A.F.R.
Reserved on 17.09.2021
Delivered on 13.12.2021

Court No. - 36

Case :- WRIT - A No. - 2126 of 2020

Petitioner :- Uday Narayan Mishra
Respondent :- State of U.P. And 5 Others
Counsel for Petitioner :- Vikas Tiwari
Counsel for Respondent :- C.S.C.

Hon'ble Saral Srivastava,J.

1. Heard learned counsel for the petitioner and Sri Yashwant Singh, learned Standing Counsel for the respondent nos. 1 to 6.

2. Petitioner through present writ petition has assailed the order dated 17.01.2020, by which, his claim for the grant of one notional increment due on 01.07.2016 has been rejected.

3. The facts of the case, in brief, are that the petitioner was Water Supervisor (Seench Paryavekshak/Ameen) in the office of respondent no.6-Executive Engineer, Nalkoop Khand-2, District Allahabad. The date of birth of the petitioner is 18.06.1956. The petitioner on attaining the age of 60 years retired on 30.06.2016 from the office of respondent no.6. The service of the petitioner was satisfactory.

4. The further case of the petitioner is that the State Government by Government Order dated 04.05.2010 provided that the 1st July would be the date for fixation of new increment/revised salary. Accordingly, the petitioner is entitled to one notional increment for a period from 01.07.2015 to 30.06.2016 on 01.07.2016 after retirement for computation of pension. The petitioner claiming notional increment due on 01.07.2016 submitted detailed representation dated 11.09.2019 relying on the

judgment of ***P.Ayyamperumal Vs. The Registrar and Ors.*** of Madras High Court dated 15.09.2017 passed in Writ Petition No.15732 of 2017. Accordingly, he prayed that his pension may be revised/refixed. When the petitioner did not receive any reply to the said representation, he submitted a reminder on 09.01.2020 before the respondent.

5. Respondent no.6 by order dated 17.01.2020 rejected the claim of the petitioner for grant of notional increment on two grounds; the petitioner had retired in the afternoon of the last day of service, therefore he was not in service on the day when the increment was due. Secondly, as per Rule 14 of Civil Service Regulations, the last date of service of a Government servant is not counted as a working day, hence the government servant is retired without completing one year of service before retirement. The said order is impugned in the present writ petition.

6. In the counter affidavit filed by the respondent-State, the ground for denying the claim of the petitioner has been stated in paragraphs no. 4, 5, and 6 of the counter affidavit wherein it is averred that Rule 56(a) of Financial Hand Book, Vol.II, Part II to IV applies to the government servant of Uttar Pradesh which provides that every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. It is further stated that any Government Servant, whose date of birth is the first day of the month, upon attaining the age of 60 years would retire from service on the afternoon of the last day of the preceding month.

7. The further case of the respondent in the counter affidavit is that Rule 14 of the Civil Service Regulations provides that when an Officer is to retire at a specified age, the day on which he attains that age is reckoned non-working day. Accordingly, it is stated that it is clear from Rule 56(a) of Financial Hand Book, Vol.II, Chapter II to IV and Rule 14 of Civil Service Regulations that Government servant retires without completing one year of service. The further case of the respondent in the counter affidavit is that judgment of P.Ayyamperumal Vs. The Registrar and Ors. of Madras High Court (supra) is not applicable as the said judgment has been rendered in the context of rules of Central Government

and the judgment referred therein namely *State of Tamil Nadu, rep. by its Secretary to Government, Finance Department, and others Vs. M. Balasubramaniam, reported in CDJ 2012 MHC 6525* has been rendered in the context of fundamental rules of State of Tamil Nadu. Hence, the judgment of P.Ayyamperumal (supra) is not applicable in the present case as the petitioner is an employee of the Uttar Pradesh Government.

8. In the rejoinder affidavit, it is stated that the denial of the claim of the petitioner is based on Rule 14 of Civil Service Regulation and Rule 56(a) of Financial Hand Book, Vol.II, Part II to IV is misplaced since the day on which a Government servant retires or is discharged or is allowed to resign from service as the case may be, shall be treated as a last working day. The day of death of a Government servant shall also be treated as a working day. It is also stated that the judgment of the Madras High Court in the case of P.Ayyamperumal (supra) is applicable in the facts of the present case. Hence, the petitioner is entitled to the benefit of said judgment.

9. Challenging the aforesaid order, learned counsel for the petitioner contends that the interpretation by respondent no.6 of Rule 14 of Civil Service Regulations and Rule 56(a) of Financial Hand Book, Vol.II, Part II to IV in rejecting the claim of the petitioner is incorrect. It is submitted that admittedly the petitioner has rendered his service from 01.07.2015 to 30.06.2016, and as such he is entitled to receive all the benefits that had accrued to him during that period. Accordingly, it is submitted that the right to get an increment on completion of one year of service is an accrued right for rendering one year of good and satisfactory service, therefore, the respondent cannot deny the benefit of such accrued right to the petitioner on misconceived grounds. It is further contended that the petitioner on completion of one year's service becomes entitled to an increment which is not otherwise withheld.

10. The further contention of learned counsel for the petitioner is that as the petitioner's entitlement to receive increment accrues on completion of one year of service, and what remains thereafter is the enforcement of such an accrued right in the form of payment which cannot be denied to

the petitioner on misconceived grounds. It is further submitted that there is no rule which stipulates that a government servant must continue in service to receive benefits that have accrued to him during the service period. In support of his case, learned counsel for the petitioner has placed reliance upon the Full Bench judgment of Andhra Pradesh High Court in ***P.Ayyamperumal (supra) (ii) P.P. Pandey Vs. State of U.P. & Ors., Civil Misc. Writ Petition (S/S) No. 18375 of 2020 passed by this Court (iii) S.Banerjee Vs. Union of India reported in 1989 Supp2 SCC 486 (iv) Mohd. Hussain Vs. State of U.P. & Ors. reported in 2010 (3) AWC 2964 (v) Ram Anjore Singh Vs. Union of India & Ors. reported in 2007 (7) ADJ 273 (DB).***

11. Per-contra, learned Standing Counsel would contend that Fundamental Rule 56 (a) of Financial Hand Book, Vol.II, Part II to IV is explicit and states that every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years and in a case where a Government servant's date of birth is the first day of the month, he shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

12. it is further contended that as per Rule 14 of Civil Service Regulations, since the last day of retirement is not a working day, therefore, the petitioner has not completed one year of service, hence he is not entitled to increment.

13. Learned Standing Counsel has placed reliance upon Full Bench judgment of Andhra Pradesh High Court in ***Principal Accountant General Vs. C.Subba Rao, reported in 2005 (4) ESC 2862***, the judgment of Madhya Pradesh High Court in ***Madhav Singh Tomar & Ors. Vs. M.P. Power Management Co. Ltd. & Ors. in Writ Petition No. 9940 of 2020 decided on 29.07.2020,*** and judgment of Himachal Pradesh High Court in case of ***Hari Prakash Vs. State of Himachal Pradesh & Ors. in CWP No. 2503 of 2016***. On the strength of the aforesaid judgments, he submits that the date of birth of the petitioner is 18.06.1956 and under Rule 56(a) of Financial Hand Book, Vol.II, Part II to IV, he shall be treated to have retired in the afternoon of 30.06.2016, therefore he was not in service on

the date when the increment was due. Hence, his claim has rightly been rejected by respondent no.6.

14. I have heard learned counsel for the petitioner and learned Standing Counsel for the State-respondents and perused the record.

15. The court believes that in view of argument advanced by respective parties, the questions which arise for consideration of this Court is that:

(i) what the word "afternoon" used in Rule 56(a) of Financial Hand Book, Vol.II, Part II to IV connotes in the context of expression 'retirement of an employee on the last day of the month';

(ii) whether the respondent has rightly placed reliance upon Rule 14 of Civil Service Regulation to deny the benefit of notional increment to the petitioner;

(iii) whether the petitioner can be denied the benefit of notional increment on the ground that the petitioner was not in service on the date when the increment was due to the petitioner.

16. Before answering the aforesaid questions, it is apposite to refer to the relevant provisions of the Financial Hand Book, Vol.II, Part II to IV, Civil Service Regulations as applicable in Uttar Pradesh, (hereinafter referred to as 'CSR') Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules, 1972').

17. Rule 9(21), Rule 9(28) and (31) of Financial Hand Book, Vol.II, Part II to IV defines 'pay', 'substantive pay', and 'scale of pay' reads as under:

"9(21) Pay- Pay means the amount drawn monthly by a Government servant as-

(i) the pay, other than special pay or pay granting in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, technical pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the Governor."

"9(28)Substantive Pay- Substantive pay means the pay other than special pay, personal pay or emoluments classed as pay by the Governor under

Rule 9(21) (ii), to which a Government servant is entitled on account of a post to which he has been appointed substantively or by reasons of his substantive position in a cadre.

9(31) *(a)* ***Time Scale Pay-*** *Time-scale pay means pay which, subject to any conditions prescribed in these rules, rises by periodical increments from a minimum to a maximum. It includes the class of pay formerly known as progressive.*

(b) Time-scales are said to be identical if the minimum, the maximum, the period of increment and the rate of increment of the time-scale are identical.

(c) A post is said to be on the same time-scale as another post on a time-scale if the two time-scales are identical and the posts fall within a cadre, or a class in a cadre, such cadre or class having created in order to fill all posts involving duties of approximately the same character or degree of responsibility, in a service or establishment or group of establishments, so that the pay of the holder of any particular post is determined by his position in the cadre or class and not by the fact that he holds that post.

18. Rule 3(2) and 3(9) of The Uttar Pradesh Retirement Benefits Rules 1961 (hereinafter referred to as 'Rules 1961') defines 'Emoluments' and 'Retirement ' reads as under:

> ***"3(2).*** *Emoluments' means the pay as defined in Rule 9(21) of the U.P. Fundamental Rules, which the Officer was receiving immediately before his retirement:-*
>
> *Provided that in the case of an Officer who on the date of his retirement is drawing pay in the scale of pay as in force on 29.3.62 the term "emoluments" shall also include the dearness allowance as admissible therein on that date.*
>
> *Note…..*
>
> ***"3(9).*** ***"****Retirement" means discharge of an officer from government service on superannuation, retiring, invalid or compensation pension or gratuity.*

19. Regulation 14,151 to 153 of the CSR reads as under:

> " ***14. Age-****When an officer is required to retire on attaining a specified age, the day on which he attains that age is reckoned as a non-working day, and the officer must retire……...with effect from and including that day…….*
>
> *"****151.*** *An increment accrues from the day following that on which it is earned.*
>
> *Exception.-An officer appointed in England by the Secretary of State for service in India receives the increment in his pay in accordance with the terms of his engagement.*
>
> *152. A periodical increment should not be granted to an officer serving on Progressive pay, as a matter of course, or unless his conduct has been good. When an increment is withheld, the*

period for which it is withheld is at the discretion of the authority having power to withhold, who will also decide whether the postponement is or is not to have the effect of similarly postponing future increments. The authority having powers to withhold is, in the case of ministerial and menial officers, the head of the office, and in the case of other officers, the Local Government, which may delegate the powers to heads of departments or other supervising officers.

153 (a). A proposal to grant an increment of Progressive pay in advance of the due date should always be scrutinized with special jealousy: it is contrary to the principle of Progressive pay to grant an increment before it is due, and such a grant should not be recommended or allowed, excepting under circumstances which would justify a personal allowance to an officer whose pay is fixed, - that is to say, seldom if ever.

(b) The powers of the Government of India, of Local Governments and of subordinate authorities to grant a premature increment to an officer are subject to the limits upto which each such authority can raise the officer's remuneration.

20. At this juncture, it is also relevant to refer to Rule 24 Financial Hand Book Vol.II Part II to IV, which is extracted herein as under:

> ***"24. An increment shall ordinarily be drawn as a matter of course unless it is withheld*** *-An increment may be withheld from a Government servant by the Government, or by any authority to whom the Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments."*

21. In the facts of the present case, it would also be relevant to notice Regulation 38 of CSR as applicable in the State of Uttar Pradesh which defines 'Pay and Salary'. Clause (a) and (c) defines 'pay' and 'salary' respectively and are reproduced herein-below:

> 38. *Pay and Salary :*
>
> *"(a) "pay" means "monthly substantive pay". It includes also "overseas allowance" and "technical allowance".*
>
> *(b)……*
>
> *(c) "Salary" means the sum of pay an acting allowance, or charge allowance, under Article 94 of Chapter VIII.*
>
> *1. Personal allowance is treated, for the purposes of calculating leave allowance and pensions, as part of an officer's substantive pay, but not for purposes of travelling allowance, unless it has been granted to protect from loss an officer, the pay of whose appointment has been changed.*
>
> *2. The allowance of an officer holding conjointly with another office a Professorship of Lecturership in any Government*

institution, are part of his salary.

3. "Salary" does not include a local allowance, deputation (local) allowance, house rent, tentage, or travelling allowance, whether daily, monthly or yearly.

4. The charge allowance admissible to Inspectors and Charge Clerks Indo-European Telegraph Department, are part of their salary.

5. The good conduct allowance of policemen is treated as salary for the purpose of calculating leave allowances, but not pension.

6. Deputation (duty) allowance and duty allowances are treated as salary for the purpose of calculating leave allowances and are included in the term "emoluments" for calculating pensions."

22. Section 1 of Chapter XLVIII of CSR deals with payment of pension and the relevant regulation in the present case is Regulation 930 of Section 1 of Chapter XLVIII of CSR as applicable in Uttar Pradesh which reads as under:

> ***"930.*** *Apart from special orders, a pension, other than a Wound or Extraordinary pension under the Uttar Pradesh Civil Services (Extraordinary Pension) Rules, is payable from the date on which the pensioner ceased to be borne on the establishment, or from the date of his application, whichever is later. The object of this later alternative is to prevent unnecessary delay in the submission of applications. The rule may be relaxed, in this particular, by the authority sanctioning the pension when the delay is sufficiently explained.*
>
> *1. The pension of an officer who under Article 436, has received a gratuity in lieu of notice is not payable for the period in respect of which the gratuity is paid."*

23. Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'Rules 1972') have been promulgated in exercise of power under proviso to Article 309 of the Constitution of India. It would also be apt to refer to Rule 5 of Pension Rules, 1972 which is reproduced herein as under:

> *"5. **Regulation of claims to pension or family pension :-(1)** Any claim to pension or family pension shall be regulated by the provisions of these rules in force at the time when a Government servant retires or is retired or is discharged or is allowed to resign from service or dies, as the case may be.*
>
> *(2) The day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The date of death shall also be treated as a working day:*
>
> *Provided that in the case of a Government servant who is retired prematurely or who retires voluntarily under clauses (j) to (m) of*

> *Rule 56 of the Fundamental Rules or Rule 48 or Rule 48-A, as the case may be, the date of retirement shall be treated as a non-working day.*

24. Chapter IX of Financial Hand Book, Vol.II Part II to IV deals with compulsory retirement. The relevant provision in the context of the present case is Rule 56(a) of Financial Hand Book, Vol.II, Part II to IV which is being reproduced herein as under:

> *"56 (a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:*
>
> *Provided that a Government servant, whose date of birth is the first day of a month, shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years:"*
>
> *Provided further that a Government servant, who has attained the age of fifty-eight years on or before the first day of the November, 2001 and is on extension in service, shall retire from service on expiry of his extended period of service.*

25. Now this Court proceeds to analyse the aforesaid provisions to appreciate the controversy in the present case. Pay as defined in Fundamental Rule 9(21) of Fundamental Rules means the amount drawn by a Government servant as the pay which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled because of his position in a cadre; and includes overseas pay, special pay and personal pay; and any other emoluments which may be specially classed as pay by the President but does not include the special pay or pay granted because of the personal qualification of a government servant.

26. As per Regulation 38(a) of CSR applicable in Uttar Pradesh, "Pay' means "monthly substantive pay" and includes also overseas allowance and technical allowance. As per Rule 9(28) of Fundamental Rules, Substantive pay means the pay other than special pay or emoluments classed as pay by the Governor under Rule 9(21)(ii) to which a government servant is entitled on account of a post to which he has been appointed substantively or because of his substantive appointment in the cadre. It is worth noticing that Rule 9(21), (28) of Fundamental Rules and Regulation 38(a) of CSR does not exclude 'increment' paid to a

government servant from the definition of 'Pay' and 'Substantive Pay'. Further, the perusal of point no.3 mentioned below Regulation 38(c) of CSR also reveals that the increment paid to a Government servant under Regulation 151 of CSR is not excluded from the salary.

27. In service jurisprudence, the increment has a distinct concept. It is an increase in or addition on a fixed scale; it is a regular increase in salary on such a scale. In other words, Increment is an incidence of service and is an addition in the same scale and not to a higher scale. The government servant is entitled to increment as a matter of course subject to the conclusion of past one year satisfactory service. As a result of the preceding discussion, the natural corollary is that it is part of "pay" and "Substantive Pay" as defined in Rule 9(21) & 9(28) of Fundamental Rules and Regulation 38(a) of the CSR and also part of "salary" as defined in Regulation 38(c) of the CSR, as applicable.

28. According to Article 151 of CSR, the annual increment will accrue to a Government servant from the day following that date on which it is earned. The right to get an annual increment would accrue to a Government servant only after completion of the year and become payable on the next day.

29. At this point, it is appropriate to consider Fundamental Rule 24, which states that an increment is normally drawn as a matter of course unless it is withheld. A combined reading of Fundamental Rule 24 and Regulation 151 of CSR suggests that the government servants shall receive increment as a matter of right from the next date when it falls due under Regulation 151 of CSR, and the only condition under which the increment accrued to a government servant can be denied is if his conduct has not been good or his work has not been satisfactory. In other words, reading the Fundamental Rules 24 leads to the inevitable conclusion that a government servant has an accrued right to receive an increment as per Regulation 151 and can be denied only if his conduct was not good or his work was not satisfactory, as stipulated in Fundamental Rule 24.

30. At this juncture, it is appropriate to consider Rule 56(a) of Financial

Hand Book, Vol.II, Part II to IV which states that every Government servant shall retire from the service on the afternoon of the last day of the month in which he attains the age of sixty years. To understand in what context the word 'afternoon' has been referred to in Rule 56(a) and proviso to Rule 56(a) of Financial Hand Book, Vol.II, Part II to IV, it would be beneficial to refer to a few judgments on which learned counsel for the petitioner has relied.

31. In the case of S.Banerjee vs. Union of India (supra), the petitioner-S.Banerjee claimed the benefit of paragraph 17.3 of Chapter 17 of Part II on page 93 of the Pay Commission Report, which states that for employees retiring between January 1, 1986, and September 30, 1986, the government may consider treating the entire dearness allowance drawn by them up to December 31, 1985, as pay for pensionary benefits. The said benefit was denied to him because he did not draw a salary for January 1, 1986, in view of the proviso to Rule 5(2) of the Pension Rules, 1972. The aforementioned contention was rejected by the Apex Court. Paragraph 6 of the judgment is relevant which reads as under:

> *(6) "Under paragraph 17.3, the benefits recommended will be available to employees retiring during the period, January 1, 1986 to September 30, 1986. So the employees retiring on January 1, 1986 will be entitled to the benefit under paragraph 17.3. The question that arises for our consideration is whether the petitioner has retired on January 1, 1986. We have already extracted the order of this Court dated December 6, 1985 whereby the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986. It is true that in view of the proviso to rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired. But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on December 31, 1985? The answer must be in the negative. Indeed, Mr. Anil Dev Singh, learned counsel appearing on behalf of the respondents, frankly conceded that the petitioner could not be said to have retired on December 31, 1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986 and that is also the order of this Court dated December 6, 1985. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986 as per the said order of this Court, that is to say, as soon as January 1, 1986 had commenced the petitioner retired. But, nevertheless, it has to be said that the petitioner had retired on January 1, 1986 and not on December 31, 1985. In the*

circumstances, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission."

32. In the case of Ram Anjore Singh (supra), the petitioner's last day of service was December 31, 1995. He claimed the benefit of a revised pension as per the revised pay scale, claiming that his retirement date is January 1, 1996. His claim was denied on the ground that he retired on December 31, 1995, and thus was not entitled to the benefit of the office memorandum dated October 27, 1997, which extended the benefit of the revised pay scale and pension fixation to a Government servant who retired on January 1, 1996, or later. This Court held that the denial of the benefit of office memorandum to the petitioner is illegal. This Court in paragraph 15 of the judgment has noted the decision in Special Appeal No. 1056 of 2005 (Sushila Devi Vs. District Collector and others) in which this Court has held that for the retirement of Government servant, the time afternoon must be construed as a time after the noon (12 O'Clock) until the end of the day (12:00 PM). Relevant paragraph nos. 15, 16, 17, 18 are reproduced herein as under:

"15. Which of the aforesaid O.Ms. would be attracted to the case of the petitioner would depend upon the fact as to when the petitioner can be said to have retired from service. From a perusal of O.M.I, it is evident that the same is applicable to such government servants who retire on 1st January, 1996 or thereafter. The O.M.II, however provides that the pension/family pension shall be determined in the manner prescribed thereunder to all pre-1996 pensioners/family pensioners in the manner indicated in the subsequent paragraphs. Though para 2.1 states that the order shall be applicable to all those who were drawing pension/family pension on 1st January, 1996, but from the definition of the existing pensioner or existing family pensioner or existing pension or existing family pension, it would be evident that the said order is applicable to those who were drawing/entitled to pension on 31st December, 1995 and therefore were also drawing pension on 1st January, 1996. Thus only such persons can be said to be pre-1996 pensioners/family pensioners. The question as to whether the petitioner can be said to be a pre-1996 pensioner/family pensioner, in order to attract the meaning of the word "government servants who retired on 1st January, 1996". In other words can it be said that the petitioner retired on 31st December, 1995 and is also an existing pensioner on 31st December, 1995. It is no doubt true that 31st December 1995 was the last day of working of the petitioner on which date he would retire on attaining the age of superannuation as per Fundamental Rule 56, which requires that a government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Since the petitioner attains the age of 58 years on 31st December, 1995 itself,

therefore he will retire in the afternoon of 31st December, 1995. The word afternoon would mean up to midnight of 31st December, 1995/1st January, 1996. It is true that normally on the last day of the working a government servant is required to hand over his charge and work is complete during office hours, but legally the status of the concerned person would continue to be a "government servant" till the midnight of the last working day, since the afternoon would come to an end at 12.00 P.M. i.e. end of the day. A Division Bench of this Court in Special Appeal No. 1056 of 2005 (Sushila Devi Vs. District Collector and others, decided on 6th September, 2005, held as under :-

"From the foregoing discussions, we are of the opinion that for purposes of retirement of a government servant, the time afternoon has to be construed as a time after the noon (12 O'clock) till the end of the day (12 P.M.)."

16. The 31st December, 1995 being the last working day, the petitioner was also entitled for full salary of the said day, which is also inconsonance with Rule 5(2) of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as "Pension Rule 1972"), which reads as under :-

"5(2) The date on which a government servant retires or is retired or has discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. The day of death shall also be treated as working day.

Provided that in the case of a government servant, who is retire or immediately to retire or who retires voluntarily under clause (j) to (m) to Rule 56 of Fundamental Rule or Rule 48 (or Rule 48-A), as the case may be, the date of retirement shall be treated as a non working day."

17. This results to an inference that the last working day in the service of the government servant is also the date of his retirement, but it cannot be said that the said government servant would be entitled for pension on 31st December, 1995 and therefore is an existing pensioner or existing family pensioner on 31.12.1995. For the purposes of pension, he would be entitled to draw the same w.e.f. 1st January, 1996 and not prior thereto. The O.M.I is applicable to those who are not pre-1996 pensioners/family pensioners since they are governed by O.M.II. Since the petitioner cannot be said to be a pre-1996 pensioner/family pensioner, therefore in our view his case will be covered by O.M.I. It is not the case of the respondents that besides the aforesaid two office memorandums, there is any other office memorandum, which would be applicable to the cases which are not covered by the aforesaid two office memorandums. The view which we have taken has not been shown to be inconsistent to any statutory provision and on the other hand since O.M.II is clearly applicable to pre1996 pensioner/family pensioner, and the petitioner cannot be said to be a pensioner on 31st December, 1995 since that being the last working day and he being entitled for full salary, he would not be entitled for pension on 31st December, 1995, therefore the O.M.II has no application to his case, the same would have to be governed by O.M.I.

> *18. In this view of the matter, in our view, for the purposes of para 3.1 of O.M.I, the petitioner is entitled to be governed by the provision thereof as he retired on 1st January, 1996. The provision of OM-I, being beneficiary in nature, in the absence of any contrary, express or necessary implication, it should be given a meaning which may cover a larger number of persons without doing any violence to the language of the Statute. The judgement of Andhra Pradesh High Court in the case of R. Malakondaiah and others (supra) relied upon by learned counsel for the petitioner, in our view does not apply to the facts of the present case, since the issue involved therein was different and the provision up for consideration before the Andhra Pradesh High Court was also in different context. That was a case of increment of a government servant and interpreting Article 151 CSR, the Andhra Pradesh High Court held that a government servant is entitled for the benefit of increment after completion of the conditions attracting said benefit, even if the same day of his last day of the working, since actual grant thereto is only in the nature of execution."*

33. In the case of ***Mohd. Hussain (supra),*** in almost identical circumstances, this court has granted the benefit of notional increment to the petitioner whose last working day was 30.06.2009. The relevant paragraph no.6 of the judgment is reproduced herein below:

> *"(6) following the aforesaid pronouncement of law, we are of the opinion that since the petitioner was retired on 30.06.2009, his last working day shall be treated as 30.06.2009 and that he would be retired on 1.7.2009. Since he was to be given benefit of one increment according to his date of birth (1.7.1949), he would have retired on 1.7.2009 taking with him the benefit of one increment payable to him in 2006 entitled to calculation of his pension accordingly."*

34. It is not the case of the respondent since the government servant retires in the afternoon in terms of Rule 56 of the Fundamental Rule so he is paid the salary until the afternoon of the last working day, rather he is paid the salary for the full day of the last working day. Thus, the word 'afternoon' mentioned in the proviso to Rule 56 (a) of the Fundamental Rules in view of the aforementioned judgment stands for after the noon until 12:00 A.M. i.e. midnight.

35. Now coming to the other ground of rejection of the claim of the petitioner by the respondent by relying upon Regulation 14 of CSR, the perusal of Regulation 14 extracted above shows that it explains the definition of 'Age'. Regulation 14 of the CSR does not apply in this case because the government servant's right to an increment is governed by Regulation 151 of the CSR. The government servant earns an increment

as a matter of course if he maintains good behaviour and provides satisfactory service for the previous year. It appears that the purpose for specifying in Regulation 14 of the CSR that the last day of retirement is a non-working day of the government servant where the government servant is required to retire on attaining a specified age is perhaps for the reason that it is his last working day in the establishment, therefore, he may not be given any new assignment to enable him to complete all the paperwork and formalities relating to his retirement.

36. In this regard, it would also be relevant to consider Rule 930 of Section 1 of Chapter XLVIII of CSR which states that a pension is payable from the date on which the pensioner ceased to be borne on the establishment or from the date of his application, whichever is later. Rule 9(9) of Rules 1961 defines 'Retirement' which means discharge of an officer from service on superannuation. In accordance with Rule 9(9) of the Rules 1961, the government servant on superannuation is discharged from government service and ceases to be a member of the establishment upon retirement, and becomes eligible for pension thereafter under Regulation 930 of CSR. So, can it be said that the government servant is entitled to receive the pension from his last day of retirement or the afternoon of his last day of retirement? In my opinion, the answer is emphatic 'No' in light of Rule 930, because entitlement to the pension to the petitioner is not from the last working day in the establishment but from the day on which he ceased to be a member of the establishment, which is the following day of the employee's last working day in the establishment.

37. Viewed from another perspective, Regulation 930 of the CSR is incorporated under Chapter XLVIII of the CSR and enumerates the conditions under which a government servant becomes entitled to a pension, whereas Regulation 14 of the CSR explains the definition of age and is not concerned with the payment of pensions; thus because Regulation 930 covers the field, Regulation 14 has no application in the instant case. In this regard, it would also be appropriate to refer to Rule 5(2) of the Rules of 1972, which states unequivocally that the day on

which a government servant retires shall be treated as the last working day; thus, the respondent's reliance on Regulation 14 of the CSR to reject the petitioners' claim is misplaced in view of Rule 5(2) of the Rules of 1972.

38. The inescapable conclusion from the preceding discussion is that the government servant is considered retired at 12:00 AM i.e. midnight on the last working day, and his last working day in the establishment is considered working day. As a result, the respondent's denial of an increment to the petitioner based on Proviso to Rule 56 of the Fundamental Rule and Regulation 14 of the CSR is erroneous and unsustainable in law.

39. The Madras High Court in the case ***P.Ayyamperumal (supra)*** has extended the benefit of notional increment to the petitioner who retired on 30.06.2013 and the increment fell due on 01.07.2013 on which date he was not in service. Relevant paragraphs no. 6 and 7 of the judgment are reproduced herein below:

> *"6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in* ***State of Tamil Nadu, rep.by its Secretary to Government, Finance Department and others v. M.Balasubramaniam, reported in CDJ 2012 MHC 6525,*** *was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.*
>
> *7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs."*

40. A Special Leave Petition (Civil) Diary No(s) 22283 of 2018 has

been preferred by the Union of India against the aforesaid judgment of P.Ayyamperumal (supra) which was dismissed by Apex Court vide order dated 23.07.2018, which is reproduced herein below:

> *"Delay condoned.*
>
> *On the facts, we are not inclined to interfere with the impugned judgment and order passed by the High Court of Judicature at Madras.*
>
> *The special leave petition is dismissed."*

41. In the case of P.P. Pandey (supra), this Court took a similar view and allowed the writ petition of a petitioner who was an employee of UPSRTC and was denied the benefit of notional increment due to him on 01.07.2010 because he retired on 30.06.2010.

42. As a consequence of the preceding discussion, it can be easily concluded that a government employee is entitled to one increment as a matter of right after completing one year of service which becomes due on the following day of the year's end; what remains thereafter is the enforcement of such right in the form of monetary benefit.

43. Now coming to the judgments which have been relied upon by the learned counsel for the respondent.

44. The first case is the Full Bench decision of the Andhra Pradesh High Court in the case of C. Subba Rao (Supra), in which the court denied the benefit of an increment due on January 1, 2002, in the case of a government servant who last day in the service was December 31, 2001. The reading of paragraphs 23 to 25 of the decision indicates that the Full Bench has primarily proceeded to deny the benefit of increment because the increment fell due on 01 January, on which date the government servant was not in service, and the emoluments drawn by the government servant as per Rule 34 during the last ten months of his service are treated as emoluments for computing the pension, and since the increment was not due on the 31 December, which does not form part of emoluments, therefore, the government servant is not entitled to the increment falling due on the next date of last working day.

45. With due respect to the Full Bench judgement of the Andhra Pradesh High Court, I respectfully disagree because the entitlement to increment to the government servant is for satisfactory service rendered by him for the past one year, and the completion of one year is the last day of the year. So, the increment is being paid to the government servant for services rendered during his service period; therefore, the question is whether this benefit can be denied to the government servant because he was not in service since the payment of said benefit is due on the day of retirement and does not form part of emoluments under Rule 34. In my opinion, the answer is 'no,' because such an interpretation would be hit by Article 14 of the Indian Constitution as any benefit accrued to a government servant during service can only be denied only on a reasonable and valid legal ground. It is important to note that because the condition for grant of increment is one-year satisfactory service, it is obvious that the government servant is entitled to receive the benefit of increment upon completion of one year of satisfactory service, and if the completion of one year is followed by the day of retirement, on which date only payment of said benefit remains, the denial of said benefit on the said ground is not only arbitrary but abuse of process of law and is against the principles enshrined in Article 14 of the Constitution of India.

46. The petitioner is demanding that he is entitled to get a notional increment falling due on 1st July 2016 for pension. It is no longer res-Integra that for government employees whose service conditions are governed by statutory rules, pension, a deferred salary, is a right and its payment is not subject to the Government's discretion. It is also settled in law that the pension is not a bounty but a hard-earned benefit by a government servant and is in the nature of the property. Thus, it cannot be taken away except with due process of law as per Article 300A of the Constitution of India. The Apex Court in paragraph 20 of ***D.S. Nakara Vs. Union of India, 1983 (1) SCC 305*** placing reliance upon judgments of Apex Court in the Deokinandan Prasad Vs. State of Bihar [1971 (2) SCC 330] and State of Punjab Vs. Iqbal Singh [1976 (2) SCC 1] has observed as under:

> *"20. The antiquated notion of pension being a bounty, a gratituous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar & Ors. wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab & Anr. v. Iqbal Singh (1)."*

47. In ***State of Jharkhand Vs. Jitendra Kumar Srivastava and others, 2013 (12) SCC 210*** the Apex Court held that the pension is not a bounty but a hard-earned benefit which is in the nature of the property. Hence, it cannot be taken away without complying with the due process of law under Article 300-A of the Constitution of India.

48. Once it is a settled position of law that pension is not a bounty and has been earned by the government servant by dint of his long, continuous, faithful, and unblemished service, the same cannot be curtailed except as per law. Since the benefit of increment has accrued to the government servant for the service rendered by him during his service period, therefore, such benefit earned by the government cannot be denied on the pretext that the government servant has retired on the day on which he is entitled to receive such benefit and it does not form part of emoluments under Rule 34 for calculating the pension. The Court believes that the denial of notional increment on the aforementioned grounds is nothing but an abuse of process of law and is an arbitrary act of the respondents, as such is hit by Article 14 of the Constitution of India.

49. So far as the judgment of Madhya Pradesh High Court in ***Madhav Singh Tomar (supra)*** is concerned, the Division Bench of the Madhya Pradesh High Court has rejected the claim relying upon the aforesaid judgment of the Andhra Pradesh High Court, therefore, the law enshrined in the said decision is also not applicable in the facts of the present case. For the same reason, the judgment of the Himachal Pradesh High Court

which has denied the claim of petitioners on the ground that when the increment fell due he was not an employee, is also not applicable in the facts of the present case.

50. Now coming to the facts of the present case, undisputedly the petitioner had retired on 30.06.2016 and the increment for the service rendered by him for the past one year i.e. 01.07.2015 to 30.06.2016 became due to him on 01.07.2016. The denial of the increment to the petitioner on the ground that the last day of the service of the petitioner was not the last working day and the petitioner had retired in the afternoon cannot be sustained given discussions aforesaid; as from the discussion aforesaid, it is evident that the last working day of the petitioner is 30.06.2016 till 12:00 P.M. Thus, the petitioner had completed one full year from 01.07.2015 to 30.06.2016. Consequently, he cannot be denied the benefit of notional increment which fell due on 01.07.2016 as the right to get increment is an accrued right for the services rendered for one year, and the next date on the conclusion of the year is only the date on which he is entitled to receive the monetary benefit. Thus, for grant of notional increment, it is immaterial that the petitioner was not in service on the day when it fell due. Accordingly, this Court believes that the order impugned is not sustainable.

51. For the reasons given above, the impugned order dated 17.01.2020 passed by respondent no.6-Executive Engineer, Nalkoop Khand-2, Allahabad is hereby quashed and a writ of mandamus is issued to the respondent to grant the benefit of one notional increment to the petitioner and accordingly, revise and refix his pay and pension.

52. The writ petition is ***allowed*** with no order as to cost.

Dated:13.12.2021

Mohit Kushwaha

(Saral Srivastava, J.)