

Date of Decision : 14-01-2025

1. CWP-11142-2021 (O&M)

CHARANJEET KARWAL AND ORS

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondent(s)

2. CWP-11196-2021 (O&M)

VIJENDER AND ORS

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondent(s)

3. CWP-11272-2021 (O&M)

ANIL KUMAR

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondent(s)

4. CWP-11988-2021 (O&M)

ANUPAM SHARMA AND ORS.

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondent(s)

5. CWP-12436-2021 (O&M)

RAJESH KUMAR AND ORS

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondent(s)

6. CWP-13952-2021 (O&M)

UMESH KUMAR AND ORS

.....Petitioner(s)

VERSUS
STATE OF HARYANA AND OTHERS

.....Respondent(s)

7. CWP-14608-2021 (O&M)

SUNIL VERMA AND ORS

.....Petitioner(s)

VERSUS
STATE OF HARYANA AND OTHERS

.....Respondent(s)

8. CM-8716-CWP-2021 in
CWP-14750-2015 (O&M)

OM PARKASH AND ORS

.....Petitioner(s)

VERSUS
STATE OF HARYANA AND OTHERS

.....Respondent(s)

9. CWP-15401-2022 (O&M)

AJEET KUMAR AND ORS

.....Petitioner(s)

VERSUS
STATE OF HARYANA AND OTHERS

.....Respondent(s)

10. CWP-35298-2019 (O&M)

RAJEEV SHARMA AND ORS

.....Petitioner(s)

VERSUS
STATE OF HARYANA AND OTHERS

.....Respondent(s)

11. CWP-409-2020 (O&M)

DILBAG SINGH AND ORS

.....Petitioner(s)

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Satyavir Singh Yadav, Advocate
For the petitioners in all the petitions
Except CWP No.35298 of 2019 and CWP No.409 of 2020.

Mr. Chanderhas Yadav, Advocate
for the petitioner in CWP No.35298 of 2019 and

Mr. G.C Shahpuri, Advocate for the
petitioner in CWP No.409 of 2020.

Mr. Naveen Singh Panwar, Addl. A.G., Haryana.

Ms. Divya Sharma, Advocate
For the respondent Nos.3 to 9 in CWP No.11142 of 2021
Respondent Nos.3 to 5 in CWP No.11196 of 2021
Respondent Nos.3 and 4 in CWP No.11272 of 2021
Respondent Nos.3 and 4 in CWP No.11988 of 2021
Respondent Nos.3 and 4 in CWP No.12436 of 2021
Respondent Nos.3 to 5 in CWP No.13952 of 2021
Respondent Nos.3 and 4 in CWP No.14608 of 2021 and
Respondent Nos.3 and 4 in CWP No.15401 of 2022.

None for respondent Nos.3 and 4 in CWP No.35298 of 2019.

Mr. Ranjit Singh Kalra, Advocate
For respondent Nos.3 and 4 in
CWP No.35298 of 2019 and CWP No.409 of 2020.

HARSIMRAN SINGH SETHI, J. (Oral)

Present bunch of eleven writ petitions involve common
question of law in the background of common set of facts and thus they are
being decided by a common order.

1. In the present bunch of petitions, the challenge is to the letter dated 30.03.2021, copy of which has been appended as Annexure P-11 by which, certain clarifications have been issued with regard to the grant of increment to the certain categories of the staff, which act of the respondents is being objected by the petitioners and the benefit of one increment, which has been given to the Graduate Clerks upon their appointment under the directions of the Shetty Pay Commission, has been withdrawn.
2. Certain facts may be noticed for the correct appreciation of the issue in hand.
3. The Shetty Pay Commission was constituted by the Hon'ble Supreme Court of India for recommendations with regard to the revision of the pay scales of the judicial officers working in the various states so as to remove the stagnation.
4. During the pendency of the said consideration, the staff working in the various judicial Courts also approached the Hon'ble Supreme Court of India that as they are also the part and parcel of the judicial dispensation hence, the benefits/revisions of their pay scale should also to be considered so that, the employees working within the judicial establishments do not suffer.
5. Ultimately, certain recommendations were made by the Shetty Pay Commission wherein, certain categories of staff belonging to the ministerial cadre were directed to be granted the higher pay scale and the staff of certain cadres which are not granted the benefit of the higher pay scale were directed to be granted the benefit of one increment so as to avoid stagnation.

6. In the cadre of Clerks, who were graduates were granted the benefit of higher pay scale whereas, certain other ministerial staff including Non-Graduate Clerks, were not granted the benefit of increment.

7. The petitioners are the one who are the Graduate Clerks, who were appointed after 01.04.2003 and were granted the benefit of higher pay scale as per the recommendations of the Shetty Pay Commission. Their claim was that any Clerk who has been recruited subsequent to 01.04.2003, is not only entitled for the benefit of higher pay scale but also benefit of one increment in the said cadre. Though, the said benefit was initially given, but thereafter, keeping in view certain clarifications given by the Hon'ble Supreme Court of India, the State of Haryana issued the impugned letter dated 30.03.2021 addressed to the Registrar of this Court that the Graduate Clerks, who were granted the benefit of higher pay scale in pursuance to the recommendations of the Shetty Pay Commission are not entitled for any increment even if, any Graduate Clerk in appointed after 01.04.2003 as the said increment is only available to the cadre to whom the benefit of revised higher pay scale was not extended in view of the recommendations of the Shetty Pay Commission.

8. The said letter dated 30.03.2021 has been implemented so as to revise the pay scale of the Graduate Clerks who were recruited after 01.04.2003 so as to bring their pay admissible to the Graduate Clerks in consonance with the recommendations of the Shetty Pay Commission as well as the directions given by the Hon'ble Supreme Court of India as clarified in IA No.297 of 2012 decided on 16.03.2015.

9. The said letter dated 30.03.2021 (Annexure P-11), is under challenge in the present petitions on the ground that any Clerk who is a Graduate and was appointed after 01.04.2003, was rightly given the pay scale of recommended by the Shetty Pay Commission and was also entitled for an increment over and above the pay scale provided keeping in view of the recommendations of the Shetty Pay Commission hence, the letter dated 30.03.2021 (Annexure P-11) is contrary to the recommendations of the Shetty Pay Commission and the said clarification issued by the State of Haryana directly sent to this Court to be implemented qua the Clerks working in the various Session Divisions, may kindly be set aside.

10. Upon notice of motion, the respondent have filed the reply on behalf of the State, High Court and various sessions divisions where the petitioners are working.

11. The State of Haryana has reiterated the stand as mentioned in the impugned letter dated 30.03.2021 that as the Graduate Clerks who were recruited after 01.04.2003, were not entitled for any increment even as per the Shetty Pay Commission as they were already granted the benefit of higher pay scale as recommended by the Shetty Pay Commission hence, any Graduate Clerk, who has been appointed after 01.04.2003 was not entitled for the benefit of increment and the same was wrongly granted which inadvertent mistake on the part of the State has been rectified vide impugned letter hence, the writ petitions challenging the clarification given by the State of Haryana vide order letter 30.03.2021 (Annexure P-11) may kindly be rejected.

12. Learned counsel appearing on behalf of the respondents submits that the Punjab and Haryana High Court and the various Session Divisions where the petitioners are working also accepted the said view of the State of Haryana and submits that benefit of increment was only available to a new recruit, who has been recruited in the cadre after 01.04.2003, wherein the pay scale was not enhanced in pursuance to the recommendations of the Shetty Pay Commission whereas all the petitioners are Graduate Clerks, to whom the benefit of higher pay scale have been given under the recommendations of the Shetty Pay Commission hence, any Graduate Clerk recruited after 01.04.2003, is not entitled for an increment over and above the pay scale admissible to the cadre of a Graduate Clerk as given to them under the recommendations of the Shetty Pay Commission.

13. The Punjab and Haryana High Court and the Session Divisions have again reiterated that the increment is only admissible to the cadres, whose pay scale was not enhanced and the same was given not only to the existing employees of the said cadre but will be admissible to any fresh recruit in the said cadre hence, the petitioners who have wrongly been given the benefit of one increment in the cadre of Graduate Clerks, the same has rightly been withdrawn from them.

14. I have heard learned counsel for the parties and have gone through the records of the present case with their able assistance.

15. In order to decide the controversy, the issue is to be seen keeping in view the recommendations of the Shetty Pay Commissioner as implemented by the Government of Haryana, which is reproduced as under:-

“I. Taking into consideration the aforesaid views of the High Courts, District Judges and IIT, Delhi, we make the following recommendations:

(a) All ministerial staff, other than those to whom we have recommended higher pay scales elsewhere, be granted one increment at the initial rate of the existing pay scale admissible to the respective post and/or time bound promotion pay scale, if any

(b) The new entrants shall be started at one stage above the minimum of the pay scale admissible to the post.

(c) Those employees who have reached stagnation shall be granted similar benefit ie. one increment at the initial rate of the pay scale admissible to the post he/she is holding, even though it is outside the upper limit of the pay scale.”

“OUR RECOMMENDATIONS:

1) Clerks: We consider that the request for grant of higher pay scale to Clerks is reasonable. We notice that in most of the States where the qualification of graduation has been prescribed for entry level posts like UDC, higher pay scale has been given. In Central Government the pay scale given to UDCs is Rs.4000-6000.

Keeping in view the fact that the nature of work performed by the Clerks in the Subordinate Judiciary is quite distinct and more important and also having considered the justification given by the High Court, we recommend the pay scale of Rs.4000-100 4800-EB-1000-6000 to Graduate Clerks in the Courts.

*2. Having regard to the views expressed by the High Court and for reasons stated in **Chapter - VII**, we recommend that holders of the following common category posts in the Ministerial cadres, other than to whom we have recommended higher pay scales in other Chapters, be given **one increment** at the initial rate of the pay scale admissible to them:*

Common category posts:

<i>1. Superintendent Grade-II</i>	<i>[70]</i>	<i>Rs.5500-9000</i>
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2. Reader in the Court of Civil Judge

(Sr. Div.) / CJM and Civil Judge

Jr. Div.)/Translator / English Clerk / - Rs.5000-7850

Asst. English Clerk / Record

Keeper / Statistical Asst. /

Civil Nazir/Copying Asst. /

Library Asst. [322]

[NOTE: The aforesaid posts are indicative and not exhaustive. If there are any other common category posts in the Ministerial Cadres, the incumbents thereof are also entitled to the benefit of our recommendation.]

*3. This benefit of **one increment** at the time of initial rate may also be provided to:*

(a) New entrants to the service

AND

(b) Employees who have reached stagnation.

*4. **Special Allowance to Drivers;***

It is recommended that the Drivers working in the Subordinate Courts shall be granted a Special Allowance for not less than Rs.150 p.m.”

16. A bare perusal of the above would show that the cadre of Graduate Clerks to which petitioners belong, has been granted the benefit of enhanced pay scale by the State of Haryana as compared to the existing pay scale prior to the recommendations and existing report of the Shetty Pay Commission.

17. The reproduced paragraph of the Shetty Pay Commission also shows that where the cadres and the pay scale has not been revised, the said cadres are to be given the benefit of one increment.

18. The only argument of the learned counsel for the petitioners is that the benefit of increment is to be given to all the new recruits irrespective as to whether their pay scale has been enhanced or not so as to correctly interpret the recommendations of the Shetty Pay Commission, which was initially been done by the State of Haryana.

19. It may be noticed that there are two categories of employees who are working in the various judicial institutions qua which recommendations were made by the Shetty Pay Commission. One, whose pay scale have been enhanced and the other, who were granted the benefit of the increment only in the existing pay scale. The cadre of Graduate Clerks to which the petitioners belongs were granted the benefit of higher pay scale and it is not the case that whosoever is a Graduate Clerk and was working at the relevant time was granted a higher pay scale along with one increment.

20. The increment was only granted to the cadres who were not granted the benefit of higher scale as compared to their existing pay scale admissible and being operational prior to the acceptance of the recommendations of Shetty Pay Commission.

21. Once, the existing Graduate Clerks were only granted the benefit of revised higher pay scale as admissible under the recommendation of the Shetty Pay Commission, how can it be said that the subsequent appointment of Graduate Clerks after 01.04.2003 will not only get the higher pay but also one increment, this will create an anomaly between the cadres of the Graduate Clerks itself. In case, the plea of the petitioners who are recruited after 01.04.2003 is accepted, then they will get more salary/benefits over the Graduate Clerks, who have already been working

prior to 01.04.2003 and had only been granted the benefit of higher pay scale and not the increment as being claimed by the petitioners. Hence, the claim of the petitioners that they are not only entitled for increment in the pay scale of Graduate Clerks as admissible to them w.e.f. 01.04.2003 but also a further increment, is incorrect and cannot be accepted.

22. Keeping in view the recommendations which have been reproduced hereinbefore of the Shetty Pay Commission that the increment is only admissible to the cadres who pay scales have not been recommended to be revised and they continue to be in the old existing pay scale, the claim of the petitioners that new recruits, Graduate Clerks will be granted the benefit of increment is irrespective of the fact that there is revision of the pay scale to the higher side or not, cannot be accepted.

23. In case, the plea of the petitioners is accepted, it will rather than solving the problem will create furthermore anomaly within the cadre of Graduate Clerks itself as the Graduate Clerks appointed prior to 01.04.2003 though will be getting a pay scale of Rs.4000-6000/- but will not be granted increment whereas the petitioners who are Graduate Clerks appointed after 01.04.2003 will be entitled for the pay scale of Rs.4000-6000/- along with one increment.

24. Therefore, a careful reading of the recommendations of the Shetty Pay Commission, as implemented by the State of Haryana, only the cadres to whom the revised pay scale was not given but were given only an increment, any appointment made to such cadre after 01.04.2003, where only increment was made admissible, the new entrants in the said cadre was also held entitled for the increment so that the subsequent appointee does not

suffer any discrimination or anomaly in the said cadre. Hence, the interpretation being given by the petitioners that increment is admissible to all the cadre qua the appointees after 01.04.2003 irrespective of the cadre in which they were appointed and irrespective of the fact whether the pay scale of the said cadre was enhanced, cannot be accepted as the same is not supported by the recommendations of the Shetty Pay Commission as reproduced hereinbefore.

25. Further, the recommendations of the Shetty Pay Commission have already been clarified by the Hon'ble Supreme Court of India itself while passing order in IA No.297 of 2012 and IA No.71-8 in Writ Petition (C) No.1022 of 1989 dated 16.03.2015.

26. The Hon'ble Supreme Court of India has clarified that certain categories of the ministerial staff were granted the benefit of higher pay scale and certain ministerial cadres were only recommended to be given the benefit of increments. As the recommendation of the 6th Pay Commission had come at the same time when the recommendations of the Shetty Pay Commission was accepted, the Hon'ble Supreme Court of India clarified the directions given in the Shetty Pay Commission that the revised pay scale given to the Graduate Clerks and the other categories, who were given a benefit of higher pay scale, will be taken as a pay scale being drawn by them while implementing the recommendations of the 6th Pay Commissioner so as to grant them the corresponding pay scale.

27. With regard to the categories who were given only the increment, it was clarified that the grant of increment and the basic pay

being drawn by them will be taken into account while fixing their pay in the revised pay scale as granted by the said cadres by the 6th Pay Commission.

28. Learned counsel for the petitioners have not been able to rebut the same.

29. It may be noticed that even while implementing the recommendations of the Shetty Pay Commission vide notification dated 03.08.2005, following was directed to be implemented. The said directions are as under:-

“I am directed to refer to Haryana Government Notification No.GSR/3/Const/Art.309/98 dated 7th January, 1998 and No.GSR/4/Const./Art./309/98 dated 7th January, 1998 vide which the pay scales of the State employees were revised w.e.f. 01.01.96.

In compliance of the directions of the Hon’ble Supreme Court to implement the Justice Shetty Commission report for the grant of pay scales to the non-Judicial staff of Subordinate Courts in the States of Haryana, the pay scales of the following categories of posts as indicated against each is modified with effect from 1st August, 2005.

Sr. No.	Name of Post	Present Pay Scale	Modified Pay Scale
1.	Usher	Rs.2550-3200	Rs.2650-4000
2.	Bailiff		
3.	<u>Reader</u> <u>Grade-I</u> (District Judge and Addl. Distt. Judge, Court) <u>Grade-II</u> Court of Civil Judge (Sr. Div.)/CJM	Rs.5500-9000 Rs.5000-7850	Rs.6500-10500 Rs.5500-9000

	<u>Grade-III</u> <i>(Court of Civil Judge (Jr. Div.)/Magistrate</i>	<i>Rs.5000-7850</i>	<i>No change</i>
4.	<u>Stenographer</u> Grade-I <i>(Court of Distt. & Sessions Judge)</i> Grade-II <i>(Court of Civil Judge (Sr. Div.))</i> Grade-III <i>(Court of Civil Judge (Jr. Div.))</i>	<i>Rs.5500-9000</i> <i>Rs.5000-7850</i> <i>Rs.3050-4590</i>	<i>Rs.6500-10500</i> <i>Rs.5500-9000</i> <i>Rs.4000-6000</i>
5.	<u>Superintendent</u> <i>Class-I/Group-A</i>	<i>Rs.6500-10500</i>	<i>Rs.8000-13500</i>
6.	<u>Clerk</u>	<i>Rs.3050-4590</i>	<i>Rs.4000-6000 to Graduate Clerks in the Courts.</i>
7.	All Ministerial Staff (common category posts) other than those to whom higher pay scales has been granted vide this order/letter	<i>Rs.5000-7850</i> & <i>Rs.5500-9000</i>	<i>The benefit of one increment at the initial rate be provided to the new entrants to the service.</i>

The pay of the employees whose pay scales have been modified as detailed above is to be fixed in accordance with the normal rules laid down in the Punjab Civil Services Rules, Volume-I Part-I, the rules prescribed vide extra ordinary gazette notification No.GSR/3/Const./Art./309/98 dated 07.0198 and GSR/4/Const./Art./309/98 dated 07.01.98 and the instructions issued on the subject from time to time”

30. A bare perusal of the said implementation of the Shetty Pay Commission at the hands of the State of Haryana clearly shows that the Clerks who are Graduates have been granted a pay scale of Rs.4000-6000/- instead of Rs.3050-4590/- but the ministerial staff who are working in the various other pay scale but were not granted a higher pay scale than the one being drawn by them and benefit of one increment was made admissible to them. This clearly shows that the increment was only admissible to the cadres who are not granted the higher pay scale whereas, the petitioners belongs to the cadre of a Graduate Clerk, who were granted the benefit of higher pay scale hence, claiming the benefit of increment which is not admissible to the Graduate Clerks on the ground that all appointees after 01.04.2003 are entitled for increment, is misreading of the benefit granted under the Shetty Pay Commission and is not borne out of the letter dated 03.08.2005, by which the recommendation of the Shetty Pay Commission has been accepted.

31. Keeping in view the said position and the Hon'ble Supreme Court of India holding in equitable terms have held that the increment is only available to the cadres, who were not granted the benefit of higher pay scale and in case, higher pay scale has been granted to a particular cadre, the grant of increment is not admissible which will continue even qua subsequent appointments made after 01.04.2003, which is the clarification given by the State of Haryana by the impugned letter dated 30.03.2021 (Annexure P-11), which is challenged in the present petitions. Hence, the action being taken by the State of Haryana with regard to the fixation of the pay of the Graduate Clerks who were granted the higher pay scales that they

are not entitled for any increment in case any appointment is made to such cadre after 01.04.2003, is perfectly valid and legal and is in consonance with the recommendations of the Shetty Pay Commission.

32. Further, reliance is being placed by the learned counsel for the petitioner on the order passed in CWP No.14750 of 2015 titled “***Om Parkash and ors. Vs. State of Haryana and ors.***”, decided on 25.01.2018. The said judgment is not on the issue with regard to the grant of increment to the Graduate Clerks but is on the issue whether any increment which has been granted in pursuance to the recommendations of the Shetty Pay Commission to the categories, to which the higher pay scale was not granted, the next increment is to be granted after a period of one year of the said increment or the annual increment date will not change and will remain the same as it existed prior to the grant of the benefit of increment under the Shetty Pay Commission.

33. The question as to whether the Graduate Clerks who are appointed after 01.04.2003 are entitled for the increment was not in consideration before the Court hence, the reliance being placed by the petitioners on the said judgment in order to claim the benefit of increment in the cadre of Graduate Clerks on the ground that they were appointed after 01.04.2003, is totally misplaced and the same is not borne out of the said judgment which was on entirely different issue and only relating to the cadres, who were to be granted the benefit of increment.

34. Even if, any Clerk was granted the benefit of increment wrongly, which is sought to be withdrawn, was not the subject matter in the said judgment rather it was only as to whether the date of annual increment

which existed with an employee prior to the grant of benefit under the Shetty Pay Commission will change or remain the same, which is not the question which is being decided in the present petition. Hence, the reliance being placed by the petitioners on the judgment passed by the Co-ordinate Bench in ***Om Parkash's case (supra)***, will not come to their rescue to claim the benefit especially when the cadres of the Graduate Clerk is not held entitled for the increment after the grant of a higher pay scale of Rs.4000-6000/-.

35. Keeping in view the Clarification, which has been issued by the State of Haryana vide letter dated 30.03.2021 (Annexure P-11), which has been sent to the Punjab and Haryana High Court so as to be circulated with the various Session Divisions so as to correctly re-fix the salary of the Graduate Clerks working in the various Session Divisions needs no interference at the hands of this Court.

36. The further question which needs to be decided is that once, the respondent-State as well as the Punjab and Haryana High Court, even if under the mistaken interpretation of the recommendations of the Shetty Pay Commission has granted the benefit of increment to the Graduate Clerks who were appointed after 01.04.2003, whether any recovery of the excess amount can be made from them after re-fixation of their salary.

37. As per the judgment of the Hon'ble Supreme Court of India in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc., 2015(1) S.C.T., 195***, no recovery can be done of the excess amount paid from Class-III and Class-IV employee. Further, no recovery can be done in case, a benefit has been received by the employee for a period of 5 years continuously. The relevant paragraph 12 of the judgment is as under:-

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

38. In the present case, the petitioners are working on a Class-III post which fact has gone un rebutted. Further the petitioners have received the benefit for more than five years before the Clarification letter dated 30.03.2021 (Annexure P-11) was issued.

39. Hence, in the facts and circumstances of the present case, it is directed that though the respondents will be within their jurisdiction to refix the salary of the petitioners by withdrawing the benefit of increment which was wrongly granted to them in the cadre of Graduate Clerks but, any

excess amount paid upto 31.12.2024 will not be taken back. The salary admissible to the petitioners upon refixation, will be made applicable from 01.01.2025 onwards.

40. The present set of eleven petitions stands disposed of in above terms.

41. Pending application, if any, also stand disposed of.

42. Photocopy of this order be placed on the files of other connected cases.

14-01-2025

Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: YES