

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 11710 OF 2015**

Sunil s/o Jagannath Lungare ... **Petitioner**
Age 58 yers, Occu; Assistant
Superintendent, C.J.S.D. Kaij, R/o
Krusra Apartment, Govind Nagar,
Nagar Road, Beed.Dist. Beed.

VERSUS

1. The State of Maharashtra,
Department of Law and Judiciary,
Mantralaya, Mumbai.
2. The Account General,
Through its Account Officer, Pay
Verification Unit, Aurangabad.
3. The Accounts Department,
District Civil Court and
Additional District Court, Kaij,
Dist. Beed.
4. The Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai.
5. The Civil Judge, Junior Division, ... Respondents
Kaij, (In Administrative
Capacity), Kaij, Dist. Beed.

Mr. Gaurav L. Deshpande, Advocate for the petitioner,
Mr.M. B. Bharaswadkar, AGP for the Respondents State.
Mr. C. K. Shinde h/for Mr. Nitin B. Suryawanshi,
Advocate for respondents3 and 5.

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 19th September, 2016

JUDGMENT (Per Gangapurwala, J.):

1. Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

3. The petitioner assails the letter dated 01.04.2015, so also Government Resolution dated 8.3.2013, to the extent it excludes the employee i.e. Assistant Superintendent of Chief Judicial Magistrate from benefits of recommendation of Justice Shetty Commission, so also the order directing refixation of the pay of the petitioner and the recovery claimed.

4. Mr.Deshpande, learned counsel for the petitioner submits that petitioner was earlier working as Senior Clerk, thereafter he was promoted to the post of Assistant Superintendent, to the Court of Chief Judicial Magistrate with effect from 13.09.2004. On 09.6.2008, the petitioner was transferred to C.J.M. Beed. Thereafter in 2012, the petitioner was transferred as Assistant Superintendent the Civil Court, Junior Division, Kaij. The benefits of Justice Shetty Commission were extended to the petitioner and the petitioner was paid his salary in the pay band of

Rs.13,210/- with subsequent increments. The learned counsel submits that vide the impugned order refixation was done and recovery is claimed. Refixation is done on the sole ground that post of Assistant Superintendent, Court of Chief Judicial Magistrate/ Civil Judge (Senior Division) is not contemplated as per Justice Shetty Commission report and it only contemplates the post of Assistant Superintendent, Civil Judge (J.D.). According to the learned counsel, the clarification given vide Government Resolution dated 18.6.1984 is clear. As per said GR dt.18.6.1984, all Assistant Superintendents working at District Courts, Taluka Courts and/or Civil Judge (S.D.) are to be considered as one cadre. The Government Resolution dated 8.3.2013 to that extent is contrary to the Government Resolution dated 18.6.1984. The learned counsel submits that a person working as Assistant Superintendent (J.D.) and Assistant Superintendent C.J.M. has to be considered as belonging to the same cadre and the same pay-scale is to be made applicable. The learned counsel relies on the judgment of the Division Bench of this Court in a case of **"Pralhad Bhaurao Ghule and others Vs. Government of Maharashtra"** in **W.P.No.6297/2014**. Learned Counsel also relies on

the judgment of the Apex Court in the case of **"V.Markendeya Vs. State of A.P."** reported in **1989(3) SCC 191**. According to the learned counsel, if the Government Resolution dated 8.3.2013 is accepted then anomalous situation would arise, wherein Assistant Superintendent of the Court Civil Judge (J.D.) would draw more pay than Assistant Superintendent working with Civil Judge (S.D.).

5. We have heard Mr. Shinde, learned counsel for Respondent Nos.3 and 5, who states that pay fixation at the relevant time has been done by the Accounts Officer (Pay Unit).

6. Mr. Bharaswadkar, learned Addl. Govt. Pleader submits that as per Government Resolution dated 20th October, 2011 and Government Resolution dated 8.3.2013, benefits of Shetty Commission were sanctioned and extended to the non-judicial employees of the Court with effect from 1.4.2003. As per para 2 of the Government Resolution dated 20th October, 2011, benefits of Shetty Commission are applicable to the post of Assistant Superintendent, Civil Court (J.D.). The said fact is also clarified by para No.4 of Government Resolution dated 8.3.2013. When the Pay Verification

was done as on 1.1.2006, the petitioner was working as Assistant Superintendent with District Court, Beed. The Pay Verification Unit has therefore, rightly raised objection regarding the Pay Fixation of the petitioner in view of the said Government Resolution. The petitioner is entitled for higher pay only so long as he works as Assistant Superintendent with Civil Judge (J.D.). According to the learned Addl. Govt. Pleader, refixation of pay vide impugned order has been correctly done and the same is in consonance with the relevant Government Resolutions. No error is committed by the Officer while refixing the pay-scale.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. The undisputed factual matrix can be culled out as under :-

The petitioner was working as Assistant Superintendent since 13.09.2004. On 09.6.2008, the petitioner was transferred to C.J.M. Beed. Thereafter in 2012, the petitioner was transferred as Assistant Superintendent the Civil Court, Junior Division, Kaij. The benefits of Justice Shetty Commission were extended

to the petitioner vide impugned letter dated 01.04.2015, refixation of his pay-scale was done and recovery claimed.

9. The benefits of recommendation of Justice Shetty Commission were extended to the employees of all District Courts, Civil and Criminal and Small Cause Court employees working under all District Courts in the State of Maharashtra by Government Resolution dated 20.10.2011. These benefits were given with effect from 1.4.2003.

10. In subsequent Government Circular dated 8.3.2013, clarifications were issued by the State Government pursuant to various issues raised by the organisation of Court employees in the State. The Government Resolution dated 20th October, 2011 lays down the revised pay-scale applicable to the various posts as referred in the said Resolution. For the post of Assistant Superintendent of the Court of Civil Judge (J.D.), revised pay-scale of Rs.6500-10500 was made applicable. However, the revised pay-scale was not prescribed in the said Resolution for a person working as Assistant Superintendent to the Court of Civil Judge (S.D.). On the premise that in the Government

Resolution dated 20.10.2011, revised pay-scale is not provided for the post of Assistant Superintendent, Chief Judicial Magistrate and it only provides for the revised pay-scale of Assistant Superintendent of the Court of Civil Judge (J.D.), refixation is done and recovery is claimed.

11. It is not the case of Respondents that there is qualitative difference in functions and responsibilities of a person working as Assistant Superintendent, Civil Judge (J.D.) and Assistant Superintendent, Civil Judge (S.D.)/Chief Judicial Magistrate. It is also not the case of Respondents that there are distinguishing features like educational qualification, mode of recruitment, status etc. There is substantial similarity in the duties and responsibilities and the posts are inter-changeable. The persons working as Assistant Superintendent of the court of Civil Judge (J.D.), are transferred as Assistant Superintendent to the Court of Civil Judge (S.D.)/ Chief Judicial Magistrate and vice versa. The responsibilities and the quality of work of the Assistant Superintendent of Civil Judge (J.D.) and Civil Judge (S.D.)/ Chief Judicial Magistrate are same.

Even the Government Resolution dated 3.4.1984 item No.21 of Annexure 'A' makes it abundantly clear that the Government has accepted the recommendation that the Assistant Superintendent of District Court, the Court of Civil Judge (J.D.) or the Court of Civil Judge (S.D.)/ Chief Judicial Magistrate would constitute one cadre. When the Government has accepted this recommendation and have treated all persons working as Assistant Superintendent in the District Court, Court of Civil Judge (J.D.) and Court of Civil Judge (S.D.)/ Chief Judicial Magistrate as belonging to one cadre. It would be utter discrimination and arbitrary to have a revised pay-scale only for Assistant Superintendent working in the Court of Civil Judge (J.D.) and to deny the same to Assistant Superintendent working with the Court of Civil Judge (S.D.)/Chief Judicial Magistrate. Even Article 39(d) of the Constitution of India, ordains the implementation of the concept of equal pay for equal work. It is no doubt true that the Courts would be slow in interfering with the State action prescribing different scales of pay. However, where two classes of employees perform identical or similar duties and carry out same functions with the same responsibilities and having same academic

qualification, they would be entitled for equal pay. The reference can be had to the judgment of the Apex Court in the case of **"V.Markendeya Vs. State of A.P."** referred supra.

12. Non-inclusion of the post of Assistant Superintendent Civil Judge (S.D.)/ Chief Judicial Magistrate in the said Government Resolution appears to be that of an inadvertent omission. The Courts can not apply the principle of casus omissus and fill the gap by adding certain words. But where a defect appears, the Court can not simply fold his hands. If the disparity in the revised pay-scale of Assistant Superintendent of Civil Judge (J.D.) and that of a Civil Judge (S.D.)/ Chief Judicial Magistrate is allowed to stand, it would result in irrational classification, absurdity and egregious injustice. The Courts in such situation have to step in to eradicate disparity on the touch stone of the principle of equal pay for equal work.

13. There is another facet of the matter. The benefit of re-fixation was given to the petitioner. It was not at the behest of the petitioner or on account

of fraud or misrepresentation on the part of the petitioner. According to the Respondents, it was mistake at their behest. Even recovery can not be claimed in such a case. The petitioner is a class III employee. The principle laid down by the Apex Court in a case of **"State of Punjab and others Vs. Rafiq Masih (Whitewasher)"** reported in **(2014) 8 Supreme Court Cases 883**, would squarely apply, wherein the Apex Court has held that recovery from the employees would be impermissible in law who are due to retire within one year or have retired or from the employees belonging to class III and class IV service. The petitioner would belong to class III service. On this count also recovery can not be claimed.

14. In light of the above, the impugned communication dated 01.04.2015 is quashed and set aside. The Assistant Superintendent of Civil Judge (S.D.)/Chief Judicial Magistrate is held entitled to the benefit of recommendation of Justice Shetty Commission and G.R. Dated 20.10.2011 of revised pay-scale as is applicable to the Assistant Superintendent of the Civil Court (J.D.). The petitioner inter alia is also held entitled to the same revised pay-scale

while working as Assistant Superintendent Civil Judge
(S.D.)/District Court/C.J.M. as is made applicable to
Assistant Superintendent of Civil Judge (J.D.).

Rule made absolute in above terms. No costs.

(**K. L. WADANE, J.**)

(**S. V. GANGAPURWALA, J.**)

JPC