



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5517 OF 2016

Sidharam Anandrao Hatte

VERSUS

The State Of Maharashtra And Others

...

- Mr. Gaurav L. Deshpande, Advocate for the Petitioner
- Mr. K. N. Lokhande, AGP for Respondent Nos. 1, 3 and 4

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CORAM : KISHORE C. SANT AND
JITENDRA JAIN, JJ.

DATE : 11th AUGUST, 2026

PER COURT :

1] Heard learned advocate Mr. Gaurav L. Deshpande for the petitioner and learned AGP Mr. K. N. Lokhande for respondent Nos.1, 3 and 4.

2] The petitioner has approached this Court with a grievance that, while he was in service, the benefit of the increments earned by him was not taken into consideration while fixing his pay pursuant to the recommendations of the Justice Shetty Commission. It is the case of the petitioner that, from 1996 till 2003, he had earned seven increments. However, according to the petitioner, though he was entitled to seven increments, one increment was not granted for one year. Thereafter, when the benefit of the Justice Shetty Commission recommendation was made applicable to him, his pay came to be fixed at Rs.6,500/-, as against the earlier pay of Rs.6,350/-. It is the case of the petitioner that, while fixing his pay under the Justice

Shetty Commission, his pay as on the date on which the said recommendations were made applicable ought to have been taken at Rs.6,500/- and the benefit of the seven increments ought to have been given to him by adding seven increments over and above pay of Rs. 6500/- from the year 2003.

3] Learned advocate for the petitioner placed reliance upon **Rule 11(2)(a) of the Maharashtra Civil Services (Pay) Rules, 1981**. The said provision reads as under:—

“11. Fixation of pay on appointment to another post. - Save as provided in Rules 12, 13, 14, 17 and 20 where a Government servant holding a post in a substantive, temporary or officiating capacity, is promoted or appointed in a substantive, temporary or officiating capacity, to another post including an ex-cadre post, his initial pay shall be regulated as follows :-

(2) If the appointment to the new post does not involve such assumption :-

(a) if there is a stage in the time-scale of the new post which is equal to his pay in the old post, he shall draw pay at that stage;

(b) if there is no such stage, he will draw pay at the stage next above his pay in the post:

(c) in the case covered by Clause (a), he will draw his next increment on the date on which he would have received increment in the old post and in the case covered by Clause (b), he will draw his next increment in the new post on completion of the required period after which an increment is earned in the time-scale of the new post:

Provided that, a Government servant on his appointment to such a new post, may at his option, to be exercised within one month from the date of his appointment, elect for fixation of his pay in one of the following manners, namely :-

(i) either to get his initial pay fixed straightaway with effect from the date of his appointment to the new post; or

(ii) to get his pay fixed with effect from the date of his next increment in the old post.”

4] Learned advocate for the petitioner thus submits that non-protection of the increments already earned by the petitioner would amount to discrimination. He submits that protection of pay would necessarily include protection of the pay along with the increments already earned by the Government servant during his service. He, therefore, submits that the petitioner is entitled to protection of the increments earned by him prior to implementation of the recommendations of the Justice Shetty Commission and consequently prays for allowing the writ petition. In support of his submissions, learned advocate for the petitioner places reliance upon the judgment of this Court in **Association of Personal Assistants, Private Secretaries & Senior Private Secretaries and Others v. State of Maharashtra and Others**, reported in **2018 (3) Bom.C.R. 608**.

5] Learned AGP for the respondents vehemently opposes the petition. He submits that **Rule 11(2)(a) of the Maharashtra Civil**

Services (Pay) Rules, 1981 is not applicable to the facts of the present case and, in any event, the said provision does not contemplate protection of the increments already earned by the petitioner while implementing the recommendations of the Justice Shetty Commission. He further submits that the petitioner has already exercised the option to have his pay fixed in accordance with the recommendations of the Justice Shetty Commission and, having availed of such option, he cannot subsequently seek to revert to the earlier position and claim, in addition, protection of the increments earned by him prior to such fixation.

6] Learned advocate for the petitioner placed reliance upon paragraphs 13 and 16 of the judgment in the case of *Association of Personal Assistants, Private Secretaries & Senior Private Secretaries and Others v. State of Maharashtra and Others*, reported in 2018 (3) Bom.C.R. 608, particularly upon the provisions of **Rule 11(2)(b) and (c)** of the Maharashtra Civil Services (Pay) Rules, 1981. He submits that the said decision recognizes the principle of protection of pay while fixing the pay of an employee in the higher post, including protection against loss of substantive pay. He has relied upon paragraph 16 of the said judgment, which reads as under:—

“13. Since it is not the case of the petitioners that the post of Private Secretary involves assumption of duties or responsibilities of greater importance than that of Personal

Secretary, the fixation will have to be processed in terms of subclause (2) of Rule 11. Since the appointment of the petitioners to the post of Private Secretary does not involve assumption of duties or responsibilities of greater importance than those attached to the old posts, the pay fixation is done by following subrule 2 of Rule 11. In case of the petitioners, clause (a) is inapplicable since in the time scale in the new post, the petitioners may not be able to find a stage equal to their earlier stage. However, it can be calculated and their pay has to be fixed by taking into consideration clause (b) and clause (c). Pertinently, clause (b) of subrule 2 of Rule 11 employs the word "pay". By its very definition it is a inclusion of both personal and special pay. The special pay which the petitioners were getting would get converted into a personal pay equal to the difference in the amount which particular incumbent would draw at a stage next below his pay in the old post and the personal pay would protect the loss of any substantive pay caused to him on account of applying clause (b) of subrule (2). In any case, the personal pay means an additional pay granted to a Government servant to save him from loss of substantive pay in respect of his post due to revision of pay or due to any reduction of such substantive pay and therefore the particular incumbent would stand protected by treating the different amount as personal pay and by virtue of clause (c) of subrule (2) of Rule 11, the incumbent would continue to get that pay only till such time he would earn an increment in the time scale of new post. The basic principle of pay fixation being not to confer any undue benefit on any Government servant on one hand and being not to deprive a Government servant of pay which he would have otherwise

been entitled to by virtue of his reaching a particular stage in a time scale. By this principle, members of the petitioner association are entitled to have their pay fixation done by applying Rule 11 sub Rule 2 (b) and (c).

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16. Applying the aforesaid principle laid by the Hon'ble Apex Court, we do not feel that the members of the Petitioner Association and the Petitioner No.2 who was working as a Personal Secretary to the Hon'ble Judges and who were conferred with a special pay since 01/01/1986 in the earlier pay revision, can be deprived the special pay which has become part of their pay, on their upgradation to the post of Private Secretary in a higher pay scale of Rs.10,000-325-15,200/-. By applying the principle as provided in Rule 11 (1) (a) sub Rule 2 (b) and (c) the pay scale of the members of the petitioner association who are working as Personal Secretary, who were upgraded to the post of Private Secretary can be fixed by making them eligible to earn a pay at the stage next below their pay in the old post and the differential amount would be carried by them as a personal pay. They would be entitled to continue to draw that pay until such time as they receive increment in the time scale of new post or that of the old post which ever is earlier. Ultimately, actual calculations would have to be drawn by the High Court being its employee and accordingly the arrears due and payable to the petitioner be calculated and paid to the petitioner forthwith."

7] We have perused the judgment relied upon by the learned advocate for the petitioner in *Association of Personal Assistants, Private Secretaries & Senior Private Secretaries and Others v. State of*

Maharashtra and Others (supra). The said judgment was rendered in the context of fixation of pay consequent upon the appointment/upgradation from the post of Personal Secretary to the post of Private Secretary, involving two distinct posts and a different factual and legal situation. The Court, in the said case, considered the applicability of Rule 11(2)(b) and (c) of the Maharashtra Civil Services (Pay) Rules, 1981 and the question of protection of substantive pay in the context of such appointment. In our considered view, the said judgment, having regard to the facts and circumstances involved therein, has no application to the facts of the present case.

8] Reference was also made to the judgment of this Court in the case of ***Suresh Yadavrao Tidke v. State of Maharashtra through its Principal Secretary, Law and Judiciary Department, Mantralaya, Mumbai and Others***, in Writ Petition No.3713 of 2000, decided on 23.06.2011. The said decision arose in a different factual context concerning fixation/protection of pay and, therefore, does not advance the case of the petitioner in the present matter.

9] In the present case, on considering the pay-fixation record produced before us and the manner in which the recommendations of the Justice Shetty Commission have been implemented in the case of the petitioner, it is evident that the petitioner has already been extended the benefit of the revised pay structure in accordance with

the applicable conditions. The question, therefore, is whether the petitioner, after such fixation, can further claim protection of the increments earned by him prior to the implementation of the Justice Shetty Commission, by invoking Rule 11(2)(b) and (c) of the Maharashtra Civil Services (Pay) Rules, 1981.

10] In our view, the benefit of protection of pay under Rule 11(2)(b) and (c) cannot be applied to the present case in the manner sought by the petitioner. The said provisions operate cases of fixation of pay on appointment to another post and cannot be invoked to require carrying forward of the earlier increments of the petitioner into the pay fixation made pursuant to the subsequent implementation of the recommendations of the Justice Shetty Commission.

11] Learned AGP also relied upon **Rule 11(2)(a) of the Maharashtra Civil Services (Pay) Rules, 1981** and submits that, in the facts of the present case, the petitioner has not suffered any loss of pay on account of implementation of the recommendations of the Justice Shetty Commission. He submits that the petitioner has been granted the benefit of the revised pay-scale in accordance with the applicable provisions and, therefore, there is no justification for granting any further protection of the increments earned by him prior to such implementation.

12] Having considered the submissions advanced by the learned advocates for the respective parties, the material placed on record and the provisions relied upon, we find that the petitioner has failed to establish that the increments earned by him prior to the implementation of the recommendations of the Justice Shetty Commission were required to be separately protected and carried forward while fixing his pay under the said recommendations. The reliance placed upon Rule 11(2)(a) and the judgment in *Association of Personal Assistants, Private Secretaries & Senior Private Secretaries and Others (supra)* does not help the petitioner, as the said provision and the judgment operate in the context of fixation of pay on appointment to another post, whereas the present controversy concerns implementation of a subsequent revised pay structure. We, therefore, find no reason to interfere with the impugned pay fixation/objections.

13] In view of the above discussion, the writ petition is devoid of merit and is accordingly **dismissed**.

[JITENDRA JAIN, J.]

[KISHORE C. SANT, J.]