

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No. 960 of 2021**

Rajendra Kumar Jumnani, aged about – 59 years, Son of – Late Vishen Das, Resident of – 321/322, Vijay Nagar Colony, Gorakhnath Road, P.O. & P.S. Gorakhnath, District-Gorakhpur, Uttar Pradesh, PIN 273015 and presently residing at – District and Sessions Judge Quarter, Lohardaga, P.O., P.S. Lohardaga, District – Lohardaga.

... .. **Petitioner**

Versus

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District Ranchi.
2. The State of Jharkhand through the Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O. Dhurwa, P.S. Dhurwa, District Ranchi
3. The High Court of Jharkhand at Ranchi, through the Registrar General, at Doarnda, P.O. Doranda, P.S. Doranda, District Ranchi.

... .. **Respondents**

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

For the Petitioner : Mr. L.C.N Shahedeo, Advocate
For the Respondents : Mr. Piyush Chitresh, A.C. to A.G.

ORAL JUDGMENT

Order No. 04 : Dated 6th December, 2021

The instant writ petition has been filed under Article 226 of the Constitution of India whereby and whereunder the following directions have been sought for –

- i. For issuance of appropriate writ(s), order(s) and/or direction(s), particularly a writ in the nature of mandamus commanding upon the respondents more particularly respondent No.2 to grant / provide three advance increment to the petitioner possessing the LL.M degree, and is entitled as per the recommendation of the Hon'ble Justice Shetty Commission which has been accepted and allowed by order of Hon'ble Supreme Court of India vide order/judgment dated 21.03.2002 passed in W.P.(C) No. 1022 of 1989.
- ii. For issuance of appropriate writ(s), order(s) and/or direction(s), particularly a writ in the nature of mandamus commanding upon the respondents especially to respondent no.2 to implement the Hon'ble Justice Shetty Commission recommendation so far it relates to three advance increments for having LL.M Degree to the Judicial Officers directly appointed as Additional District Judge.
- iii. For issuance of appropriate writ(s), order(s) and/or direction(s), particularly a writ in the nature of mandamus commanding upon the respondents to provide the consequential benefit to the petitioner after rectifying the anomaly in his pay scale.

3. The brief facts of the case as per the statements made in the writ petition which are required to be enumerated herein read as hereunder:-

In pursuance to an advertisement issued sometime in the year 2001 for the post of Jharkhand Superior Judicial Service, the writ petitioner had applied for the said post. He had participated in the tests and on being selected, he was appointed to the post of Additional District and Sessions Judge vide Notification dated 15.12.2001. The writ petitioner was promoted as District Judge (Principal District Judge) vide Notification dated 12.07.2007.

The writ petitioner possesses the degree of LL.M. acquired from Gorakhpur University, Gorakhpur in the year 1997 i.e., before joining of the service.

The case of the writ petitioner is that in pursuance to the recommendation of the Fourth Central Pay Commission, the Central Government accepted the proposal to grant special incentive to the officers and staffs who acquired higher qualification which are useful for their official work and contribution to their efficiency especially in the field of Medicine and Engineering etc. In continuation to the said decision, some of the judicial officers working in the State of Delhi applied for special incentive on the ground of having higher qualification such as LL.M but no relief was granted and as such, some of the judicial officers working within the

jurisdiction of Delhi High Court moved the Delhi High Court by filing writ petitions being C.W. No.4799/1995 (V.K. Jain v. Union of India and Others) and other analogous cases for a direction upon the respondents to grant the benefit of three additional increments to the judicial officers having degree of LL.M from the date of acceptance of the recommendation of the Fourth Central Pay Commission. The Delhi High Court, vide order dated 20.02.2001, directed to grant three advance increments from the date of acceptance of the recommendations of the Fourth Pay Commission with effect from 01.01.1986.

Subsequent thereto, First Judicial Pay Commission (known as Hon'ble Justice Shetty Commission) has been constituted wherein recommendation was made to grant three advance increments to such judicial officers who could acquire higher professional qualification as under paragraph 29.8. The recommendation of the Shetty Commission has been accepted in entirety by the Hon'ble Apex Court in the judgment in ***All India Judges' Association and Others v. Union of India and Others*** [(2002) 4 SCC 247].

The writ petitioner has preferred the instant writ petition seeking for a similar direction of grant of three advance increments since he has acquired the degree of LL.M prior to his appointment.

4. The respondent State has appeared and filed counter affidavit wherein at paragraph 9 the claim of the writ petitioner has been negated holding him not entitled to be granted the benefit of three advance increments, as, in terms of the recommendations of the Commission, the same is admissible only to the appointees of Civil Judge (Junior Division).

5. In response thereto, the learned counsel appearing for the writ petitioner, by referring to the circular issued by the State of Jharkhand through Personnel, Administrative Reforms and Rajbhasha Department dated 24.05.2016 wherein policy decision has been made to grant three advance increments to such judicial officers who are having the LL.M degree at the time of their selection as Civil Judge (Junior Division), has submitted that the said circular is absolutely illegal and discriminatory because if such benefit is being extended in favour of Civil Judge (Junior Division) having LL.M. degree at the time of selection, the same ought to have been granted in favour of the officers who are coming in the Superior Judicial Service.

6. Learned State counsel has seriously objected to such submission by taking the point that if the writ petitioner is at all aggrieved with the Government circular dated 24.05.2016, he ought to have questioned the same by challenging it but having not done so, he cannot be allowed to take advantage

of grant of three advance increments contrary to the Government circular.

7. We have heard the learned counsel for the parties and perused the documents available on record.

8. This Court, before considering the merit of the issue, deems it fit and proper to refer certain undisputed facts i.e. -

A Commission was set up for recommending uniform pattern of eligibility conditions and pay structure throughout the country in the Judicial Services, known as “Shetty Commission” (hereinafter referred to the Commission). The Commission has 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 Volume-II of the fact that except Delhi and Rajasthan, in none of the States, additional benefit to the selected candidates possessing higher qualification was admissible, which prompted the Commission to make following recommendation as under paras 8.48 of the Report (Volume-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.”

The recommendation of the Commission was considered and accepted by the Hon'ble Apex Court in ***All India Judges' Association and Others v. Union of India and Others*** (Supra). The Hon'ble Apex Court issued several directions for the improvement of service conditions including reasonable hike in the pay scales of the judicial officers. The recommendation made by the First National Judicial Pay Commission, apart from other conditions, is for grant of three advance increments to judicial officers having Post Graduate degree in Law, which has also been accepted by the Hon'ble Apex Court.

The department of Personnel, Administrative Reforms and Rajbhasha Department, Government of Jharkhand vide Resolution No.13/variya vividh-03/2010 Ka.4328 Ranchi dated 24.05.2016 has published a resolution bringing on record the report of the Commission whereby and whereunder certain criteria for the grant of three additional increments who have obtained LLM degree have been stipulated.

9. Thus, it is evident from the recommendation of the Shetty Commission as under paragraph 8.48 of the report which stipulates that if selected candidates are having a higher qualification like post-graduation in law, the recommendation for three advance increments to be given as it is allowed by the Delhi Administration, the reason being

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

10. In the present case, the writ petitioner claims to have been appointed in the judicial service on 15.12.2001 and after rendering service fairly for a period of 20 years, now he has superannuated from service. He is seeking the benefit of Shetty Commission for grant of three advance increments but the writ petitioner cannot be held to be entitled for the reason that admittedly, the writ petitioner was appointed on 15.12.2001 and he acquired the LL.M degree in the year 1997. The Shetty Commission has submitted its report, which was accepted in entirety by the Hon'ble Apex Court in ***All India Judges' Association and Others v. Union of India and Others*** (Supra).

11. The State of Jharkhand has come out with a circular on 24.05.2016 extending the said benefit in pursuance to the order passed by the Hon'ble Apex Court in W.P.(C) No. 1022 of 1989 dated 21.03.2002 to grant three advance increments to such judicial officers who are having LL.M degree at the time of selection as Civil Judge (Junior Division).

Thus, it is evident that the aforesaid circular only stipulates to grant the benefit of three advance increments to such candidates who are having the LL.M degree at the time of their appointment as Civil Judge (Junior Division).

12. The contention of the writ petitioner that merely

granting three advance increments only to the Civil Judge (Junior Division), if having LL.M degree at the time of selection, is highly discriminatory by not granting such benefit to the officers who are being appointed to the Superior Judicial Service. But, as of now, as per the circular upon which the claim of the writ petitioner is solely based, only speaks about granting benefit of three advance increments to such judicial officers who are having LL.M degree at the time of their selection as Civil Judge (Junior Division) having no reference to grant such benefit even to the officers who are being appointed or have been appointed in the Superior Judicial Service.

13. Admittedly, the writ petitioner has not questioned the circular on the ground of discrimination and in absence thereof, the writ court sitting under Article 226 of the Constitution of India, cannot grant such benefit to the writ petitioner contrary to the aforesaid circular.

14. In view thereof and as per the discussion made hereinabove, we find no reason to extend such benefit to the writ petitioner.

15. Accordingly, the writ petition fails and is dismissed.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)