

(2014) 08 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No. 6297 of 2014

Pralhad Bhaurao Ghule

APPELLANT

Vs

Government of Maharashtra

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 39(d)
Family Courts Act, 1984 — Section 3, 7, 7(1)
Special Marriage Act, 1954 — Section 8

Citation : (2014) 5 ABR 587 : (2014) 6 ALLMR 240 : (2015) 4 BomCR 658 :
(2014) 5 MhLj 367

Hon'ble Judges : Abhay Shreeniwas Oka, J;A.S. Chandurkar, J

Bench : Division Bench

Advocate : P.G. Jagdale, Advocate for the Appellant; A.B. Vagyani, Government Pleader and S.R. Nargolkar, Advocate for the Respondent

Judgement

A.S. Chandurkar, J.—By this Writ Petition filed under Article 226 of the Constitution of India, the petitioners who are members of the staff serving in the Family Courts at Aurangabad and Nagpur seek extension of benefits as made available by "Justice Shetty Commission" to the staff of the Family Courts in the entire State.

2. The proceedings were initially filed in public interest. However, as the petitioners were seeking reliefs for their own benefits, by order dated 17.6.2014 the petitioners were permitted to convert the Public Interest Litigation into a regular Writ Petition. After the proceedings were duly converted, the Writ Petition has been heard finally with consent of the parties. Hence, Rule. Rule made returnable forthwith and heard finally.

3. The petitioners were initially appointed after following the due process of recruitment at the District Court in Aurangabad and Nagpur. Under the Family Courts Act, 1984 (for short, "the said Act"), Family Courts were constituted at Aurangabad and Nagpur as per Government Resolution dated 21.5.1992. With a

view to facilitate the functioning of said Family Courts the petitioners who were regular employees in the District Court at Aurangabad and Nagpur were appointed by way of ad hoc arrangement on temporary basis to officiate on various posts in said Family Courts. Necessary orders were issued to each of the petitioners in the year, 1992-93. Since then the petitioners have been discharging their duties in said Family Courts.

4. The State of Maharashtra by Government Resolution dated 20.10.2011 resolved to extend benefits recommended by "Justice Shetty Commission" to the employees working on the establishments of the District Court, subordinate Civil and Criminal Courts, Small Cause Court and City Civil and Sessions Court at Mumbai. The aforesaid benefits were held admissible from 1.4.2003. The staff of the Family Courts in the State of Maharashtra were however not extended said benefit. It is in that background that the petitioners have approached this Court after making due representations to the State of Maharashtra and are therefore praying for grant of benefits as recommended by "Justice Shetty Commission".

5. In the Writ Petition it has been averred that all the petitioners after their regular appointments were serving in the District Courts at Aurangabad and Nagpur. Their appointments there were on regular basis. On formation of the Family Courts at Aurangabad and Nagpur, the High Court Administration issued orders to each of the petitioners appointing them on the establishment of Family Courts by way of ad hoc arrangement on temporary basis to officiate on equivalent posts held by them in the District Courts. It is further averred that though the services of the petitioners have been assigned to said Family Courts, their names appeared in the Gradation List that is maintained by the District and Sessions Court. In this regard, the Gradation List as on 1.4.2012 has been referred to, which includes the names of the petitioners. It is further averred that some of the petitioners were held eligible for grant of benefits under the Assured Career Progression scheme. However, as said petitioners refused the promotional posts, said benefits were subsequently withdrawn. It is further averred that two of the petitioners had sought voluntary retirement from service and the request in that regard was accepted by the learned District and Sessions Judge, Aurangabad. It is further stated that by Government Resolution dated 20.10.2011 the State of Maharashtra implemented the recommendations of "Justice Shetty Commission" in respect of all District Courts and all Civil, Criminal, Small Cause Court employees working under all District Courts as well as the City Civil and Sessions Court, Small Cause Court, the Court of Chief Metropolitan Magistrate and other Courts of Magistrates functioning thereunder in the City of Mumbai. These benefits were made admissible from 1.4.2003. It is further stated that the Registrar (Legal and Research) of the High Court had called for proposals regarding conversion and reorganization of certain posts in terms of aforesaid recommendations and the Principal Judge, Family Court, Aurangabad had duly forwarded such information. The petitioners sought information under the Right to Information Act, 2005 as regards implementation of aforesaid recommendations to the members of the staff of Family Courts as

they were also erstwhile members of the District and Sessions Court staff. It was replied by the State Government that only those categories of employees referred to in the Government Resolution dated 20.10.2011 were entitled to benefits of the recommendations of "Justice Shetty Commission". The petitioners have also relied upon certain instances with regard to the States of Andhra Pradesh, Gujarat and Madhya Pradesh to indicate that similarly situated staff members of the Family Courts in said States were held entitled to the benefits of said recommendations. The petitioners have therefore prayed that Government Resolution dated 20.10.2011 itself be declared as arbitrary and discriminatory with a further prayer to direct the State Government to extend aforesaid benefits to employees of the Family Courts at Mumbai, Nagpur, Aurangabad and Pune.

6. The respondent No. 2-Legal Advisor-cum-Joint Secretary, Law and Judiciary Department, State of Maharashtra has filed an affidavit of Shri Shamsundar Dadaji Darne dated 19.7.2014 in which it is stated that the recommendations by "Justice Shetty Commission" were made available for sub-ordinate staff of the District Court Judiciary after examining structure of the Court administration, classification, work load etc.. It is therefore stated that such recommendations cannot be made applicable to the staff of the Family Courts. It is further stated that the petitioners though were working in the District Courts were deputed with their consent to work on establishments of the Family Courts and were absorbed as regular employees of said establishment. Hence it is stated that they being on establishment of Family Courts were not entitled to claim benefits of aforesaid recommendations.

7. Shri P.G. Jagdale, learned Counsel appearing for the petitioners has submitted that the petitioners have been discriminated against in the matter of grant of benefits of the recommendations made by "Justice Shetty Commission". It is submitted that all the petitioners were regularly employed with the District Courts at Aurangabad and Nagpur and they had been deputed by way of ad hoc arrangement initially to work in the Family Courts. The posts on which they were appointed were identical to the posts held by them in the District Courts. The District and Sessions Judge, Aurangabad by accepting the request for voluntary retirement of two of the petitioners clearly established that the petitioners continued to be employees of the District Courts. Similarly the names of the petitioners continued in the Gradation List along with all other employees of the District Court. Considering the nature of duties being done by petitioners which were identical to such duties being done by similarly situated employees, there was no justifiable basis for excluding grant of benefits of "Justice Shetty Commission" to the petitioners. It was urged that the Government Resolution dated 20.10.2011 to the extent it excluded the employees of the Family Court from being entitled to such benefits was arbitrary. It was therefore submitted that the petitioners were entitled to grant of all such benefits w.e.f. 1.4.2003 as was granted to all employees of the District Courts and other subordinate Courts functioning under it.

8. Shri A.B. Vagyan, learned Government Pleader for respondent Nos. 1, 2, 4 and 5 has opposed the Writ Petition. He submitted that the petitioners ceased to be the employees of the District Court after they were sent to the Family Courts by way of ad hoc arrangement. The benefits under the Government Resolution dated 20.10.2011 were admissible only to employees of the District Courts and other courts subordinate thereto. As the Family Court was subordinate to the High Court, the petitioners were not entitled to aforesaid benefits. It was submitted that merely because the names of the petitioners were shown in the Gradation list as on 1.4.2012, the same by itself would not indicate that the petitioners continued to be employees of the District Courts.

9. Shri S.R. Nargolkar, the learned Counsel appearing for the Registrar General, Bombay High Court has submitted that it was for the State Government to take necessary decision in the matter of grant of benefits of the recommendations of "Justice Shetty Commission" to the petitioners. Relying upon the decision of the Supreme Court of India in the case of S.D. Joshi and Others Vs. High Court of Judicature at Bombay and Others, it was submitted that insofar as the judicial members of the Family Courts were concerned, they were treated as not belonging to "Judicial Services" of the State of Maharashtra. The learned Counsel for the respondent No. 3 also placed on record relevant extracts of the report of "Justice Shetty Commission" wherein certain reference was made to the constitution of Family Courts. The learned Counsel did not dispute the fact that the data had been sought by the High Court Administration in the matter of conversion and reorganization of certain posts as per aforesaid recommendations.

10. We have carefully considered the submissions made by the respective Counsel appearing for the parties. We have also carefully gone through the averments made in the Writ Petition and the documents annexed thereto as well as the reply filed on behalf of respondent No. 2.

11. The basis on which the petitioners seek relief is principally on the ground of discrimination between the employees of the District Courts and the Courts subordinate to it on one hand and the employees of the Family Courts on the other. The further basis for seeking relief is non-inclusion of employees of the Family Courts in the category of employees held admissible for grant of benefits to the recommendations made by "Justice Shetty Commission" as per Government Resolution dated 20.10.2011. In the aforesaid background, the respective cases of the parties will have to be examined.

12. It is not in dispute that the petitioners were regular employees of the District Court at Aurangabad and Nagpur prior to formation of the Family Courts there. By way of ad hoc arrangement, the petitioners were sent to the respective Family Courts from the District Courts on equivalent post. It is further not in dispute that for various purposes the Principal District and Sessions Judge continued to exercise administrative control with regard to matters pertaining to acceptance of resignation etc. even in the year, 2011. This is clear from office order dated 30.06.2011 issued by the Principal District and Sessions Judge, Aurangabad

accepting the voluntary retirement of one Smt. Malti Chintaman Rahalkar, Junior Clerk, Family Court, Aurangabad. Similarly on 3.10.2011 the request for voluntary retirement of another Junior Clerk of the Family Court from Aurangabad was accepted by the Principal District and Sessions Judge, Aurangabad. It is further not in dispute that the names of the petitioners continued to be maintained in the Gradation list. The Gradation list as on 1.4.2012 includes the names of all the petitioners and their respective entries have been made in accordance with seniority in their respective cadres. It is thus obvious that even after lapse of about 20 years after being sent to the Family Courts by way of ad hoc arrangement, the names of the petitioners continued to find place in the Gradation list along with other employees on the roll of the District Court. It is further not in dispute that the posts held by the petitioners in the Family Courts were the same posts that they were holding in the District Court before being sent by way of ad hoc arrangement. There is therefore nothing to distinguish the cases of the petitioners who are employed with the Family Courts and those employed with the District Courts.

13. By Government Resolution dated 20.10.2011, employees of the District Courts, Civil and Criminal Courts and Small Cause Courts, subordinate to the District Court were held entitled to the benefits of the recommendations made by "Justice Shetty Commission" w.e.f. 1.4.2003. In subsequent Government Circular dated 8.3.2013, certain clarifications were issued by the State Government pursuant to various issues raised by the organizations of Court employees in the State. One of the issues raised was that as employees of the Family Courts were employees of the District and Sessions Court, the aforesaid recommendations should also be made applicable to them. However, no clarification has been issued by the State Government in this regard. In communication dated 11.3.2013, it has merely been stated that only those category of employees who are mentioned in the Government Resolution dated 20.10.2011 are entitled for benefits of aforesaid recommendations. It is thus clear that though aforesaid issue as regards employees working with the Family Courts being entitled to aforesaid benefits was raised before the State Government, no clarification in that regard has been issued. It may be noted that in very same circular where other benefits as sought were found not admissible, the same has been clearly mentioned against such issues. It can thus be taken that the State Government has not disputed the fact that the employees working with the Family Courts continued to be employees of the District and Sessions Court. The only justification given is that as there was no mention of employees working with the Family Courts in Government Resolution dated 20.10.2011, they were being denied aforesaid benefits.

14. At this stage a reference to certain provisions of the said Act would be necessary. Section 7 of the said Act reads as under:

"7. Jurisdiction.- (1) Subject to the other provisions of this Act, a Family Court shall--

(a) have and exercise all the jurisdiction exercisable by any district Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation.-- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise--

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

It is, therefore, clear that the Family Court exercises jurisdiction with regard to suits and proceedings of various nature which otherwise a Civil Court or District Court in the State would have exercised. Similarly it also exercises jurisdiction that is exercisable by a Magistrate of First Class under Chapter IX of the Code of Criminal Procedure, 1973 as well as such other jurisdiction as may be conferred on it by any other enactment. Jurisdiction is also exercised by the Family Court where constituted with regard to proceedings under the Special Marriage Act, 1954 which matters were earlier being entertained by the District Court.

Section 8 of the said Act reads as under:

"8. Exclusion of jurisdiction and pending proceedings.- Where a Family Court has been established for any area,-

(a) no district Court or any subordinate civil Court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established."

Thus, on establishment of the Family Court, even proceedings pending before any District Court or a subordinate Court or before any Magistrate in relation to proceedings pertaining to Section 7 of the said Act stand transferred to the Family Court.

It is therefore clear that in matters specified, the Family Court exercises jurisdiction that was earlier exercised by the District Court or a Court subordinate to it or by the Magistrate in relation to jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973.

15. In this background, it would now be necessary to examine as to whether exclusion of the employees working with the Family Courts to benefits of aforesaid recommendation is discriminatory in nature or whether the same is based on an intelligible criterion having some nexus with the differentiation. In this regard, it may be noted that there is no clear stand on the part of the State Government as regards exclusion of employees working with the Family Courts from being entitled to the benefits as per the recommendations of "Justice Shetty Commission". The only discernible reason that can be gathered from the Government Resolution dated 20.10.2011 and circular dated 8.3.2013 is that as the Family Court is not a Court subordinate to the District Court, the employees working with the Family Courts are held ineligible for such benefits. 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. They have been continued to be treated as employees of the District Court. 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 aforesaid recommendations to the employees of the Family Court. Said employees continued on the same post doing the same nature of work that they were earlier doing in the District Courts. There is no difference in the educational qualifications of the employees of the District Court and Courts subordinate to it and the employees working in the Family Court. Hence, there does not appear to be any justifiable reason to differentiate between the employees working with the Family Courts and those working with the District Courts to deny them aforesaid benefits.

16. Insofar as the judgment of the Supreme Court in the case of S.D. Joshi and others (supra) is concerned, the issue involved therein was whether the Judges of the Family Court were entitled to be considered as members of the Higher Judicial Services in the State of Maharashtra. It was held that Judges of the Family Court did not form part of "Judicial Services" as contemplated by Rule 3 of the Bombay Judicial Services Recruitment Rules, 2008. However, while considering various provisions of the said Act, it was held that the Family Court constituted u/s 3 of the said Act had all the trappings of a Court. While holding so, the Supreme Court in paras-28 and 30 observed as under:

"Various provisions of this Act, therefore, clearly demonstrate that the Family Court, a creature of statute, has been vested with power to adjudicate and determine the disputes between the parties which fall within the scope and ambit of Explanation to Section 7(1) of the Act. The persons, who are appointed as Judge of the Family Court, perform all duties and functions which are akin to the functions being performed by the Presiding Officer of a Civil or a Criminal Court, though to a very limited extent."

".... The statutory provisions of the Family Court squarely satisfy these ingredients and further Presiding Officers of Family Courts are performing judicial and determinative functions and, as such, are Judges."

17. It would be necessary to refer to the observations of the Supreme Court of India in the case of V. Markendeya and Others Vs. State of Andhra Pradesh and Others, , it has been observed thus:

"9. Article 39(d) contained in Part IV of the Constitution, ordains the State to direct its policy towards securing equal pay for equal work for both men and women. Provisions contained in the Chapter on Directive Principles of State Policy cannot be enforced by courts although the principles contained therein are

fundamental in nature for the governance of our country. The Court has no power to direct the Legislature to frame laws to give effect to the Directive Principles as contained in Part IV of the Constitution or to injunct the legislature from making any such law. But while considering the question of enforcement of fundamental rights of a citizen it is open to the court to be guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained. The purpose of Article 39(d) is to fix certain social and economic goals for avoiding any discrimination amongst the citizens doing similar work in matters relating to pay. If the Court finds that discrimination is practised amongst two sets of employees similarly situated in matters relating to pay, the court must strike down discrimination, and direct the State to adhere to the doctrine of "equal pay for equal work" as enshrined under Article 39(d) of the Constitution. Fundamental rights, and the directive principles constitute "conscience of the Constitution". The Constitution aims at bringing about a synthesis between "Fundamental Rights" and "Directive Principles of State Policy" by giving to the former a place of pride and to the latter a place of permanence, together they form core of the Constitution. They constitute its true conscience and without faithfully implementing the Directive Principles it is not possible to achieve the welfare State contemplated by the Constitution, see His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala,

10. In *Randhir Singh Vs. Union of India (UOI) and Others*, and later in *Dhirendra Chamoli and Another Vs. State of U.P.*, *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, *Bhagwan Dass and Others Vs. State of Haryana and Others*, *Jaipal and Others Vs. State of Haryana and Others*, and *P. Savita and Others Vs. Union of India (UOI), Ministry of Defence (Department of Defence Production), New Delhi and Others*, this Court implemented the principle of "equal pay for equal work". The Court granted relief on the principle of equal pay on the basis of same or similar work performed by two classes of employees under the same employer even though the two classes of employees did not constitute the same service. But in all the aforesaid cases relief was granted only after it was found that discrimination was practised in giving different scales of pay in violation of the equality clause enshrined under Articles 14 and 16 of the Constitution. The principle of equal pay for equal work was enforced on the premise that discrimination was practised between the two sets of employees performing the same duties and functions, without there being any rational classification. The principle of "equal pay for equal work" is not abstract one, it is open to the State to prescribe different scales of pay for different cadres having regard to nature, duties, responsibilities and educational qualifications. Different grades are laid down in service with varying qualification for entry into particular grade. Higher qualification and experience based on length of service are valid considerations for prescribing different pay scales for different cadres. The application of doctrine arises where employees are equal in every respect, in educational qualifications, duties, functions and measure of responsibilities and yet they are denied equality in pay. If the classification for prescribing different

scales of pay is founded on reasonable nexus the principle will not apply. But if the classification is founded on unreal and unreasonable basis it would violate Articles 14 and 16 of the Constitution and the principle of "equal pay for equal work", must have its way..... "

Similarly in State of Madhya Pradesh and Others Vs. Ramesh Chandra Bajpai, the Supreme Court observed thus:

"It is well settled that the doctrine of equal pay for equal work can be invoked only when the employees are similarly situated. Similarity in the designation or nature or quantum of work is not determinative of equality in the matter of pay scales. The court has to consider the factors like the source and mode of recruitment/appointment, qualifications, the nature of work, the value thereof, responsibilities, reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesale identity between the holders of two posts."

18. Thus, even on the principle of "equal pay for equal work" the petitioners would be entitled to the relief sought. It is well settled that if there is a complete identity between a group of employees claiming identical benefits with regard to a group getting such benefits, then there is no reason to deny the former group of such benefits. It is therefore clear that the petitioners have been discriminated against without there being any intelligible criterion. The Family Court not being subordinate to the District Court cannot be said to be a reasonable and valid ground to deny similar benefits to the employees of the Family Courts. It is therefore clear that the Government Resolution dated 20.10.2011 to the extent it excludes employees of the Family Courts from the benefits of the recommendations of "Justice Shetty Commission" is concerned, the same is discriminatory in nature. The petitioners being similarly situated are entitled to said benefits of the recommendations of "Justice Shetty Commission".

19. As per Government Resolution dated 20.10.2011 aforesaid benefits have been made admissible to the categories of employees mentioned therein from 1.4.2003. The petitioners have been agitating against their wrongful exclusion immediately after issuance of aforesaid Government Resolution. However, it is to be noted that in view of the law laid down by the Supreme Court in the case of State of Haryana and Others Vs. Charanjit Singh and Others, etc. etc., , the petitioners would be entitled to the benefit of aforesaid recommendations from the date they have filed the present Writ Petition, which is 13.8.2013.

20. In view of aforesaid, it is declared that the employees of all the Family Courts in the State of Maharashtra are entitled to the benefits of the recommendations made by "Justice Shetty Commission" in terms similar to those applicable to the employees of the District Courts. The respondent Nos. 1 and 2 are therefore directed to take all necessary steps in this regard and make available the benefits of the recommendations of "Justice Shetty Commission" to the employees of aforesaid Family Courts from 13.8.2013 onwards being the date

they have filed the present Writ Petition. The effect of aforesaid recommendations be made available to the petitioners and other employees of the Family Courts within a period of six months from today. Rule is accordingly made absolute in aforesaid terms with no order as to costs.