

*Before Surya Kant, J.*

**PRIYA SOOD,—Appellant**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents**

**CWP No. 6954 of 2009**

24th January, 2011

*Constitution of India, 1950—Art. 226—Punjab Civil Services Rules, Volume I—Rls. 4.7, 4.9A and 4.10—Government on recommendation of Shetty Commission granting 3 advance increments to Civil Judges (JD) possessing higher qualifications and adjusting against their future annual increments—Whether entitled to be granted 3 annual increments over and above annual increments admissible to all employees under rules—Held, yes—Expression “advance” does not mean that three increments granted to 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—Petition allowed.*

*Held*, that Rules 4.7, 4.9A and 4.10 of the Punjab Civil Services Rules, Volume I, crystallize that the ‘annual increment’ is a part of the conditions of service and shall ordinarily be admissible to an employee unless withheld for want of good conduct or satisfactory work. The annual increment does not depend nor draws any distinction amongst the employees possessing minimum or higher qualifications. Similarly, the Competent Authority, notwithstanding the admissibility of annual grade increment, may grant advance, enhanced or pre-mature increment(s) to an employee which can be over and above the annual increment(s).

(Para 6)

*Further held*, that the expression “advance” as mentioned in paragraph 8.48 of the recommendations made by Justice Shetty Commission 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 withheld under Rule 4.7 of the C.S.R.

(Para 8)

Anil Shukla, Advocate, *for the petitioner.*

Manoj Bajaj, Addl. AG, Punjab, *for respondent Nos. 1 & 2.*

Karminder Singh, Advocate, *for respondent No. 3.*

**SURYA KANT, J. (ORAL)**

(1) The petitioner is a member of the Punjab Civil Services (Judicial Branch) and is presently serving as Chief Judicial Magistrate in the State of Punjab. She is aggrieved by the order dated 13th November, 2007 (Annexure P-3) to the extent it restricts the grant of three increments “not additional or special but only as “advance” increments.

(2) In order to appreciate the issue involved, it may be mentioned here that the First National Judicial Pay Commission headed by Hon’ble Mr. Justice K. Jagannatha Shetty, a former Judge of the Supreme Court (popularly known as the ‘Shetty Pay Commission’) took notice of the anomalous situation prevailing in various States except Delhi and Rajasthan where “no additional benefit to a candidate selected for Civil Judge (Junior Division) possessing higher qualifications” was being granted. The Commission accordingly recommended 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 approximately 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.” (emphasis applied)

(3) These recommendations have been purportedly implemented by the State of Punjab also by granting three advance increments to the candidates who were appointed as Civil Judges (Junior Division) with higher qualifications like L.L.M. The petitioner who possesses the L.L.M. Post

Graduate Degree has also been granted these three increments but with a restriction imposed,—*vide* the impugned order dated 13th November, 2007 (Annexure P-3) to treat them as “advance” increments only and not as “additional” or “special” increments.

(4) The ‘advance’ increments have been understood by the respondents to mean that the officers like the petitioner possessing higher qualifications, are entitled to three increments at the time of their appointment but the same shall be ‘adjusted’ against their future annual increments. In other words, the officers with higher qualifications shall revert back after a period of three years at par with those who do not possess the higher qualification(s). The petitioner, on the other hand, contends that she is entitled to be granted three annual increments over and above the annual increments which are admissible as a part of the conditions of her service.

(5) There is indeed no dispute that the conditions of service of the petitioner in the matter of pay fixation or grant of advance/pre-mature increments are regulated by Rules 4.7, 4.9A and 4.10 of the Punjab Civil Services Rules, Volume-I, which read as follows :—

“4.7 An increment shall ordinarily be drawn as a matter of course, unless it is withheld. An increment may be withheld from a Government employee by a competent authority if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments.

Note :—In the case of an officer/official who does not fulfill the basic condition laid down in the respective Service Rules regarding the minimum number of years of service, in the lower rank and who is promoted to a higher post by involving an alternative provision in the relevant rules specifying the extent of relaxation of the basic condition, referred to above, the initial pay in his case would be the minimum of the post to which he is promoted/appointed till he fulfills the condition of completing the basic minimum period of service prescribed and the first annual increment will be granted after one year of the date of the completion of the minimum length of qualifying service/experience, necessary for appointment to the service, cadre or

the post. In other words, for the purpose of 1st increment his appointment shall be deemed to have started on the date on which he completes the minimum qualifying service/experience, as is necessary for appointment to the service, cadre or the post concerned. This restriction will however, not apply in cases where the officer/official was drawing pay more than the minimum of the higher post. In such cases pay shall be fixed in accordance with the provisions of rule 4.4 of these rules. The first annual increment in such a case also will, however, be granted after one year of the date of completion of the minimum length of qualifying service/experience.”

4.9-A. Notwithstanding anything contained in the foregoing rule, the annual increments shall be allowed with effect from the first day of the month in which they fall due under the normal rules regulating increments.

Note 1 :—The increment of an employee on leave due on the first day of the month will be drawn from the date of resuming his duty on return from leave, because during leave the employee gets leave salary only.

Note 2 :—In cases in which there is postponement due to employees proceeding on leave without pay which is not counted for increment, normal increment will be granted from the first day of the month in which the postponed increment, as worked-out under the existing rules and orders, falls.

Note 3 :—In case where the date of appointment of an employee is 19th December, 1975, he will be given increment on 1st December, 1976 before completing 12 months service. Similarly, when he is promoted to a higher grade on 19th December, 1976, he will get increment on 1st December, 1977 before completing 12 months service in officiating grade.

Note 4 :— XX      XX      XX

Note 5 :—Where the normal increment is withheld for specific period and the period of such penalty expires after first day of the month, increment will be granted or restored from the date of the penalty ceases.

Note 6 :—This rule is not applicable to advance or enhanced increments which are allowed as a result of passing of certain examinations. Such increments, if possible, will be governed by separate rules and orders.

4.10. Subject to any general or special orders that may be made by the competent authority in this behalf, an authority may grant a premature increment.

Note 1 :— XX XX XX XX

Note 2 :— XX XX XX XX

Note 3 :— XX XX XX XX

Note 4 :—In the case of increments granted in advance, it is usually the intention that the Government employee should be entitled to increments in the same manner, as if he had reached his position in the scale in the ordinary course and in the absence of special orders to the contrary he should be placed on exactly the same footing as regards future increments, as a Government employee, who has so risen .....” (emphasis applied)

(6) The above reproduced Rules crystallize that the ‘annual increment’ is a part of the conditions of service and shall ordinarily be admissible to an employee unless withheld for want of good conduct or satisfactory work. The annual increment does not depend nor draws any distinction amongst the employees possessing minimum or higher qualifications. Similarly, the Competent Authority, notwithstanding the admissibility of annual grade increment, may grant advance, enhanced or pre-mature increment(s) to an employee which can be over and above the annual increment(s).

(7) The recommendations made by Justice Shetty Commission explicitly advocate incentive for the highly qualified candidates to attract them to join the judicial services. The object that the officers possessing higher qualification should get “additional benefit” is discernible from para 8.46 of the recommendations made by the Commission to the following effect :—

“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 (Junior Division) 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.” (emphasis applied)

(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.

(10) The Commission, under no circumstance, can be said to have recommended for a short term gain only by construing the word ‘advance’ as ‘pre-mature’, for such a restrictive meaning would lead to discriminatory results and would unwittingly bring equality amongst un-equals.

(11) For the reasons afore-stated, the writ petition is allowed ; the impugned communication/order dated 13th November, 2007 (Annexure P-3) to the extent it refuses to grant three annual increments as additional increments to petitioner is hereby quashed and the respondents are directed to grant three annual increments in lieu of the higher qualifications to the petitioner and other similarly placed officers over and above the annual increments admissible to them as a part of the conditions of their service under the Punjab Civil Services Rules. The needful shall be done within a period of *three months* from the date of receipt of certified copy of this order.

(12) *Dasti.*