

From

Additional Chief Secretary to Government Haryana,  
Finance Department.

To

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

Memo No. 6/44/2024-4PR(FD)  
Dated 23.07.2024

**Subject:- Filing of SLP against the orders of the Hon'ble High Court regarding grant of one notional increment to those Government Employees who retired either on 30<sup>th</sup> June after completing one year service or those who retired after completion of 6 months or more but less than one year service or otherwise.**

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Sir/Madam,

I have been directed to refer the subject noted above.

2. The Hon'ble Supreme Court of India had decided a *Civil Appeal No. 2471 of 2023 titled as The Director (Admn. And HR) KPTCL & Others Vs. C.P. Mundinamani and others on 11.04.2023, wherein, the Hon'ble Court had upheld the judgment of the Hon'ble High Court of Karnataka at Bengaluru in Writ Appeal No. 4193/2017 and set aside the judgment & order passed by the Ld. Single Judge and directed* the appellants to grant one annual increment which the respondents had earned one day prior to they retired on attaining the age of superannuation.

3. A number of cases on the same lines have been disposed of by the Hon'ble Punjab & Haryana High Court directing the respondents to grant the one increment as raised in CWP's/LPA's, keeping in view the judgment & order dated 11.04.2023 of the Hon'ble Supreme Court. These orders also include such petitioners, who have completed six months or more but less than one year service.

4. Keeping in view a series of judgment of the Hon'ble High Court, the Advocate General, Haryana have opined in 49 cases (List attached as Annexure 'A') to file SLP in the Hon'ble Supreme Court. Further, it has also been suggested to file Civil Misc. applications in the Hon'ble High Court seeking extension of prescribed time as the time period granted in the number of CWP's/LPA's for grant of relief is going to expire by the end of July/Mid of August.

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5. A copy of legal opinion No. 2423 dated 29.05.2024 signed on dated 13.06.2024 in CWP No. 14857 of 2024- Jagdish Rai Gupta Vs. State of Haryana & ors. is hereby annexed for ready reference.

6. **Therefore, it is advised to immediately file SLP in the relevant cases to your respective department, against the judgment passed by the Hon'ble High Court in these 49 cases and all other similar cases on the subject cited matters in consultation with O/o the Advocate General, Haryana. The draft SLP may be got vetted from Ms. Tanisha Peshawaria, DAG, Haryana.**

Further, to avoid any Contempt Petition(s), a Civil Misc. application may also be filed in the Hon'ble High Court seeking extension of prescribed time in all the cases in consultation with O/o the Advocate General, Haryana immediately.

*Ward*  
**Chief Accounts Officer (PR)**  
for Additional Chief Secretary to Government, Haryana,  
Finance Department.

Endst. No. 6/44/2024-4PR(FD)

Dated: 23.07.2024

A copy is forwarded to the Advocate General, Haryana w.r.t. their office legal opinion(s) tendered by Ms. Tanisha Peshawaria, D.A.G. for information and necessary action.

*Sd -*  
**Chief Accounts Officer (PR)**  
for Additional Chief Secretary to Government, Haryana,  
Finance Department.

Legal Opinion

**Subject: Opinion No. 2423 Dated: 29.05.2024**  
**CWP No. 14857 of 2024**  
**Jagdish Rai Gupta Vs. State of Haryana and others.**

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I have gone through the contents of the CWP, order dated 15.04.2024 passed in CWP No. 14857 of 2024 as well as the order passed by the **Hon'ble Supreme Court in Civil Appeal No. 2471 of 2023 (SLP(C) No. 6185 of 2020) titled The Director (Admn, and HR) KPCL & others vs. C.P. Mundinamani** and others and relevant rules of HCS (RP) Rules, 2008 & HCS (RP) Rules, 2016, am of the opinion that it is a fit case for filing SLP in the Hon'ble Supreme Court of India. The brief facts and the reasons are as follows:-

The petitioner filed the above stated writ petition in which he has alleged that he **retired from the service on 31.03.2007** on attaining the age of superannuation. He further alleges that he has not been granted annual increment which was due on 1<sup>st</sup> Jan/1<sup>st</sup> July of the respective year by taking the plea that as per Rule 10 of the Haryana Civil Service (Revised Pay) Rules, 2008 for grant of annual increment it is mandatory that employee must be in service on due date i.e. 1<sup>st</sup> January/1<sup>st</sup> July of the respective years. The petitioner has challenged vires of the **Rule 10 Haryana Civil Service (Revised Pay) Rules, 2008** being contrary to the law laid down by the Hon'ble Supreme Court cited in the impugned order.

The above stated writ petition listed for hearing on 17.07.2023 when notice of motion was issued to be heard along with CWP 20644 of 2020. The reply was also got vetted by the office, however, before the reply could be filed when the case came up for hearing on 15.04.2024 and the same has been disposed of after getting the notice accepted by the State Counsel as per the instructions issued by the Bench. The writ petition has been disposed of and allowed by getting the consent as conceded as noted in the impugned order that the State Counsel has

conceded that the controversy is covered by the decision of the Hon'ble Supreme Court. The Hon'ble Division Bench while allowing the writ petition on the basis of the so called concession given by the State Counsel as directed the respondents to grant the release of one annual increment due after their retirement which was due on 1<sup>st</sup> January/1<sup>st</sup> July of the respective year of their retirement. The Hon'ble Division Bench further ordered that the petitioner who even did not complete 12 calendar months to earn the annual increment as per the judgment to the Hon'ble Supreme Court and as per the provisions of Haryana Civil Service (Revised Pay) Rules, 2008 be also directed that the petitioners who has completed only 9 months and not completed 12 months on the date of superannuation be also granted one annual increment as the rule permits grant of increment on completion of minimum 6 months of service.

The above said order passed by the Hon'ble Division Bench is not legally sustainable and is liable to be challenged by filing SLP in the Hon'ble Supreme Court of India, inter alia amongst following grounds:-

- i) It is appropriate to mention here that the writ petition filed by the petitioner holding that he has completed 12 calendar months on the date of superannuation from service ranging from 31.03.2007, therefore, he cannot be denied annual increment merely on the ground that on the succeeding day he was are not in service and was treated as pensioner and his Annual increment can't be withheld as per Haryana Civil Service (Punishment and Appeals) Rules, 1987 and applicable to State of Haryana increment cannot be said to be withheld only if there is punishment imposed. The above stated finding recorded by the Hon'ble Bench are not legally sustainable but the rule permits for grant of annual increment on the succeeding day of completion of 12




calendar months, therefore unless and until the vires of Rule 10 of the HCS (Revised Pay) Rules, 2008 as challenged has been set aside, no relief can be granted to such petitioner, thus the order dated 15.04.2024 passed by the Hon'ble Division Bench is required to be challenged by filing SLP as unless and until vires challenged to rule accepted.

- ii) That apart from above it has been recorded in the orders that State counsel has conceded that the matter is covered by the decision of the Hon'ble Supreme Court being the similar controversy therefore the petition has been disposed of and allowed on the first date of hearing without permitting the respondent to file the written statement. Once the vires of the rule has been challenged which definitely is a plea of the petitioners that they are not entitled to the annual increment on the succeeding date of their superannuation being not a Government employee and they have already superannuated on the last day of the months, therefore, without setting aside and declaring the rules ultra vires, relief granted to the petitioner is not legally sustainable purely based on the concession shown to be made by the State counsel which is not legally tenable as no concession on point of law can be given by the State Counsel that too in cases where vires of rules has been challenged. Thus, the impugned order is liable to be challenged and the writ petition is required to be adjudicated on merits after giving effective opportunity to the respondent to file the reply to the writ petition.
- iii) That apart from above, the order dated 15.04.2024 is also liable to set aside on the ground that some other petitions have also been allowed

the same benefit cannot be denied even for the sake of the argument, the case is covered by the decision of the Hon'ble Supreme court though specifically denied but the petitioner who has not even completed 12 months service before the age of retirement and merely completed 9 months service he cannot be held to be entitled to annual increment as ordered under the impugned order. The reliance by the Hon'ble Division Bench on the notification dated 07.01.2015 is not legally tenable as the same is applied to only such direct recruits who are/were directly recruited on or after 01.01.2006 and prior to implementation of the Haryana Civil Service (Revised Pay Rule), 2008 as a one-time measure and not to the other regular employees who were already in service and regularly earning their Annual Increment. Thus the findings recorded by the Hon'ble Division Bench ordering grant of annual increment even to those petitioner who admittedly not completed 12 months of service are not legally sustainable as the same is not the intention of the Hon'ble Supreme Court even for the sake of argument it is assumed and presumed that the judgment of the Hon'ble Supreme Court is applicable to petitioners that will be applied only qua such petitioners who completes 12 calendar months of service and not to such employees who were short of length of 12 months service on any account. The findings recorded by the Hon'ble Division Bench that even government grants increment in cases where the period of 6 months has completed and once the rule permits for grant of any annual increment upon completion of 6 months service the same is not applicable to the present petitioner(s) and is again only a one time




measure only for the first increment where there is a hardships to such direct recruits who entered the service as a direct recruit on or after 01.01.2006 till 31.12.2008 and not thereafter or due to change of Annual Increment on account of intervening facts under the Haryana Civil Service (Revised Pay) Rules, 2016 applicable w.e.f. 01.01.2016. Once the proportionate increment as per the notification dated 07.01.2015 issued and granted then after the start of period of 1<sup>st</sup> July 2006 to onwards then the general circle of completion of 12 months will be made applicable and none of the petitioner(s) can be allowed to be granted annual increment before the completion of minimum requisite period of 12 months. Thus, the order granting relief to the petitioner even to those who did not completed 12 months regular satisfactory service cannot be held to be entitled to annual increment as ordered by the Hon'ble Division Bench. Thus, the order dated 15.04.2024 resulted in mis-carriage of justice and dilution of the judgment of Hon'ble Supreme Court which would create a wrong precedent therefore the order dated 15.04.2024 is liable to be assailed in the Hon'ble Supreme Court of India.

- iv) That a perusal of the writ petition shows that the **petitioner superannuated from the services on 31.03.2007** and the present petition has been filed in the year 2024 after a belated delay and the present petitioner cannot be entertained on account of delay and laches in approaching the Court even the sake of argument, he is entitled to get the benefit of judgment of the Hon'ble Supreme Court, merely on the basis of the judgment of the Hon'ble Supreme Court decided in the year 2023. Thus, seen from any angle, the present
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petition filed in the year 2024 is suffers from delay and laches and even filing of the civil suit limitation is 3 years and the present petition has filed in the year 2024.

- v) That the writ petition has been allowed on the 2nd date of hearing without permitting the respondent to file reply/written statement to the petition as the petitioner has challenged the vires of Rule 10 of the HCS (RP) Rules, 2008. Once the vires of the Rules has been challenged then without permitting the applicant/respondent to file reply to the various grounds taken by the petitioner is not legally tenable and tantamount to declaring the rule ultra-vires without permitting/considering the reply, which was not filed as the petition was listed on the 1<sup>st</sup> date and same has been disposed of along with other writ petitions merely by recorded the conceding part on the state counsel. Thus, the concession given by the State Counsel, to the effect that the matter is covered by the decision of the Hon'ble Supreme Court or of the other decision relied there in titled **Union of India Vs. Vijay Kumar case**, is not legally tenable and the recorded concessions is required to be recalled and the writ petition is required to be adjudicated on merits after permitting the respondent to file the detailed reply to the petition. It is settled law that concession given by the counsel against the law is not binding on the Government, as per reported decision (1976) 1SCC 863; 2007 (1) SCC 457; AIR 2019 SC 4755 and AIR 2022 SC 1018.

-  vi) That apart from the above, similar controversy is pending before the Hon'ble Division Bench comprised of Hon'ble Mr. Justice Sanjeev Prakash Sharma and Hon'ble Mrs. Justice Sudeepti Sharma in CWP



No. 11318 of 2019, now listed for hearing at serial No. 322 in the regular cause list. The above sated petition No. 11318 of 2019 and batch of other writ petitions, the Hon'ble Division Bench after preliminary hearing admitted those writ petitions for final hearing as the petitioner(s) challenged the vires of the Rules. The petitioner(s) has also challenged the vires of the Rules 10 of the HCS (RP), Rules, 2008 and prima facie settled law is that the presumption of law is that rules framed in accordance with the procedure established and legislature is competent to frame the same, therefore, the cases in which vires of the Rules has been challenged cannot be disposed of merely on the basis of statement made by the State Counsel based on earlier statements, which is contrary to the Rules, moreso, when the Government never authorized the State Counsel to concede the claim of the petitioner. Thus, the impugned order dated 15.04.2024 is required to be challenged by filing the SLP before the Hon'ble Supreme Court of India.

- vii) That apart from the above, the petitioner has not given the details of the facts in the said writ petition and hide the various facts in the petition, as when the HCS (RP) Rules, 2008 made applicable w.e.f. 01.01.2006 and the uniform date of increment was fixed as 1<sup>st</sup> July 2006 for all the employees, and on account of implementation of the provisions of the above stated rules, certain anomalous situations subsequently brought to the knowledge of the government by different organizations and union of employees pointed out that the statutorily fixing the uniform date of increment as 1<sup>st</sup> July, 2006 has caused some prejudice to different employees as the annual increment, which was

due upon completion of 12 months are being granted after completion of 12, 16 or 18 months. To remove such grievance pointed out by the employees Union as well as the individual employees, the **Government of Haryana issued the notification dated 16.04.2012** bearing No. 6/84/2010-4PR (FD) vide which the necessary **amendments/clarifications have been issued to Rule 10 of the HCS (RP) Rules, 2008** and to remove the grievance of those employees whose increment was due between February to 30<sup>th</sup> June, 2006 they were allowed once increment in unrevised pay scale and pay was fixed on 01.01.2006 by the department in unrevised pay scale and thereafter he was again granted increment in the revised pay scale on 01.07.2006, meaning thereby, after the implementation of the HCS (RP) Rules, 2008 and the employee was granted 2 annual increment one due between the months of February to 30<sup>th</sup> June, 2006 and second on 01.07.2006.

Thus, the petitioner has concealed these facts and has not mentioned in the present writ petition. The grievance, which the petitioner(s) has made on account of implementation of Rule 10 of the HCS (RP) Rules, 2008 has already stood compensated after the implementation of the notification dated 16.04.2012. Relevant notification dated 16.04.2012 is also reproduced as below:-

**"Government of Haryana  
Finance Department**

ORDER

(made under rule 17 and rule 10 of the Haryana Civil Services (Revised Pay) Rules, 2000 and rule 26 and rule 28 of the Haryana CIVIL Services (Assured Career Progression) Rules, 2008)


No. 6/84/2010-4PR (FD), dated, Chandigarh the 16.04.2012

**Subject:** *Date of next increment In the revised pay structure under Rule 10 of Haryana Civil Services (Revised Pay) Rules, 2008 and under rule 20 of Haryana Civil Services (Assured Career Progression) Rules, 2008.*

*In accordance with the provision contained in the Rule 10 of Haryana Civil Services (Revised Pay) Rules, 2008 and under rule 20 of Haryana Civil Services (Assured Career Progression) Rules, 2008, there will be a uniform date of annual increment, viz. 1 July of every year. Employees completing 6 months and above in the revised pay structure as on 1 of July will be eligible to be granted the increment. The first increment after fixation of pay on 1.1.2006 In the revised pay structure will be granted on 1.7.2006 for those employees for whom the date of next increment was between 1st July, 2006 to 1 January, 2007.*

2. *Whereas sections of those Government employees who were due to get. their annual Increment between February to June during 2006 have represented to set right the distortions/ anomaly induced due to above said provisions of Rule 10 of Haryana Civil Services (Revised Pay) Rules, 2008 and under Rule 20 of Haryana Civil Services (Assured Career Progression) Rules, 2008.*

3. *On further consideration and in exercise of the powers vested under Rule 17 and Rule 19 of the Haryana Civil Services (Revised Pay) Rules, 2008 and Rule 28 and Rule 28 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 and all other powers enabling the Government so to do, the Government is pleased to decide that in relaxation of stipulation under Rule 10 of Haryana Civil Services (Revised Pay) Rules, 2008 and under Rule 20 of Haryana Civil Services (Assured Career Progression) Rules, 2008, those State Government employees who were due to get their annual increment between February to June, 2006 may be granted one increment on 01.01.2006 in the pre-revised pay scale as a onetime measure and thereafter will get the next increment in the revised pay structure on 01.07.2006. The pay of the eligible employees may be re-fixed accordingly.*



4. Those Government Employees who were drawing their pay at the verge of E.B. in the pre-revised pay scale as on 01.01.2006, they shall be deemed to have crossed the E.B. for the purpose of pay fixation under these orders.

*This concludes the order.*

*Dated, Chandigarh  
the 12.04.2012*

**AJIT M. SHARAN**  
*Financial Commissioner & Principle Secretary to  
Government Haryana, Finance Department"*

Hence, reading the above stated two reproduction if read together, then the impugned order dated 15.04.2024, if seen from any angle, same is not legally sustainable and is required to be assailed. A perusal of the impugned order and relied judgment(s) in the impugned order never considered such facts, rules and law as discussed above.

viii) That order passed by the Hon'ble Bench is also not legally sustainable, as the Hon'ble Bench has mentioned that writ petition is allowed as conceded by the counsels but the consequences of that consenting order also tantamount to ignoring the law of limitation, as the petitioner will be held entitled to onetime payments on account of grant of notional increment on different dates of their retirement, which are onetime payments like leave encashment, gratuity and even fixation of pension, which also gives onetime cause of action and the limitation to file the civil suit expired much earlier in the year 2015, 2019 and the present petition was filed in the year 2024. Thus, prima-facie present writ petition suffer from delay and laches. The theory of 38 months arrear relates to civil suits where recurring cause of action arise to the employee. In the present case, the fixation of pay and pension only provides a onetime cause of action and onetime

payments does not give any recurring cause of action. Though the withdrawal of pension gives a recurring cause of action but fixation of pension is also onetime cause of action, therefore, even the civil suit if filed by the petitioner in the year 2024 would be hopelessly barred by limitation. The Hon'ble Court's jurisdiction under article 226/227 of the Constitution of India suffers from delay and laches and barred by limitation, hence, impugned order is not legally sustainable considering the facts of the present case.

- ix) Thus, seen from any angle, the order passed by the Hon'ble Division Bench is legally not tenable and the applicant/respondent be permitted the liberty to file the written statement, so the vires of rules under challenge can be contested, moreso, when the similar controversy is pending in the above stated CWP No. 11318 of 2019. The decision of the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court in Union of India Vs. Vijay Kumar case, is not applicable, as the relevant rules of HCS (RP) Rules, 2008 or any other rules and instruction dated 16.04.2012 not considered either by the Hon'ble Division Bench of this Hon'ble Court or by the Hon'ble Supreme Court. Thus, seen from any angle, order passed by the Hon'ble Division Bench is required to be set aside and the respondent be permitted to file written statement and thereafter, the controversy be decided along with other batch of pending petition(s).
- x) Apart from above, as far as the payment of gratuity and leave encashment are concerned which are the onetime payment and petitioner superannuated on 31.03.2007. The present petition filed in the year 2024 which is beyond the prescribed period of limitation as

prescribed in the provisions of the Indian Limitation Act 1963 even for filing of a civil suit for grant of onetime payment, limitation is of three years. Moreover, in all the cited judgments in the order passed by the Hon'ble Supreme Court in Civil Appeal. No. 2471 of 2023, concerned employees of different State Governments approached the relevant judicial fora within prescribed period of limitation, whereas the present petitioner approached the Hon'ble High Court beyond the prescribed period of limitation, then their claim also suffers from delay & latches. Therefore, the above stated claim of release of due and drawn difference of amount even on account of grant of notional increment (through specifically denied not entitled to), is not legally permissible, to which the petitioner cannot be granted any benefit as granted by the Hon'ble Division Bench.

- xi) Similarly, after the implementation of the HCS (Pay) Rules, 2016, w.e.f. 01.01.2016, **Rule 32** prescribes the date of increment and provides two options to choose dates of Annual Increment. Similarly, other modalities to give effect to annual increment under the HCS (Pay) Rules, 2016 are 33 and 34, the same are also reproduced below:-

**"32. [Date of Increment.—**

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

*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 date of next increment of a Government employee, who has been appointed or promoted or granted ACP level during the period between the—

- (i) 2<sup>nd</sup> day of January and 1<sup>st</sup> day of July (both inclusive), shall be the 1<sup>st</sup> day of January;
- (ii) 2<sup>nd</sup> day of July and 1<sup>st</sup> day of January (both inclusive) shall be the 1<sup>st</sup> day of July.]

**33. Grant of increment while on leave on [1<sup>st</sup> January or 1<sup>st</sup> July] 1.—**

The increment due on the [1<sup>st</sup> January or 1<sup>st</sup> July] shall, subject to eligibility, be granted notionally if the Government employee is on leave (other than casual leave) on that day and actually from the date of joining duty after return from leave, provided the leave has been sanctioned by the competent authority.

*Note.*— Any period of absence without proper sanction of the competent authority shall not be considered as leave.

**34. [Date of increment if there is holiday on 1<sup>st</sup> January or 1<sup>st</sup> July.—**

When a Government employee who has been appointed or promoted to a post is otherwise able to join his duty but could not join due to holiday, or series of holidays, falling on 1<sup>st</sup> of January or 1<sup>st</sup> July, and joins on forenoon of 1<sup>st</sup> working day of the month of January or July, i.e. on or after 2<sup>nd</sup> January or 2<sup>nd</sup> July, he shall be treated to have completed 6 months qualifying service upto 30<sup>th</sup> June or 31<sup>st</sup> December of that year for the purpose of grant of normal increment provided the same shall have been admissible to him on 1<sup>st</sup> July or 1<sup>st</sup> January, had there been no holiday or series of holidays on 1<sup>st</sup> January or 1<sup>st</sup> July. However, the pay shall be admissible from the date of actually joining duty and not from 1<sup>st</sup> January or 1<sup>st</sup> July. In all other cases the date of increment shall be 1<sup>st</sup> January or 1<sup>st</sup> July subject to completion of minimum six months qualifying service before that date.]"

Apart from above, relevant Rules 29 of the Haryana Civil

Services (Pay) Rules, 2016 is also reproduced as below:-

"29. Grant of Increment.—

- (1) The Head of office shall be competent authority to allow annual increment in normal course to subordinates working

under him. The increment to Head of office shall be allowed by the next designated higher authority.

(2) On promotion to a post of higher level on the date of normal increment, first the normal increment in the level of feeder post shall be granted, if otherwise admissible under the rules on that day, thereafter, the pay shall be fixed in the level of promotional post.

(3) In case of death while in service, the normal increment on the 1st January or 1st July shall, subject to eligibility, be granted to the Government employee—

(a) actually, in case of death on the 1st January or 1st July while not on leave; and

(b) notionally, in case of death on or after the 1st January or 1st July while on leave provided the same would have been admissible had he been on duty on the date of death.

(4) Advance or non-compoundable increment(s) which are granted as a result of passing of certain examination, higher qualification or otherwise, shall be regulated by the relevant rules and orders issued from time to time by the competent authority.

Note.— No benefit of increment shall be admissible to a Government employee who is not in service on the 1st January or 1st July, as the case may be.”

Note to Rule 29 also requires that the increment is payable only when an employee is on duty on 1<sup>st</sup> July of the respective year when the increment was due.

Similarly Rule 143 of HCS (General) Rule, 2016 also prescribes the retirement on superannuation which is also relevant and the same is also reproduced as below:-

“143. Retirement on superannuation.-

(1) Except as otherwise provided in these rules, every Government employee shall Retirement on superannuation.



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) Disabled 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 disabled 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 Graduation Institute of Medical and Science, Rohtak to be headed by its Director. On receipt of medical report from the Board, the appointing authority of 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 that term of re-appointing shall not extend beyond the date of attaining the age of superannuation.

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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 A concurrent reading of the above reproduced rules shows that the employee is supposed to retire on the date of attaining the age of 58 years, but

taking into consideration the factum of consideration and calculation of the pension, the last drawn salary is required to be taken into consideration, therefore, the employee is allowed to superannuate on the last day of the month, in which he attains the age of 58 years. Similarly, as far as the pension and revision of pension is concerned, the State of Haryana has also issued Haryana Civil Services (Revised Pension Part-I) Rules, 2009 and Haryana Civil Services (Revised Pension Part-II) Rules, 2009 which are applicable w.e.f. 01.01.2006 and such employees who are also drawing pension on 01.01.2006 and Haryana Civil Services (Revised Pension Part-II) Rules, 2009 as applicable to employees who retired on or after 01.01.2006. All the above said rules or any pari materia rule of other state government was never considered by the Hon'ble Supreme Court in the relied and cited judgment.

Therefore, the relied decision by the petitioner in the order dated 15.04.2024 is not applicable being not interpreted the rules of the pay & pension as applicable to the employees of the state of Haryana.

A perusal of the above said Rules, which were amended on 26.02.2018 to remove the grievance of employee which shows that once again these rules were amended and substituted to original rules enacted under these rules, employees has been given options of two dates for annual increment for change the date of increment i.e. of 1<sup>st</sup> of January 2016 and on 1<sup>st</sup> of July, 2016 on account of change of circumstances i.e. promotion and grant of ACP Scale, which at this juncture also, such employees, who were promoted or granted ACP Scale after completed the tenure of 6 months, they have option to opt for change of annual increment either 1<sup>st</sup> of January or 1<sup>st</sup> of July. Therefore, due to the implementation of the above said rules, the annual increments, which was payable after completion of 12 months (365 days) has been allowed to be granted on 1<sup>st</sup> of January and on 1<sup>st</sup> of July of 2016, but with the rider, employee must have more

than 6 months services on 31<sup>st</sup> December, 2015 and 30<sup>th</sup> June, 2016, respectfully and on account of change of such circumstances as stated Supra. Thus, the decision of Hon'ble Supreme Court in Civil Appeal No. 2471 of 2023 and the decision of the Hon'ble High Court in Union of India Vs. Vijay Kumar, never considered such rules and instructions issued by the State of Haryana.

xii) That even otherwise also as per the **Instructions dated 07.01.2015 issued by the Government of Haryana**, the concept of pro-rata increment has been allowed to only such direct recruits who entered the government service as a direct recruit on or after 01.01.2006 till 30.07.2006 or till the 30<sup>th</sup> June of the next year to grant pro-rata annual increment to remove the grievances of such employees whose increment falls beyond 12 months on 1<sup>st</sup> July of the respective years. Thus the concept of pro-rata increment is applicable only to such government employees who were directly recruited on or after 01.01.2006 to remove the one time grievances. After grant of pro-rata increment, which was definitely less than the period of 12 months and subsequently, their annual increment was also held to be a uniform as per rule 10 of the HCS (Revised Pension) Rules, 2008 as applicable. Thus, taking into consideration the above stated facts and circumstances all these rules has not been considered either by the Hon'ble Supreme Court in the relied judgment in the order dated 23.08.2023 or by the Hon'ble Division Bench, hence the claim of the petitioner is not acceptable as claimed by him and as allowed.


Taking into consideration the above said facts and circumstances, earlier once the employees were duly compensated at the time of implementation of the HCS (Revised Pay) Rules, 2008 applicable w.e.f. 01.01.2006 as clarified

vide notification dated 16.04.2012 and majority of the employees granted 2 annual increments or one annual increment without completion of 12 months mandatory period on 1<sup>st</sup> of January, 2006 and thereafter, further annual increment on 01.07.2006, even prior to completion of mandatory period of 12 months (365 days), all such rules and instructions applicable to state Government employees were never considered by the Hon'ble Supreme Court in the cited judgments.


**Implementation of Rules 32, 33 and 34 of the HCS (Pay) Rules, 2016** and option to be governed by such rules and further option to change the date of annual increment provided on two dates i.e. 1<sup>st</sup> of January and 1<sup>st</sup> of July, 2016 on account of earning promotion and grant of ACP Scale, then such employees were already compensated on account of non completion of mandatory period of 12 months service (365 days) by granting pre mature annual increment.

Taking into consideration the above said facts and circumstances, since the anomaly shown to be occurred by the employee on account of implementation of the provisions of HCS (RP), Rules, 2008 w.e.f. 01.01.2006 and HCS (Pay) Rules, 2016 read with judgment of the Hon'ble Supreme Court passed in Civil Appeal No. 2471 of 2023, even if, notional pay of such employees be fixed w.e.f. 01.01.2006 to onwards taking into consideration mandatory requisite period of 12 months service to earn annual increment, last drawn salary is bound to decrease and if the same is causing financial prejudice to any of the employees, then their pay/pension be not decreased on account of superannuation from service.

Hence it is a fit case for filing SLP.

  
(Tanisha Peshawaria)  
Deputy Advocate General, Haryana  
13.06.2024

Ld. Advocate General, Haryana

  
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S. Gaurami  
Sr. Addl AG.

Sr. No.	CWP No.	Title	date of orders passed by High Court
1.	6631/2016	Jai Narayan Vs. State of Haryana.	21.05.2024
2.	10594/2024	Vijay Kumar Kapur Vs. State of Haryana.	08.05.2024
3.	11604/2024	Rakesh Dhawan Vs. State of Haryana.	17.05.2024
4.	11613/2024	Subash Chander Aneja Vs. State of Haryana.	17.05.2024
5.	11558/2024	Satyapal Goyal Vs. State of Haryana.	17.05.2024
6.	12119/2024	Balbir Singh Chhikara Vs. State of Haryana.	22.05.2024
7.	12862/2024	Sher Singh Verma Vs. State of Haryana.	28.05.2024
8.	13001/2024	Surinder Kaushik Vs. State of Haryana.	29.05.2024
9.	13054/2024	Gopal ram Chaudhary Vs. State of Haryana.	29.05.2024
10.	13579/2024	Narender Kumar Garg Vs. State of Haryana.	30.05.2024
11.	13445/2024	Ravi Chandra Vs. State of Haryana.	30.05.2024
12.	13374/2024	Randhir Singh Vs. State of Haryana.	30.05.2024
13.	10888/2024	Manphool Singh Vs. State of Haryana.	10.05.2024
14.	11460/2024	Yudhvir Singh Chauhan Vs. State of Haryana.	16.05.2024
15.	14857/2023	Jagdish Rai Gupta Vs. State of Haryana.	15.04.2024
16.	12261/2024	Girraj Prasad Bansal Vs. State of Haryana.	23.05.2024
17.	11639/2024	Balwant Rai Bansal Vs. State of Haryana.	23.05.2024
18.	11426/2024	Harish Kumar Gupta Vs. State of Haryana.	16.05.2024
19.	12126/2024	Krishan Kumar Gupta Vs. State of Haryana.	22.05.2024
20.	12110/2024	Randhir Singh Vs. State of Haryana.	22.05.2024
21.	12951/2024	Rajiv Narula Vs. State of Haryana.	29.05.2024
22.	13301/2024	Vijender Singh Dagar Vs. State of Haryana.	30.05.2024
23.	13519/2024	Naresh Kumar Chopra Vs. State of Haryana.	30.05.2024
24.	12264/2024	Tirath Singh Phougat Vs. State of Haryana.	23.05.2024
25.	13172/2024	B.K. Gupta Vs. State of Haryana.	29.05.2024
26.	11419/2024	Mehtab Singh Vs. State of Haryana.	16.05.2024
27.	13053/2024	Seema Gandhi Vs. State of Haryana.	29.05.2024
28.	12431/2024	Shashi Ahlawat Vs. State of Haryana.	24.05.2024
29.	13069/2024	Hari Shankar Sharma Vs. State of Haryana.	29.05.2024
30.	11479/2024	Sushma Bala Vs. State of Haryana.	16.05.2024
31.	12256/2024	Ashok Kumar Vs. State of Haryana.	23.05.2024
32.	11643/2024	Rajeev Verma Vs. State of Haryana.	23.05.2024
33.	13829/2024	Sunil Kumar Malhotra Vs. State of Haryana.	31.05.2024

34.	13389/2024	V.K. Bathla Vs. State of Haryana.	30.05.2024
35.	12242/2024	Purushotam Lal Garg Vs. State of Haryana.	23.05.2024
36.	13483/2024	Anil Kumar Gupta Vs. State of Haryana.	30.05.2024
37.	13338/2024	Pawan Kumar Singla Vs. State of Haryana.	30.05.2024
38.	11645/2024	Atam Parkash Chug Vs. State of Haryana.	23.05.2024
39.	13334/2024	B.B. Tihal Vs. State of Haryana.	30.05.2024
40.	11411/2024	Rakesh Kumar Garg Vs. State of Haryana.	16.05.2024
41.	13028/2024	Ravinder Kumar Trehan Vs. State of Haryana.	29.05.2024
42.	12939/2024	Rajinder Pal Gupta Vs. State of Haryana.	29.05.2024
43.	12998/2024	Kartar Singh Joon Vs. State of Haryana.	30.05.2024
44.	13491/2024	Nilamber Kishore Sharma Vs. State of Haryana.	29.05.2024
45.	13396/2024	Ishwar Singh Vs. State of Haryana.	30.05.2024
46.	12502/2024	N.S. Yadav Vs. State of Haryana.	24.05.2024
47.	12342/2024	Karan Singh Vs. State of Haryana.	24.05.2024
48.	12940/2024	Mohinder Singh Saharan Vs. State of Haryana.	29.05.2024
49.	12503/2024	Daljit Singh Vs. State of Haryana.	24.05.2024