

By Regd. Post

From,

S. S. Gautam,  
Deputy Registrar(M),  
High Court of Judicature at,  
Allahabad.

Revised 95

To,

The District Judge,  
Lucknow.

86

No. 12053 /IV-3190/Admin.(A) dated 23.8.2014

Subject: Grant of Three advance increments to those officers who have been selected on or after 21.03.2002 having two years degree of LL.M. from a recognized University.

Sir,

With reference to your endorsement no. 1470/XV PF dated 07.06.2014, on the above subject, I have to say that according to the Govt. order and approval of Hon'ble the Chief Justice, three advance increments only be given to those judicial Officers of U.P Nyayik Sewa /U.P.H.J.S., who has fulfilled the following conditions:-

1. who have been selected on or after 21.03.2002 having two years degree of LL.M. from a recognized University.
2. And for ensuring that who have been selected on or after 21.03.2002 having LL.M. degree who have mentioned this qualification in the application form of U.P Nyayik Sewa /U.P Higher Judicial Service, as the case may be.

From perusal of service record of Mohd. Neyaz Ahmad Ansari, Additional Chief Judicial Magistrate, Lucknow, he has mentioned only LL.M. I in his application form of U.P Nyayik Sewa and included his degree after coming into service, so he has not fulfilled the required condition, for grant of three advance increments.

Yours Faithfully,

  
22.8.14  
Deputy Registrar

87

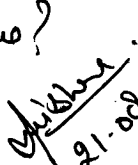
No. 12054 /IV-3190/Admin.(A) dated 23.8.2014

Copy forwarded for information to Mohd. Neyaz Ahmad Ansari, Additional Chief Judicial Magistrate, Lucknow.

  
22.8.14  
Deputy Registrar

S.O. (Admin. A-1) / D.R. (M)

may like to issue?

  
21-08-2014  
A.R.O.

  
21/08/14

Sardar  
10-6-14

Ed-59

16-6-14

9401

Revised

प्रेषक,

मो0 नियाज अहमद अंसारी,  
ए0सी0जे0एम0पंचम कक्ष संख्या -29  
लखनऊ।

Register No. IV/3190  
83  
3  
21/6/14  
19-8-14

सेवा में,

एस.एस.गौतम,  
डिप्टी रजिस्टार(एम)  
माननीय उच्च न्यायालय इलाहाबाद  
इलाहाबाद।

द्वारा:- जनपद न्यायाधीश, लखनऊ।

विषय:-एल.एल.एम डिग्रीधारक होने की दशा में तीन अग्रिम वेतनवृद्धि हेतु।

महोदय,

ससम्मान निवेदन है कि प्रार्थी की एल.एल.एम. डिग्री को सेवा अभिलेख का भाग बनाये जाने हेतु शासन द्वारा अनुमति दिनांक 13.1.2014 को प्रदान की जा चुकी है।

अतः प्रार्थी द्वारा प्रार्थनापत्र सहप्रत्यावेदन इस पत्र के साथ सादर अवलोकन हेतु प्रेषित किया जा रहा है।

सादर!

दिनांक 06.6.2014

भवदीय,

(मो0 नियाज अहमद अंसारी)  
न्यायालय, ए0सी0जे0एम0पंचम  
कक्ष संख्या -29 लखनऊ

S.O. (Admin. H.) /

V.C. Rastogi

10/6/2014

I.C.D.R. (M)

कायस्थ जनपद न्यायाधीश, लखनऊ

नं. 1470/XV RF दिनांक 07/6/14

अप्रमाणित किया गया

Jal  
जनपद न्यायाधीश, लखनऊ

Smt. Anshu  
20/08/14

प्रेषक,

मो० नियाज अहमद अंसारी,  
ए०सी०जे०एम० पंचम  
कक्ष संख्या-29 लखनऊ

Received  
6/6/14

सेवा में

महानिबंधक,  
माननीय उच्च न्यायालय इलाहाबाद,  
इलाहाबाद।

द्वारा:- जनपद न्यायाधीश, लखनऊ।

विषय:- एल.एल.एम. डिग्रीधारक होने के दशा में तीन अग्रिम वेतनवृद्धियाँ प्रदान किये जाने हेतु प्रार्थनापत्र-सह-प्रत्यावेदन:-

महोदय,

विनम्रतापूर्वक प्रार्थी सादर यह निवेदन कर रहा है कि -प्रार्थी उ०प्र० न्यायिक सेवा के बैच 2003 में चयनित होकर दिनांक 15.6.2006 को बतौर सिविल जज (जू०डि०)के रूप में जनपद आजमगढ़ में कार्यभार ग्रहण किया, तथा वर्तमान समय में बतौर अपर मुख्य न्यायिक मजिस्ट्रेट के रूप में जनपद लखनऊ में कार्यरत है।

महोदय, यह भी सादर अवगत कराना है कि प्रार्थी सेवा में चयनित होने से पूर्व सत्र 2002-2003 में एल.एल.एम. प्रथम वर्ष एवम सत्र 2003-2004 में अंतिम वर्ष की परीक्षा सफलतापूर्वक उत्तीर्ण की है तथा विश्वविद्यालय द्वारा प्रार्थी के हक में सत्र 2004 की डिग्री भी निर्गत की जा चुकी है, प्रार्थना पत्र के साथ विश्वविद्यालय द्वारा निर्गत मार्कशीट एवं डिग्री बतौर संलग्नक संख्या -1, संलग्नक संख्या -2 एवं संलग्नक संख्या -3 के रूप में सम्मिलित है।

महोदय, यह भी सादर अवगत कराना है, कि, आपके सम्मानित पत्र संख्या -16961, दिनांकित 10.12.2013के अनुपालन में, उ०प्र० शासन नियुक्ति अनुभाग -4 संख्या -1232/दो-4-2013-26/2(5)/2011, लखनऊ दिनांक 13, जनवरी -2014से प्रार्थी को प्रदान की गई एल.एल.एम. डिग्री को प्रार्थी के सेवा अभिलेख के रूप में रखे जाने हेतु शासन द्वारा स्वीकृति प्रदान की जा चुकी है जो बतौर संलग्नक संख्या -4 एवं संलग्नक संख्या -5 के रूप में संलग्न है।

महोदय, यह भी सादर अवगत कराना है कि, माननीय न्यायमूर्ति श्री जगन्नाथ शेट्टी की अध्यक्षता में गठित प्रथम राष्ट्रीय न्यायिक वेतनआयोग द्वारा दी गई संस्तुतियों के प्रस्तर 8.48 में यह अनुशंसा की गई थी कि - यदि चयनित अभ्यर्थी जो अच्चतर योग्यता अर्थात् विधि में परस्नातक रखते हैं, को तीन अग्रिम वेतन वृद्धि दिल्ली प्रशासन के अनुरूप प्रदान की जाये, उक्त अनुशंसा करते समय माननीय शेट्टी आयोग द्वारा यह महसूस किया गया कि यह वास्तविकता है कि विधि में परस्नातक कठिन है और ऐसे उचित अभ्यर्थियों के लिए अच्छा होगा कि उन्हें सम्मान प्रदान किया जाए।

Ansari  
6/6/14



जो बतौर संलग्नक संख्या -6 के रूप में संलग्न है, माननीय न्यायमूर्ति शेट्टी द्वारा दी गई संस्तुतियों में परस्नातक डिग्रीधारक अभ्यर्थियों को दिल्ली प्रशासन के अनुसार और उसी के अनुरूप ही तीन अग्रिम वेतन वृद्धि देने की अनुशंसा की गई है। इस प्रकार दिल्ली प्रशासन द्वारा तीन अग्रिम वेतन वृद्धि के सम्बन्ध में अपनायी जाने वाली रीति एवं नियम को ही मानक माना गया। जो बतौर संलग्नक संख्या -7 के रूप में सम्मिलित है तथा इस संबंध में माननीय उच्च न्यायालय, दिल्ली की खण्डपीठ द्वारा "युनियन आफ इण्डिया एवं अन्य बनाम श्री बी.एल. गर्ग एवं अन्य" में पारित निर्णय एवं आदेश दिनांकित 30.7.2001 की छयाप्रति बतौर संलग्नक संख्या -8 के रूप में संलग्न प्रार्थनापत्र है।

महोदय, यहाँ यह भी सादर उल्लेखनीय है कि, माननीय न्यायमूर्ति शेट्टी की अध्यक्षता में गठित आयोग द्वारा की जाने वाली अनुशंसा को माननीय उच्चतम न्यायालय के समक्ष "आल इण्डिया जजेज एशोसिएशन एवं अन्य बनाम युनियन आफ इण्डिया एवं अन्य ए.आई.आर.2002 एस.सी.1752 के बाद में रखा गया जिसे विचार में लेते हुए माननीय उच्चतम न्यायालय ने अपने पारित निर्णय एवं आदेश दिनांकित 21.3.2002 में माननीय शेट्टी आयोग के द्वारा दी गई अनुशंसा को कुछ संशोधनों के साथ शेष सभी अनुशंसाओं को ठीक उसी रूप में स्वीकार कर लिया गया जैसी कि अनुशंसा की गई थी जिसे माननीय उच्चतम न्यायालय ने अपने निर्णय के प्रस्तर -36 में उल्लिखित किया है। जो बतौर संलग्नक संख्या -9 के रूप में संलग्न प्रार्थनापत्र है।

महोदय यहाँ यह भी उल्लेखनीय है कि माननीय उच्चतम न्यायालय ने माननीय न्यायमूर्ति शेट्टी द्वारा प्रस्तर 8.48 में की गई अनुशंसा उपरोक्त में कोई संशोधन नहीं किया गया जिससे यह स्पष्ट है कि माननीय उच्चतम न्यायालय द्वारा प्रस्तर 8.48 में उल्लिखित अनुशंसा को ठीक उसी रूप में स्वीकार किया गया है।

महोदय, यहाँ यह भी सादर अवगत कराना है कि, माननीय उच्चतम न्यायालय द्वारा दिये गये उपरोक्त निर्णय एवं आदेश दिनांकित 21.3.2002 के अनुपालन में उत्तर प्रदेश शासन द्वारा शासनादेश संख्या -1363/दो -4-2009-45(12)/91टीसी दिनांकित -13.05.2009 को जारी किया गया है जो संलग्नक संख्या -10 के रूप में संलग्न है।

महोदय, यहाँ यह भी सादर अवगत कराना है कि उपरोक्त शासनादेश के संबंध में पाँच बिन्दुओं पर स्पष्टीकरण माँगी गई। जिसमें दिनांक 03.1.2012 को जारी की गई स्पष्टीकरण में न केवल माननीय न्यायमूर्ति शेट्टी आयोग द्वारा उनेक प्रस्तर 8.48 में की गई अनुशंसा के विरुद्ध है, बल्कि, माननीय उच्चतम न्यायालय द्वारा पारित निर्णय एवं आदेश दिनांक 21.3.2002 एवं उसमें व्यक्त की गई मंशा के भी विरुद्ध है जिसमें माननीय उच्चतम न्यायालय ने माननीय न्यायमूर्ति शेट्टी आयोग की अनुशंसा को ठीक



उसी रूप में स्वीकार किया जैसा कि अनुशंसा की गई थी तथा इस संबंध में कोई पुरोभाव्य शर्त अधिरोपित नहीं है कि यदि कोई अभ्यार्थी अपने आवेदन में एल.एल.एम. डिग्री का उल्लेख नहीं किया है तो उसे इस अतिरिक्त तीन अग्रिम वेतन वृद्धि के लाभ से वंचित कर दिया जाये, साथ ही उक्त शर्त अनुच्छेद-14 भारतीय संविधान के उपबन्ध के भी सर्वथा प्रतिकूल है जिसमें कोई भी शर्त जो युक्तिसंगत एवं बोधगम्य अंतरक पर आधारित न हो अधिरोपित नहीं किया जा सकता और इस तरह का कोई अनिवार्य शर्त एवं नियम दिल्ली प्रशासन द्वारा अधिरोपित नहीं किया गया था जिसे मानक माना गया था।

महोदय, यहाँ यह भी सादर उल्लेखनीय है कि माननीय उच्चतम न्यायालय द्वारा उपरोक्त निर्णय एवं आदेश के पश्चात अन्य प्रदेशों में भी शासनादेश जारी हुए हैं जिनमें हरियाणा, गुजरात, आन्ध्रप्रदेश, पश्चिम बंगाल तथा केरला, आदि प्रमुख हैं। जबकि मात्र दो राज्य दिल्ली एवं राजस्थान ही उक्त निर्णय के पूर्व से तीन अग्रिम वेतन वृद्धि का अतिरिक्त लाभ प्रदान कर रहे थे जैसा कि माननीय शेट्टी आयोग के अनुशंसा के पैरा 8.46 में उल्लिखित है

महोदय, यहाँ यह भी सादर उल्लेखनीय है कि माननीय न्यायूर्ति शेट्टी आयोग द्वारा की गयी संस्तुति के पैरा 8.46 एवं 8.48 में स्पष्ट अनुशंसा के बावजूद उक्त अनुशंसा का निर्वचन उत्तर प्रदेश शासन द्वारा सही रूप से नहीं किया गया जैसा कि मंशा माननीय शेट्टी आयोग ने व्यक्ति की थी। परिणामस्वरूप माननीय उच्चतम न्यायालय द्वारा पारित निर्णय एवं आदेश दिनांकित 21.3.02 उपरोक्त का भी सम्यक अनुपालन आज तक नहीं हो सका।

महोदय, यहाँ यह भी सादर अवगत कराना है कि हरियाणा राज्य द्वारा चयन के पूर्व एवं चयन के पश्चात एल.एल.एम. डिग्री धारक अभ्यार्थियों में विभेद किया गया जिसे माननीय उच्च न्यायालय पंजाब एवं हरियाणा के समक्ष सी.डब्लू.पी.संख्या -15883/2011 विरेन्द्र प्रसाद एवं अन्य बनाम स्टेट आफ हरियाणा एवं अन्य में चुनौती दी गई जिसमें माननीय उच्च न्यायालय की खण्डपीठ द्वारा अपने पारित निर्णय एवं आदेश दिनांकित 02.8.2012 में माननीय उच्चतम न्यायालय द्वारा प्रतिपादित विधि व्यवस्था के आलोक में विधि संगत एवं न्यायोचित नहीं माना साथ ही यह भी अवधारित किया है कि उक्त अतिरिक्त तीन अग्रिम वेतन वृद्धि का लाभ उच्च वेतनमान में प्रोन्नति की दशा में भी पूर्ववत लागू होगा जैसा कि दिल्ली प्रशासन ने भी अपने शासनादेश में पारित किया है। जो बतौर संलग्नक संख्या -11 है।

महोदय, यहाँ यह भी सादर उल्लेखनीय है कि माननीय केरल उच्चन्यायालय द्वारा डब्लू.पी.(सी)संख्या -3486/2008(डब्लू) "प्रबाभू कुमार एवं अन्य बनाम स्टेट आफ केरला एवं अन्य" में पारित निर्णय एवं

Ansari  
6/6/14



आदेश दिनांकित 09.9.2010 में माननीय उच्चतम न्यायालय द्वारा आल इण्डिया जजेज एशोसिएशन के उपरोक्त वाद में दिये गये निर्णय को संदर्भित करते हुए यह अवधारित किया गया है कि -माननीय उच्चतम न्यायालय ने उपरोक्त निर्णय एवं आदेश में मात्र तीन तिथियो- शेट्टी आयोग की अनुशंसा की तिथि दिनांक 01.01.1996 से एवं धनीय लाभ के अदायगी तिथि दिनांक 01.7.1996 से एवं अन्य भत्ते संबंधी किए गए अनुशंसाओ का लाभ दिये जाने की तिथि दिनांक 01.01.1999 से प्रभावकारी माना जायगा तथा उक्त तीन तिथियो के अतिरिक्त अन्य किसी तिथियो के आधार पर किया गया विभेद अथवा लगाया गया कोई भी शर्त माननीय उच्चतम न्यायालय के उपरोक्त निर्णय एवं आदेश दिनांकित 21.3.2002में व्यक्त किए गए मंशा के विरुद्ध माना है और उसे निरस्त किया गया। जो बतौर संलग्नक संख्या -12 है।

महोदय, यहाँ यह भी सादर अवगत कराना समीचीन है कि उ0प्र0 शासन द्वारा जारी स्पष्टीकरण दिनांक 01.01.2012 के द्वारा इस आधार पर विभेद करना कि वे अभयार्थी जिन्होंने उ0प्र0 न्यायिक सेवा के अपने आवेदन पत्र में एल.एल.एम. डिग्री का उल्लेख नहीं किया है वे तीन अग्रिम वेतन वृद्धि को पाने के अधिकारी नहीं है। माननीय शेट्टी आयोग की अनुशंसा एवं इस संदर्भ में माननीय उच्चतम न्यायालय द्वारा पारित उपरोक्त निर्णय एवं आदेश दिनांकित 21.3.2002 में व्यक्त किये गये अभिमत एवं मंशा के सर्वथा विरुद्ध है, और इस प्रकार के विभेद को बोधगम्य अंतरक के आधार पर विभेद नहीं माना जा सकता जिसे माननीय उच्च न्यायालय पंजाब एवं हरियाणा तथा माननीय उच्च न्यायालय केरल ने अपने उपरोक्त विधि व्यवस्था में समर्थित किया है।

महोदय, प्रार्थी आदरपूर्वक करबद्ध यह प्रार्थना कर रहा है कि माननीय शेट्टी आयोग द्वारा की गई अनुशंसा को माननीय उच्चतम न्यायालय द्वारा दिये गये निर्णय एवं आदेश दिनांकित 21.3.2002 के आलोक में तथा उसके मंशा के अनुरूप प्रार्थी के प्रार्थनापत्र-सह-प्रत्यावेदन पर सहानुभूतिपूर्वक विचार किया जाए।

प्रार्थी आपका सदैव हृदय से आभारी रहेगा।

सादर प्रेषित

दिनांक -06.6.2014

भवदीय  
  
 (मो0 नियाज अहमद अंसारी)

अपर मुख्य न्यायिक मजिस्ट्रेट

कक्ष संख्या -29लखनऊ

संलग्नक:-

- 1-एल.एल.एम प्रथम वर्ष अंकपत्र,
- 2-,, ,, अंतिम वर्ष अंकपत्र,
- 3-,, ,, डिग्री
- 4-मा0 उच्च न्यायालय के पत्र दिनांकित 10.12.2013,



- 5-उ०प्र०शासन नियुक्ति अनुभाग -4 द्वारा जारी कार्यालय ज्ञापन दिनांकित 13.01.2014,
- 6-माननीय न्यायमूर्ति शेट्टी आयोग द्वारा प्रस्तर-8.48मेदी गई अनुशंसा की छाया प्रति,
- 7-भारत संघ द्वारा दिल्ली में न्यायिक अधिकारियों को तीन अग्रिम वेतनवृद्धि दिये जाने के शासनादेश दिनांकित 24.6.02 की छाया प्रति,
- 8-माननीय दिल्ली उच्च न्यायालय द्वारा पारित निर्णय एवं आदेश दिनांकित 30.7.2001 की छाया प्रति,
- 9-माननीय उच्चतम न्यायालय द्वारा "आल इण्डिया जजेज एसोसिएशन एवं अन्य बनाम युनियन आफ इण्डिया एवं अन्य" में पारित निर्णय एवं आदेश दिनांकित 08.2.2001 की छाया प्रति,
- 10-उ०प्र०शासन द्वारा जारी शासनादेश दिनांकित-13.5.09,
- 11-माननीय पंजाब एवं हरियाणा उच्च न्यायालय द्वारा पारित निर्णय एवं आदेश दिनांक 02.8.2012 की छायाप्रति,
- 12-माननीय केरला उच्च न्यायालय द्वारा पारित निर्णय एवं आदेश दिनांकित 09.9.2010 की छायाप्रति,
- 13-अन्य राज्यों द्वारा जारी शासनादेश की छाया प्रति।

*Ansari*  
6/6/14

संलग्नक संख्या-1

Page 95

## University of Allahabad

No.

115



Original/Duplicate

Statement of Marks LL. M. Part II Examination 2004

Name Mohd. Heyaj Ahmad Ansari Roll No. 63

Father's Name Mohd. A. Ali

Subject	Max Marks	Mini. Marks	Marks obtained			Remarks
			Theory I	Theory II	Total	
Law of Contracts	200	80	41	55	96	
Administrative Law	200	80			/	
Law of Torts	200	80			/	
Hindu Law/Muslim Law	200	80	61	38	99	
Law of Crimes	200	80	53	50	103	
Private/Public International Law.	200	80			/	
Viva-Voce	100	40			63	
Total marks LL. M. II	700	350			361	
Total marks of LL.M. I	700	350			365	
Grand Total	1400	700			726	

Result: Passed in Second Div

Dated 20/10/2005  
SENATE HOUSE (Prepared by) (Checked by) Deputy Registrar (Exam.)  
Allahabad

Ansari  
6/6/14



संलग्नक संख्या-2

# University of Allahabad



Original/Duplicate

No.

115

Statement of Marks LL. M. Part II Examination 2004

Name Mohd. Heyaj Ahmad Ansari Roll No. 63

Father's Name Mohd. A. Ali

Subject	Max Marks	Mini Marks	Marks obtained			Remarks
			Theory I	Theory II	Total	
Law of Contracts	200	80	41	55	96	
Administrative Law	200	80			/	
Law of Torts	200	80				
Hindu Law/Muslim Law	200	80	61	38	99	
Law of Crimes	200	80	53	50	103	
Private/Public International Law.	200	80			/	
Viva-Voce	100	40			63	
Total marks LL.M. II	700	350			361	
Total marks of LL.M. I	700	350			365	
Grand Total	1400	700			726	

Result: Passed in second div

Dated 20/10/2005

SENATE HOUSE  
Allahabad

(Prepared by)

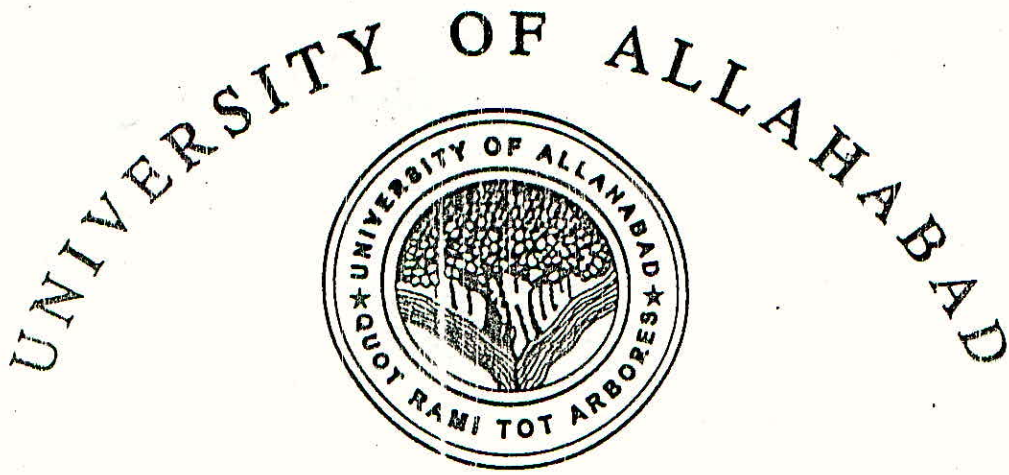
(Checked by)

Deputy Registrar  
(Exam.)

Ansari  
6/6/14

संलग्नक संख्या - 3

Serial No. 64.....



Master of Laws

Enrollment No. C9425648

Roll No. 63

This is to certify that Mohd. Nayaj Ahmad Ansari

Son/Daughter of Sri Mohd. A. Ali

obtained the degree of Master of Laws in this University in  
the Examination of <sup>2004</sup>; and that he/she was placed in the  
second class.

University of Allahabad:

The 12<sup>th</sup> Oct, 2006  
15<sup>th</sup> Oct, 2013.

Attended  
11/10/13  
20/10/13

Ansari  
6/6/14

Ansari

Vice-Chancellor.

UNIVERSITY OF ALLAHABAD  
ALLAHABAD  
2013



Received 1/13

संलग्नक संख्या - 4

①

By Regd. Post

From,  
S. S. Gautam,  
Deputy Registrar(M),  
High Court of Judicature at,  
Allahabad.

To,  
The Joint Secretary,  
Appointment Section-4,  
Govt. of U.P., Lucknow.

No. /IV-3190/Admin.(A) dated

Subject: Inclusion of qualification of LL.M. degree in the service records of Mohd. Neyaz Ahmad Ansari, Additional Chief Judicial Magistrate, Lucknow.

Sir,

I am directed to send herewith a copy of letter dated 03.10.2013 and 07.08.2013 of Mohd. Neyaz Ahmad Ansari, Additional Chief Judicial Magistrate, Lucknow regarding inclusion of qualification of LL.M. degree in his service records alongwith attested copies of LL.M.(I & II year) marksheets, original provisional certificate of LL.M. and attested copy of U.P. Nyayik Sewa form of Sri Ansari, on the above subject and to request you kindly to obtain necessary orders of the Government and communicate the same to this court at an early date, so that necessary action may be taken in the matter.

Yours faithfully,

Encl.- As above.

Deputy Registrar

No. 16961 /IV-3190/Admin.(A) dated 10-12-2013

Copy forwarded for information and necessary action to:

- 1. The District Judge, Lucknow with reference to his endorsement no. 3047/XV PF dated 05.10.2013.
- 2. Mohd. Neyaz Ahmad Ansari, Additional Chief Judicial Magistrate, Lucknow with reference to his letter dated 03.10.2013.

Deputy Registrar

*Infor the Officer concerned*

*Deputy Registrar*

*Ansari 6/6/14*

*Sri Mohd. Neyaz Ahmad Ansari / 3/1/13*  
A.C.J.M. Court No-29 Lko.

आसनिक लिपिक  
उच्च न्यायालय, लखनऊ

## संलग्नक संख्या-5

Reply 5

1

उत्तर प्रदेश शासन  
नियुक्ति अनुभाग-4  
संख्या--1232/दो-4-2013-26/2(5)/2011  
लखनऊ दिनांक: 13 जनवरी, 2014

### कार्यालय-झाप

उप निबन्धक (एम), उच्च न्यायालय, इलाहाबाद के निम्नलिखित अधिकारियों के संबंध में विभिन्न पत्रों द्वारा प्राप्त मा0 उच्च न्यायालय, इलाहाबाद की संस्तुति के आधार पर उत्तर प्रदेश न्यायिक सेवा के अधिकारियों द्वारा अर्जित की गयी पीएच. डी./एलएल0 एम0 डिग्री को निम्न तालिका में अंकित विवरणानुसार उनके सेवा संबंधी अभिलेखों में रखे जाने की शासन द्वारा स्वीकृति प्रदान की जाती है:-

क्र0	न्यायिक अधिकारी का नाम/पदनाम/तैनाती स्थल	उप निबन्धक(एम), उच्च न्यायालय, इलाहाबाद से प्राप्त संख्या एवं दिनांक	विश्वविद्यालय का नाम	डिग्री	वर्ष
1.	श्री अजय कुमार-प्रथम, अपर सिविल जज (जू0डि0) इटावा।	संख्या-14993/चार-3373/एडमिन(ए), दिनांक 28-10-2013	दिल्ली विश्वविद्यालय।	पीएच. डी.	2011
2.	श्रीमती पूजा विश्वकर्मा, न्यायिक मजिस्ट्रेट, इटावा।	संख्या-14942/चार-3667/एडमिन(ए), दिनांक 28-10-2013	लखनऊ विश्वविद्यालय।	एलएल0 एम0	2009
3.	श्री0 नियाज अहमद अंसारी, ए0सी0जे0एम0-पंचम, लखनऊ।	संख्या-16960/चार-3190/एडमिन(ए), दिनांक 10-12-2013	इलाहाबाद विश्वविद्यालय।	एलएल0 एम0	2004
4.	श्री कल्पराज सिंह, अपर सिविल जज (जू0डि0), बाराबंकी।	संख्या 16933/चार 3751/एडमिन(ए), दिनांक 09-12-2013	भारतीय विधि संस्थान, नई दिल्ली। (मानित विश्वविद्यालय)	एलएल0 एम0	2010
5.	श्री कीर्ति कुमाल, अपर सिविल जज(जू0डि0)/न्यायिक मजिस्ट्रेट, संभल, मुरादाबाद।	संख्या-17804/चार-3717/एडमिन(ए), दिनांक 21-12-2013	श्रीर बहादुर सिंह पूर्वान्चल विश्वविद्यालय, जौनपुर।	एलएल0 एम0	2007

योगेश्वर राम मिश्र  
विशेष सचिव

संख्या-1232/दो-4-2013-26/2(5)/2011, तददिनांक

प्रतिनिधि निम्नलिखित को सूचनाार्थ एवं आवश्यक कार्यवाही हेतु पेशित:-

- 1- महानिबन्धक, मा0 उच्च न्यायालय, इलाहाबाद, उत्तर प्रदेश।
- 2- प्रमुखा सचिव, न्याय, उत्तर प्रदेश शासन।
- 3- जनपद न्यायाधीश, इटावा, लखनऊ, बाराबंकी, संभल, मुरादाबाद।
- 4- अपर निदेशक, कोषागार, कचेहरी रोड, इलाहाबाद, उत्तर प्रदेश।
- 5- निदेशक, राजकीय मुद्रणालय, इलाहाबाद, उत्तर प्रदेश।
- 6- संबंधित अधिकारियों को महानिबन्धक, मा0 उच्च न्यायालय, इलाहाबाद द्वारा।
- 7- गार्ड फाइल।

आज्ञा से,  
(श्रीरं कुमार उपाध्यक्ष)  
अ. सचिव

Ansam/  
6/6/14

21-1-14

श्री0 नियाज अहमद अंसारी  
ए0सी0जे0एम0 पंचम  
लखनऊ।



संलग्नक संख्या - 6

Revised 95

Judges (Jr. Divn.).

8.41 Generally, persons with uninterrupted education would be able to graduate themselves at 21 years and complete the three years law degree course by 24 years. If we insist three more years of practice as a pre-condition for recruitment, then, they would be completing that period by 27 years. But this may be possible only for urban students. The rural students will have their own inherent disadvantage. We have, therefore, to give some more margin while fixing the maximum age.

8.42 Secondly, every year, there is no recruitment to the Civil Judge (Jr. Divn.) cadre. Advocates may have to wait for the advertisement for a couple of years after completing the three years Bar practice.

8.43 Having regard to all these facts and circumstances, it seems to us that the candidate for recruitment in terms of age must be below 35 years. He will then have reasonable period of twenty five years of service.

8.44 We accordingly suggest to all States and High Courts to fix 35 years as the maximum age for eligibility for selection to the cadre of Civil Judges (Jr. Divn.) with relaxation by 3 years for SC/ST candidates.

8.45 It is not necessary to prescribe any minimum age in this regard.

**ADDITIONAL BENEFIT FOR HIGHER QUALIFICATION :**

8.46 Except in Delhi Administration and in the State of Rajasthan, there is no other State providing additional benefit to a candidate selected for Civil Judges (Jr.Divn.) possessing higher qualification. In Delhi, three advance increments are allowed for a candidate having higher qualification than the prescribed minimum qualification.

8.47 In Rajasthan, if a candidate has to his credit two years more than the minimum practice prescribed, he would be entitled to two advance increments.

**RECOMMENDATION BY THE COMMISSION :**

Ansari  
6/6/14

Review

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.

8.49 But we do not propose to suggest any advance increments to those who are having more experience as Advocate than the minimum prescribed. Giving any advance increment for additional Bar practice is not proper. It should not be a bonus for those who have not been able to make their way immediately after acquiring the minimum qualification.

**AUTHORITY FOR SELECTION :**

8.50 At present, in some States, Public Service Commission is the selecting authority while in other States, the High Courts are the authority for selecting Civil Judges (Jr. Divn.). In a couple of States, selection is partly made by the High Court and partly by the State Public Service Commission.

8.51 In the States of Andhra Pradesh, Assam, Delhi, Gujarat, Karnataka and Kerala, selection to the lower judicial service is made by the respective High Courts.

8.52 In Bihar, Goa, Haryana, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Orissa, Punjab, Rajasthan, Tamil Nadu, West Bengal and Nagaland, selection is made by the Public Service Commission.

8.53 In Manipur and Tripura, there are dual sources of selection.

8.54 In Manipur, the Public Service Commission recruits 2/3rd of the posts from amongst the law graduates on the basis of competitive examination and viva-voce and the Gauhati High Court selects 1/3rd of the posts from amongst the Advocates.

8.55 In Tripura, the State Public Service Commission is entrusted with the responsibility of selecting 50% of the posts of Civil Judges (Jr. Divn.). The remaining 50% is left to be selected by the Gauhati High Court.

8.56 The High Courts of Andhra Pradesh, Gujarat, Himachal Pradesh, Karnataka, Kerala and Bombay have suggested that the selection should be left exclusively to the High Court.



संलग्नक संख्या - 7

24  
MOST IMMEDIATE

No. 17 17014/1/98-JO3  
Government of India  
Ministry of Law, Justice & Company Affairs  
(Department of Justice)

Jaisalmer House, Mansingh Road,  
New Delhi-110011. Dated 24.6.2002

To,

**The Secretary,  
Department of Law, Justice & Legislative Affairs,  
Govt. of NCT., 5, Sham Nath Marg,  
Delhi-110 054.**

Subject: Grant of advance increments on Attaining Higher Qualifications in  
Compliance of Hon'ble Supreme Court of India's Judgment in Identical  
Cases.

Sir,

1. In pursuance of the Hon'ble Supreme Court order dated 1.2.2002 dismissing SLP No. 1462/2002 titled as Union of India Vs. S.K. Kaushik & Ors. filed by the Union of India against the High Court of Delhi judgment dated 3.8.2001 in LPA No. 390/01 and others identical cases wherein the Hon'ble Delhi High Court had directed Union of India to grant of three advance increments to the petitioner, Sh. S.K. Kaushik Judicial Officer w.e.f. 1.1.1986 and all other similarly situated Judicial Officers throughout their employment as Judicial Officer, and in case the petitioner is placed in a higher or revised pay scale, he will get three advance increments in that higher/revised pay scale in Higher Judicial Service and the arrears payable to the petitioner will be duly worked out and paid to him. I am directed to convey sanction of the Central Government to the grant of 3 advance increments to the petitioner Sh. S.K. Kaushik, a Judicial Officer w.e.f. 1.1.1986 and arrears accrued to him and to all other similarly situated Judicial Officers throughout their employment as Judicial Officer as per the orders dated 20.2.2001 of the Hon'ble High Court.

2. This issues with the approval of Department of Personnel & Training vide Memo ID No. 3117/JS/02 dated 20.6.2002.

Thanking you.

Yours faithfully,

(CHARANJIT SINGH)  
DY. SECRETARY  
TO THE GOVT. OF INDIA

Admission  
6/6/14

Report/3

IN THE HIGH COURT OF DELHI.

LPA No. 374/01 & CM Nos. 917-9/01

Date of Decision: July 30, 2001

Union of India & Amr. .... Appellants.

through

Ms. Avnish Ahlawat, Advocate

Shri B.L. Garg & Amr. .... Respondents

through

Name.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI.  
HON'BLE MR. JUSTICE P.C. JAIN.

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

Dalveer Bhandari, J. (Oral)

Learned Chief Justice while deciding the writ petition has followed the Division bench judgment of this Court delivered in Civil Writ Petition No 4799/95.

The need and importance of higher education and professional qualifications have been recognised by the Fourth Pay Commission. In para 29 & at page 29, Vol. I of the Fourth Pay Commission report it has been recommended that the government employees who could acquire higher professional qualifications would be added to their official work and contribute to their efficiency. The recommendation of the Fourth Pay Commission were accepted by the Government of India on 13.2.1986 and it was duly accepted by the Union of India

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Respondents

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through office memorandum dated 15.12.1986 providing that incentives were being allowed for acquiring special qualifications like post graduate degree/diploma in the case of doctors. It was the general consensus that attaining a higher qualification in a particular field undoubtedly results in broadening the outlook of an individual and increase in knowledge thereby directly bringing efficiency which alone was the object of recommendations made by the Fourth Pay Commission. It was further held that strong recommendations had been made by the Delhi High Court after pointing out that it had not received any timeframe for making recommendations. There was no reason why the same ought not to have been accepted by the appellants/Union of India and the Delhi Government. It may be pertinent to mention that such incentives have already been given to doctors and other government employees. Denial of similar incentives to the respondents judicial officers in the matter of increments on acquiring or in recognition to the higher qualification would amount to discrimination. It is stated in the writ petition that the office memorandum dated 15th December, 1986 was not circulated amongst the members of the Delhi Judicial Services and was otherwise not in the knowledge of the respondents and immediately on learning about the same the respondents preferred their claims which were not accepted and ultimately the

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respondents were compelled to file the writ petitions before this court.

The Division Bench of this Court in a comprehensive judgment in Civil Writ Petition No. 4799/95 has directed that the judicial officers who possess higher academic qualification i.e. Master of Laws will be entitled to get three advance increments in the higher or revised pay scale in terms of office memorandum dated 15.12.1986, and also the subsequent notification issued by the Government of India on 31.1.1995.

It may be pertinent to mention that aggrieved by the judgment of the Division Bench the Union of India preferred a review petition. After hearing the counsel for the parties, the review petition was rejected. The Union of India again chose not to accept the decision of the Division Bench and preferred a special leave petition before the Hon'ble Supreme Court. It is unfortunate that even after the dismissal of the special leave petition, the appellants chose not to grant the same benefit to the similarly placed judicial officers and eventually these officers were compelled to move this Court again.

It is beyond our comprehension that even after dismissal of the special leave petition why the same benefit was not extended to the similarly placed judicial officers. It is also not understandable why



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The appellant should grudge the small benefit to the judicial officers in recognition of their higher qualification of Master of Laws. We are of the considered opinion that the appellant must encourage judicial officers to acquire higher qualification in the larger interests of all concerned.

We direct the Union of India to grant similar benefits to all other similarly placed judicial officers in Delhi state within three months of the receipt of this order to avoid unnecessary litigation.

This appeal is barred by limitation. Since we have decided this appeal on merits therefore, it is not necessary to deal with the application for delay in filing this appeal.

LPA 374/01 and CM Nos. 917/01, 918/01 & 919/01 are accordingly disposed of. Dasti.

Dalveer Bhandari, J:

30th July, 2001

R.C.Jain, J.

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*Reporters*

IN THE HIGH COURT OF DELHI

LPA No.390/01 & CM Nos. 968-70/01

Date of Decision: August 3, 2001

Union of India & Anr. .... Appellants.

through

Ms.Avnish Ahlawat, Advocate

Shri S.K.Kaushik & Anr. .... Respondents.

through

Nemo.

CORAM :

HON'BLE MR.JUSTICE DALVEER BHANDARI.  
HON'BLE MR.JUSTICE R.C. JAIN.

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?

Dalveer Bhandari, J (Oral)

This appeal is allowed and disposed of in terms of our detailed judgment passed in LPA No.374/2001 dated 30.7.2001.

C.M.Nos.968-970/01 are also accordingly disposed of.

*Dalveer Bhandari*

Dalveer Bhandari, J.

*R.C. Jain*  
R.C.Jain, J.

August 3rd, 2001



Type Copy of Annexure No- 2

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Most Immediate

No. 17 17014/1/98-JO3

Government of India

Ministry of Law Justice & Company Affairs

(Department of Justice)

Jaisalmer House, Mansingh, Road

New Delhi 110011, Dated 24.6.2002

To,

**The Secretary,**

**Department of Law, Justice & Legislative Affairs,**

**Govt. of NCT., 5, Sham Nath Marg,**

**Delhi-110054**

**Subject :- Grant of advance increments on Attaining Higher Qualifications in Compliance of Hon'ble Supreme Court of India's Judgment in Identical Cases.**

Sir,

1. In pursuance of the Hon'ble Supreme Court order dated 1.2.2002 dismissing SLP No. 1462/2002 titled as Union of India Vs. S.K. Kaushik & Ors. Filed by the Union of India against the High Court of Delhi judgment dated 3.8.2001 in LPA No. 390/01 and others identical cases wherein the Hon'ble Delhi High Court had directed Union of India to grant of three advance increments to the petitioner, Sh. S.K. Kaushik Judicial Officer w.e.f. 1.1.1986 and all other similarly situated judicial officers throughout their

employment as judicial officer, and in case the petitioner is  
placed in a higher or revised pay scale, he will get three  
advance increments in that higher/revised pay scale in  
Higher Judicial Service and the arrears payable to the  
petitioner will be duly worked out and paid to him. I am  
directed to convey sanction of the Central Government to  
the grant of 3 advance increments to the petitioner Sh. S.K.  
Kaushik, a Judicial Officer w.e.f. 1.1.1986 and arrears  
accrued to him and to all other similarly situated Judicial  
Officers throughout their employment as judicial officer as  
per the orders dated 20.2.2001 of the Hon'ble High Court.

2. This issues with the approval of Department of Personnel  
& Training vide their ID No. 3117/JS/02 dated 20.6.2002.

Thanking you

**Yours Faithfully**

**(CHARANJIT SINGH)**  
**DY. SECRETARY**  
**TO THE GOVT. OF INDIA**



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**IN THE HIGH COURT OF DELHI**

LPA No. 374/01 & CM Nos. 917-9/01

Date of Decision : July 30, 2001

Union of India & Anr.... **.....Appellants**

Through

Ms. Avnish Ahlawal, Advocate

Shri B.L. Garg & Anr. **.....Respondents**

Through

Memo

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI

HON'BLE MR. JUSTICE R.C. JAIN

1. Whether the Reporters of Local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

Dalveer Bhandari, J (Oral)

Learned Single Judge while deciding the writ petition has followed the Division Bench judgment of this court delivered in Civil Writ Petition No. 4799/95.

The need and importance of higher education and professional qualifications have been recognized by the fourth pay Commission. In para 29.8 at page 29, Vol. I of

the Fourteen Pay Commission report it has been recommended that the government employees who could acquire higher professional qualifications would be useful in their officials working and contribute to their efficiency. The recommendation of the Fourth Pay Commission were accepted by the Government of India on 15.2.1986 and it was duly accepted by the Union of India.

Through officer memorandum dated 15.12.1986 providing that incentives were being allowed for acquiring special qualifications like post graduate degree/diploma in the case of doctors. It was the general consensus that attaining a higher qualification in a particular field undoubtedly results in broadening the outlook of an individual and increase in knowledge thereby directly bringing efficiency which alone was the object of recommendation made by the Fourth Pay Commission. It was further held that strong recommendations had been made by the Delhi High Court after pointing out that it had not conveyed any time frame for making recommendations. There was no reason why the same ought not to have been accepted by the appellants/Union of India and the Delhi Government. It may be pertinent to mention that such incentives have already been given to doctors and other government employees. Denial of similar incentives to the respondents judicial officers in the matter of increments on acquiring or in recognition to the higher qualification would



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Report 95

amount to discrimination. it is stated in the writ petition that the office memorandum dated 15<sup>th</sup> December, 1986 was not circulated amongst the members of the Delhi Judicial Services and was otherwise not in the knowledge of the respondents and immediately on learning about the same the respondents preferred their claims which were not accepted and ultimately the respondents were compelled to file the writ petitions before this court.

The division Bench of this court in a comprehensive judgment in Civil Writ petition No. 4799/95 has directed that the judicial officers who possess higher academic qualification i.e. Master of Laws will be entitled to get three advance increments in the higher or revised pay scale in terms of office memorandum dated 15.12.1986 and also the subsequent notification issued by the Government of India on 31.1.1985.

It may be pertinent to mention that aggrieved by the judgment of the Division Bench the Union of India referred a revision petition. after the hearing the counsel for the parties, the review petition was rejected. The Union of India again chose not to accept the decision of the Division Bench and preferred a special leave petition before the Hon'ble Supreme Court. It is unfortunate that even after the dismissal of the special leave petition. the appellants chose not to grant the same benefit to the similarly placed

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judicial officers and eventually these officers were compelled to move this court again.

It is beyond our comprehension that even after dismissal of the special leave petition why the same benefit was not extended to the similarly placed judicial officers. It is also not understandable why the appellant should grudge the small benefit to the judicial officers in recognition of their higher qualification of Master of Laws. We are of the considered opinion that the appellant must encourage judicial officers to acquire higher qualification in the larger interests of all concerned.

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We direct the Union of India to grant similar benefits to all other similarly placed judicial officers in Delhi state within three months of the receipt of this order to avoid unnecessary litigation.

This appeal is barred by limitation. Since we have decided this appeal on merit, therefore, it is not necessary to deal with the application for delay in filing this appeal.

LPA 374/01 and CM Nos. 917/01, 918/01 & 919/01 are accordingly disposed off Dasti.

Dalveer Bhandari. Jr

30<sup>th</sup> July, 2001

R.C. Jain, J.



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Reporters

**IN THE HIGH COURT OF DELHI**

LPA No. 390/01 & CM Nos. 968-70/01

Date of Decision : July 3, 2001

Union of India & Anr.... **.....Appellants**

Through

Ms. Avnish Ahlawal, Advocate

Shri S.K. Kaushik & Anr. **.....Respondents**

Through

Memo

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI

HON'BLE MR. JUSTICE R.C. JAIN

1. Whether the Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?

Dalveer Bhandari, J (Oral)

This appeal is allowed and disposed of in terms of our details judgment passed in LPA No. 374/2001 dated 30.7.2001.

C.M. Nos. 968-970/01 are also accordingly disposed of.

Dalveer Bhandari, J,  
August 3<sup>rd</sup>, 2001

CASE NO.:

Writ Petition (civil) 1022 of 1989

PETITIONER:

ALL INDIA JUDGES ASSOCIATION AND ORS.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 21/03/2002

BENCH:

B.N. KIRPAL & G.B. PATTANAİK & V.N. KHARE

JUDGMENT:

JUDGMENT

2002 (2) SCR 712

The Judgment of the Court was delivered by

KIRPAL, J. This Writ Petition pertains to the working conditions of the members of the Subordinate Judiciary throughout the country. This is third round before this Court.

In a decision reported in [1992] 1 SCC 19 entitled AII India Judges' Association v. Union of India and Ors., directions were given by this Court in regard to the working conditions and some benefits which should be given to the members of the Subordinate Judiciary. The directions were as follows:

"63. We would now briefly indicate the directions we have given in the judgment:

(i) An AH India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.

(ii) Steps should be taken to bring about uniformity in designations of officers both in civil and the criminal side by March 31, 1993.

(iii) Retirement age of judicial officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992.

(iv) As and when the Pay Commissions/Committees are set up in the States and Union Territories, the question of appropriate pay scales of judicial officers be specifically referred and considered.

(v) A working library at the residence of every judicial officer has to be provided by June 30, 1992. Provision for sumptuary allowance as stated has to be made.

(vi) Residential accommodation to every judicial officer has to be provided and until State accommodation is available, government should provide requisitioned accommodation, for them in the manner indicated by December 31, 1992. In providing residential accommodation, availability of an office room should be kept in view.

(vii) Every District Judge and Chief Judicial Magistrate should have a State/vehicle, judicial officers in sets of five should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.

(viii) In-service Institute should be set up within one year at the Central and State or Union Territory level.

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A number of directions which were given have been implemented. The Union of India, however, filed a review petition seeking certain modifications/clarifications. This review petition was disposed of by the judgment reported in [1993] 4 SCC 288 entitled All India Judges' Association and Ors., etc. v. , Union of India and Ors., etc. The relevant findings in the said decision are as follows:

(i) Each of the general and special objections of Union of India and States/UTs was dealt with and rejected. The distinction between judicial and other service specifically emphasized, (paras 7 to 10).

(ii) "The service conditions of Judicial officers should be laid down and reviewed from time to time by an independent Commission exclusively constituted for the purpose, and the composition of such Commission should reflect adequate representation on behalf of the judiciary" (para) 11.

(iii) "By giving the directions in question, this Court has only called upon the executive and the legislature to implement their imperative duties. The courts do issue directions to the authorities to perform their obligatory duties whenever there is a failure on their part to discharge them.....The further directions given, therefore, should not be looked upon as an encroachment on the powers of the executive and the legislature to determine the service conditions of the judiciary. They are directions to perform the long overdue obligatory duties." (para 14).

".....The directions are essentially for the evolvement of a appropriate national policy by the Government in regard to the judiciary's conditions". The directions issued are mere aids and incidental to and supplemental of the main direction and intended as a transitional measure till comprehensive national policy is evolved. (para 15) (emphasis supplied)."

(iv) The question of financial burden likely to be imposed is misconceived and should not be raised of discharge mandatory duties:

"16. The contention with regard to the financial burden likely to be imposed by the directions in question, is equally misconceived. Firstly, the courts do from time to time hand down decisions which have financial implications and the Government is obligated to loosen its purse recurrently pursuant to such decisions. Secondly, when the duties are obligatory, no grievance can be heard that they cast financial burden. Thirdly, compared to the other plan and non-plan expenditure, we find that the financial burden caused on account of the said directions is negligible. We should have thought that such plea was not raised to resist the discharge of the mandatory duties. The contention that the resources of all the States are not uniform has also to be rejected for the same reasons. The directions prescribe the minimum necessary service conditions and facilities for the proper administration of justice. We believe that the quality of justice administered and the calibre of the persons appointed to administer it are not of different grades in different States. Such contentions are ill-suited to the issues involved in the present case."

(v) The directions given in the main judgment dated 13.11.1991 were maintained except as regards the following:-

(a) Para 52 (a), page 314

"The legal practice of 3 years should be made one of the essential qualifications for recruitment to the judicial posts at the lowest rung in the judicial hierarchy.

Further, wherever the recruitment of the judicial officers at the lowest rung is made through the Public Service Commission, a representative of the High Court should be associated with the selection process and his advice

should prevail unless there are strong and cogent reasons for not accepting it, which reasons should be recorded in writing.

The rules for recruitment of the judicial officers should be amended forthwith to incorporate the above directions."

(b) Para 52(b), page 315

"The direction with regard to the enhancement of the superannuation age is modified as follows:

While the superannuation age of every subordinate judicial officer shall stand extended upto 60 years, the respective High Courts should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within time before he attained the age of 58 year by following the procedure for the compulsory retirement under the Service Rules applicable to him and give him the benefit of the extended superannuation age from as to 60 years only if he is found fit and eligible to continue in service. In case he is not found fit and eligible, he should be compulsorily retired on his attaining the age of 58 years.

The assessment in question should be done before the attainment of the age of 58 years even in cases where the earlier superannuation age was less than 58 years."

(c) Para 52 (c), page 316

"The direction for granting sumptuary allowance to the District Judges and Chief Judicial Magistrates stands withdrawn for the reasons given earlier."

(d) Para 52(d), page 316

"The direction with regard to the grant of residence-cum-library allowance will cease to operate when the respective State Government/ Union Territory Administration start providing the courts, as directed above, with the necessary law books and journals in consultation with the respective High Courts."

(e) Para 52(e), page 316

"The direction with regard to the conveyance to be provided to the District Judges and that with regard to the establishment of the training institution for the Judges have been clarified by us in paragraphs 45(vii) and 49 (viii) respectively. It is the Principal District Judge at each district headquarter or the metropolitan town as the case may be, who will be entitled to an independent vehicle this will equally apply to the Chief Judicial Magistrate and the Chief Metropolitan Magistrate. The rest of the Judges and Magistrates will be entitled to pool-vehicles-one for every five Judges for transport from residence to court and back and when needed, loans for two wheeler automobiles and conveyance allowance. The State Governments/Union Territory Administrations are directed to provides adequate quantity of free petrol for the vehicles, not exceeding 100 litres per month, in consultation with the High Court."

(f) Para 52(f), page 316

"In view of the establishment of the National Judicial Academy, it is optional for the States to have their independent or joint training Judicial institutes."

(g) Para 52(h), page 316

In view of the time taken to dispose of the Review Petitions, following orders were passed:



(i) "the time to comply with the direction for bringing about uniformity in hierarchy, designations and jurisdictions of Judicial officers on both civil and criminal sides is extended upto March 31, 1994";

(ii) "the time to comply with the directions to provide law books and law journals to all courts is extended up to December 31, 1993 failing which the library allowance should be paid to every judicial officer with effect from January 1, 1994, if it is not paid already";

(iii) "the time to provide suitable residential accommodation, requisitioned of Government, to every judicial officer is extended up to March 31, 1994".

(iv) "the time to comply with the rest of the directions is maintained as it was directed by the judgment under review."

(v) Regarding uniform pay scales the Review Judgement emphasised the following:

"36. We have already discussed the need to make a distinction between the political and the administrative executive and to appreciate that parity in status can only be between Judges and the political executive and not between Judges and the administrative executive. Hence the earlier approach of comparison between the service conditions of the Judges and those of the administrative executive has to be abandoned and the service conditions of the Judges which are wrongly linked to those of the administrative executive have to be revised to meet the special needs of the judicial service. Further, since the work of the judicial officers throughout the country is of the same nature, the service conditions have to be uniform. We have also emphasised earlier the necessity of entrusting the work of prescribing the service conditions for the judicial officers to a separate Pay Commission exclusively set up for the purpose. Hence we reiterate the importance of such separate Commission and also of the desirability of prescribing uniform pay scales to the Judge all over the country. Since such pay scales will be the minimum deserved by the judicial officers, the argument that some of the States may not be able to bear the financial burden is irrelevant. The uniform service conditions as and when laid down would not, of course, affect any special or extra benefits which some States may be bestowing upon their judicial officers."

The question with regard to the pay scales in respect of the members of the Judicial Service was first referred to the Fifth Central Pay Commission. Subsequently by an amendment made on 24th October, 1996, the reference to the Fifth Central Pay Commission with regard to the fixation of the pay scales of the Judicial Officers was deleted. We may here note that the Fifth Central Pay Commission submitted its report on 30th January, 1997 which was accepted by the Government on 30th September, 1997. It became applicable with retrospective effect, that is to say, with effect from 1st January, 1996. This is relevant, when considering the question as to with effect from which date the Report of the Shetty Commission is to become effective.

On 21st March, 1996, pursuant to the directions issued by this Court in the review judgment, the Government of India by a Resolution constituted the First National Judicial Pay Commission under the Chairmanship of Mr. Justice K.J. Shetty. As per the said Resolution, the following were the terms of reference:

"(a) To evolve the principles which should govern the structure of pay and other emoluments of Judicial Officers belonging to the Subordinate Judiciary all over the country.

(b) To examine the present structure of emoluments and conditions of service of Judicial Officers in the States/UTs taking into account the total packet of benefits available to them and make suitable

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recommendations having regard, among other relevant factors, to the existing relativities in the pay structure between the officers belonging to subordinate Judicial service vis-a-vis other civil servants.

*Requents!*

(c) To examine and recommend in respect of minimum qualifications, age of recruitment, method of recruitment., etc., for Judicial Officers. In this context, the relevant provisions of the Constitution and directions of the Supreme Court in All India Judges Association case and other cases may be kept in view.

(d) To examine the work methods and work environment as also the variety of allowances and benefits in kind that are available to Judicial Officers in addition to pay and to suggest rationalization and simplification thereof with a view to promoting efficiency in Judicial Administration, optimising the size of the Judiciary etc."

As the Fifth Central Pay Commission Report had been accepted but no relief was available to the members of the Judicial Subordinate Service, a question arose that pending the recommendation of the Shetty Commission whether any interim orders can be passed giving some relief. Accordingly, on 16th December, 1997, another terms of reference was added according to which the Commission was empowered to consider and grant such interim relief as it may consider just and proper to all categories of Judicial Officers of all the States/Union Territories. It was made clear that the interim relief, if recommended, was to be adjusted against and included in the package which may become admissible to the Judicial Officers on the final recommendations of the Commission.

By a preliminary Report dated 31<sup>st</sup> January, 1998, some interim relief was granted by Justice Shetty Commission. It is not necessary for our purpose to refer to the relief so granted, except to note that wherever the relief has been granted the same was subject to adjustment on the acceptance, with or without modification, of the final Report of Justice Shetty Commission. The Interim Report has been fully implemented by the Union of India in respect of Union Territories and by the States.

After thorough deliberations, Justice Shetty Commission submitted its Report on 11th November, 1999. By order dated 14th December, 1999, the State Governments and the Union Territories were directed to send their responses to the Union of India so that it could correlate the responses and indicate its own stand on the recommendations of the Commission.

The recommendations of the Shetty Commission were in respect of the following topics:

(1) The High Courts were required to frame the rules specifying particular age of retirement and it was also recommended that the procedure prescribed for writing the confidential reports by the self-assessment process was better and more transparent and should be adopted by the High Court for Judicial Officers.

(2) The Commission recommended appropriate nomenclature to be given to the Judicial Officers. The recommendation was that they should be called "Civil Judge" in place of "Civil Judge (Junior Division)" and "Senior Civil Judge" in place of "Civil Judge (Senior Division)".

(3) It further gave recommendation with regard to equation of posts of the Chief Metropolitan Magistrate and Chief Judicial Magistrate. While it recommended that the Chief Judicial Magistrate should be in the cadre of Civil Judge (Senior Division), in respect of Chief Metropolitan Magistrate, it recommended that it should be placed in the cadre of District Judge. According to the learned Amicus Curiae, the Chief Metropolitan Magistrate and Chief Judicial Magistrate must be in the same cadre equivalent to Civil Judge (Senior Division) and that it should be at par with each other. We shall deal with this aspect slightly later.



*Report*

(4) Recommendations were made with regard to recruitment to the cadre of Civil Judge (Junior Division) Cum-Magistrate First Class as well as recruitment to the post of Civil Judge (Senior Division). The recommendation in this regard was that the posts of Civil Judge (Senior Division) should only be filled by promotion.

(5) The commission also made recommendation with regard to appointment to the post of District Judge which includes the Additional District Judge in the Higher Judicial Service. It pointed out some problems which had arisen as a result of direct recruitment to the post of District Judges, the problem really being with regard to the inter se seniority amongs them.

(6) The Commission also recommended that service Judges who were between 35 and 45 years of age should be made eligible for direct recruitment to the Higher Judicial Service which consists of the posts of District Judges and Additional District Judges and for this purpose, if necessary, there should be an amendment to Article 233(2) of the Constitution of India.

(7) With regard to inter se seniority between direct recruits and promotees, the Commission recommended that the promotees be given weightage of one year for every five years of Judicial Service rendered by them subject to a maximum of three years.

(8) The Report also recommended steps being taken for Judicial education and training.

(9) With regard to pay scales, the Shetty Commission set out the principles governing the pay structure of the Subordinate Judiciary. It referred to the All India Judges' Association case (supra) wherein it had been observed that the parity in status should be between the political, Executive, the Legislatures and the Judges and not between the Judges and the Administrative Executive.

After taking into consideration the recommendations which had been made by the Fifth Central Pay Commission and the pivotal role of the subordinate Judiciary and the essential characteristics of a Judicial officer, the Shetty Commission evolved a Master Pay scale. It came to the conclusion that the number of pay scales should be equal to the number of clearly identifiable levels of responsibility. Scope for promotional avenues must also be taken into consideration. After considering all the relevant circumstances the Commission recommended the following scales of pay :

- (1) Civil Judges (Jr. Divn.) Rs. 9000-250-10750-300-13150-350-14530
  - (2) Civil Judges (Jr. Divn.) (I stage ACP Scale)
  - (3) Civil Judges (Sr. Divn.) (II Stage ACP Scale for Civil Judge) (Jr. Divn.)
  - (4) Civil Judge (Sr. Divn.) (I Stage ACP Scale)
  - (5) District Judges Entry Level + (II Stage ACP for Civil Judges (Sr. Divn.))
  - (6) District Judges (Selection Grade)
  - (7) District Judges (Supertime Scale)
- Rs. 10750-300-13150-350-14900
- Rs. 12850-300-13 150-350-15950-400-17550
- S. 14200-350-15950-400-18350

RS. 16750-400-19150-450-20500

Rs. 18750-400-19150-21850-500-22850

Rs. 22850-500-24850

In arriving at the aforesaid pay scales, the Commission noted that while fixing the maximum of the master pay scale it had been constrained by the vertical cap of the salaries of the High Court Judges. In other words, the District Judges could not get more salary than a High Court Judge whose salary was statutorily fixed. It, however, recommended that as and when the salary of a High Court Judge is raised, then the salary of the Judicial Officers should also be increased by maintaining the ratio which it had recommended. According to the Commission, the pay scales recommended by it should be deemed to come into force with effect from 1st January, 1996, but the monetary benefit was to be payable with effect from 1st July, 1996. Other allowances, which the Commission had recommended, were to be given affect to from 1st November, 1999. Taking into consideration that there were at present 12771 posts on regular pay scales, the estimated impact of the introduction of the new pay scales was stated to be of the order of Rs. 95.71 crores for one year.

(10) The Commission recommended that administration of justice in the States should be the joint responsibility of the Centre and the States. It noted that the expenditure on the judiciary in India in terms of Gross National Product was relatively low : it was not more than 0.2%. The main recommendation of the Shetty Commission was that the Central Government must, in every States, share half of the annual expenditure on subordinate courts and quarters for Judicial Officers. This was to be without prejudice to the rights and privileges of the north-eastern States and State of Sikkim wherein about 90-92% of the expenditure of the States was to be made by the Central Government under the provisions for special category of States.

(11) The Commission also recommended Assured Career Progression Scheme and functional scales. Recommendations were also made with regard to dearness allowance, allowances for electricity and water charges, home orderly allowances, newspaper allowances, city compensatory allowance, robe allowance, conveyance allowance, sumptuary allowance, hill allowance and further recommended provisions with regard to medical facilities, leave travel concession, special pay, concurrent charge allowance, encashment of leave and level salary, composite transfer grant allowance, housing and house rent allowance, telephone facilities and advances of loans to the Judicial Officers.

(12) The Report also made recommendation to the effect that there should be an increase in the retirement, age of the Judicial Officers from 60 to 62 years and recommendations were also made with regard to retirement benefits.

(13) One more recommendation which was made for retired Judicial Officers was that cash payment of Rs. 1,250 per month should be given as domestic help allowance to enable the retired Judicial Officer to engage a Servant.

(14) Another recommendation which was made was for the establishment of an AH India Judicial Service.

Pursuant to the order which was passed by this Court requiring the response of the various States to be given to the Union of India, it was noted in this Court's order of 27th August, 2001 that six States, namely, those of West Bengal, Assam, Karnataka, Manipur, Kerala and Mizoram had accepted the recommendations of the Shetty Commission and had agreed to implement the same subject to the Union of India bearing 50 percent of the expenditure as envisaged in the Report. The States of Bihar and Jharkhand had also conveyed that they were accepting the Shetty Commission Report subject to



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the Union of India bearing 50 per cent of the expenditure and the Report being further modified and scaled down. Affidavits have also been filed by the States of Andhra Pradesh and Haryana with regard to the scales of pay accepted by them.

From the various affidavits which have been filed and the responses given to the Union of India, we find that none of the States has accepted the recommendation of the Shetty Commission with regard to the pay scales in toto.

Pursuant to an order dated 27th August, 2001, an affidavit has also been filed by Shri Kamal Pande, Secretary, Government of India, Department of Justice detailing the decisions taken by the Central Government with regard to the Judicial Officers in the Union Territories. According to this affidavit, with regard to the Union Territory of Delhi the pay scales which have been accepted by the Union of India are as follows :

Civil Judge (Jr. Division)	-Rs. 8000-275-13500
Civil Judge (Senior Time Scale)	-Rs.10650-325-15850
Senior Civil Judge 12750-375-16500	-Rs.
District Judge (Entry Level)	-Rs.15100-400-18300
District Judge (Selection Grade) (20% of the posts of District Judges)	Rs. 18400-500-22400

We have heard the learned Amicus Curiae as well as the learned Solicitor General and the Advocates General for the State of Karnataka and other learned counsel. We will first deal with some of the contentious issues on which arguments have been addressed and also deal with the recommendations of the Shetty Commission which, in our opinion, need modification or cannot be accepted as such.

The most important point in these proceedings appears to us to be as to whether the recommendation of the Shetty Commission laying down different scales of pay should be accepted or not. It is to be borne in mind that pursuant to the judgment in the review case [1983] 4 SCC 288 the Central Government had accepted the recommendation and had constituted the Shetty Commission. Correspondingly, it had deleted from the terms of reference of the Fifth Central Pay Commission the consideration in respect of the pay scales of the Judicial Officers. Therefore, it can safely be concluded that the Central Government had agreed to set up a Pay Commission specifically for Judicial Officers and normally the recommendations made in that behalf should be accepted unless for some specific and valid reason a departure was required to be made. We may here bear in mind that the Fifth Central Pay Commission Report which was submitted has been largely accepted by the Government of India with little or no modification. It was, therefore, rightly urged by Shri F.S. Nariman that there must be good and compelling reason for the States and the Central government in not accepting the recommendations of the Shetty Commission.

From the facts narrated hereinabove, it is clear that atleast eight of the States have accepted the recommendations of the Shetty Commission provided the Central Government bears 50 percent of the expense. This means that in principle there is acceptance of the pay scales as determined by the Shetty Commission.

The Central Government, however, has evolved its own pay scales with regard to the Subordinate and the Higher Judicial Service in the Union Territories, including the Union Territory of Delhi. The pay scales which have now been approved by the Government of India had been formulated on

the basis that there should be a parity between the Executive and the Judiciary. Mr. Nariman rightly contended that this basis is contrary to the decision of this Court in the AII India Judges' Association case (supra) as well as in the review judgment. It was stated in no uncertain terms that the Judiciary could not be equated with the Executive and it must have its own pay structure.

Even if we were to examine the two scales of pay, one for the I.A.S. officers after the Fifth Central Pay Commission Report and the scales of pay recommended for the Judicial Service, we find that there is a fundamental error which has been committed by the Union of India. Then scales of pay approved for the I.A.S. officers are as follows :

Junior Scale	-Rs.. 8000-275-13500	
Senior Scale : (i) Time Scale		-Rs.
10650-325-15850		
(ii) Jr. Admn. Grade	-Rs. 12750-375-16500	
(iii) Selection Grade	-Rs. 15100-400-18300	
(iv) Super Time Scale	-Rs. 18400-500-22400	
(v) Above ST Scale	-Rs. 22400-525-24500	
Secretary to Govt. of India	-Rs. 26000 (fixed)	
Cabinet Secretary	-Rs. 30000 (fixed)	

What the Union of India has done is that it equated the District Judge at this entry level with the Selection Grade for the I.A.S. officers. The pay scale approved is Rs. 15100-400-18300. We, however, find that an I.A.S. officer enters the Selection Grade after having put in approximately 14 years of service. On the other hand, Civil Judge would normally enter the level of the District Judge, and is appointed first as an Additional District Judge, after having put in 18 to 20 years of service. As far as the I.A.S. Officers are concerned, after 17 years of service, an I.A.S. officer would normally enter the Super Time Scale of Rs. 18400-500-22400. If the number of years which are put in service, is a measure to be adopted in determining as to what should be the pay scales, we find that the Government of India has erred in equating the District Judge at the entry level with the scale of pay of a Selection Grade I.A.S. Officer. The proper equation should have been between the District Judge at the entry level with a Super Time Scale of an I.A.S. Officer. It is on that basis that the scale of pay should have been determined upwards and downwards.

The Shetty Commission has trifurcated the scales of pay as far as the District Judges are concerned. It has recommended scales of pay of a District Judge at the entry level at Rs. 16750-20500, District Judge (Selection Grade) at Rs. 18750-22850 and District Judge (Super Time Scale) at Rs. 22850-24850. As we have already noted, a Judicial Officer would enter the District Judge (Entry Level) after having put in 18-20 years of service. The scale of pay of Rs. 16750-20500 recommended by the Shetty Commission is lower than the Super Time Scale for an I.A.S. Officer of Rs. 18400-22400, when such an officer enters the Super Time Scale after 17 years of service. A Judicial Officer enters the Selection Grade of a District Judge after having put in 21 to 25 years of service. The pay scale recommended by the Shetty Commission is Rs. 18750-22850. This is less than the scale above ST Scale recommended for an I.A.S. officer which is of Rs. 22400-24500 even though an I.A.S. officer enters that scale after having put in 25 years of service which is at par with the number of years put in by a Judicial Officer on his entry into Selection Grade. It is only the District Judge (Super Time Scale) as recommended by the Shetty Commission which is comparable with the last scale of an I.A.S. Officer.



From the aforesaid, it is clear, and it is so mentioned in the Shetty Commission Report, that the said Commission has taken into consideration the recommendation of the Fifth Central Pay Commission while determining the pay scales for the Judicial Officers. In our opinion, the pay scales recommended by the Shetty Commission are just and reasonable. Considering the years of service put in by the Judicial Officer at different stages, the parity in the scale of pay recommended by the Shetty Commission for the Judicial Officers with the scales of pay of I.A.S. officers is not, by and large, disturbed. In fact, the scale of pay recommended by the Shetty Commission appear to us to be somewhat lower, on the average, than the scales of pay recommended for an I.A.S. officer is we take into consideration, as we must do, the number of years a Judicial officer has put in service. We are therefore, of the opinion that the pay scales recommended by the Shetty Commission should be accepted. We wish to emphasise that even though in the earlier judgments, it has rightly been said that there should be no equation or parity between the Judicial Service and the Executive Service, nevertheless even on the basis that there should not be great distortion in the pay scales of the Judicial Officer vis-a-vis the Executive, we find the recommendations made by the Shetty Commission as just, fair and reasonable.

The next question which arose for consideration is whether the Shetty Commission was justified in recommending that 50 per cent of the expense should be borne by the Central Government. It has been contended by the learned Advocate General for the State of Karnataka as well as on behalf of the other States that the Judicial Officers working in the States deal not only with the State laws but also with the federal laws. They, therefore, submitted that, in fairness of things, the Central Government should bear half of the expense of the Judiciary.

The learned Solicitor General, however, submitted that the recommendation of the Shetty Commission that the Union of India should bear 50 per cent of the total expense was inconsistent with the Constitutional set-up. Had there been an All India Judicial Service, then the Union of India may have been under an obligation to bear the expense, but as the State Governments had not agreed to the establishment of the All India Judicial Service and no legislation had been passed under Entry 11A of List III by the Parliament, therefore it will not be correct to direct the Central Government to bear 50 per cent of the expense on the Judicial system. The learned Solicitor General submitted that the obligation to meet the expenses of the Judicial Service, except for the Supreme Court and the Courts, in the Union Territories, was on the State Governments. He contended that when allocation of funds between the Centre and the States takes place the expenses which the States are required to meet in connection with the administration of justice is a factor which is taken into consideration. The provision for devolution of funds from the Union to the States is either by assignment of taxes or distribution of taxes or by grants-in-aid. As and when the need arises, either the Finance Commission or the Union of India allocates more funds to the States.

It has not been disputed that at present the entire expense on the administration of justice in the States is incurred by the respective States. It is their responsibility and they discharge the same. Logically, if there is to be any increase in the expenditure on Judiciary, then it would be for the States to mobilise the resources in such a way whereby they can meet expenditure on Judiciary for discharging their constitutional obligations. Merely because there is an increase in the financial burden as a result of the Shetty Commission Report being accepted, can be no ground for fastening liability on the Union of India when none exists at present. Accordingly, disagreeing on this point with Justice Shetty Commission recommendations, we direct that the entire expenditure on account of the recommendations of the Justice Shetty Commission as accepted be borne by the respective States. It is for the States to increase the court fee or to approach the Finance Commission or the Union of India for more allocation

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of funds. They can also mobilise their resources in order to meet the financial obligation. If such a need arises and the States approach the Finance Commission or the Union of India for allocation of more funds, we have no doubt that such a request shall be favourably considered.

Mr. F.S. Nariman has drawn our attention to yet another important aspect with regard to dispensation of justice, namely, the huge backlog of undecided cases. One of the reasons which has been indicated even in the 120th Law Commission Report was the inadequate strength of Judges compared to the population of the country. Even the Standing Committee of Parliament headed by Shri Pranab Mukherjee in its 85th Report, submitted in February, 2002, to Parliament, has recommended that there should be an increase in the number of Judges. The said committee has noted the Judge-population ratio in different countries and has adversely commented on the judge-population ratio of 10.5 judges per 10 lakh people in India. The Report recommends the acceptance, in the first instance, of increasing the judge strength to 50 judges per 10 lakh people as was recommended by the 120th Law Commission Report.

An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient number of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of judges has adversely been commented upon. Not only have the Law Commission and the Standing Committee of Parliament made observations in this regard but even the Head of the Judiciary, namely, the Chief Justice of India has had more occasion than once to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the Judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional judges, not only will the posts have to be created but infrastructure required in the form of additional court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the Subordinate Courts at all levels should be filled, if possible latest by 31 st March, 2003, in all the States. The increase in the Judge strength to 50 judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but, this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary. The Shetty Commission had recommended that there should be an increase in retirement age from 60 to 62 years. In our opinion, this cannot be done for the simple reason that the age of retirement of a High Court Judge is constitutionally fixed at 62 years. It will not be appropriate, seeing the Constitutional framework with regard to the Judiciary, to have an identical age of retirement between the members of the Subordinate Judicial Service and a High Court, As of today, the age of retirement of a Supreme Court Judge is 65 years, of a High Court Judge it is 62 years and logically the age of retirement of a Judicial Officer is 60 years. This difference is appropriate and has to be maintained. However, as there is a backlog of vacancies which has to be filled and as the Judge strength has to be increased, as directed by us, it would be appropriate for the States in consultation with the High Court to amend the service rules and to provide for re-employment of the retiring Judicial Officers till the age of

62 years if there are vacancies in the cadre of the District Judge. We direct this to be done as early as possible.

Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The Subordinate Judiciary is the foundation of the edifice of the Judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the Judicial system essentially rests on the Subordinate Judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scale of the Subordinate Judiciary, it is at the same time necessary that the Judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standards, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge Cadre from amongst the advocate should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the Subordinate Judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law. The remaining 25 per cent of the posts in the Service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

- [1] (a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;
- (b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and
- (c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible Advocates on the basis of the written and viva voce test conducted by respective High Courts.

[2] Appropriate rules shall be framed as above by the High Courts as early as possible.

Experience has shown that there has been a constant discontentment amongst



the members of the Higher Judicial Service in regard to their seniority in service. For over three decades large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, in so far as seniority is concerned, is where a roster system is followed. For example, there is, as per the Rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the Service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in R. K. Sabharwal and Ors., v. State of Punjab reported in [1995] 2 SCC 745. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40 point roster works. We direct the High Courts to suitably amend and promulgate Seniority Rules on the basis of the roster principle as approved by this Court in R.K. Sabharwal 's case (supra) as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant Rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31st March, 2003.

We disapprove the recommendation of giving any weightage to the members of the Subordinate Judicial Service in their promotion to the Higher Judicial Service in determining seniority vis-a-vis direct recruits and the promotees. The roster system will ensure fair play to all while improving efficiency in the service.

As we have already mentioned, the Shetty Commission had recommended that Chief Metropolitan Magistrates should be in the cadre of District Judges. In our opinion, this is neither proper nor practical. The appeals from orders passed by the Chief Metropolitan Magistrates under the provisions of the Code of Criminal Procedure are required to be heard by the Additional Sessions Judge or the Sessions Judge. If both the Additional Sessions Judge and the Chief Metropolitan Magistrate belong to the same cadre, it will be paradoxical that any appeal from one officer in the cadre should go to another officer in the same cadre. If they belong to the same cadre, as recommended by the Shetty Commission, then it would be possible that the junior officer would be acting as an Additional Sessions Judge while a senior may be holding the post of Chief Metropolitan Magistrate. It cannot be that against the orders passed by the senior officer it is the junior officer who hears the appeal. There is no reason given by the Shetty Commission as to why the post of the Chief Metropolitan Magistrate be manned by the District Judge, especially when as far as the posts of the Chief Judicial Magistrate are concerned, whose duties are at par with that of the Chief Metropolitan Magistrate, the Shetty Commission has recommended, and in our opinion rightly, that they should be filled from amongst Civil Judges (Senior Division). Considering the nature and duties of the Chief Judicial Magistrate and the Chief Metropolitan Magistrates, the only difference being their location, the posts of Chief Judicial Magistrate and Chief Metropolitan Magistrate have to be equated and they have to be placed in the cadre of Civil Judge (Senior Division). We order,

accordingly.

In the All India Judges's case [1993] 4 SCC 288 at p. 314; this Court has observed that in order to enter the Judicial Service, an applicant must be an Advocate of at least three year's standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the Judicial Service. A bright young law graduate after 3 year of practice finds the Judicial Service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an Advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned Amicus Curiae that it should be no longer mandatory for an applicant desirous of entering the Judicial Service to be an Advocate of at least three years' standing we accordingly, in the light of experience gained after the judgment in All India Judges' cases direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the Judicial Service. We, however, recommend that a fresh recruit into the Judicial Service should be imparted with training of not less than one years, preferably two years. The Shetty Commission has recommended Assured Career Progressive Scheme and Functional Scales. We have accepted the said recommendation and a suggestion was mooted to the effect that in order that a Judicial Officer does not feel that he is stagnated there should be a change in the nomenclature with the change of the pay scale. A suggestion has been mooted by Shri F.S. Nariman, the learned Amicus Curiae that the nomenclature in each cadre should be as follows:

- A. Civil Judge (Junior Division Cadre) at entry level:
1. Civil Judge
  2. Civil Judge, Grade-II
  3. Civil Judge, Grade-I
- B. Civil Judge (Senior Division Cadre) at intermediary level:
1. Senior Civil Judge
  2. Upper Senior Judge
  3. Superior Senior Judge

These are only suggestions which are made and it will be more appropriate for each State, taking into consideration the local requirements, to adopt appropriate nomenclatures. It would be appropriate to mention at this stage that in some States, the entry point to the Judicial was at the level of a Munsiff or a Subordinate Judge. Those are nomenclature which are also to be considered but what is important is that in respect of each scale the nomenclature should be different. In this way a Judicial Officer will get a feeling that he has made progress in his Judicial career with his nomenclature or designation changing with an upward movement within the Service,

One of the recommendations of the Shetty Commission is in relation to the grant of the house rent allowance. The recommendation is that official accommodation should be made available to the members of the Judicial Service who should pay 12.5% of the salary as rent. The Commission further recommends that in addition to the allotment of the said premises, the Judicial Officer should also get house rent allowance. In our opinion, this double benefit is uncalled for. It is most desirable and imperative that free Government accommodation should be made available to the Judicial



officers. Taking into consideration, the fact that the accommodation which is made available to the Judges of the Supreme Court as well as the High Courts is free of charge, we direct that the official accommodation which is allotted to the Judicial Officers should likewise be free of charge but no house rent allowance will be payable on such an allotment being made. If, however, the Government for any reason is unable to make allotment, or make available official accommodation, then in that event the Judicial Officer would be entitled to get house rent allowance similar to that which has been as existing or as directed by the Shetty Commission whichever is higher. However it is made clear that once a Government or official accommodation is allotted to an officer and in pursuance thereof he occupies such an accommodation, he would not be entitled to draw house rent allowance.

There are a number of other allowances which have been referred to by the Shetty Commission, some of which have not been accepted by the Central Government. For example, allowance of Rs. 2,500 to be paid to enable the engagement of a servant by a Judicial Officer. We do not think such a suggestion made by the Shetty Commission to be appropriate and the Central Government has rightly not accepted the same. Another suggestion which has been made by the Shetty Commission is that 50 per cent of the electricity and water charges of the residences of the Judicial Officers should be reimbursed by the Government. There is merit in this suggestion subject to a cap being placed so that the 50 per cent expense does not become very exorbitant. This allowance should be paid, inasmuch as Judicial Officers do and are required to work at their residence in discharge of their Judicial duties. Therefore, it will not be inappropriate that 50 per cent of the electricity and water charges should be borne by the State Government.

Subject to the various modifications in this Judgment, all other recommendations of the Shetty Commission are accepted.

We are aware that it will become necessary for service and other rules to be amended so as to implement this judgment. Firstly, with regard to the pay scales the Shetty Commission has approved the pay scales with effect from 1st January, 1996 but has directed the same to be paid with effect from 1st July, 1996. The pay scales as so approved by us are with effect from 1st July, 1996. However, it will take some time for the States to make necessary financial arrangements for the implementation of the revised pay scales. The Judicial officers shall be paid the salary in the revised pay scales as approved by this Court with effect from 1st July, 2002. The arrears of salary between 1st July, 1996 to 30th June 2002, will either be paid in cash or the State may make the payment by crediting the same in the Provident Fund Account of the respective Judicial Officers. Furthermore, the payment by credit or otherwise should be spread over between the years 1st July, 1996 to 30th June, 2002 so as to minimise the income tax liability which may be payable thereon. In calculating the arrears, the Government will, of course, take into account the interim relief which had been granted and drawn by the Judicial Officers. The amount to be credited in the Provident Fund Account would also be after deducting the income tax payable.

The States as well as the Union of India shall submit their compliance report by 30th September, 2002. Case be listed thereafter for further orders.

Any clarification that may be required in respect of any matter arising out of this decision will be sought only from this Court. The proceedings if any, for implementation of the directions given in this judgment shall be filed only in this Court and no other Court shall entertain them.

Before concluding, we record our high appreciation for the assistance rendered by the learned Amicus Curiae-Shri F. S. Nariman, Shri Subhash Sharma, Shri C.S. Ramulu, Shri A.T.M. Sampath and all other learned counsel.





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Virender Parshad and Others Vs. State of Haryana and Others

LegalCrystal Citation : [legalcrystal.com/951547](http://legalcrystal.com/951547)

Court : Punjab and Haryana

Decided On : 2012-08-02

Judge : SURYA KANT & R.P. NAGRATH

Appeal No. : CWP No.15883 of 2011 (O&M)

Appellant : Virender Parshad and Others

Respondent : State of Haryana and Others

## Judgement :

SURYA KANT, J.

(1). The petitioners are Judicial Officers serving in the State of Haryana. All of them have done their Masters in Law. They seek quashing of the Haryana Government Instructions dated 19.05.2011 (Annexure P6) whereby the benefit of three additional increments on acquiring a Degree in LL.M. has been restricted qua those Judicial Officers only who possess the LL.M. Degree at the time of joining service and not to those who obtain such Degree subsequently. The petitioners have obtained their Degrees in LL.M. admittedly while in service.

(2). In All India Judges' Association v. Union of India and Ors., (2002) 4 SCC 247, the Hon'ble Supreme Court had issued several directions for the improvement of service conditions including reasonable hike in the payscales of Judicial Officers. The recommendations made by the First National Judicial Pay Commission, popularly known as "Shetty Commission" in this regard, including for the grant of three advance increments to Judicial Officers having Post-graduate degree in Law, were also accepted.

(3). While recommending uniform pattern of eligibility conditions and pay structure throughout the country for initial entry in the Judicial Services, 'Shetty Commission' also considered the desirability of granting 'Additional Benefit for Higher Qualification'. The Commission referred to the Service Rules and conditions of service prevailing in different States at the entry level and took notice in para 8.46 of its Report Vol-II of the fact that except Delhi and Rajasthan, in none of the States additional benefit to a selected candidate possessing higher qualification was admissible. The Commission thereafter made the following recommendations in paras 8.48 and 8.49 of the report (Vol-II) :-

"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.

8.49 But we do not propose to suggest any advance increments to those who are having more experience

Ansari  
6/6/14



as Advocate than the minimum prescribed. Giving any advance increment for additional Bar practice is not proper. It should not be a bonus for those who have not been able to make their way immediately after acquiring the minimum qualification." H.V. 19/1

(4). The Supreme Court in the cited decision directed all the States to implement these recommendations and grant the benefit of three additional increments to those possessing higher qualification. The reluctant executive with a clear agenda to frustrate these directions, started misinterpreting the Shetty Commission recommendations to mean as if the three advance increments in issue were to be adjusted against future annual increments of the eligible Judicial Officers. Such like misconstruction given to these recommendations by the State of Punjab was set at naught by one of us (Surya Kant, J) in CWP No.6954 of 2009 (**Priya Sood v. State of Punjab and Ors.**) decided on 24.01.2011, holding as follows:-

✓ "8] The expression "advance" as mentioned in paragraph 8.48 of the recommendations does not mean that three increments granted to the petitioner or other judicial officers possessing higher qualifications are a temporary measure only to be adjusted against their future annual increments to which they are otherwise entitled to as a matter of right save these are with-held under Rule 4.7 of the C.S.R. (ibid).

9] I say so for the reason that the Shetty Commission has referred to the phrases 'additional' and 'advance' both in Para 8.46 of its recommendations inter-changeably and since the solitary object of these recommendations was to grant an extra benefit to these officers who join judicial services with higher qualifications, the word 'advance' shall connote the same meaning as the word 'additional' is understood in general parlance."

(Emphasis applied)

(5). The unsuccessful challenge at the instance of the High Court was turned down by a Division Bench of this Court in LPA No.970 of 2011 decided on 30.05.2011 (Annexure P10) with an additional reason to the following effect:-

"In the present case the degree of Masters of Laws would certainly bring efficiency in discharging duties by a Judicial Officer in comparison to those who do not possess such a degree. There is no real benefit of advancing advance increments if in the due course of time the writ petitioner-respondent No. 1 is to become equal to those who do not have additional higher qualification. Such an interpretation adopted by the appellant would not advance the basic object of the recommendation made by the Shetty Pay Commission. Therefore, we are of the view that the instant appeal does not merit admission and the view taken by the learned Single Judge deserves to be upheld."

(Emphasis applied)

(6). The Special Leave to Appeal was also turned down by the Hon'ble Supreme Court.

(7). We are informed that the Judicial Officers in the State of Punjab have still not been able to harvest their dues due to one or the other technicalities raised by the establishment.

(8). State of Haryana also did not lag behind. Firstly, it issued a circular dated 28.10.2010 (Annexure P5) saying that the three advance increments on account of LL.M. Degree will be provided from the date of issue of letter dated 30.03.2010 and only '...at the entry point those who have post-graduate qualification i.e. LL.M. Degree'.

(9). Meanwhile, some of the Judicial Offices of Haryana approached this Court in CWP No.5966 of 2011 (**Ritu Garg and others v. Punjab and Haryana High Court and Anr.**) which was allowed by a learned Single Judge on 22.07.2011 following the above-cited decisions in the Punjab case.

(10). The impugned circular dated 19.05.2011 restricting the benefit of three increments to those Judicial Officers 'who possess the qualification of LL.M. at the time of joining of service and not to those who obtained the degree of LL.M. subsequently', was issued pending the above-stated writ petition.



(11). The above-reproduced restricting clause does deprive the petitioners of the benefit of three increments as they have obtained LL.M. Degree after joining the service. Reviews

(12). The question that arises for our consideration is whether the classification sought to be made between the Judicial Officers who possess LL.M. Degree at the time of joining service and those who obtain the same subsequent to their appointment, is a reasonable classification based upon an intelligible criteria?

(13). A somewhat similar artificial distinction drawn between the Masters appointed with higher qualification and those acquiring higher qualification while in service, for the purpose of grant of higher pay, was annulled by a Division Bench of this Court in *Rattan Singh v. State of Haryana* 1995 (1) SCT 711, holding as follows:-

"11. Circular dated 9.3.1990 issued by the Government of Haryana, in our opinion, cannot be used to deny relief to the petitioners.-A careful perusal of that circular shows that the issue of the same is nothing but an attempt to frustrate the rights of the existing teachers to get higher pay from the date they acquired higher qualifications. Distinction sought to be made out between the persons appointed as Masters with higher qualifications and those acquiring higher qualification while in service is illusory and unwarranted. A similar situation was considered by the Supreme Court in *PK Ramachandra Iyer and Others v. Union of India*, AIR 1984 SC 541. In that case petitioners, who were holding the posts of professors were denied higher pay scale because they did not possess a particular qualification. While upholding their claim for grant of higher pay scale according to the principle of equal pay for equal work, the Supreme Court observed...":

(Emphasis applied)

(14). The right to equality in pay scale amongst 'two classes of employees performing identical or similar duties and carrying out same functions with the same measure of responsibility having same academic qualifications' has been approved by the Apex Court in a catena of decisions including in *V. Markendeya and others v. State of Andhra Pradesh and Ors.*, (1989) 3 SCC 191.

(15). We are, however, conscious of the fact that wherever the classification made by the State in giving different treatment to the two classes of employees is founded upon a rational criteria and has nexus with the object sought to be achieved, the allegation of invidious discrimination must fail. The Court would, thus, before forming an opinion in this regard shall consider various factors like nature of duties, functions, measures of responsibility and educational qualifications etc. Applying these yardsticks, we find no tangible distinction amongst the Judicial Officers possessing higher qualification of LL.M. whether obtained before or after joining the Judicial services. If the Degree of Masters of Law brings efficiency and improves quality of discharging duties by a Judicial Officers as held by this Court in *Priya Sood's case* (supra), we fail to understand as to why such a qualitative advantage will not be achieved by an Officer who does LL.M. after joining the Service?

(16). It shall be beneficial at this stage to refer to the Circular dated 04.12.1961 (Annexure P7) issued by the erstwhile State of Punjab laying emphasis on permitting the Government servants to improve their academic qualifications as "the acquisition of higher qualifications is always beneficial and broadens the outlook of an individual who should naturally give better work to Government...".

(17). The extent of hostile discrimination against the Judicial Officers or complete non-application of mind behind issuance of the impugned letter is writ large in the Haryana Government's Finance Department Circular dated 30.08.2011 (Annexure P14) issued for the "grant of two advance increments to the Junior Engineers on acquiring AMIE or an equivalent degree during service". The Circular says that a Junior Engineer if acquires higher qualification of AMIE or an equivalent degree during service is entitled to two advance increments. There is nothing on record to justify the somersault taken in the case of Judicial Officers acquiring higher qualification of LL.M. while in service to whom the benefit of three increments is being denied. If the acquisition of higher qualification in engineering services improves the work efficiency, why the qualification of LL.M. will also not broaden the outlook of a



Judicial Officer and enrich his knowledge for quality decisions?

*Review*

(18). We now advert to the justification advanced by the State Government in its reply/affidavit. It is claimed that the Shetty Commission in para 8.48 has recommended three advance increments only "if selected candidates are having a higher qualification like post-graduation in law...". In other words, the higher qualification should be possessed by the Officer at the time of his/her selection.

(19). The above-noticed plea, in our considered view, is wholly unjustified. Firstly, Shetty Commission has nowhere recommended that three advance increments are not to be granted to those Officers who acquire higher qualification while in service. The phrase "selected candidates.... having higher qualification" does not and cannot mean that if higher qualification is acquired by the selected candidates after their appointment, it would not improve their efficiency with better knowledge of Law. Secondly, the Judicial Officers having Postgraduate Degree in Law before appointment and those who acquire such Degree after joining the service, constitute one homogenous class and the artificial classification to discriminate against the latter category of Officers does not satisfy the test of equality within the meaning of Articles 14 and 16 of the Constitution. Thirdly, the classification professed in the case of Judicial Officers contradicts the State when confronted with the other services like Junior Engineers to whom benefit of advance increments, on acquisition of higher qualification 'during service', has been expressly granted vide circular dated 30.08.2011 (Annexure P14).

(20). For the reasons afore-stated, we allow this writ petition and quash the impugned circular dated 19.05.2011 (Annexure P6) to the extent it denies the benefit of three increments to those Judicial Officers who have acquired/acquire higher qualification of LL.M. after joining the service. We further direct that :-

i. the benefit of three additional increments shall be admissible to the petitioners as well as other similarly placed Judicial Officers;

ii. the only permissible distinction shall be that the Judicial Officers who acquire LL.M. Degree before joining the service shall be entitled to additional increments from the date of joining the service, while those who have acquired/acquire the same after joining the service shall be entitled to these increments from the date of acquisition of the higher qualification of LL.M.;

iii. the three increments granted to the Judicial Officers on acquisition of LL.M. Degree shall be treated as 'additional increments' in the same manner as has been directed by this Court in Priya Sood's case (Punjab matter);

iv. the additional increments shall continue to be drawn by the Judicial Officers on their further promotion and/or placement in higher pay scale, as the case may be.-

(21). No costs. Dasti.

संलग्नक संख्या-12

Prabathu Kumar.B, Quarter No. A 4 vs State Of Kerala, Represented By ... on 9 September, 2010

*Represented*

Kerala High Court

Kerala High Court

Prabathu Kumar.B, Quarter No. A 4 vs State Of Kerala, Represented By ... on 9 September, 2010  
IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 34846 of 2008(W)

1. PRABATHU KUMAR.B, QUARTER NO. A 4,

... Petitioner

2. MOHIT.C.S, RESIDING AT JUDICIAL OFFICERS

3. SEENA.S.S, RESIDING AT JUDICIAL OFFICERS

4. SURESH BABU.V.P.M, RESIDING AT

5. THANKACHAN.K.P, KARIMPANACKAL HOUSE,

6. SALEENA.V.G. NAIR, KALATHARA,

7. SAIMA.P.S, SUDHA BHAVAN, T.C 30/1583,

8. SUNITHA.K.P, HOUSE NO. VII/66-B,

9. ANILKUMAR.K, PANDANVILAKOM HOUSE,

Vs

1. STATE OF KERALA, REPRESENTED BY THE

... Respondent

2. THE ACCOUNTANT GENERAL,

For Petitioner :SRI.P.SREEKUMAR

For Respondent :GOVERNMENT PLEADER

The Hon'ble MR. Justice S.SIRI JAGAN

Dated :09/09/2010

ORDER

S. Siri Jagan, J.

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W.P(C) No. 34846 of 2008

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Indian Kanoon - <http://indiankanoon.org/doc/321658/>

*Ansari*  
*6/6/14*



Dated this, the 9th day of September, 2010.

Revised

## J U D G M E N T

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 xx

Advance increments

W.P.C. No. 34846/2008 -: 2 :-

(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.&quot;

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 & E), Kerala. It is under the above circumstances, the petitioners have approached this Court seeking the following reliefs: &quot;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.&quot;

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 W.P.C. No. 34846/2008 -: 3 :-

Revised

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 possess/acquire higher qualification like Post Graduation in Law with effect from W.P.C. No. 34846/2008 -: 4 :-

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 States. 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 W.P.C. No. 34846/2008 -: 5 :-

Revised

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 W.P.C. No. 34846/2008 -: 6 :-

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 v. Union of India and others, 2002(4) SCC 247, 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 of 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.

W.P.C. No. 34846/2008 -: 7 :-

The writ petition is allowed as above.

Sd/- S. Siri Jagan, Judge.



*Revised*

Tds/

Additional Benefit of three advance increments to be given to the Judicial Officers of Subordinate Judiciary

**Govt. of Gujarat  
Legal Department  
Resolution No.PAY/WPC/102004/173/D  
4, Sardar Bhavan  
Sachivalaya, Gandhinagar**

Dated 14<sup>th</sup> June, 2012.

**READ :**

1. Supreme Court Judgment dated 21/3/2002 in Writ Petition (Civil) NO.1022/1989 (All India Judges Association v/s. Union of India)
2. Review Judgment of Hon'ble Supreme Court dated 24/8/1993 in Review Petition No.249/1992 .
3. Directions of the Hon'ble Supreme Court of India in I.A.No.103 and other I.As. in Writ Petition (Civil) No.1022/1989 dated 06/12/2005, 07/02/2006 and 20/07/2006.
4. Hon'ble High Court of Gujarat's letter No.A.2622/1996 dated 17/10/1996, 23/01/2009 & 27/07/2009

**RESOLUTION**

**WHEREAS** First National Judicial Pay Commission under the Chairmanship of Mr. Justice K. Shetty has recommended vide para 8.48 to grant benefit of three advance increments to those selected candidates who possess higher qualifications.

**AND WHEREAS**, the Hon'ble Supreme Court has in the case of All India Judges Association and others v/s. Union of India accepted the above recommendations and directed the State Government to implement the same.

**AND, WHEREAS**, the Supreme Court of India has given certain directions in Writ Petition (Civil) No.1022/1989 of 20<sup>th</sup> July, 2006 regarding full compliance of the First National Judicial Pay Commission (FNJPC).

**AND, WHEREAS**, The suggestion of the High Court of Gujarat as proposed vide letter dated 27/7/2009 prefaced at 4 in the preamble, has been accepted on 23/4/2012 by the Government of Gujarat.

**NOW, THEREFORE**, the Government of Gujarat is pleased to sanction the benefit of three advance increments to Judicial Officers of Sub-ordinate Judiciary as under:-

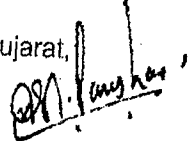
1. That if selected candidates are having higher qualifications like Post Graduation in Law, M.Phil or Ph.D. shall be given three advance increments.
2. The advance increments to be given to candidates who possessed higher qualifications in Law at the time of joining service on or after Dt.01.11.1999. But, such increment shall be released upon successful completion of probation period.
3. The Principal District Judge of the District where such selected candidates are posted shall scrutinize each case and after obtaining the proof of higher qualification shall pass an order of granting three advance increments to such officers.

*Ansari*  
6/6/14

Report

4. The Judicial Officers joined the judicial services after 1-11-1999 and are having such higher qualifications at the time of selection, they shall be entitled to get such three advance increments. The Principal District Judge of concerned District where such officers are working, shall after verifying each case, re-fix their pay.
5. The differential amount of arrears shall be paid in cash.
6. The amount of arrears payable to the Judicial Officers, who have retired or died in harness, shall be placed at the disposal of the Principal District Judge of the District / Head of Department where the retired / deceased Judicial Officer last worked; thereafter, Principal District Judge of the District / Head of Department shall draw the amount and pay it to the retired Judicial Officer / family of the deceased Judicial Officer.
7. The expenditure shall be debited to the concerned budget heads and shall be defrayed out of the grants sanctioned for the Pay & Allowances to be paid to Judicial Officers during the financial year.
8. This issues in consultation with General Administration Department vide its note dated 26/2/2009 and with the concurrence of the Finance Department vide its notes dated 19/2/2009 and 10/2/2012 on this department's file of even number.

By order and in the name of the Governor of Gujarat,



(M J Parashar)

Deputy Secretary to Govt. of Gujarat  
Legal Department

To,

1. P.S. to Hon'ble Law Minister, Sachivalaya, Gandhinagar
2. P.S. to Secretary & R.L.A., Legal Department, Sachivalaya, Gandhinagar
3. P.S. to Secretary, Health & Family Welfare Department, Sachivalaya, Gandhinagar
4. P.S. to Secretary, Finance Department, Sachivalaya, Gandhinagar
5. Registrar General, Gujarat High Court, Sola, Ahmedabad. by letter
6. Principal Judge, City Civil & Sessions Court, Ahmedabad
7. Chief Metropolitan Magistrate, Ahmedabad.
8. Chief Judge, Small Causes Court, Ahmedabad.
9. Principal Judge, Family Court, Ahmedabad.
10. All Principal District and Sessions Judges
11. All the District Treasury Officers
12. Director, Pension & Provident Fund, Ahmedabad.
13. Under Secretary, "F" Branch, Legal Department, Sachivalaya, Gandhinagar.
14. Section Officer, "F" Branch, Legal Department, Sachivalaya, Gandhinagar.
15. Select File



3 advance increments for LL.M./Post Graduation

GOVERNMENT OF WEST BENGAL

JUDICIAL DEPARTMENT

WRITER'S BUILDING, KOLKATA-700001

No.431-J Dated Kolkata, the 18-01-2008

*Received*

From: Shri S.K. Chakraborty, Principal Secretary to the Government of West Bengal.

To : The Sr. Accountant General (A & E),

Treasury Building, Kolkata-700001.

Subject:- Sanction of advance increment for having/acquiring higher qualification like Post Graduation

-in-law for the members of the West Bengal Judicial Service.

Sir,

I am directed by order of the governor to say that all members belonging to the West Bengal Judicial Service having / acquiring higher qualification like Post Graduation-in-law are entitled to get three advance increments with effect from 01.11.1999 as per recommendations of the Shetty Commission duly accepted by Hon'ble Apex Court.

This order issues with the concurrence of the Finance Department of West Bengal vide their U/O No.165. Group I (Pay) dated 18.01.2008.

Yours faithfully,

Sd/-

Principal Secretary.

No.431/1J dated 18.01.2008.

Copy forwarded for information and necessary action to the Registrar General, High Court, Calcutta, High Court's Building, Kolkata-700001.

Sd/- Principal Secretary.

3 advance increments for LL.M./Post Graduation

GOVERNMENT OF WEST BENGAL

JUDICIAL DEPARTMENT

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Sd/- Principal Secretary.







REJECTION OF PROBATE APPLICATION  
REJECTION OF PROBATE APPLICATION  
ADVERSE POSSESSION SUPREME COURT  
CBI INVESTIGATION SC & HC CAN DIRECT  
CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920  
Chief Justices Conference  
LABOUR  
CONTEMPT OF COURTS ACT, 197  
Examining Cross Examination - S.P.S  
G.P.S  
DETAILS OF MY POSITIONS AS JUDICIAL OFFICER  
DISTRICT JUDGE CADRE INTERVIEW  
PAYMENT OF SALARY  
EVIDENCE OF A RAPE VICTIM

Subject:- Sanction of advance increment for having/acquiring higher qualification like Post Graduation -in-law for the members of the West Bengal Judicial Service.

39  
Revised 95

Sir,

I am directed by order of the governor to say that all members belonging to the West Bengal Judicial Service having / acquiring higher qualification like Post Graduation-in-law are entitled to get three advance increments with effect from 01.11.1999 as per recommendations of the Shetty Commission duly accepted by Hon'ble Apex Court.

This order issues with the concurrence of the Finance Department of West Bengal vide their U/O No.165. Group I (Pay) dated 18.01.2008.

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Sd/-

Principal Secretary.

FUEL CHARGES: ADMISSIBILITY.

GOVERNMENT OF WEST BENGAL

JUDICIAL DEPARTMENT

WRITER'S BUILDING, KOLKATA-700001

Page 4/5

Office and residence.		
Additional District Judge/ Sessions Judge, (With STD facility both in office and residence.	2000	1000
Civil Judge (Sr. Divn) and CJM (STD facility to CJM both in office and residence)	2000	1000
Civil Judge (Jr. Divn)/Magistrate (STD facility to SDM both in office and residence.	1500	750

Provided further that retired judicial officers including members of erstwhile Higher Judicial Service or those who are elevated from State Judicial Service will also be entitled to get the benefit from 1.11.1999 till date of their retirement or elevation as the case may be and draw reimbursement from which the salaries of the Judicial Officers was last drawn.

Provided further that the concerned office shall bear the expenses of the installation and bimonthly payments of the telephone bills upto the aforesaid ceiling and that the excess calls if any, shall be borne by the concerned judicial officers.

The charge shall be met from the sub-detailed head '02-Telephone' subordinate to the detailed head '13-Office



Expenses' under the major/minor heads from which the salaries of the concerned judicial officers are being drawn. \

This order issues with the concurrence of Finance Department vide their U.O No. 3192 dated 31.8.06.

Yours Faithfully

**(S.K. Chakraberti)**  
**Secretary to the Govt. of W.B.**

3 advance increments for LL.M./Post Graduation

Government of West Bengal

Judicial Department

Writer's Building, Kolkata700001

No. 431-J Dated Kolkata, the 18-01-2008

From : Shri S.K. Chakraborty, Principal Secretary to the Government of West Bengal.

To : The Sr. Accountant General (A & E).

Treasury Building, Kolkata-700001.

41

Regd. No. 131



42

Requents

Subject : Sanction of advance increment for having/ acquiring higher qualification like Post Graduation-in-law for the members of the West Bengal Judicial Service.

Sir,

I am directed by order of the governor to say that all members belonging to the West Bengal Judicial Service having/ acquiring higher qualification like Post Graduation-in-law are entitled to get three advance increments with effect from 01.11.1999 as per recommendations of the Shetty commission duly accepted by Hon'ble Apex Court.

This order issues with the concurrence of the Finance Department of West Bengal vide their U/O No. 165. Group I (Pay) dated 18.01.2008.

Yours Faithfully

Sd/-

Principal Secretary

No. 431/1J dated 18.01.2008.

Copy forwarded for information and necessary action to the Registrar General, High Court, Calcutta, High Court's Buliding, Kolkata-700001.

Sd/-

Principal Secretary

**FUEL CHARGES : ADMISSIBILITY.  
GOVERNMENT OF WEST BENGAL  
JUDICIAL DEPARTMENT  
WRITER'S BUILDING, KOLKATA-700001**