

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO.51 OF 2008.**

Shri Uttam K. Pal, r/o F-3, 1st
Floor, Sairaj Complex, Baina
Market, Vasco-da-Gama, Goa.

..... Petitioner.

Versus

1. The State of Goa through
the Chief Secretary,
having office at
Secretariat, Porvorim,
Goa.

2. The Director, Directorate
of Panchayats,
Government of Goa,
Junta House, Panaji,
Goa.

3. The Under Secretary
(Personnel), Department
of Personnel, Secretariat,
Porvorim, Goa.

4. Goa Public Service
Commission through its
Chairman, having office
at EDC House, Dr. A. B.
Rd., Panaji, Goa.

..... Respondents.

Mr. N. Sardessai, Senior Advocate with Mr. L. Raghunandan, Advocate
for the petitioner.

Mr. M. Salkar, Government Advocate for the respondent nos. 1 to 3.

**Coram:-F. M. REIS,
K. L. WADANE, JJ.**

Date:- 23rd September, 2015.

JUDGMENT (Per K. L. Wadane, J.)

This petition is filed by the petitioner seeking to quash and set aside the order dated 8.10.2004 by which the petitioner is terminated and discharged from his services as Block Development Officer (BDO for short) with immediate effect.

2. Brief facts of the case may be summarised as follows:-

On 4.1.1982, the petitioner joined the services of State, Government of Goa as Assistant Teacher. With the permission of Directorate of Education, he applied for the post of BDO on 12.9.1996. The respondent no. 4 selected the petitioner for the post of BDO on 3.1.1997, he was appointed initially on the probation for a period of two years. The ACRs from 1.4.1997 to 2002 were recorded as good, very good and satisfactorily. The petitioner has never been intimated about any adverse remark in the petitioner's ACR. On 8.10.2004, the petitioner was terminated from services and such order is passed by the authority based upon the adverse remarks passed somewhere after 31.3.2002 which was never been communicated to the petitioner.

3. It is the claim of the petitioner that he successfully passed the examination and after the end of two years the petitioner was deemed to be confirmed. According to the petitioner provisions of Rule 5 of the Temporary Civil Services are wrongly made applicable to the

petitioner. After passing of the impugned order, the petitioner made representations to the Chief Minister and the Governor of State of Goa however, the same were not considered. Hence present petition.

4. Mr. N. Sardesai, learned Senior Counsel appearing for the petitioner in support of his submission has placed reliance upon the observations of the following authorities:-

(i) Babu Lal Vs Staet of Haryana and others, 1991(2) SCC 335.

(ii) Shiv Kumar Sharma Vs. Haryana State Electricity Board Chandigarh and others, 1988(supp) SCC 669.

(iii) Dr. Mrs. Sumati P. Shere Vs Union of India(UOI) and ors., AIR 1989 Sc 1431.

5. We have heard arguments of Mr Nitin Sardesai, learned Senior Counsel for the petitioner and Mr. M. Salkar, learned Government Advocate for the respondent nos. 1 to 3.

6. On perusal of the impugned order, it reveals that upon consideration of the overall performance of the petitioner and assessment of work during the probation period, the Government of Goa terminated and discharged the petitioner from services. Matter of lifting of the probation period and confirmation of the petitioner was referred to the respondent no.4 for recommending appropriate line of action on which the appropriate committee has observed as follows:-

"However, his CR for the year 2002,2003, the Reporting Officer i.e. Director of Panchayats has stated that he has been warned during monthly meetings of the BDO and that he is having poor knowledge of Rules, Regulations and Acts and is negative in his approach towards the work allotted to him. Moreover, Reporting Officer has also observed that his quality of supervision is also poor and that he failed to see that cash books of his office in BDO, Mormugao was not written for seven months. Further, it is also pointed out that, he is also not prompt in shouldering responsibilities and the qualities of responsibility and leadership are absent in him and his performance was reported as 'Not Satisfactorily'. The Reviewing Officer has accepted these remarks."

7. For the reasons noted above, the services of the petitioner are terminated. It is material to note that no adverse remarks were communicated to the petitioner at any time before his termination which is improper. If the adverse remark could have been communicated to the petitioner then there would be an opportunity to the petitioner to explain about adverse remarks and the circumstances in which such remarks were passed. However, order of termination appears to be based upon non-communicated adverse remarks.

8. According to the petitioner there is no provision to extend the probation period as no departmental examination was held within a period of two years from the date of appointment, therefore, probation period of the petitioner is deemed to be completed. According to the petitioner, he successfully passed the departmental examination in 2002, therefore, he deemed to be permanent in the services. As per the guidelines regarding probation laid down in the manual the decision as to whether the employee is to be confirmed or his probation period is to be extended, is required to be taken within 6 to 8 weeks soon after the expiry of the initial probation period and communicated to the employee together with the reasons, in case of extension. Here, in the present case, departmental examination was not taken within a period of two years and nor the petitioner was communicated about the extension of probation period for which no blame could be given to the petitioner.

9. From the record, it reveals that after the termination of the petitioner's services, the petitioner was reinstated and he is appointed to the post of Assistant Teacher as the petitioner had lien over that post. Further, it reveals from the records that two disciplinary proceedings were initiated and pending at the relevant time and disciplinary inquiry was for minor penalty. Out of which one inquiry was finalised with holding increments of pay for years without cumulative effect. Another inquiry was pending.

10. We have gone through the facts and observations of the cases cited by Mr. N. Sardessai, learned Senior Counsel and we find that the observation in the case at serial no. 3 are most appropriately applicable to the present case wherein it has observed at paragraph 5 as follows:-

“5. We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability.”

11. In the present case also, the petitioner was not aware of his defect in work and deficiency in his performance. If at the relevant point of time his deficiencies/defects, if communicated to the petitioner then the petitioner could have been tried to improve. Due to non- communication of the adverse remarks, the petitioner was kept in

dark.

12. Looking to the over all circumstances of the case, no opportunity was given to the petitioner to explain alleged adverse circumstances nor the adverse remarks were communicated to him. In such circumstances, the impugned order passed in such circumstances cannot be justified. Therefore, it is to be set aside.

13. We, therefore, allow the writ petition and quash and set aside impugned order dated 8.10.2004 with a direction to the respondent no.1 to proceed to appoint the petitioner on the post of BDO. However, the petitioner is not entitled to claim seniority in the services as well as he shall not claim the difference in the pay of BDO and the Assistant Teacher. The Respondent may proceed further with the disciplinary proceedings, if find appropriate, in accordance with law.

14. With these directions, Rule made partly absolute with no order as to costs.

15. Writ Petition stands disposed of accordingly.

K. L. Wadane, J.

F. M. Reis, J

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