

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 00972 of 2017

District : Aurangabad

1. Shri Dnyanoba Tukaram Devne,
Age : 55 years,
Occupation : Practice in law,
R/o. Thakre Nagar, CIDCO, N-2,
Aurangabad.
 2. Shri Sham Babarao Patil,
Age : 55 years,
Occupation : Practice in law,
R/o. Mogra H-2,
Gurushani Nagar,
CIDCO, N-4, Aurangabad.
 3. Shaligram Bhiwsanrao Pawar,
Age : - ,
Occupation : Practice in law,
R/o. 10, Yugantar Housing Society,
Plot No.7, N-9, M-2, CIDCO,
Aurangabad.
 4. Syed Asif Ali Syed Turab Ali,
Age : 58 years,
Occupation : Practice in law,
R/o. GHATI "Moona" Building,
Aurangabad.
- .. Petitioners.

versus

1. The State of Maharashtra,
Through its Principal Secretary,
Law & Judiciary Department,
M.S., Mantralaya, Mumbai - 32.
2. The Joint Secretary,
Law & Judiciary Department,
Aurangabad.
3. The Secretary,
Finance Department, M.S.,
Mantralaya, Mumbai - 32.

4. Chief Presenting Officer,
Maharashtra Administrative Tribunal,
Aurangabad, through its
Superintendent.

.. Respondents.

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Mr. N.B. Khandare, Advocate, for petitioners.

*Mr. A.B. Girase, Government Pleader, for
respondents no.01 to 04.*

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**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

**Date of reserving
the judgment : 13th September, 2017**

**Date of pronouncing
the judgment : 26th September, 2017**

JUDGMENT *(Per Smt. Vibha Kankanwadi, J.) :*

01. Rule. Rule made returnable forthwith. By consent, heard finally.

02. Petitioners have invoked the jurisdiction of this court under Articles 14 and 226 of the Constitution of India, in order to challenge the Government Resolution [**For short, "G.R."**] dated 01st June, 2016 issued by the Law & Judiciary Department, Maharashtra State, Mantralaya, Mumbai, which stipulates the exclusion of condition regarding outer

limit of fees payable to Law Officers in Maharashtra Administrative Tribunal [**For short, "MAT"**] to be made applicable from 01st June, 2016.

03. Petitioners are practicing advocates. Their tenure as Chief Presenting Officer [**For short, "CPO"**] and Presenting Officers [**For short, "POs"**] expired in June, 2016. The Government of Maharashtra framed rules, namely, 'Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration) Rules, 1984'. These rules provide for appointment of Law Officers in various courts including High Court and MAT. The rules regulate the functions and duties of Law Officers and also provide for rate of fees payable to them. Petitioners were appointed as Presenting Officers to represent the Government before MAT at Aurangabad in the year 2001 and their appointments were continued from time to time by issuing orders.

04. The fees structure for payment of fees was revised which was framed under the above said rules from time to time. The fees structure was revised

under Government Resolution dated 11th October, 2013 and revision of rates of fees made under the said G.R. were made applicable with effect from 01st November, 2013. Different fees structure for the Law Officers working in different courts was decided by the Government including the Chief Presenting Officer and Presenting Officers working in MAT. It was mentioned in statement 'B' of the said G.R. that, prescribed daily ceiling / cap will be of Rs. 4,000/- for CPOs and Rs. 3,000/- for POs. The outer limit of monthly ceiling / cap of Rs. 65,000/- for CPOs and Rs. 60,000/- for POs was also mentioned in statement 'B' in G.R. dated 11th October, 2013. However, drafting and retainer fee was excluded from such ceiling / cap. Said G.R. also included the fees prescribed for Government Pleader, 'A' Panel Counsel, Additional Government Pleaders and Assistant Government Pleaders and 'B' Panel Counsel in the High Court (Original Side & Appellate Side), Mumbai and its Benches at Nagpur and Aurangabad. Fees payable to the Law Officers and Panel Counsel in the State of Maharashtra was revised by issuing G.R. dated 15th February, 2014.

05. Statement 'B' in the said G.R. relates to the prescription of fees payable to CPOs and POs of MAT at Mumbai and its Benches at Nagpur and Aurangabad. Fees was revised and increased substantially and according to note no.05, a quarterly outer limit was placed which prescribed for Rs. 2,70,000/- for CPOs and Rs. 2,10,000/- for POs. No corresponding change to meet the situation was contemplated under note no.05, but the daily ceiling / cap on fees of Rs. 4,000/- and rs. 3,000/- for CPOs and POs, respectively remained the same. However, statement 'C' which was in relation to the fees to the Government Pleaders, etc. in the High Court did not mention any daily ceiling / cap. Only quarterly ceiling / cap was made applicable to them.

06. The disparity in fees payable to the Government Pleaders / Addl. Government Pleaders working in the High Court and the CPOs and POs working in the MAT, so far as it relates to exclusion of daily ceiling / cap was noticed by the petitioners and, therefore, they immediately made a

representation to the 1st respondent on 26th March, 2014. The said disparity was brought to the notice of the Government and the 1st respondent was requested to issue corrigendum to do away with the disparity. After great persuasion, Law & Judiciary Department took necessary steps to correct the mistake. Office note was put in favour of the representation by the Law & Judiciary Department and thereafter a proposal was made to the Finance Department for lifting the daily ceiling / cap with effect from 01st November, 2013. Then the file was forwarded to the Finance Department. Certain queries were raised and the file was again remitted to the Law & Judiciary Department. Law & Judiciary Department had confirmed the mistake as it was an inadvertent mistake. However, a fresh G.R. was issued correcting the mistake but the said G.R. prescribed for lifting of daily ceiling / cap was made with effect from 01st June, 2016. When it was, in fact, a typographical mistake in the earlier G.R., the effect ought to have been given from 01st November, 2013. It is discriminatory and, therefore, by this writ petition, the petitioners have prayed

for quashing the said condition and making it applicable from 01st November, 2013.

07. Say in the form of affidavit of Shri Shripad s/o. Devidasrao Digaskar, Joint Secretary to Government of Maharashtra, Law & Judiciary Department, Aurangabad, has been filed on behalf of respondent no.01. The factual aspect about issuance of G.R. has been accepted. It has been also stated that the upper cap for quarterly fees was revised to Rs. 2,70,000/- for CPOs and Rs. 2,10,000/- for POs by keeping the daily cap unaltered. Receipt of the representations by the Law Officers from MAT has also been admitted. It is stated that as per the provisions of the Manual of Office Procedure of Government of Maharashtra, it is mandatory to seek consent of Finance Department of the State for the proposals containing financial implications. Hence, the proposal for removal of daily cap of remuneration prescribed in the G.R. dated 15th February, 2014 with retrospective effect was referred to the Finance Department. He has stated that the claim of the petitioners for removal of the condition of daily

ceiling vide G.R. dated 01st June, 2016 ought to have been with retrospective effect only is unsustainable. He has pointed out the note dated 13th January, 2016 of the Law & Judiciary Department which stated that, *'if it was found that arrears were huge, the dispensation in terms of G.R. dated 15th February, 2014 may be given with effect from 01st January, 2016'*. The Government was conscious about issue of payment of arrears and prospective implementation was proposed by the Government in the Law & Judiciary Department. He, therefore, prayed for dismissal of the petition.

08. Heard Mr. N.B. Khandare, learned Counsel appearing for the petitioners, and Mr. A.B. Girase, learned Government Pleader appearing for the respondents. In order to cut short, we would like to say that both the counsel have argued in support of their respective contentions.

09. Learned counsel appearing for the petitioners has drawn our attention to the note that was put by the Law & Judiciary Department while

referring the file to the Finance Department which had stated that deletion of the said daily cap is due to inadvertence or clerical mistake. He had pointed out that the said daily cap has been removed from the notification which was made applicable to the Government Pleaders and Additional / Assistant Government Pleaders and 'B' Panel Counsel in the High Court.

10. Learned Government Pleader appearing for the respondents accepted the said position in the Government Resolution but in consonance with the affidavit filed on behalf of respondent no.01, he has also pointed out towards the financial implications and the subsequent note that was put by the Law & Judiciary Department.

11. It is to be noted that the said Government Resolution dated 15th February, 2014 was promulgated for the object that the question of revision of fees payable to Law Officers in the State of Maharashtra , as prescribed by the Maharashtra Law Officers (Appointment, Conditions of Service and Remuneration)

Rules, 1984 was under consideration. Hearing to the representations of the Government Pleaders and representatives of the District Government Pleaders was taken before issuing the said notification. That means, the Government had intention to bring uniformity in the fees not only in respect of rates but other conditions appended to the same. It is also to be noted that while revising the fees payable to the Government Pleaders, Additional & Assistant Government Pleaders in the High Court, the Government has removed the daily cap. But the said daily cap has not been removed in respect of the CPOs and POs working with MAT at Mumbai and its Benches at Nagpur and Aurangabad. In fact, the said note no.01 and note no.05 to the statement 'B' are contrary to each other and, therefore, after taking into consideration said discrepancy, the note was put by the Law & Judiciary Department, that the said note no.01 was by mistake.

12. The said mistake has also been accepted by respondent no.01 in its G.R. dated 01st June, 2016. However, while removing that note no.01, the G.R.

says that the effect of the same would be from 01st June, 2016. When the said daily cap provision in respect of Government Pleaders, Additional / Assistant Government Pleaders in the High Court was removed and the revised rates were made applicable from 01st November, 2013, respondent no.01 ought to have corrected the said mistake and given effect of deletion of the daily cap from 01st November, 2013, to the CPOs and POs in the MAT. The CPOs and POs working before the MAT should have been considered at par with the Government Pleaders and Additional / Assistant Government Pleaders working before the High Court because revision regarding their fees was revised by a single G.R. The effect of deletion of note no.01 i.e. removal of daily cap by G.R. dated 01st June, 2016 with effect from 01st June, 2016 is discriminatory and, therefore, requires to be struck down. Making it prospective due to financial implications is equally discriminatory. There is no substance in that submission.

13. In the result, the writ petition is allowed.

The condition contained in G.R. dated 01st June, 2016, so far as it states that the benefit of decision deleting note no.01 in statement 'B' to the G.R. dated 15th February, 2014 is applicable from 01st June, 2016 is hereby quashed and set aside. Respondents are directed to extend the benefit of the decision deleting note no.01 in statement 'B' to the G.R. dated 15th February, 2014 to the petitioners and similarly placed persons / Law Officers and the pay in respect of unpaid amount be extended to them. Respondent no.04 shall prepare and submit bills of unpaid amount to the Joint Secretary, Law & Judiciary Department i.e. respondent no.02, forthwith and respondent no.02 shall accord sanction to the same.

14. Rule made absolute in the above terms. In the circumstances of the case, there shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

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