

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7633 OF 2018

Padmakar Wamanrao Bhuyar	]
Age : 64 years, Occu : Retired Judge,	]
R/o: House No.3, Old I.T.I. Colony,	]
Kanta Nagar, Amravati,	]
Tq & Dist : Amravati	]..Petitioner

Versus

1] State of Maharashtra	]
through its Chief Secretary,	]
Labour/Industries Department	]
Mantralaya, Mumbai-400 032	]
2] President,	]
Industrial Court Maharashtra Mumbai,	]
at New Administrative Building,	]
1 st floor, Government Colony,	]
Bandra (E), Mumbai-400 051	]..Respondents

WITH
WRIT PETITION NO.10983 OF 2015

Dilip Shivajirao Ghumare,	]
Age : 46 years, Occu : Service,	]
R/o: Chaityanya-6,	]
Bara bungalow, Kopari Colony,	]
Thane-East	]..Petitioner

Versus

1] The State of Maharashtra,	]
Through the Secretary,	]
Law & Judiciary Department,	]
State of Maharashtra,	]

- Mantralaya, Mumbai-400 032]
- 2] The Secretary,]
Finance Department,]
State of Maharashtra,]
Mantralaya, Mumbai-400 032]
- 3] The Registrar General,]
High Court Bombay,]
Appellate Side, Fort,]
Mumbai-400 032]
- 4] Maharashtra State Judges Association,]
Through its President/Secretary of Association,]
Aurangabad District Court,]
Jalna Road, Aurangabad]..Respondents

AND
WRIT PETITION NO.927 OF 2018

- 1] Tejawant Singh Sandhu,]
Age : 37 years, Occu : Service,]
R/o : 8-B/14, Haji Ali Government]
Quarters, K. K. Marg, Government]
Colony, Mumbai-400 034]
- 2] Yasmin Gulamgaous Deshmukh,]
Age : 45 years, Occu : Service,]
“Chandrakans”, 46, Civil Lines,]
Judges' Quarters, Mahavir Chowk,]
Solapur-413 003]
- 3] Satyanarayan Ramjivan Navander,]
Age : 45 years, Occu : Service,]
R/o : 11, Jui Bungalow, Nyay Nagar,]
Near DSP Chowk, Ahmednagar]
- 4] Ganesh Padmakar Deshmukh,]
Age : 49 years, Occu: Service,]

R/o : A-201, Indigo Park, Sadashiv]
Nagar, Untavadi Road, Opposite]
Patanjali Mall, Nasik-422 008]

5] Ladshet Dattaram Bile,]
Age : 45 years, Occu : Service,]
R/o : 801 HR3/Punya Parva, Near Apple]
Hospital, Kadamwadi, Kolhapur]

6] Sachin Suryakant Patil,]
Age : adult, Occu : Service,]
R/o : 1, Judicial Quarters,]
Near Water Filtration Centre,]
Nashik Road, Nashik]..Petitioners

Versus

1] State of Maharashtra]
Through its Principal Secretary]
Law & Judiciary Department,]
Having its address at Mantralaya]
Mumbai-400 032]

2] High Court of Judicature at Bombay]
Through its Registrar General,]
Having its office at High Court,]
Bombay]..Respondents

Mr. Abhijeet Desai a/w Ms. Ankita Nishad I/by Desai Legal,
Advocates for the Petitioner in WP No.7633 of 2018.

Mr. S. S. Patwardhan, Advocate for the Petitioners in WP No.927 of
2018.

Mr. Shantanu Chandratre, Advocate for the Petitioner in WP
No.10983 of 2015.

Ms. Kavita N. Solunke, AGP for Respondent Nos.1 & 2 in WP
Nos.7633 of 2018, 10983 of 2015 & for Respondent No.1 in WP
No.927 of 2018.

Mr. A. B. Borkar, Advocate for Respondent No.3 in WP Nos.7633 of 2018 & 10983 of 2015 & for Respondent No.2 in WP No.927 of 2018.

**CORAM : B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.
DATE : 11th DECEMBER, 2018**

ORAL JUDGMENT (Per B. R. Gavai, J)

1] Rule. Rule made returnable forthwith. Heard by consent of the parties.

2] The Petitioners, who are Judicial Officers working in the State of Maharashtra have challenged clause 4 of Government Resolution dated 1st August 2017.

3] The facts in brief giving rise to the present Petition are as under :-

The All India Judges' Association had filed a Writ Petition under Article 32 of the Constitution of India before the Hon'ble Apex Court being Writ Petition (Civil) No.1022 of 1989 with regard to fixation of pay scales of the Judicial Officers in the entire country and for bringing uniformity therein. Certain directions were issued by the Hon'ble Supreme Court from time to time.

BGP.

time. As per the directions issued by the Hon'ble Supreme Court dated 21th March 1996, the Union of India had constituted the first National Judicial Pay Commission under the Chairmanship of Hon'ble Shri. Justice K. J. Shetty (Retd.). Justice Shetty Commission submitted its report on 11th November 1999, thereby making various recommendations with regard to other facilities to be provided to the Judicial Officers in the country. One of the recommendations, which was made by the Justice Shetty Commission and also accepted by the Hon'ble Apex Court was to grant three advance increments to Judicial officers having higher qualification like Post Graduation in Law (LLM).

4] Vide Government Resolution dated 4th July 2003, State Government accepted various recommendations of the Justice Shetty Commission with regard to pay scale to be made applicable to the Judicial Officers in the State of Maharashtra. However, insofar as recommendation with regard to grant of three advance increments to the Judicial Officers possessing higher qualification like Post Graduation in Law (LLM), the State Government had not made the same applicable vide the Government Resolution dated 4th

July 2003. It appears that there was communication between the High Court and the State of Maharashtra with regard to making recommendation 8.48 applicable to the Judicial Officers in the State of Maharashtra. Finally, by a Government Resolution dated 1st August 2017, the State of Maharashtra has also accepted recommendation 8.48 of the said recommendations. It will be relevant to refer to true translated version of clauses 3 and 4 of the said Government Resolution dated 1st August 2017 :-

“3. The procedure to grant the said increment is as under :-

Sr. No.	Procedure to grant 3 advance increments	
1.	If the judicial officer has possessed the post-graduation degree in law (LL.M.) before getting appointed in the service.	In case of such officer, the pay fixation shall be made in the pay scale of the said post on the date on which the judicial officer has been first appointed, by granting him notional benefit of 3 advance increments.
		The pay fixation in the pay scale of assured progress scheme/ promotion shall be made as per pay fixation made by assuming 3 advance notional increments.
		After fixing pay in each phase of assured progress scheme/ promotion as above, the pay

		fixation of the post presently working to, shall be made.
2.	If the judicial officer has possessed the post graduation degree in law (LL.M.) after getting appointed in the service.	In case of such officer the pay fixation shall be made by granting him notional benefit of 3 advance increments in the pay scale drawn by him on the post on which he is working on that date, on which he has possessed the post graduation degree in law (LL.M.)
		The pay fixation shall be made in the pay scale of assured progress scheme/promotion as per pay fixation made by assuming 3 advance notional increments.
		After fixing pay in each phase of assured progress scheme/promotion as above, the pay fixation of the post presently working to shall be made.

4. If the benefit of assured progress scheme / promotion / select grade / senior time scale is granted while granting 3 advance increments as above, then the benefit of 3 advance increments shall not be admissible again, in the respective pay scale.”

5] It could thus be seen that as per clause 3, if a Judicial Officer possesses Post Graduation in Law (LLM) at the time of his appointment, then from the date of appointment, he would be entitled to grant of three advance increments, for fixation his pay. It also provides that if a Judicial Officer obtains Post Graduation in

Law (LLM) during the period when he is in service, then from the date on which he acquires such a Post Graduation in Law (LLM), his pay should be fixed by giving him three advance increments. However, the problem lies in clause 4. Clause 4 provides that if a Judicial Officer has got advantage of Assured Career Progressive Scheme/Promotion/Selection Grade/Higher Time Grade, then he would not be entitled to the benefit of three advance increments.

6] We have heard Mr. Patwardhan, Mr. Desai and Mr. Chandratre learned counsel for the Petitioners and Ms. Solanke for the Respondent – State and Mr. Borkar for the High Court Administration.

7] Mr. Patwardhan, learned counsel for the Petitioners submits that the very purpose of grant of three advance increments is to provide an incentive to the Judicial Officers to get higher education. It is submitted that by clause 4 of the Government Resolution, what has been given under clause 3 has been taken away. It is submitted that the very purpose of grant of advance increment stands frustrated by clause 4.

8] Ms. Solanke, learned counsel appearing on behalf of the Respondent – State vehemently opposes the Petition.

9] It will be relevant to refer to paragraph 10 of the affidavit in reply filed by the State Government :-

“10. The aforesaid Clause 4 therefore, is incorporated in the aforesaid Government Resolution, to clarify that, once the benefit of 3 advance increments is granted to a judicial officer, he will not be again entitled for grant of the very same benefit at the stages of his promotion or at the stages of grant of benefit of Assured Career Progressive Scheme to him/her again. I say that by seeking relief to the effect that the judicial officers be given benefit of the recommendation in issue, at every stage of promotion and/or at every stage of grant of benefit of Assured Career Progressive Scheme, the Petitioner is requesting this Hon'ble Court to expand the scope of recommendation(s) made by the Shetty Commission, which now having been accepted by the Hon'ble Supreme Court as it is, is not at all permissible.”

10] Perusal of the affidavit would reveal that it is the view of the State Government that once the benefit of three advance increments is granted to a Judicial officer at one stage, he will not be entitled again for grant of the said benefit at the stage of promotion or at the stage of grant of benefit of Assured Career Progressive Scheme. We do not find that there should be any quarrel with the stand of the State Government on the said issue. It

is clear that if a candidate, who possesses higher qualification, then he would be entitled to the benefit of three advance increments only once in his entire career. The matter would have been different if the Government would have stopped at the same. However, it will be relevant to refer to paragraph 12 of the affidavit in reply, which reads thus :-

“12. I stoutly deny the contentions raised by the petitioner to the effect that such judicial officers are not able to carry the benefits of the increments forward in case of promotion. I further deny the contention of the petitioner to the effect that the acceptance of the aforesaid recommendations should have been understood as grant of “additional” increments and not just “advance” increments. I hereby emphatically deny that the 3 increments are to be granted as and by way of 'additional' increments and not just by way of 'advance' increments. I say that the language of the recommendations is clear, plain and simple. It clearly speaks of only and only 'advance' increments and not at all 'additional' increments as suggested or even otherwise. The same admits of no such inference, as is sought to be drawn by the petitioner or even otherwise. The same also does not leave any scope to even contend that such benefit ought to be granted or is admissible at every promotional stage or at every stage of the judicial career.”

11] We are at pains to say that what has been stated in paragraph 12 is totally in conflict with paragraph 10. In paragraph 10, what the Government says is that a candidate would not be

entitled to the benefit of three advance increments at more than one stages. For example, if a candidate is granted three advance increments at the stage of his coming in the cadre of JMFC, he would not be entitled to again those three increments, when he comes in the cadre of Senior Division. However, by using the words 'advance' and 'additional' the State Government has tried to create a confusion. It is stated that those three increments are only by way of advance and not by way of additional increments.

12] It will be also relevant to refer to the recommendation 8.48 of the Shetty Commission, which reads thus :-

“8.48. If selected candidates are having a higher qualification like Post Graduation in Law, we recommend that three advance increments be given as it is allowed by Delhi Administration. It is an acknowledged fact that Post Graduation in Law is a difficult course and it is better to reward appropriately such candidates.”

It could thus be seen that the very purpose of granting three advance increments is to give an incentive and to reward a Judicial Officer, who has obtained Post Graduation in Law (LLM). We find that if the stand of State Government is to be accepted, it will totally frustrate the purpose, for which the advance increment is

to be granted. If the stand is to be accepted, there will be equal treatment to all the Judicial Officers, who are having Post Graduation in Law (LLM) with the other Judicial Officers, who are not having such a Post Graduation in Law (LLM). For example, if a candidate has been granted three increments on account of possessing higher qualification, when he joined the services as JMFC, once he gets benefit of Assured Career Progressive Scheme, the additional benefit would be taken away. Such an interpretation would be totally in conflict with the recommendation made by Justice Shetty Commission.

13] It may also be worthwhile to note that Mr. Borkar appearing on behalf High Court Administration submits that interpretation as placed by the High Court Administration is also on the same lines. He submits that High Court has recommended grant of three advance increments as addition to be made to the pay scale of the Judicial Officers possessing Post Graduation in Law (LLM). He submits that High Court has accepted decision of the State Government to make the said Government Resolution prospectively applicable in order to meet the concern of the State Government

about the financial implication.

14] In that view of the matter, we find that if clause 4 of the Government Resolution is permitted to remain, it will lead to a confusion and would have the result of taking away benefit, which is granted by clause 3 to the Judicial Officers possessing Post Graduation in Law (LLM).

15] In that view of the matter, Petitions are allowed. Rule is made absolute by quashing and setting aside clause 4 of the Government Resolution dated 1st August 2017.

16] Needless to state that all the Judicial Officers, who are possessing Post Graduation in Law (LLM) would be entitled to the benefit from the date of the said Government Resolution. The arrears to be worked out on the basis of the same shall be paid to the Judicial Officers within a period of three months from today.

[RIYAZ I. CHAGLA, J.]

[B. R. GAVAI, J.]