



WP-7248-2017 & WP-8399-2017

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

BEFORE

HON'BLE SHRI JUSTICE SANJEEV SACHDEVA

&

HON'BLE SHRI JUSTICE VINAY SARAF

WRIT PETITION No. 7248 of 2017

P.P. NAOLEKAR AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WITH

WRIT PETITION No. 8399 of 2017

CHANDRESH BHUSHAN AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

*Shri Kishore Shrivastava, Senior Advocate with Shri Raman Choubey,
Advocate for the Petitioners in W.P. No. 7248 of 2017.*

*Shri Sanjayram Tamrakar, Senior Advocate with Shri Ankit Chopra,
Advocate for the Petitioners in W.P. No. 8399 of 2017.*

Shri Vivek Sharma, Deputy Advocate General for the Respondent/State.

Pronounced on: 06.05.2025

ORDER

Per: Justice Sanjeev Sachdeva

W.P. No. 7248/2017

1. Petitioner No. 1 in W.P.No.7248/2017 retired as a judge of the Supreme Court of India on 28.06.2008. Thereafter on 29.06.2009, he was appointed as the *Lokayukt* in the State of Madhya Pradesh, from where he retired on 28.06.2016.

2. In the Pension Payment Order (PPO for short) issued post the retirement of the Petitioner No. 1, there was no provision made for payment of family pension to his wife (Petitioner No. 2) and further he was not granted any cash equivalent to the unutilized leave.

3. Petitioners thus filed this petition inter alia seeking a direction to the Respondents to fix the family pension for Petitioner No. 2 (the wife of Petitioner No.1) and for a direction to the Respondents to make payment of cash equivalent to unutilized leave on full allowances to the Petitioner No. 1 as a *Lokayukt* of the State of Madhya Pradesh alongwith interest for delayed payment.

W.P. No. 8399/2017

4. Original Petitioner No. 1 in W.P.No.8399/2017 (now deceased), retired as a judge of the High Court of Madhya Pradesh on 02.11.2005. Thereafter he was appointed as *Up-Lokayukt* on 01.02.2008 of the State of Madhya Pradesh, from where he retired on 01.01.2014.

5. As in the case of the Petitioner in W.P. 7248 of 2017, in this case also, in the Pension Payment Order (PPO for short) there was no provision made for grant of family pension to the wife of Petitioner No. 1 and payment of Cash equivalent to the unutilized leave.

6. Petitioners thus filed this petition *inter alia* seeking a direction to the Respondents to fix the family pension for Petitioner No. 2 (the wife of Petitioner No. 1) and for a direction to the Respondents to make payment of cash equivalent to unutilized leave on full allowances to the Petitioner No. 1 as *Up-Lokayukt* of the State of Madhya Pradesh alongwith interest for delayed payment.

7. During pendency of the petition, Petitioner no.1 expired on 22.08.2018.

8. In both the Writ Petitions, reliance is placed on the case W.P. No. 13294 of 2007(S) titled *Shyamsunder Chawla versus State of Madhya Pradesh* wherein by order dated 03.09.2014, a single judge of this court rejected the plea that as the rules were silent so the wife, Respondent No. 2 would not be entitled to family pension. The Writ Appeal (W.A. 896 of 2014) impugning the said decision was dismissed on 09.12.2014, holding that as Shri Justice Shyamsunder Chawla was getting additional pension as he worked as Deputy Lokayukt and therefore, in the absence of rules his widow could not be deprived of family pension in that regard. Subsequently the Special Leave Petition (S.L.P. (Civil) No. 5796 of 2016) against the order dated 09.12.2014 was dismissed by the Supreme Court of India on 15.02.2016 on the ground of delay, however leaving the question of law open. Thereafter, the Respondents by order dated

24.02.2016 fixed the family pension of the wife of Shri Justice Shyamsunder Chawla.

9. In the present case, the appointment of the respective PetitionersNo.1,in both the petitions, to the post of *Lokayukt*and *Up-Lokayukt*respectively was under the provisions of *M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981* (herein after referred to as ‘the Act’).

10. No separate Return was filed by the Respondents in W.P. No. 8399/2017. They simply adopted the Return filed in W.P. No. 7284 of 2017. The stand taken by the Respondents is that the family pension for respective PetitionerNo.2 was not fixed because in the *Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982*(hereinafter referred to as the “Rules”) there is no mention of grant of family pension to the dependent of the *Lokayukt* or *Up-Lokayukt* in the State of Madhya Pradesh and for the benefit to be extended there has to be an explicit and express provision under the rules and in absence thereof such relief cannot be granted.

11. With respect to payment of cash equivalent to unutilised leave, the stand of the Respondents is that asPetitioners have already availed the benefit of leave encashment of 300 days in their capacity as Judges, in view of Rule 6 of the Rules, they are not entitled for any benefit of leave encashment for the services rendered as *Lokayukt* and *Up-lokayukt*. Reliance is also placed on the judgment of the Supreme Court of India in *V.S. Mallimathversus Union of India & another (2001) 4 SCC 31*.

12. As per the Respondents, during the pendency of these petitions, Rules were amended with effect from 25.01.2022 and provision for family pension was inserted in the Rules. A statement was made by the Deputy Advocate General appearing for the State on 05.02.2025 that family pension had already been fixed and was being paid to PetitionerNo.2 of W.P. No.8399/2017 (wife of the Late Petitioner No. 1 who expired on 22.08.2018), from the date of amendment i.e. 25.01.2022 of the Rules. It was further stated that family pension would be payable to the PetitionerNo. 2 of W.P. No.7248/2017 as and when the cause so arises.

13. In view of the statement made on behalf of the State, the grievance of the Petitioners of W.P. No.7248/2017 in respect of family pension has been resolved. In so far as PetitionerNo. 2 of W.P. No.8399/2017 is concerned, the issue still survives as the family pension has only been paid to her from the date of amendment of the Rules on 25.01.2022 and not from the date of death of PetitionerNo.1 i.e. 22.08.2018.

14. In so far as the payment of cash equivalent to unutilized leave is concerned, said issue survives in both the petitions.

15. The questions that arise for determination in these petitions are:

- i. *Whether family pension is payable to the dependent family member of the Lokayukt and Up-lokayukt from the date of death of the Lokayukt or Up-Lokayukt or from the date a specific provision was made in the Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982?*
- ii. *Whether the Lokayukt and Up-lokayukt appointed under the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 are entitled to cash equivalent to unutilized leave, even if*

they have already availed the benefit of leave encashment of 300 days in their capacity as Judges prior to their appointment as Lokayukt and Up-lokayukt?

16. To answer the questions that arise for determination in these petitions, we need to examine the Act.

17. Appointment of *Lokayukt* and *Up-Lokayukt* is in terms of Section 3 of the Act. Section 3(2) of the Act reads as under:

“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) *****”

18. Originally, when the Act 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.*”

19. The Term of office and other conditions of service of *Lokayukt* and *Up-Lokayukt* are governed by Section 5 of the Act. Section 5 (4) and (5) of the Act deals with salaries, allowances and pension payable to and other conditions of service of *Lokayukt* and *Up-Lokayukt*.

20. For answering the questions that have arisen in these petitions it would be expedient to examine the legislative history of the said provisions.

21. When the Act 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 be such 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) *****”

22. 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)]

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 the incumbent during his service.

Up-Lokayukt 3,500 rupees Plus such perquisites and allowances as were 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.”*

23. In 1985 by the *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)]

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

24. By the *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.

25. Subsequently by *The Madhya Pradesh Lokayukt Evam Up-Lokayukt (Sanshodhan) Adhiniyam, 2004*, subsection (4) and (5) was 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.”

26. In both the petitions we are concerned with 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 *Lokayuktare* 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.

27. The salary, allowances, pension and other perquisites payable to and other conditions of the service of *Up-Lokayuktare* 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 there under.

28. The contention on behalf of the State, to deny Family Pension, is that the *Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982*, did not provide for grant of family pension and as such, same did not fine mention in the PPO issued to the Petitioner No. 1

in WP 8399 of 2017 and as the Rules were amended on 25.01.2022 specifically providing for Family Pension, same has been paid to Petitioner No. 2 (wife of Late Petitioner No. 1).

29. The 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.

30. 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. 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 here by makes the following rules regulating the allowances, pension and other conditions of service of Lokayukt and Up-Lokayukt, namely:-.....*”

31. 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.

32. 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 by 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.

33. There is no merit in the contention on behalf of the State. 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.

34. Chapter III (Sections 12 A to Section 21) of *The Supreme Court Judges (Salaries and Conditions of Service) Act, 1958* provide for Salaries and Pensions. Section 16A provides for Family Pension and gratuity and reads as under:

“16A. Family pension and gratuity.— (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),—*

(a) dies before retirement, 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; and

(b) dies after retirement on attaining the age of sixty-five years, family pension shall be thirty per cent. of his salary and shall be payable to the person or persons entitled thereto;

(c) dies after retirement after seeking premature retirement and before attaining the age of sixty-five years, family pension shall be calculated at the rates specified in clause (a) shall be payable to the person or persons entitled thereto.

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 I of the 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;

(ii) in relation to a Judge who elects to receive pension under Part III of the 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) 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 16 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 (2), the expression “Judge” has the same meaning as in section 13.”

35. 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 I 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;

(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.”

36. The contention on behalf of the State is clearly not acceptable. Particularly after the amendment to the Act in 2004. 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.

37. Thus the State cannot now rely upon the Rules to regulate the allowances and pension payable to, and other conditions of Service of the *Lokayukt* and *Up-Lokayukt*. 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.

38. However, it is debatable as to whether prior to the 2004 amendment, the allowances and pension payable to *Lokayukt* and *Up-Lokayukt* could be prescribed by the *Madhya Pradesh Lokayukt and Up-*

lokayukt (Conditions of Service) Rules, 1982 lower than what was stipulated by the *Supreme Court Judges (Salaries and Conditions of Service) Act, 1958* and the *High Court Judges (Salaries and Conditions of Service) Act, 1954* because Section 5 (4) and 5 (5) of the Act mandated that 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.

39. Even if the *Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982* did not contain a stipulation for Family Pension, whether it could be denied, in view of the same being specifically provided by the *Supreme Court Judges (Salaries and Conditions of Service) Act, 1958* and the *High Court Judges (Salaries and Conditions of Service) Act, 1954* is also debatable. However, in the petitions at hand, said question does not arise for consideration as the Petitioner No. 1 in both the Petitions were appointed respectively as *Lokayukt* and *Up-Lokayukt* after the 2004 amendment.

40. Therefore, in respect of W.P. 8399 of 2017, in terms of the 2004 amendment, Family Pension would be payable to Petitioner No. 2, in terms of Section 17A of the *High Court Judges (Salaries and Conditions of Service) Act, 1954*. Thus, it is held that Petitioner No. 2 is entitled to Family Pension from the date of death of Petitioner No. 1 on 22.08.2018 and not from the date of amendment of the Rules on 25.01.2022.

41. In view of the above, in respect of question No. 1 “*Whether family pension is payable to the dependent family member of the Lokayukt and Up-lokayukt from the date of death of the Lokayukt or Up-Lokayukt or*

from the date a specific provision was made in the Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982?”, it is held that after the 2004 amendment of the Act, Family Pension is payable to the dependent family member of the Lokayukt and Up-Lokayukt from the date of death of the Lokayukt or Up-Lokayukt, and not from the date a specific provision was made in the *Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982*. The question as to what would be the position prior to the 2004 amendment is left open.

42. Coming to the question of entitlement of cash equivalent to unutilized leave.

43. Respondents have contended that as Petitioners have already availed the benefit of leave encashment of 300 days in their capacity as Judges they are not entitled for any benefit of leave encashment for the services rendered as *Lokayukt* and *Up-lokayukt*. Reliance is placed on Rule 6 of the *Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982* to contend that proviso to the said rule stipulates: “*Provided that the earned leave encashed by the Lokayukt or Up-Lokayukt under this sub-rule together with any amount of leave encashed earlier during the tenure of his service shall not exceed the limit of 300 days.*”

44. Reliance had been placed by the learned counsel for the Respondent on Rule 6 of the Rules as it was originally enacted in 1982. However said rule has been amended *inter alia* in the years 1989 and 1995 and the period has been reduced to 240 days.

45. The amended Rule 6 as it stood after the 1995 amendment and as applicable to the present cases reads as under:

“6. Leave:

(1) *The Lokayukt and the Up-Lokayukt shall be entitled to earned leave on full allowance upto 1/11th of the period spent on duty:*

Provided that they shall cease to earn such leave when the earned leave due amounts to [240 days:] [Substituted by Notification No. F. 4(3) 89-XLIX-10, dated 20-7-1989.]

Provided further that the Up-Lokayukt, who at the time of his appointment as Up-Lokayukt was in the service of the Central or a State Government, the leave standing to his credit on the date of his appointment as Up-Lokayukt shall be carried forward and he may avail of such leave during his tenure as Up-Lokayukt.

(2) *The maximum earned leave that may be granted at any one time shall be [150 days] [Substituted by Notification No. F. 4(3) 89-XLIX-10, dated 20-7-1989.].*

[(2-A) Lokayukt and Up-Lokayukt shall be entitled to casual leave of fifteen days in a year.] [Inserted by Notification No. F. 4(3) 89-XLIX-10, dated 20-7-1989.]

(3) *In the matter of all other types of leave the Lokayukt and the Up-Lokayukt shall be governed by the rules and practices applicable to the Chief Justice and the other Judges of the High Court.*

(4) *[The Lokayukt and Up-Lokayukt shall be entitled to cash equivalent of leave salary in respect of the period of earned leave at their credit on the date of retirement subject to a maximum of 240 days :Provided that the earned leave encashed by the Lokayukt or Up-Lokayukt under this sub-rule together with any amount of leave encashed earlier during the tenure of his service shall not exceed the limit of 240 days.] [Substituted by Notification No. F-15-95-1-(10), dated 26-8-1995.]*

(5) *If in public interest or due to exigencies of public service, the Lokayukt or Up-Lokayukt is refused leave preparatory to retirement, he shall for the hardship caused by such refusal, be*

granted compensation for leave so refused up to maximum of 120 days of leave refused and such compensation determined in manner laid down in sub-rule (6) shall be paid to the Lokayukt or Up-Lokayukt as the case may be, in as nearly as possible, equal monthly instalments, not exceeding four.

(6)(a) The compensation referred to in sub-rule (5) shall be computed in the first place calculating separately:-

- (i) amount of leave salary that the Lokayukt would have drawn, if the leave had not been refused; and*
- (ii) the pension (inclusive of the pension equivalent of gratuity) to which Lokayukt or as the case may be, Up-Lokayukt is entitled from the date of vacation of office, for a period equivalent to the period of leave refused.*

(b) The total amount of pension referred to in item (ii) of clause (a) shall next be deducted from the total amount of leave salary referred to in para (i) of clause (a) and the balance shall be the amount of compensation payable to under sub-rule (5) to the Lokayukt or to the Up-Lokayukt, as the case may be."

46. Though, we are unable to accept the contention of learned Deputy Advocate General for the State that the period eligible for leave encashment would be restricted to 300 days by the Rules, however, for different reasons as discussed hereinafter, we hold that the period would be restricted to 300 days.

47. The judgment in the case of *V.S. Mallimath (supra)* relied upon by learned Deputy Advocate General has no applicability to the facts of the present case, in view of different statutory provisions applicable. In *V.S. Mallimath (supra)* the Supreme Court was considering the *Protection of Human Rights Act, 1993* and the *National Human Rights Commission*

Chairperson and Members (Salaries Allowances and Other Conditions of Service) Rules, 1993, which have different statutory provisions.

48. As has been held hereinabove, that after the amendment of the Act in 2004, the allowances and pension payable to, and other conditions of service would be entirely governed by 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.

49. Reference may be had to the *Supreme Court Judges (Salaries and Conditions of Service) Act, 1958*, which in Rule 4A provides for leave encashment and reads as under:

“4A. Leave encashment.—*A Judge shall be entitled in his entire service, including the period of service rendered either as a Judge of a High Court or in a pensionable post under the Union or a State or on re-employment, if any, to claim the cash equivalent of leave salary on his retirement in respect of the period of leave at his credit, calculated on full allowances basis, to the extent of the maximum period prescribed for encashment of such leave under the All India Service (Leave) Rules, 1955.”*

(underlining supplied)

50. The Corresponding Rule 4 A of the *High Court Judges (Salaries and Conditions of Service) Act, 1954* reads as under:

“4A. Leave encashment.—*A Judge shall be entitled in his entire service, including the period of service rendered in a pensionable post under the Union or State or on re-employment, if any, to claim the cash equivalent of leave salary on his retirement in respect of the period of leave at his credit, calculated on full allowances basis, to the extent of the maximum period prescribed for encashment of such leave under the All India Service (Leave) Rules, 1955.”*

(underlining supplied)

51. Both the Acts refer to the maximum period prescribed for encashment of such leave under the All India Service (Leave) Rules, 1955. The All India Service (Leave) Rules besides prescribing for various types of rules that are admissible, in Rule 20A provides for Payment of cash equivalent of leave salary in case of retirement or death. Said Rule reads as under:

“20A. Payment of cash equivalent of leave salary in case of retirement or death.—

(1) Where a member of the Service retires from the service, whether on attaining the age of superannuation under sub-rule(1) of rule 15 or sub-rule(2), (2A) or (3) of rule 16, of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 or dies, the Government shall suo-motu sanction to him or his family, as the case may be, cash equivalent of leave salary in respect of both earned leave and half pay leave, if any, standing in his credit on the date on which he ceases to be member of the Service subject to a maximum of 300 days and pay the same in lumpsum as a onetime settlement. The cash equivalent shall be equal to the leave salary as admissible for earned leave and /or equal to the leave salary as admissible for half pay leave plus dearness allowance admissible on the leave salary for the first 300 days.

(2) The cash equivalent of leave salary payable to a member of service, under sub-rule(1) shall also include dearness allowance but shall not include any other allowances.

(3) The cash equivalent of leave salary for earned leave payable under sub-rule(1) shall be calculated as follows:

Cash payment in lieu of Earned leave component	=	<div> Pay admissible on the date of retirement/death Plus Dearness Allowances admissible thereon </div> <hr/> 30	X	Number of days of unutilized earned leave at credit up to a maximum of 300 days
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(4) *The leave salary payable for the Half Pay Leave component under sub-rule (1), shall be calculated as follows:-*

Cash payment in lieu of half pay leave component	=	<i>Half pay leave salary admissible on the date of retirement plus Dearness Allowance admissible on that date</i> <hr/> 30	X	<i>Number of days of half pay leave at credit subject to the total of earned leave and half pay leave at credit not exceeding 300 days.</i>
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Provided that to make up the shortfall in earned leave, no commutation of half pay leave shall be permissible.

(a) *A member of the Service who has been permitted by the State Government to voluntarily retire from service while under suspension or who is retired by the Central Government in public interest while under suspension shall be paid cash equivalent of leave salary under sub-rule(1) in respect of the period of leave at his credit on the date of his retirement from service provided that in the opinion of the authority competent to order reinstatement the member of the service has been fully exonerated and the suspension was wholly unjustified.”*

52. Rule 20A of the All India Service (Leave) Rules provides for 300 days as the maximum limit for encashment. Both the *Supreme Court Judges (Salaries and Conditions of Service) Act, 1958* and the *High Court Judges (Salaries and Conditions of Service) Act, 1954* stipulate that a Judge shall be entitled “in his entire service, including the period of service rendered in a pensionable post under the Union or State or on re-employment, if any.” to claim the cash equivalent of leave salary to the extent of the maximum period prescribed for encashment of such leave under the *All India Service (Leave) Rules, 1955*.

53. The legislative intent is apparent. The intention of the legislature is that in the entire service of any nature to which the *All India Service (Leave) Rules, 1955* apply, the maximum period prescribed in the said rules would apply. The rules restrict the period for which cash equivalent of leave salary can be claimed on retirement to 300 days.

54. In view of the above the second question *Whether the Lokayukt and Up-lokayukt appointed under the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 are entitled to cash equivalent to unutilized leave, even if they have already availed the benefit of leave encashment of 300 days in their capacity as Judges prior to their appointment as Lokayukt and Up-lokayukt* is answered in favour of the State. The *Lokayukt and Up-Lokayukt* appointed under the *M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981* are entitled to cash equivalent to unutilized leave subject to a maximum of 300 days including the number of days of leave encashment already availed in their capacity as Judges.

55. Admittedly, both the Petitioners No. 1 in the respective petitions were given cash equivalent to unutilized leave of 300 days in their capacity as Judges. Thus on this count they would not be entitled to any further amount.

56. In view of the above, the petitions are thus disposed on holding and directing that:

- i. after the 2004 amendment of the *M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981*, Family Pension is payable to the dependent family member of the Lokayukt and Up-Lokayukt from the date of death of the Lokayukt or Up-Lokayukt, and not from the date a

specific provision was made in the Madhya Pradesh Lokayukt and Up-lokayukt (Conditions of Service) Rules, 1982. The question as to what would be the position prior to the 2004 amendment is left open; and

- ii. Respondents shall make the payment of family pension to Smt. Madhu Bhushan (PetitionerNo.2, in W.P.No.8399 of 2017) from the date of death of Shri Justice Chandresh Bhushan i.e. from 22.08.2018. The arrears shall be paid to Petitioner no. 2 within a period of 90 days from today along with the interest @ 7% *per annum*; and
- iii. Respondents, shall issue a revised Pension Payment Order to Petitioners of W.P. No. 7248/2017 incorporating the entitlement of Petitioner No. 2 to family pension, in compliance of order dated 05.02.2025, within a period of one month from today, if not already done; and
- iv. The *Lokayukt* and *Up-Lokayukt* appointed under the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 are entitled to cash equivalent to unutilized leave subject to a maximum of 300 days, including the number of days of leave encashment already availed in their capacity as Judges.

57. The petitions are disposed of in the above terms, with no orders as to costs.

(SANJEEV SACHDEVA)
JUDGE

(VINAY SARAF)
JUDGE