

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

WRIT PETITION No.808 OF 2018

1. Syed Vilayat Hussain Quadari,
Age : 39 years, Occu. Service as
Assistant Charity Commissioner,
Aurangabad.
R/o Dargah Road, Galib Nagar,
Parbhani.
2. Paikrao Sanjay Pundlikrao,
Age : 44 years, Occu. Service as
Assistant Charity Commissioner,
Beed.
R/o At post Koli, Tal. Hadgaon,
District Nanded.
3. Panchal Rajpal Dyanoba,
Age : 42 years, Occu. Service as
Assistant Charity Commissioner,
Jalna.
R/o Mahatma Phule Road, Purna,
Tal. Purana, District Parbhani. ... **Petitioners**

Versus

1. The State of Maharashtra,
Through its Chief Secretary,
Mantralaya, Mumbai - 32.
2. The State of Maharashtra
Through its Principal Secretary,
Finance Department, Mantralaya,
Mumbai - 32.
3. The State of Maharashtra,
Through its Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai - 32. ... **Respondents**

...
Advocate for Petitioners : Mr. A. P. Bhandari.
AGP for Respondents-State : Mr. S. B. Yawalkar.
...

**CORAM : RAVINDRA V. GHUGE AND
S. G. MEHARE, JJ.**

**RESERVED ON : 16.09.2021
PRONOUNCED ON : 13.10.2021**

JUDGMENT : (Per S. G. Mehare, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioners are the Assistant Charity Commissioners appointed by the Government of Maharashtra in the Charity Organization of the State of Maharashtra. They approached this Court under Article 226 of the Constitution of India, claiming 'equal pay for equal work' at par with the Judicial Officers appointed in the State of Maharashtra, as applied in the State of Gujarat for the reason that the Gujarat State has the same Law. They compare themselves equal in discharge of functions and duties, the nature of their powers like judicial officers in the State of Maharashtra. They also have the comparison with the judicial officers deputed in charity

organization by the High Court of Bombay. They have set out the case that they also discharge the same function akin to the Judicial Officer. They are also doing the adjudications of the rights of the concerned, but the State is paying them less pay than the Judicial Officers, which violates Article 14 of the Constitution of India. Therefore, they should be treated equally on par with Judicial Officers, and the discrimination made by the Government of Maharashtra may be eliminated.

3. The claim of the petitioners can be summarized as follows :-

- (a) The petitioners were appointed as Assistant Charity Commissioners by the State Government on 07.10.2014 by Notification of the State of Maharashtra as Group-A Officers on the pay scale of Rs.9300-34800 plus grade pay Rs.4600/- under Rule 9(42) of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981.
- (b) They were appointed temporarily for two years on probation.

- (c) The qualification to appoint as Assistant Charity Commissioner under Section 5(2) of the Maharashtra Public Trusts Act 1950 ("M.P.T. Act" for short), is, holding or has held a Judicial Officer in rank not lower than Civil Judge (Junior Division) for not less than one year. Giving the list of their duties under the M.P.T. Act, they further stated that as per Section 73 of the M.P.T. Act, the powers of Civil Court are equally vested with them. The Judicial Officers can be appointed as Assistant Charity Commissioner by granting re-appointment / on deputation and paid the salary recommended by the Padmanabhan Committee. They have given the pay scale of Rs.27700-770-33090-920-40450-1080-44770.
- (d) The petitioners have contended that considering the nature of duties performed by various Judicial Officers, the Badkas Committee had recommended that the salary of the Assistant Charity Commissioner shall be more than the Salary of Civil Judge Junior Division. Therefore, if the pay scales of other Officers appointed on the basis of recommendations of Maharashtra Public Service

Commission are considered, it would be clear that the post of Assistant Charity Commissioner is not extended the requisite financial benefits.

- (e) The Department of Law and Judiciary had recommended a specific proposal dated 04.01.2013 on implementing the fifth pay scale, to the High Power Committee, for the Assistant Charity Commissioners. The said proposal was forwarded to the Finance Department vide noting dated 17.12.2014. However, the Finance Department refused the proposal of Law and Judiciary Department vide order dated 02.02.2015, giving reasons that these cadres are not comparable, hence their pay scales are not equated. Hence, the proposal is rejected. Financial burden on the exchequer is also the ground to refuse the recommendations made by the Department of Law and Judiciary.
- (f) The Association of the Officers working with Charity Organization kept making representations to the Government for considering the deficiencies in pay fixation of Assistant Charity Commissioners.

- (g) Vide Representation dated 06.04.2016, it was pointed that the State of Gujarat granted the pay in the scale of Rs.15600-39100 plus grade pay Rs.5400/-, whereas, the State of Maharashtra has the pay scale of Rs.9300-34800 plus grade pay of Rs.5000/-.
- (h) The entire expenses of the Charity Organization, including the salaries of the Assistant Charity Commissioner is expended from the Public Charity Administrative Fund. Hence, there is no financial burden on the exchequer. The Finance Department lost sight of this fact and wrongly gave the reason of financial burden on the exchequer.
- (i) Vide representation dated 02.03.2017, various issues regarding fixation of pay, has been elaborately analyzed, and it was expected from the State Government that, they will take corrective steps. However, no further steps were taken except for increasing grade pay from 4600 to 5000 from 31.10.2017.
- (j) The Finance Department, time and again, refused to accept the recommendations of respondent No.3 and

refused to respect the Constitutional mandate of paying equal salary for equal work. No reasons are assigned to reject the representations of the petitioners.

- (k) Hence appropriate Writ, order, or directions be issued to make the salary of petitioners equivalent to the salary of Civil Judge Junior Division within the State of Maharashtra, or equivalent to the salary granted by the State of Gujrat and respondent Nos.1 and 2 be directed to approve and implement the recommendations of respondent No.3 dated 13.05.2016.

4. The respondents have submitted their joint submissions. The facts of the appointment of petitioners and depositions of the Judicial Officers in the Charity Organization are not in dispute. The representations made by petitioners are also not disputed. They have come with the case that in view of the Hon'ble Supreme Court pronouncements, the Court should avoid giving declaration granting particular pay scale and compel the Government to implement the same. The Government of India has extended the 7th pay commission to the Central Government employees. The State of Maharashtra

has extended “State Pay Revision Committee-2017”. Therefore, the petitioners may take recourse to remedial measure by approaching that Commission. By Notification dated 31.10.2017, the grade pay of the Assistant Charity Commissioners has been revised from Rs.4600 to 5000. The demand of the petitioners for scale parity with the judicial Officer is not legal and proper. The National Judicial Pay Commission governs the Judicial Officers. In view of Justice Jagannath Shetty Commission constituted on the orders of Hon’ble Supreme Court in the case of All India Judges Association, the pay scales of the Judges were revised by the Government on 4th July, 2003. Then, the Government also accepted the recommendation of the Padmanbhan Committee and implemented it from 22nd October, 2010.

5. The basic premise of the petitioners that their services are comparable with the services rendered by the Judicial Officers, is not legally and factually correct. Merely because the petitioners discharge some quasi judicial functions which are also discharged by the Judicial Officers when posted on ex-cadre post of Assistant Charity Commissioner, they cannot

claim equivalence with the Judicial Officers in status and pay emoluments as well. Under the scheme of the Constitution, the Judicial Officers stand on a different footing, and the members of the other service cannot be placed on par with the members of the Judiciary merely because they happen to discharge some quasi judicial functions.

6. The general duties and responsibilities of the judicial Officers deputed as Assistant Charity commissioners in their capacity are substantially different. The Assistant Charity Commissioners have limited jurisdiction under the M.P.T. Act. Against this, the Judicial Officers have to deal with various Acts and are required to adjudicate under multiple laws.

7. The nature of work, the challenges in adjudication, the pressure of the situation, and overall volume and complexity thereof are markedly higher than that of an Assistant Charity Commissioner, who discharges some quasi judicial functions. On appointing the Judicial Officer on deputation as Assistant Charity Commissioner, does not justify the demand for equal pay at par with them. The petitioners are appointed on feeder posts and entitled to promotions.

8. The Finance Department has clarified that at the time of the 4th Pay Commission, Justice Naik Committee did not consider the cadre of Assistant Charity Commissioner, equivalent to any other cadre. The pay scale recommended by the said Committee has been applied to the post of petitioners. Therefore, there is no anomaly in the pay scale of the cadre of the petitioners. The Finance Department has clarified that while revising the pay scale of Government Servant, the pay structure of other States is not to be considered. Therefore, the pay scale determined by the State of Gujrat is not comparable, and it is inappropriate.

9. Fixation of pay and determination of parity in duties and responsibilities is a complex matter for the executive to discharge. The recommendations of Pay Commissions are subject to the acceptance of the State Government. No Court shall compel the State to accept the recommendations of the Pay Commission though it is an expert body. It is the discretion of the Government and therefore, it must be left with the Pay Commission. The petitioners have no case on merit and hence, the petition is liable to be dismissed, are the submissions.

10. The petitioners have a twofold case. Firstly, they claim equivalence with the Judicial Officers regarding the nature, power, and functions of their duties. They have claimed that the duties they discharge and the nature of their work are as good as adjudication. They have the powers of Civil Courts. Hence, they, be treated at par with the Judicial Officers. When they are at par with the Judicial Officers by the nature of the duties and powers, no discrimination shall be made by giving them less pay than the Judicial Officers. Secondly, they have claimed parity with the pay scale. They have claimed that the Gujarat State pays the scale at par with the Civil Judges. The Gujarat State followed the same M.P.T. Act. Therefore, the nature of the work, functions, duties, and powers are the same in both the States. Therefore, there shall be no discrimination in pay.

11. The Constitution of India recognizes the doctrine of “Equal pay for equal work” for both men and women and “Right to Work” through Articles 39 (d) and 41. These Articles cover the Directive Principles of State Policy. Article 14 of the Constitution guarantees the right to equality before Law or

equal protection of Law. No inequality is allowed in the same circumstances. So, to establish the right to equal pay for equal work, equivalence is the primary test. However, article 14 is not an absolute right to equality, and the State has the right to reasonable classification.

12. The petitioners' services are governed under M.P.T Act. The State Government appoints the Assistant Charity Commissioners ("A.C.C." for short) who qualify the conditions laid in Section 5(2-A) of the 1950 Act. The Judicial Officer holding or has held the post not lower than the Civil Judge Junior Division may apply the Advertisement for the post of Assistant Charity Commissioner. A Civil Judge Junior Division in judicial service or was in such service for one year may apply for the post of Assistant Charity Commissioner. It gives an option to the Sitting Judge of the Junior Division to change the cadre. A person practicing Law, registered under the Indian Bar Councils Act, or The Advocates Act, for four years, the person holding the law degree from recognized University and has worked with the Charity Organization not below the rank of Senior Clerk or Steno-typist for five years and passes the

departmental competitive examination is also qualified to be appointed as Assistant Charity Commissioner. The posts are filled by nomination.

13. On reading Section 5(2-A), it is clear that the State may appoint the Assistant Charity Commissioners, who are sitting Judges as Civil Judge Junior Division or holding such post for one year, a person practicing Law for four years and the person working in Charity Organization not below the rank of Senior Clerk or Steno-cum-typist holding law degree, for five years.

14. Article 309 of the Constitution empowers the State to regulate the recruitment and condition of the service of persons to be appointed in public service. The Governor of the State of Maharashtra, in the exercise of powers under Article 309 of the Constitution, framed the rules regulating recruitment to the posts of Charity Commissioner, Joint Charity Commissioner, Class I, Deputy Charity Commissioner, Class I and, Assistant Charity Commissioner Class I. ("Recruitment rules, 1986" for short). Rule 6 is relevant, which reads thus :-

“6. Subject to provisions of section 5 of the Act, appointment to the post of Assistant Charity Commissioner shall be made either-

(a) by promotion, on the basis of seniority subject to fitness, from amongst the person holding the post of Superintendent in the Charity Organization of Government for a period not less than five years: or

(b) by transfer on deputation of a suitable Judicial Officer possessing the qualifications laid down in subsection (2A) of section 5 of the Act; or

(c) by nomination from amongst candidates who are not less than 25 years of age and, unless already in the service of Government are not more than 40 years of age;

Provide that, Government may, on the recommendation of the Commission, relax the maximum age limit up to 42 years in the case of candidates possessing exceptional qualifications or experience or both."

15. Clause (c) of the above Rules provides that suitable Judicial Officers may be appointed as A.C.C. by transfer on deputation. The Judicial Officers appointed on deputation are from the cadre of Judicial Services. The Civil Judge Junior Divisions are recruited under the Bombay Judicial Services Recruitment Rules, 2008. Rule 3 of the Rules 2008 states that a State Service shall be constituted known as Maharashtra Judicial Services. Sub-rule (2) of rule 3 of Rules, 2008 states that the services shall consist of the cadres specified in the Schedule appended thereto. As per the said Schedule, the cadres have been designated. A Judge of Civil Judge Junior Division is designated as "Civil Judge Junior Division." Chapter III deals with recruitment. As per Rule 4, the appointing

authority of the Judges, including Civil Judge Junior Division, is the Governor and for promotions to the cadre of Senior Division is the High Court. Rule 5 deals with the method of recruitment, qualification, and age limit. For the recruitment on the post of Civil Judge Junior Division, the method is by nomination on the basis of marks obtained in a competitive examination conducted by Maharashtra Public Service Commission in terms of the Examination Scheme at may be framed by the High Court.

16. The educational qualification as prescribed is, the person must hold a law degree, must have practiced as an advocate in the High Court or court subordinate thereto for not less than three years on the date of the publication of the Advertisement or must be a fresh Law graduate, who has secured the degree in Law by passing all the examination leading to the degree in first attempt, has secured in the final year examination of the degree in Law or in the case of candidates holding Master's degree in Law in final year examination not less than fifty five percent marks or must be working or must have worked as Public Prosecutor or Government Advocate for not less than

three years, the period during which the candidate has worked as an Advocate shall also be included; or must be a member of Ministerial Staff, of High Court or subordinate thereto; or of Offices of Government Pleaders attached to those Courts; or working as Legal Assistant and above in the Legal Section of Law and Judiciary Department In Mantralaya provided such employee has put in minimum three years of service after obtaining Degree in Law.

17. The learned Counsel Mr. Bhandari submits that the A.C.C. are discharging the duties and responsibilities at par with the Judicial Officers. They also do the adjudication. The nature of duties, functions and powers are the same, and hence there is apparent equivalence between the two.

18. Let us now examine the powers, duties, and functions of the A.C.C. under M.P.T. Act. The A.C.C. has to make inquiries of Registration of the Trusts under Section 19. He has to hold the inquiry under Section 22 of the Act on any change in the Trustees, the appointment of Trustees on election, retirement, resignation, death, or incapability to be a trustee of the Trust. It's a contested inquiry too. He has to invite objections to

accept the change report. He has to record the findings on the issues raised in such change reports and pass a reasoned order based on the facts and Law. On giving such orders, he has to take the entries in the Register of Trust. He has to amend the Trust Register by adding new changes in the trustees and properties of Trust and delete the entries in the effect of any such changes. It is also his power and duty to de-register the defaulting Trust and take over the management of such de-registered Trusts, and if deemed fit, may dispose of the Trust property. Under section 37, he has the power to enter on and inspect or cause to be entered on and inspect any property belonging to public Trust, to call for and inspect the proceedings of the trustees, any book of accounts or document in the possession or under the control of the trustees, to call for any return, statement, account or report from the trustees, to get the explanation of the trustee and reduce or cause to be reduced to writing any statement made by a trustee or any person concerned with the Trust. If he finds any loss caused to the public Trust on account of gross negligence, breach of Trust, misapplication, or misconduct of trustee, he may submit the report to the Charity Commissioner. On his report, Charity

Commissioner may take appropriate action against the errant trustee/trustees.

19. Under section 41B, he has the powers to institute inquiries suo motu or on a complaint in writing from any person having interest in the Trust, with regard to charities, or a particular charity either generally or for a particular purpose. For the purpose of such inquiry, he has, by notice, require any person to attend at a specified time and place and give evidence or produce documents in his custody or control which relate to any matter in question at the inquiry. He may take evidence on Oath, and for that purpose, he may administer Oath under The Indian Oath Act, 1873 or solemn affirmation. Completing such inquiry, he has to report to the Charity Commissioner.

20. Under section 41C, A.C.C. has to make an inquiry for permission to collect money, subscription or donation, etc., and decide it. If he finds a possibility of fraud, misappropriation, or other abuse, in that case, he may stop such person from such collection and direct such person to render the account and

deposit the amount so collected in Public Trusts Administration Fund.

21. Section 41E imposes a duty on him to report to the Charity Commissioner that trust property is in danger of being wasted, damaged, or improperly alienated by any trustee or that trustee threatens or intends to dispose of that property. Section 41F imposes a duty on him to report to the Charity Commissioner the disobedience of any orders passed under any of the sections in chapter VI. He has powers under section 50A to frame, amalgamate, or modify the schemes. Under section 79, he has to determine whether or not a trust exists, and such Trust is a public trust, or particular property is property of such Trust. All these duties, functions, and powers of A.C.C. have been summarized in Section 68 of the Act.

22. The orders of A.C.C. passed under Sections 22, 22A, 28, 41C, 50A, 79, 79AA are appealable.

23. Under Section 73, he has the powers of Civil Courts in respect of proof of facts by affidavit, summoning and enforcing the attendance of any person examining him on Oath, ordering

discovery and inspection, and compelling the production of the document, and issuing of commissions. He shall record the evidence on affidavit only in inquiry under Section 22 of the Act.

24. In the case of *K. Shamrao and others s. Assistant Charity Commissioner (2003) 3 SCC 563*, the question before the Hon'ble Apex Court was whether Assistant Charity Commissioner under Section 5 of the Bombay Public Trusts Act, 1950 as applicable to Karnataka is a "Court" for the purpose of Contempt of Courts Act.

25. The Hon'ble Apex Court considering the provisions of the Act 1950 regarding powers, duties, and functions of the A.C.C. observed in the last but one para as follows :-

"The aforesaid provisions make it clear that that Assistant Charity Commissioner has only the trapping of a judicial tribunal but also has powers to give a decision or a definitive judgment which has finality and authoritativeness which are essential tests of a judicial pronouncement. The Assistant Charity Commissioner, therefore, possesses all the attributes of a court. The fact that the Assistant Charity Commissioner also has to perform some administrative functions is not of any relevance for coming to the conclusion that he is not a court, having regard to the provisions of the Act which substantially confer on him the power to give definite judgment subject to finality in appeal, after hearing all concerned. Functions of the Assistant

Charity Commissioner are predominantly adjudicatory. The Assistant Charity Commissioner has almost all the powers of which an ordinary Civil Court has including powers of summoning witnesses, compelling production of documents, examining witnesses on Oath and coming to a definite conclusion on the evidence induced and arguments submitted”.

“For the foregoing reasons, we hold that the Assistant Charity Commissioner is a Court for the purpose of Contempt of Courts Act...”

26. The learned counsel Mr. Bhandari for the petitioners argued that the nature of duties and functions performed so also exercised under M.P.T. Act by the A.C.C. and the Judicial Officers deputed as A.C.Cs are the same. The M.P.T. Act does not provide any difference in their powers and functions based on their mode of appointment. Respondent No.3 had made well-reasoned recommendations. Hence, they should have been accepted by respondent No.1.

27. The first question that the Government could have accepted the recommendations made by respondent No.3 is strongly opposed by the respondents, contending that any such recommendations made by the Committee are not binding on the Government. Even the Court of Law may not force the Government to accept and implement the recommendations.

To bolster their arguments, they relied on the case of *Union of India Vs. Arun Jyoti Kundu and others 2007(7) SCC 472*.

28. The facts in Arun Kundu (*supra*) were that the respondents had claimed before the Central Administrative Tribunal that their pay should be at par with Lower Division Clerks. The Fifth Pay Commission had recommended that typists should be treated at par with Clerks, Head Clerks, and Overseers Grade II in respect of the post of Senior Typists, Head typists, and daily Typists, respectively. Instead of applying the recommendations of the Fifth Pay Commission, the appellants have fixed the pay of the respondents at a lower scale.

29. The Hon'ble Apex Court, on the facts of the above case, held in paragraph No.9 that "it is well settled principle of Law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government". So, "unless the Government has accepted the recommendation to merge the cadres, the Court cannot proceed on the basis of the recommendation alone or to direct the Government to accept the recommendation".

30. Respondent No.3 submitted its proposal to revise the pay of A.C.Cs by comparing the salaries of the Civil Judge Junior Divisions. He also explained the nature of duties, powers, and functions of the A.C.Cs. To support his recommendations, he quoted the various sections of the M.P.T. Act. He also opined that the low pay compared to their duties and functions makes the A.C.Cs prone to seeking another higher pay job. Due to the low pay scale, the Charity Organization does not get good quality Officers. Their nature of work is judicial. Hence, the pay scale of Joint Charity Commissioner should be equated with the pay scale of Joint Secretary and Pay Scale of A.C.Cs should be equated with Additional Secretary in the Mantralaya. He also suggested that the expenses borne by Government of the Charity Organization are expended from Public Trust Administration Fund.

31. The petitioners have based their claim on the equality in the nature of duties, powers, and functions with the Civil Judge Junior Division. The cadre of the Civil Judge Junior Division has been designated as per rule 3 of the Maharashtra Judicial Recruitment Rules 2008. The appointments of Judicial

Officers other than the District Judges are made by the Governor under Article 234 of the Constitution of India, in accordance with rules framed by him after consultation with the Public Service Commission and the High Court of that State. In Article 236(b) of the Constitution, the expression “Judicial Service” means a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge. The Judicial Officers exclusively discharge the judicial functions. The A.C.Cs are appointed as prescribed in M.P.T. Act and the regulations made by the Governor. We have discussed the nature of duties, functions, and powers of A.C.Cs, and the Hon’ble Apex Court, in the case of K. Shamrao (*supra*) has held that the functions of A.C.Cs are predominantly adjudicatory. They also perform some administrative functions. Having regard to the nature of duties, functions, and powers of the A.C.Cs, it is no doubt that they are performing judicial and administrative functions.

32. What is the role of Charity Commissioner and other designated Officer can be understood better by going through

the object of the M.P.T. Act from its preamble. As per the preamble, the object of the M.P.T. Act, is to regulate and make better provisions for the administration of public religious and charitable trusts in the State. The various provisions of the M.P.T. Act are supervisory and administrative. The powers are conferred on the Charity Commissioner and other Officers to take necessary measures to protect the trust property, issue injunctions restraining the trustees whose acts are detrimental to the property and object of the trusts, and supervise, regulate and control the administration and management of the trusts. To administer the Trust is the primary duty of the Charity Commissioner, and for that purpose, vast powers are given to them. They also have adjudicatory powers based on the evidence taken on Oath. They also possess quasi judicial powers. Quasi judicial is an action by an administrative agency that, ascertains certain facts, holds hearings, weighs evidence, makes conclusions from the facts as a basis for their official actions and exercise discretion of judicial nature.

33. The question that may arise is whether on the basis of some similarities in the duties, functions, and powers at par

with the Civil Judge Junior Division, should the A.C.Cs be treated at par with the Civil Judge Junior Division.

34. The learned counsel Mr. Bhandari also relied on the case of *State of Kerala Vs. B. Renjith Kumar and others (2008) 12 SCC 219*. In the said case, the petitioners were selected and appointed as Presiding Officers of the Industrial Tribunals. The High Court of Kerala on the facts that before 1998 the State Government was paying to the petitioners, the pay at par with District Judges, however, when the Judicial Officers were granted the benefit of revision pay scales in December 2001, similar benefits were denied to them, held the petitioners at par with District Judges and directed the State Government to treat the petitioners at par with District Judges in the matter of time scale, as well as selection grade. The Hon'ble Apex Court confirmed the view of the Kerala High Court. The Kerala High Court, in its judgment, has observed in paragraph No.6 as follows :-

“6. When the Government admits that the duties, functions, and scales of pay of the Industrial Tribunals are equal to that of District Judges, I do not find any justification for not granting the interim relief of 15% granted to the Judicial Officers as per Exh.4 to the petitioners. Anyway, the Government has promised that they will implement the report of the First National Judicial

Pay Commission. In Exhibit P4 also it has been stated that the interim relief of 35% granted will be fully adjusted against and included in the package on the final recommendation of the First National Judicial Pay Commission."

35. In the above case, prior to the revision of pay of District Judges as per the First National Judicial Pay Commission, the pay scale of District Judges and Industrial Tribunal Judges in the State of Kerala was the same. Besides, the State of Kerala had admitted that the duties and functions are equal to that of District Judges. It had also promised to implement the report of the First National Judicial Pay Commission. Against this backdrop, the petition was allowed. However, in the case at hand, the State has specifically come with a stand that the cadres are incomparable.

36. Mr. Bhandari, the learned counsel, further relied on the case of ***Randhir Singh Vs. Union of India and others AIR 1982 SC 879***. The petitioner, in that case, was a Driver-Constable in the Delhi Police Force under Delhi Administration. He had demanded that his pay scale should atleast be the same as the pay scale of other drivers in the service of the Delhi Administration. In the above case, it is observed that the driver-constables of the Delhi Police Force perform no less

arduous duties than drivers in other departments. The respondents admitted in their counter that the duties of the Driver-Constables of Delhi Police Force were onerous. Therefore, the petition was allowed.

37. The next case on which Mr. Bhandari relied is ***Alvaro Norohna Ferriera and others Vs. Union of India and others (1999) 4 SCC 408***. It was the case of District Judges from the State of Goa. They had claimed equal pay at par with the pay of the District Judges in Union Territory of Delhi. The Hon'ble Apex Court held that the nature and functions of the District Judges in both Union Territories were the same and before the revised pay in the Union Territory of Delhi, in both Union Territories, the District Judges were drawing the same pay.

38. The learned counsel Mr. Bhandari relying on the case of ***All India Judges' Association and others Vs. Union of India and others AIR 1993 SC 2493*** (Review Petition) argued that the recommendations made by respondent No.3 were well reasoned, however, the State Government, turned it down without application of mind. The Government should have considered that the duties, functions, and nature of both cadres

is the same, so the petitioners ought to have been equated with Judicial officers as prayed.

39. In the above review petition, the petitioners had raised the objection that the power to prescribe service conditions is vested in the executive and legislature. The service conditions are a matter of policy and have to be prescribed by taking into consideration the comparative utility of the service, the nature, and quality of the work, the overall availability of resources, the priorities for allocation of funds, etc. The review petitioners also expressed an apprehension that if the directions given by the Hon'ble Apex Court are followed, the other services may demand similar service conditions. It was also contended that the financial resources of all the States are not equal, and some of the States would be unable to bear the financial burden that is bound to result from the implementation of the directions. The conditions of work and employment of the judicial officers differ from State to State. The Hon'ble Apex Court, discussing in detail the functions, duties, responsibilities, and duties of judicial officers and executives, and the members of other services, discarded the objections.

40. The learned AGP Mr. Yawalkar for the State, relied on the case of *S.D. Joshi and others Vs. High Court of Judicature at Bombay and others 2011 (1) SCC 252*. He argued that the Hon'ble Apex Court in the above case distinguished the nature and functions of District Judges directly recruited and the Judges of Family Courts. Discarding the prayers of the Family Court Judges, it is finally observed that both are in different cadres, though they are adjudicating the dispute but cannot be equated with District Judge.

41. In the above case, the petitioners had claimed that they hold judicial office as contemplated under Article 217 of the Constitution and are at parity with functional jurisdiction, while satisfying all the trappings of a Civil Court and, as such, they should be deemed to be qualified for elevation to the High Court.

42. In paragraph No. 24, the Hon'ble Apex Court observed thus;

“24. A bare reading of the above Article clearly shows that the expression District Judge includes different kinds of Judges but not Family Court Judges. Similarly, judicial servicees means a service consisting exclusively of the persons intended to fill the post of District Judge and other civil judicial posts inferior to the

post of District Judge. The expression judicial service, therefore, would not include a Family Court Judge as they are neither persons eligible to fill up the post of District Judge nor are they holding civil judicial posts inferior to the post of District Judge.”

43. The Hon’ble Apex Court discussed the recruitment and appointments of those two cadres and declined the prayers of the petitioners in the above case on its peculiar facts.

44. We have discussed above the recruitment and appointments of the Civil Judge Junior Division and petitioners. They are governed by distinct recruitment rules. The service conditions of the Civil Judge and the petitioners are also not the same or similar. So far as the functions of Civil Judge Junior Division is concerned, besides adjudicating civil rights, they also deal with the rights of liberty of individuals in the criminal trials. They also possess the power to detain individuals. They punish a wrongdoer, impose a fine, or sentence imprisonment. They have powers to decide the nature and extent of such imprisonment having regard to the facts and circumstances. They also discharge administrative functions. Being the presiding Officers of the Civil Court, they deal with private controversies, particularly disputes that arise between individuals or between private businesses or

institutions. The Civil Court also deals with the dispute involving some injury to personal rights.

45. As against this, the A.C.Cs have a limited jurisdiction to deal with the protection of trust property, management, registration of the Trusts. The appointment of Trustees, who have limited right to have the trust property vested. They have to supervise and control the activities of such Trustees, whether they are performing the duties to protect the assets, property of public Trusts. They are required to implement the provisions of M.P.T. Act. In Letters Patent Appeal No.226 of 2011 in Writ Petition No.949 of 2011 Smt. Vanmala Manoharrao Kamdi and others Vs. The Deputy Charity Commissioner Nagpur, decided on 4th May 2012, the Hon'ble Division Bench of this Court at Nagpur has observed in paragraph No.19 as follows :-

“19. That the function of the Charity Commissioner while acting under the provisions of the Act is administrative, judicial as well as quasi judicial and even that he acts as a watchdog and a delegate of the Government for superintendence and control over the Public Trusts.”

46. Proviso to section 6 of the M.P.T. act empowers the A.C.Cs the powers if delegated by the Government by general

or special order, to appoint subordinate officers and servants. No such powers lie with the Civil Judge Junior Division.

47. The Civil Judge Junior Division is a part of the District Judiciary. Under Article 235 of the Constitution, the control, posting, promotion of, and the grant of leave to the subordinate Courts is vested in the High Court. In other words, the Civil Judge Junior Divisions are under the direct control of the High Court. Article 234 of the Constitution is about the recruitment of persons other than District Judges to the Judicial Service. The appointment of such persons is made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court. The expression 'judicial service' has been interpreted in Article 236(b) of the Constitutions, which means a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge.

48. As against this, section 5 of the M.P.T. Act governs the appointment of A.C.Cs. The Civil Judge Junior Divisions are governed under Maharashtra Judicial Services Recruitment

Rules, 2008. Rule 3(2) of the said Rules states that the services shall consist of the cadres specified in column 2 of the Schedule appended to the Rules of 2008. The appointments are to be made to the State Judicial Services strictly in accordance with these Rules. The cadre of the Civil Judge Junior Division is specifically recognized in the Schedule appended to the Rules of 2008.

49. So far as the recruitment and appointment of the A.C.Cs are concerned, they are governed under the Charity Commissioner, Joint Charity Commissioner, Deputy Charity Commissioner and Assistant Charity Commissioner (Recruitment) Rules, 1986. These rules are made by the Governor of Maharashtra in exercise of his powers under Article 309 of the Constitution. The said Rules provide for appointment, posting, promotion, transfer of A.C.Cs anywhere in the State of Maharashtra. These rules are explicit that the A.C.Cs are under the direct control of the State Government. The Governor of Maharashtra has made the above rules as discussed above, in the exercise of the powers under Article 309 of the Constitution, wherein the word 'public service' is

used. Reading the above recruitment Rules, Article 236(b) and Article 309(1) of the Constitution together, it is apparent that the Judicial service and public service are different.

50. The Hon'ble Apex Court in the case of ***Government of West Bengal Vs. Tarun K. Roy and others***, laid down the Law that, Article 14 read with Article 39(d) of the Constitution of India envisages the doctrine of equal pay for equal work. The said doctrine, however, does not contemplate that only because the nature of work is the same, irrespective of educational qualification or irrespective of their source of recruitment or other relevant considerations the said doctrine would be automatically applied. The holders of higher educational qualification can be treated as a separate class. Such classification, it is trite, is reasonable. Employees performing the similar job but having different educational qualification can, thus be treated differently.

51. The petitioners also canvass that the M.P.T. Act, is followed by the State of Gujarat. The A.C.Cs in Gujarat and Maharashtra are discharging the same duties and functions and have the same powers. The State of Gujarat pays the same

Civil Judge Junior Division scale to the A.C.Cs in that State. On the doctrine of equality before the Law, they should be at par with the same scale of Civil Judge Junior Division.

52. The Government constitutes the Pay Commissions to examine and recommend the changes to salary structures of the Government employees. The Central Government to date has constituted Seventh Pay Commissions. For the purpose of recommending the required changes, the Pay Commission analysis various aspects of the economy. Some of the important factors the Commission considers are the economic condition of the country, financial resources under the purview of the Government, corresponding impact on the revenue position of all the State Governments, etc. As a result of inflation in the economy, the price of goods and services increases over the year due to the increase in the cost of production. As a result of the increase in the rate of inflation, the purchasing power of the money decreases. This makes it necessary to adjust the salary of Central and State Government employees. This is because the salary becomes insufficient to sustain the same level of lifestyle and fulfill the basic

necessities. For all these reasons, the Pay Commission is constituted to revise the pay structure. However, the recommendations of the Pay Commission are not binding on the Government. It may accept or reject the recommendations of the Pay Commission. Apart from the various factors like recruitment method, a level at which recruitment is made, hierarchy of service, etc., a pay structure also evolves, keeping in mind the employers' capacity to pay.

53. The Hon'ble Apex Court in ***M.P. Rural Agriculture Extension Officers Association Vs. State of M.P. (2004) 4 SCC*** in paragraph No.13 has observed as follows :-

“13. Pay Commissions are constituted for evaluating the duties and functions of the employees and the nature thereof vis-vis the educational qualifications required therefor. Although the Pay Commission is considered to be an expert body, the State in exercise of its wisdom and in furtherance of a valid policy may or may not accept its recommendations. The State in exercise of its jurisdiction conferred upon it by the proviso appended to Article 309 of the Constitution of India can unilaterally make or amend the conditions of service of its employees by framing appropriate rules. The State in terms of the said provision is also entitled to give retrospective effect thereto.” (Emphasis added)

54. It is clear from the above pronouncement of the Hon'ble Apex Court that framing the appropriate rules of service condition of its employee, revising the pay, is in the domain of every State Government. Ultimately in the matter of pay and

service conditions, the appropriate Government derives its power only in terms of the Rules framed under Article 309 of the Constitution. It is for the State, either to accept the Pay Commission's recommendations constituted by it in furtherance of a valid policy or decline.

55. The learned AGP Mr. Yawalkar has vehemently argued that the equation of post and salaries is a matter to be dealt with by the expert body. The pay revision is the matter of policy decision of the Government, and Court should not direct the Government to implement a particular pay scale to a particular cadre. We find force in his argument. The Hon'ble Apex Court in ***West Bengal Vs. Subhas Kumar Chatterjee (2010) 11 SCC 694*** observed in paragraph 14 as follows :-

“14. This court time and again cautioned that the Court should avoid giving a declaration granting a particular scale of pay and compel the Government to implement the same. Equation of posts and equation of salaries is matter which is best left to an expert body. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge. Even the recommendations of the Pay Commissions are subject to the acceptance or rejection, the courts cannot compel the State to accept the recommendations of the Pay Commissions though it is expert body. The State, in its wisdom and in furtherance of its valid policy, may or may not accept the recommendations of the Pay Commission. (See Union of India v Arun Jyoti Khandu and State of Haryana V Haryana Civil Secretariate Personal Staff Assn) It is no doubt true, the constitutional courts clothed with the power of judicial review have jurisdiction, and aggrieved employees have remedy only if

they are unjustly treated by arbitrary State action while fixing the pay scale for a given post”.

56. Evaluating the facts and relevant provisions of Law as discussed above, we believe that the nature of duties, functions, powers, responsibilities, recruitment, appointment, control, cadre recognition, service conditions of the Civil Judge Junior Division, and the A.C.Cs, are dissimilar. Moreover, the cadre of the petitioner is different and not comparable with the cadre of the Civil Judge Junior Division in the State of Maharashtra. Hence, we do not find substance in the petition. Needless to state that, the dismissal of this petition does not take away the petitioners' right to make representation before the Pay Commission, if any, constituted by the State Government to revise their pay scale and service condition.

57. In view of the above, this petition stands dismissed. No costs. Rule is discharged.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-