

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 306 & 220 OF 2017

WRIT PETITION NO. 306 OF 2017

Shri Ravindra Panduranga Kamat,
Headmaster (Retired) of
Mahatma Gandhi Centenary
High School, Gaunem, Ponda,
under Central Education Zone,
Panaji Goa, aged 72 years,
married, Indian National,
r/o I/F-9, Santaban Housing Complex,
Chimbel Road, Mercedes,
Tiswadi Goa 403 005.

... Petitioner

Versus

1. State of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Bardez Goa 403 521
2. Government of Goa,
through its Chief Secretary,
having office at Secretariat,
Porvorim, Bardez Goa 403 521
3. The Director of Education &
Ex-Officio Joint Secretary,
Government of Goa,
having office at Directorate of Education,
Porvorim Goa 403 521.

... Respondents

The petitioner in person.

Mr. Dattaprasad Lawande, Advocate General with Mr. Deep D. Shirodkar, Addl. Government Advocate for the respondents.

WRIT PETITION NO. 220 OF 2017

1. Shri Ravindra Panduranga Kamat,
Headmaster (Retired) of Mahatma Gandhi
Centenary High School Gaunem,
Ponda under Central Education Zone,
Panaji, 72 years of age, married,
Indian National,
r/o I/F-9, Santaban HSG Complex,
Chimbel Road Mercedes,
Tiswadi Goa 403 005
2. Shri Jayprakash Narayan Joshi
Headmaster (Retired)
of Dnyanprasarak Vidyalaya Mapusa,
Goa, under Asst. Director of
Education North Education Zone,
Mapusa Goa, 70 years of age,
married, Indian National,
r/o 2nd Floor,
1st Building Chandranath Apartment,
Opposite Police Station, Mapusa Goa 403 507
3. Shri Ganapat Nagesh Gauns,
Trained Graduate Teacher (Retired)
of Dayanand High School Chorao,
Ilhas Goa, under Central Education Zone,
Panaji Goa, 78 years of age,
Indian National,
r/o House No.157-C. R, Khorlim Shim,
Mapusa Goa 403 507

4. Shri Maruti Bharmachinchanikar,
Trained Graduate Teacher (Retired)
of Dnyanprasarak Vidyalaya Mapusa Goa
under North Education Zone,
Mapusa Goa.
76 years of age, Indian National,
R/o “Matruchhaya” Kumya-Morod,
Sarewada, Guirim, Bardez Goa 403 507
5. Smt. Usha Anand Kerkar,
wife of late Anand Vassudeo Kerkar,
61 years of age,
Housewife, Family Pension Holder of Anand Kerkar
(Since deceased)
r/o House No.32/E, Sanjay Niwas,
Khorlim Mapusa Goa 403 507
6. Shri Ganpat Nagesh Gauns,
78 years of age, Pensioner, husband
of late Minakshi Ganpat Gauns,
Family Pension Holder of
late Minakshi Ganpat Gauns (Since deceased)
r/o House No.157-C/12,
Khorlim-Shim, Mapusa Goa. ... Petitioners

V e r s u s

1. State of Goa,
through the Chief Secretary with office
at Secretariat Building,
Porvorim, Bardez Goa 403 521
2. The Govt. of Goa
through the Chief Secretary,
with office at Secretariat Building,
Porvorim Goa 403 521

3. The Director of Education and Ex-Officio
Jt. Secretary, Govt. of Goa
with office at Directorate of Education,
Porvorim Goa 403 521. Respondents

Mr. V. R. Tamba and Mr. P. Sawant, Advocates for the petitioners.

Mr. Dattaprasad Lawande, Advocate General with Mr. A. Prabhudessai, Addl. Government Advocate for the respondents.

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

Date:- 26th July, 2017

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

Heard the petitioner in person, Mr. Dattaprasad Lawande, learned Advocate General along with Mr. D. Shirodkar and Mr. A. Prabhudessai, learned Addl. Government Advocates for the respondents and Mr. V. R. Tamba, learned counsel appearing for the petitioners in Writ Petition No.220 of 2017.

2. At the outset, Mr. V. R. Tamba, learned counsel appearing for the petitioners in Writ Petition No.220 of 2017 seeks leave to delete the petitioner no.1. Leave granted. The petitioner

no.1 stands accordingly deleted.

3. Rule. Heard forthwith with the consent of the learned counsel.

4. The learned Addl. Government Advocate appearing for the respective respondents waive service.

5. Both the above Writ Petitions were taken up together for consideration with the consent of the respective parties as it was not disputed that the issues involved in both the petitions are identical.

6. In the above petitions, the petitioners inter alia seek to quash and set aside the order dated 12.06.2001 denying the benefits to the petitioners who were in service upto 31.12.2000 and grant the reliefs as directed to the petitioners in Writ Petition No.344 of 2009 as according to the petitioners are similarly placed. The reliefs sought in the other petition inter alia are similar and identical.

7. Briefly, the main contention of the petitioners is that the petitioners are similarly placed with the petitioners who had filed Writ Petition No.344 of 2009 which came to be disposed of by judgment dated 21.01.2013 whereby the Division Bench of this Court has taken a view that the cut off date which has been fixed by order dated 12.06.2001 is arbitrary and violates Article 14 of the Constitution of India and consequently, for the reasons stated in Writ Petition No.430 of 2003, the reliefs sought by the petitioners therein came to be allowed. In fact a view was already taken in Writ Petition No.430 of 2003 which was disposed of by judgment dated 15.10.2009 whereby it was held that the cut off date 01.01.2001 in the order dated 11.04.2001 is wholly arbitrary and violates Article 14 of the Constitution of India. It is not in dispute that the respondents had raised a challenge to the aforesaid judgments of this Court before the Apex Court which came to be rejected. In such circumstances, for the reasons stated in the said two judgments passed by the Division Bench of this Court and as it is not disputed that the petitioners in the above petitions are similarly placed, we find that the petitioners are entitled for the

relief inter alia to declare that the cut off date i.e. 01.01.2001 fixed by order dated 12.06.2001 is arbitrary and violates the Article 14 of the Constitution of India. To that extent, for the reasons stated in the said two judgments, the petitioners are entitled for such relief.

8. The only aspect remains to be considered is whether the petitioners are entitled for the reliefs in the manner as prayed for in the petitions. The admitted facts which culled out are that the order impugned was passed on 12.06.2001 and the petitioners raised a challenge to the said order only in the year 2016. The petitioners in the other Writ Petition approached this Court in the year 2009 and the petition came to be disposed off in the year 2013. The learned Advocate General submits that the petitions deserve to be rejected on the ground of laches. The fact that the impugned order stands vitiated for the reasons recorded by the learned Division Bench of this Court in the said judgment dated 21.01.2013 cannot be disputed. The fact that the petitioners are similarly placed is also not in dispute. It is also not in dispute that all the petitioners have retired and that they will at the most receive better retirement

benefits. In such circumstances, we find that the benefits of the judgments passed by this Court in the said Writ Petitions should be notionally given from the year 2001 but however, the actual benefits in payment of the enhanced pensionary benefits to the petitioners shall be calculated and paid from the date of the filing of the Writ Petition.

9. Mr. Tamba, learned counsel appearing for the petitioners however submits that the order itself is held to be a nullity and as such the respondents cannot indulge in unjust enrichment at the cost of the petitioners. We are not inclined to accept the said contention in the facts and circumstances of the case as the belated challenge to the impugned order by the petitioners has not been satisfactorily explained.

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

ORDER

(i) The impugned order dated 12.06.2001 fixing the cut off date as 01.01.2001 is quashed and set aside.

(ii) The respondents are accordingly directed to notionally fix the benefits to work out the entitlement of the pensionary benefits of the petitioners from 01.01.1996 and pay the petitioners the amount they are so entitled from the date of the filing of the above petition in the light of what has been stated hereinabove.

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

(iv) The petitions stand disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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