

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 13.08.2024

Subject:- Regarding grant of one notional increment to those Government Employees who retired either on 30th 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.

Sir/Madam,

In continuation of FD's letter issued vide memo No. 6/44/2024-4PR (FD) dated 23.07.2024, I have been directed to say that pursuant to the judgment dated 11.04.2023 of the Hon'ble Supreme Court passed in *Civil Appeal No. 2471 of 2023 titled as The Director (Admn. And HR) KPTCL & Others Vs. C.P. Mundingamani and others, the Hon'ble Punjab & Haryana High Court has disposed of various CWP's with directions to decide the legal notice/representation of the petitioner(s) within a specific time limit.*

2. Apart from above various legal notices/representations have/are being received in the Finance Department, which are also addressed to concerned AD's/ Department on this issue.

3. Whereas, complete service record of petitioners/retired employees is lying in the custody of the concerned AD/ Department and not with the Finance Department. Thus, Finance Department is not in a position to examine & decide any legal notice(s)/representation(s) etc.

Therefore, it is hereby advised to examine & decide the legal notices/representations etc. either as directed/ordered by the Hon'ble Courts or received from the quarter concerned, after meticulously verifying the facts and keeping in view the facts (as contained in Annexure-A) in consultation with

officers of SAS Cadre and Attorney Cadre posted in the department immediately, Failing which total onus shall be upon the concerned AD/Department as per instructions of the Chief Secretary, Haryana dated 03.06.2021 & FD's letter dated 03.06.2024.

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

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

Dated 13.08.2024

A copy of above is forwarded to the Advocate General, Haryana w.r.t. their office legal opinion(s) tendered in various cases, for information and necessary action.

- Sd -

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

Internal Distribution

✓ Joint Director, Computer Cell for uploading these instructions on website.

No.

Date:

Whereas, petitioner(s) has filed CWP No. of titled as praying therein

2. Whereas, the Hon'ble High Court vide order dated has disposed of this writ petition with following directions:-

“”

3. Whereas, the Finance Department has circulated a copy of legal opinion No. 2423 dated 29.05.2024 in CWP No. 14857 of 2023—Jagdish Rai Gupta Vs. State of Haryana vide U.O. No. 6/44/2024-4PR dated 23.07.2024, to all the Administrative Secretaries with the advice to file SLP in the cases pertaining to their department.

4. As per above circular, in a case of similar nature, the Ld. Advocate General, Haryana vide opinion dated 31.05.2024 tendered in CWP No. 14857 of 2023-Jagdish Rai Gupta & others Vs. State of Haryana and others, has after going through the contents of CWP, order dated 15.4.2024 passed therein as well as the order passed by the Hon'ble Supreme Court of India in Civil Appeal No. 2471 of 2023 and relevant rules of HCS(Revised Pay) Rules. 2008 and HCS(Revised Pay) Rules, 2016 tendered opinion that it is a fit case for filing SLP in Hon'ble Supreme Court of India.

5. Whereas, in Civil Appeal No. 2471 of 2023, the Hon'ble Supreme Court mainly relied upon Regulation 40(1) of Karnataka Electricity Board Employees Service Regulations. The Hon'ble Supreme Court observed that Regulation 40(1) states that 'an increment accrues from the day following that on which it is earned.' Thus the appellants have earned the increment on the date of their retirement i.e. when they were in service and what remains thereafter, is only its enforcement in the form of payment which accrues the very next day and they need not be in service on that

date to earn the increment. In rest of the orders the Hon'ble Supreme Court has mentioned different court orders.

6. However, the general principles of granting annual increment are explained as under:-

- a. An increment is a part of the pay not that of Pension. A Government servant is allowed increment while discharging duties of his post. Thus, although an increment may accrue to a Government servant on a particular day but he must be in service and discharging the duties attached to that post on that day.
- b. Annual increase in pay is granted to an employee with the stipulation that he will perform better in future due to his past experience.
- c. A Government servant ceases to draw pay and allowances attached to his post with effect from the date on which he ceases to discharge the duties of that post i.e. on the date of retirement.
- d. On the next day after retirement, the Government employee doesn't remain in service rather, he became a pensioner.
- e. Hence, no increase in pay can be granted after retirement for the purpose of enhancement in pension.
- f. This position can be understood from an example. Suppose an employee is appointed for 5 years in the pay scale of Rs. 10000-325-13900. He joins service on 1st July 2008. His pay is regulated as under:-

Year	Basic Pay	Remarks
1 st year 1.7.2008 to 30.6.2009	Rs. 10000	This pay will remain valid for one year i.e. 1.7.2008 to 30.6.2009.
2 nd year 1.7.2009 to 30.6.2010	Rs. 10325	Granted one increment on completion of one year service which is valid for next one year i.e. 1.7.2009 to 30.6.2010
3 rd year 1.7.2010 to 30.6.2011	Rs. 10650	valid for 1.7.2010 to 30.6.2011
4 th year 1.7.2011 to 30.6.2012	Rs. 10975	valid for 1.7.2011 to 30.6.2012
5 th year 1.7.2012 to 30.6.2013	Rs. 11300	valid for 1.7.2012 to 30.6.2013
He retired on 30 th June 2013.		

It is clear from the above table that his last pay of Rs. 11300/- is valid upto 30.6.2013 and he retired on the same date i.e. 30.6.2013. If another increment is granted on 1.7.2013, that will be valid for next year i.e. 1.7.2013 to 30.6.2014. However, he is not in service for this period even for a single day. Therefore, he cannot be considered for grant of increment as on 1.7.2013 unless he is in service as on 1.7.2013. That no such benefit is available in other pension schemes like CPF/EPF/NPS etc.

- g. That the amended rule 6.24 (2) provides that pension must not be increased on account of increase in pay not actually drawn.
- h. That Rule 36 of HCS(Pay) Rules, 2016 prescribes as under:-

“Increment on 1st January or 1st July while on duty.—

When a Government employee is not actually present in office on the date of his next increment (i.e. on 1st January or 1st July) but under the rules he is on duty, like on training, tour, compulsory waiting period, availing joining time, vacation or otherwise, the normal increment shall be granted if the same shall have otherwise been admissible had he been in office on that day.”

In view of provision of this statutory Rule, the prayer of the petitioner is not tenable.

- i. That Rule 143 of HCS (General) Rules, 2016 prescribes as under:-

“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.....”

In view of this Rule, such employees, who are born on 1st day of next month, are also not entitled for such increment.

7. Whereas, the Hon'ble Kerala High Court has decided O.P.(CAT). No. 61 of 2020 vide order dated 22.11.2022. The operative part of these orders is as under:-

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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 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.

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While delivering the above orders, the Hon'ble Kerala High Court has considered the Rules governing the issue, namely, the Fundamental Rules [F.R. 17, F.R. 24, F.R. 56(a) and the 1st proviso to F.R. 56(a)] and Rules 3, 5, 14, 33 and 34 of the CCS (Pension) Rules. Further, the Hon'ble Kerala High Court has also considered the different decisions of various courts either in favour of retired employees or in favour of the Government.

8. Whereas, such petitioners/employees who have completed six months or more but less than one year service before their retirement has also filed various writ petitions claiming therein one increment. But the same is not permissible on the following grounds:-

- a. That the concept of uniform date of annual increment i.e. 1st July of every year was introduced during implementation of 6th CPC framing HCS(RP) Rules, 2008 vide notification dated 30.12.2008.
- b. The Rule 10 of HCS (RP) Rules, 2016 provides 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. It is clear that increment is to be granted only after completion of one year, however, qualifying service during previous year can be of six months or more.
- c. While introducing uniform date of annual increment, the employees whose increment was due after 1st July, 2006 upto 31st December, 2006, their increment was preponed to 1st July 2006. Thus they were given extra benefit in order to

adhere a uniform date of increment and granted annual increment even before the completion of statutory 12 calendar months. Thus they were extra benefited.

- d. Similarly, those employees whose annual increment was due between 1st February, 2006 to 30th June 2006 were also given one annual increment on 1.1.2006 vide order dated 16.4.2012. Thus they were also extra benefited.
- e. Vide general order of F.D. dated 7.1.2015, such persons who joined service after 1.1.2006 were allowed proportionate increment upto 1st July of the joining year so that thereafter a uniform date of annual increment i.e. 1st July can be maintained.
- f. If this extra benefit which was given to the employee vide government notification dated 30.12.2008 and vide order dated 16.04.2012 & 07.01.2015 due to introducing a uniform date of annual increment was not given to them, their increment will not fall due on 1st July after retirement on 30th June.

9. That neither Rule 10 of HCS (RP) Rules, 2008 nor Rule 20 of HCS (ACP) Rules, 2008 provides the benefit of proportionate increment. The benefit of proportionate increment vide letter dated 07.01.2015 was made admissible in relaxation of stipulation under Rule 10 of HCS (RP) Rules, 2008 and Rule 20 of HCS (ACP) Rules, 2008 with respect to those employees only who joined service as fresh entrant between 1st January & 1st July as one time measure. Therefore, the benefit of proportionate increment to such retired Government Employees/ Petitioners is not admissible

10. Thus, it cannot be held that the Rule also provides that if a person has rendered more than six months service, he would be deemed to have completed 12 months of service for the purpose of grant of increment.

11. Accordingly, in the light of above mentioned rules and factual position and in the light of opinion tendered by Ld. Advocate General, Haryana, the demand made by the petitioner/retiree in his representation/Legal Notice etc. dated..... (Annexure.....) is found to be devoid of any merits and, therefore, cannot be accepted at this stage.