

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3528 of 2023

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Shri Shiv Kumar Son of Late Raghunandan Paswan/R.N. Paswan, resident of
Village - Laxmipur, P.O. - Losghani, P.S. - Piri Bazar, District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Department of General Administration, Bihar, Patna.
2. The Under Secretary, Bihar, Patna Personal Claim and Redressal Cell, Bihar, Patna.
3. The Law Secretary, Government of Bihar, Patna.
4. High Court of Judicature at Patna through its Registrar General, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Sinha, Advocate Mr. Munish Kumar, Advocate Mr. Minakshi Kumar, Advocate Mr. Munna Raj, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj (Gp5)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-10-2023

A retired District Judge claims his annual increment, which normally would have fallen due only on the next day of completion of one full year. He retired on the last date, thus dis-entitling him from the increment, which he would have otherwise been entitled to had he continued in service, with the increment reckoned for last pay drawn to determine his pension.



2. The petitioner, who was appointed as a Munsif was promoted as Additional District and Sessions Judge on 03.01.2019. The petitioner contends that his annual increment falls on the 1st January of every year of service. The petitioner retired on 31.12.2022, and, hence, he was deprived of the annual increment on successful completion of his one year of service between 01.01.2022 and 31.12.2022. The petitioner relies on Annexure-1, judgment of a Division Bench of the High Court of Judicature at Madras, the SLP against which was dismissed by Annexure-2 and a Division Bench decision of the High Court of Judicature at Bombay, Nagpur Bench; the later decision having followed the decision of the Madras High Court.

3. The State does not dispute the fact that the petitioner retired on 31.12.2022, and his annual increment falls due on 01.01.2023. The State, however, points out that going by the decision of the Hon'ble Supreme Court in **Kunhayammed and Ors. Vs. The State of Kerala; 2006 (6) SCC 359** produced as Annexure-B, the dismissal of an SLP without any observation on merits of the matter cannot



be taken as a binding precedent under Article 141 of the Constitution of India. It is pointed out that a Division Bench of this Court in **C.W.J.C. No. 15307 of 2006** titled as **Union of India v. Lalit Mohan Sahay** has held that a person retiring on 31.01.1989, would not be entitled to the annual increment falling due on 01.02.1989, reported in **2009 (2) PLJR 598**.

4. We would have normally referred the matter for consideration by a larger bench especially since, we are bound by a coordinate bench decision of this Court and the decisions of other High Courts have only a persuasive effect; however strong the persuasion and our inclination to follow the dictum of the other High Courts. That would not be necessary, if we notice the decision of the Hon'ble Supreme Court in **All India Judges Association vs. Union of India & Ors; 2023(4) BLJ 6 (SC)** in which similar recommendations have been upheld by the Hon'ble Supreme Court. We extract paragraph no. 53, 54 and 55 of the aforesaid judgment.

53. Three sets of decisions had been rendered by different High Courts regarding this. The



first view, which was taken by the High Courts of Madhya Pradesh, Gujarat and Allahabad, is that when the increment becomes due the next day after retirement, the employee ought not to be denied the benefit of the increment for the purpose of pay. The second view, which was taken by the High Courts of Madras, Orissa and Delhi is that the increment would accrue to officers only for the purpose of pension alone. The third view, taken by the Andhra Pradesh, Himachal Pradesh and Rajasthan High Courts is that the increment cannot be granted to the officers.

54. The law has now been settled by this Court in a recent judgment **Director, KPTCL vs. CP Mundinamani**. This Court approved the judgment of the High Court of Allahabad's view in **Nand Vijay Singh vs. Union of India** it was held:-

“24. ... In the case of a government servant retiring on 30th of June the next day on which increment falls due/becomes payable loses significance and must give way to the right of the government servant to receive increment due to satisfactory service 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.”

55. In such circumstances, the recommendations of the Commission in so far as it notionally grants the increment for the purposes of pension is completely justified. As a consequence of the acceptance of the recommendation, the calculation of pension must notionally include the increment for the purposes of calculation of pension. This will also obviate any confusion. It is therefore directed that the High Courts amend the applicable rule to state that the increment which becomes due to the judicial officer on the day after his retirement may be notionally included in the calculation of his pension as his last pay, subject to the vertical ceiling of Rs. 2,24,100/-

5. In the above circumstances, we feel no requirement to refer the matter to a larger Bench and following the judgment of the Hon’ble Supreme Court, we allow the writ petition. The petitioner shall be granted the increment notionally to reckon his last pay drawn and the retirement benefits shall be re-fixed in accordance with that. The entire exercise shall be carried out within a period of



three months and the revised pension with arrears paid to the writ petitioner.

6. The writ petition stands allowed without any order on costs.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2023.
Transmission Date	

