<u>W.A. Nos.739/2014, 767/2014, 947/2014, 948/2014, 949/2014 & 953/2014</u>

14.3.2016

<u>I.A. No.12946/2015 (W.A. No.953/2014) for passing appropriate order/directions</u>) :

Shri P.K. Kaurav, Advocate for the appellant University.

Smt. Shobha Menon, Senior Counsel with Shri Rahul Choubey, Advocate for the respondent No.1.

Shri Sandeep Kumar Shukla, Advocate for respondent/Union of India.

Heard counsel for the parties.

By this application, the original writ petitioner prays for appropriate direction. The applicant, in fact, prays that the pensionary benefits receivable by the applicant be settled on the basis of his last drawn salary on the date of his retirement. For that reliance has been placed on Rule 30 of the Civil Services (Pension) Rules, which defines the expression "emolument", an amount received immediately before his retirement or on the date of his death, as the case may be.

The applicant claims that he retired on 30.11.2013 on attaining the age of 65 years. It is, however, not in dispute that when the applicant attained the age of 62 years, was

superannuated on 30.11.2010 as per the extant Regulations. The age of superannuation, however, was extended and the applicant by way of writ petition sought direction against the Authorities to continue the applicant in service till he would attain the age of 65 years. Pursuant to that order, the applicant continued to serve till 65 years of age upto 30.11.2013.

That decision of learned Single Judge, however, is the subject matter of challenge in this appeal at the instance of University. According to the University, the applicant was not entitled to continue after attaining the age of 62 years when he stood superannuated on 30.11.2010. However, because of the direction issued by the Court he was taken back in service and was allowed to continue till 65 years. During the *interregnum,* if benefit of 6th Pay Commission was extended to the applicant, that would not enure any right in favour of the applicant. For the purpose of determination of pension, however, the date of superannuation will have to be reckoned as 30.11.2010 when the applicant attained the age of 62 years.

Since, this is the core issue to be considered in the pending appeal, it is not possible to engage ourselves in further analysis on the point except to observe that the

applicant will have to await the decision of the writ appeal to pursue for relief claimed in the application, only if the applicant succeeds in substantiating that he stood retired/superannuated on 30.11.2013, by which date the 6th Pay Commission benefit was extended w.e.f. 1.5.2013. In the meantime, the applicant is free to accept pension and retiral dues on the basis of indisputable position of his date of superannuation as 30.11.2010, without prejudice, if so advised.

Further, counsel for the appellant/University is right in pointing out the order passed by another Division Bench on 30.6.2015 on the similar application preferred by the applicant.

As aforesaid, we decline to grant relief in this application and make it clear that any observation made in this order will not come into way of any party at the time of hearing of Writ Appeal, which will have to be decided on its on merits in accordance with law.

Accordingly this application is **disposed of** on the above terms.

Writ Appeal to be proceeded under priority category **Writ Appeal : Service Matters – Retiral Benefits(16.i)/ High Court Expedited Cases, Other than**

above(3.iii)/Cases of Senior Citizens (4)", whichever is earlier as per its turn.

At this stage, counsel for the applicant submits that there is record to indicate that the applicant was receiving 6th Pay Commission even when he stood superannuated w.e.f. 30.11.2010.

Counsel for the University submits that 6th Pay Commission has been introduced and made applicable to all employees of the University only w.e.f. 1.5.2013.

Even this question will have to be considered in the pending appeal, if the documents in support of this contention are already on record.

(A. M. Khanwilkar)   (Sanjay Yadav)
Chief Justice   Judge

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