

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 318/2015

DR. (MRS.) MANGALA VEERESH,
major of age, Indian National
r/o "Sharada", #222,
7th Main Road,
Sadanandanagar, (NGEF Layout),
Bengaluru – 560 038.

Petitioner

Versus

1. THE STATE OF GOA
through the Under
Secretary (Higher Education)
having office at Secretariat, Porvorim,
Goa.
2. THE DIRECTOR,
Directorate of Higher Education,
Opp. Directorate of Education,
Alto Porvorim, Goa.
3. THE PRINCIPAL,
Smt. Parvatibai Chowgule
College of Arts & Science,
Margao, Goa.
4. GOA UNIVERSITY,
through the Registrar,
having office at Bambolim,
Goa.

Respondents.

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Shri Shivan Desai, Advocate, for the petitioner.

Ms. Asha Desai, Government Advocate for the respondents no.1
and 2.

Mrs. A. Agni, Senior Advocate with Ms. A. Kamat, Advocate for
the respondent no.4.

CORAM : F.M.REIS & NUTAN D. SARDESSAI, JJ
DATED : 13/07/2016.

Oral Judgment (Per F.M. REIS, J):

1] Heard Shri Shivan Desai, learned counsel appearing for the petitioner, Ms. Asha Desai, learned Government Advocate appearing for the respondents no.1 and 2 and Mrs. A. Agni, learned Senior Counsel with Ms. A. Kamat, learned counsel for the respondent no.4.

2] The above petition, inter alia, takes exception to the rejection of the representation filed by the petitioner for claiming the entitlement of pensionary benefits or in the alternative to condone the break in services in the employment .

3] The brief facts of the case as under:-

The petitioner made an application to the respondent no.3 in the year 1992 as a full time post of Lecturer in the subject of Zoology. By a letter dated 17th November, 1992 the respondent no.3 appointed the petitioner to the full time post of Lecturer in the subject of Zoology. It is further contended that by letter dated 20.6.1994 the respondent no.3 continued the services of the petitioner for another academic year 1994-95 which services continued upto the year 2001. It is further pointed out that on 12th August 2002 the respondent no.3 informed the petitioner that since there is no sufficient workload in the department of Zoology during the academic year 2002-03, it is not possible to re-appoint the petitioner on full time basis

as Lecturer during the academic year 2002-03. But however, the petitioner was informed that there was workload of three periods per week and as such she was appointed on lecture basis. This letter preceded a letter by the Principal to the department inter alia suggesting that the services of the petitioner should be continued in anticipation of the vacancy as one of the teachers was expected to retire.

4] It happened that on 14th May, 2003 the petitioner was re-appointed to fill up the post of one full time post in Zoology and the post was thereafter regularised and confirmed and the petitioner has continued in service. It is further the contention of the petitioner that as the petitioner desired to go on voluntary retirement, she made an application to consider her pensionary benefits. At that point of time the petitioner learnt that a stand was taken by the respondent no.2 that she had not completed 20 years of her service and as such would not be entitled for pension. The basic contention of the petitioner is that she did not meet the qualifying services to avail of the pensionary benefits as there was a break of service from August 2002 to May 2003. But as already pointed out above that, it is the contention of the petitioner that not during the said period though she was not as full time Lecturer nevertheless she continued to render services as Lecturer on the hour basis at their request. The petitioner

thereafter made a representation to the respondent no.1 on 14.7.2011 calling upon the respondent no.1 to examine the entitlement of the pensionary benefits, as according to the petitioner, she has the qualifying service. The said representation came to be disposed of by a letter dated 22.5.2014 inter alia rejecting the claim of the petitioner. Being aggrieved by the said communication, the petitioner has filed the present petition.

5] Shri Shivan Desai learned counsel appearing for the petitioner, has taken us through the impugned communication dated 22.5.2014 to point out that there are no reasons therein rendered by respondent no.1 while disposing of the representation. The learned counsel further points out that though it is the contention of the petitioner that she had qualifying service in terms of Rule 18 of the CCS Pension Rules nevertheless the petitioner also claim that in case there is any break in service, such break be condoned in terms of Rule 28 (a) of the CCS Pension Rules. The learned counsel has thereafter taken us through Rules 27 and 28 to point out that the respondent no.1 can consider that the petitioner had in fact rendered services to the respondent no.3 even during the alleged break in service, and as such there is no reason to refuse to condone in terms of Rule 28 of the CCS Pension Rules. The learned counsel thereafter pointed out that the said decision by

the representation has not at all examined all the relevant aspects. The learned counsel further points out that not giving reasons itself is a breach of the principles of natural justice and as such, the impugned communication deserves to be quashed and set aside.

6] On the other hand, Mrs. Asha Desai, learned Government Advocate, appearing for the respondent nos. 1 and 2 has pointed out that the petitioner did not have the requisite qualification to be appointed as a full time Lecturer in Zoology. The learned Government Advocate further submits that as she did not have the requisite Ph.D. qualification at the relevant time, she was not considered for the post as Full Time Lecturer in Zoology with the respondent no.3. The learned Government Advocate further submits that all these aspects have been duly considered by the respondent no.1 while rejecting the representation of the petitioner. Ms. Agni, learned Senior Counsel appearing for the respondent no.4, however, points out that considering that the petitioner had rendered services throughout, though in different capacities there is no justifiable reason to refuse the petitioner of the pensionary benefits.

7] We have considered the submissions of the learned counsel. We have also perused the record and relevant CCS

Pension Rules.

8] Rules 18, 27 and 28 reads thus:-

“18. Counting of pre-retirement civil service in the case of re-employed Government servants :

(1) A Government servant who, having retired on compensation pension or invalid pension or compensation gratuity or invalid gratuity, is re-employed and appointed substantively to a service or post to which these rules apply may exercise option either -

(a) to continue to draw the pension or retain the gratuity sanctioned for his earlier service, in which case his former service shall not count as qualifying service, or

(b) to cease to draw his pension and refund -

(i) the pension already drawn,

(ii) the value received for the commutation of a part of pension, and

(iii) the amount of ¹[retirement gratuity] including service gratuity, if any,

Provided that -

(i) the pension drawn prior to the date of re-employment shall not be required to be refunded,

(ii) the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay shall be refunded by him,

(iii) the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of his pay shall be set off against the amount of ¹[retirement gratuity] and the commuted value of pension and the balance, if any, shall be refunded by him.

EXPLANATION. - In this clause, the expression `which

was taken into account' means the amount of pension including the pension equivalent of gratuity by which pay of the Government servant was reduced on initial re-employment, and the expression 'which was not taken into account' shall be construed accordingly.]

(2)(a) The authority issuing the order of substantive appointment to a service or post as is referred to in sub-rule(1) shall along with such order require in writing the Government servant to exercise the option under that sub-rule within three months of the date of issue of such order, or if he is on leave on that day, within three months of his return from leave, whichever is later and also bring to his notice the provisions of Clause (b).

(b) If no option is exercised within the period referred to in Clause (a), the Government servant shall be deemed to have opted for Clause (a) of sub-rule (1).

(3) In the case of a Government servant who opts for Clause (a) of sub-rule (1) the pension or gratuity admissible for his subsequent service is subject to the limitation, that service gratuity, or the capital value of the pension and ¹[retirement gratuity], if any, shall not be greater than the difference between the value of the pension and ¹[retirement gratuity] if any, that would be admissible at the time of the Government servant's final retirement if the two periods of service were combined and the value of retirement benefits already granted to him for the previous service.

Note:- The capital value of pension shall be calculated in accordance with the table prescribed by the President under the * Civil Pension (Commutation) Rules applicable at the

time of the second or final retirement.

- (4)(a) A Government servant who opts for Clause (b) of sub-rule (1) shall be required to refund the gratuity received in respect of his earlier service, in monthly instalments not exceeding thirty-six in number, the first instalment beginning from the month following the month in which he exercised the option.
- (b) The right to count previous service as qualifying service shall not revive until the whole amount has been refunded.

(5) In the case of a Government servant, who, having elected to refund the gratuity, dies before the entire amount is refunded, the amount of unrefunded gratuity shall be adjusted against the ¹[death gratuity] which may become payable to his family”.

Rule 27:

27. Effect of interruption in service

(1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases :-

- (a) authorized leave of absence ;
- (b) unauthorized absence in continuation of authorized leave of absence so long as the post of absentee is not filled substantively ;
- (c) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension ;
- (d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest ;
- (e) joining time while on transfer from one post to another.

(2) Notwithstanding anything contained in sub-rule (1), the ¹[appointing authority] may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

Rule 28

"28. Condonation of interruption in service

- (a) In the absence of a specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.
- (b) Nothing in Clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.
- (c) The period of interruption referred to in Clause (a) shall not count as qualifying service.

9] A plain reading of the Rules 28 and Rule 17, it clearly provides that even contractual service can be considered while considering qualifying service. In the present case, on examining the impugned communication, we find, though it is not disputed that the petitioner was rendering services all throughout in different capacities including the alleged break in service as she was working on Lecturer basis, these aspects have not been duly considered by the respondent no.1. Apart from that, on going through

Rules 27 and 28 of CCS Pension Rules, we find that the respondent no.1 has power to condone in peculiar facts and circumstances of each case as specified therein. It is not disputed that the alleged break in service was not on account of any termination or any other ground attributing to the petitioner. It is also not disputed that the petitioner even during such period was rendering services on Lecturer basis at the request of respondent no.3 though it was clearly pointed out to the petitioner that there is likely to arise a regular post of Lecturer. In such circumstances, we find that the respondents have not dealt with the representation filed by the petitioner after examining all the relevant aspects in accordance with law. Shri Shivan Desai, learned counsel appearing for the petitioner points out that though the representation does not clearly seek for condonation, but however on going through the averments is clearly spelt out that without prejudice condonation was sought in terms of Rule 28 of CCS Pension Rules.

10] In view of the above, we pass the following order:-

Order

The impugned communication dated 24.5.2014 is quashed and set aside. The respondent no.1 is directed to decide the representation dated 14.7.2011 afresh within

three months from date of passing of this order, in the light of the observations made above, in accordance with law. All contentions of the parties are left open.

Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J

F.M. REIS, J

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