

(2006) 06 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 1796 of 1990

Arvind Wamanrao Pendharkar (deceased) (through L.Rs.
Sow. Sunita Arvind Pendharkar, Shri Vijay Arvind Pendharkar,
Sow. Sadhana Milind Jamdar and Sow. Suparna Sameer
Kanetkar)

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226, 39
Maharashtra Civil Services (Pay) Rules, 1981 — Rule 11, 11, 40, 41

Citation : (2007) 1 BomCR 287 : (2006) 5 MhLj 85

Hon'ble Judges : P.V. Kakade, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : R.B. Pendharkar and S.P. Hedao, for the Appellant; K.S. Dhote, Assistant Government Pleader, for the Respondent

Judgement

B.P. Dharmadhikari, J.—After the matter was closed on 19th June 2006, on 20th June 2006, the learned Senior Advocate with Shri Hedao, Advocate appeared and made a request to grant him further hearing in the matter. He was accompanied by Shri Dhote, learned AGP, who gave his no objection. Accordingly, both the advocates were heard on 20th June 2006 and the matter was closed for judgment.

2. By this writ petition filed under Article 226 of Constitution of India, the petitioner, deceased and retired District and Sessions Judge has claimed a relief of re-fixation of his basic pay with effect from the date on which he was promoted to the cadre of District Judge and all subsequent dates on which his juniors were so promoted with all consequential reliefs. During the pendency of petition, by Government Resolution dated 25.7.1991, he has been given part of relief from some later dates. The grievance made is that said relief should be granted from earlier dates and he should also be paid interest on belated payment as per this Government Resolution and also on amount of difference in

case the relief is given from earlier dates. The original petitioner has expired and petition is being prosecuted by his widow, son and daughters.

3. The petitioner entered the service as Civil Judge, Junior Division and Judicial Magistrate First Class on 1.12.1958 and on 14.8.1978 he was promoted as District and Sessions Judge at Beed in the Pay-Scale of Rs. 1750-75-2000-125/2-2250. The petitioner was thereafter taken up as Member of Industrial Court at Nagpur on 14.6.1980 and he retired upon reaching the age of superannuation on 31.10.1986 in the afternoon. The case of the petitioner is that upon promotion as District Judge, his juniors like Shri Somalwar, Shri Gawande, Shri Patwardhan and Shri S. S.H. Qazi were given more salary than him because of their fixation as such and hence in view of Instruction No. 2 to Rule 11 of Maharashtra Civil Services (Pay) Rules 1981, he is also entitled to have his pay stepped up to a figure equal to the pay of his juniors to the post of District Judge. Relying upon this instruction, the petitioner has contended that on 14.8.1978 his pay was fixed at Rs. 1925/- in the scale mentioned above and in fact on 30.9.1983, the State Government had directed the Accountant General-II, Maharashtra, Nagpur, to fix his pay at Rs. 2000/- with effect from 14.8.1978 and fix pay of his junior Shri S.S.H. Qazi on promotion at Rs. 2250/- with effect from 17.7.1980. It is his contention that his junior Shri Qazi was given benefit of this letter and he was fixed at Rs. 2250/- with effect from 17.7.1980 while the letter was not implemented in his case and it constituted discrimination and also violation of above referred Instruction No. 2. He addressed two letters i.e. dated 14.10.1983 and 21.2.1984 for implementing these letters but his request was not even looked into.

4. The petitioner has also given instance of Shri R.N. Gawande, who was given promotion in the Cadre of District Judge with effect from 10.8.1979 and was given basic pay of Rs. 2,000/-. Shri Gawande made representation and upon it, his basic pay was fixed at Rs. 2125/- with effect from 10.3.1983 and at Rs. 2250/- with effect from 17.7.1980 as per Government Resolution dated 9.6.1986. For giving benefit to Shri Gawande, Government Resolution and cases of Shri S.S.H. Qazi and Shri S.B. Patwardhan, both juniors of petitioner were relied upon. The petitioner, therefore, claimed that he also deserved to be refixed at Rs. 2000/- with effect from 14.8.1978 and at Rs. 2125/- with effect from 10.3.1980 and at Rs. 2250/- with effect from 17.7.1980.

5. The petitioner has further pointed out that one Shri M.L. Somalwar, came to be appointed as District and Sessions Judge on promotion on 16.2.1979 and his scale of pay was fixed at Rs. 2000/-. Hence without prejudice to his above contentions and submissions, his basic pay ought to have been stepped up to Rs. 2000/- with effect from 16.2.1979, at Rs. 2125/- with effect from 10.3.1980 and at Rs. 2250/- with effect from 17.7.1980. All these persons viz., Shri M.L. Somalwar, Shri R.N. Gawande, Shri S.G. Patwardhan and Shri S.S.H. Qazi were his juniors. The petitioner has contended that as against this payment demanded by him, he actually received basic pay of Rs. 1925/- from 14.8.1978, Rs. 2000/-

with effect from 1.8.1979, Rs. 2125/-with effect from 1.8.1981 and Rs. 2250/-with effect from 1.8.1983. The petitioner has thus complained of discrimination in this respect and has alleged that it is violation of Articles 14, 16 and 21 of Constitution of India and also of his right of equal pay for equal work. He stated that he has sent number of representations in this respect but all these representations were ignored. He also forwarded a telegram ultimately on 27.7.1990 but that was also not considered.

6. In view of the subsequent events, the petitioner has amended his petition as per orders of this Court dated 20.12.2004 and pointed out that he had also made representation to the Secretary of State of Maharashtra on 2.8.1991 but that also was not considered. In the return filed before this Court, the respondent alleged that they have refixed the pay of Shri Qazi at Rs. 2125/-on 17.7.1980 and the petitioner remained in pay scale of Rs. 1925/-with effect from 14.8.1978 till 17.7.1980. This refixation was done by communication dated 23.7.1991 (25.7.1991). The petitioner contended that there is hardly any explanation in this stand and the petitioner ought to have been fixed at Rs. 2250/-with effect from 17.8.1980. The return was amended and in response to that amended portion, again the petition came to be amended. The petitioner has stated in this amendment that he had already claimed interest and proper fixation and Government Resolution dated 25.7.1991 did not place before the Court the correct picture. It is his contention that after the Court passed orders on 23.6.2005, noticing the stand of respondent that though earlier Shri S.S.H. Qazi was placed in pay scale of Rs. 2250/-with effect from 17.7.1980 but on account of audit objection, his pay was reduced at Rs. 2125/- and the petitioner's grievance did not survive. In relation to Shri Gawande, the respondent pointed out that his pay was also reduced to Rs. 2125/-on account of audit objection and as both these juniors did not receive basic of Rs. 2250/-, the grievance of the petitioner did not survive. In view of this stand dated 23.6.2005, this Court directed the respondent to file documents in respect of refixation of pay of Shri Qazi. Accordingly those documents have been filed. The petitioner has contended that these documents did not show that benefit of basic of Rs. 2250/- was not released either to Shri Qazi or to Shri Gawande. The petitioner has further contended that in any case withdrawal of benefit on account of alleged audit objection was itself contrary to law and if Shri Qazi or Shri Gawande. did not challenge said withdrawal, the right of the petitioner to claim basic of Rs. 2250/- was independent and it was not affected at all.

7. The respondent has filed its return denying all the allegations. The respondent stated that whatever mistake was there, it has been corrected and the consequential amounts have been released to the petitioner. It has been denied that there has been any mistake in withdrawing the benefits of basic pay of Rs. 2250/-in case of Shri Qazi or Shri Gawande. Reliance has been placed on Government Resolution dated 25.7.1991 and Rule 11 read with Government instructions contained in Government Resolution dated 1.10.1980 for fixation of pay scales of District Judges in this respect.

8. We have heard Shri R.B. Pendharkar, learned Senior Advocate with Shri Hedao, learned Advocate for the petitioners and Shri K.S. Dhote, learned Assistant Government Pleader for the respondent . State Government.

8. Shri Pendharkar, learned Senior Advocate for the petitioners has stated that the petitioner is entitled to be fixed at Rs. 2,000/-with effect from 14.8.1978 itself as per the communication dated 30.9.1983 and at Rs. 2125/-with effect from 10.3.1980 and at Rs. 2250/-with effect from 17.7.1980 as per Government Resolution dated 9.6.1986. He contends that the communication dated 30.9.1983 is by the Assistant Secretary to the Government of Maharashtra and it is addressed to the Accountant General . II and it has not been implemented. He further states that communication dated 9.6.1986 gave such benefit to his juniors viz., Shri Patwardhan and Shri Gawande and hence said benefit needs to be given to the petitioner also.

9. The second limb of his argument is that if the petitioner is entitled to be given fixation at Rs. 2000/-from any particular date because his juniors got that on said date, the petitioner is entitled to be given said pay right from his appointment as District Judge i.e. 14.8.1978. He contends that a junior cannot be given said scale from the beginning of his assuming charge of said post and the petitioner cannot be denied such beginning. In the alternative, he has also invited attention to provisions of Articles 14, 16 and 39(d) to invoke principle of equal pay for equal work and has contended that even this principle warrants grant of such relief to the petitioner. He has further argued that the petitioner has been given the benefit of fixation at Rs. 2000/-from 16.2.1979 and fixation at Rs. 2125/- from 10.3.1980. He contends that said benefit needs to be given from earlier dates as per prayers made above and in the petition. It is his argument that the arrears for this period have been released in terms of Government Resolution dated 25.7.1991 and the delay has been occasioned for no fault on the part of the petitioner. The petitioner is therefore entitled to grant of interest on this delayed payment. It is further argued by him that if earlier dates as claimed by the petitioner are given and fixation is accordingly ordered from those dates, more arrears will be required to be paid to the petitioner and the petitioner will also be entitled to interest on it on same lines. He has placed reliance upon the judgment of the Hon''ble Apex court in the case of R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, to point out how the Hon''ble Apex Court has granted interest in such contingencies. He has also invited attention to the above mentioned High Court order dated 23.6.2005 and has contended that the stand of Government that it has not released the salary by fixing Shri Qazi and Shri Gawande respectively at Rs. 2250/-and the Government has withdrawn the orders fixing them accordingly is incorrect. He argues that documents filed do not demonstrate that the benefit released to these persons has been in fact withdrawn by the State Government. He has further stated that the said withdrawal in any case is incorrect and though the persons who suffered that withdrawal have not challenged it, the petitioner can point out that he is entitled to said fixation.

10. Shri Dhote, learned Assistant Government Pleader, on the other hand, argues that the case of the petitioner is based upon the wrong fixation of salary of S/ Shri Qazi and Gawande at Rs. 2250/-by the government. He points out that said mistake was committed inadvertently in the case of Shri Qazi and Gawande and it has been withdrawn in the case of Shri Qazi. He invites attention to the statements made in paragraph 4 of additional reply on affidavit filed by the respondent on 27.7.2005. He states that accordingly the mistake was corrected by issuing orders dated 14.8.1994 to Shri Qazi. He further argues that the case of the petitioner is based only upon his fixation as compared with fixation of his juniors. He points out that the petitioner has been given benefit by stepping up his pay to the pay of his juniors in accordance with Instruction No. 2 of Rule 11 of Maharashtra Civil Services (Pay) Rules 1982. According to him, the English translation of Government Resolution dated 1.10.1980 was not correct and therefore Law and Judiciary Department requested the Accountant General . II by communication dated 30.9.1983 to fix the salary at Rs. 2000/-. He has taken this Court to English translation as also its Marathi version which is filed on record. He has argued that the amounts due and payable to the petitioner on account of pay fixation have been rightly worked out and paid to him and no injustice has been done to him. He asserts that no junior of the petitioner got more salary than the petitioner. In relation to demand for interest, it is contended that there was genuine mistake which has been corrected immediately and the amounts have also been paid to the petitioner thereafter and hence interest should not be awarded.

11. On 20th June 2006, Shri Pendharkar, learned Senior Counsel again sought permission to argue the matter and contended that inadvertent mistake or error being pressed into service by respondent is itself an error. He states that when a person is promoted to next higher post, an increment is always required to be released and accordingly in the case of the petitioner, an increment of Rs. 75/- was rightly released by the Assistant Secretary of Law and Judiciary department as per its communication dated 30.9.1983. He states that thereafter by adding Rs. 300/-to it, the stage of Rs. 2000/-was rightly reached and accordingly the petitioner should have been fixed at Rs. 2000/-from 14.8.1978. His fixation at Rs. 1925/-on 14.8.1978 was erroneous. He has invited attention of Court to the fact that provisions of Maharashtra Civil Services (Pay) Rules, 1981 have come into force from 15.8.1981. He states that the case of the petitioner is prior to that date. The dates claimed by the petitioner are prior to 15.8.1981 and all his juniors were promoted prior to 15.8.1981. According to him, therefore, reliance upon Rule 11 of the Maharashtra Civil Services (Pay) Rules, 1981, is unwarranted. He contends that the issue is governed by Rule 41 of Bombay Civil Services Rules and also by Government Resolution dated 20.4.1976 and 1.10.1980. He has invited attention to provisions of Rule 41(a)(i) and Note 3 along with its illustration to show that how the words .the stage of the time scale next above his substantive pay in respect of permanent post. are to be construed. He states that release of increment of Rs.75/-in case of petitioner

was, therefore, essential and was rightly ordered. He has also sought support from the various documents filed with the petition and has contended that amount of Rs. 300/-added to Rs. 1625/-in the process of revising the salary of the petitioner consequent upon his promotion represents his special pay. He states that therefore the addition of Rs. 75/-as increment is just and proper and fixation of petitioner on 14.8.1978 ought to have been Rs. 2000/-.

12. Shri Dhote, learned Assistant Government Pleader on the other hand has contended that these documents are misconceived. He has invited attention to provisions of Rule 41 of Bombay Civil Services Rules which have been amended and said note and illustration has been deleted. He points out that amended provision of Rule 41(a)(i) of Bombay Civil Services Rules is *pari materia* with provisions of Rule 11(i)(a) of the Maharashtra Civil Services Rules and contends that arguments advanced by the petitioner are erroneous. He states that the petitioner has been rightly fixed by processing his case as required by Instruction No. 2 of Rule 11.

13. The communication dated 30.9.1983 at Annexure -B and the communication dated 9.6.1986 at Annexure . E have come much later in point of time. The grievance of the petitioner appears to be that his pay was lower than the pay of his juniors. The chart at Annexure . A with the petition reveals his grievance. In said chart name of deceased petitioner and name of his juniors viz. Shri Somalwar, Shri Gawande, Shri Patwardhan and Shri Qazi are mentioned. The petitioner is senior most as he entered the cadre of District Judge on 14.8.1978. Shri Somalwar entered into service on 16.2.1979, Shri Gawande entered into service on 10.8.1979, Shri Patwardhan entered on 10.3.1980 and Shri Qazi entered into service on 17.7.1980. Upon promotion, the petitioner was fixed at Rs. 1925/-on 14.8.1978 while Shri Somalwar was fixed at Rs. 2000/-, Shri Gawande was fixed at Rs. 2000/-, Shri Patwardhan was fixed at Rs. 2125/-. Though the chart shows that Shri Qazi was fixed at Rs. 2250/-on 17.7.90, in view of the affidavit filed on record by the Government, that error has been corrected and Shri Qazi has been fixed at Rs. 2125/- only on 17.7.1980. All these persons, therefore, junior to the petitioner got more pay as District Judges. As juniors were given the fixation as mentioned above, in view of the representations made, Government has fixed the deceased petitioner also at Rs. 2000/-on 16.2.1979. This date has been given to the petitioner because his immediate junior Shri Somalwar was promoted as District Judge on that date and he was fixed at Rs. 2000/-on that date. On 10.3.1980, Shri S.B. Patwardhan, a person still junior to Shri Pendharkar and also to Shri Somalwar got promoted as District Judge and he was fixed at Rs. 2125/-. Hence, Government fixed the petitioner and Shri Somalwar both at Rs. 2125/-from 10.3.1980. Accordingly, the date of their next increment was also fixed as 1.3.1982. This order dated 25.7.1991 has been issued in exercise of powers under Rule 40 read with Rule 11 of the Maharashtra Civil Services (Pay) Rules, 1981. Rule 40 permits the State Government to release increment prematurely in certain contingencies. Instruction No. 2 appearing below Rule 11 permits State Government to step up

the salary of senior equal to the pay of his junior in that higher post. It is therefore clear that the above orders have been issued in exercise of powers under Instruction No. 2 of Rule 11.

14. The contingency of junior drawing more salary upon promotion as District Judge has arisen because the petitioner was receiving Rs. 1625/- on 13.8.1978 while Shri Somalwar was receiving Rs. 1700/- on 15.2.1979. Shri Gawande was receiving Rs. 1700/- on 9.8.1979 while Shri Patwardhan was receiving Rs. 1775/- on 9.3.1980. Shri S.S.H. Qazi was also receiving Rs. 1775/- on 16.7.1980. All these persons junior to the deceased petitioner were receiving higher pay in lower cadre on a date prior to their promotion as District Judge and hence after promotion, their pay got fixed at a higher stage above the petitioner. The respondent has produced a chart showing working in this respect and said chart reveals that the formula applied for fixing salary of all these persons upon promotion is one and the same. It is, therefore, clear that only on account of a junior getting more pay than his senior, the grievance made by the petitioner has cropped up. Instruction No. 2 of Rule 11 contemplates only said situation and said instruction has been implemented and the grievance of the petitioner has been accordingly ventilated by issuing the order dated 25.7.1991.

15. The pay scale admissible to deceased petitioner before his promotion as District Judge was Rs. 1450-1950 and after promotion, it was Rs. 1700-2250. These pay scales are not in dispute. The fact that petitioners and his juniors were receiving their salary before promotion at a stage which was below the minimum of pay scale of District Judge is also not in dispute. In fact on the eve of promotion, Shri Somalwar and Shri Gawande were receiving basic pay of Rs. 1700/- and the pay scale of District Judge begins from that stage only. Shri Patwardhan and Shri Qazi were receiving Rs. 1775/- respectively on the eve of their promotion. The question is whether while fixing them in pay scale of District Judge an additional increment of Rs. 75/- needs to be released to them because of such promotion. As is apparent from the facts mentioned above, the petitioner is heavily relying upon the communication of Assistant Secretary to Government, Law and Judiciary Department dated 30.9.1983 to the Accountant General - II. In said communication while arriving at pay fixation of the deceased petitioner at Rs. 2000/-, the then existing pay scale of the petitioner at Rs. 1625/- has been added with Rs. 300/- in terms of Government decision dated 1.10.1980 and with Rs. 75/- i.e. increment in the pay scale. By same letter salary of Shri Qazi was also fixed similarly i.e. by adding Rs. 300/- and Rs. 75/- to his basic pay in lower cadre. The learned Senior Advocate has contended that this Rs. 300/- is not on account of increment but it is special pay which the incumbents receive because of the fact that they were members of Industrial Court. The argument is misconceived because the pay fixation has been done in the case of the deceased petitioner on 14.8.1978 when he was promoted as District Judge and at that time he was not Member, Industrial Court. He became Member, Industrial Court on 14.6.1980. Thus, there was no question of granting special pay to him earlier. Similarly, special pay is granted to a person in some contingencies and

that special pay is personal and is not looked into for the purposes of pay fixation or revision.

16. The petitioner has relied upon Government Resolution dated 20.4.1976 which deals with fixation of pay of Judicial Officers promoted as District Judges and clause (1) thereof is important. Said clause reads as under:

Assistant Judges promoted from among Civil Judges:

In case of Assistant Judge who has been promoted from among Civil Judges on his promotion as District Judge, his pay should be fixed in the scale of Rs. 1200-50-1300-60-1600-EB-60- 1900-100-2000 at the stage next above his pay plus increments at the rate of one increment for every three completed years of judicial service subject to a minimum and maximum increase of Rs. 100/-and Rs. 200/- respectively, over his pay.. It is contended that as per this Government Resolution deceased petitioner was to be fixed at the stage next above his pay plus increments as mentioned therein. It was argued that the subsequent Government Resolution dated 1.10.1980 on this subject only places ceiling upon number of increments to be granted. As per Government Resolution dated 20.4.1976, such incumbent was to be granted increments " one increment for every three completed years of Judicial service subject to minimum of Rs. 100/-and maximum of Rs. 200/-over his pay. According to the petitioner, only the change brought about by Government Resolution dated 1.10.1980 is increasing said ceiling to Rs. 300/-. It is contended that therefore the respondent ought to have added Rs. 300/-plus one increment to the existing stage of time scale of pay of petitioner in earlier cadre to arrive at his salary in time scale of District Judge. In this respect, support is also sought to be drawn from Rule 41 of Bombay Civil Services Rules, particularly Rule 41 (a)(ii) and Note 3 with illustration. As already stated above, the said provisions have been amended later on and Note 3 or illustration thereof is not in existence in amended provisions of Bombay Civil Services Rules. However, even Rule 41(a)(i) on which reliance has been placed contemplates that such officer shall draw as initial pay the stage of the time scale next above his substantive pay in respect of permanent post. The requirement of releasing additional increment is not flowing even from this provision. The provisions incorporated in Rule 41(a)(ii) are not applicable to the petitioner because that provision is applicable only when the new post is not involving assumption of duties and responsibility of greater importance. The illustration and Note 3 on which reliance has been placed consider case of an officer receiving substantive pay of Rs. 350/-in scale of Rs. 300-10-400 and his promotion to a post involving higher responsibilities with pay scale of Rs. 350-30/2- 650-EB-45-740. The illustration says that such officer should be given officiating pay of Rs. 380/-i.e. his existing substantive pay of Rs. 350/-has been added by Rs. 30/-. However, as already discussed above, the requirement of Rule 41(a)(i) is of drawing as initial pay the stage of time scale next above his substantive pay in respect of permanent post. In the illustration the substantive pay was already Rs. 350/-and stage above such substantive pay

of Rs. 380/-has been granted to this officer. In the present case as already stated above, existing pay of deceased petitioner was Rs. 1625/-and after adding Rs. 300/-to it, it has become Rs. 1925/-. This figure of Rs. 1925/-is more than the substantive pay which the petitioner was receiving in lower cadre and therefore there is no question of releasing any additional or more increment in favour of the petitioner. The stage of Rs. 1925/-is already prescribed in the time scale of pay applicable to the District Judge and accordingly the petitioner has been rightly fixed at Rs. 1925/-.

17. The contention of learned AGP that in case of Shri Qazi also similar mistake of adding Rs. 75/-as increment in addition to Rs. 300/-was committed by the department and said mistake was rectified, therefore needs to be accepted. We, therefore, do not find any substance in the contention of the petitioner that increment of Rs. 75/-needs to be added to Rs. 1925/-and thereafter only his correct pay as District Judge can be fixed. Though the learned Counsel has argued that provisions of Maharashtra Civil Services (Pay) Rules, 1981, are not applicable, it is to be noted that Rule 11(i)(b) is a provision which is *pari materia* with above Rule 41(a)(i) of Bombay Civil Services Rules and it does not require fixation of petitioner at a stage of time scale above his stage after revision of pay in reference to old post (lower post).

18. As already stated above, the pay scales of lower post and promotional post in case of petitioner are not in dispute. As already stated above, in case of petitioner, there is no over lapping in fixation. The contention of petitioner that therefore the petitioner ought to have been paid salary equivalent to his juniors right from the date of his promotion as District Judge cannot be accepted. The stepping up of salary of a senior to a stage of salary of his junior who comes to his promotional cadre later in point of time is well recognized principle in service jurisprudence. The illustration No. 2 of Rule 11 of Maharashtra Civil Services (Pay) Rules, 1981, on which the petitioner has placed reliance in his petition and during arguments embodies said principle only. The pay scale of petitioner was required to be revised only because his juniors got more salary than him upon their subsequent promotion as District Judges. In the absence of this promotion to his juniors, the said contingency of revising would not have arisen. If Shri Somalwar, junior to the petitioner would not have been promoted on the post of District Judge on 16.2.1979, there would not have been any occasion for the petitioner to claim basic of Rs. 2000/-and similarly had Shri Patwardhan would not have been similarly promoted on 10.3.1980, there would not have been occasion for the deceased petitioner to claim fixation at Rs. 2125/-from 10.3.1980. It is, therefore, apparent that there is nothing wrong in initial fixation of deceased petitioner at Rs. 1925/-on 14.8.1978. The subsequent higher salary has been given to him only because the contingency of his juniors getting promoted and receiving more salary than him. This has been done in accordance with provisions of Rule 11 Instruction No. 2. Thus, this contingency cannot be made use of by the petitioner to claim that he should be paid at Rs. 2000/-or at Rs. 2125/-from 14.8.1978 itself. There is no reason and occasion for the

petitioner to make such demand.

19. The different pay scales prescribed for these two posts are already mentioned above. Various stages therein are also mentioned. Thus a person who joins employment for the first time as District Judge would be receiving his salary at the lowest of the time scale and his seniors would continue to receive their salary at different stages above him because the annual increments drawn by them on account of length of service put in by them. The pay scale itself therefore contemplates different payment of monthly salary to the incumbent depending upon his seniority in the cadre. Hence, the argument of equal pay for equal work being advanced on behalf of the petitioner is also found to be without any merit and is accordingly rejected.

20. The learned Counsel for the petitioner has contended that fixation of salary of the petitioner has not been done as per the resolution of Government of Maharashtra dated 20.4.1976 and as modified by further Government Resolution dated 1.10.1980. The rival arguments in this respect are already mentioned above. The language of resolution dated 20.4.1976 required respondents to fix the petitioner at the stage next above his pay plus increment " one increment for every completed three years of judicial service. Thus, as per arguments, the deceased petitioner ought to have been first fixed at the stage next above his pay and thereafter increments admissible should have been released in his cadre. However, this Government Resolution has undergone change and on 1.10.1980, the said position has been retrospectively modified. The amendment has been brought into effect from 1.1.1973. As per this amendment, the number of increments to be given to such person on promotion has been restricted to Rs. 300/-by mentioning that such person shall be entitled to one increment for every three years of judicial service. This resolution does not require that the incumbent should be fixed at the stage next above his pay. The said requirement of Government Resolution dated 20.4.1976 has been deleted by the Government Resolution dated 1.10.1980. The fixation at next above stage has been directed only when the figure arrive at after adding amount of Rs. 300/-is not matching with the structure of pay scale. In the present facts as already stated above, after adding Rs. 300/-to the existing pay scale of petitioner in lower cadre, the salary of Rs. 1925/-in the cadre of District Judge has been worked out. Said stage is very much available in pay scale prescribed for the post of District Judge. As such, there is no question of fixing the salary of the petitioner at a stage above Rs. 1925/-and arguments of the petitioner in this respect are misconceived. We hold that salary of petitioner has been rightly fixed at Rs. 1925/-by following Government Resolution dated 1.10.1980.

21. The last question to be answered is in relation to claim of interest. We have already held that the petitioner has been rightly fixed at Rs. 2000/-on 16.2.1979 and at Rs. 2125/-on 10.3.1980. The petitioner has contended that he has been fixed accordingly on 25.7.1991 i.e. after about 11 or 12 years from the date on which he should have been accordingly fixed. It is not in dispute that the amount

actually becoming due to the petitioner on account of this fixation has already been paid to him. The petitioner has contended that as there is delay of about 11 to 12 years in effecting that payment, he is entitled to grant of interest on his claim also.

22. From the facts stated above, it is clear that the petitioner was insisting for his fixation since beginning and his grievance was pending before the State Government for long time. The Government has taken decision belatedly though in case of Shri Gawande, the decision was taken on 9.6.1986 itself. It is also clear that the petitioner cannot be blamed for this delay in any manner. The learned Counsel for the petitioner has relied upon the judgment in the case of Manganese Ore (India) Ltd. v. Chandi Lal Saha, reported at 1991 Lab. I.C. 524 to point out that for delayed payment of minimum wages, the Hon"ble Apex Court has granted interest " 12%. Para 18 of said judgment supports the stand of the petitioner. Another ruling on which reliance has been placed is reported at R. Kapur Vs. Director of Inspection (Painting and Publication) Income Tax and Another, , in which the Hon"ble Apex Court after considering belated payment of gratuity (DCRG) granted interest " 18%. However, in the last few years, there had been drastic fall in the rate of interest. Hence in the facts of present case, we are inclined to grant interest " 10% to the deceased petitioner only on amount paid belated to him in pursuance of Government Resolution dated 25.7.1991.

23. Thus, writ petition is only partly allowed. The claim of the deceased petitioner for interest is allowed. The respondent is directed to pay to the petitioners interest " 10% on the amount paid to the deceased petitioner as per Government Resolution dated 25.7.1991 from 10.3.1980 till said amount was actually received by the deceased petitioner. This amount of interest be paid to present petitioners who are legal heirs of the deceased petitioner within a period of three months from today. Rest of the prayers in the petition are rejected. Rule is made absolute accordingly. There shall be no order as to costs.