

All India Judges Association And Ors vs Union Of India And Ors on 21 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1752, 2002 (4) SCC 247, 2002 AIR SCW 1706, 2002 LAB. I. C. 1473, 2002 (5) SRJ 246, (2002) 3 CGLJ 361, (2002) 2 JCR 248 (SC), (2002) 3 JT 503 (SC), 2002 (3) JT 503, 2002 (3) SLT 4, 2002 (2) UPLBEC 1246, 2002 (2) SERVLJ 480 SC, 2002 (3) SCALE 291, 2002 (2) BLJR 1144, 2002 BLJR 2 1144, (2003) ILR (KANT) (1) 321, (2002) 2 PAT LJR 210, (2002) 2 SCJ 598, (2002) 22 OCR 652, (2002) 3 GUJ LR 2017, (2002) 93 FACLR 628, (2002) 3 KANT LJ 26, (2002) 2 LAB LN 781, (2002) 2 SCT 735, (2002) 3 SERVLR 271, (2002) 2 UPLBEC 1246, (2002) 3 ANDHLD 39, (2002) 3 SUPREME 180, (2002) 3 SCALE 291, (2002) 3 ESC 25, (2002) 47 ALL LR 395, (2002) 4 ANDH LT 41, (2002) 2 ALL WC 1422, (2002) 2 BLJ 586, (2002) 2 CURLR 612, 2002 SCC (L&S) 508, (2002) 5 BOM CR 242

Bench: B.N. Kirpal, V.N. Khare

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. PATTANAIK & 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 All 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.

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."

(O 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) Para52(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 21 st 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 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.

(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 there of 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 st 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 Territotries 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.

(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.12850-300-13150-350-15950-400-17550 Rs. 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 effect 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 State, 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 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)

Rs. 18400-500-22400

(20% of the posts of District Judges)

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 10650-325-15850	-Rs.
(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 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 31 st 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 moted 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, ne 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.