
(2016) 03 BOM CK 0023
In the Bombay High Court
Case No : Writ Petition No. 11700 of 2015

Bhaskar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Citation : (2016) 2 ALLMR 855 : (2016) 4 BCR 374

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : G.L. Deshpande, Advocate, for the Appellant; D.R. Kale, AGP, for the Respondent

Final Decision : Allowed

Judgement

P.R. Bora, J.—1. Heard. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

2. Following two issues are raised in the present petition:

(1) Whether the recommendations of Justice Shetty Commission would be applicable to the post of Assistant Superintendent, Civil Court, Senior Division.

(2) Whether the benefits as made available by Justice Shetty Commission can be extended to the employees working in the Office of the District Legal Services Authority.

3. Before advertng to the legal issues raised as above, it would be necessary to note down in brief the facts of the present petition, which are thus:

The petitioner entered into the services of the State on 15th July, 1980. He was appointed as Junior Clerk on the establishment of the District Court, Beed. In the year 1989, he was promoted to the post of Senior Clerk. After having completed 12 years of the service in the cadre of Senior Clerk, petitioner was promoted to the post of Assistant Superintendent, Civil Court, Senior Division, Beed, vide Office order dated 25th January, 2001, issued under the signature of the

Principal District and Sessions Judge, Beed. In the year 2005, the petitioner was transferred from the post of Assistant Superintendent, Civil Court, Senior Division, Beed, to the post of Assistant Superintendent, Civil Court, Junior Division, Patoda. In the year 2009, he was promoted and transferred to the post of Superintendent, Civil Court, Senior Division, Majalgaon. In the year 2010, petitioner was transferred from the post of Superintendent, Civil Court, Senior Division, Majalgaon, to Superintendent, District Legal Services Authority, at Beed. On 30th April, 2013, petitioner retired from the said post on attaining the age of superannuation. After his retirement, the pay of the petitioner was fixed by considering the recommendations of the Shetty Commission vide office order No. 428/2012. Thereafter, the pay verification was done by respondent no.2. In the pay verification, respondent no.2 raised an objection that the petitioner was working as Assistant Superintendent, Civil Court, Senior Division, Beed, on 1.4.2003, and as such, was not entitled to the pay and increments as recommended by the Shetty Commission since the recommendations of the Shetty Commission were applicable only to the post of Assistant Superintendent, Civil Court, Junior Division, and not to the post of Assistant Superintendent, Civil Court, Senior Division. According to respondent no.2, the aforesaid objection was raised based on clause (4) of the Government circular dated 8th of March, 2013.

One more objection was raised by respondent no.2 that the benefits of the recommendations made by Justice Shetty Commission would not be applicable to the petitioner since he was working on the establishment of the District Legal Services Authority, Beed, and in view of the Government Resolution dated 20th October, 2011, and the Government circular dated 8th of March, 2013, the employees of the District Legal Services Authority were not entitled to the benefits of the Justice Shetty Commission. Respondent no.2, therefore, directed the office of the District Legal Services Authority to re-fix the pay and, accordingly, to make necessary changes in the service book of the petitioner. Aggrieved by the objection so raised by respondent no.2, the petitioner has filed the present petition.

4. One Shri Ganpat Vyankatrao Jadhav, working as Accounts Officer, Pay Verification Unit, Aurangabad, in the office of the Joint Director of Accounts and Treasury, Aurangabad, has filed the affidavit in reply, on behalf of respondent no.2. It is the contention of respondent no.2 that the Government circular dated 8th of March, 2013, is not applicable to the petitioner in view of clause (4) of the said circular. It is further contended that the judgment and order passed by the Division Bench of this Court in Writ Petition No. 429/2015 (Amanulla Khan Vs. State of Maharashtra and others -, 2016 (1) Mh.L.J. 723) cannot be made applicable to the case of the present petitioner since the relief granted in the said petition is restricted to the case of the said petitioner only.

5. Heard Shri G.L. Deshpande, learned Counsel appearing for the petitioner, and Shri D.R. Kale, learned A.G.P. appearing for respondent nos. 1 and 2. Learned Counsel appearing for the petitioner has relied upon two Division Bench

judgments of this Court; first, in the case of Pralhad Bhaurao Ghule and others Vs. Government of Maharashtra and others (Coram: A.S. Oka & A.S. Chandurkar, JJ.) decided on 14th August, 2014, and the other in the matter of Amanulla Khan Vs. State of Maharashtra (cited supra). According to the learned Counsel, the issues raised in the present petition are squarely covered by the verdict in the aforesaid judgments. The learned Counsel, therefore, prayed for allowing the present petition.

6. The learned A.G.P. reiterated the contentions raised in the affidavit in reply filed on behalf of respondent no.2 and prayed for dismissal of the petition.

7. We have carefully considered the submissions advanced on behalf of learned Counsel appearing for the petitioner and learned A.G.P. appearing for respondent nos. 1 and 4. In the matter of Amanulla Khan Vs. State of Maharashtra (cited supra), one of the point at issue was "whether the benefits of the Justice Shetty Commission can be made applicable to the employee working on the post of Assistant Superintendent in the Court of Civil Judge, Senior Division". The learned Division Bench of this Court, after having considered the arguments advanced before it, and the documents placed on record by the parties, has recorded an unambiguous finding that the benefits of the recommendations of Justice Shetty Commission would be equally applicable to the post of Assistant Superintendent of the civil Court, Senior Division. From the discussion made by the learned Division Bench in the aforesaid matter it appears that an argument was sought to be canvassed before it that the post of Assistant Superintendent, Civil Judge, Senior Division, is neither included in the Government Resolution dated 20th of October, 2011, nor in the Government circular dated 8th of March, 2013, and as such, no benefit of the recommendations of Justice Shetty Commission can be extended to the post of Assistant Superintendent, Civil Judge, Senior Division. The learned Division Bench, however, has rejected the said argument by observing that non inclusion of the post of Assistant Superintendent, Civil Judge, Senior Division, in the concerned Government Resolution appears to be an inadvertent omission. The Division Bench has further observed that if the disparity in the revised pay scale of Assistant Superintendent of Civil Judge, Junior Division, and that of Civil Judge, Senior Division, is allowed to stand, it would result in irrational classification, absurdity and egregious injustice. It is further observed that the Court in such situation has to step in to eradicate the inequality on the touchstone of the principle "Equal Pay for Equal Work". Eventually, the learned Division Bench held the petitioner in the said case entitled to the same revised pay scale while working as Assistant Superintendent, Civil Judge, Senior Division, as is made applicable to the Assistant Superintendent, Civil Judge, Junior Division.

8. In the instant case also, the benefit of the recommendations of Shetty Commission are not made applicable to the petitioner for the reason that on the relevant date the petitioner was working on the post of Assistant Superintendent in the Court of the Civil Judge, Senior Division. In view of the law laid down by

the Division Bench in the case of Amanulla Khan Vs. State of Maharashtra (cited supra), the decision of respondent no.2, not to extend the benefit of the recommendations of Justice Shetty Pay Commission to the petitioner for the reason that, at the relevant time, he was working on the post of Assistant Superintendent, Civil Judge, Senior Division, cannot be sustained and will have to be quashed and set aside.

9. Now, we will deal with the second issue raised in the matter. From the materials placed on record, it does not appear that while carrying out pay verification in respect of the pay of the petitioner for the purposes of determining the amount of pension and other pensionary benefits on attaining the age of superannuation by the petitioner, the pay has been directed to be re-fixed by respondent no.2 on the ground that the petitioner is working in the District Legal Services, Authority, Beed. In the respective communications dated 1.4.2013 and 29.4.2013, respondent no.2 appears to have raised the query and has, accordingly, directed re-fixation of the pay of the petitioner only on the ground that in the Government Resolution dated 20th October, 2011, and in the Government Circular dated 8th of March, 2013, the post of Assistant Superintendent, Civil Judge, Senior Division, is not included so as to extend to the petitioner the benefits of the recommendations made by Justice Shetty Pay Commission. The petitioner has not placed any material on record to show that the benefits of the Justice Shetty Pay Commission have been refused to the employees of the District Legal Services Authority. In the circumstances, in fact, we see no reason for the petitioner, to seek a declaration that, the employees of the District Legal Services Authority are entitled to the benefits of the recommendations of the Justice Shetty Commission.

10. It appears that since in the Government Resolution dated 20th October, 2011 as well as in the Government circular dated 8th of March, 2013, there is no mention of the employees working with the District Legal Services Authorities, it is apprehended by the petitioners that the employees of the District Legal Services Authorities may be denied the benefits of the recommendations of Justice Shetty Commission. It does not appear to us that the respondent State or the Office of the Accountant General would refuse to grant benefit of the recommendations of the Justice Shetty Pay commission to the employees of the District Legal Services Authority in view of the judgment of the Division Bench of this Court in the case of Pralhad Bhaurao Ghule and others Vs. Government of Maharashtra and others (cited supra). In the aforesaid matter, the learned Division Bench of this Court has declared that, the employees of all the Family Courts in the State of Maharashtra are entitled to the benefits of recommendations made by Shetty Commission in terms similar to those applicable to the employees of the District Court. The learned Division Bench has observed that, considering the fact that the employees of the Family Courts were all initially appointed with the District Courts and were sent to the Family Courts by way of ad hoc arrangement coupled with the fact that the District Court continued to exercise administrative control over them in the matter of various

aspects pertaining to their services and continuation of their names in the Gradation list for a period of more than 20 years, it will be clear that employees of the Family Courts have not been treated as a separate class by themselves. It is further observed that they have been continued to be treated as employees of the District Court. It is further observed that merely because under the said Act, the Family Court is not a Court subordinate to the District Court, the same would not be a justifiable reason to deny benefits of Shetty Commission recommendations to the employees of the Family Court. It is further observed that the said employees continued on the same post doing the same nature of work that they were doing in the District Courts. There is no difference in the educational qualifications of the employees of the District Court and the employees working in the Family Courts.

11. It is undisputed that the employees in the Office of the District Legal Services Authority are being treated as employees of the District Court. Said employees are asked to work in the office of the Legal Services Authority on deputation by way of Ad hoc Arrangement and the District Court continues to exercise administrative control over such employees. The present petitioner has also been deputed to work as the Superintendent in the Office of the District Legal Services Authority, Beed, however, for all purposes, he is under the administrative control of the District Court, Beed. In such circumstances, it does not appear to us that there is any likelihood of refusing the benefit of the recommendations of Justice Shetty Pay Commission to the petitioner by respondent nos. 1 and 2 on the ground that the petitioner stood retired as an employee of District Legal Services Authority.

12. For the reasons recorded as above, the impugned communications dated 1.4.2013, 29.4.2013, and 26.2.2014, are quashed and set aside. It is declared that though at the relevant time, the petitioner was working on the post of Assistant Superintendent, Civil Court, Senior Division, he is entitled to the benefits of the recommendations of Justice Shetty Commission in terms similar to those applicable to Assistant Superintendent, Civil Court, Junior Division.

It is further declared that the employees of the District Court working in the Office of the District Legal Services Authority are entitled to the benefits of the recommendations of Justice Shetty Commission.

Writ Petition stands allowed in the aforesaid terms and Rule is made absolute accordingly. No costs.