

Second National Judicial Pay Commission: A journey in retrospect

- By Dr. Ajay Nathani

Introduction

All India Judges Association is an association of Judges of District Judiciary where every Judge of District Judiciary in any State or Union territory of India becomes its member since his date of appointment. The history of All India Judges Association is placed on the website of the Association and the readers interested to know this checkered history may log in www.allindiajudges.in. The Association in 1989 filed W.P.1022 of 1989 in Supreme Court and a historic judgement was pronounced by the Hon'ble Supreme Court on 13.11.1991 underlining the need for separate conditions for the judges of District Judiciary, their Lordships to underline their decision referred to Statement of Professor Pannick in his book "Judge", where he observed,

" Judges do not have an easy job, they repeatedly do what the rest of us seek to avoid; make decisions."

and

" Judges are mere mortals they are asked to perform a function that is utterly divine."

The phrases aptly determine importance, requirement, and the unique place of the judges in society and highlight the quality, standard and integrity the judges must maintain. The decision of honourable Supreme Court was also woven around the above phrases where they said the function of judiciary cannot be equated with any other branch of governance and therefore their pay and service conditions shall also be unique.

In view of the observations of Hon'ble Supreme Court, the 1st National Judicial Pay Commission (FNJPC) was set up in the aftermath of 5th Central Pay

Commission (CPC). FNJPC made revolutionary changes in the set up of District Judiciary, FNJPC linked the salary of judges of District Judiciary and the salary of Hon'ble judges of High Court and set up a formula to revise the pay of Judges of District Judiciary on revision of salary of Hon'ble High Court Judges.

In view of the report of 6th CPC in or around 2007 the salary of Hon'ble High Court Judges was increased multifold. The All India Judges Association by an interim application sought relief for enhancement of salary of the judges of the District Judiciary. Hon'ble Supreme Court Constituted one man committee Chaired by Hon'ble Justice Padmanabhan to consider revision of pay and allowances of the Judges of District Judiciary. All India Judges Association raised several issues before the Hon'ble Justice Padmanabhan Committee and assisted the committee to revise the pay structure in terms of the formula given by FNJPC. All India Judges Association urged the committee to consider the new method of Pay revision adopted by 6th CPC and provide grade pay as provided to executives and employees of Central Government. The Committee however insisted that, it must revise the pay as per formula of FNJPC and the same pay structure as derived by FNJPC will continue. Because of the stand taken by the committee the judges were not able to get the grade pay which was made available to the employees of central government and subsequently to the state government employees in view of the recommendations of 6th central Pay Commission and which was in addition to basic pay. The pay structure derived by Hon'ble Justice Padmanabhan Committee has taken time to be implemented and the implementation was completed by 2012.

Prequel to Second National Judicial Pay Commission

After 2012 most of the members of All India Judges Association, who have gained activeness for getting revision of pay structure and allowances were no more visible in meetings. Very few of us were left and prominent amongst them

was Mr. Randheer Singh, District Judge of Uttar Pradesh, who is now President of Uttar Pradesh Judges Association.

Justice Padmanabhan Committee report in its part VIII and IX placed two lists on record. The first list in part VIII has fifty-six points, which as per the committee require consideration either by the Hon'ble Supreme Court or by a separate judicial pay commission. The list in part IX has twelve points, which as per commission did not cost the exchequer. The committee did not include any of the points in recommendations because of its limited jurisdiction.

The prominent issues in these lists are pertaining to seniority, relaxation in criteria for determining conferment of ACP, selection grade and super time scale, inclusion of and streamlining of various allowances such as furnishing allowances, risk allowances, additional increment for higher qualification, restoration of commuted pension after 10/12 years, raising the age of retirement, and promotion of members of Cadre of civil judge to the post of district Judge, increasing security for judges of district judiciary and allowing voluntary retirement after 15 years. These observations of Justice Padmanabhan Committee and the anomalies created by recommendations of FNJPC and the manner in which they have been considered by the Hon'ble Supreme Court in 2002 judgement were the subject of discussion amongst the executives of All India Judges Association, and the Executives reached to the conclusion that these issues cannot be answered by filing interim application in WP no. 1022/1989 and it is necessary to request Hon'ble Supreme Court to issue instructions to constitute pay commission to look into the grievances of members of District Judiciary.

Preparation and filing of Writ Petition 643/2015

Prominent Senior Counsel learned Fali S. Nariman was appointed as an amicus in Writ Petition 1022/1989. Learned Adv. Sampath to assist him. The All India Judges Association is indebted to them for their submissions before the

Hon'ble Supreme Court and in getting favorable orders which improved the pay scale of members of district judiciary, bestowed on them various allowances like medical allowance, sumptuary allowance which were not earlier available. W.P.1022/1989 was in respect of the constitution and recommendations of FNJPC and the learned amicus provided their valuable services to the hon'ble Supreme Court on its request limited to that purpose. It was, therefore, necessary to search for an advocate who can draft and tender writ petition before the Hon'ble Supreme Court. Mr. V. P. Singh, the then District Judge in Uttar Pradesh district judiciary, had taken us to Adv. Ms. Mayuri Raghuwanshi, whose father was also a former Judge of District Judiciary Uttarakhand. She was therefore aware of the problems which are required to be faced by the members of district judiciary and his/her family members. She gave consent to appear for All India Judges Association. Preparations of Writ began with taking on the table all the previous submissions of All India Judges Association before various forums, various representations received from different State Associations, report of FNJPC and report of Justice Padmanabhan Committee. After deliberations of several deliberations, the Writ Petition was finally prepared. Before filing of Writ, it was necessary to tender a representation to the Union of India. A lengthy representation was prepared and tendered to the Department of Justice, Union of India on 13.05.2015 and then the Writ Petition was filed in the Supreme Court. The main relief claimed in the said Petition is as under:

To issue a writ of mandamus or such other writ/order/direction as may be necessary directing the Respondents to constitute all India Judicial Commission in terms of the representation made by the petitioner to respondent no. 1 on 13/05/2015 to revise the service conditions of the judicial officers of subordinate judiciary including but not Limited to pay scale, retirement age, pension and other emoluments of the sub-ordinate Judiciary from time to time

. Since then, Adv. Mayuri Raghuwanshi and her office is relentlessly working for All India Judges association and is instrumental in filing several interim applications, making submissions, tendering charts and instrumental in briefing senior counsel before every hearing of the petition. She is providing her services pro-bono, and All India Judges Association hardly pays her for the expenses incurred.

Second National Judicial Pay Commission constituted.

After institution of Writ All India Judges Association was required to be represented by some Senior Counsel. Considering the financial status of the Association, it was not possible to get the service of Senior Counsel by paying charges. In this demanding situation Senior Counsel Shri Gourab Banerji graduate of Cambridge University and former Additional Solicitor General of India agreed to appear for All India Judges Association pro-bono. Since then, on every occasion, he appeared and argued for All India Judges Association and before every argument he is giving enough time to have conference with advocate on record and members of executive committee of All India Judges Association. The time given by him values in crores of Rs. in terms of finances. All India Judges Association and all its member remain thankful to him.

On 9th May, 2017 the bench of Hon'ble Justice Chelameshwar and Hon'ble Justice Abdul Nazeer passed an order to constitute 2nd National Judicial Pay Commission. The terms of reference of the commission were submitted by the All India Judges Association to the Hon'ble Supreme Court. The terms of reference submitted evolved from the terms of reference of FNJPC to widen the scope of the Commission. Besides this, the term of reference also includes the terms to resolve the anomalies created because of recommendations of FNJPC or the orders passed after that. A term was also introduced for setting up a permanent body to resolve the issue of pay and allowances arising in future so that every time it is not required to rush to the Hon'ble Supreme Court to get an order for

appointment of a commission to review the pay structure. Hon'ble Supreme Court accepted all the terms of references submitted by the All India Judges Association and SNJPC was constituted to collect data and recommendations in respect of terms of references.

Structure of Second national judicial Pay Commission

As per directions of Hon'ble Supreme Court SNJPC was constituted. It was decided to be headed by Hon'ble justice P. V. Reddi, former Judge of the Supreme Court of India. Hon'ble Justice Basant, former Judge of High Court of Kerala was appointed as a member of Commission and Shri Vinay Kumar Gupta, District Judge from Delhi judiciary was appointed as Secretary. Hon'ble Justice Reddi was unable to get accommodation from the Government of Delhi. Despite that he continued to work as Chairperson of Commission. Shri Vinay Kumar Gupta soon became acquainted with all the Executives of All India Judges Association and was helpful in inclusion of all the submissions coming from All India Judges Association or other Associations. He is so humble that he uses to take all the phone calls from the judges of District Judiciary though it must have been painful to give a patient hearing to thousands of Judges.

Consultation by SNJPC

In 2018 SNJPC issued a consultation paper for collection of information and data. The consultation paper was circulated to all the State Associations and the detailed voluminous reply was prepared by All India Judges Association and was tendered to the Commission. The Commission then decided to get firsthand information from the Judges by visiting different States. The commission held meetings with the office bearers All India Judges Association and State Associations and individual judges at Mumbai, Srinagar, Hyderabad, and Guwahati. Executives of All India Judges Association pitched in for help wherever and whenever required for holding these meetings. Final meeting was

held at Vigyan Bhavan Delhi and all the executives All India Judges Association, retired judges association, representative of various State association and some individuals participated the meeting and there was a lengthy discussion on various issues like fixation of pay, enhancement of allowances, introduction of new allowances, restoration of old pension scheme to the Judges employed after 2004, improvement in service condition, evolving methods of early promotions, evolving formula for maintaining seniority list etc.

Because of frequent deliberations Hon'ble Justice Reddi and Hon'ble Justice Basant soon became familiar with grievances of District Judiciary, and it became easy to communicate with them. Hon'ble Justice Reddi is a man of golden heart and apart from the above said meetings I was able to visit him on several occasions to convince him regarding the problems of district Judiciary and to request him for implementable solutions which will stand beneficial for the years to come.

Submission of the report

The Commission tendered interim report of the Commission recommending interim enhancement of basic pay by 30%. Honourable Supreme Court by order dated 27th of March 2018 directed the State governments and Union Territories to implement the said interim recommendations. As the enhancement of basic pay by interim recommendation was not to carry addition of dearness allowance soon the said interim relief was found inadequate and a stage has come when some of the staff members of district judiciary whose pay was revised in view of the recommendation of 7th Pay Central Commission were getting more salary than the judges of district judiciary. The SNJPC submitted its initial report in four volumes in January 2020. Subsequent parts of the report regarding service conditions and permanent mechanism were submitted subsequently, Volume I-A of the report is in respect of the views and suggestions placed before the SNJPC. Summary of the submission of All India Judges

Association is in several pages of volume 1-A. Every Judge of District Judiciary shall read volume 1-A to know the efforts taken by the Associations and by various individual Judges for getting a collective relief for all of us.

Getting recommendations approved from the Hon'ble Supreme Court

The recommendations were placed before the Hon'ble Supreme Court in January 2020. Soon after that the country has to go through the covid pandemic. I too suffered from the covid and was in hospital from May 2020 to August 2020. I am alive because of the good wishes of all Judges from east to west and north to south of India. After the lockdown, the Supreme Court started functioning by allowing distant hearing. Hon'ble Justice Bobade the then Chief Justice of India passed order on 28th Feb. 2020 declaring that recommendations of SNJPC are required to be considered for implementation by ignoring objections of the various State Governments which found that pay and allowances recommended for the member of Judiciary are higher as compared the pay and allowances of the members of the member of the executive services. Hon'ble Justice also made it clear that there is no reason to direct the central government to share the financial burden to pay the revised salary and allowances of the Judges of District Judiciary and the burden is to be borne by State Government alone.

Ripping fruits of recommendations

Hon'ble Justice Narsimha, Judge Supreme court of India, before his elevation was appointed as amicus in this matter by order dated 28th February 2020. Shri K. Parmeshwar learned advocate was to assist him. We have a cherished memory of having a conference with Hon'ble Justice Narsimha. After elevation of his lordship learned counsel shri. K. Parmeshwar Adv. became instrumental in making submissions before Hon'ble Supreme court regarding the essentialities to implement recommendations of SNJPC. His effective presentation has helped the Hon'ble Court to make apt decision regarding

implementation. Hon'ble Justice Chandrachud the then Chief Justice of Supreme Court of India finally heard and approved the recommendations in respect of pay and allowances. The most prominent observation by Hon'ble Justice was to constitute a committee for service conditions of District Judiciary and adding various inputs in the recommendations to frame a medical scheme for the member of district judiciary where every judge of district judiciary, his/her dependents and retired judge and his/her dependents will be able to avail cashless medical facilities at the best of the medical Centers in India. This will bring solace to the stressful life of a judge assuring him that in case of medical emergency he does not have to take stress of making finance available.

Journey continues.

Several issues and several recommendations are yet to be considered. A major recommendation awaiting approval is the restoration of the old pension scheme. The FNJPC recommended that the judicial service is a pensionable service, but the pension umbrella has been taken away from the judges recruited since 2005. The pursuance of All India judges and the other State Associations succeeded to have recommendation of second pay commission to restore old pension scheme of judges of district judiciary. Hon'ble Justice Bhushan Gavai, now the honorable chief justice Supreme Court of India had already heard this issue by giving entire two days to the stakeholders. We are hopeful that the further hearing will soon be initiated.

Conclusion

The purpose of this write up is to emphasis the extraneous efforts put in by all the executives of All India Judges Association and executives of other Associations to get revision of salary and allowances for judges of district judiciary and to get better services conditions. Whatever is said above is the summarized version and after reading it one can visualize what a gigantic task it

was to keep things moving in the right direction since the inception of journey till destination. The time moves on; the All India Judges Association is thankful to all its office bearers who were part of the journey and who continue to be part of the journey. The institution continues. The judges who want to work for the welfare of district judiciary by contributing their time and money may take some inspiration from the write up and keep the glorious journey of the All India Judges Association in progress.