

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 184 OF 2014.

Mr. Zoivonta E Parab, Major of Age,
Indian National, Resident of H.
No.617/1-(2) Bhutki, Socorro,
Bardez-Goa. Petitioner.

Versus

- 1 The Secretary(Law), Law
Department, Government of
Goa, Having office at
Secretariat, Porvorim, Goa.
- 2 State of Goa, Through its Chief
Secretary, Having office at
Secretariat, Porvorim-Goa.
- 3 The Director of Accounts,
Government of Goa, Having
office at Directorate of
Accounts, Panaji-Goa.(Above
are the registered address of
the Parties). Respondents.

Mr. D. J. Pangam, Advocate for the petitioner.

Mr. Vivek Rodrigues, Government Advocate for the respondents.

Coram:-F. M. REIS,

K. L. Wadane,JJ.

Reserved on:14th January, 2016.

Pronounced on: 25th February,2016.

JUDGMENT (Per K. L. Wadane, J)

The petitioner has filed this Writ Petition seeking direction to the respondents to release retirement dues to the petitioner including pension and gratuity along with 8%

interest.

2. The brief facts of the case are as follows:-

The petitioner was practising advocate since 1979. The petitioner practised as an advocate till he was appointed as the President of Administrative Tribunal. The petitioner was appointed as the President of Goa Administrative Tribunal by order dated 24.10.2001 and the same was published in the Official Gazette on 08.11.2011.

3. The appointment order of the petitioner was challenged in Writ Petition No. 315/2001 on the ground that State did not consult the High Court before appointing the petitioner as the President. This Court by its Judgment dated 19.9.2002 set aside the appointment order dated 24.10.2001.

4. The petitioner states that thereafter the Government referred the proposal of appointment of the petitioner to the Hon'ble Chief Justice of the High Court of Bombay. The Hon'ble Chief Justice granted permission and the petitioner was re-appointed on the same post on the basis of some selection done at the time of initial appointment by order dated 16.10.2003.

5. During the tenure of the petitioner as the President of Administrative Tribunal, the age of the retirement was

brought down to 60 years from 65 years by the Goa Administrative Tribunal (Amendment) Act, 2012 (“the Act” for short) The Amendment Act provided that the person who has attained the age of 60 years and holding the office of the President and Additional President of Administrative Tribunal on the date of the commencement of the Act, such person was cease to hold their respective office w.e.f. 1.10.2012. The birth date of the petitioner is 17.5.1950. The petitioner has completed 60 years on the commencement of the Act. i.e. 1.10.2012.

6. It is further stated that while deciding Writ Petition No. 315/2001, this Court held that the post of the President of Administrative Tribunal is equivalent to the post of a District Judge as defined under Article 226 of the Constitution of India.

7. Based upon the above contentions, the petitioner has claimed benefit of additional service as contemplated under Rule 22 of the Goa Judicial Service Rules, 2005 (“the GJSR, 2005” for short) which deals with the addition of certain service for the purpose of pension in case of an advocate appointed as the Civil Judge, he is entitled for addition of service for three years and in case advocate is appointed as the District Judge, he is entitled for addition of service for a period of 7 years.

8. It is further contented by the petitioner that his total

qualifying service for the purpose of determining the pension is as follows:-

- a. 24.10.2001 to 18.09.2002
- b. 16.10.2003 to 01.10.2012
- c. 7 years of practise as an Advocate(maximum).

9. So according to the petitioner, his qualifying service for pension is 16 years, 10 months and 10 days. The payment of pension of the petitioner is governed by the Central Civil Service(Pension) Rules, 1972 ("CCS(Pension) Rules 1972" for short) which are adopted and followed by the State Government. It is further the case of the petitioner that he retired from service w.e.f. 30.9.2012, therefore, he is entitled as of right for payment of his retirement benefits including pension and gratuity.

10. In spite of the above fact, the Government authority has displayed a shocking conduct of not paying the petitioner his retirement benefits legitimately due to him despite the petitioner repeatedly reminding the Authority. The Government Authority has failed to discharge their constitutional duties and obligation.

11. It is further contented by the petitioner that the respondents have not acted within a time and in spite of the

qualifying service of the petitioner, the respondents have failed to pay the retirement benefit.

12. On behalf of the respondent nos. 1 and 2, an affidavit in reply is produced on record sworn by the Under Secretary(Law) establishment and almost all the material allegations are denied. However, it is admitted that the petitioner had retired on 30.9.2012. The petitioner had not completed the required number of years of service for the purpose of drawal of the pension. As per the pension Rules, the petitioner has to complete 10 years of qualifying service. However, the petitioner does not fulfill norms of service, as the petitioner has completed 8 years 11 months and 15 days of his service. Therefore, he is not entitled for pension as per the Government of India, Office Memorandum no. 38/37/08-P&PW(A) dated 2.09.2008. It is further stated on behalf of the respondent nos.1 and 2 that the petitioner was appointed by issuing fresh order dated 16.10.2003 and was not re-appointed as claimed by the petitioner. The Rules, 2005 are applicable only to the Judicial Officers and not for quasi-judicial officers, hence, Rule 22 is not applicable in the present case. It is further contended that the Department has already paid leave encashment benefit to the petitioner.

13. Considering the rival contentions of both the parties,

the disputed issue is whether the petitioner is entitled for additional service of 7 years as contemplated under Rule 22 of the Goa Judicial Service Rules, 2005 or not?

14. We have heard the arguments of Mr. Pangam, learned counsel appearing for the petitioner and Mr. V. Rodrigues, learned Government Advocate appearing for the respondents.

15. During the course of arguments, Mr. Pangam, learned counsel appearing for the petitioner has argued that in the Writ Petition No.315/2001, this Court has held that the post of the President of the Administrative Tribunal is equivalent to that of the District Judge. The pay and allowances of the President is also equal with the post of the District Judge. Therefore, according to Mr. Pangam, learned counsel, the retirement benefit/pension has to be in accordance with the pension of the District Judge. Mr. Pangam, further points out that the age of the retirement of the District Judge is 60 years, therefore, by way of amendment to the Act, the age of retirement of the President of the Administrative Tribunal was reduced from 65 years to 60 years. Therefore, service condition of the District Judge as well as the President of the Administrative Tribunal are same. Hence, the petitioner is entitled for the pension, after taking into consideration

additional service in terms of Rule 22 of the GJSR,2005.

16. As against this, Mr. V. Rodrigues, learned Government Advocate pointed out that the petitioner was appointed by the Government of Goa, as per the powers conferred under Section 3(2) of the Act, therefore, the services of the petitioner are governed under the Act. The learned Government Advocate further argued that the pension of the petitioner is governed under the provisions of CCS(Pension) Rules, 1972 and as per the notification of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners dated 2.9.2008, a Government servant retiring in accordance with the provisions of the CCS(Pension)Rules, 1972 before completing qualifying service of 10 years is not entitled for pension but he is entitled for service gratuity in terms of the Rule 49(1) of the CCS(Pension)Rules, 1972, so according to Mr. Rodrigues, the petitioner has not completed qualifying service of 10 years so as to get minimum pension under the CCS(Pension)Rules, 1972. The learned counsel further argued that provisions of the GJSR, 2005 cannot be read into provisions of the Act or CCS(Pension) Rules, 1972. Mr. Rodrigues, further submitted that the petitioner has completed his service of 8 years, 11 months and 15 days and the State Government is going to consider and add remaining service so as to complete 10 years and same is under

consideration of the State Government. The learned counsel further submits that the State Government is ready to consider the qualifying service of the petitioner to the extent of 10 years but in any circumstances, the petitioner is not entitled to count his service giving benefit of Rule 22 of the GJSR, 2005.

17. Considering the arguments advanced by the learned counsel appearing for the respective parties, we have carefully gone through the record from which it appears that the petitioner was appointed by the State Government exercising the powers under Section 3(2) of the Act. Therefore, obviously his services are governed under the Act. Further more, Rules regarding pensions are applicable as per the provisions of CCS(Pension)Rules, 1972. During the course of arguments Mr. Pangam has heavily relied upon the provisions of Rule 22 of the GJSR, 2005 and claimed that before the appointment of the petitioner as the President of the Administrative Tribunal he was practising advocate and therefore, he is entitled for addition of his service by 7 years. Rule 22 of the GJSR, 2005 reads as follows:-

“Additional of Certain service for purpose of pension:-An Advocate appointed as a Civil Judge or a District Judge shall be entitled to reckon as service qualifying for superannuation pension, the actual period of practice put in by him at the Bar not

exceeding three years or seven years respectively.”

18. On bare perusal of the above provision which relates to the service of the Judicial Officer who were appointed as the Civil Judge or the District Judge and word “Service” is defined under Section 2(f) of the GJSR, 2005 means “Goa Judicial Service” Admittedly, the petitioner is not from Goa Judicial Service, therefore, the provisions of Rule 22 cannot be applied for the purpose of counting of additional service. It is true that services of the petitioner were equated with the post of the District Judge to the extent of pay and allowances. On perusal of the proviso to clause of Section 2 of the Act which reads as follows:-

“2. Qualification for appointment of President or Additional President-- The President or the Additional President, as the case may be, shall be a person who is,---

- (a) a judicial officer of seven years standing; or
- (b) an advocate of not less than seven years standing, having knowledge of Konkani, knowledge of Marathi being desirable; or
- (c) holding a superior post not lower than that of Joint Secretary in the Law Department of Government of Goa, for not less than three years.

Provided that the appointee under clause (a) shall be

appointed on deputation from the Goa Judicial Service and shall be governed by the service conditions applicable to the Goa Judicial Service.

Provided further that the appointees under clauses(b) or (c) shall not be less than 40 years of age, who shall be on probation for a period of two years and shall be governed by the service conditions as application to Group "A" officer of the Government of Goa and shall carry a pay scale and allowances as admissible to the District Judge from time to time."

19. On perusal of the above proviso, it appears that a Judicial Officer appointed on deputation from the Goa Judicial Service shall be governed by the service condition applicable to the Goa Judicial Service. The petitioner is not from Goa Judicial Service or appointed on deputation. Therefore, certain provisions/rules cannot be imported and read into the GJSR, 2005 or the Act or CCS(Pension) Rules 1972.

20. It is material to note that under the proviso to Section 2 of the Act, it appears that the President appointed under the Act shall be governed by the service condition as applicable to the group 'A' officer to the Government of Goa and shall carry a pay scale and allowances as admissible to the

District Judge from time to time. It is pertinent to note that the pay and allowances of the President are equated with the District Judge but the word pension is omitted from which an intention of the legislature is very clear by which the pension of the President is not as per the provisions of pay and allowances as admissible to the District Judge. The pay scale and allowances as referred in proviso clause of Section 2 do not include pension. Mr. Pangam, learned counsel has relied upon the observations of the Apex Court in the case of ***Union of India Vs. R. Gandhi, President Madras Bar Association***, reported in ***(2010) 11 SCC 1*** and by relying upon the observations of the above cited case, Mr. Pangam, has submitted that the services of the President are on par with service condition of the District Judge, therefore, obviously, the petitioner is entitled for pension as per the rule of GJSR, 2005.

21. We have gone through the observations of the above authority and such observations are inapplicable to the facts of the present case simply because though pay and allowances of the President are at par with the District Judge but word "pension" do not appear in proviso clause of Section 2 of the Act. Therefore, in the absence of expressed provision, it is difficult to hold that the pension condition of the President are on par with the pension condition of the District Judge.

22. It was brought to our notice during the course of hearing, in the above petition, by the learned Government Advocate that the respondents are in the process of examining whether the petitioner can be given relaxation for the purpose of meeting the requirement of qualifying service of 10 years to enable him to get the pension. Disposal of the present petition will not come in the way of the respondents examining such an aspect, on its own merits.

23. In view of the above observation, we are of the opinion that the petitioner is not entitled to the benefit of additional service as per Rule 22 of the GJSR, 2005. Hence, the petition is dismissed.

24. Rule stands discharged.

K. L. WADANE, J.

F. M. REIS, J.

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