

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 23 OF 2009**

Shri Fernando De Costa,
son of Shri Joe Augustine De Costa,
aged 50 years, resident of Pancharatna
Rua Matries Dias,
Margao Goa.
Presently residing at 9/24 Black Butt Crescent,
Grey Stanes 2145, New South Wales,
Australia,
represented by Power of Attorney
Shri Antonio Menino Teotonio Duzerino Colaco,
major, married, resident of Espi Modi,
Mandopa, Navelim, Salcete Goa. ... Petitioner

V e r s u s

1. State of Goa,
through Chief Secretary,
with office at Secretariat,
Porvorim Goa.
2. Directorate of Education,
Government of Goa,
through the Director of Education,
with office at Panaji Goa.
3. Vidya Vikas Mandal's Ramakrishna,
Mahadev Salgaonkar Higher
Secondary School,
Shree Damodar College Complex,
P.O. Box No. 751,
Govind Ramnath Kare Road,
Tansor, Comba,
Margao Goa 403 601. ... Respondents

Mr. Sudesh Usgaonkar with Ms. R. Pereira, Advocates for the petitioner.

Ms. Neha Kholkar, Addl. Government Advocate for respondent nos. 1 and 2.

Mr. P. Gawas holding for Mr. V. Palekar, Advocate for respondent no.3.

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

Date :- 11th March, 2015

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioner, Ms. N. Kholkar, learned Addl. Government Advocate appearing for respondent nos. 1 and 2 and Mr. P. Gawas holding for Mr. V. Palekar, learned counsel appearing for the respondent no.3.

2. The petitioner has been deprived of the retirement benefits though he has retired in the year 2004. The petitioner who has retired was forced to seek relief of this Court on two occasions as his claim for retirement benefits was rejected by the respondents.

3. This Court has disposed of Writ Petition No. 212 of 2008 by order dated 28.04.2008 on the basis of the statement by the learned Addl. Government Advocate inter-alia to the effect that there will be no difficulty in paying the pension dues in accordance

with law provided the petitioner submits the requisite documents and presents himself before the concerned authority. It is pointed out by Mr. Usgaonkar, learned counsel appearing for the petitioner that pursuant to the said directions, the petitioner has in fact presented himself and submitted all the requisite documents but however, by the impugned communication addressed by the respondent no.2 to the respondent no.3, the claim of the petitioner for his pension benefits are refused on the ground that E.O.L. standing in favour of the petitioner cannot be termed as leave and as such his claim for pension cannot run concurrently with the notice period to seek voluntary retirement. From the record, it reveals that the said findings of the respondent no.2 in the said communication are not correct as it is not disputed that in fact the petitioner had joined the services of the respondent no.3 on 27.09.2004 and also paid the salary in lieu of the three months notice period. In such circumstances, the observations in the said impugned communication that such leave cannot run concurrently is not justifiable. The reasons recorded in the said communication dated 08.12.2004 to refuse the voluntary retirement to the petitioner cannot be sustained and deserves to be quashed and set aside. It is not in dispute that as the petitioner has thereafter reported for duties, the question of seeking any refund of the amount during the period of his earned leave would not arise at all

and consequently, the demand by letter dated 15.07.2008 cannot be sustained and deserves to be set aside.

4. At this stage, Ms. Kholkar, learned Addl. Government Advocate appearing for respondent nos. 1 and 2 has pointed out that in the meanwhile by communication dated 15.02.2015 the respondent no.1 has called upon the respondent no.3 as well as the petitioner to complete the formalities of payment of his pension as raised by the Accounts Department, Government of Goa, to finalise the payment of pension benefits.

5. The learned counsel appearing for respondent no.3 has pointed out that though the respondent no.3 has otherwise complied with all the requisitions nevertheless, the respondent no.3 will send the communication specifying the aspect raised herein within four weeks from today.

6. Mr. Usgaonkar, learned counsel appearing for the petitioner further pointed out that though according to him no further clarifications are required, nevertheless, the petitioner will send a reply to the said letter dated 15.02.2015 within four weeks from today. Accepting the said statement of the learned counsel appearing for the petitioner and the respondent no.3, we

accordingly quash and set aside the communication dated 08.12.2004 and direct the respondent no.1 to proceed to examine the payment of pension benefits to the petitioner in accordance with law within three months from the receipt of the respective replies from the petitioner and the respondent no.3. Rule is made absolute in above terms.

K. L. WADANE, J

F. M. REIS, J

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