

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 653 OF 2010**

Alagharu Venkataratnam,
residing at 'Shiva Gauri",
Plot No.12, Green Hill Society,
Socorro, Porvorim,
Bardez Goa.

.. Petitioner

Versus

1. The Union of India,
Ministry of Health & Family Welfare,
through its Secretary,
Nirman Bhawan,
Maulana Azad Road,
New Delhi 110 108.

2. State of Goa,
through the Chief Secretary,
Secretariat, Porvorim,
Bardez Goa.

3. Commissioner & Secretary
to the Government,
Department of Information &
Publicity, Secretariat,
Porvorim, Bardez Goa.

4. Director of Accounts,
Government of Goa,
Fazenda Building,
Panaji Goa 403 001.

.. Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. C. Padgaonkar,
Advocate for the petitioner.

Ms. S. Linhares, Addl. Government Advocate for the respondent nos.
2, 3 and 4.

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

Date:- 25th October, 2016

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

Heard Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the petitioner and Ms. S. Linhares, learned Addl. Government Advocate appearing for the respondent nos. 2, 3 and 4.

2. Upon hearing the learned counsel appearing for the respective parties, the grievance of the petitioner is that though the petitioner retired as a Chief Information Commissioner and is entitled for pension payable to a Judge of the Supreme Court, the respondents have denied such pension to the petitioner and only granted additional pension in terms of the schedule attached to the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 (herein after referred to as “the said Act of 1958”).

3. Mr. J. E. Coelho Pereira, learned Senior Counsel appearing for the petitioner points out that in terms of Section 16(5) of the Right to Information Act, 2005 the State Chief Information

Commissioner is entitled for pension as payable to the Chief Election Commissioner. It is further submitted that in turn the Chief Election Commissioner, when he enters upon the office is entitled for pension payable to the Judge of the Supreme Court. The learned Senior Counsel further pointed out that the State Government has framed Rules specifying the terms and conditions of service of the State Chief Information Commissioner and in terms thereof, the petitioner is entitled for pension payable as provided in Clause 2 of Part III of the said Act of 1958. The learned Senior Counsel further submits that though the petitioner was earlier superannuated from his earlier service as a I.A.S. Officer, in view of his appointment as the Chief Information Commissioner, the petitioner is entitled for pension in terms of the said Clause after deducting any amount received on account of his previous pensionable post. The learned Senior Counsel thereafter has taken us through the communication received from the respondents by the petitioner to point out that on erroneous consideration the petitioner has been deprived of the pension in terms of the said Act of 1958.

4. On the other hand, Ms. S. Linhares, learned Addl.

Government Advocate appearing for the respondent nos. 2, 3 and 4 has submitted that as the petitioner was not in continuous service after demitting his service as an I.A.S. Officer, the question of availing of pension payable to the Supreme Court Judge as claimed by the petitioner would not arise. The learned Addl. Government Advocate further pointed out that in terms of Section 17 of the said Act of 1958, in order to avail of pension as a Judge of the Supreme Court, there has to be continuity in service. The learned Addl. Government Advocate has thereafter taken us through the communication sent to the petitioner to point out that as the petitioner has been receiving pension as an I.A.S. Officer, the petitioner is only entitled to the additional pension in terms of Clause 2(b) of Part III of the said Act of 1958. The learned Addl. Government Advocate as such submits that the petition be accordingly rejected.

5. We have given our thoughtful consideration to the rival contentions of the learned counsel and with the assistance of the learned counsel, we have also gone through the relevant Rules and the provisions applicable to the facts of the present case. Section 16(5) of the Right to Information Act, 2005 reads thus :

“(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government;

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.”

6. The Government of Goa in pursuance of the said provisions and the provisions of the “ The Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991” as amended by the “The Chief Election

Commissioner and other Election Commissioners (Conditions of Service) Act, 1993” read with Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 and Supreme Court Judges Rules, 1959, the terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioner were notified in the Official Gazette dated 24.05.2007 under title 'Pension'. The said terms read thus :

“*Pension*.- In terms of Section 6(2) of the CEC and other ECs (Conditions of Service) Act, 1991 the CEC and ECs are entitled to a pension which is equal to the pension payable to the Judge of the Supreme Court in accordance with the provisions of Part III of the schedule to the Supreme Court Judges (Conditions of Service) Act, 1958 as amended from time to time. These provisions are also applicable to the State Chief Information Commission in terms of Section 16(5)(a) of RTI Act, 2005.

The provisions of Part III apply to a Judge who has held any pensionable post under the union or a State (but is not a member of Indian Civil Service) and who has not elected to receive the pension

under Part I *ibid*.

The pension payable to such a Judge shall be :

(a) the pension to which he is entitled under the ordinary rules of his service if he had not been appointed a Judge, his service as a Judge in India being treated as service therein for the purpose of calculating pension.

(b) a special additional pension of Rs.7800 per annum in respect of such completed year of service for pension as a Judge in India:

Provided that the pension under (a) and additional pension under clause (b) together shall in no case exceed Rs.2,70,000 per annum.

Commutation of pension, family pension and gratuity as are admissible to the Judge of the Supreme court are also admissible to State Chief Information Commissioner.”

7. On going through the said provisions, it clearly specifies that the Chief Information Commissioner is entitled to a pension which is equal to the pension payable to a Judge of the Supreme

Court in accordance with the provisions of Part III of the schedule to the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958 as amended from time to time. It further clearly specifies that these provisions are also applicable to the State Chief Information Commissioner in terms of Section 16(5)(a) of the Right to Information Act of 2005. The amount of pension payable in terms of the provisions of Part III specifies that the pension which he is entitled under the ordinary rules of his service if he had not been appointed as a Judge, his service as a Judge in India being treated as service therein for the purpose of calculating pension. The said term clearly specifies that the Chief Information Commissioner is entitled for pension as specified therein. In fact, clause (a) and (b) specifying the pension payable to a Judge referred to herein above is in consonance with clause 2(a) and (b) of Part III of the said Act of 1958. In such circumstances, on conjoint reading of the said rules and terms of appointment of the Chief Information Commissioner, it clearly reveal that the petitioner appointed as a Chief Information Commissioner would be entitled for pension as provided therein, no doubt, subject to the restrictions provided. In such circumstances, the stand taken by the respondents that the petitioner is not entitled to the

pension in terms of clause 2(a) of Part III of the said Act of 1958 is not at all justified. The petitioner having retired as a Chief Information Commissioner would entitle to the pension payable to a Judge of the Supreme Court as provided in Part III of clause 2(a) and (b) of the said Act of 1958 as amended.

8. The Gauhati High Court in the judgment reported in **2013 LawSuit (Gau) 555** in the case of **Robert Hrangdawla, IAS & SCIC V/s State of Mizoram and others**, has observed at paras 14, 15, 16 and 20 thus :

“**14.** Section 16 of the Act deals with terms of office and conditions of service. Relevant portion of the aforesaid section provides that the State Chief Information Commissioner shall hold office for a term of 5 years from the date on which he enters office and shall not be eligible for reappointment. As per the proviso to sub-section (1), no State Chief Information Commissioner shall hold office after he attained the age of 65 years. Under sub-section (5), salary and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner shall be the same as that of an Election

Commissioner. As per the proviso, if the State Chief Information Commissioner at the time of his appointment is in receipt of a regular pension in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of his service as the State Chief Information Commissioner shall be reduced by the amount of that pension.

15. Thus, it is clear from a reading of section 16(5) of the Act that the salary and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner is the same as that of an Election Commissioner.

16. Petitioner has averred and has extensively referred to in his pleadings the provisions of the Election Commissioner (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991, as amended. As per section 6 of the said Act, pension is payable to Election Commissioners. A person who immediately before assuming office as Chief Election Commissioner or Election Commissioner was in service of Government, shall be deemed to have retired from service on the date on which

he enters office as Chief Election Commissioner or Election Commissioner but his subsequent service as Chief Election Commissioner or Election Commissioner shall be reckoned as continuous approved service counting for pension in service to which he belonged. When the Chief Election Commissioner or the Election Commissioner demits office, he shall be entitled to pension equal to the pension paid to a Judge of the Supreme Court in accordance with the provisions of the Supreme Court Judges (Conditions of Service) Act, 1958 and such other pension as are admissible to a Judge of the Supreme Court.

20. This contention of the respondents is fallacious inasmuch as entitlement to pension of State Chief Information Commissioner is traceable to section 16(5) of the Act. Once the statute provides such a benefit, the same cannot be curtailed or given effect to from a latter date by a subordinate legislation. Moreover, when the 2012 Rules expressly provides pensionary benefit to State Chief Information Commissioner, it would be incongruous and an anomalous situation to

grant pension to one State Chief Information Commissioner and deny the same to another State Chief Information Commissioner only on the ground that the latter had retired before coming into force of the 2012 Rules.”

9. The facts in the said case were that the petitioner therein had retired in 2005 as an I.A.S. Officer and was appointed as the Chief Information Commissioner in 2006 and in the context of such facts, the Gauhati High Court has come to the conclusion that the Chief Information Commissioner was entitled for pension payable to a Judge of the Supreme Court.

10. Taking note of the said observations and the facts therein, we find that in the present case, the petitioner who has retired as a Chief Information Commissioner is entitled for pension in terms of the said clause as payable to a Judge of the Supreme Court. As such, the communication of the respondent no.4 dated 29.03.2010 denying the pension to the petitioner in terms of clause 2(a) of Part III of the said Act of 1958 is not at all justified and deserves to be quashed and set aside.

11. For the aforesaid reasons, the petitioner is entitled for pension in terms of clause 2(a) and (b) of Part III of the said Act of 1958.

12. In view of the above, we pass the following :

ORDER

(i) The communication dated 29.03.2010 issued by the Joint Director of Accounts, denying the pension in terms of clause 2(a) of Part III is quashed and set aside.

(ii) The respondents are directed to redetermine the pension payable to the petitioner in the light of the observations made herein above and in accordance with law and pay the difference amount to the petitioner within six months from the date of the receipt of this order.

(iii) Rule is made absolute in the above terms with no order as to costs.

(iv) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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