REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 19 OF 2012

BHARATKUMAR SHANTILAL THAKKAR ... PETITIONER(s)

Versus

STATE OF GUJARAT & ANOTHER ... RESPONDENT(s)

J U D G M E N T

R.M. LODHA,J.

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 Ist 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 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 Ist Pay Commission particularly para 8.48 thereof. In that Resolution, however, the sanction of the benefit of three advance increments is conditional upon 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 .....**
>
> **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.**
>
> **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.....**

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 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.

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 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:

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1 **(2002)4 SCC 247**

> **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.

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 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 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. 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 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.

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.

.....J.
(R.M. LODHA)

.....J.
(SHIVA KIRTI SINGH)

NEW DELHI;
APRIL 1, 2014.