

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12575 of 2019

1. Shio Jee Rai
2. Atal Bihari Rai
3. Ramkarn Ram
4. Shyam Bihari Chaudhary
5. Hareram Pandey
6. Kamla Prasad Sharma
7. Md. Sohrab
8. Lalan Rai
9. Janardan Singh
10. Om Prakash Pandey
11. Parsuram Yadav
12. Hiralal Rai
13. Divakar Nath Rai
14. Krishnanand Upadhyay
15. Dinanath Pandey
16. Satyanarayan Choubey
17. Harinarayan Singh
18. Parasnath Pathak
19. Uday Shankar Singh
20. Munindranath Rai



21. Siyaram Yadav

22. Shiv Govind Rai

23. Vishwamitra Pandey

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary,
2. The Principal Secretary, Department of Education,
3. The Principal Secretary, Department of General Administration,
4. The Principal Secretary, Finance Department, Government of Bihar,
5. The Director Secondary Education, Department of Education, Government of Bihar,

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Tej Bahadur Singh, Sr. Adv Mr. Brisketu Sharan Pandey, Adv
For the Respondent/s	:	Mr. Ram Vinay Pd. Singh, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 29-04-2025

1. Heard learned senior counsel for the petitioners, Shri.

Tej Bahadur Singh and learned AC to GP-12.

2. The learned senior counsel for the petitioners submits that the instant writ petition was filed on 17-5-2019, it is submitted that the said submission has been made regarding filing of writ petition for the reason that it has bearing on the adjudication of the present case.



3. The learned senior counsel further submits that the instant writ petition has been filed seeking a direction upon the respondent Nos. 2 to 4 for granting the benefit of annual increment for their last year of service, which has been denied to the petitioners on the grounds that petitioners have retired on 30th June and the annual increment as per 6th Pay Revision and 7th Pay Revision has been made admissible to the employees on 1st of July, further for a direction upon the respondent Nos. 2 to 4 to treat the date of retirement of the petitioners to be 1st July of their respective year of retirement and to grant them all consequential benefits including the pensionary benefits, further for holding that it was incorrect on part of the respondent No. 2 and 4 to have denied the petitioners their annual increment for their last year of service in view of the facts that the petitioners, who have retired on 30th June in their respective year of retirement, had worked for complete one year, thus the annual increment which accrued on the next day of their retirement on 1st July could not have been denied, apart from other consequential reliefs.

4. The learned senior counsel for the petitioners thus submits that in sum and substance the prayer of the petitioners is to grant annual increment for their last year of service by adding



in their last basic pay and accordingly to revise their pension. It is further submitted that the details of the date of retirement of all the 23 petitioners have been mentioned at paragraph-5 of the writ petition. It is also submitted that the petitioners retired in between 2009 to 2019 on 30th June in their respective year of retirement.

5. It is further submitted that Department of Finance, Government of Bihar issued memo No. 3A-2-16/09-630 dated 21-1-2010 (Annexure-2) regarding revision of pay scale of the State government employees with effect from 1-1-2006 by adopting the approval granted by the central government to the recommendation of 6th Central Pay Commission. The aforesaid resolution dated 21-1-2010 vide its Clause 10 dealt with the date of next increment in the revised pay scale. As per Clause 10, the uniform date of annual increment has been identified as 1st of July every year. The employees completing 6 months and above in the revised pay scale as of 1st July would be granted the increment.

6. The learned senior counsel for the petitioners next submits that the petitioners effectively have served one complete year from the last annual increment i.e. 1st July of the preceding calendar year until 30th June of their respective year



of retirement. It is submitted that the petitioners by virtue of Clause 10 of the resolution dated 21-1-2010 have been denied their last annual increment which is having cascading effect on their pension, as pension is calculated on the last pay drawn and as such the pension of the petitioners has been fixed on their last pay drawn without adding their last annual increment in their last pay scale drawn.

7. The learned senior counsel for the petitioners by way of example submits that if the last pay drawn of a person was Rs. 100, then his pension would be fixed as per Rs. 100, but if the last annual increment would have been added to Rs. 100, the same would have become Rs. 110, accordingly the pension would have been fixed at Rs. 110 and thus future revisions in pension would have been made accordingly, it is submitted that this is the loss which the petitioners are facing.

8. It is next submitted that 7th Central Pay Commission recommendation also recorded the date of annual increment as 1st of July. It is further submitted that petitioners Nos. 1, 3, 4, 11, 14, 18 and 22 are entitled to receive the annual increment in terms of 7th Pay Commission, however rest of the petitioners are entitled to annual increment in terms of 6th Pay Commission.



9. The learned senior counsel next submits that 6th Central Pay Commission recommendation is akin to resolution dated 21-1-2010 issued by the State of Bihar. It is further submitted that similar dispute had arisen for central government employees in the state of Tamil Nadu, where the employees retiring on 30-6-2013 were denied annual increment for the year 1-7-2012 to 30-6-2013 on the ground that they have retired prior to 1-7-2013, which is the date identified by the central resolution approving the 6th PRC. The aggrieved employee filed WP No. 15732 of 2017, which was allowed by the Hon'ble Division Bench of the High Court of Madras by an order dated 15-9-2017 and held that petitioners are entitled for annual increment for the year 30-6-2012 to 1-7-2013, as the petitioners served and retired on 30-6-2013. The order of the Madras High Court was affirmed by the Hon'ble Supreme Court vide its order dated 30-7-2018 in SLP (C) Diary No. 22283 of 2018.

10. The learned senior counsel further submits that a similar dispute had also arisen before the Hon'ble Allahabad High Court in the case of Nand Vijay Singh & Ors. vs. Union of India & Ors. (Writ A. No. 13299 of 2020 decided on 29-6-2021)

11. It is submitted that the Hon'ble Allahabad High Court while dealing with the same issue in Nand Vijay Singh



case (*supra*) held at Para-24 that -

"Law is settled that where entitlement to receive a benefit crystallises in law its denial would be arbitrary unless it is for a valid reason. The only reason for denying benefit of increment, culled out from the scheme is that the central government servant is not holding the post on the day when the increment becomes payable. This cannot be a valid ground for denying increment since the day following the date on which increment is earned only serves the purpose of ensuring completion of a year service with good conduct and no other purpose can be culled out for it. The concept of day following which the increment is earned has otherwise no purpose to achieve. In isolation of the purpose it serves the fixation of day succeeding the date of entitlement has no intelligible differentia nor any object is to be achieved by it. The central government servant retiring on 30th June has already completed a year of service and the increment has been earned provided his conduct was good. It would thus be wholly arbitrary if the



increment earned by the central government employee on the basis of his conduct for a year is denied only on the ground that he was not in employment on the succeeding day when increment became payable. In the case of a government servant retiring on 30th of June the next day on which increment falls due/payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory services of a year so that the scheme is not construed in a manner that it offends the spirit of reasonableness enshrined in Article 14 of the Constitution of India. The scheme for payment of increment would have to be read as whole and one part of Article 151 of CSR cannot be read in isolation so as to frustrate the other part particularly when the other part creates right in the central government servant to receive increment. This would ensure that scheme of progressive appointment remains intact and the rights earned by a government servant remains protected and are not denied due to fortuitous circumstances."



12. The learned senior counsel for the petitioners further submits that various High Courts have decided the issue in favour of the employees as decided by the Hon'ble Allahabad High Court.

13. It is submitted that the Hon'ble Division Bench of the High Court of Karnataka at Bengaluru in Writ Appeal No. 4193 of 2017 had allowed the appeal preferred by the employee by setting aside the order of the learned Single Judge and directed the KPTCL to grant one annual increment, which the employees had earned one day prior to their retirement on attaining the age of superannuation.

14. It is submitted that the Director (Admn and HR) KPTCL and others filed Civil Appeal No. 2471 of 2023, impleading C.P. Mundinamani and others as respondents, before the Hon'ble Supreme Court assailing the order passed by the Hon'ble Division Bench of the High Court of Karnataka at Bengaluru.

15. The learned senior counsel further submits that before the Hon'ble Supreme Court in the aforesaid case, various judgments passed by different Hon'ble High Courts deciding the issue in favour of the employees, including the judgment passed in Nand Vijay Singh and others (*supra*) by the Hon'ble



Allahabad High Court, were cited on behalf of the respondents of Civil Appeal No. 2471 of 2023. It is submitted that the Hon'ble Supreme Court dismissed Civil Appeal No. 2471 of 2023 by a judgment dated 11-4-2023 filed by KPTCL and held that Division Bench of the High Court has rightly directed the appellant (KPTCL) to grant one annual increment which the original writ petitioners earned on the last day of their service, preceding one year from the date of retirement with good behaviour and efficiency.

16. The learned senior counsel submits that the judgment dated 11-4-2023 in Civil Appeal No. 2471 of 2023 is reported in 2023 (3) PLJR (SC) 6.

17. The learned senior counsel next submits that while deciding the case of KPTCL, the Hon'ble Supreme Court also agreed with the judgment passed in Nand Vijay Singh and others (supra) passed by the Hon'ble Allahabad High Court.

18. The learned senior counsel further submits that since the Hon'ble Supreme Court decided the issue on 11-4-2023, as such Respondent No. 4 herein brought on record the resolution dated 22-7-2024 (Annexure-5 to IA No. 1 of 2024) in the supplementary counter-affidavit, issued by the Department of Finance, Government of Bihar, on the direction of the



Hon'ble Governor, whereby it has been decided to grant notional benefit to the Government servant retiring on 30th June/31st December, with effect from 11-4-2023. The learned senior counsel thus submits that resolution dated 22-7-2024 issued by the Department of Finance (Annexure-5 to IA No. 1 of 2024) has been challenged by filing I.A. No. 1 of 2024 on the ground that Hon'ble Supreme Court had held vide its judgment dated 11-4-2023 that such decision of denying annual increment to the employee superannuating on 30th June/31st December, bad in law.

19. The learned senior counsel for the petitioners next submits that the law is clear that the judgment of the Hon'ble Supreme Court applies retrospectively, unless made prospective, but then fairly submits that the Hon'ble Supreme Court in Miscellaneous Application Diary No. 2400/2024, in SLP(C), 4722/2021 (Union of India & Anr. vs. M Siddharaj), heard along with various interlocutory applications, passed an interim order dated 6-9-2024, clarifying the date of applicability of the judgment dated 11-4-2023, in Civil Appeal No. 2471 of 2023, titled Director (Admn and HR) KPTCL & Ors. vs. C.P. Mundinamani & others, with regard to the third parties concerned.



20. It is further submitted that the Hon'ble Supreme Court in its order dated 6-9-2024 recorded that --

"We are informed that a large number of fresh writ petitions have been filed.

To prevent any further litigation and confusion, by of an interim order we direct that:

(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.

(b) For persons who have filed writ petitions and succeeded, the directions given in the said judgment will operate as res judicata, and accordingly, an enhanced pension by taking one increment would have to be paid.

(c) The direction in (b) will not apply, where the judgment has not attained finality, and cases where an appeal has been preferred, or if filed, is entertained by the appellate court.

(d) In case any retired employee has filed



any application for intervention/impleadment in Civil Appeal No. 3933/2023 or any other writ petition and a beneficial order has been passed, the enhanced pension by including one increment will be payable from the month in which the application for intervention/impleadment was filed.

This interim order will continue till further orders of this Court. However, no person who has already received an enhanced pension including arrears, will be affected by the directions in (a), (c) and (d)."

21. Learned counsel appearing on behalf of the State, at this stage, submits that the Hon'ble Supreme Court while clarifying the date of applicability of the order dated 11-4-2023, clarified at Clause (a) that - *(a) The judgment dated 11.04.2023 will be given effect to in case of third parties from the date of the judgment, that is, the pension by taking into account one increment will be payable on and after 01.05.2023. Enhanced pension for the period prior to 31.04.2023 will not be paid.*

22. It is next submitted by learned State counsel that in view of the clarification given by the Hon'ble Supreme Court with regard to the date of applicability of the order dated 11-4-



2023, it would manifest that it has been clearly recorded at clause-(a) that enhanced pension for the period prior to 31-4-2023 will not be paid, as such the resolution dated 22-7-2024 issued by the Department of Finance, Government of Bihar, rightly records that notional benefit given to government servant retiring on 30th June/ 31st December shall be given effect from 11-4-2023.

23. The learned senior counsel appearing on behalf of the petitioners submits that at the first blush what has been submitted by learned counsel appearing on behalf of the State appears to be correct but then it is submitted that the Hon'ble Supreme Court further clarified its own interim order dated 6-9-2024 with regard to the applicability of the order dated 11-4-2023 in Miscellaneous Application Diary No. 2400 of 2024 in Civil Appeal No. 3933 of 2023 (Union of India and another versus M. Siddaraj) along with other miscellaneous applications, wherein the Hon'ble Supreme Court recorded --

"We are inclined to dispose of the present miscellaneous applications directing that Clauses (a), (b) and (c) of the order dated 6-9-2024 will be treated as final directions. We are, however, of the opinion that Clause (d) of the order dated 6-9-2024 requires



modification which shall now read as under:

(d) In case any retired employee filed an application for intervention/impleadment/writ petition/original application before the Central Administrative Tribunal/High Courts/this court, the enhanced pension by including one increment will be payable for the period of three years prior to the month in which the application for intervention/impleadment/writ petition/original application was filed.

Further, clause (d) will not apply to the retired government employee who filed a writ petition/original application or an application for intervention before the Central Administrative Tribunal/High Courts/this Court after the judgment in "Union of India & Anr. vs. M. Siddaraj", as in such cases, Clause (a) will apply."

24. Learned senior counsel for the petitioners thus submits that after the order dated 20-2-2025 passed by the Hon'ble Supreme Court as recorded hereinabove, leaves absolutely no room for any further clarification/interpretation with regard to the applicability of the order dated 11-4-2023



passed in Civil Appeal No. 2471 of 2023.

25. It is next submitted by learned senior counsel appearing on behalf of the petitioners that it was for this reason that at the outset, when the present writ application was taken up, it was submitted that the instant writ petition was filed by the petitioners on 17-5-2019.

26. Learned senior counsel for the petitioners thus submits that petitioners are entitled for one increment to be added in their last pay drawn with effect from 17-5-2016, i.e., three years prior to the date of filing of the instant writ application, and accordingly their pension is to be revised. It is next submitted that in view of the clarification made by the Hon'ble Supreme Court by its order dated 20-2-2025 in Miscellaneous Application Diary No. 2400 of 2024 in Civil Appeal No. 3933 of 2023, the resolution of the Department of Finance dated 22-7-2024 (Annexure-5 to the I.A. No. 1 of 2024), whereby it has been decided to grant notional benefit to the government servant retiring on 30th June/ 31st December, with effect from 11-4-2023, has no legs to stand in the case of the petitioners.

27. The learned appearing on behalf of the State is not in a position to rebut the said submission of the learned senior



counsel appearing on behalf of the petitioners, but then submits that from perusal of the date of retirement of the petitioners as pleaded at para-5 of the writ application, it would manifest that certain petitioners have retired in between 30th June 2017 to 30th June 2019, as such they will not be entitled for one increment with effect from 2016, as their date of retirement is subsequent to 30th June 2016.

28. Learned senior counsel appearing on behalf of the petitioners fairly submits that the said submission of the learned State counsel cannot be countenanced.

29. After hearing the learned counsel for the parties, the Court is in complete agreement with the submission made by the learned senior counsel appearing on behalf of the petitioners.

30. Having regard to the facts and circumstances of the case and also taking into consideration the order of the Hon'ble Supreme Court dated 20-2-2025 in Miscellaneous Application Diary No. 2400 of 2024 in Civil Appeal No. 3933 of 2023, the resolution dated 22-7-2024 (Annexure-5 to the I.A No. 1 of 2024) issued by the Department of Finance, Government of Bihar, whereby it has been decided to grant notional benefits to the government servant retiring on 30th June/31st December with



effect from 11-4-2023, is hereby quashed in so far as it affects the petitioners.

31. It is made clear that all the petitioners, who have retired in between 30th June 2009 till 30th June 2016, will be entitled for their increment with effect from 1-7-2016, whereas those petitioners, who have retired after 30th June 2016, i.e., on 30th June 2017, 30th June 2018 and 30th June 2019, will be entitled for their increment with effect from the date on which they have retired, i.e., 1st July 2017, 1st July 2018 and 1st July 2019.

32. It goes without saying that the authorities now will add the last increment in the last pay drawn with effect from 1st July 2016 with respect to those petitioners who have retired in between June 2009 till June 2016 and with respect to rest of the petitioners, their last increment would be added with effect from the date of their retirement, within a period of four months from the date of receipt/production of a copy of this order.

33. The writ application is allowed.

(Satyavrat Verma, J)

SUMIT/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29-4-2025.
Transmission Date	

