
(2016) 03 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : SWP No. 53 of 2011 and M.P No. 2126 of 2011

Surinder Singh

APPELLANT

Vs

State of Jammu & Kashmir

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Citation : (2016) 3 JKJ 211 : (2017) 2 LLN 205

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ. and Mr. Tashi Rabstan, J.

Bench : Division Bench

Advocate : Mrs. Seema Shekhar, Sr. AAG. Mr. AS. V. Gupta, Sr. Advocate with Mr. Munish Sharma, Advocate. Mr. Amrish Kapoor, Advocates, for the Respondent; Mr. Sunil Sethi, Sr. Advocate with Mr. Sumit Nayyar, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, C.J. - This writ petition is filed by the employees borne on the cadre of Subordinate Courts seeking implementation of

Shetty Commission Report so far as recommendations pertaining to the Ministerial staff working in the Subordinate Courts in the State of Jammu

and Kashmir are concerned, which was agreed to by the State Government and, to pay the arrears which are admissible to the Ministerial Staff

working in the Subordinate Courts by implementing the Shetty Commission report w.e.f. 01.04.2003.

2. The case of the petitioners is that as per the Resolution of Ministry of Law, Justice and Company Affairs (Department of Justice, Government of

India) the 1st National Judicial Pay Commission was constituted by the Government of India on 21st March 1996 headed by Hon'ble Justice

Jagannath Shetty, a former judge of the Supreme Court. The said Commission

submitted its report regarding the pay structure of the Judicial Officers of the Subordinate Judiciary during November 1999 and thereafter, considered the grievances of the Ministerial Staff of the Subordinate Judiciary as per the directions issued by Hon'ble the Supreme Court in All India Judicial Employees Confederation for broadening the scope of consideration of National Judicial Pay Commission for improving the conditions of the Ministerial Staffs of subordinate courts as they being at pivotal position so far as working of the Subordinate Courts is concerned. The said Commission finally submitted various recommendations in favour of the Ministerial Staff so far as working conditions and restructuring, removal of pay anomalies and grant of higher pay scales, advance increments etc. The Hon'ble Supreme Court thereafter considered the said recommendations and directed all State Governments to consider implementation of the recommendations and no steps having been taken by the State Governments, the Hon'ble Supreme Court by order dated 07.10.2009 gave directions to all the High Courts to ensure implementation of the recommendations of Shetty Pay Commission by State Governments within reasonable period and preferably within one year and if the same is further delayed, the High Courts were granted liberty to entertain writ petitions/applications on Judicial and Administrative side, with a further directions that the High Courts shall see that the recommendations are implemented w.e.f. 01.04.2003.

3. According to the petitioners, this Court administratively took up the matter with the State Government for implementation of the recommendations of the Shetty Pay Commission in the meeting of the then Chief Justice of this Court with the then Chief Minister on 02.04.2008 on this aspect and after deliberations, it was agreed by the State Government to implement the recommendations of the Shetty Pay Commission in a phased manner after ascertaining the financial implications. In the said meeting, several issues were discussed and the issue pertaining to implementation of Shetty Commission in respect of the Ministerial staff of the Subordinate Courts was discussed as Agenda No.10. A Monitoring committee was constituted under the Chairmanship of Chief Secretary of which the Registrar General of this Court was a member and various meetings were held by the Monitoring committee. This Court on 04.03.2010

requested the 3rd respondent to implement the recommendations, but till date the recommendations are not implemented. Hence the writ petition was filed in the year 2011 with the above said prayer.

4. The request made by the High Court dated 04.03.2010 is very specific about the order passed by the Hon'ble Supreme Court dated

07.10.2009 and copy of which is filed along with the writ petition.

5. The respondent nos. 1 to 3 filed objections stating that respondents have been earnestly following the directions of Hon'ble Supreme Court and

have held number of meetings in pursuance of the said directions and decision was taken on 18.06.2008 seeking option of the employees through

Registrar General, whether to accept the pay as per 6th Pay Commission or recommendations of the Shetty Commission. The employees agreed

to take the benefits of the 6th Pay Commission. It is further contended in the counter affidavit that the employees having accepted the benefit of 6th

pay commission they are not entitled to any additional benefit which will amount to availing of two benefits which is legally impermissible as the

same would put the state exchequer to great burden. It is also the contention of the respondent nos.1 to 3 in the counter affidavit that Articles 233

to 237 of the Constitution of India which deals with the Subordinate Courts/ Judiciary do not extend to the State of Jammu and Kashmir in view of

Article 370 of the Constitution of India. In the counter affidavit the State had taken a stand that all possible and reasonable steps to implement the

recommendations were made and only because the 6th Pay Commission benefits were accepted by the ministerial staff, the State is not

implementing the recommendation of the Shetty Commission.

6. Mr. Sunil Sethi, learned senior counsel appearing for the petitioners vehemently argued that the State Government is not entitled to take such a

plea in the counter affidavit, particularly after the Chief Minister of the State, who was holding the post as per the Constitution of Jammu and

Kashmir on 02.04.2008 agreed in a joint meeting with the Chief Justice which was recorded in Item No. 10 to implement the recommendations of

the Shetty Pay Commission to ministerial staff of the subordinate Courts in phased manner after ascertaining the financial implications. He also

argued that the Supreme Court directions are binding to State Government and the special status enjoyed by the State cannot be allowed to be

pleaded to deny the benefits.

7. Mrs. Seema Shekhar, learned senior AAG, appearing for the State Government has no answer to the said submission made particularly with

reference to the recorded minutes of the meeting between the then Chief Minister of the State and the then Chief Justice of the High Court dated

02.04.2008.

8. We have considered the rival submissions.

9. The contention of the respondents in the counter affidavit that the ministerial staff of the subordinate judiciary having accepted the 6th Pay

Commission benefits, they cannot claim the benefit of recommendations of the Shetty Commission from 01.04.2003 is an erroneous and un-

sustainable stand. A similar plea was raised by the State of Gujarat for not implementing the recommendations of the Shetty Commission and the

said plea of the State of Gujarat was accepted by the Division Bench by order dated 07.09.2011. The said order of the Division Bench of Gujarat

High Court was challenged before Hon'ble the Supreme Court and the Supreme Court considered the circumstances under which the said

Commission was appointed, the acceptance of the recommendations by the Supreme Court and the directions issued to the State Governments to

implement the recommendations and the High Courts were directed to monitor the implementation of various orders passed. The specific issue, as

to whether after receiving the 6th Pay Commission benefits with effect from 01.01.2006 the Shetty Commission recommendations are bound to be

given with effect from 01.04.2003 was considered and it was held that Shetty Commission benefits shall be paid with effect from 01.04.2003 to

31.12.2005 and also after 01.01.2006. In paragraph 20 it is held thus:-

20. In the light of our above conclusion, we direct as under:

i. Such of those States other than the States of Andhra Pradesh, Karnataka, Assam, Punjab and Haryana and West Bengal, wherever the Shetty

Commission has tabulated the financial estimate on the recommendations in the report as has been noted and extracted with reference to NCT of

Delhi wherein any special allowance, medical allowance TA/special pay were directed to be given on monthly basis, such payment should be

continued to be made w.e.f 01.04.2003 and even after the coming into effect of the 6th Pay Commission recommendation from 01.01.2006 till

any modification or revision is made with reference to such allowances/TA/special pay in any future Pay Commission recommendation of the State

or Centre.

ii. Wherever under the Shetty Commission recommendation, a higher scale of pay is recommended in the said tabular format for any category of

employees apart from applying such higher scale of pay for the period 01.04.2003 up to 31.12.2005 as from 01.01.2006, the corresponding

revision should be only with reference to such higher pay scale recommended and made applicable to those categories of employees as revised

under the 6th Pay Commission Report and which came to be implemented from 01.01.2006. instead of adopting the said manner of payment, if

any of the States had resorted to the revised pay-scale corresponding to the scale of pay which was existing prior to the recommendation of the

Shetty Commission Report, the States are hereby directed to rectify such defect and calculate the revised pay-scale on the above footing as

directed by us, work out the difference payable to those categories of employees payable from 01.01.2006 and effect such a payment with effect

from the month of April, 2015 payable in May 2015. The arrears of the difference payable for the past period ending with March, 2015 should be

paid in one lump sum or in instalments, in any case within nine months from the date of this judgment i.e on or before 31.12.2015.

iii. Insofar as one advance increment which was recommended by the Shetty Commission for all the common category posts for which no other

scale of pay other than what was existing, is concerned, as directed by this Court in the order dated 07.10.2009, if such advance increment had

been paid based on the existing pay-scale, there is no need for making any further payment on that account. It is needless to state that if for any

reason, such advance increment on the existing pay-scale has been omitted to be paid in those cases the concerned State Government should

effect the payment as directed in our order dated 07.10.2009.

iv. It is reiterated that the above direction in regard to the implementation of 6th Pay Commission recommendation will hold good even for

implementation of any future pay Commission recommendation.

v. Whatever pending applications before the High Court on the administrative side or on the judicial side shall be considered and disposed of

expeditiously preferably within three months.

10. Thus it is evident that in spite of the receipt of the benefits under 6th Pay Commission, the employees of Subordinate Courts in all States are

eligible to get the benefits as recommended by Shetty Commission if the same is beneficial. Hence the State of J&K cannot deny the benefits which

were ordered to be extended to the ministerial staff of the subordinate Courts in the State of Jammu and Kashmir. In paragraph 21 of the said

judgment it is further held that, ""wherever any issue is raised by any of the employees working in different States, such grievances raised by way of

representation or by moving appropriate petitions in the respective High Courts shall be examined and appropriate orders passed wherever it finds

that such grievances are to be redressed in tune with the orders passed herein"".

11. The State Government cannot deny the benefits by stating any reason much less the financial constraint as the recommendations were made to

pay the benefit from 01.04.2003 which was agreed to be implemented by the State as early as in the year 2008.

12. In such circumstances, we are constrained to allow the writ petition by giving directions to respondent nos. 1 to 3 to implement the

recommendations of the Shetty Commission with effect from 01.04.2003, which was agreed to be implemented by the Chief Minister of the State

which was recorded in the minutes dated 02.04.2008, and as per the directions of Hon'ble the Supreme Court dated 16.03.2015, within a period

of three months from the date of receipt of copy of this order.