

CASE NO.:
Writ Petition (civil) 1022 of 1989

PETITIONER:
ANIL KUMAR VITTHAL SHETE & ORS.

RESPONDENT:
STATE OF MAHARASHTRA & ANR.

DATE OF JUDGMENT: 28/04/2006

BENCH:
CJI Y.K. SABHARWAL, C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T
INTERLOCUTORY APPLICATION NO.126
IN
WRIT PETITION (CIVIL) NO. 1022 OF 1989
WITH

I.A.NOs.172, 181, 143, 141 & \005 IN W.P.(C) NO. 1022
OF 1989, I.A.NO.2 IN W.P.(C) NO. 258 OF 2003
AND
WRIT PETITION (CIVIL) NO. 173 OF 2004

C.K. THAKKER, J.

Interlocutory Application No. 126 of 2003 is filed in Writ Petition (Civil) No. 1022 of 1989 by the Judges of the Small Causes Court, Bombay for declaration that the action of the Shetty Commission of referring the case of the petitioners to the High Court of Bombay is illegal and improper; to call for records and proceedings of the Full Court of the High Court of Bombay and to set aside the decision taken by the Full Court by directing the High Court to place the petitioners in the same cadre in which Additional Chief Judges of the Court of Small Causes have been proposed to be placed by the Shetty Commission in Category 1.

It is the case of the petitioners that they belong to a cadre of Judges of Small Causes Court, Bombay which is an independent, separate and distinct cadre filled up by promotion from Civil Judges (Senior Division) and also by direct recruitment. Their cases were considered by the Administrative Side of the High Court of Bombay and a decision was taken by the Full Court to place them in Category 2 of the judicial hierarchy in the State of Maharashtra. The three categories created in the State of Maharashtra are as under:

Category 1 : District Judges, Joint District Judges, City Civil Court Judges

(iA) : Chief Judge, Small Causes Courts;

(ii) : Additional District Judges, Additional Chief Judges, Small Causes Courts

Category 2 : Senior Civil Judges

- (i) Chief Metropolitan Magistrates;
- (ii) Additional Chief Metropolitan Magistrates;
- (iii) Metropolitan Magistrates and Judges of Small Causes Courts;
- (iv) Civil Judges (Senior Division)

Category 3 : Civil Judges (Junior Division)

The grievance of the petitioners is that, though they were holding higher post and forming higher cadre than Civil Judges (Senior Division) and were promoted from the post of Civil Judges (Senior Division) to the post of Judges, Small Causes Court, they have been illegally put on par with Civil Judges (Senior Division) virtually reverting to the position of Civil Judges (Senior Division) from which cadre they were promoted to the higher cadre.

It is the case of the petitioners that in All India Judges Association v. Union of India (1992) 1 SCC 119, this Court had issued certain directions in regard to the working conditions of Judicial Officers and benefits to be extended to the members of subordinate judiciary. After considering reports submitted by the Law Commission and the relevant provisions of the Constitution, the following directions were issued by this Court;

(i) An All 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 designation 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.

The directions were thus essentially for the evolvement of appropriate national policy by the Government in regard to service conditions of Judicial Officers. On March 21, 1996, pursuant to the above directions issued by this Court, the Government of India constituted First National Judicial Pay Commission under the Chairmanship of Mr. Justice K.J. Shetty (known as 'Shetty Commission'). One of the tasks of the Commission was to restructure judicial cadres and amalgamation of multiple cadres into three uniform cadres. So far as the cadre of Judges of Small Causes Courts is concerned, after taking into consideration the grievance of the Judges of Small Causes Courts in Maharashtra and Gujarat, the Commission observed: "It seems to us that question of equation of Small Causes Court Judges must be left to the decision of each High Court since there is no uniformity in their cadres. In some States, Civil Judge (Junior Division) are empowered to exercise Small Causes Court jurisdiction and that too on varied terms. In Metropolitan Cities, Civil Judges (Senior Division) are having such jurisdiction. It is not desirable to bring about uniformity in their cadres in all States. We, therefore, leave the matter to be examined and decided by the High Court of each State/Union Territory". (Emphasis supplied)

Regarding Chief Judge as well as Additional Chief Judge of Small Causes Courts, however, having regard to their supervisory powers and jurisdiction, the Commission recommended that they should be included in the cadre of District Judges in all States/Union Territories.

In pursuance of the above observations and recommendations, the Full Court of the High Court of Bombay on its Administrative Side considered the case of the petitioners and a decision was taken to club the petitioners in Category 2 above Civil Judges (Senior Division). The grievance of the petitioners is that the placement of the petitioners in Category 2 along with Civil Judges (Senior Division) is illegal, erroneous, amounting to demotion/reversion/reduction in rank and the said order, therefore, deserves to be quashed and set aside by placing the petitioners in Category 1 along with Additional Chief Judges, Small Causes Court.

According to the petitioners, a writ petition pertaining to the working conditions of the subordinate judiciary throughout the country was filed in this Court under Article 32 of the Constitution and in All India Judges Association v. Union of India, (2002) 4 SCC 247, certain directions were issued by this Court. It was the third round of litigation before this Court. A three Judge Bench headed by Hon'ble the Chief Justice B.N. Kirpal disposed of the petition. In Para 40, the Bench expressly stated;

"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."

In view of the above observations, the petitioners are constrained to approach this Court for the reliefs prayed in the Interim Application.

On May 5, 2003, notice was issued by this Court to the High Court of Bombay and was made returnable after summer vacation. The Court also requested Mr. F.S. Nariman, Senior Advocate to appear and assist the Court as amicus curiae. On September 20, 2004, the Court noted that Writ Petition (Civil) No. 258 of 2003 raising a similar issue also awaited hearing by the Court. A direction was, therefore, issued to the Registry to place for hearing the present Interim Application 126 of 2003, Writ Petition (Civil) 258 of 2003 as also Writ Petition (civil) 173 of 2004 and Interim Application 143 of 2003 together. The matters were thereafter heard from time to time.

We have heard the learned counsel for the parties. Mr. Nariman, learned senior advocate, amicus curiae, submitted that the question of equation of Judges of Small Causes Court, Bombay was left by the Shetty Commission to the High Court since there was no uniformity in the cadre. According to the Shetty Commission, it was not 'desirable' to bring about uniformity in the cadre of Judges of Small Causes Court. It was, therefore, left to be examined and decided by the High Court in each State. With regard to Chief Judge and Additional Chief Judge, however, the Shetty Commission considering their supervisory powers and jurisdiction, recommended to be included Category 1 of District Judges. According to Mr. Nariman, the Administrative Side of the High Court of Bombay considered the question and it was decided to place the Judges of the Small Causes Court in Category 2 of Civil Judges (Senior Division) which has seriously prejudiced the petitioners in their pay scales as well as status. Though the petitioners were promoted from the post of Civil Judges (Senior Division) as Judges of Small Causes Court, by the impugned decision, they were again reverted to the feeder cadre of Civil Judges (Senior Division). It was submitted that considering the functions to be performed, powers to be exercised and duties to be discharged by the Judges of the Small Causes Court, proper placement would be in Category 1 along with Additional Chief Judges, Small Causes Court and not in Category 2 with Civil Judges (Senior Division). It was also submitted that since they were placed in Category 2 of Civil Judges (Senior Division), their chances of further promotion have been adversely affected. It was, therefore, prayed that the impugned decision taken by the Full Court of the High Court of Bombay on its Administrative Side be set aside by placing the petitioners in Category 1 and by treating them equally with the Additional Chief Judges, Small Causes Court, Bombay.

Writ Petition (Civil) No. 173 of 2004 is filed by Judges of the Small Causes Court, Ahmedabad (Gujarat) making a similar grievance of their placement with Civil Judges (Senior Division). They have also prayed for

quashing and setting aside the notification dated October 10, 2003 issued by the State of Gujarat to the extent that it denied the status and service benefits of the Judges of Small Causes Court by equating them with Civil Judges (Senior Division) being illegal and unlawful. According to them, they should have been placed along with the Judges shown in Category 1. They have also raised almost similar contentions which have been raised by the Judges of the Small Causes Court, Bombay.

Affidavits-in-reply have been filed on behalf of the High Court of Bombay as also High Court of Gujarat. It was submitted that considering the status of Judges of Small Causes Court in Maharashtra and in Gujarat, the Shetty Commission rightly observed that it was a special cadre and could not be compared with the cadre of District Judges/Additional District Judges or Civil Judges (Senior Division) or Civil Judges (Junior Division). The Commission, therefore, rightly left the matter to be taken up by the respective High Courts of each State. The High Courts of Bombay and Gujarat, pursuant to the above observations, considered the cases of Judges of Small Causes Court and their placement and after taking into account the relevant provisions of law, the powers to be exercised and duties to be discharged by them and affording opportunities to them resolved that they could not be placed in Category 1 along with District Judges/Additional District Judges but could be placed in Category 2. The Judges of the Small Causes Courts in both the States i.e. State of Maharashtra as well as State of Gujarat were, therefore, placed in Category 2 along with Civil Judges (Senior Division) but above them. The decisions taken by the High Court on their Administrative Side and consequential action, such as issuance of notification by the State of Gujarat, cannot be said to be contrary to law or otherwise objectionable. The applications as well as writ petition, therefore, deserve to be dismissed.

We have been taken through the relevant provisions of law as also the report of the Shetty Commission and the decisions of this Court. It was submitted on behalf of the petitioners that Judges of Small Causes Courts are holding 'key posts'. According to them, the Presidency Small Causes Courts Act, 1882 (Act XV of 1882) came into force with effect from 1st July, 1882. The object of the Act was to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency towns. In the beginning, it was applicable to the Presidency Town of Bombay but after the creation of the State of Gujarat, it was also applied to the City of Ahmedabad with effect from November 4, 1961. It was submitted that Small Causes Courts had a special history. There was initially only one Supreme Court at Calcutta established under the Act of 1753 (Regulating Act of 1753). The decisions of the Supreme Court could be challenged only before the Privy Council. At that time, Presidency Towns of Bombay and Madras had only 'Recorder's Courts'. The Small Causes Courts worked in the form of 'Courts of Requests'. In or around 1850, the 'Courts of Requests' were replaced by Courts of Small Causes. Jurisdiction of Supreme Court was conferred on the Court of Small Causes in the Presidency Towns. They were 'Courts of Record' having power to punish for contempt. Later on, a need was felt to bring Small Causes Courts in conformity with the

legal system prevailing in India and that is how the Presidency Small Causes Courts Act, 1882 came to be enacted.

Our attention in this connection was also invited to M.P. Jain's "Outlines of Indian Legal History", (5th Edition) in which it has been observed that the Courts of Requests were facing difficulties in practical working. Pecuniary limits of their jurisdiction had created problems. Moreover, cases outside the jurisdiction of Courts of Requests had to go to Supreme Courts where the proceedings were very expensive and dilatory and amounted to denial of justice. There was thus great need and necessity for alternative mechanism to dispense cheap and speedy justice in comparatively small matters. Accordingly, an Act was passed in 1850 by the Indian Legislature abolishing Courts of Requests and establishing Courts of Small Causes in their place. They were to follow practice and procedure subject to the approval of the respective Supreme Court. A Judge of the Supreme Court was to act as a Judge of Small Causes Court. The jurisdiction of the Supreme Court was concurrent with the Court of Small Causes in the Presidency Towns. By the Presidency Towns Small Causes Courts Act, 1864, the jurisdiction of Presidency Small Causes Courts was extended. The Presidency Small Causes Courts were "in the immediate vicinity of the High Courts, and are practically much influenced by that vicinity, that they are attended by a fairly competent class of advocates and that they are carefully watched both by press and public."

The learned author then stated;
"In each of the towns of Calcutta, Madras and Bombay there is Court of Small Causes which is subject to the superintendence of, and is subordinate to, the High Court. The local limits of the jurisdiction of each of the Small Causes Court corresponds with the local limits of the ordinary original Civil Jurisdiction of the High Court concerned. It has jurisdiction to try cases of civil nature when the amount or value of subject-matter does not exceed two thousands rupees. With the consent of the parties to suit, however, the Court may try a suit involving subject-matter of a higher value. Not all civil cases are triable by the Court. It is ineligible to try, inter alia, suits relating to revenue, recovery of immovable property, partition of immovable property, restitution of conjugal rights, acts of the government, specific performance of contracts, injunctions, dissolution of partnership, etc. If two judges of the Small Causes Court sitting together in any suit differ in their opinion as to any question of law or usage, they may refer the question to the High Court for opinion. Similarly, if the Court entertains reasonable doubt on any point of law or usage in suit involving over Rs.500 and either of the parties to the suit so requires, the question is to be referred to the High Court for opinion. Subject to the superintendence of the High Court, every decree or order of a Small Causes Court is final and conclusive." (emphasis supplied)
It was, therefore, submitted that the jurisdiction

conferred with the creation of Small Causes Courts was a unique feature and the Courts were of a special class and category. The local limits of the jurisdiction of each of the Small Causes Court corresponded with the local limits of ordinary original civil jurisdiction of the High Court concerned. Our attention was also invited by the learned counsel to the relevant provisions of the Act of 1882. It was stated that Section 8 expressly enacts that the Chief Judge is 'first' among equals and as such all Judges of the Small Causes Court are of equal status. It was also submitted that subject to the superintendence of the High Court, every decree or order passed by the Small Causes Court is final and conclusive. The counsel also submitted that the order passed by a Small Causes Court is not subject to appeal to the High Court. Only a revision lies in the High Court in certain circumstances. It was urged that an intra court appeal lies in certain cases against an order passed by one Judge of Small Causes Court to a Division Bench of two Judges of the same Court (Section 42). In several cases, such orders are passed by Additional Chief Judge of Small Causes Court, Bombay and appeals are heard by a Bench of two Judges of that Court. In many cases, such appeals are allowed and the orders passed by the Additional Chief Judges are set aside. A provision that in case of difference of opinion in two Judges, the opinion of the Senior Judge would be preferred was held to be arbitrary and ultra vires [vide *Sobhna Shanker Patil v. Ram Chandra Shirodkar*, (1996) 1 Mah LJ 751] on the ground that "Judges who are equal in rank enjoyed equal powers and jurisdiction as far as judicial work is concerned". In view of the above provisions and case-law, it must be held that Judges of Small Causes Court are equal in status with Additional Judges of that Court in Category I and they are not subordinate to Chief Judges or Additional Chief Judges of Small Causes Court. The Judges of Small Causes Court of Bombay, therefore, must be placed in Category 1. Reliance was also placed on the Bombay Judicial Service Recruitment Rules, 1956. In exercise of the powers conferred by Article 234 as also under the proviso to Article 309 of the Constitution, Recruitment Rules have been framed. Rule 4(3) provides for appointment of Judges of Small Causes Court at Bombay. Under clause (a)(i) of sub-rule (3) of Rule 4, Judges of Small Causes Court can be appointed by promotion from Civil Judges (Senior Division). It was, therefore, submitted that the post of Judges of Small Causes Court is a promotional post and cannot be equated with the cadre of Civil Judges (Senior Division). The impugned action taken by the respondents, therefore, deserves to be quashed and set aside by issuing appropriate directions as prayed by the petitioners.

It was also submitted that Small Causes Courts were constituted to create a forum which was 'to ease the burden of higher judiciary in the Presidency Towns'. Because of that fact, the Judges of Small Causes Courts were placed higher than Civil Judges (Senior Division). It was admitted that technically speaking, Judges of Small Causes Court were exercising jurisdiction of Civil Judges (Junior Division) or Civil Judges (Senior Division) in certain fields, such as money suits, Rent cases, etc. But their workload is higher and much more difficult than the workload of Civil Judges. For instance, under the

Rent Legislation, the litigation in mofussil towns under Rent Legislation cannot be compared with litigation in the Metropolis of Bombay. Apart from the fact that the stakes are very high, complex civil rights and complicated questions of law are raised in the City of Bombay. Unfortunately, however, the said fact has been totally ignored and overlooked by the Administrative Side of the High Court. Similar is the position of the Judges of Small Causes Court in Gujarat. Rent cases in Ahmedabad or Rajkot cannot be compared with similar cases at other places. Again, the jurisdiction under the Bombay Provincial Municipal Corporations Act, 1949 in the matters of assessment of Municipal Tax are difficult and complicated and considering the work undertaken by Judges of Small Causes Courts, they ought to have been placed in Category 1 along with Additional Chief Judges, Small Causes Court.

On behalf of the High Courts of Bombay and Gujarat, however, it was submitted that the petitions/applications are not maintainable and they deserve to be dismissed. As far as High Court of Bombay is concerned, it was submitted that a Committee was constituted of four Senior Judges of the High Court to consider the amalgamation of different cadres and fixation of seniority in the light of observations made by the Shetty Commission. Several sittings were held by the Committee. It considered the placement of Judges of Small Causes Court taking into account the functions performed by them. Personal hearing was also afforded to the Judges of the Small Causes Court and on overall consideration, it was decided that they should be placed in Category 2 but above Civil Judges (Senior Division). It was also stated that though in several States, there are Small Causes Courts, such as Maharashtra, West Bengal, Tamil Nadu, Uttar Pradesh, Gujarat, Delhi, etc., in none of the States, the post of Judge of the Court of Small Causes was equated with the District Judge in Category 1. It was stated that when several cadres were to be reduced into three cadres, all Judicial Officers had to be placed in one of the three cadres. Considering the special status and position of Judges of Small Causes Court, the Shetty Commission rightly left the question to be determined by each High Court and accordingly the exercise was undertaken by the High Court of Bombay. Taking note of administrative and supervisory powers of the Chief Judge and Additional Chief Judge, they were placed in Category 1 along with District Judges and Additional District Judges but below them. Since Judges of Small Causes Court are promoted from the post of Civil Judges (Senior Division) as also Civil Judges (Junior Division), they were rightly placed in Category 2 above Civil Judge (Senior Division). The said action can neither be said to be arbitrary or illegal nor unlawful or unreasonable.

It was further submitted that every promotional post cannot form a cadre in itself, especially, when all Judicial Officers had to be accommodated and placed in three cadres only. In view of the said circumstance, an action has been taken which is in consonance with law and recommendations of the Shetty Commission.

On behalf of the State of Gujarat also, similar stand has been taken. It was submitted that a Committee of Senior Judges of the Court was constituted to consider the case of Judicial Officers and the said Committee, after considering all relevant facts and circumstances,

took a decision to place the Judges of Small Causes Courts in Category 2 and the said decision is legal and valid.

Having considered the respective contentions of the parties and decisions to which reference has been made, it cannot be said that by placing Judges of Small Causes Courts, Bombay and Ahmedabad and other places in Gujarat in Category 2 along with Civil Judges (Senior Division) but placing above them, any illegality has been committed. So far as the Shetty Commission is concerned, it is clear that the said Committee considered one of the questions which related to equation of posts by amalgamation of multiple cadres into three uniform cadres. The Commission considered the case of all Judicial Officers and they were placed in one or the other cadre. So far as Judges of Small Causes Courts are concerned, the Commission opined that they formed a unique cadre and in view of their special position, the Commission in paragraphs 7.73 to 7.76 observed as under:

7.73 The High Court of Bombay has stated that while unifying subordinate judicial service into three tier system, Small Causes Court Judges will have to be included in the second tier, i.e., of Civil Judges (Sr. Divn.), and Chief Judges, Small Causes Court/Additional Chief Judge, Small Causes Court are to be included in the first tier viz., the cadre of District and Sessions Judges.

7.74 The High Court of Gujarat has also stated that the Judges of the Provincial Small Causes Court are to be included in the second tier along with the Civil Judges (Sr. Divn.)/Chief Judicial Magistrates/Metropolitan Magistrates.

7.75 It seems to us that the question of equation of Small Causes Court Judges must be left to the decision of each High Court, since there is no uniformity in their cadres. In some States, Civil Judges (Jr. Civn.) are empowered to exercise Small Causes Court jurisdiction and that too on varied terms. In Metropolitan Cities, Civil Judges (Sr. Divn.) are having such jurisdiction. It is not desirable to bring about uniformity in their cadres in all States. We, therefore, leave this matter to be examined and decided by the High Court of each State/U.T.

7.76 We, however, recommend that Chief Judge, Small Causes and Additional Chief Judge, Small Causes having regard to their supervisory powers and jurisdiction, be included in the cadre of District Judges in all States, UTs as rightly pointed out by the High Courts of Bombay and Gujarat.

It was, therefore, expected of the respective High Courts to consider the cases of Judges of Small Causes Court and make their placement keeping in view all the relevant factors. The High Courts of Bombay and Gujarat, thought it proper to constitute Committees so that such Committees may consider the relevant factors. Senior Judges of both the High Courts considered the question keeping in view the relevant Acts, various decisions of this Court as also the observations made in the report of the Shetty Commission. It also considered

the representations made by the petitioners and taking overall view of the matter decided to place them in Category 2 above Civil Judges (Senior Division). In our considered view, such a decision cannot be described as arbitrary, unlawful or otherwise objectionable. It is no doubt true, that since the Small Causes Courts are constituted either in Presidency Towns or in other mega cities like Ahmedabad, Rajkot, etc. the Judges had to do hard work and perform arduous functions. That, however, does not mean that it would result in change of cadre. It is also not correct to contend that at other places, the Judges have not to do hard work. There are several cities and towns in the State of Maharashtra as also in the State of Gujarat which are commercial centres. The Judges posted at those places are doing almost similar work which has been undertaken by Judges of Small Causes Court in Bombay, Ahmedabad or Rajkot. Civil Judges (Senior Division) also perform similar functions. Moreover, in several States, there is no Court of Small Causes and the powers have been exercised by the Civil Judges (Senior Division or Junior Division) and yet they are placed in Category 2 or Category 3, as the case may be. In our opinion, therefore, it cannot be contended by the petitioners that since they deal with cases having high stakes or deciding complicated and controversial issues of civil rights or commercial litigation, they should be placed in Category I along with District Judges/Additional District Judges. In our opinion, therefore, the decisions taken by the High Courts cannot be faulted.

We have been taken through the decision of the Committee constituted by the High Court of Bombay and the report submitted by the said Committee and approved by the Full Court on its Administrative Side. The Committee considered the respective claims of all Judicial Officers. It took into account the position of various cadres in the State of Maharashtra prevailing before the Shetty Commission and also the recommendation of the Commission that all cadres should be unified into three cadres (1) Civil Judges, (2) Senior Civil Judges, and (3) District Judges. The Committee also considered the relevant case-law on the point and finally decided to place Judges of Small Causes Court\027petitioners herein, in Category 2 above Civil Judges (Senior Division).

We may now consider the principles relating to integration and unification of different cadres. In Reserve Bank of India v. N.C. Paliwal, [(1976) 4 SCC 838 : (1977) 1 SCR 377], to equalize the confirmation and promotional opportunities of several officers, a scheme was introduced and seniority was fixed which was challenged by certain employees. Dealing with the question of power of Reserve Bank in introducing combined seniority scheme, a three judge Bench of this Court held that it was competent to the authority to introduce such scheme for the purpose of integrating the staff of various departments. Referring to the earlier decision in Kishori Mohanlal Bakshi v. Union of India, AIR 1962 SC 1139, the Court held that Article 16 and a fortiori Article 14 did not forbid the creation of different cadres for Government service. The two Articles did not stand in the way of the State integrating different cadres into one cadre.

The Court proceeded to state\027

"It is entirely a matter for the State to decide

whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by the combined seniority scheme cannot in the circumstances be assailed as violative of the constitutional principle of equality."

On question of seniority, the Court observed that there can be no doubt that it is open to the State to lay down any rule which it thinks appropriate for determining seniority in service and it is not open to the Court to state that in its opinion another rule would be better or more appropriate. The only enquiry which it can undertake is whether the scheme is arbitrary or irrational, so that it results in inequality of opportunity amongst employees belonging to the same class. If it does not result in such inequality, no grievance can be made against the action.

In *State of Maharashtra v. Chandrakant Anant Kulkarni*, [(1981) 4 SCC 130 : AIR 1981 SC 1990], the questions which came up for consideration before this Court was whether the State Government could by an executive fiat without framing a rule under the proviso to Article 309 of the Constitution, fix the principles relating to departmental promotion of its employees and alter the seniority? Referring to the decision of this Court in *Union of India v. P.K. Roy*, (1968) 2 SCR 186 : AIR 1968 SC 850, the Court held that the Government is the final authority in the matter of integration of services under sub-section (5) of Section 115 of the States Reorganization Act, 1956. The Court formulated the following principles for being observed as far as may be in the integration of Government servants allotted to the services of the new States:

The Court stated,

In the matter of equation of posts :

- (i) Where there were regularly constituted similar cadres in the different integrating units the cadres will ordinarily be integrated on that basis; but
- (ii) Where, however, there were no such similar cadres in the following factors will be taken into consideration in determining the equation of posts -
 - (a) nature and duties of a post;
 - (b) powers exercised by the officers holding a post, the extent of territorial or other charge held or responsibilities discharged;
 - (c) the minimum qualifications, if any, prescribed for recruitment to the post, and
 - (d) the salary of the post.

In *S.P. Shivprasad Pipal v. Union of India & Ors.*, (1998) 4 SCC 598, three cadres in labour service were merged by issuing a notification. It was contended by the appellant that different cadres could not have been merged inasmuch as they had different qualifications, functions, duties and powers and by merging those cadres, unequals had been treated as equals which was not permissible. It was also contended that by reason of merger, chances of promotion of the appellant stood diminished. The action was thus violative of Articles 14 and 16 of the Constitution.

The Court, however, negatived the contention

holding that it was open to the State to merge different cadres. Following Chandrakant Kulkarni, the Court observed that, when different cadres are merged, the principles laid down in that decision had to be complied with. The Court reiterated that it was not open to the judiciary to consider whether the equation of posts made by the Government was right or wrong. It was a matter exclusively within the province of the Government. Perhaps the only question the Court could enquire into was as to whether the principles laid down in Chandrakant Kulkarni had been kept in mind and properly applied.

Dealing with the contention that as a result of merger of cadre, promotional chances of the petitioner had been adversely affected because his position in the seniority list had gone down, the Court stated that the seniority rules had been carefully framed and appellant had not suffered prejudice. It, however, proceeded to state that by reason of such a merger, chances of promotion of some of the employees may be adversely affected or some others may be benefitted in consequence. But that cannot be a ground for setting aside the merger which is essentially a policy decision. It is well established that 'chances of promotion' is not a 'condition of service' and reduction of chances of promotion would not amount to 'change in condition of service'.

From the above decisions, it is clear that it is always open to an employer to adopt a policy for fixing service conditions of his employees. Such policy, however, must be in consonance with the Constitution and should not be arbitrary, unreasonable or otherwise objectionable. When several cadres are sought to be unified in few cadres, e.g. three cadres in the instant case, it is natural that all Judicial Officers have to be placed in one or the other cadre. The said fact itself cannot make the decision vulnerable. The High Court, in our opinion, considered the question in its proper perspective and while creating three cadres and placing Judicial Officers in one of the cadres, took into account the relevant principles. So far as the Judges of Small Causes Courts are concerned, they were placed in Category 2 but considering the fact that it was a promotional post from Civil Judges (Senior Division), all of them were en bloc placed above Civil Judges (Senior Division) in the said Category. We find no infirmity therein. It is also clear that in the State of Maharashtra, the new cadre of District Judges covers three existing cadres (i) District Judges, (ii) Joint District Judges, and (iii) City Civil Court Judges and all of them have been placed senior to other cadres in the same category of Additional District Judges, Chief Judges, Small Causes Court and Additional Chief Judges, Small Causes Court. This has been done on the basis that for the District Judge cadre, Additional District Judge cadre is a feeder cadre. The cadre of Additional District Judge is also a feeder cadre for the cadre of Judges of the City Civil Court. Likewise, the cadre of Additional Chief Judge, Small Causes Court is a feeder cadre for the Judges of City Civil Court. In other words, a person holding the post of Additional District Judge can be promoted as a District Judge or as a City Civil Court Judge. Since all the three cadres were to be merged, the superiority of the District Judges and the Judges of City Civil Court was required to be maintained and is accordingly maintained. But it does not mean that District Judges, Chief Judges, Small Causes Court and Additional District Judges/Additional

Chief Judges, Small Causes Court cannot be placed in one and the same category. We, therefore, find no illegality in the decision of the Full Court on its Administrative Side which calls for interference.

The matter can be considered from a different angle as well. Under the scheme of our Constitution, High Courts have been invested with the power of superintendence and control over Subordinate Judiciary. Bare reading of Articles 227 and 233 to 237 makes it explicitly clear that the High Courts take care of and exercise control over District Courts and Courts subordinate thereto. This power of superintendence and control include inter alia to guide, advice and encourage Judges of subordinate courts to exercise their powers, discharge their duties and perform their functions independently, fearlessly and objectively.

In the leading decision in *Shamsher Singh v. State of Punjab*, (1974) 2 SCC 831 : AIR 1974 SC 2192, speaking for the majority, A.N. Ray, C.J. observed that the members of the subordinate judiciary are 'not only under the control of the High Court but are also under the care and custody' of the High Court. The members of the subordinate judiciary look up to the High Court 'not only for discipline but also for dignity'.

In our considered opinion, as 'caretaker', guardian and custodian of subordinate judiciary, the Full Court of the High Courts of Bombay and Gujarat on Administrative Side have considered the position and status of Judges of Small Causes Courts and in the light of the relevant provisions of the Constitution as interpreted by this Court from time to time have taken decisions to place them in Category 2. To us, keeping in view the principles laid down by this Court in various decisions referred to above, it cannot be said that the action impugned by the petitioners of placing them in Category 2 above Civil Judges (Senior Division) is illegal, unlawful, arbitrary, discriminatory or otherwise objectionable. Since there is no legal flaw in the decisions, they require no interference by this Court. Consequent notification issued by the Government of Gujarat in the light of the decision of the Full Court of High Court of Gujarat on its Administrative Side also does not suffer from legal infirmity and the said notification cannot be struck down.

For the foregoing reasons, the interim application as also the writ petition, deserve to be dismissed and accordingly they are dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

I.A. No. 143 in W.P. (Civil) No. 1022 of 1989 :

Permission to file application for directions is granted.

I.A. No. \005 in W.P. (Civil) No. 1022 of 1989 :

This application is filed for appropriate directions. The applicant is Chief Judge, Small Causes Court, Ahmedabad. His grievance is that he ought to have been placed in Category 1 with District Judges and pay fixation ought to have been made on that basis. By not doing so, the State of Gujarat as well as the High Court of Gujarat has committed an error. The Notification dated October 10, 2003 to that extent deserves to be interfered with. It was submitted that in the State of Maharashtra, the post of Chief Judge, Small Causes

Court has been placed in Category 1. The said action is also in consonance with recommendations of Shetty Commission which has been accepted by this Court. It was, therefore, prayed that the notification of October 10, 2003 may be quashed and an appropriate direction may be issued to the State as well as the High Court of Gujarat by ordering the respondents to place the post of Chief Judge, Small Causes Court in Category 1 and by granting consequential benefits.

Affidavits have been filed by the State as well as the High Court of Gujarat. It was stated that to consider the suggestions and recommendations made by the Shetty Commission, the Full Court of High Court of Gujarat on its Administrative Side constituted a committee of five Judges. The Committee examined the question in its entirety. It also considered the reasoning of this Court in para 31 of the decision in All India Judges' Assn. v. Union of India, (2002) 4 SCC 247; wherein the Court observed;

"31. As we have already mentioned, the Shetty Commission had recommended that the 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 the 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 Magistrates are concerned, whose duties are on a par with those 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 Magistrates 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."

On the basis of above observation, the Committee, in the report dated July 10, 2002 stated in paragraphs 2.2(ii) and (iii) thus;

(ii) As regards the post of Chief Metropolitan Magistrate, the Commission in para 6.40 at page 471 of Vol. 1 of its report had observed that the Metropolitan Magistrates were subordinate only to Chief Metropolitan Magistrate subject to the general control of the Sessions Judge and in paragraph 6.44, it observed that, "In the premise and for the aforesaid reasons, we equate Chief Metropolitan Magistrate to the cadre of District Judges". This recommendation of the Commission has been, in terms negatived by Honourable the Supreme Court, as noted above. For the same reasons, even the post of Chief Judge, Small Causes Court, cannot be equated to the post of District Judge. It will be noticed that an Assistant Judge can by transfer be posted as Chief Metropolitan Magistrate or as Chief Judge, Small Causes Court, Ahmedabad, under the existing recruitment rules (See Rule 6(3)(i)(b) and 6(3)(ii)(b), which provide that appointment to the post of Chief Judge, Small Causes Court/ Chief Metropolitan Magistrate, Ahmedabad, may be made by transfer of a person holding the post of an Assistant Judge).

(iii) Thus, if the Assistant Judge could be transferred to the post of Chief Metropolitan Magistrate and also to the post of Chief Judge, Small Causes Court, Ahmedabad, it will not be appropriate, having regard to the vertical and horizontal relativity of various posts, to treat the post of Chief Judge, Small Causes Court, Ahmedabad, equivalent to the post of District Judge. That recommendation of the Commission made in paragraph 7.76 of Volume 1 falls to the ground for the same reasons for which the Supreme Court has negatived its recommendation that the post of Chief Metropolitan Magistrate, Ahmedabad, should be treated equal to the post of District Judge.

The report was placed before the Full Court on its Administrative Side and it was accepted. Not only that, but a representation which was made by the applicant to the State Government on October 14, 2003 was also considered by the High Court on Administrative Side and the following decision was taken\027

"Resolved that having regard to the horizontal and vertical relativity of the posts of Chief Judge, Small Causes Court, Chief Metropolitan Magistrate, Assistant Judge and the post of District Judge, it is not possible to accept the request and Full Court decision dated 20/7/2002 accepting Five Judge Committee Report, reiterated."

It is, no doubt, true that the Shetty Commission recommended that the Chief Judge, Small Causes Court should be included in the cadre of District Judges. It is also true that in State of Maharashtra, the post of Chief Judge, Small Causes Court has been included in the District Cadre but having regard to the position and status of the Chief Judge, Small Causes Court and keeping in view the observations of this Court in para 31

of the decision in (2002) 4 SCC 247, the Administrative Side of the High Court considered the question as to placement of the Chief Judge, Small Causes Court and 'having regard to the horizontal and vertical relativity' of the Chief Judge, Small Causes Court, Chief Metropolitan Magistrate and Assistant Judges, he could not be placed along with District Judge.

For the reasons which we have already indicated earlier while dealing with the issue of placement of various judicial officers that the action taken by the High Court of Gujarat on its Administrative Side cannot be held illegal or contrary to law applies to the present case as well. We, therefore, see no substance in the application which deserves to be dismissed and is, accordingly, dismissed. No costs.

I.A. No. 2 in W.P. (Civil) No. 258 of 2003

This application is filed by the applicants who are Metropolitan Magistrates in Mumbai. They have inter alia prayed that their scales of pay, seniority, chances of promotion and other benefits should be maintained. It was particularly stated that their scales be maintained and fixed on par with that of Additional Chief Metropolitan Magistrates/Additional District Judges in the pay-scale of Rs.16750-400-19150-450-20500. It is stated that after the decision of this Court in (2002) 4 SCC 247 in which several issues had been settled, they are obliged to approach this Court since an action prejudicial to their interest has been taken by the respondents. In the light of the observations and directions in paragraph 40 of the judgment, they are constrained to file the present application for clarification of the orders passed in the said judgment.

It may, however, be stated that in the present Interlocutory Application itself, it is stated that after the judgment of this Court on March 21, 2002 in Writ Petition No. 1022 of 1989, an application for clarification was moved by the Additional Chief Metropolitan Magistrates of Mumbai. A prayer was made to clarify the orders passed on March 21, 2002. The said application was, however, rejected by this Court on January 31, 2003 with the following observations\027

"We have heard the learned senior counsel for the applicants and do not find any merit in the contention. What this Court has held in para 31 is that the post of Chief Metropolitan Magistrate and Chief Judicial Magistrate are to be filled in from amongst the Civil Judge (Senior Division) and not by the officers working in the Higher Judicial Service. The question of the applicants' reversion does not arise at all. By the aforesaid judgment, the applicants who are working in higher judicial services are not going to be reverted to the post of Civil Judge (Senior Division). The applicants shall continue to be members of the Higher Judicial Service."

In view of the above order passed by this Court, in our opinion, various prayers made in this application cannot be granted. A limited grievance, however, was made at the time of hearing of this application that in pursuance of the directions issued by this Court, the

Shetty Commission had undertaken the work of unification of cadres in judicial service and it was decided to assimilate judicial services in three cadres "without impairing" the incumbents' scales of pay etc. It was stated that the exercise has been undertaken by various High Courts including the High Court of Bombay and a Committee of Senior Judges was appointed which had submitted its report and the report was accepted by the Full Court on its Administrative Side. As held by us hereinabove while dealing with the case of Judges of the Small Causes Court that the said action cannot be declared illegal or contrary to law. That action, therefore, cannot be set aside.

In the facts and circumstances of the case, however, we are of the view that ends of justice would be met if we direct that pay scales of the applicants will not be reduced nor recovery be effected in pursuance of the decision of the High Court of Bombay on its Administrative Side.

Subject to what we have stated above, the application is disposed of. No costs.

I.A. No. 172 in W.P. (Civil) No.1022 of 1989 :

Application for impleadment of applicant as party to the writ petition is allowed.

I.A. No. 181 in W.P. (Civil) No.1022 of 1989 :

This application is filed by the Assistant Judges in the Judicial Service of Gujarat. It is prayed in the application that directions be issued to the State of Gujarat and the High Court of Gujarat to place Assistant Judges in the category of District Judges with higher pay-scales along with seniority from January 1, 1996 by striking down notifications dated May 9, 2005 and May 19, 2005. A prayer is also made to ratify Notification dated October 10, 2003 by revising pay-scales of applicants-Assistant Judges.

According to the applicants, the recommendations of Shetty Commission have not been taken into consideration by the respondents. The relevant provisions of the Constitution and Rules governing service conditions of Assistant Judges in Gujarat and their status had been totally ignored and Assistant Judges have been clubbed with Civil Judges (Senior Division) in Category 2 though they ought to have been placed in Category 1 along with District Judges/Additional District Judges. The impugned action thus amounts to reversion/demotion/downgrading of Assistant Judges in Gujarat which is totally unjust, arbitrary, unreasonable and ex facie unsustainable. The applicants had challenged the Government Resolution dated October 10, 2003 fixing their pay scales as also Notifications dated May 9, 2005 and May 19, 2005 and prayed that the post of 'Assistant Judge' in Gujarat should be placed in the cadre of District Judge along with higher pay-scales and seniority. According to the applicants, this Court had taken cognizance of the anomaly in pay-scales of Assistant District Judges and two orders were passed on April 18, 2005 and April 25, 2005. They read thus:

Order dated 18.4.2005

"Re : Primary Pay-scales

The stand taken by the State of Gujarat is that an Assistant Sessions Judge does not form

part of the cadre of District Judges. Reliance is placed on a decision of the Gujarat High Court reported as 1995 (1) GLR 807. We would like to hear the learned counsel for the State of Gujarat as also the learned Amicus Curiae and record a specific finding on this issue. In that context, the report of the Committee of Judges of the Gujarat High Court may also need to be examined. The learned counsel for the State of Gujarat assures to file a copy of that report within two weeks. The hearing is postponed."

Order dated 25.4.2005

"As to some anomaly regarding pay-scales, by reference to their structure as prevailing in the State, there are directions awaited from this Court, which is a subject matter of separate hearing."

According to the applicants, the Shetty Commission considered the cases of Assistant Judges and decided to treat them as belonging to the Senior Branch. In paras 2.6.10 and 2.6.26, the Commission observed as under;

2.6.10 The Senior Branch consists of the following cadres:

- (i) District Judges.
- (ii) Principal Judge, City Civil Court, Ahmedabad.
- (iii) Judges of the City Civil Court, Ahmedabad
- (iv) Chief Judge of the Small Causes Court, Ahmedabad
- (v) Chief Metropolitan Magistrate.
- (vi) Additional Chief Metropolitan Magistrate
- (vii) Assistant Judges

2.6.26 There are 84 posts of Assistant Judges in the pay scale of Rs.10000-325-15200 which are promotional posts from the cadre of Civil Judges (Junior Division) with 7 years of service and Civil Judges (Senior Division) with minimum 3 years of service on the civil side. The Assistant Judges shall be on probation for a period of two years.

On the basis of the above consideration, the Commission laid down principles for determining equation of posts as mentioned in paragraph 7.16. They read as under\027

7.16 From the aforesaid observations, it will be seen that the integration of services and equation of posts is purely an administrative function and it will not impinge upon the equality clause guaranteed under Article 14 or 16 of the Constitution, provided that the equation of posts has been done by following certain principles. The principles are : (i) Where there are similar posts, there will be little difficulty in integrating or equating the posts; (ii) Where, however, there are no such similar posts, the following factors will have to be taken into consideration in determining the equation of posts;

- (a) Nature and duties of post;

(b) Powers exercised by the officers holding a post, the extent of Territorial or other charge held or responsibilities discharged;

(c) The minimum qualifications, if any, prescribed for recruitment to the post;

(d) The salary of the post.

According to the applicants, if the factors which had been taken into account by the Shetty Commission are kept in mind and placement is made, the respondents cannot equalize the post of Assistant Judges with the post of Civil Judges (Senior Division) considering the functions to be performed by them and they ought to be placed in Category 1 along with District Judges. Unfortunately, however, ignoring legitimate claim of Assistant Judges, they have been placed in Category 2 which compelled the applicants to approach this Court.

An affidavit-in-reply is filed by the High Court inter alia contending that the action taken by the respondents is in consonance with law and as per the recommendations of the Commission, no grievance can be made by the Assistant Judges. It was submitted that in order to implement the recommendations of the Shetty Commission, the High Court of Gujarat by a resolution dated May 4, 2002 and June 29, 2002 constituted a Special Committee of Judges which considered the question and submitted its report on July 10, 2002. It was accepted by the Full Court of the High Court on its Administrative Side on July 20, 2002 with minor modifications. In accordance with the report, the action has been taken which is legal, valid and in consonance with law. The action is also in accordance with the provisions of the Constitution.

Mr. Sanjay Parikh, learned counsel for the applicants submitted that the State of Gujarat and the High Court of Gujarat had committed an error of law in placing Assistant Judges in Category 2 along with Civil Judges (Senior Division) and the said action deserves to be interfered with by this Court. He submitted that Assistant Judges are promoted from the post of Civil Judges (Senior Division). It is thus a promotional post and feeder cadre is Civil Judge (Senior Division). The promotion has been effected under the Gujarat Judicial Service (Recruitment) Rules, 1961 (since repealed) on the basis of 'merit-cum-seniority'. Therefore, it was not open to the respondents to treat Assistant Judges as equal to Civil Judges (Senior Division) by placing them in one and the same cadre. It was also urged that Assistant Judges are exercising appellate jurisdiction from the decisions of subordinate courts. They are hearing appeals and revisions from the orders passed by the Civil Judges (Junior Division) as well as Civil Judges (Senior Division). They are also working as District and Sessions Judges and conducting Sessions trials. They can impose substantive sentence up to rigorous imprisonment for life. They are also competent to hear MACT matters, TADA cases, POTA cases, cases under the Prevention of Corruption Act, NDPS Act and matters under the Bombay Public Trusts Act, 1950. Thus, Assistant Judges exercise jurisdiction which is exercised by District Courts. In the State of Maharashtra, they are known as 'Additional District Judges'. Only in Gujarat, their nomenclature is 'Assistant Judges', but

they are similarly situated with Additional District Judges and exercising similar powers and discharging similar duties. In Maharashtra, they have been placed along with District Judges in Category 1. But in Gujarat, they are shown in Category 2 above Civil Judges (Senior Division). It was also stated that regarding leave, vacation etc., Assistant Judges have been equated with District Judges. They are working in 'non-vacation' Department unlike Civil Judges (Senior Division) who are having vacation. In infrastructure of courts also, they have been placed in same category as District Judges. Over and above judicial work, they perform administrative work along with District Judges. Till recently, assessment of their work was done by the High Court as in case of District Judges and not by District Judges as has been done in the case of Civil Judges (Senior Division). On all these grounds, it was submitted that the respondents had committed an error in equating Assistant Judges with Civil Judges (Senior Division) and in placing them in Category 2. It was, therefore, prayed that the impugned action may be set aside by quashing and setting aside Government Resolution and two notifications and by directing the authorities to place Assistant Judges in Category 1 along with District Judges and to take all consequential actions on that basis.

The learned counsel for the respondents, on the other hand, submitted that the action taken by them is according to law. Pursuant to the report of Shetty Commission, the claim of Assistant Judges came up for consideration before the High Court on its Administrative Side and a decision was taken to place them in Category 2 above Civil Judges (Senior Division) in accordance with law. The Committee which was appointed by the Full Court also considered the relevant provisions of the Constitution and the position of Assistant Judges vis-à-vis Assistant District Judges and decided to place them in Category 2 above Civil Judge (Senior Division).

In our opinion, it cannot be said that by placing Assistant Judges in Category 2 above Civil Judges (Senior Division), any illegality has been committed by the High Court of Gujarat on its Administrative Side. A Committee of five Judges was appointed and the said Committee considered the question of placement of Assistant Judges. Keeping in view the relevant provisions of the Constitution, Recruitment Rules and the powers exercised by Assistant Judges, the Committee felt that proper placement of Assistant Judges would be above Civil Judge (Senior Division) in Category 2. In its report dated July 10, 2002, the Committee inter alia observed as under;

2.1 The post of Assistant Judges, Chief Metropolitan Magistrate, Chief Judge of the Small Causes Court, Small Causes Court Judges, all are in the same pay scale of Rs.10,000 to Rs.15,200. The Commission was of the opinion that the post of the Chief Metropolitan Magistrate should be placed in the cadre of District Judge. The Supreme Court has held that this is neither a proper nor a practicable recommendation. It observed that the appeals from orders passed by the Chief Metropolitan Magistrate are required to be heard by Additional Sessions Judge or the Sessions Judge and if both the Additional Sessions Judge and the Chief Metropolitan Magistrate belong to the same cadre, it will be paradoxical. Moreover,

if they are to be put in the same cadre, then it may so happen that the Junior Officer would be acting as an Additional Sessions Judge, while a senior would be holding the post of Chief Metropolitan Magistrate. It was also noticed that the post of Chief Metropolitan Magistrate was to be filled from amongst the Civil Judges (Senior Division). The Supreme Court held that, considering the nature and duties of the Chief Judicial Magistrate and the Chief Metropolitan Magistrate, 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).

2.2 (i) The Shetty Commission has, on the basis of the decision of the Apex Court in para 7.16 at page 484 of Vol. 1 of its report, indicated the factors which are required to be taken into consideration for determining the equation of posts where there are no similar posts. These factors are:

- (a) Nature and duties of a post;
- (b) Powers exercised by the officer holding a post, extent of territorial or other charge, or responsibility discharged;
- (c) The minimum qualifications, if any, prescribed for recruitment to the post;
- (d) The salary of the post.

(ii) As regards the post of Chief Metropolitan Magistrate, the Commission in para 6.40 at page 471 of Vol. 1 of its report had observed that the Metropolitan Magistrates were subordinate only to Chief Metropolitan Magistrate subject to the general control of the Sessions Judge and in paragraph 6.44, it observed that, "In the premise and for the aforesaid reasons, we equate Chief Metropolitan Magistrate to the cadre of District Judges". This recommendation of the Commission has been, in terms negated by Honourable the Supreme Court, as noted above. For the same reasons, even the post of Chief Judge, Small Causes Court, cannot be equated to the post of District Judge. It will be noticed that an Assistant Judge can by transfer be posted as Chief Metropolitan Magistrate or as Chief Judge, Small Causes Court, Ahmedabad, under the existing recruitment rules (See Rule 6(3)(i)(b) and 6(3)(ii)(b), which provide that appointment to the post of Chief Judge, Small Causes Court/ Chief Metropolitan Magistrate, Ahmedabad, may be made by transfer of a person holding the post of an Assistant Judge).

(iii) Thus, if the Assistant Judge could be transferred to the post of Chief Metropolitan Magistrate and also to the post of Chief Judge, Small Causes Court, Ahmedabad, it will not be appropriate, having regard to the vertical and horizontal relativity of various posts, to treat the

post of Chief Judge, Small Causes Court, Ahmedabad, equivalent to the post of District Judge. That recommendation of the Commission made in paragraph 7.76 of Volume 1 falls to the ground for the same reasons for which the Supreme Court has negatived its recommendation that the post of Chief Metropolitan Magistrate, Ahmedabad, should be treated equal to the post of District Judge.

2.3 Having regard to the nature of the post of Assistant Judge and the pay scale that it carries (Rs. 10,000 to Rs. 15,200) and to the fact that the said cadre of Assistant Judge is a source of promotion to the post of District Judges, Post of Assistant Judge cannot be equated with the post of District Judge. The existing Assistant Judges are considered for promotion to the post of District Judges from time to time and there may have been several instances of supersession of Assistant Judges who have not been found fit for promotion to the post of District Judges. Therefore, if all the Assistant Judges are en bloc merged with the cadre of District Judges, a very anomalous position will arise by upgrading a lower post to the higher post which was a promotional avenue and giving automatic promotion to all the Assistant Judges as District Judges.

2.4 Applying criteria for equation of posts set out by the Commission on the basis of the Apex Court's decision (see on page 484 Vol. 1) and having regard to the above observations of the Supreme Court, we are of the opinion that the post of Assistant Judge should be equated along with other post of Chief Metropolitan Magistrate and Chief Judge, Small Causes Court, Ahmedabad, Small Causes Court Judges, Civil Judges (Senior Division) which are also in the same pay-scale of Rs. 10,000 to Rs. 15,000, under the nomenclature "Senior Civil Judges" as shown in the proposed Rules Annexure "A".

In our opinion, therefore, the grievance of the Assistant Judges is not well-founded. It cannot be said that the status and position of Assistant Judges had been ignored or overlooked by the respondents while considering their cases and by placing them in Category 2. We are also satisfied that the Committee considered the relevant provisions of law and proper placement has been made.

Reference was made by the learned counsel for the applicants to a decision of the High Court of Gujarat in Valjibhai H. Patel v. S.N. Sundaram, (1995) 1 GujLR 807. In our opinion, however, the ratio laid down in Valjibhai does not apply to the facts of the present case. In Valjibhai, the authority of the High Court to make appointment of Joint District Judge from the post of Assistant Judge by way of promotion came up for consideration. It was contended that it was the Governor of the State and not the High Court who was competent to appoint a District Judge. The High Court considered the question in the light of the provisions of Article 233 of the Constitution. Relying on its earlier decision in N.J.

Mankad v. State, (1983) 2 Guj LR 897 as also decisions of this Court, the Court held that Article 233 of the Constitution had no application to promotion. The said Article is attracted when initial appointment by direct recruitment is made. Once such an appointment is made by the Governor under the Constitution, all further promotions and postings would not attract Article 233 of the Constitution as it had no application. All those cases would be governed by Article 235 and covered by 'control over subordinate courts' by the High Court. The said decision is not an authority as regards equation of Assistant Judges with District Judges and, therefore, has no relevance to the issue in controversy.

Considering the powers to be exercised, functions to be performed and duties to be discharged by Assistant Judges and keeping in view the provisions of the Constitution as also the relevant provisions of law, the Committee constituted by the High Court of Gujarat considered the question and decided to place Assistant Judges in Category 2 above Civil Judges (Senior Division). It is no doubt true that Assistant Judges are promoted from feeder cadre of Civil Judges (Senior Division), but as observed by us hereinabove, while dealing with the placement of Judges of Small Causes Court in Maharashtra and in Gujarat that when all officers are to be placed within few cadres, some officers are required to be placed in one and the same cadre even though they are holding promotional posts. Their placement, however, must be properly done so that they are shown above the feeder cadre from which they have been promoted. This was the position of Judges of Small Causes Court and we have held that such an action cannot be held illegal. We have also considered the relevant cases while dealing with the contentions of Judges of Small Causes Court and negatived them.

For the self-same reasons, the grievance of Assistant Judges cannot be upheld and, in our opinion, the prayers cannot be granted. For the foregoing reasons, the Interlocutory Application is rejected.

I.A. No. 141 in W.P. (Civil) No. 1022 of 1989 :

In this application, prayer has been made to direct Government of Gujarat to apply the Shetty Commission Report to all retirees irrespective of their date of retirement and also to allow other allowances payable to judicial officers. Since the question as to benefits of the Shetty Commission is pending in other matters, we direct the Registry to place this Interlocutory Application along with those matters treating it as pending.