

(2023) 04 OHC CK 0112

In the Orissa High Court

Case No : Writ Petition (C) No. 27234 Of 2011

All Orissa Judicial Employees? Association, Represented
Through Its General Secretary Basanta Kumar Mohapatra

APPELLANT

Vs

State Of Orissa And Others

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 233(2)

Citation : (2023) 04 OHC CK 0112

Hon'ble Judges : Dr B.R. Sarangi, J;M.S.Raman, J

Bench : Division Bench

Advocate : Manoj Kumar Mishra, P.K. Das, S. Senapati, T. Mishra, A.K. Mishra

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J

1. All Orissa Judicial Employees' Association, a body duly recognised by the Orissa High Court, vide Recognition No. 11139 dated 10.12.1974, and has been espousing the cause of judicial employees (except judicial officers) since its inception, has filed this writ petition through its General Secretary seeking direction to the opposite parties to implement the recommendation of the Shetty Commission in the manner directed by the apex Court in its order dated 07.10.2009 passed in W.P.(C) No. 1022 of 1989 (All India Judges' Association and others v. Union of India and others) under Annexure-2, within a stipulated period.

2. The factual matrix of the case, in precise, is that in order to improve the administration of justice in the country, a Commission was constituted under the Chairmanship of Hon'ble Justice K. Jagannatha Shetty (hereinafter to be referred as "Shetty Commission") to give a report on the service conditions of the judicial and non-judicial staff working in the different set ups of courts in all the States and Union Territories of the country with the recommendations which is very

much required for proper administration of justice in the present system in the country. Pursuant to the direction of the apex Court in W.P.(C) No.1022 of 1989 (All India Judges' Association and others v. Union of India and others), the Shetty Commission after taking into consideration the views of the concerned State Governments, High Courts of the concerned States and the Employees Unions of concerned States, submitted its report before the apex Court giving separate recommendations for all the staff of the judicial system working in the different set ups of courts in all the States and Union Territories of the country separately. So far as the State of Odisha is concerned, separate recommendations were also made.

2.1 The apex Court, while accepting the recommendations of the Shetty Commission, vide order dated 07.10.2009, directed as follows:-

“(i) The High Courts, on judicial/administrative side will ensure implementation of the recommendations of the Shetty Commission within a reasonable period of one year. The High Court shall permit writ petitions or applications that may be tiled by the individual or staff association representing the various members of the staff.

(ii) The High Courts shall also see that the recommendations are implemented w.e.f. 01.04.2003.

(iii) There shall be benefit of one advance increment on the existing pay-scale instead of initial pay-scale. In many of the states, the same benefit has not been given to the members of the staff, the High Court should also see that these recommendations are implemented.

(iv) In some of the States based on various other pay commissions' reports, benefits had been given to the members of the staff, these benefits, if any, given shall be in addition to the recommendations given by the Shetty Commission. In any case, if the members of the staff association/ subordinate staff getting higher benefits under any of the recommendations of the pay commission/ Government Orders, they shall be permitted to avail those benefits.”

2.2 The Shetty Commission report, which was accepted by the apex Court, reveals that the Commission has taken note of the fact that working of a Court does not depend only on the work of judicial officer rather it is supplemented by the staff of the Court. Without contribution of the staff at all stages of a case, there cannot be satisfactory termination of any case. It has also been taken note of, that it is the staff who form a critical and important part of administration of justice in District Courts and Courts subordinate thereto. After noticing arduous conditions, in which the staff of the subordinate judiciary are working, the Commission made several recommendations to ameliorate the service conditions of the employees. The recommendations have been made on State-wise and Group-wise, to avoid any ambiguity. In Chapter-XVIII of the report, the recommendations have been made so far as the State of Odisha is concerned. The Commission recommended that the existing Classes-I, II, III and IV be

replaced by Groups A, B, C and D respectively. As such in Part-II of the report under Annexure-1 series, the cadre-wise recommendations have been made with regard to scales of pay.

2.3 Apart from the above, regarding the scale of pay of the employees, the Commission, after taking into consideration the views of High Courts, State Governments and Staff Associations, has made some general recommendations, such as, the medical allowance, special allowance to staff working in record room/property room, creation of the post of protocol officer and assured career progression scheme. The Commission also recommended for payment of medical allowance of not less than Rs.100/-p.m. in addition to reimbursement of hospitalization charges, if any, to all Court employees who are below the clerical cadre and also the drivers and also for payment of Special Allowance of Rs.100/-p.m. to each of the staff working in the record room/property room. The Commission further recommended for creation of a post of Protocol Officer with necessary supporting staff and other facilities at the places as suggested by the High Court. In addition to the above general recommendations, the Commission recommended to the State Government to provide one more Assured Career Progression (ACP) scale to the employees with appropriate interval of years of service.

2.4 After classifying the Class-IV post as Group-D post, the Commission found that the peons have no adequate promotional opportunity and the ACP Scale is available to them only after completion of 20 years of service. For that reason, the Commission recommended that the minimum educational qualification of Group-D employees is VII Standard and recommended promotional scale of Rs.2610-3540/- for Orderly Peons, Office Peons, Sweepers, Night Watchman-cum-Sweepers, Malkhana Guards, Malkhana Peons, Treasury Peons and the Daftari, Gardner, Jamadar, Record Keeper were assigned the pay scale of Rs.2650-4000/-, along with library Attenders. The Commission further recommended that 25% of the posts shall be reserved in Class-III for Class-IV employees in the ratio of 1:2 for Process Servers and appointment to 50% of the posts of Process Servers shall be made by promotion of Class-IV staff.

2.5 The Commission also restructured the Process Establishment and recommended that the Process Establishment shall consist of two cadres, i.e. (1) Process Servers and (2) Bailiffs (Salaried Amins). After restructuring, the Commission recommended the pay scale Rs.2750- 4400/- for Process Servers and existing pay scale of Rs.3200-4900/- for Bailiffs (Salaried Amins) and F.T.A. of not less than Rs.200/- p.m. to both. With a view to provide more promotional opportunity to the Bench Clerk/Reader/ Bench Asst./Peshkar, the Commission recommended for three grades of Bench Clerks for the three levels of Courts, namely, (i) Bench Clerk Grade-III, Court of Civil Judge (Jr. Divn.)/ Magistrate with pay scale of Rs.4000-6000/-, (ii) Bench Clerk Grade-11, Court of Civil Judge (Sr.Divn.)/CJM with pay scale of Rs.5000-8000/- and (iii) Bench Clerk Grade-I, District Court/Addl. District Judge Court with pay scale of Rs.6500-10500/-. So

far Junior Stenographers are concerned, the Commission emphasised that they should be given an attractive pay scale with more promotional opportunity. The Commission recommended (i) Stenographer Grade-III with pay scale of Rs.4000-6000/-, (ii) Stenographer Grade-II with pay scale of Rs.5000-8000/-and (iii) Stenographer Grade-I with pay scale of Rs.5900-9700/-. In addition to the Stenographer Grade-I, the Commission further recommended that there shall be a Personal Assistant to Principal District & Sessions Judge and the post would be designated as Executive Assistant to the Principal District & Sessions Judge and special allowance of Rs.200/- p.m. was recommended. The Commission also recommended Travelling/ Compensatory/ Special Allowance to the Stenographers not less than Rs.100/- in Taluka/ District Headquarters, not less than Rs.150/- working at Cities and not less than Rs.200/- to Executive Assistant.

2.6 So far as State of Odisha is concerned, as it has got a centralized system of administration, the High Court stated that since the Controlling Officers are included in Group-A category, the proposal to upgrade the post of Sheristadar of the Court to Group-A category will not be proper. Therefore, instead of making any recommendation, the Commission left the matter of Sheristadar, Head Clerk, Superintendent/Registrar to the High Court to take steps keeping in view the recommendations of the Commission in respect of other posts. In the case of Chief Administrative Officer/Senior Administrative Officer/ Sheristadar/ Superintendent/ Registrar/ Clerk of the Court/ Senior Munsarim etc., the Commission recommended the pay scale of Rs.8000-13500/-, which is the lowest pay scale in Group-A/Class-I as per general pay scale. The Commission also recommended that they shall be given one increment at the initial rate of the pay scale admissible to them. The Commission further recommended that the Drivers working in the Subordinate Courts shall be granted a Special Allowance of not less than Rs.150/- p.m. Besides these recommendations, the Commission also recommended other miscellaneous recommendations, which are very much required for the proper administration and beneficial to the staff.

2.7 The apex Court, vide order dated 07.10.2009, accepted the Shetty Commission's report and directed that the High Courts, on judicial/administrative side will ensure implementation of the recommendations of the Shetty Commission within a reasonable period of one year and further directed that the High Courts shall also see that the recommendations are implemented w.e.f. 01.04.2003 with other directions. Since no action was taken, the petitioner-association filed a representation before the Registrar (General) requesting to take steps to implement the recommendations of the Shetty Commission as per the direction of the apex Court. The Deputy Registrar (A&P), vide letter dated 17.09.2010, informed the Principal Secretary to the Government-opposite party no.2 regarding the views of the High Court to comply the order of the apex Court in implementing the recommendations of the Shetty Commission and to communicate the same to the High Court. The Deputy Registrar (A&P), vide letter dated 19.11.2010, directed the District Judges-opposite parties No. 7 to 20 for implementation of the recommendations of the Shetty Commission and to

submit the report as to the action taken in the matter. In spite of such communication made, the District Judges-opposite parties No. 7 to 20 have not complied the same.

2.8 After the 6th revised pay has been implemented by the Government, the State Government employees, other than the Court staff, are getting much more than the judicial employees. In this process, the staff of entire judiciary in the State have been discriminated. Due to such inaction of the authorities, the petitioner has approached this Court by filing the present writ petition.

2.9 During pendency of this writ petition, most of the recommendations of the Shetty Commission have been complied with. At the time of adjudication, it was brought to the notice of this Court that there is non-implementation of three recommendations by the Government, though in the meantime 13 years have passed. Those three recommendations are as follows:-

"1. Bench Clerk Grade-I in the newly created Courts in the Cadre of District Judge from the date of functioning of Courts.

2. Up-gradation of the posts of Sheristadar/ Head Clerk w.e.f. dtd. 21.11.2016, when recommendation/ decision of the Hon'ble Court for up-gradation/ Revision of Grade Pay of the posts of Subordinate Court Sheristadar/ head Clerk of the District Court / C.J.M. Court/ S.D.J.M. Court/ Nazir/ Accountant/ Record Keeper of the District Court was communicated to Government by the learned Registrar.

3. Special Allowance to Drivers."

3. Mr. Manoj Kumar Mishra, learned Senior Advocate appearing along with Mr. S. Senapati, learned counsel for the petitioner vehemently contended that Shetty Commission, which was constituted with an avowed objective, had made some recommendations for the benefit of the employees of the subordinate judiciary and the same were directed by the apex Court to be implemented in letter spirit. As the same has not been implemented, the members of the petitioner-association, being the beneficiaries, are grossly prejudiced because their rights have been affected. Consequentially, they have approached this Court through their association by filing the present writ petition. It is also contended that it is the solemn duty of the State to comply the directions given by the apex Court. Therefore, due to non-implementation of the recommendations made by the Shetty Commission, as mentioned above, the opposite parties have not only violated the orders passed by the apex Court, but also their conduct appears to be contumacious. Therefore, direction should be given to the opposite parties to implement the three recommendations, as mentioned above, forthwith.

4. Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties contended that the State is not disputing for implementation of the directions issued by the apex Court. So far as compliance of the above noted recommendations are concerned, necessary steps are being taken and, as such, the State Government is in no way trying to violate the directions given by the

apex Court for implementation of the recommendations given by the Shetty Commission. As such, it has no intention to do so, but it takes time for implementation thereof. Consequentially, dismissal of the writ petition is prayed for.

5. This Court heard Mr. Manoj Kumar Mishra, learned Senior Advocate appearing along with Mr. S. Senapati, learned counsel for the petitioner-association and Mr. A.K. Mishra, learned Addl. Government Advocate appearing for the State-opposite parties in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

6. The first grievance of the petitioner-association, as mentioned above, is with regard to non-implementation of the recommendation of Bench Clerk Grade-I in the newly created Courts in the Cadre of District Judge from the date of functioning of the Courts. As per recommendation of the Shetty Commission and direction of the apex Court, the Bench Clerk Grade-I was to be recommended for District Judge and Additional District Judge Courts with effect from 01.04.2003. The recommendation has been implemented with effect from 01.04.2003 for the existing District Judge and Additional District Judge Courts. So far as newly created Courts of District Judge and Additional District Judge are concerned, equivalent rank posts have been created, after the order dated 07.10.2009 of the apex Court, and they are to be given Bench Clerk Grade-I (Level-10) status from the date of the functioning of the Courts. There are 77 numbers of newly created posts of Bench Clerk Grade-I (Level-10), which are to be given the status from the date of functioning of the Courts.

7. The petitioner-association, on 17.12.2022, had filed an affidavit before this Court with regard to non-implementation of the above recommendations. Consequentially, this Court, vide order dated 21.02.2022, called upon learned Addl. Government Advocate to file a reply to the same. Accordingly, it has been brought to the notice of this Court that the Government, vide letter no. 7576 dated 06.07.2022, abolished 77 number of posts of existing Bench Clerk, Grade-II (Level-9) attached to the newly created Addl. District Judge Courts. Thereafter, the Government, vide order no. 7582 dated 06.07.2022, created 77 posts of Bench Clerk Grade-1 in (Level-10) in lieu of abolition of equal number of existing Bench Clerk, Grade-II (Level-9) posts, but, however, without mentioning the date of effect of the order from the date of functioning of the respective Courts. In the affidavit filed by the Government on 01.08.2022 it has been stated inter alia that the recommendation has been implemented by creating 77 number of Bench Clerk Grade-1 in (Level-10) posts in the Additional District Judge Courts and equivalent rank Courts and they are to be given such status from the date of functioning of the Courts and the eligible staff/employees are entitled to get the consequential service and financial benefits from the date of the functioning of the said Courts.

8. So far as up-gradation of the posts of Sheristadar / Head Clerk with effect

from 21.11.2016 is concerned, the Government has sat over the matter, even after a chart with affidavit was filed on 01.08.2017, but the benefit has not been extended to the said category. So far as special allowance to drivers is concerned, the Shetty Commission has recommended for grant of special allowance not less than Rs.150/- per month to all drivers of the sub-ordinate courts. Therefore, there is gross inaction on the part of the authority on implementation of the order passed by the apex Court so far as implementation of the Shetty Commission's report is concerned.

9. It is of relevance to note that, on 17.10.2022, an affidavit was filed by opposite party no.2 to the reply affidavit dated 22.09.2022 filed by the petitioner-association, wherein at paragraphs 3 to 11, it has been stated as follows:-

"3. That the petitioner in the Notes of submission dated 24.09.2022 have submitted that 3 nos. of the following recommendations made by the Hon'ble Justice Shetty Commission haven't yet been implemented :-

i) Bench Clerk Grade-I

ii) Up-gradation of the posts of Sheristadar/Head clerk and

iii) Special allowance to Drivers

4. That with regard to point no. (i), it is respectfully submitted that the Hon'ble High Court have recommended for up-gradation of 77 nos. of post of Bench Clerk Grade-II to that of Bench Clerk, Grade-I in the Court of Additional District Judges and its equivalent rank in conformity with a recommendation of Hon'ble Justice Shetty Commission.

5. That on the basis of the recommendation of the Hon'ble High Court, the Law Department have endorsed the file to the Finance Department for up-gradation of 77 Nos. of post or Bench Clerk Grade-II to that of Bench Clerk Grade-I in the Court of Additional District Judges and its equivalent rank in conformity with a recommendation of Hon'ble Justice Shetty Commission.

6. That the Finance Department have considered the proposal of Law Department and approved for creation of 77 posts of Bench Clerk Grade-I in (level -10) in lieu of abolition of equal no. of existing Bench Clerk, Grade-II (level-9). The creation and abolition order has already been issued simultaneously.

7. That as per approval of the Finance Department, this Department have abolished 77 Nos. of posts of existing Bench Clerk, Grade-II (Level-9) attached to the Court of Additional District Judge and its equivalent rank vide Law Department Letter No. 7576. dated 06.07.2022 and also created 77 Nos. of Bench Clerk Grade-I (level-10) attached to the Court of Additional District Judges and its equivalent rank vide Law Department letter No. 7582, dated 06.07.2022. The copy of the creation Letter No.7582, dated 06.07.2022 have already been filed as Annexure-A/2 in the affidavit filed on behalf of Opp. Party No.2 on

01.08.2022.

8. That with regard to point No. (ii), the Law Department have mentioned in the affidavit filed on 01.08.2022 on behalf of Opp. Party No.2, that Justice Shetty Commission have not recommended to upgrade the post of Sheristadar/ Head Clerk/ Nazir/Accountant and Record Keeper of Sub-ordinate Courts with that of Bench Clerk, Grade-I in the Sub-ordinates Judiciary. But Hon'ble Justice Shetty Commission have left the matter to the Hon'ble High Court to take steps, as deemed fit keeping in view of the recommendation in respect of other Courts.

9. That the Law Department have endorsed the file to the Finance Department for revision of the pay of the Sheristadar working in the Court of Civil Judge (Sr. Division) and (Jr. Division)/ Head clerk of the District Court/C.J.M. Court/S.D.J.M. Court/ Nazir/ Accountant / Record Keeper of the District Court from level-9 to Level-10 at par with the Bench Clerk. Grade-I of the Sub-ordinate Judiciary.

10. That after concurrence of the Finance Department, the Law Department will upgrade the post or Sheristadar working in the Court of Civil Judge (Sr. Division) and (Jr. Division)/ Head clerk of the District Court/C.J.M. Court/S.D.J.M. Court/ Nazir/ Accountant / Record Keeper of the District Court from level-9 to Level-10 at par with the Bench Clerk. Grade-I of the Sub-ordinate Judiciary.

11. That with regard to point No. (iii), it is respectfully submitted that the Law Department have placed the matter before the Committee constituted by the State Government for implementation of the benefit to the staff of the Sub-ordinate Courts as per-recommendation of Hon'ble Justice Shetty Commission and it has been unanimously decided that the Special pay is attached to the certain posts but not to any person concern. The Committee further recommended that Special Pay of Rs.150/- may be extended only to the driver attached the District Judges and Additional District Judges. The copy of the minutes dated 24.05.2008 have already been filed in the affidavit as Annexure-C/2 filed by the Opposite Party No.02 on 01.08.2022."

On perusal of the above affidavit, it is made clear that for some reason or other the State authorities are not implementing the direction given by the apex Court rather different pleas are being taken for non-compliance of the recommendations of the Shetty Commission.

10. In V.M. Kurian v. State of Kerala, (2001) 4 SCC 215: AIR 2001 SC 1409, the apex Court observed that the word 'recommend' in the context of the Rules, would mean 'giving of a favourable report opposed to an unfavourable one'. Therefore, the recommendation is a statement expressing commendation, or a message of this nature.

11. In A. Pandurangam Rao v. State of Andhra Pradesh, AIR 1975 SC 1922, considering the provision of Article 233(2) of the Constitution of India, the apex Court observed that recommended mean suggested as fit for employment.

12. In view of such position, it is made clear that by not implementing the

direction of the apex Court, which was followed by the recommendations of the Shetty Commission, the authorities are acting arbitrarily, unreasonably and their conduct is contumacious, for which they are liable for proceeding under the Contempt of Court's Act.

13. In view of the fact and law, as discussed above, this Court directs the State-opposite parties to act upon the recommendations made by the Shetty Commission, so far as the specific three items, as mentioned above. Needless to say, the High Court has no objection to extend such benefits to the sub-ordinate judicial staff, because it is in the public interest. If such benefits are extended to them, by carrying out the recommendations made by the Shetty Commission, which was directed to be complied with by the apex Court, in that case, the long cherished desire of the members of the petitioner-association will be fulfilled.

14. Accordingly, this Court directs the State-opposite parties to comply with the aforementioned three grievances of the petitioner-association in terms of the recommendations of the Shetty Commission, which was directed to be implemented by the apex Court, and extend the benefits to the members of the petitioner-association as expeditiously as possible, preferably within a period of three months from the date of communication of this judgment.

15. In the result, the writ petition is allowed. However, there shall be no order as to costs.

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