

**HON'BLE THE ACTING CHIEF JUSTICE DILIP
B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO**

WRIT PETITION No.2491 of 2016

Date:20.4.2016

Between:

S.L.Meharbaba, s/o.Lakshmana Rao,
Aged 56 years, Superintendent (Translation),
District Court, Rajahmundry, East Godavari
District and others.

.....Petitioners

and

State of Andhra Pradesh, rep.by its Principal,
Secretary, Hyderabad and others.

.....Respondents

The Court made the following:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B.
BHOSALE**

AND

HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.2491 of 2016

PC: (Per the Hon'ble Sri Justice P.Naveen Rao)

Petitioners 1 to 17 are working in Judicial

Ministerial Service. Petitioners 18 and 19 retired from judicial Ministerial service. Grievance of the petitioners necessitating invoking extra-ordinary jurisdiction of this court is against inordinate delay in fixation of pay and allowances on their appointment/promotion to three categories of Stenographers in judicial ministerial service.

2. Petitioners are either appointed directly as Steno-Typist (Stenographer) or promoted from the lower cadre to the cadre of Stenographer. By the time this writ petition is instituted petitioner No.1 to 6 and 17 are working as Office Superintendents, petitioners 6, 8 and 16 are working as Senior Assistants, petitioners 9 to 12, 14 and 15 are working as Stenographer Gr.I, petitioners 10, 13, 20 and 21 are working as Stenographer Gr.II and petitioners 18 and 19 retired while working as Steno-typists. When petitioners joined the cadre of Stenographer, they were governed by the "A.P.Judicial Ministerial Service Rules, 2003 (Rules, 2003)". On a review of the cadre structure in the Subordinate Judiciary, Justice Jagannath Shetty Commission has made several recommendations including restructuring of Stenographer cadre. The Justice Jagannath Shetty Commission recommended creation of three categories of Stenographers, namely, Stenographer Grade-I, Stenographer Grade-II and Stenographer Grade-III in three different pay scales. As a consequence to the recommendation of the Justice Jagannath Shetty Commission, the composite State of Andhra Pradesh amended the existing Rules of 2003. The significant changes that are brought out insofar this case is concerned are:

3. In the place of existing post of Steno-typist (re-designated as Stenographer/Personal Assistant) Stenographer Grade-I, Stenographer-II and Stenographer Grade-III are created. Stenographer Grade-III is intended to be filled up by direct recruitment and promotion in the ratio of 60:40. Grade-III is in the scale of Rs.4190-8750/-, Grade-II is in the scale of Rs.4430-9300/-, 75% of posts are filled up by promotion from Grade-III and 25% by direct recruitment. Stenographer Grade-I is to be filled up only by promotion from the cadre of Stenographers Grade-II and is positioned in the scale of Rs.5000-10600/- (Rule 5, constitution, method of recruitment and scales of pay).

4. As a consequence to the implementation of the Justice Jagannath Shetty Commission recommendations and amendments made to rules, 2003, except petitioners 18 and 19, who stood retired, all other petitioners were fitted into the respective categories as per their eligibility. For example, 1st petitioner initially joined service as Examiner and later promoted as Steno-typist on 16.08.1985. He was promoted as Senior Assistant on 5.3.2007 and as Office Superintendent on 14.05.2009. Thus, by the time amended Rules were notified, he was working as Office Superintendent. As a consequent to the restructuring of the cadres and creation of three separate categories of Stenographers instead of one, as per his eligibility petitioner was granted promotion as Stenographer Grade-II w.e.f. 01.04.2003 and as Stenographer Grade-I w.e.f. 25.01.2005. He was treated as Stenographer Grade-I till his date of promotion as

Senior Assistant. In this writ petition, 1st petitioner claims pay fixation in the categories of Stenographer Grade II and Grade-I respectively and payment of arrears for the period from 01.04.2003 to 04.03.2007. As a consequent to such re-fixation of pay, he may be entitled to revision of pay in the cadre of Senior Assistant and Office Superintendent. Similar is the claim of all other petitioners.

5. Though the dates of appointment into the various grades of stenographer and the nature of promotion granted to them varies from petitioner to petitioner, the sum and substance of the grievance of the petitioners is against not fixing the pay by applying FR-22(a)(i) in three categories of Stenographers as applicable. Since petitioners 18 and 19 were also working as Stenographers, in view of retrospective operation of amendment to the Rules, 2003, they are also entitled to revision of pay and allowance in accordance with the revised structure of stenographers in three categories. To complete the narration of facts, the 18th petitioner retired from service as Steno-typist on 31.10.2010 and 19th petitioner on 31.01.2006. They also claim pay fixation in revised Stenographers cadre.

6. Respondents do not dispute the basic facts as noted above. The only area of controversy between petitioners on one hand and respondent authorities of the Government is with reference to pay fixation by applying FR-22(a)(i). According to the learned Special Government Pleader, since petitioners are not discharging higher duties and responsibilities on their elevation to Grade-II or Grade-I respectively, FR 22(a)(i)

and 22(B) is not attracted and, therefore, they are not entitled to claim pay fixation as sought by them. Though, learned Government Pleader was trying to justify the objection raised by the Treasury and Accounts Department, he fairly submitted that matter was referred to Government for clarification and so far no decision is taken by the Government. Pay fixation claims are not finalized since the clarification sought from the Government by the Treasury and Accounts Department was yet to be furnished. However, learned Government Pleader is unable to state what clarification is required. The stand of respondent Government as emphasized by the learned Special Government Pleader is that Stenographers, wherever they work and in whatever capacity they work, discharge the same duties and responsibilities and therefore on promotion they have not assumed higher duties and responsibilities and thus are not entitled to fixation of pay under FR 22(a)(i) and 22(B).

7. The issue for consideration in this writ petition is whether petitioners are entitled to pay fixation by applying FR 22(a)(i) and 22(B) on their promotion as stenographer Grade II and / or Stenographer Grade I.

8. To appreciate the stand of the respondents, it is necessary to consider the scope of the above provisions. They read as under:

F.R.22. The initial substantive pay of a Government servant who is appointed substantively to a post on time-scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended:

(i) **When appointment to the new post involves the assumption of duties or responsibilities of greater**

importance (as interpreted for the purpose of Rule 30), than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) When appointment to the new post does not involve such assumption he will draw as initial pay the stage of the time scale which is equal to his substantive pay in respect of the old post, or if there is no such stage, the stage next below that pay, plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, or for the period after which an increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time-scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay.

....

F.R. 22-B: Notwithstanding anything contained in these Rules, where a Government servant holding a post in a substantive, officiating or temporary capacity **is promoted or appointed in a substantive, officiating or temporary capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him**, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at, by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued.

[Inserted by G.O.Ms.No.239, Fin. & Plg. (FW: FR II) Dept, dt.23.8.1983]

(Emphasis supplied)

9. The two important components to invoke the above provisions are: 1) the employee should earn promotion from the post he was holding to higher post; and 2) on such promotion, he must carry out duties and responsibilities of greater importance than those attached to the post held by him previously.

10. To appreciate the impact of said two conditions and to examine the validity of claim of the petitioners for such pay fixation, it is also necessary to look into the background leading to amendment of rules introducing three categories of Stenographers.

11. Justice Jagannath Shetty Commission has gone into

all aspects of Judiciary, including the cadre structure and pay scales of ministerial establishments in the High Court and Subordinate Courts. The Commission has made several recommendations. Chapter-X of the report dedicated to Stenographers. In depth study was undertaken on origin and growth of Stenographer and its importance. Different types of grades and scales in various states were analyzed. After through analysis of the cadre requirements, the Commission observes as under:

“Chapter-X:

It is difficult to get proficient and good Stenographers for Court work. They prefer Multinational Company where they get fat salary. The Court Stenographer should have a command of English and local language. He must be familiar with the substantive and procedural laws. He has to adjust to the speed and accent of the Judges who are on rotation. He has to take down the dictation continuously without interrupting the Judge. If he interrupts the Judge by seeking clarification, he would be disturbing the Judge's thought and impeding his speed. He needs a speed of 120 words per minute to take down the dictation without omission and in some cases, the judgments runs into 50 to 100 pages, if not more. He has to be familiar with the citations or the passage to be extracted therefrom. He has to observe very stringent requirement of secrecy. He may, therefore, be given an attractive pay scale, depending upon the facts and circumstances in each State/U.T.

In the Trial Courts, after preliminary hearing, the Presiding Officers are invariably engaged in recording evidence. In many States, the Stenographers alone are used for recording evidence in the Open Court and also for taking dictation of judgment in home office or chambers.

It may be noted that, the Judges of Subordinate Courts are not expected to dictate judgment in the Open Court. Order XX Rule 3 of the code of Civil Procedure provides that there cannot be Open Court dictation of judgment by Presiding Officers unless they are specially empowered by the High Court. That means the Stenographers have to take down the judgment after the Court hours. **Thus the Stenographer is over burdened with heavy load of work. There is need to reward this cadre with better pay scale and more promotional avenues. ” (Emphasis supplied)**

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12. Chapter-XVIII of the report deals with the composite State of Andhra Pradesh. In this chapter,

para-IV deals with Stenographers. After noting the method of recruitment, qualifications and pay scales prescribed and taking note of the views of the High Court and Staff Associations, the Commission made recommendations. Para-IV (C) of the Commission Report deals with recommendations insofar as the Stenographers cadre is concerned. To the extent relevant the recommendation reads as under:

C. Our Recommendations:

(a) In Andhra Pradesh, Steno-typists and Typists carry the same pay scale, i.e., Rs.3290-6550, which is as admissible to Jr.Assistants. But, in many other States, the Stenographers carry the pay scale admissible to UDCs/FDAs/FDCs/Assts. with some amount of Special Pay. Further, in Andhra Pradesh, Steno-typists have no promotional opportunity.

In Chapter-X, we have considered the importance of the efficient Stenographers for judicial work and we have also emphasized that they should be given an attractive pay scale and better promotional opportunity, in view of the fact that the quality and quantity of their work vastly differ from those of their counterparts in Government Departments.

For these and other reasons stated in Chapter-X, we recommend the following three grades of Stenographers for the three levels of Courts with the pay scales as indicated against each:

(i)	Stenographer Grade-III Court of Civil Judge (Jr.Div.) (Existing Steno-Typist)	:	Rs.4190-8700 (Pay scale applicable to UDCs Sl.No.XI in the General Pay Scales)
(ii)	Stenographer Grade-II Court of Civil Judge (Sr.Div.)	:	Rs.4430-9300 (Pay scale applicable to Head Clerk of Munsiff Court Sl.No.XII in the General Pay Scales)
(iii)	Stenographer Grade-I Court of District & Sessions Judge	:	Rs.5000-10600 (Pay scale applicable to Senior Stenographer in G o v t . i.e., Sl.No.XV in the General Pay Scales)

[Note: The High Court may decide about the mode of recruitment and promotion to these three cadres]

13. After the report of the Commission, Hon'ble Supreme Court passed series of orders directing the respective State Governments to implement the recommendations of the Justice Jagannath Shetty Commission and to give effect to the recommendations w.e.f. 01.04.2003. As a consequence, Government issued orders in G.O.Ms.No.50 Law Department dated 23.04.2009 complying with the recommendations in para-IV(C) of Chapter -XVIII. Thus, three categories of Stenographer posts have come into existence, organized in three different scales.

14. Note-3 appended to para-5 of the G.O.Ms.No.50 dated 23.4.2009, holds that the employees whose pay scales have been upgraded should be allowed pay fixation as per the FR-22 (a)(i). As a consequence to the executive decision to comply with the orders of the Supreme Court, the composite State of Andhra Pradesh, in consultation with the High Court, have effected amendments to the Rules, 2003. The said amendments were notified vide G.O.Ms.No.100 Law Department dated 08.08.2013. They have come into force with effect from 01.04.2003.

15. As noted from the report of the Shetty Commission, the object and purpose of recommendation is very clear and specific and unless the said recommendation is implemented in true letter and spirit the very purpose of such recommendation gets defeated. We note that the objections raised by the Treasuries and Accounts

Department is expressly intended to nullify the very object of the recommendations made by the Commission to remove the hardship and activating suffering of stenographers and intend to deprive them the benefit of creation of three grades with promotional avenues.

16. The amendments brought about significant change in cadre structure, method of recruitment and scales of pay. Rule 5 of the Rules 2003 deals with constitution of the service. Rule 6 deals with method of appointment and appointing authority. Rule 8 read with annexure appended to Rules deal with qualifications. Three grades of Stenographers are organized into three categories, Category-4, Category-5 and Category-6 of the service. Each of the three categories organized independently with different scales of pay and different method of recruitment and different job assignment and arranged in a pyramid structure. Category-6 provides channel for other ministerial posts organized in Categories 8 and 9, subject to their eligibility, in addition to recruitment from open market. Recruitment to Grade-III is by direct recruitment from open market (to the extent of 60%) and by promotion of Junior Assistants/Typists subject to their possessing requisite basic qualifications (to the extent of 40%). Category-6 is a feeder channel for promotion to category 5 in addition to direct recruitment from open market. In Grade-II, the percentage of direct recruitment is reduced to 25% and channel of promotion is increased to 75%. Category-4 is to be filled up only by promotion from category 5. These three levels of Stenographers are organized into water tight compartments. They are not interchangeable.

Each of them are attached to three levels of judicial

officers in the subordinate Courts.

17. Though the basic job in all three categories is same that is taking dictation and subscribing to what is dictated, but the level of skill and work load is not same. A Senior Civil Judge Court is vested with higher responsibilities as compared to a Junior Civil Judge Court and the Officer also expects better skill from the Stenographer. Similarly the responsibilities of a District Judge are more onerous. A Stenographer working under him is expected to have better skill, knowledge of English and legal terminology, higher speed and understanding. The experience gained by them working in lower grades and with junior officers puts them in better position to take up the higher responsibilities on their posting under senior judicial officers. A highly skilled and efficient Stenographer would save lot of judicial time of a Senior Civil Judge and District Judge. Thus, respondent authorities are not justified in merely looking at the nomenclature of the post and basic job assignment to hold that they do not fulfill the second condition of FR-22(a)(i) and FR 22 (B), i.e., “**discharge of higher duties or responsibilities**”.

18. As analyzed by the Shetty Commission, the work of Stenographer in judiciary *per se* is more onerous as compared to Stenographers working in Government or private service. Thus, by merely looking at the basic job profile as Stenographer the claim of pay fixation cannot be rejected. Basic service law doctrine envisages that ‘promotion’ means elevation of status of an employee and he moves from a lower post to higher post. In the instant case, rule making authority created three categories of

Stenographers and assigned them to three levels of judicial officers in the subordinate judiciary. Each of the categories are positioned in different scales, one is higher than the other. Promotion to Category-5/Category-4 is not automatic but is subject to suitability and availability of vacancies. It is not automatic elevation to higher category on completion of fixed period of service. It is not a financial up-gradation. It has all the trappings of elevation of status with liability to discharge more onerous responsibilities.

19. The malady crept in when existing employees were sought to be fitted into the three categories. At this stage it is to be noticed that the recommendations of Shetty Commission achieved concrete shape only in the year 2013, that too after judicial fiat. The rules are made effective from retrospective date i.e., 01.04.2003. By the time recommendations of Shetty Commission are implemented Stenographers working in subordinate judiciary have moved into other ministerial posts such as Senior Assistant, Office Superintendent. As a consequence to retrospective amendment of Rules, it was necessary to grant promotion to eligible stenographers into respective categories as per their eligibility and suitability, obviously from retrospective date while protecting the promotions granted to them in the meanwhile.

20. It is noted that while granting such elevation of status they were treated as placed in '**restructured**' cadre, a coin invented by administrative authority without understanding its consequences/relevance. This is not a case of '**restructuring**'. Two new categories of

posts are created in Stenography branch which are higher cadre posts to existing post of Stenographer. As a consequence, existing personnel working in lower categories have to be granted promotion to fill the promotional posts, i.e., category 5 and category 4.

Though the said categories are filled by assessing the suitability of existing personnel, that exercise was treated as '**restructuring**'. Merely because '**restructured**' word is used, it cannot take away the impact of elevation granted to petitioners and other similarly situated. What was granted to them was promotion. It is not a case of upward revision of scales and fitment thereof. The Government erred in analyzing the issue from the stand point of '**restructuring**' as evident from Memo No.122751272/A1/PCV2006, dated 23.06.2006. In the process Government also ignored its G.O.Ms.No.50, dated 23.04.2009, where categorical assurance of extension of FR-22(a)(i) was made (Note-III appended to paragraph 5). It is also appropriate to note that before G.O. was issued financial concurrence was also obtained.

21. The Director of Treasuries and Accounts erred in referring the matter to Government when provisions of Rules, 2003 as amended in 2013 are clear and unambiguous and financial concurrence was already obtained in the year 2009 when commitment to apply FR-22 (a)(i) was made and unnecessarily delayed in granting fixation of pay to petitioners. The Treasuries and Accounts authorities have raised frivolous objections only to deprive the petitioners their legitimate benefits.

22. The writ petition is allowed. The respondents 1,2 to 4 are directed to fix the pay of petitioners in the pay

scales attached to Stenographers Grade II and Stenographers Grade I, respectively, by applying provision in FR 22 (a)(i) and FR 22 (B) as expeditiously as possible, at any rate within four months from the date of receipt of copy of this order. It is also made clear that they are also entitled to all consequential benefits. To avoid further litigation on such claims, respondents 1, 2 to 4 are directed to extend the same benefit to all similarly situated persons. No costs.

Miscellaneous petitions if any pending stand closed.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date:20-04-2016

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