
(2010) 09 KL CK 0185

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34846 of 2008 (W)

Prabathu Kumar B. and Others

APPELLANT

Vs

State of Kerala and The Accountant General

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0185

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : P. Sreekumar, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Siri Jagan, J.—The petitioners are Judicial Officers working in the lower judiciary of the State. They are holders of post-graduate degrees in Law. The Shetty Commission appointed by the Government of India to look into the service conditions of the officers of the lower judiciary of the country, submitted recommendations regarding revision of scales of pay, grant of additional allowances etc., to Judicial Officers in the country. That report was submitted on 11-11-1999. The petitioners entered service after the submission of the Shetty Commission Report. One of the recommendations of Shetty Commission Report extracted in Ext. P2 is that if candidates selected for appointment as judicial officers are having a higher qualification like post-graduation in Law, three advance increments be given to them as it is allowed by the Delhi Administration, since it is an acknowledged fact that post-graduation in Law is a difficult course and it is better to reward appropriately such candidates. The Shetty Commission Report was accepted by the Government of Kerala also. The recommendation regarding grant of three advance increments to judicial officers having higher qualification was also accepted by Ext. P3 order dated 28-3-2007, in which it is stated thus:

In compliance of the judgment in W.P(C) No. 1022/89 of Hon''ble Supreme Court

and based in the recommendations of the 1st National Judicial Pay Commission, Government as per Government Order read as 1st to 7th paper above have issued various benefits to the Judicial Officers.

In view of the recommendations by the 1st National Judicial Pay Commission, Government are pleased to sanction the following additional benefits to the Judicial Officers in the State:

xx xx

Advance increments

(Para 8.48 of the recommendations)

Candidates selected to the post of Munsiff-Magistrate having a higher qualification like Post Graduation in Law will be sanctioned three advance increments.

The petitioners' contention is that all the existing Judicial Officers of the State are entitled to the three advance increments so sanctioned, if they have the higher qualifications contemplated by the Shetty Commission. But the Government took the stand that only those Judicial officers, who have entered service subsequent to Ext. P3 order dated 28-3-2007 are entitled to such advance increments. The same has been incorporated in Ext. P7 letter dated 17.11.2007 from the Additional Chief Secretary to the Government to the Accountant General (A and E), Kerala. It is under the above circumstances, the petitioners have approached this Court seeking the following reliefs:

- i. Issue a writ of certiorari or any other writ or order calling for the records relating to Ext. P7 and to quash the same to the extent it denies the benefit of three advance increments to the petitioner, granted through Ext. P3 Government Order.
 - ii. Issue a writ of mandamus or any other appropriate writ or order directing the respondents to grant the benefit of three advance increments to the petitioners in terms of Ext. P3 Government Order without further delay.
 - iii. Declare that the benefit of advance increments as contemplated in Ext. P 3 Government Order is to be given to those who were appointed after 1.11.1999.
2. A counter affidavit has been filed on behalf of the 1st respondent, wherein the stand taken is that the advance increments sanctioned as per Ext. P3 Government Order is payable only prospectively and therefore will be payable only to those candidates possessing higher qualification like post-graduation in Law recruited as Munsiff Magistrate after Ext. P3 order has been issued.
3. I have considered the rival contentions in detail.
4. The extract of paragraph 8.48 of the Shetty Commission has been produced as Ext. P2, in which the recommendation is as follows:

8.48 If selected candidates are having a higher qualification like Post-Graduation in Law, we recommend that three advance increments be given as it is allowed by the Delhi Administration. It is an acknowledged fact that Post-Graduation in Law is a difficult course and it is better to reward appropriately such candidates.

This recommendation has been accepted by the Government of Kerala as per Ext. P3 order, which has already been extracted hereinbefore. Neither the Shetty Commission Report nor Ext. P3 order stipulates that only candidates selected with effect from any particular date only would be eligible for such advance increments. Learned Counsel for the petitioners would contend that as far as there is no specific restriction placed either by Ext. P2 or by Ext. P3, all Judicial Officers in the State who hold higher qualification like Post-graduation would be eligible for the said three advance increments. According to him, such increments should be given with effect from the date of the report of the Shetty Commission, namely, 1-11-1999. In support of his contention, he relies on Ext. P8 order dated 22-1-2010 issued by the Government of Andhra Pradesh, wherein in respect of the same subject matter, the Government of Andhra Pradesh has ordered thus:

3) Government, after careful examination of the matter in tune with the recommendations of the First National Judicial Pay Commission, and the recommendations made by the Registrar (Admn.) High Court of A.P., Hyderabad, hereby sanction three advance increments to all the Judicial Officers who posses/ acquire higher qualification like Post Graduation in Law with effect from 1.11.1999.

4)(a) In respect of in-service employees, the advance increments sanctioned in para "3" above shall be paid in cash with the salary of January, 2010 payable in February, 2010. The arrears of advance increments from 1.11.1999 to 31.12.2009 shall be credited to the respective General Provident Fund Accounts of the employees.

(b) In respect of those employees, who do not have General Provident Fund Accounts, the arrears shall be credited to the Public Account under "1-Small Savings and provident Funds, etc., (b) Provident Funds - 8009 - State Provident Funds 01-Civil-MH. 101 - General Provident Funds - SH (01) - GPF (Regular). As and when GPF accounts re opened, this shall be transferred to that Account.

According to the petitioners, insofar as the Shetty Commission Report has been implemented all over India, there is no reason why the same should not be implemented in Kerala as in other Sates. He would further contend that even otherwise, grant of three advance increments to some Judicial Officers recruited after Ext. P3 while denying the same to seniors would be discriminatory insofar as there is no intelligent differentia between the two classes of officers.

5. On the other hand, the learned Government Pleader would contend that the grant of advance increments themselves was for the purpose of attracting better candidates to the judiciary and therefore the same should be given only to those

persons who are selected subsequent to the date of Ext. P3 Government Order. He further submits that there is an intelligent differentia between the two classes of Judicial Officers insofar as there was a change in the prescribed qualifications before and after the Shetty Commission Report. He would contend that formerly, minimum qualification prescribed for Munsiffs was LLB with 5 years' practice as an advocate and for Magistrates, it was LLB with 3 years' practice as an advocate. That qualification has been subsequently changed in the wake of the Shetty Commission Report, as per which the minimum qualification was only graduation in law and no minimum practice as an advocate was insisted upon. Therefore, according to the learned Government Pleader, there is an intelligent differentia between the two classes of Judicial Officers, who were recruited before and after the date of Ext. P3, which justifies the classification and therefore there is no discrimination in the matter of grant of advance increments. The learned Government Pleader also submits that the very term "advance increment" postulates advance increments granted to an officer who has just entered service and not increments granted to those officers who are already in service.

6. I am unable to perceive such an intelligent differentia between the two alleged classes of Munsiff-Magistrates. Munsiff-Magistrates of the State form one class. Basic qualification required for selection to the post of Munsiff-Magistrate is graduation in Law. In fact, those who entered service earlier had to put in 5 years' of practice also before becoming eligible for being considered for selection to the post of Munsiff-Magistrate. I am of opinion that they stand on a higher pedestal than raw law graduates selected to the post. Therefore, if at all there should be a classification, that should be in favour of the persons already in service prior to the introduction of the new qualification. Certainly, the persons who are selected subsequent to the change of qualifications cannot be in a better position than those who are already in service. Therefore, I am not satisfied that there is any intelligent differentia between the two classes of Munsiff-Magistrates.

7. Neither in Ext. P2 nor in Ext. P3 is there anything to suggest that it relates to candidates selected after the Government issued Ext. P3 order or even after the date of Shetty Commission Report. It only speaks about candidates selected to the post of Munsiff-Magistrate. That can be after Ext. P3 order or before Ext. P3 order. Neither Ext. P2 nor Ext. P3 suggests that the benefit granted is prospective in operation. Ext. P3 states that the said additional benefits mentioned therein are sanctioned to the Judicial Officers of the State. Further, from the Supreme Court decision in All India Judges Association and Others Vs. Union of India (UOI) and Others, it is clear that the pay scales recommended by the Shetty Commission were to be brought into force with effect from 1.1.1996 and monetary benefits were to be payable with effect from 1.7.1996. Other allowances recommended were to be given effect to from 1.11.1999. No other dates are fixed for any other benefits. Increments form part of the pay. In fact, apart from pay scales and allowances, no other monetary benefits have been brought to my notice as payable in accordance with the Shetty Commission Report, by the learned Government Pleader, for implementation with effect from

any other date. In any event, since I am of opinion that advance increments are part of pay scales themselves, it should be treated as part of the pay and the date of implementation of pay scales and monetary benefits thereto are applicable to these advance increments also. However, since the petitioners seek grant of the benefits only to persons who entered service with effect from 1.11.1999, I am inclined to restrict the relief only to such persons. The Andhra Pradesh Government had also implemented the recommendation of the Shetty Commission regarding the grant of advance increments with effect from 1.11.1999 as evidenced by Ext. P8. That being so, I do not find any reason to restrict the grant of such benefit to Munsiff-Magistrates of the State of Kerala only to those persons who have been selected after the date of Ext. P3 order. Therefore, I am of opinion that all Munsiff- Magistrates in the State having higher qualification like post- graduation in Law recruited after the date of the Shetty Commission report, viz. 1.11.1999 are entitled to the benefit granted by Ext. P3 order. In view of the above finding, Ext. P7 is quashed. There would be a direction to the respondents to grant such benefits to all Munsiff- Magistrates of the State possessing the higher qualification recruited after 1.11.1999 and recruited thereafter. Orders in this regard shall be passed and arrears disbursed by the respondents as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.