

BHARATKUMAR SHANTILAL THAKKAR

v.

STATE OF GUJARAT & ANOTHER
(Writ Petition (C) No. 19 of 2012)

APRIL 1, 2014

[R.M. LODHA AND SHIVA KIRTI SINGH, JJ.]

Judicial Service - Subordinate judiciary in the State of Gujarat - Vide Resolution dated 14.6.2012, additional benefit of three advance increments given to Judicial Officers who possessed higher qualification in law - Sanction of the benefit however made conditional by making it available to those who possessed higher qualification in law on or after 1.11.1999 - Cut-off date (1.11.1999) prescribed in para 2 of Resolution dated 14.6.2012 - If wholly arbitrary - Held: A sentence in a communication dated 27.7.2009 made by the Registrar General of the Gujarat High Court to the Secretary to the Government of Gujarat, Legal Department created confusion which led to the cut-off date (1.11.1999) being provided in the Resolution dated 14.6.2012 - The date 1.11.1999 in the above sentence is referable to implementation date for three advance increments and not as the cut-off date for acquiring the higher qualification in law - As it is, the criteria provided in para 2 of Resolution dated 14.6.2012 is irrational - Expression "on or after 1.11.1999" in para 2 of Resolution dated 14.6.2012 to be read as "on or before 1.11.1999" - 1st National Judicial Pay Commission - Para 8.48 - Gujarat State Judicial Services Rules, 2005 - r.7-A.

By the instant writ petition filed under Article 32 of the Constitution, inter alia, prayer was made that direction be issued to the respondents to implement para 8.48 of the recommendations of the 1st National Judicial Pay Commission as approved by this Court.

A During pendency of the writ petition, by Resolution
 dated 14.6.2012, additional benefit of three advance
 increments was given to Judicial Officers of the
 subordinate judiciary in the State of Gujarat pursuant to
 the recommendations made in the 1st Pay Commission
 B particularly para 8.48 thereof. In that Resolution,
 however, the sanction of the benefit of three advance
 increments was made conditional upon fulfillment of
 condition set-out in para 2 or para 4, as the case may be.
 The additional benefit of three advance increments was
 C made available to those who possessed higher
 qualification in law on or after 1.11.1999.

It was contended by the petitioner that the cut-off
 date prescribed in the Resolution was wholly arbitrary
 and had no nexus with the object sought to be achieved.

D Allowing the writ petition, the Court

HELD: By communication dated 27.7.2009, the
 Registrar General of the Gujarat High Court had advised
 the Secretary to the Government of Gujarat, Legal
 E Department that insertion of Rule 7-A in the Gujarat State
 Judicial Services Rules, 2005 may not be necessary if the
 recommendation of granting three advance increments
 to the candidates having higher qualification in law w.e.f.
 1.11.1999 is incorporated as an addendum to the
 F Government Resolution No. Pay/102003/1233/D dated
 16.3.2007 and given effect from 1.11.1999. It appears that
 the sentence "if the present recommendation of granting
 three advance increments to the candidates having
 higher qualification in law w.e.f. 1.11.1999" in the letter
 G dated 27.7.2009 has really created confusion which led
 to cut-off date (1.11.1999) being provided in the
 Resolution dated 14.6.2012. The date 1.11.1999 in the
 above sentence is referable to implementation date for
 three advance increments and not as the cut-off date for
 H acquiring the higher qualification in law. As it is, there is

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no rationale in providing that those candidates who possessed higher qualification in law on or after 1.11.1999 would be given advance increments. The criteria provided in para 2 is irrational. The expression "on or after 1.11.1999" in para 2 of the Resolution dated 14.6.2012 shall be read as "on or before 1.11.1999". [Paras 8, 9 and 10] [1151-F-H; 1152-A-B, E-F]

All India Judges Association & Others vs. Union of India and others (2002)4 SCC 247: 2002 (2) SCR 712 - referred to.

Case Law Reference:

2002 (2) SCR 712 referred to Para 5

CIVIL ORIGINAL JURISDICTION : Under Article 32 of the Constitution of India.

Writ Petition (Civil) No. 19 of 2012.

Sanjay Parikh, Mamta Saxena, Bushra Parveen, N. Vidya, Anitha Shenoy for the Petitioners.

Hemantika Wahi, Jayesh Gaurav, T. Mahipal for the Respondent.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. The petitioner - Bharatkumar Shantilal Thakkar joined judicial service in the State of Gujarat in 1995. Prior to his joining judicial service, the petitioner had done post-graduation in law. By this writ petition filed under Article 32 of the Constitution of India, inter alia, he has prayed that direction be issued to the respondents to implement para 8.48 of the recommendations of the 1st National Judicial Pay Commission (for short "Commission") which has been approved by this Court.

2. It appears that during the pendency of the writ petition, by Resolution dated 14.6.2012, additional benefit of three

A advance increments has been given to the Judicial Officers of
the subordinate judiciary in the State of Gujarat pursuant to the
recommendations made in the 1st Pay Commission particularly
para 8.48 thereof. In that Resolution, however, the sanction of
the benefit of three advance increments is conditional upon
B fulfillment of condition set-out in para 2 or para 4, as the case
may be. The relevant part of Resolution dated 14.06.2012
reads:

1.

C 2. The advance increments to be given to candidates
who possessed higher qualifications in Law at the time of
joining service on or after 1.11.1999. But, such increment
shall be released upon successful completion of probation
period.

D 3.

4. The Judicial Officers joined the 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.....

E 3. Mr. Sanjay Parikh, learned counsel for the petitioner
submits that the above Resolution does not address the
grievance of the petitioner as additional benefit of three
advance increments has been made available to those who
F possessed higher qualification in law on or after 1.11.1999. He
further submits that the cut-off date prescribed in the Resolution
is wholly arbitrary and that has no nexus with the object sought
to be achieved.

G 4. In para 8.48, the Commission made the following
recommendation:

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

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Graduation in Law is a difficult course and it is better to reward appropriately such candidates.

5. In *All India Judges Association & Others vs. Union of India and others*¹, this Court accepted all the recommendations of the Commission except those which were modified in the judgment itself. This is apparent from para 37 of the judgment which reads as under:

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

6. Having regard to the above, the Registrar General of the Gujarat High Court by his communication dated 2.4.2008 sent to the Secretary to the Government of Gujarat, Legal Department advised him to move the Government for insertion of Rule 7-A in the Gujarat State Judicial Services Rules, 2005 (for short "2005 Rules"). Rule 7-A of 2005 Rules, proposed by the High Court, reads as under:

A candidate selected for the post of Civil Judge who possesses higher qualification in law, such as LL.M., M.Phil in Law, Ph.D. in Law shall be entitled to get three additional increments, but such increments shall be released upon successful completion of the probation period.

7. Pertinently, in the proposed Rule 7-A, there is no cut-off date with regard to acquisition of higher qualification in law such as LL.M. in law, M.Phil in Law, Ph.D. in Law.

8. By subsequent communication dated 27.7.2009, the Registrar General advised the Secretary to the Government of Gujarat, Legal Department that insertion of Rule 7-A in 2005 Rules may not be necessary if the recommendation of granting three advance increments to the candidates having higher qualification in law w.e.f. 1.11.1999 is incorporated as an addendum to the Government Resolution No. Pay/102003/1233/D dated 16.3.2007 and given effect from 1.11.1999.

1. (2002) 4 SCC 247.

A 9. It appears that the sentence "if the present
 recommendation of granting three advance increments to the
 candidates having higher qualification in law w.e.f. 1.11.1999"
 in the letter dated 27.7.2009 has really created confusion which
 led to cut-off date (1.11.1999) being provided in the Resolution
 B dated 14.6.2012. The date 1.11.1999 in the above sentence
 is referable to implementation date for three advance
 increments and not as the cut-off date for acquiring the higher
 qualification in law. This is also clear from the sentence
 preceding the controversial sentence which reads "...the
 C Government in the Legal Department have issued Resolution
 No. Pay/102003/1233/D dated 16/03/2007 and given effect to
 the same from 01/11/1999. (emphasis supplied). It is not in
 dispute that while recommending insertion of Rule 7-A in 2005
 Rules; no cut-off date has been given. As a matter of fact, Mr.
 D Jayesh Gaurav, learned counsel for the respondent No. 2 - High
 Court of Gujarat submits that by letter dated 27.7.2009, it was
 neither intended nor meant that three advance increments shall
 be available only to those judicial officers who have acquired
 higher qualification in law w.e.f. 1.11.1999. As it is we do not
 E find any rational in providing that those candidates who
 possessed higher qualification in law on or after 1.11.1999
 would be given advance increments. The criteria provided in
 para 2 is irrational.

F 10. We, accordingly, hold that the expression "on or after
 1.11.1999" in para 2 of the Resolution dated 14.6.2012 shall
 be read as "on or before 1.11.1999".

11. Writ Petition is allowed as above with no order as to
 costs. All financial benefits as per this order shall be paid to
 the petitioner as early as possible and in no case later than two
 months from the date of receipt of copy of this order. This order
 shall also be applicable to all Judicial Officers who have been
 denied benefit of three advance increments on the basis that
 they acquired higher educational qualification in law before
 1.11.1999.