

(2012) 03 GUJ CK 0069

In the Gujarat High Court

Case No : Special Civil Application No. 8320 of 2011

Industrial Courts Employees Association Class-III-
Ahmedabad and 1

APPELLANT

Vs

State of Gujarat and 2

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 9
Constitution of India, 1950 — Article 14, 16, 226, 233, 233(2)
Industrial Disputes Act, 1947 — Section 7

Citation : (2012) 2 GLR 1265

Hon'ble Judges : J.B. Pardiwala, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : V.K. Joshi for Petitioners 1 - 2, for the Appellant; Shalin N. Mehta for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

Honorable Acting Chief Justice Mr. Bhaskar Bhattacharya

1. By this Special Civil Application under Article 226 of the Constitution of India, the writ-petitioners, the Industrial Courts Employees" Association Class-III, Ahmedabad and the Labor Courts Employees" Association Class-III have prayed for issue of writ of mandamus or other appropriate writ upon the respondents to extend the benefit of the revised pay-scale as per the recommendation of the Justice Shetty Pay Commission Report to the employees of the Industrial Courts and Labor Courts in terms of the order dated October 07, 2009 passed by the Hon"ble Supreme Court of India.

2. The case made out by the writ-petitioners may be summarized thus :

2.1 The members of the petitioners-Associations were appointed on various posts like Registrar, Office Superintendent, Clerk of the Court, Sub-Accountant, Clerk, Clerk-cum-Typist and Class-IV employees like Nayak and Peon by the Labor and

Employment Department of the State of Gujarat under the direct supervision and control of Labor and Employment Department of the State of Gujarat.

2.2 The Supreme Court of India in the case of *The State of Maharashtra Vs. Labour Law Practitioners' Association and Others*, held that persons presiding over Industrial and Labor Courts would constitute judicial service and, therefore, the recruitment of Labor Court Judges was required to be made in accordance with Article 234 of the Constitution of India. Consequently, according to the said order passed by the Supreme Court of India, the Presiding Officers and the employees working under the direct control and supervision of the State of Gujarat had been placed under the direct supervision and control of the High Court of Gujarat.

2.3 General Inspection of the Industrial Courts and Labor Courts is being carried out by the High Court, including the inspection of accounts of the Labor Courts and Industrial Courts. Though the rules for recruitment of staff, their promotions, and disciplinary rules are yet to be finalized by the High Court, the promotion orders in respect to the post of Registrar are being issued by the Legal Department, which clearly demonstrates that the entire staffs of both the abovementioned judicial institutions are under direct control of the High Court. Such being the position, the members of the writ-petitioners are entitled to get revision of pay-scale with effect from April 01, 2003 onwards with all consequential benefits, including corresponding scale and other perquisites and allowances recommended by the Justice Shetty Pay Commission and accepted by the Supreme Court.

2.4 The Union of India, Ministry of Home and Affairs issued a letter dated August 05, 1997 whereby the Labor Courts have been treated to be equivalent to the District Court and the status of the Labor Courts has been accepted in principal in pursuance of the suggestion given by the Union of India.

2.5 The Supreme Court appointed the National Judicial Pay Commission known as Justice Shetty Commission to examine the anomaly in the scale of pay prevailing in the judicial department and their employees throughout the country. After examining various aspects, Justice Shetty Pay Commission in its report in Chapter VII noted that in consultation with various expert institutions in the subject matter and with all High Courts and the State Governments, it recommended to grant higher pay to Courts' Staff, since they form an integral part of judicial system and help to perform the judicial process efficiently and effectively. It was also observed in the said report that the Courts' activities being absolutely labor intensive and service oriented and the specialization which the judicial employees possess, is not appreciated properly and they are compared with the staff of other Government departments. According to the said report, considering the expertise they gain, the stress they undergo, the hiccups they suffer, all are required to be aptly recognized and compensated for.

2.6 In view of above comments made by the Justice Shetty Pay Commission and

accepted by the Supreme Court, the employees who are working in the Industrial Courts and Labor Courts are now being considered as subordinate court's employees under the supervision of the High Court.

2.7 Since the members of the petitioners-Associations are employees of the Courts subordinate to the High Court of Gujarat, the equal treatment and benefits should be given to the members of the petitioners-Associations at par with subordinate courts' employees working in the State of Gujarat. Pursuant to the recommendation made by Justice Shetty Pay Commission, the Government of Gujarat issued a notification dated June 26, 2009 extending the benefits of pay-scale only in favour of Judicial Officers working in the State of Gujarat but there is no reference of the employees who are also under the control of the High Court by extending the benefits to those employees.

2.8 The Judicial Officers who are appointed as Civil Judge are being posted as Presiding Officer of the Labor Court and those persons are performing the same duty at par with other Civil Courts and at the same time, the employees working under such Presiding Officers, such as, Court Shirastedar, Registrar, Office Superintendent, Nayak and the Peon are also performing the same duties at par with the employees of all Courts in the State. Thus, there is no justification of giving different pay scale to the members of the petitioners-Associations and such treatment is arbitrary and discriminatory.

2.9 Despite the order dated October 07, 2009 passed by the Supreme Court to implement the report of the Justice Shetty Pay Commission for improvement of Service Conditions of the subordinate Courts in the State, Special Civil Application No. 7813 of 2010 has been preferred by the Class-III Employees Association and Stenographer Association before High Court and the Courts are examining the same for compliance of the order passed by the Supreme Court. Thus, the members of the petitioners-Associations are entitled to have the same benefit as is payable to the employees of the Courts.

3. The writ-application is contested by the State-respondent by filing an affidavit-in-reply and the defense taken by the State-respondent No. 2 may be summed up thus :

3.1 The benefit of the recommendation of Justice Shetty Pay Commission is only extended to the non-judicial employees of subordinate Courts and is not extended to any other employee. The appointment of Class-II and Class-III employees of Labor and Industrial Courts are made by the State Government and the employees of the State Government are not entitled to the benefits of Justice Shetty Pay Commission.

3.2 There is no notification issued for putting Head Clerk, Senior Clerk or Sub-Accountant, Class-III employees of Industrial and Labor Courts under the control of High Court. By resolution dated January 09, 2003 the Labor and Employment Department has vested all jurisdiction and powers in the Legal Department. The procedure for appointment of Class-III and Class-IV employees are carried out

by the President of Industrial Court and, therefore, the President of the Industrial Court is required to be joined as a party respondent in this writ-application. Till today the employees of the Labor Court and Industrial Court are employees of the State Government and, therefore, benefit of Shetty Pay Commission cannot be extended to them.

4. The Gujarat High Court has affirmed a separate affidavit-in-reply and the stance taken by the Gujarat High Court may be epitomized thus :

4.1 The employees of the Industrial Courts and the Labor Courts in the State are appointed by the State Government. The proposed draft Rules for recruitment and conditions of service of staff of the Industrial Courts and Labor Courts in the State were framed by the High Court and sent to the State Government for approval vide letter dated April 28, 2010. The same was returned by the Legal Department of the State Government vide letter dated June 26, 2011 with a request to resubmit the same with certain amendments proposed by the State Government.

4.2 The State Government ought to issue a formal notification to bring the Industrial Courts and Labor Courts in the State under the effective control of the High Court of Gujarat and the same would be in tune with the Supreme Court's decision in Labor Law Practitioners Association (supra).

4.3 The Supreme Court by its order dated October 07, 2009 did not expressly cover the staff of the Industrial Courts and Labor Courts in the State and the said order only covers the judicial staff and non-Judicial staff of the subordinate Courts in the State. In compliance of the said order, the State Government issued a Government Resolution dated May 07, 2011 for payment of Justice Shetty Pay Commission benefits to the non-judicial staff of the subordinate Courts in the State. Whether the non-judicial staff of the Industrial Courts and Labor Courts in the State are entitled to the benefits of the report of the Justice Shetty Pay Commission is a matter for the High Court to decide in this litigation.

4.4 Whereas the Government notification dated June 26, 2009 extends the benefits of Justice Shetty Pay Commission to the Judicial Officers of the subordinate Courts in the State, the Government Resolution dated May 07, 2011 extends the benefits of Justice Shetty Pay Commission to the non-judicial staff of the subordinate Courts in the State.

5. The writ-petitioners have filed affidavit-in-rejoinder to the affidavit-in-reply filed by the respondents and the stance taken in such affidavit-in-rejoinder may be epitomized thus :

5.1 The High Court vide communication letter dated August 01, 2011 addressed to the Secretary, Government of Gujarat, Legal Department, Sachivalaya, Gandhinagar, in terms stated that the Government may decide their request as they are not Court/ Civil Court/ District Court employees. It is pertinent to submit that the said letter has been written by the Registrar (Administration)

Shri R.P. Dholaria, during the pendency of the present writ-application and the direction has been shown reflected in paragraph 2 of the affidavit-in-reply of the respondent No. 2 without taking into consideration the recommendation made in Shetty Pay Commission Report as well as ratio laid down by the Supreme Court in the case of State of Maharashtra v. Labor Law Practitioners Association (supra), wherein it has been held that the Labor Court Judges and the Judges of the Industrial Court belong to the judicial service and the said Courts fall within the terms of the Court.

5.2 Pursuant to this judgment, it was decided in the Chamber Meeting held on October 25, 1999 by the High Court that the Industrial Courts and Labor Courts are to be treated at par with Courts and the method of administration in respect of judicial officers and Courts in subordinate judiciary are made applicable to Industrial Courts and Labor Courts.

5.3 High Court has also framed recruitment rules of the staff Class-I to Class-IV for the establishment of Labor and Industrial Courts in the State and also forwarded the Draft Recruitment Rules under its communication dated January 19, 2009, wherein it clearly shows that the appointing authority of the staff is the President of the Industrial Court, subject to approval of the High Court.

5.4 In the Evening Court Rules, 2006 framed by the Government of Gujarat in consultation with the High Court dated November 02, 2006, the Labor Courts and Industrial Courts are shown as Courts under the supervision of the High Court and, therefore, there cannot be any second view or meaning except to treat the employees of Labor Courts and Industrial Courts as employees of subordinate Courts.

6. Therefore, the first question that arises for determination in this writ-application is whether the Labor and the Industrial Courts functioning in this State are District Courts within the meaning of the Constitution of India.

7. After hearing the learned counsel for the parties and after going through the materials on record we find that in the case of the State of Maharashtra v. Labor Law Practitioners' Association and others (supra), the Supreme Court was dealing with a case where the first respondent before the said court was Labor Law Practitioners' Association, an association of members practicing in the Industrial and Labor Courts in the State of Maharashtra. The Association filed a writ petition before the High Court challenging the appointment of respondents 2 and 3 who were Assistant Commissioners of Labor, as Judges of the Labor Court at Pune and Sholapur under a Notification issued by the Government of Maharashtra dated March 8, 1979. They also prayed that the provisions of the amended Section 9 of the Bombay Industrial Relations Act and the amended Section 7 of the Industrial Disputes Act in so far as these provisions authorized the appointment of Assistant Commissioners of Labor as Judges of the Labor Court, were void and illegal and contrary to Article 234 of the Constitution. There was also a prayer in the writ-petition for a direction to the State of Maharashtra

to comply with the provisions of Article 234 of the Constitution in appointing judges of the Labor Court.

8. A learned Single Judge of the High Court set aside the Notification of 8th of March, 1979 and also gave a direction to the State of Maharashtra to comply with the provisions of Article 234 of the Constitution while making appointments of judges of the Labor Court. Being aggrieved by this judgment and order, the appellant, the State of Maharashtra preferred an appeal before a Division Bench of the High Court, which was dismissed. Hence, the appeal was preferred before the Supreme Court.

9. The Supreme Court dismissed such appeal filed by the State of Maharashtra by making the following observations:

The constitutional scheme under Chapter V of Part VI dealing with the High Courts and Chapter VI of Part VI dealing with the subordinate Courts shows a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the judiciary from the executive. Thus Article 233 which deals with appointment of District Judges requires that such appointments shall be made by the Governor of the State in consultation with the High Court. Article 233(2) has been interpreted as prescribing that "a person in the service of the Union or the State" can refer only to a person in the judicial service of the Union or the State. Article 234 which deals with recruitment of persons other than District Judges to the judicial service requires that their appointments can be made only in accordance with the Rules framed by the Governor of the State after consultation with the State Public Service Commission and with the High Court. Article 235 provides that the control over district Courts and Courts subordinate thereto shall be vested in the High Court; and Article 236 defines the expression "District Judge" extensively as covering judges of a city civil Court etc. as earlier set out, and the expression "judicial service" as meaning a service consisting exclusively of persons intended to fill the post of the District Judge and other civil judicial posts inferior to the post of District Judge. Therefore, bearing in mind the principle of separation of powers and independence of the judiciary, judicial service contemplates a service exclusively of judicial posts in which there will be a hierarchy headed by a District Judge. The High Court has rightly come to the conclusion that the persons presiding over Industrial and Labor Courts would constitute a judicial service so defined. Therefore, the recruitment of Labor Court Judges is required to be made in accordance with Article 234 of the Constitution.

10. After the aforesaid decision of the Supreme Court, there is no scope of any further argument that the Labor and the Industrial Court would not constitute part of the judicial services. Thus, the labor and the industrial courts functioning within the State are all District Courts and consequently, the non-judicial staffs attached to those labor and industrial courts are the staffs of the District Court under the Supervision of the principal judge of the Industrial Court. Thus, their appointment and service shall also under the control of the High Court like other

staff of the District Courts.

11. It further appears from record that this court by its resolution taken in the chamber meeting (full court) held on October 25, 1999 has decided to treat the Industrial Courts and Labor Courts at par with other Courts and the method of administration in respect of judicial officers and Courts in subordinate judiciary are also made applicable to the Industrial Courts and Labor Courts by the said resolution.

It further appears from the materials on record that this High Court has also framed Recruitment Rules of the Staff Class-I to Class-IV for the establishment of Labor and Industrial Courts in the State and forwarded the Draft Recruitment Rules under its communication dated January 19, 2009, wherein it clearly indicated that the appointing authority of the staff is the President of the Industrial Court, subject to approval of the High Court.

Even in the Evening Court Rules, 2006 framed by the Government of Gujarat in consultation with the High Court dated November 02, 2006, the Labor Courts and Industrial Courts are shown as Courts under the supervision of the High Court and, therefore, it is apparent that the State Government has also treated the employees of Labor Courts and Industrial Courts as employees of subordinate Courts.

There is no dispute that the Government notification dated June 26, 2009 extended the benefits of Justice Shetty Pay Commission to the Judicial Officers of the subordinate Courts in the State, and the Government Resolution dated May 07, 2011 made applicable the benefits of Justice Shetty Pay Commission to the non-judicial staff of the subordinate Courts in the State.

Such being the position, we find substance in the contention of Mr. Joshi, the learned counsel for the petitioners, that there is no reason why the benefit available to the non-judicial staffs of the other District Subordinate Courts should not be equally available to his clients.

12. The members of the petitioners' association are doing the similar job done by the other non-judicial staffs attached to the different Subordinate courts in this State. Merely because the Draft Recruitment Rules recommended by High Court have not been finally prepared and published in accordance with law or a formal notification has not been issued by the State Government declaring the staffs attached to the labor and industrial court to be those of legal department of the State, the benefit of the principles of equality and equal pay for equal work cannot be denied.

13. In our opinion, the deprivation of the benefit of the Justice Shetty pay commission adopted by the State Government and conferred upon all the non-judicial staff of the subordinate courts violates Articles 14 and 16 of the Constitution of India once the courts to which the members of the petitioners are attached have been recognized by the Supreme Court as the District Court within

the meaning of the Constitution.

14. In this connection, we may profitably refer to the decision of the Supreme Court in the case of *State of Kerala v. B. Renjith Kumar and Ors* reported in AIR 2009 SC 465 which supports our above reasoning.

15. In that case the State Government had granted to presiding officers of Industrial Tribunal pay scale at par with that of the District Judges before the recommendations of the pay scales of the District Judges by the Shetty Commission by which District Judges were placed in higher scales which benefit had been denied to the Presiding Officers of Industrial Tribunals merely on the ground that the Presiding Officers of the Industrial Tribunal were not appointed under Article 233 of the Constitution of India nor were they appointed to the Judicial Services of a State under Article 234 of the Constitution. In such a case, the Supreme Court made the following observations:

It is not in dispute that the officers who presided over the Labor Courts and those appointed as Presiding Officers of the Industrial Tribunals do decide disputes under the ID Act, 1947. There is no qualitative difference in the nature of functions or duties attached to the categories of posts. This parity having been recognized and accepted by the State Government for more than 30 years, the High Court, in our view, has rightly observed that the mere fact that the Constitution refers to the appointment of District Judges alone cannot, by itself, be a good ground for treating the Presiding Officers of the Industrial Tribunal and the District Judges differently. The High Court held that even the Presiding Officers of the Industrial Tribunals are not outside the ambit of the Constitution as the protection of rules framed under Article 309 as also under Article 311 is available to them. The State Government had granted pay scale at par with that of the District Judges before the recommendations of the pay scales of the District Judges by the Shetty Commission by which District Judges were placed in higher scales which benefit has been denied to the Presiding Officers of Industrial Tribunals merely, on the ground that the Presiding Officers of the Industrial Tribunal are not appointed under Article 233 of the Constitution of India nor they are appointed to the Judicial Services of a State under Article 234 of the Constitution. The action of the State Government in treating the officers presiding over the Industrial Tribunal differently from the District Judges in the matter of pay scales on its face is in violation of Article 14 of the Constitution of India.

The Industrial Tribunals are indisputably judicial tribunals manned by legal professionals who are eligible to be appointed as District Judges or Judges of the High Courts. The Presiding Officers are exercising judicial powers and duties under the ID Act, 1947 and their decisions are subject matter of challenge before the High Court by way of writ petition. The only difference is their source of recruitment.

11. Looking to the nature of duties and functions of these respondents, we are of the opinion that there is no reason to treat them differently. Once these persons are already working for more than three decades discharging the same functions and duties, we see no reason why the same benefit should not be given to the respondents and other similarly situated Presiding Officers of the Tribunal who are the applicants before us in IA No. 2/2004.

If we apply the above principles to the facts of the present case, we find that non-judicial staffs of the District Courts and those of the Labor and Industrial Court were placed on the same podium before the recommendation of the Justice Shetty Commission by which special scale of pay has been recommended for the non-judicial staffs of the District Courts. The State Government proposes to deny such benefit to the non-judicial staffs of the labor and industrial court on the same ground on which the Government of Kerala refused similar benefit to the presiding officers of those courts and tribunals, i.e. that those employees were not appointed in the legal department of the State but in a different department. In this case, similar to the one mentioned above, these employees are not outside the ambit of the Constitution as the protection of rules framed under Article 309 as also under Article 311 is available to them. The State Government had granted the pay scale to these employees at par with those of the legal department working in the subordinate courts prior to the recommendation of the Justice Shetty commission. Thus, for the selfsame reason disclosed by the Apex Court in the above case of *State of Kerala v. B. Renjith Kumar and Ors* (supra), the same scale of pay enjoyed by the non-judicial staffs of the District Court should be made available to the members of the petitioner's association as the presiding officers of the labor courts and tribunals were granted at par with those of the District Judges.

16. This special civil application thus succeeds. Let there be an order in term of prayer B and C of paragraph 15 of the application.

17. In the facts and circumstances, there will be, however, no order as to costs.