

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

WRIT PETITION NO. 2679 OF 2015

Parasmal Pukhraj Bafna .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Parasmal Pukhraj Bafna, Party in Person.

Mrs. M. A. Deshpande, Addl.G.P. for the Respondent No. 1.

Shri S. B. Deshpande, A.S.G. for the Respondent No. 2.

Shri C. K. Shinde, Advocate for the Respondent No. 3.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

Closed for orders on : 20.12.2018

Order pronounced on : 22.03.2019

FINAL ORDER (Per S. V. Gangapurwala, J.) :

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

02. The petitioner has retired from judicial service as District and Sessions Judge, Nanded on 31.12.1993 having attained age of superannuation.

03. The instant writ petition is filed for the following reliefs :

“(B) To issue any appropriate writ, direction or order to consider the Revised Pension of the petitioner, in the light of Justice Shetty Commission recommendations, at 50% of the minimum pay of the post held at the time of his retirement, as revised from time to time I. e. Rs. 8,375/- p.m. (Revised Scale under Shetty Commission, being 16750-400-19150-450-20500), instead of Rs. 8,248/- p.m., and accordingly issuance of the P.P.O. (Pension Payment Order) by the second respondent for payment of the differential amount together with admissible Dearness Allowance, for the period 01.01.1996 to 31.12.2005.

(C) To issue any appropriate writ, direction or order requiring the first and the third respondent to take immediate steps to implement the recommendation of Justice Padmanabhan Committee comprised in paragraph 31(d) and approved by the Hon'ble Apex Court in it's Order dated 27.07.2010 in I. A. No. 244 in W. P. (C) No. 1022/1989, All India Judges Association V/s Union of India and Others in the matter of the Medical Facilities as regards the Treatment and reimbursement of Expenditure etc. to the retired Judicial Officers, also entitling petitioner to avail all the said benefits.”

04. So far as prayer clause B with regard to the revised pension of the petitioner is concerned, after hearing the parties we have on June 27, 2018 passed an order directing the respondent No. 2 to sanction revised pension to the petitioner as

per the corrigendums dated 30.03.2011 and 09.06.2015 viz at the rate of 50% of the minimum pay of the post held at the time of his retirement as revised from time to time together with admissible dearness allowance for the period 01.01.1996 to 30.12.2005 with interest at the rate of 9% per annum to be calculated from 01.01.2012 till the date of payment of arrears. The same was directed to be sanctioned within a period of three (3) months for the date of order. The issue with regard to prayer clause B, as such stands concluded in view of our order dated June 27, 2018.

05. The only issue that remains to be considered is about implementation of recommendations of Justice Padmanabhan Committee comprised in para No. 31(d) with regard to the medical facilities for retired judicial officers.

06. Mr. Bafna party in person strenuously contends that, Justice Shetty Commission had made recommendation in para 23.8(6) that all medical facilities that are recommended to serving judicial officers with regard to treatment and reimbursement of expenditure, etc. be made applicable to retirees. Justice Padmanabhan Committee in its report under para 31(d) made the recommendation that the recommendation of the First National Judicial Pay Commission at No. 6 with regard to treatment and reimbursement of expenditure etc. holds good and the same to continue. The petitioner further submits

that, the Apex Court in its order dated 27.07.2010 passed on Interlocutory Application No. 244 in Writ Petition (Civil) No. 1022 of 1989, All India Judges Association V/s Union of India and others had approved recommendations of justice Padmanabhan Committee as mentioned in para 31 (d) of the report. According to the petitioner, the respondents have not yet implemented the said recommendations accepted by the Hon'ble Supreme Court. The respondents be directed to provide the medical facilities to the retired judicial officers as provided to the serving judicial officers. The State cannot turn around and deny the said benefits to the petitioner and the retired judicial officers. The petitioner further submits that, the directions of the Hon'ble Apex Court have to be meticulously complied with. The State Government has to give effect to the directions of the Hon'ble Apex Court. It is the obligation of the State to implement the said recommendations. He relies on the judgment of the Apex Court in a case of Dr. Dinesh Kumar and others Vs. Motilal Nehru Medical College, Allahabad and others reported in (1990) 4 SCC 627.

07. Mrs. M. A. Deshpande, the learned Additional Government Pleader for the respondent No. 1 submits that, the Government Resolution dated 05.01.2011 provides payment of medical allowance of Rs. 1,500/- per month to the retired judicial officers as recommended by Justice Padmanabhan Committee. As far as medical benefit to the retired judicial officers on par with the

serving judicial officers is concerned, the State Cabinet has not approved said medical benefits to the retired judicial officers on par with the serving judicial officers. However, Cabinet gave approval to make applicable the medical reimbursement insurance scheme to the retired judicial officers which is applicable to the State Government officers/servants and All India Services Officers vide Government Resolution dated 09.06.2014 and 28.06.2016 issued by the Finance Department. The steps are taken in that direction. The learned Additional Government Pleader further submits that for carrying out business of the Maharashtra Government, the Governor of Maharashtra in exercise of the powers conferred by Clause (2)(3) of Article 166 of the Constitution of India has made the rules called, "The Maharashtra Government Rules of Business" (for short "said Rules"). Under Rule 9 of the said Rules, all the cases referred to in the second schedule shall be brought before the Council (Council means Council of Ministers constituted under Article 163 by the directions of the Governor under Clause (c) of the Article 167 of the Constitution and by directions of (a) Hon'ble Chief Minister or (b) the Minister in charge of the case with the consent of Hon'ble Chief Minister. It is further submitted that, at Sr. No. 15 of the Second Schedule, there is a reference to proposal which affects the finance of the State which does not have consent of the Finance Minister. At Sr. No. 19 of the Second Schedule, there is a reference to proposals involving important changes of policy or practice. The aforesaid rules

necessitate that the said proposals shall be placed before the Council of Ministers.

08. It is further submitted by the learned Addl. Govt. Pleader that, in the year 2009, the Law and Judiciary Department had moved the proposal for implementation of the directions given by the Apex Court in respect of the recommendations of Justice Shetty Commission. The State Cabinet in its meeting dated 25.08.2009 rejected the proposal of medical reimbursement to the retired judicial officers on par with the serving judicial officers. For the second time the issue of medical reimbursement to the retired judicial officers on par with the serving judicial officers was submitted to the Finance Department and the State Government for concurrence and the Finance Department noted that State Cabinet has rejected the proposal in the year 2009. The proposal now cannot be given concurrence and suggested that the medical reimbursement insurance scheme, which has been introduced by the Finance Department vide G. R. dated 09.07.2014 to the serving and retired State Government officers/employees and officers of All India Services be made applicable to the retired judicial officers. The State Cabinet on 17.07.2016 considered the proposal incorporated in the cabinet Note and resolved that the medical reimbursement insurance scheme applicable to the serving and retired State Government officers/employees and officers of All India Services be made applicable to the retired judicial officers.

09. The learned Addl. Govt. Pleader submits that, the issue of medical reimbursement for the retired judicial officers on par with the serving judicial officers though recommended by Justice Shetty Commission would be the policy decision of the State Government and the same was required to be placed before State Cabinet for approval. Unless the recommendations are incorporated in the Rules, the same cannot be implemented. Reliance is placed on the judgment of the Apex Court in a case of **Rakhi Ray and others Vs. High Court of Delhi** reported in **(2010) 2 SCC 637**. It is further submitted by the learned Addl. Govt. Pleader that the Governor of Maharashtra in consultation with the Maharashtra Public Service Commission and the High Court of Bombay has made rules called the Maharashtra Judicial Services Rules 2008 regulating the recruitment to the Maharashtra Judicial service. The said rules are notified in the year 2008. As on today there is no provision in the Maharashtra Judicial Service Rules 2008 regarding grant of benefit of medical reimbursement to the retired judicial officers. The issue of extending medical reimbursement facility to the retired judicial officers was also discussed in the meeting of the Hon'ble Chief Minister and the Hon'ble Chief Justice High Court of Bombay held on 01.04.2017. In the said meeting it was agreed and decided that a Committee of the Hon'ble Judges to be nominated by the Hon'ble Chief Justice will look into the subject and make recommendations. It was informed by the Registry of High Court of Bombay under letter dated 17.11.2017 that the Hon'ble

Chief Justice has constituted the Committee and the recommendations of the Committee of Hon'ble Judges along with information as regards financial implications of extending medical reimbursement facility to the retired judicial officers were communicated to the Government vide letter dated 08.02.2018 and 19.03.2018. The proposal was then submitted to the Hon'ble Chief Minister to be placed before the Cabinet through Finance Department. The Finance Department raised two issues.

(a) If judicial officers of subordinate courts in the State who retired before 30.06.2011 are given benefit of medical reimbursement as per provision contained in Government Resolution, dated 19.03.2005, issued by the Public Health Department, those judicial officers who retire on or after 30.06.2011 will be discriminated, considering the provisions contained in Government Resolution, dated 24.03.2017, and that may give rise to further litigation. This aspect should be clarified.

(b) Information about number of judicial officers who retired during the period 01.01.1970 to 30.06.2011 and who are eligible for medical reimbursement, should be provided.

10. The learned Addl. Govt. Pleader further submits that, the medical reimbursement insurance cover policy is made applicable to the serving as well as retired employees/officials of the State Government and officers of All India services vide G. R. dated 09.07.2014 issued by the Government of Maharashtra, Finance Department. The said government resolution was then amended vide G. R. dated 25.06.2015, 20.08.2016 and 17.07.2017. It has been recently amended to provide for insurance premium for the period 01.07.2018 to 30.06.2019 vide G. R. dated 16.07.2018. The said policy of medical insurance cover has been extended to the judicial officers of subordinate courts, who retired on or after 30.06.2011 vide G. R. dated 24.03.2017. The learned Addl. G. P. further submits that, it is upto to the State Government to take a policy decision considering the financial implications, whether to extend the facility of medical reimbursement to the retired judicial officers on par with the serving judicial officers and this Court would not direct the State Government to take a policy decision in a particular manner. Reliance is placed by the learned Addl. G. P. on the judgments of the Apex Court in the case of **Balco Employees Union Vs. Union of India** reported in (2002) 2 SCC 333, in the case of **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi** reported in (2006) 10 SCC 337, in the case of **Bhavesh D. Parish Vs. Union of India** reported in (2000) 5 SCC 471 and in the case of **Brij Mohan Lal Vs. Union of India and others** reported in (2012) 6 SCC 502. It is further

submitted that, the Apex Court in the case of All India Judges Association and others Vs. Union of India and others reported in (2002) 4 SCC 247 has clearly observed that any clarification that may be required in respect of any matter arising out of said decision will be sought only from the Apex Court.

11. We have considered the submissions.

12. The Government has the authority and power to frame the policies and also to change the policies. The power of Government to frame a policy, to implement it and amplitude of manner in which it is to be framed and implemented is wide. The scope of judicial review in matters of policy is limited and minimal and more particularly when the policy involves fiscal ramifications. In matters of economic policy, the Court does not interfere with the decision of expert bodies as is held by the Apex Court in the judgment referred to supra by the learned Addl. Govt. Pleader namely in the case of Balco Employees Union Vs. Union of India, in the case of Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, in the case of Bhavesh D. Parish Vs. Union of India and in the case of Brij Mohan Lal Vs. Union of India and others.

13. We are aware that it would not be within our province to direct the State Government to resort to a particular policy. We

would certainly not have exercised our writ jurisdiction under Article 226 of the Constitution of India and issued directions to the State Government, had the petitioner approached us seeking benefit of medical reimbursement to the retired judicial officers without being armed with the directions of the Apex Court. The petitioner is seeking implementation of the recommendations of Justice Padmanabhan Committee comprised in para 31(d) and approved by the Apex Court in its order dated 26.07.2010 in I. A. No. 244 in Writ Petition (Civil) No. 1022 of 1989 in the matter of All India Judges Association Vs. Union of India and others.

14. The focal point in issue is about the implementation of the recommendations of Justice Shetty Commission and Justice Padmanabhan Committee for providing medical reimbursement facility to the retired judicial officers on par with the serving judicial officers. Justice Padmanabhan Committee note No. 31(d) reads thus :

31 (d) The other recommendations of First National Judicial Pay Commission at No. 6 with regard to treatment and reimbursement of expenditure etc. holds good and the same to continue.

15. Vide note 31(6) it was recommended that all the medical facilities recommended to serving judicial officers with regard to treatment and reimbursement of expenditure etc. be made applicable to retirees.

16. The Apex Court in Interim Application No. 244 in Writ Petition (C) No. 1022 of 1989 under order dated 26.07.2010 observed thus :

“We approve the recommendations made by Justice Padmanabhan Committee to continue with Justice Shetty Commission recommendations, as mentioned in Paragraphs 31 (a), (d) and 36 of the Report.”

“We may place on record that as far as above directions are concerned, no State has raised any objection.”

17. The Apex Court in the aforesaid order has approved the recommendations made by Justice Padmanabhan Committee to continue with Justice Shetty Commission recommendations as mentioned in para 31(a) and (d) and 36 of the report. We are concerned with the recommendations in para 31 (d) of the report of Padmanabhan Committee. The same is reproduced supra. In the recommendations it is clearly observed that, the recommendations of the First National Judicial Pay Commission (Justice Shetty Commission) with regard to the treatment and reimbursement of expenditure etc. holds good and the same to continue. The recommendation at para No. 31 (6) is that all the medical facilities that are recommended to the serving judicial officers with regard to treatment and reimbursement of expenditure, etc. be made applicable to the retirees. The Apex

Court has approved the said recommendations. The Apex Court has further observed that, as far as said directions are concerned, no State has raised any objection. The said order has become final. The recommendations are approved by the Apex Court and the directions issued under the said order have been accepted by all the State Governments, in as much as no State has raised any objection to the same. Sequel to that is implementation of the same.

18. The State of Maharashtra has not yet implemented the aforesaid recommendations and the directions of the Apex Court.

19. The State ought not to contest the present matter as an adversarial litigation. The recommendations as observed above have been approved by the Apex Court. The State Government had not raised any objection before the Apex Court to the said recommendations. It is the duty of the State Government to implement the recommendations approved by the Apex Court. The same is in the nature of direction. There cannot be any debate with the proposition put forth by the respondent/State that the State will have to either amend the rules or issue some executive instructions in that regard. More than nine years have lapsed, but the State Government has not implemented the said recommendations. On the contrary it has come with the stand that the Cabinet has rejected the proposal to award benefit of medical reimbursement facility to the retirees as is available to

the serving judicial officers. In our opinion, it would not be open for the Government now to contend that it will not implement the said recommendations. Once the said recommendations have been approved by the Apex Court and the Apex Court having further observed that the aforesaid directions have not been objected to by any State Government, it is obligatory on the part of the State Government to implement the said recommendations by amending the rules or by issuing executive instructions in that regard.

20. We have no manner of doubt that policy matters are within the domain and competence of the State Government and where any policy involves financial and economic ramifications, the Court certainly would not transgress upon the policy making power of the State. We certainly would not have entertained the petition even for a moment, had the petitioner sought the relief as claimed in the present petition dehors the recommendations of Justice Padmanabhan Committee and Justice Shetty Commission and approved by the Apex Court.

21. In our opinion, it is now not open for the State Government to contend that on account of financial constrains, it would not implement the said recommendations. The recommendations having been approved by the Apex Court and further the Apex Court observing that their directions have not been objected to by

any State Government, it is now not open for the State of Maharashtra to take a contrary stand.

22. We may appreciate that it would take some time for the Government to issue necessary instructions. However, nine years is too long period for not implementing the recommendations approved by the Apex Court. The State Government in its true letter and spirit ought to have implemented the said recommendations, more so when same are approved by the Apex Court.

23. We have been told that other State Governments have implemented the same and provided medical reimbursement facility to the retirees as is provided to the serving judicial officers.

24. The respondents have taken a stand that insurance scheme is contemplated to meet the medical expenses for retirees. Applying an insurance scheme for medical reimbursement to retired judicial officers is certainly not providing them medical reimbursement facility on par with the serving judicial officers. The Government employees are provided with medical reimbursement as per Government Resolution dated 19th March, 2005. It has been submitted by respondents that the serving judicial officers are also provided with medical reimbursement on the same lines as provided to the Government employees as per

G. R. dated 19th March, 2005.

25. In view of the directions of the Apex Court in the case of All India Judges Association Vs. Union of India vide order dated 26.07.2010 in I. A. No. 244 in Writ Petition No. 1022 of 1989 approving the recommendations made by Justice Padmanabhan Committee to continue with the Justice Shetty Commission recommendation as mentioned in paragraphs 31(a) to (d) of the report and further observation, “we may place on record that as far as above directions are concerned, no State has raised any objection.” The State Government has to implement the directions of the Apex Court and award to the retired judicial officers same benefit of medical reimbursement as is available to the serving judicial officers. The Government is not left with any discretion in this regard.

26. The Apex Court in a case of Dr. Dinesh Kumar and others Vs. Motilal Nehru Medical College, Allhabad and others reported in (1990) 4 SCC 627 observed thus, “*this Court has stated in the past and now reiterate that, the directions of this Court are not intended to be brushed aside and overlooked or ignored. Meticulous compliance is the only way to respond to directions of this Court.*”

27. It needs to be considered that, medical aid would be a necessity more for a retired judicial officer. Nine years have

passed, the State Government has not implemented the recommendations of Justice Padmanabhan Committee, as approved by the Apex Court. The State Government was expected to take up the said cause.

28. It is for the State Government to decide the date of implementing the facility of medical reimbursement to the retired judicial officers as provided to the serving judicial officers. Nine years is too long a period for the Government in not taking the decision. It is because of the apathy on the part of the Government, we are required to step in.

29. The State Government shall within a period of four months from today take steps to provide the benefit/facility of medical reimbursement to the living judicial retirees on par with the serving judicial officers.

30. The writ petition accordingly stands disposed of. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]