

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 385 OF 2013

Lt. Col. P. K. Kamalan (Retd),
s/o late Mr. Aiyappan Kesavan,
major of age, Indian National,
resident of Row House no. 5,
Golden Arch, Bavadhan Khurd,
Pune, 411 021,
Maharashtra.

... Petitioners

V e r s u s

1. The State of Goa,
represented herein by its
Chief Secretary, having
his office at Secretariat,
Alto Porvorim, Bardez, Goa.
2. Department of Electricity,
Government of Goa,
Represented herein by its
Chief Electrical Engineer,
Vidhyut Bhavan
Panaji, Goa.
3. Joint Electricity Regulatory
Commission, (for the State of
Goa and Union Territories)
represented herein by its
through its Secretary,
having office at 2nd floor,
HSI IDC Office Complex,
Vanijya Nikunj Complex,
Udyog Vihar, Phase V,
Gurgaon , Haryana.
4. Consumer Grievances
Redressal Forum,
Vidhyut Bhavan,
Vasco da Gama, Goa.

... Respondents

Mr. Ryan Menezes, Advocate for the Petitioners.

Mr. Pravin Faldessai and Mr. Amir Jamadar, Additional Government Advocate for the Respondent nos. 1, 2 and 4.

Coram :- F. M. REIS,
NUTAN D. SARDESSAI, JJ.
Date : 11th January, 2017

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

Heard Mr. Ryan Menezes, learned Counsel appearing for the Petitioner and Mr. Pravin Faldessai, learned Addl. Government Advocate appearing for the Respondent nos. 1, 2 and 4.

2. The above Petition, inter alia, seeks for a direction to the Respondent nos. 2 and 3 to pay to the Petitioner the remuneration that he was entitled to be paid from 06.01.2010 to 29.06.2010, which period has been reckoned by the Respondents to be a period during which the Petitioner has served the tenure of his appointment as a member of the Consumer Grievances Redressal Forum of the Department of Electricity, Government of Goa.

3. Briefly, the facts of the case to the extent necessary to decide the matter in controversy in the above Writ Petition are that somewhere on 25.11.2009 in view of an application filed by the Petitioner in response to an advertisement of the Respondent no. 3 for appointment as its nominee member of the Grievance Redressal Forum of the Electricity Department of

the Government of Goa, the Petitioner was appointed as its nominee member in terms of the provisions of The Joint Electricity Regulatory Commission (JERC Regulations) to the Grievance Redressal Committee for three years from the date of his inception of office. It is the contention of the Petitioner that based on the said appointment, the Petitioner joined duties somewhere on 06.01.2010 and reported to his Superiors in the Department of Electricity. It is also contended that thereafter the Petitioner addressed a letter to the Respondent no. 1 somewhere on 11.01.2010 communicating to the Chief Secretary that he had already assumed office. Though there was correspondence addressed by the Petitioner to the Respondent nos. 1 and 2 about his assumption or joining office as a nominee to the Grievance Forum, there was no response from the said Respondents nor the Committee itself was constituted as the remaining members were not nominated. Ultimately, according to the Petitioner, on 28.06.2010, the remaining members of the Committee were nominated and ultimately the Grievance Forum was constituted and, as such, the Petitioner was performing his functions in terms of the said Regulations. It is further the contention of the Petitioner that the Respondent no. 3 communicated to the Respondent nos. 1 and 2 that the termination of the Petitioner which was due to expire somewhere in January 2013 be extended upto February 2013. But, however, it is contended by the Petitioner that from the period from January to June, no remuneration was paid to the Petitioner and, in any event, according to him, as the term of the Petitioner was due to expire even assuming his date of

actual constitution of the Committee on 28.06.2010, there was a shortfall of four months period for which the Petitioner was entitled to be in service as a nominee of such Grievance Committee. It is further contended by the Petitioner that despite of the notices issued to the Respondents to pay the remuneration, as no such payments were forthcoming, the Petitioner filed the above Writ Petition, inter alia, seeking the aforesaid relief.

4. The Respondents filed their reply, inter alia, disputing that the Petitioner was appointed from 06.01.2010 but, however, according to them, as per the letters addressed by the Petitioner himself, his appointment is from 28.06.2010. It is further contended that as the term of the Petitioner in accordance with his appointment by the Respondent no. 3 would expire in January 2013 as per the directions of the Respondent no. 3, his term was extended for a period of one month and, accordingly, his services as a nominee of the Grievance Forum expired on 28.02.2013. It is further pointed out that as the Petitioner was not appointed by the Respondent nos. 1 and 2 in January 2010, but however, his appointment was from 28.06.2010, the question of paying any remuneration to the Petitioner for the period as claimed by the Petitioner would not arise.

5. We have heard the learned Counsel appearing for the respective parties. Both the learned Counsel have reiterated the contentions as reflected in the Petition as well as in the replies as stated herein above. The

point for determination based on the rival contention is whether the Petitioner is entitled for remuneration for a period of six months as claimed by the Petitioner on the assumption that he had in fact assumed office as a nominee on 06.01.2010.

6. On perusal of the appointment of the Petitioner by the Respondent no. 3 in November 2009, it clearly states that the appointment of the Petitioner was for a period of three years. In the present case, it is the stand taken by the Respondent nos. 1 and 2 that his appointment has to be reckoned from 28.06.2010 whereas it is contended by the Petitioner that as he had assumed office on 06.01.2010, he is entitled for such remuneration as from that date. The records do not conclusively establish that the Petitioner had in fact reported for duties continuously from January 2010 to June 2010. It is also undisputed that the Grievance Forum was defunct during the said period and had not taken off as the remaining members were not nominated. But the fact remains that in terms of the appointment of the Petitioner as a nominee, he was guaranteed a period of three years as a nominee of the Grievance Forum. In the present case, it is not disputed that in fact the Petitioner had worked as a nominee up to February 2013. In case the period is reckoned from the date of his appointment as claimed by the Respondent being 28.06.2010, his terms would otherwise expire by the end of June 2013. There are no specific reasons or allegations by the Respondents which would disqualify the Petitioner from holding office as

such nominee for a period up to the end of June 2013. In such circumstances, we find that considering the overall facts and circumstances of the case, the Petitioner should be paid remuneration for the remaining period of four months which were deprived by the Respondents in view of the action taken by the Respondent nos. 1 and 2 in withdrawing the services of the Petitioner as a nominee of such Forum. By reducing the period of the services of the Petitioner, the Respondents have acted arbitrary and contrary to the terms of his appointment.

7. In the peculiar facts and circumstances of the case and taking an equitable justice oriented view of the matter, we find that the Respondent nos. 1 and 2 be directed to pay the remuneration for a period of four months amounting to Rs.1,40,000/- within six months from today.

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

ORDER

(i) The Respondent nos. 1 and 2 are directed to pay a sum of Rs.1,40,000/- to the Petitioner within six months from today.

(ii) In case of any default in payment of such amount, it would carry interest of 10% p.a. from the date of delay upto actual payment.

(iii) Liberty to the Respondents to deposit the said amount with the Registry of this Court which the Petitioner may withdraw after giving due notice to the Respondents.

(iv) Rule is made absolute.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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