum-retirement gratuity and service gratuity means—

(i) Basic pay in pay scale; actual or notional, whichever fixed/refixed last.

(ii) non-practicing allowance admissible to Doctors and Veterinary Surgeons subject to pay plus non-practicing allowance not exceeding [2,24,100/- (Two lakhs twenty four thousand one hundred only);] 1

(iii) dearness allowance admissible on (i) and (ii) above; and

(iv) any other amount specially classed as emoluments for the purpose by the competent authority.

(b) pension and family pension means—

(i) basic pay in pay scale, actual or notional, whichever fixed/refixed last;

(ii) non-practicing allowance upto the prescribed limit; and

(iii) any other amount specially classed as emoluments for the purpose by the competent authority.

Similarly Rule 36 of 2016 (Pension) Rules also defines last emoluments in case of “On leave” or “under suspension” on the date of retirement. Simultaneously Rule 37 & 38 of 2016 (Pension) Rules also defines last emoluments in case of death while in service & last emoluments in case of Foreign Service or deputation same are not reproduced for the sake of brevity.

Prior to above stated rules which were framed and made applicable w.e.f. 19.07.2016, pension was being governed under the PCS Rules Vol.II part 1 as applicable to State of Haryana and under such rules last emoluments has been defined under Rule 6.24 as under:

6.24. (1) The term "average emoluments" means the average calculated upon the last ten months of qualifying service.

Note.—Omitted.

(2) If during the last ten months of his service a Government employee has been absent from duty on leave with leave salary, and also on extraordinary leave which counts for pension or having been suspended, has been reinstated without forfeiture of service, his emoluments, for the purpose of ascertaining the average, should be taken at what they would have been had he not been absent from duty or suspended: provided always that, except as provided in Note, his pension must not be increased on account of increase in pay not actually drawn.

Note.—In the case of a Government employee who during the currency of leave preparatory to retirement up to 300 days on full pay was on earned leave during the last ten months of service had earned an increment which was not withheld during the currency of the earned leave, such increment, though not actually drawn, shall be included in the average emoluments.

(3) If, during the last ten months of his service, a Government employee has been absent from duty on leave without leave salary (not counting for pension), or has been in Group "D" service, or has been suspended under such circumstances that the period of suspension does not count as service, the period so passed should be disregarded in the calculation of the average emoluments, and an equal period before the ten months should be included.

(4) In the case of Government employees who are allowed to count their Military service for civil pension under rule 4.3 the average emoluments should be calculated on the basis of pay drawn in the Civil and the Military Department during the last ten months of service and the break, if any, between the Military service and the Civil Service should be disregarded and an equal period before the ten months should be included.

(5) Periods of joining time which fall within the last ten months of a Government employee's service should form part of ten months for the purpose of "average emolument. In case of joining time falling under clauses (a) and (b) of rule 9.15 of Volume I (Part I) of these

rules, where the pay of a particular post is drawn, the actual „emoluments“ (not the actual joining time allowances) drawn should be taken for the purpose of average emoluments. In cases of joining time falling under clauses (b) of the said rule, the emoluments for calculation of average emoluments should be taken at what they would have been had the Government employee not been on joining time.

(6) Omitted.

(7) Except as provided in clauses (2) to (6) above, only emoluments actually received can be included in the calculation. For example, when a Government employee is allowed to count time retrospectively towards increase of pay, but does not receive intermediate increments are not reckoned in the calculations.

(8) In the case of section-writers whose service has been allowed to count for pension and of Press employees whose service qualifies under rule 3.28 “average emoluments” means the average earnings of the last seventy-two months in superior service.

Note 1.—This clause applies in the case of Press employee remunerated by a fixed rate of pay if his pay is met from the grant for piece-work.

Note 2.—Overtime earning of Press employees paid at piece-work rates may be taken into account in calculating average emoluments under this clause; but such earnings must be excluded in reckoning the average emoluments of Press employees (who draw pay at fixed rates). If during the last 72 months of service a Press employe has been for some period on fixed pay and for other periods a piece-work employee overtime earning may be taken into account in calculating pension only for the period during which he was remunerated at piecework rates.

(9) Basis for calculation of pension in respect of seasonal establishments governed by rule 3.18. For purposes of calculating of average emoluments for pension, in respect of seasonal establishments, the whole of the last ten months of service including the periods which count but during which no emoluments were drawn should enter into calculation and not merely the periods during which emoluments were drawn. The emoluments that should be taken into account should under clauses (7) above be those actually drawn during that period.

Similarly under HCS (General) Rules 2016 applicable w.e.f. 19.7.2016 the relevant Rule 143 lays down as under:

143. Retirement on superannuation.—

(1) Except as otherwise provided in these rules, every Government employee shall retire from service on afternoon of the last day of the month in which he attains the age of retirement prescribed for him or for the post held by him in substantive or officiating capacity, as the case may be. However, a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the prescribed age. The age of retirement on superannuation is fifty eight years for all groups of employees except the following for whom the same is sixty years:-

- (i) Differently-abled employees having minimum degree of disability of 70% and above;
- (ii) Blind employees;
- (iii) Group 'D' employees; and
- (iv) Judicial Officers.

No Government employee shall be retained in service after attaining the age of superannuation, except in public interest and in exceptional circumstances, without the approval of Council of Ministers.

Note 1.— One eyed employee shall not be treated as blind or differently-abled person for the purpose of this rule.

Note 2.— When a Government employee is due to retire on superannuation from service an office order shall be issued on 7th of the month in which he is going to be retired and a copy of every such order shall be forwarded immediately to the Principal Accountant General, Haryana. There is no need to re-instate a Government employee who is under suspension at that time.

Note 3.— A Government employee who becomes disabled while in service shall bring to the notice of his Head of Department minimum three months before attaining the age of 58 years. He shall be got examined from a Medical Board of the Post Graduate Institute of Medical and Science, Rohtak to be headed by its Director. On receipt of medical report from the Board, the appointing authority or the Head of Department, whichever is higher, shall take a final decision to grant or not to grant the extension in service to such physically disabled employee.'

(2) (a) The age of retirement on superannuation of HCMS Doctor of Health Department shall be 65 years provided—

(i) he should be eligible to be retained in service beyond 58 years as per eligibility criteria prescribed by Government from time to time; and

(ii) he has to perform only clinical duties during the period beyond the age of 58 years (b) If a doctor does not wish to work in clinical

capacity beyond the age of 58 years he may seek voluntary retirement provided he opt for it in writing minimum three months before attaining the age of 58 years.'

(3) No Engineer-in-Chief in the PWD (B & R), Irrigation Department and Public Health Engineering Department shall, without re-appointment, hold the post for more than five years, but re-appointment to the post may be made as often and in each case for such period not exceeding five years, as the competent authority may decide:

Provided the term of re-appointment shall not extend beyond the date of attaining the age of superannuation.

Note.— The following authorities are competent to retain a Government employee after the age of superannuation:-

Powers to retain a Government employee in public interest and in exceptional circumstances after the age of superannuation.	Administrative Department	Full powers subject to a maximum of two years with the approval of Council of Ministers.]
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Prior to it under the old PCS Rules Vol.I Rule 3.26 prescribes date of retirement as under:

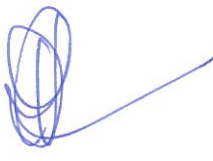
“3.26(a) Except as otherwise provided in other clause of this rule, every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He must not be retained in service after the age of compulsory retirement, except in exceptional circumstances with the sanction of the competent authority in public interest, which must be recorded in writing.

[Provided that the age of compulsory retirement for the members of the [judicial Services, blind and] Class IV Government employees shall be sixty years].

Provided further that a Government employee whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of fifty eight or sixty years, as the case may be.

(b) Deleted

(c) [No Engineer-in-Chief in the P.W.D., shall, without re-appointment, hold the post for more than five years, but re-



appointment to the post may be made as often, and in each case for such period not exceeding five years, as the competent authority may decided, provided that the term of re-appointment shall not extend beyond the date of his superannuation.]1

(d) The appointing authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government employee, other than Class IV Government. employee by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice—

(i) If he is in class I or class II Service or post and had entered Government service, before attaining the age of thirty five years, after he has attained the age of fifty years; and (ii)(a) if he is in class III service or post, or

(b) if he is class I or class II service or post and entered Government service after attaining the age of thirty five years; after he has attained the age of fifty five years:

[Provided that in the case of a member of the Judicial Service, if he had entered Government service before or after attaining the age of thirty five years, his case for retention in service beyond the age of fifty-eight years, shall be considered before he attains such age;]

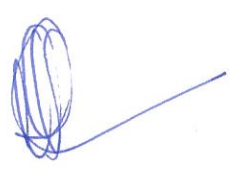
The Government employee would stand retired immediately on payment of three months pay and allowances in lieu of the notice period and will not be in service thereafter.

(e) A Government employee, other than a class IV Government employee, may be giving a notice of not less than three months in writing to the appointing authority, retire from service—

(i) if he is in class I or II service or post and had entered Government service before attaining the age of thirty-five years after he has attained the age of fifty years; and (ii)(a) if he is in class III service or post; or

(b) if he is in class I or class II service or post and entered Govt. service after attaining the age of thirty-five years; after he has attained the age of fifty five years:

[Provided that in the case of a member of the Judicial Service, he shall have the option to retire at the age of fifty –eight years, which should be exercised by him in writing before he attains the age of fifty-seven years. A member who does not exercise such option before he attains the age of fifty-seven years, would be deemed to have opted for continuing in service till the superannuation age of sixty years with the



liability to compulsory retirement at the age of fifty- eight years; and]1

Provided [further]1 that it shall be open to the appointing authority to withhold permission to a Government employee under suspension who seeks to retire under this clause.

Note 1.— Officiating service unless followed by confirmation without interruption in such service does not count towards the period of five years mentioned in sub-clause © (3). The period shall however include any period which the holder of the post may spend on deputation or special duty.

Note 2.— Military Officers serving in Civil employee shall cease to be in such employee on reaching the age of fifty-eight years.

Note 3.— Clauses (a), (b) and (c) (i) of this rule apply to all Government employees to whom these rules as a whole apply, whether they be holding temporary or permanent posts substantively or in an officiating capacity. When a Govt. employee holding a permanent post substantively is officiating in another post, this rule should be applied according to the character or the post in which he is officiating and not according to the character of the permanent post held substantively by him.

Note 4.— The grant, under rule 8.21 of leave extending beyond the date on which a Govt. employee must compulsorily retire, or beyond the date upto which a Govt. employee has been permitted to remain in service, shall not be treated as sanctioning an extension of service, for the purposes of pensionary of contributory provident fund benefits or the retention of lien. The Govt. employee shall become eligible from the date of expiry of such leave, for all pensionary benefits as due to him on the date of compulsory retirement, or if an extension of service is granted, on such other later date upto which his service is extended or on which he is actually relieved whichever is earlier.

Note 5.— Regarding the day of attaining a specified age see rule 2.5.

Note 6.— This rule is applicable to re-employed personal and the rules in chapter VII of volume II of these rules . are subject to the conditions laid down in this rule. Rule 7.17 of Volume II of these rules, however from the nature of its concession and conditions puts the re-employment of a person in receipt of a superannuation or retiring pension in special class outside

this rule and subject to the conditions stated in that rule itself which must be observed with every renewal of sanction.

Note 7.— In computing the notice period of three months referred to in clauses (d) and (e) the date of service of the notice and the date of its expiry shall be excluded.


Note 8.— (i) A Government employee shall retire immediately on payment of pay and allowances in lieu of notice given to him under clause (d) . He shall be entitled to pension from the date of such retirement and the pension shall not be deferred till the expiry of the period of three months for which he is paid pay and allowances. In other words pay and allowances paid in lieu of the notice period shall be in addition to pension for the said period.

(ii) The payment of pay and allowances in lieu of the notice period shall be made simultaneously with the order of retirement.

(iii) The pay and allowances to be paid in lieu of the notice period shall be the pay and allowances including House Rent Allowances and City Compensatory Allowance drawn immediately before the retirement.

(iv) Since the Government employee shall stand retired immediately on payment of three months pay and allowances in lieu of notice period and shall not be in service thereafter, the question of either taking into consideration the date of increment or counting of any period subsequent to the date of such retirement for the purpose of pension etc. does not arise.

(v) The three months pay and allowances paid in lieu of notice are, "Salary" and therefore, income tax shall be deducted at source."



In the above reproduced Rule, it was prescribed that in case a government employee attains the age of superannuation after 1st day of the month in which he attains the age of 58 years, he should be retired at the end of the month. Similarly if an employee's date of birth is 1st day of a month he shall retire on the last day of the preceding month. Therefore, such period after attaining the age of 58 years is treated as a grace period with a view to determine his last pay drawn/emoluments to determine the quantum of pension as under PCS Rule upto a certain date to determine the quantum of pension, ten months drawn salary is calculated and average of such amount would be termed

- 63 -

emoluments to determine the pension and then co-related proportionately to number of years an employee served. Thus the last date of the month till 12.00 AM is deemed to be in service and on the next succeeding day he shall be treated as a pensioner and not an employee. Therefore, as per Rule 10 of HCS (Pay) Rule, 2016 no Annual Increment is payable because the employee does not fall within the definition of an employee and becomes a pensioner on the succeeding day. Once he becomes a pensioner then he can't be allowed annual increment which is admissible to government employee when he is actively in service hence entitled to annual increment on completion of 12 months. Relevant Rule 10 of HCS (Revised Pay) Rules 2016 is reproduced as below:

"10. Date of next increment in the revised pay structure.—

(1) There shall be two dates for grant of increment namely, 1st January and 1st July of every year, instead of existing date of 1st July:

Provided that an employee shall be entitled to only one annual increment either on 1st January or 1st July depending on the date of his appointment, promotion or grant of financial upgradation. Provided further that a Government employee who does not complete six months qualifying service before the date of normal increment due on 1st July or 1st January, as the case may be, his date of next increment shall be changed to 1st January or 1st July and shall be granted subject to admissibility.

(2) The increment in respect of an employee appointed or promoted or granted financial upgradation during the period between the 2nd day of January and 1st day of July (both inclusive) shall be granted on 1st day of January and the increment in respect of an employee appointed or promoted or granted financial upgradation during the period between the 2nd day of July and 1st day of January (both inclusive) shall be granted on 1st day of July.

(a) In case of an employee appointed or promoted in the normal hierarchy during the period between the 2nd day of July, 2016 and the 1st day of January, 2017, the first increments shall accrue on the 1st day of July, 2017 and thereafter it shall accrue after one year on annual basis.

(b) In case of an employee appointed or promoted in the normal hierarchy during the period between 2nd day of January, 2016 and 1st day of July, 2016, who did not draw any increment on 1st day of July, 2016, the next increment shall accrue on 1st day of January, 2017 and thereafter it shall accrue after one year on annual basis:

Provided that in the case of employees whose pay in the revised pay structure has been fixed as on 1st day of January, the next increment in the Level in which the pay was so fixed as on 1st day of January, 2016 shall accrue on 1st day of July, 2016: Provided further that the next

increment after drawal of increment on 1st day of July, 2016 shall accrue on 1st day of July, 2017."

(ii) The relevant Rule 10 of HCS (RP) Rules 2016 which makes an employee eligible for annual increment after completion of one year service prescribes that the annual increment is payable on the 1st day of the succeeding month and if on that 1st day an employee is not in service or is on leave then increment is payable from the day when he actually joins. The vires of the above said Rule 10 is under challenge in CWP No. 11318 of 2019 which stood admitted and is pending for final adjudication and listed at serial No. 322 in the regular cause list of Hon'ble Mr. Justice Deepak Sibal and Her Ladyship Sukhvinder Kaur, batch of 13 CWP(s). In the present case the petitioner has not challenged the vires of Rule 10 of HCS (RP) Rules 2016 under which an annual increment is due and payable in all the earlier cases decided in favour of the employee only relevant rules under which annual increment is payable has been considered which is payable only to an employee and not to a pensioner and the pension rules which prescribes how to calculate the pension, what shall be the quantum of pension such rules were never considered in any of the earlier decisions which are in favour of the employees.

Even the decision of the Hon'ble Supreme Court in Civil Appeal No. 2471 of 2023 decided on 12.04.2023 is not applicable as relevant pension rules of State of Haryana were not considered and other relied rules of different departments of Government of India cannot be applied to the employees / pensioners of the State Government.

(iii) That apart from above, the similar cases were decided by the Ld. Single Judge in CWP No. 32598 of 2019 decided on 16.03.2022 (both CWP(s) allowed) extending the same relief as extended in the present writ petitions. The State of Punjab has already filed LPA(s) No. 696 of 2022 against the above said batch of petitions decided on 16.03.2022 and the matter is still pending for final consideration before the Hon'ble Division Bench and the next date of hearing in the above stated batch of LPA(s) is 27.02.2024.

Similarly the Hon'ble Supreme Court has earlier considered the controversy qua cut of date and age of retirement in the reported case 2008(14)

SCC 699 titled as Chief General Manager Telecom BSNL Vs. K.J. George and others, the Hon'ble Supreme Court held that since the relationship of an employer and employee terminated on the date when employee attained 58 years, merely their date of retirement/superannuation is on the last day of the month and such employee paid pay & allowance till the last day of the month, does not bestow them any further right which was made applicable w.e.f. 01.01.1996, therefore, any benefit of revision of pay scale which was made applicable w.e.f. 1.1.1996 would not be entitled to such employees who stood retired either on account of attaining the age of superannuation or on account of voluntary retirement on the last day of December, 1995. Thus in view of the above said decision of the Hon'ble Supreme Court and non consideration of relevant pension rules either of the concerned organization of which the present cases pertains and merely relying upon the decided case by the Hon'ble Supreme Court now relied by Ld. Single Judge, such order cannot be treated a judicial precedent being a per incuriam decision. Therefore, the judgment of the Hon'ble Supreme Court is not applicable and is distinguishable on facts, hence require to be assailed by filing LPA.

(iv) That even otherwise also, the Ld. Single Judge has allowed the writ petition in view of the order passed by Hon'ble Supreme Court as relied in the order but the other aspects has not been considered in which the petitioners has claimed either interest on the enhanced retiral benefits, would be held entitled to interest or not on account of delay & latches in approaching this Hon'ble Court, has not been considered at all. In some of the cases, the petitioners retired from service even prior to the year 2005, 2006, 2010 and these petitions has been filed after a delay of more than 5 to 15 years delay then whether such employee would be entitled to any arrears on account of enhanced revised pensionary benefits on account of grant of notional increment as ordered by the Hon'ble High Court, as well as by the Hon'ble Supreme Court as some payments are payable as a onetime measure and not give any right as a recurring cause of action. All these aspects has not been considered and the limitation to file the civil suit to claim arrears of one time payments is 3 years and even if there is no



prescribed period of limitation to invoke Article 226 of the Constitution of India, but the employee are required to approach within the reasonable period and the Hon'ble High Court, in specific cases restricted the arrears 38 months prior to filing of writ petition only qua an arrears which provides recurring cause of actions like pension alone. Then the question whether the payments which were payable as a onetime measure i.e. leave encashment, gratuity, commutation of pension can be held to be payable even if the employee approached this Hon'ble Court after a prolonged delay of more than 5 to 10 years even beyond the prescribed period of limitation in filing the civil suit for recovery, limitation stood barred. Mere using the word the writ petition is allowed or disposed of in view of the order of Hon'ble Supreme Court causes lot of allied subsidiary problems as detailed above. All the above stated aspects are required to be considered and specifically adjudicated to avoid any further implication. Hon'ble Supreme Court time & again held that orders/judgments passed by the Courts should be clear unambiguous & discernible instead of ambiguous & unclear. If the CWP(s) allowed as it is, as in all the petitioners, petitioners claimed rate of interest @ Rs.12/ 18% per annum when the further question is such petitioners would be entitled to interest as claimed in view of acceptance of their CWP(s).

(v) That some of the similar controversy has also been decided by Hon'ble Supreme Court in the reported case AIR 2008(Suppl.) 1469 titled Achhaibar Maurya Vs. State of U.P. & ors. in which the Hon'ble Supreme Court has clarified the date and age and the date of superannuation which is relevant to determine the question of entitlement of annual increment which the present petitioners are claiming after their superannuation from service, has not been considered while passing the present order.

(vi) It is appropriate to mention here that other question raised, whether such pensioner who did not complete 12 months to earn the AI, can be allowed pro-rata Annual Increment, once such employees not completed 12 months regular satisfactory service to earn Annual Increment, so there is no question of grant of pro-rata increment on the basis of notification dated 7.1.2015 (Annexure P/5) as clarified vide notification dated 16.2.2017 (Annexure P/6). Such notification is

applicable only in case of direct recruitment to overcome the initial hardship to such employees whose A.I due beyond 12 months on account of fixation of uniform dated of A.I. as 1st of July 2006 under HCS (Revised Pay) Rules, 2008. Once the pro rata A.I for the proportionate period granted till 30th June then the natural circle of 12 months automatically start, hence cannot, granted pro-rata increment on the date of retirement.

Taking into consideration the above stated facts and circumstances, undersigned is of the view that these cases are fit cases for filling LPA(s) in the Hon'ble High Court.



(R.D.Sharma)
Dy. Advocate General, Haryana
19.12.2023

Ld.A.G.


29.12.2023
वकील राज महान
महाधिवक्ता, हरियाणा

Dairy No. 26451
Date 29-12-23
Joint Secretary (MPO)

Advocate General Haryana
CFMS No. 1851
Dated 26-12-2023