



W.P. Nos.18260/2024 & 38596/2024

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL

WRIT PETITION No. 18260 of 2024

JUSTICE NARESH KUMAR GUPTA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WITH

WRIT PETITION No. 38596 of 2024

JUSTICE UMESH CHANDRA MAHESHWARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Satyam Agrawal – Advocate through video conferencing with Shri Aryan Shukla – Advocate for the petitioner in W.P. No.18260/2024.

Shri Saket Agrawal – Advocate for the petitioner in W.P. No.38596/2024.

Shri B.D. Singh – Deputy Advocate General for the respondent no.1/State.
Shri Sanjay Lal-Advocate for the respondent no.2.

Reserved on : ***21.11.2025***

Pronounced on : ***29.05.2026***



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JUDGMENT

Per Justice Sanjeev Sachdeva:

1. This order will govern the disposal of Writ Petition No.18260/2024 and Writ Petition No.38596/2024 as common issues are involved in both the petitions.

2. Petitioner in W.P. No.18260/2024 retired as a Judge of the High Court of Madhya Pradesh on 30.06.2017. Thereafter on 18.10.2017, he was appointed as Lokayukt of the State of Madhya Pradesh, from where he retired on 10.03.2024.

3. Petitioner in W.P. No.38596/2024 demitted the office of High Court of Madhya Pradesh on 27.06.2016 and was appointed as Up-Lokayukt on 28.06.2016 of the State of Madhya Pradesh, from where he retired on 27.06.2022.

4. Both the petitioners rendered services as Lokayukt and Up-Lokayukt in the State of Madhya Pradesh. Secretary, Lokayukt Office, Bhopal forwarded their respective pension cases to Principal Secretary, General Administrative Department (GAD for short), State of M.P., being the Nodal Department for Lokayukt Organization and GAD after obtaining due approval and order from the Governor for payment of Pension and Gratuity to the petitioners forwarded the case of the petitioners to the Principal Accountant General (PAG for short), with a direction for payment of amount of Pension and Gratuity to the petitioners on respective dates, however, PAG declined to pay the amount of Gratuity by impugned letter dated 13.06.2024 on the ground that there is no provision for payment of Gratuity to Lokayukt and Up-



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lokayukt in Madhya Pradesh Lokayukt and Up-lokayukt Adhiniyam,1981 (in short “Adhiniyam,1981”) or in Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982 (in short “Rules, 1982”) and, therefore, no Gratuity was payable to the Lokayukt and Up-lokayukt. Second reason assigned by PAG was that the petitioners had already received the amount of Gratuity at the time of demitting office of Judge of High Court and there was a ceiling of Rs, 20,00,000/- for a Judge of High Court, therefore, no additional amounts towards Gratuity was payable to the petitioners.

5. Both the Petitioners have assailed communication dated 13.06.2024 on the grounds *inter alia* that the appointment as Lokayukt or Up-lokayukt cannot be treated as continuation of service of a Judge of High Court and, therefore, the contention of PAG that as the Gratuity amount was paid to the petitioners at the time of demitting the office of Judge of the High Court, they was not entitled for additional Gratuity is illegal, arbitrary and unjust. Petitioners contend that after demitting the office of a High Court Judge they rendered services to the State of Madhya Pradesh as Lokayukt or Up-lokayukt respectively and therefore they were entitled to payment of Gratuity separately.

6. Petitioners further contend that once the State Government had already considered the matter and approval was granted by the Governor directing payment of Gratuity to the petitioners, the PAG had no authority to deny payment of Gratuity to the petitioners and the action of the PAG was contrary to provisions of law. Petitioners further contend that the denial by the PAG on the ground that after omission of Rule 8(A), there is no provision in the Rules, 1982 to make the payment



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of gratuity and thus petitioners were are not entitled for gratuity, is erroneous. It is submitted that definition of “Pension” in section 2(1) (gg) of the High Court Judges (Salaries and Conditions of Service) Act, 1954 (hereinafter referred to as the HC Judges Act, 1954), which is applicable to Lokayukt and Up-lokayukt, the expression pension includes Gratuity also.

7. It is further contended that earlier Gratuity had been paid to former Lokayukts and up-lokayukts in the case of Justice Dayal, Justice Naolekar and Justice Chandresh Bhushan but the payment of same was being erroneously denied to the petitioners, which is in contravention to the fundamental rights of the equality guaranteed under Article 14 of the Constitution of India.

8. In reply, PAG contends that even after receipt of the payment order from the GAD authorizing payment of pension to the petitioners, gratuity was not paid due to absence of any specific rule in the Rules, 1982. It is contended that earlier there was a provision for payment of Gratuity in Rule 8(A) of the Rules, 1982, which was omitted vide amendment published in Madhya Pradesh Gazette on 04.03.2005 and thereafter there is no provision for payment of Gratuity in the Rules, 1982, therefore, petitioners are not entitled for payment of Gratuity. It is further contended that the maximum ceiling of Gratuity benefit payable to a Judge of High Court is Rs. 20 lakhs and said amounts were already paid to the petitioners therefore the petitioners are not entitled to get any further amount of Gratuity.



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9. During pendency of the petitions, respondents made a payment of Rs. 5 lakhs to the petitioners contending that the ceiling of Rs. 20 lakhs has been enhanced to Rs. 25 lakhs. Reference is made to letter dated 10.03.2025, whereby it was communicated that w.e.f. 01.01.2024, maximum limit for payment of Death-Cum-Retirement Gratuity (DCRG) has been enhanced to Rs. 25 lakhs and consequently further amount of Rs. 5 lakhs were paid to the petitioners.

10. It is contended by the Petitioners that there is no maximum limit fixed by the HC Judges Act, 1954 and therefore the denial of balance amount of Gratuity to the petitioners on the ground that no further amount is payable due to ceiling of the maximum payable amount, is erroneous and liable to be struck down. It is submitted on behalf of the petitioners that in the Rules, 1982 provisions of Rule 8 provide that the maximum limit fixed for pension of the Chief Justice or the Judges of the High Court should not be applicable in fixation of pension for the services rendered as Lokayukt or Up-lokayukt and therefore even if maximum DCRG limit is fixed under HC Judges Act, 1954, same shall not be applicable to the case of Lokayukt or Up-lokayukt and thus the petitioners are entitled to balance amount of Gratuity.

11. The questions that arise for determination in these petitions is as to *Whether any Death-Cum-Retirement Gratuity is payable to Lokayukt or Up-lokayukt of State of Madhya Pradesh in absence of any provision in the Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982?*

12. Appointment of Lokayukt and Up-lokayukt is in terms of Section 3 of the Adhiniyum 1981. Section 3(2) thereof reads as under:



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"3. Appointment of Lokayukt and Up-lokayukt-

*(1)****

(2) A person shall not be qualified for appointment as.

(a) Lokayukt unless he has been a Judge of the Supreme Court or Chief Justice or Judge of any High Court in India.

(b) Up-lokayukt, unless he is or has been a Judge of any High Court in India or has held the Office of the Secretary to Government of India or has held any other post under Central or a State Government carrying a scale of pay which is not less than that of a Additional Secretary to Government of India.

*(3) *****"*

13. Originally, when the Adhiniyum was enacted in 1981, Section 3(2)(a) of the Act provided that a person shall not be qualified for appointment as Lokayukt unless he has been a "Judge of the Supreme Court or the Chief Justice of any High Court in India." In 2003 the Act was amended by the MP Amendment Act 24 of 2003, to read "a Judge of the Supreme Court or Chief Justice or Judge of any High Court in India."

14. The Term of office and other conditions of service of Lokayukt and Up-lokayukt are governed by Section 5 of the Adhiniyum. Section 5 (4) and (5) of the Adhiniyum deal with salaries, allowances and pension payable to and other conditions of service of Lokayukt and Up-lokayukt.

15. For answering the questions that arise for consideration in these petitions it would be expedient to examine the legislative history of the said provisions.



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16. When the Adhiniyum was enacted in 1981, said sub sections read as under:

“5. Term of office and other conditions of Service of Lokayukt and Up-lokayukt-

*(1) ****

(4) There shall be paid to Lokayukt and Up-lokayukt such salaries as are specified in the Second Schedule.

(5) The allowances and pension payable to, and other conditions of service of, Lokayukt or Up-lokayukt shall as may be prescribed

Provided that-

(a) in prescribing the allowances and pension payable to and other conditions of service of, Lokayukt, regard shall be had to the allowances and pension payable to, one other conditions of service of, Judge of the Supreme Court or Chief Justice of a High Court;

(b) in prescribing the allowances, and pension payable to, and other conditions of service of Up-lokayukt regard shall be had to the allowances and pension payable to, and other conditions of service of, a Judge of a High Court or Secretary to the Government of India or the Chief Secretary to a State Government:

Provided further that, the allowances and pension payable to, and other conditions of service of, Lokayukt or Up-lokayukt shall not be varied to his disadvantage after his appointment.

*(6) *****”*

17. Section 5(4) of the Act refers to the Second Schedule. The Second Schedule when enacted in 1981, read as under

"THE SECOND SCHEDULE

[See section 5(4)]



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There shall be paid to the Lokayukt and the Up-lokayukt in respect of time spent on actual service, salary at the following rates per mensem, that is to say:-

Lokayukt 4,000 rupees Plus such perquisites and allowances as were last available to incumbent during his service.

Up-lokayukt 3,500 rupees Plus such perquisites and allowances answered last available to the incumbent during his service:

Provided that, if the Lokayukt or an Up-lokayukt at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Government or under the Government of a State or any of its predecessor Governments, his salary in respect of service as the Lokayukt or, as the case may be, Up-lokayukt shall be reduced-

(a) *by the amount of that pension, and*

(b) *if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension, and*

(c) *if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity."*

18. In 1985 by the Madhya Pradesh Lokayukt Evam Up-lokayukt (Sanshodhan) Adhiniyam, 1985, the Second Schedule was amended retrospectively with effect from 14.02.1982 and after amendment it read as under:

“THE SECOND SCHEDULE

[See section 5 (4)]



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After appointment there shall be paid to the Lokayukt and Up-lokayukt in respect of time spent on actual service, salary at the following rates per mensem, that is to say,-

Lokayukt 4,000 rupees plus such perquisites and allowances as are payable to-

(i) a Judge of the Supreme Court in case Lokayukt is appointed from amongst the Judge of the Supreme Court;

(ii) a Chief Justice of a High Court in case Lokayukt is appointed from amongst Chief Justices of High Courts in India.

Up-lokayukt -3,500 rupees plus such perquisites and allowances as are payable to-

(i) a Judge of any High Court in India in case Up-lokayukt is appointed from amongst the Judges of any High Court;

(ii) a Secretary to the Government of India in case Up-lokayukt is appointed from amongst the Secretaries to the Government of India;

(iii) a Chief Secretary to a State Government in case Up-lokayukt is appointed from amongst Chief Secretaries of State Governments;

Provided that, if the Lokayukt or an Up-lokayukt at time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Government or under the Government of a State or any of its predecessor Governments, his salary in respect of service as the Lokayukt or, as the case may be, Up-lokayukt, shall be reduced-

(a) by the amount of that pension; and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof. by the amount of that portion of the pension; and



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(c) if he has, before such appointment, received a retirement gratuity in respect of such previous service, by the pension equivalent of that gratuity."

19. By The Madhya Pradesh Lokayukt Evam Up-lokayukt (Sanshodhan) Adhiniyam, 1988, the amounts "4,000 rupees and 3,500 rupees" were enhanced to "9,000 rupees and 8,000 rupees" respectively with effect from 01.04.1986.

20. Subsequently by The Madhya Pradesh Lokayukt Evam Up-lokayukt (Sanshodhan) Adhiniyam, 2004, sub section (4) and (5) were substituted, with effect from 01.01.1996, as under:

"(4) The salary, allowances, pension and other perquisites payable to and other conditions of the service of Lokayukta shall be same as are admissible to him before his appointment as contained in the Supreme Court Judges (Conditions of Service) Act, 1958 (No.41 of 1958), or the High Court Judges (Conditions of Service) Act, 1954 (No.28 of 1954) and the rules made under the aforesaid Acts as the case may be.

(5) The salary, allowances, pension and other perquisites payable to and other conditions of the service of Up-lokayukta shall be same as are admissible to a sitting Judge of a High Court as contained in the High Court Judges (Conditions of Service) Act, 1954 (No. 28 of 1954) and rules made there under.

Provided that, if the Lokayukt or an Up-lokayukt at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service, his salary in respect of service as the Lokayukt or, as the case may be, Up-lokayukt shall be reduced-

(a) by the amount of that pension, and

(b) if he has, before such appointment, received in lieu of a portion of the pension due to him in respect of such previous service the commuted value thereof, by the amount of that portion of the pension."



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21. In both the petitions, the relevant applicable provisions are the provisions as amended by the 2004 Amending Act. In terms of the Act as amended by the 2004 Amending Act, the salary, allowances, pension and other perquisites payable to and other conditions of the service of Lokayukt are the same as admissible to him before his appointment as contained in the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 (No. 41 of 1958), or the High Court Judges (Salaries and Conditions of Service) Act, 1954 (No.28 of 1954) and the rules made under the aforesaid Acts, as the case may be.

22. The salary, allowances, pension and other perquisites payable to and other conditions of the service of Up-lokayukt are the same as are admissible to a sitting Judge of a High Court as contained in the High Court Judges (Salaries and Conditions of Service) Act, 1954 (No. 28 of 1954) and rules made thereunder.

23. Proviso to Section 5 of the Act prior to the amendment by the 2004 Amending Act, stipulated that in prescribing the allowances and pension payable to and other conditions of service of Lokayukt and Up-lokayukt regard shall be had to the allowances and pension payable to, and other conditions of service of, Judge of the Supreme Court or Chief Justice of a High Court or a Judge of a High Court or Secretary to the Government of India or the Chief Secretary to a State Government as the case may be.

24. Section 17 of the Act *inter alia* empowers the Governor to make rules for the purposes of carrying into effect the provisions of the Act.



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The Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982 states that "In exercise of the powers conferred by sub-section (1) of Section 17 read with sub-section (5) 5 of the Madhya Pradesh Lokayukt Evam Up-lokayukt Adhiniyam 1981 (No. 37 of 1981) the Government of Madhya Pradesh hereby makes the following rules regulating the allowances, pension and other conditions of service of Lokayukt and Up-lokayukt, namely:....."

25. After the amendment by the 2004 Amendment Act, Section 5(4) and (5) of the Act provides that the salary, allowances, pension and other perquisites payable to and other conditions of the service of Lokayukt shall be same as are admissible to him before his appointment as contained in the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 (No. 41 of 1958), or the High Court Judges (Salaries and Conditions of Service) Act, 1954 (No.28 of 1954) and the rules made under the aforesaid Acts as the case may be and for Up-lokayukt as are admissible to a sitting Judge of a High Court as contained in the High Court Judges (Salaries and Conditions of Service) Act, 1954 (No. 28 of 1954) and rules made there under.

26. Section 5(4) and (5) of the Act, prior to its amendment by the 2004 Amending Act, provided that the allowances and pension payable to, and other conditions of service shall be such '*as may be prescribed*'. Said provision was amended and the power to prescribe has been deleted and substituted '*as contained in the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 and the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the rules framed thereunder*'.



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27. There is a clear legislative shift in 2004; from the power of the Governor to prescribe the allowances and pension payable to, and other conditions of service, to being regulated entirely by the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, or the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the rules made under the aforesaid Acts.

28. Similarly, Chapter III (Sections 13 A to Section 21) of The High Court Judges (Salaries and Conditions of Service) Act, 1954 provide for Salaries and Pensions. Section 17A provides for Family Pension and gratuity and reads as under:

"17A. Family pensions and gratuities. (1) Where a Judge who, being in service on or after the commencement of the High Court and Supreme Court Judges (Conditions of Service) Amendment Act, 1986 (38 of 1986), dies, whether before or after retirement in circumstances to which section 17 does not apply, family pension calculated at the rate of fifty per cent. of his salary on the date of his death shall be payable to the person or persons entitled thereto and the amount so payable shall be paid from the day following the date of death of the Judge for a period of seven years or for a period up to the date on which the Judge would have attained the age of sixty-five years, had he survived, whichever is earlier, and thereafter at the rate of thirty per cent of his salary.

Provided that in no case the amount of family pension calculated under this sub-section shall exceed the pension payable to the Judge under this Act.

Explanation. For the purposes of determining the person or persons entitled to family pension under this sub-section-

- (i) in relation to a Judge who elects or is eligible to receive pension under Part 1 of the First Schedule, the rules, notifications and orders for the time being in force with regard to the person or persons entitled to family pension in relation to an officer of the Central Civil Services, Group 'A', shall apply;*



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(ii) in relation to a Judge who elects to receive pension under Part III of the First Schedule, the ordinary rules of his service if he had not been appointed a Judge with respect to the person or persons entitled to family pension shall apply and his service as a Judge being treated as service therein.

(2) Where any Judge, who has elected to receive the pension payable to him under Part III of the First Schedule, retires, or dies in circumstances to which section 17 does not apply, gratuity, if any, shall be payable to the person or persons entitled thereto under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge being treated as service therein for the purpose of calculating that gratuity.

(3) The rules, notifications and orders for the time being in force with respect to the grant of Death-Cum-Retirement Gratuity benefit to or in relation to an officer of the Central Civil Services, Class I (including the provisions relating to deductions from pension for the purpose) shall apply to or in relation to the grant of death-cum-retirement gratuity benefit to or in relation to a Judge who, being in service on or after the 1st day of October, 1974, retires, or dies in circumstances to which section 17 does not apply, subject to the modifications that-

- i) the minimum qualifying service for the purpose of entitlement to the gratuity shall be two years and six months:*
- (ii) the amount of gratuity shall be calculated on the basis of ten days' salary for each completed six months period of service as a Judge;*

Explanation. In sub-section (3), the expression "Judge" has the same meaning as in section 14."

29. Thus, the contention on behalf of the respondents is clearly not acceptable that in the absence of any provision in the Rules, 1982 and omission of Rule 8(A) in the Rules, 1982, petitioners are not entitled



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for payment of any amount of Gratuity particularly after the amendment to the Act in 2004.

30. Prior to the amendment in 2004, the allowances and pension payable to, and other conditions of service were to be as may be prescribed. However, by the 2004 amendment there is a shift from what could be prescribed to what is stipulated in the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 and the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the rules framed thereunder.

31. Thus, reliance placed by the State upon the Rules to regulate the allowances and pension payable to, and other conditions of Service of the Lokayukt and Up-Lokayukt is erroneous. The allowances and pension payable to, and other conditions of Service of the Lokayukt and Up-Lokayukt are the same as prescribed under the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, or the High Court Judges (Salaries and Conditions of Service) Act, 1954, as the case may be.

32. A Coordinate Bench of this Court; wherein one of us (Chief Justice Sanjeev Sachdeva) was a member in Writ Petition no.7248/2017 (P.P Naoleker and Others Vs. The State of Madhya Pradesh and Others) by order dated 06.05.2025 has already held that after the amendment to the Act in 2004, the allowances and pension payable to the Lokayukt and Up-lokayukt would be as per the provisions prescribed and stipulated in the Supreme Court Judges (Salaries and Conditions of Service) Act,1958 and the High Court Judges (Salaries and Conditions



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of Service) Act,1954 and the Rules framed thereunder and not as may be prescribed.

33. Section 17A (3) of the HC Judges Act,1954 provides for the payment of amount of Death-Cum-Retirement Gratuity benefit and thus the first question is answered that even in the absence of any specific provision in the Adhinyam, 1981 and Rules, 1982, the Lokayukt and Up-lokayukt are entitled to Death-Cum-Retirement Gratuity benefit as stipulated in the SC Judges Act, 1958 or the HC Judges Act, 1954 and the Rules framed thereunder. As both the petitioners are Former Judges of the High Court, the HC Judges Act,1954 would be applicable. Thus, in terms of section 17A(3) of the HC Judges Act, 1954 petitioners are entitled to the payment of gratuity despite omission of Rule 8A of Rule, 1982.

34. In view of the above, the petitions are **allowed** by holding that the petitioners are entitled for the benefit of Death-Cum-Retirement Gratuity for the service rendered as Lokayukta and Up-lokayukta respectively, irrespective of the amount already received by them due to holding the office of judge of the High Court of Madhya Pradesh. The Death Cum Retirement Gratuity shall be paid by the Respondents within a period of 08 weeks along with interest @ 7% per annum from the date of demitting the office of Lokayukt or Up-lokayukt till the date of payment. No order as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(DWARKA DHISH BANSAL)
JUDGE