

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 121 OF 2008

Vivekavathy Anil,
major, Indian National, currently
serving as Manager, EDC Ltd., EDC House,
1st Floor, Dr. Atmaram Borkar Road,
Panaji, Goa, 400 001.

... Petitioner

V e r s u s

1. The Economic Development Corporation (EDC) Ltd.,
through its Managing Director,
having his office at EDC House,
1st Flr, Dr. Atmaram Borkar Road,
Panaji, Goa, 400 001.
2. The State of Goa,
through the Chief Secretary, Govt. of Goa,
with his office at Secretariat,
Porvorim, Goa.
3. A. V. Palekar,
Former Managing Director of EDC
Ltd., currently Managing
Director, GIDC, having office
C/o Goa Industrial Development Corporation,
Patto, Panaji, Goa.

... Respondents

Mr. A. F. Diniz , Mr. Ryan Menezes and Mr. C. Rebeiro, Advocates for the Petitioner.

Ms. Susan Linhares, Addl. Government Advocate for the Respondent no. 1.

Mr. D. Pangam and Ms. Ketki Naik, Advocates for the Respondent no. 2.

Coram :- **F. M. REIS,**
NUTAN D. SARDESSAI, JJ.

Date: 26th October, 2016

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

Heard Mr. A. F. Diniz, learned Counsel appearing for the

Petitioner, Ms. Susan Linhares, learned Addl. Government Advocate appearing for the Respondent no. 1 and Mr. Pangam, learned Counsel appearing for the Respondent no. 2.

2. The above Petition seeks for direction to regularise the Petitioner against the post of Manager with retrospective effect from 01.04.1995 and further to suitably fix the basic pay of the Petitioner and to place the Petitioner in the consequential seniority list and receive the benefits of such promotion and clear the irregularities with regard to the service of the Petitioner. The Petitioner has also incorporated a further relief by amending the Petition to declare the Resolution no. 4758 held on 24.09.2015 as null and void and quashed and set aside.

3. Briefly, it is the case of the Petitioner, that in the year 1984, after successfully completing academically the course leading to the Bachelor of Engineering (BE) degree in Electronics and Communication at Manipal Institute of Technology, wherein the Petitioner passed the prescribed examination placed in First Class and was awarded a BE Degree in Electronics & Communication. Thereafter, she served as a lecturer in the Department of Electronics and also worked in Meitec Co., dealing with Computer Software. On or about 10.11.1991, an advertisement was issued by the Respondent no. 1 inviting applications from eligible candidates for recruitment of CAD/CAM Specialist, in a particular pay scale. After scrutiny

of the applications, the Respondent no. 1 called the Petitioner for an interview and ultimately the Respondent no. 1 informed the Petitioner that she was shortlisted to appear for the final interview. By an appointment letter dated 01.04.1992, the Petitioner was selected and appointed against the CAD Specialist (Jr) instead of the advertised post of CAD Specialist Electronics subject to the terms and conditions stipulated therein and on the condition that on completing the probation period, she would be suitably placed in a particular pay scale. By Office letter dated 21.05.1992, the Petitioner was appointed as CAD Specialist (Jr) w.e.f. 01.04.1992. The post was re-designated as Deputy Manager by an Order dated 14.09.1992 and about the same time, the post CAD Specialist was re-designated as Manager. The Petitioner successfully completed her probation period which was confirmed by the Respondent no. 1 as Deputy Manager/CAM Centre and placed in a pay scale as specified therein w.e.f. 01.04.1993. The Petitioner thereafter addressed a representation on 06.10.1993 bringing to the notice of the Managing Director of the Respondent no. 1 that the fixation of the basic pay was anomalous. Thereafter, vide Order dated 28.04.1994, the Petitioner was informed that the issue raised by her in the representation was decided and her basic pay was fixed at Rs.2,180/- w.e.f. 01.04.1993. Subsequently, a fresh representation was forwarded to the Respondent no. 1 by the Petitioner that there was an anomaly in her pay scale. The Petitioner was thereafter informed by Respondent no.1 by letter dated 28.07.1994 of her consolidated salary. A short representation was addressed by the

Petitioner to the Respondent no. 1 and the Petitioner was informed that a 10% deduction towards provident fund was made towards simplification process. Vide letter dated 22.03.1999, the Respondent no. 1, inter alia, directed the Petitioner then occupying the substantive post of Dy. Manager (CAD) to look after the duties of her Computer Cell in addition to her duties in the CAD Centre. Thereafter, the incumbent Manager CAD Centre was transferred to GEL as Dy. Managing Director. Since her appointment, the Petitioner received no career advancement/progress and continued to stagnate as Deputy Manager, though she was fully qualified to be appointed as CAD Specialist (re-designated as Manager). The Petitioner thereafter on 27.07.2001 addressed her representation to the Respondent no. 1 bringing to the notice of the Managing Director the fact that despite of nine years have passed since her initial appointment as CAD Specialist she has not received any career advancement and requested that she may be considered for promotion. The representation with regard to the regularization was placed for consideration before the 243rd Meeting of the Board of Directors. On 08.03.2002, after considering all the aspects and discussing the matter, the Board decided to approve the request of the Petitioner and one Mr. P. P. Borkar, for regularization of their services with retrospective effect as the same ought to have been done much earlier. The Board accordingly resolved by Resolution no. 3257 that the proposal to regularise the services of P. P. Borkar and the Petitioner against the requisite sanctioned posts in the CAD was approved with retrospective effect and authorised the

Managing Director to take necessary action with that regard. By an Order dated 30.03.2002, the then Managing Director of the Respondent no. 1, the services of the Petitioner were regularised to the post of Manager in the pay scale of Rs.10,000-325-15,200 with immediate effect contrary to the resolution of regularization. Thereafter, on 16.05.2002, an Order was issued fixing the pay scale of the Petitioner as Manager CAD Specialist. The Petitioner thereafter made a representation on 27.05.2002 calling the attention of the Managing Director that the regularization of the appointment as Manager in fact ought to have been done much before 30.03.2002. It is further pointed out by the Petitioner that at 262nd Meeting of the Board of the Respondent no. 1, it was resolved to close down the CAD Centre and the Petitioner was informed that consequent upon the decision to close the CAD Centre, it was necessary to temporary allocate work to Officers posted at the CAD Centre. On 03.05.2004, the Petitioner was directed to look after the disinvestment of GAAL & GAPL and sanction and disbursement of Chief Minister's Rozgar Yojana (CMRY). A representation was thereafter addressed by the Petitioner on 18.01.2007 and, subsequently, on 01.06.2007. The Petitioner was thereafter informed that though the resolution of the Board was to regularise the CAD/CAM employees in the required sanctioned post, instead of regularising them, in the post and pay in which the selection was made, the Corporation had gone further by issuing order regularising them in a higher post with a higher pay scale. It is also informed by the Respondent no. 1 that considering the past representation

on the issue, she was granted suitable increments and that though they were appointed for specialized activities considering the CAD Centre, the Corporation had to close down. It was also stated that though the Petitioner lacked sufficient experience in the main work of EDC, they were using their services without changing her post and the cases could not be decided in isolation.

4. The Respondent no. 1 filed their reply, inter alia, contending that the appointments of the employees at CAD/CAM Centre were pursuant to the directions from the State of Goa and was initially located in the premises of the EDC Limited. It was further pointed out that EDC Limited in collaboration with Commonwealth Secretariat initiated the process of setting up the Centre and recruitment of personnel thereat. It was further pointed out that as per the ratings awarded, two candidates were called for the final interview. It was further pointed out that the Petitioner was appointed on a consolidated salary of Rs.4,000/- per month during the period of one year from the date of appointment and in the event, the services were satisfactory for placement in the scale of Rs.2000-60-2300-EB-75-3200-100-3900. It was further contended that the Petitioner accepted the offer of appointment unconditionally. It was further pointed out that even Efficiency Bar was crossed as per the scale indicated and accepted by the Petitioner at the time of her appointment. It was also pointed out that CAD was for appointment as per the directions of the State of Goa and with the assistance from Common

Wealth Secretariat. It was also pointed out that the employees in the CAD Centre are outside the General Recruitment Rules framed by the EDC. It was further pointed out that EDC has taken into consideration the interest of the two employees of CAD Centre and issued appointment letters in higher posts. It is also stated that there are number of employees with EDC Limited who have got promotions after completing of more than nine years in service. It was further pointed out that two employees of M/s. GLFSL are to be kept in a separate cadre of EDC. It was also pointed out that after completion of one year's probation period, the petitioner was confirmed to the post of Deputy Manager (CAD/CAM) by offering her three additional increments which were duly accepted by the Petitioner. It was also pointed out that the Petitioner was not conversant with the activities of the EDC Limited. The Respondent no. 1 disputed the claim of the Petitioner and as such prayed that the Petition be dismissed.

5. An additional affidavit was thereafter filed on behalf of the Respondent no. 1, inter alia, contending that at the Meeting of the Board of Directors of EDC held on 24.09.2015, the subject matter of the impugned resolution dated 14.03.2002 was also discussed and deliberated upon and on detailed deliberation, the Board's decision to the Resolution bearing no. 3257 passed on 14.03.2002, was overruled. It would be pertinent to note that this Resolution was passed when the above Writ Petition was already placed for final disposal. A show cause notice was thereafter issued why

proceedings should not be initiated for contempt against the deponent of the said affidavit who stated that the action was taken bonafidely to protect the interest of the Corporation.

6. The Respondent no. 1 also filed an additional affidavit to the amendment filed by the Petitioner disputing the allegations made therein. A rejoinder was also filed by the Petitioner disputing the allegations made by the Respondent no. 1. It was disputed that the Petitioner lacked administration experience and pointed out that the letter of such experience of Mr. Borkar cannot be acquainted to the Petitioner.

7. Mr. A. F. Diniz, learned Counsel appearing for the Petitioner, has assailed the impugned decision on the ground that the Respondents were not justified to pass a Resolution during the pendency of the above Petition when the matter was already fixed for Judgment to overrule the earlier Resolutions. The learned Counsel further pointed out that in view of the Board's Resolution dated 08.03.2002, the Petitioner is entitled to be regularised with retrospective effect. It is further pointed out that in view of the prayer sought by the Petitioner, such regularization has to be made from 01.04.1995. Learned Counsel further pointed out that the implementation is totally contrary to the Board Resolution and, as such, deserves to be quashed and set aside.

8. On the other hand, Shri Pangam, learned Counsel appearing for the Respondent no. 2, has pointed out that the question of regularising the Petitioner from the year 1995 is barred by laches. It is further submitted that based on the Resolution of the Board, the Petitioner has been rightly regularised with immediate effect. Learned Counsel further pointed out that in any event even assuming that the Petitioner is regularised from the year 1995, the question of getting any back wages would not at all be justified. The learned Counsel has thereafter taken us to the relevant records to point out that the Petitioner has rightly regularised in terms of the Board Resolution and, as such, the above Petition deserves to be rejected.

9. We have considered the submission of the learned Counsel and we have also gone through the records. Based on the rival contentions, there is no serious attempt by the Respondents to invoke the Resolution passed during the pendency of the above Petition dated 24.09.2015. In such circumstances, the question of relying upon such Resolution would not at all be justified. There is no basis to pass such Resolution and, as such, the question of overruling the earlier Board Resolution in question is unsustainable in law and, consequently, the Resolution dated 24.09.2015 passed during the pendency of the above Petition has no legal effects and deserves to be discarded.

10. The only aspect which remains to be examined is the date on

which the Petitioner is entitled to be regularised. On perusal of the Office Order dated 21.05.1992 issued by the Managing Director of the Economic Development Corporation of Goa, Daman and Diu Limited, the Respondent herein, the Petitioner was appointed as CAD Specialist (Jr) w.e.f. 01.04.1992. Thereafter, on 27.09.1993, the Petitioner was appointed w.e.f. 01.04.1992 on a stipend of Rs.4000/- per month which appointment was for a probation period of one year. Ultimately, there were many representations by the Petitioner with regard to her pay scale. On 18.01.1999, a note was issued, inter alia, that the Petitioner who was a Deputy Manager (CAD) would look after the working of the Computer Centre in addition to her own duties in the Centre. The representations of the Petitioner led to the topic in the agenda for the 243rd Board Meeting of EDC which was scheduled on 08.03.2002. By a Resolution no. 3257, it was resolved that the proposal to regularise the services of Mr. P. Borkar and the Petitioner against the sanction post of CAD Centre, is approved with retrospective effect. It was further resolved that the Managing Director be authorised to take further necessary action in this matter. The Managing Director however issued an Order dated 30.03.2002, inter alia, regularising the services of the Petitioner as Manager (CAD) Specialist with immediate effect. It is the contention of the Petitioner that she ought to have been regularised with retrospective effect i.e. from the date her services were confirmed. But, on the contrary, in flagrant violation of the Board Resolution, the concerned Board of the Managing Director regularised her from the year 2002. The Petitioner

addressed a letter dated 27.05.2002 to the effect that she has been wrongly regularised from 30.03.2002 when she ought to have been regularised from the date of her recruitment in the year 1992 which resulted in her losing all her benefits.

11. The short point for consideration as such was whether the impugned Order passed by the Deputy Managing Director is in consonance with the said Resolution of the Board. The Board Resolution clearly states that the Petitioner had to be regularised with retrospective effect. In such circumstances, the action by the impugned Order dated 30.03.2002 regularising her with immediate effect is clearly contrary to such Resolution and as such unsustainable. The Petitioner as such had to be regularised atleast from the date of her confirmation. On perusal of the reliefs sought by the Petitioner, we find that the Petitioner herself has claimed her regularization as from 01.04.1995. In such circumstances, the impugned Order deserves to be modified and the Petitioner be directed to be regularised from 01.04.1995.

12. With regard to the contention of Mr. Pangam, learned Counsel appearing for the Respondent no. 2, that the question of paying any back wages to the Petitioner would not at all be justified. We find that considering that the Petition itself was filed in the year 2008, as the Petitioner did not immediately take necessary action to get her services regularised in

accordance with the aforesaid Resolutions, the Petitioner would not be entitled for any arrears of excess salary for a period beyond three years prior from the date of filing of the above Petition. Consequently, the Petitioner should be notionally regularised as from 01.04.1995 and would be entitled for all other benefits in accordance with law. The Petitioner will be entitled to draw arrears of excess salary, if any, **commencing from** ~~only for~~ a period of three years prior to the date of the filing of the above Petition.

13. In such circumstances, we pass the following :

ORDER

(i) The Petition is partly allowed.

(ii) The impugned Order dated 30.03.2002 is modified and the Petitioner is directed to be regularised notionally from 01.04.1995 with all other consequential benefits in accordance with law.

(iii) The Petitioner would be entitled for arrears **commencing from** of the excess salary or other benefits, if any, ~~only for~~ a period of three years prior to the date of the filing of the above Petition.

(iv) Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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Corrections
Carried out
As per Order
Dated 03.04.17
Passed in Stamp
Number (Appln.)
No. 1142 of 2017