

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 707 OF 2011**

Shri Santosh R. Shirodkar, resident of
Vithalpur, Sanquelim, Goa. Petitioner

Versus

Sanquelim Municipal Council, through its
Chief Officer, having office at Sanquelim
Municipal Council, Sanquelim-Goa. Respondent

Shri Devidas J. Pangam with Shri S.P. Munj, Advocates for the
Petitioner.

Shri Sandesh D. Padiyar with Shri Prashil Arolkar, Advocates
for the Respondent.

CORAM:- C. V. BHADANG, J.

RESERVED ON: 3rd OCTOBER, 2017

PRONOUNCED ON: 7th OCTOBER, 2017

JUDGMENT:

The challenge in this petition is to the judgment and award dated 18.03.2011, passed by the Industrial Tribunal cum Labour Court, Panaji (Tribunal, for short), by which the petitioner (party no. 1) is directed to be paid a compensation of Rs.25,000/- in lieu of the reinstatement. The petitioner is basically aggrieved by the refusal of an order of reinstatement.

2. The brief facts are that the petitioner was appointed as a Peon in the erstwhile Village Panchayat of Sanquelim,

Virdi, Harvalem, somewhere in the year 1982 and worked as such, till 15.09.1995, when the services of the petitioner came to be terminated without any inquiry. The respondent-Municipal Council is the Successor of the erstwhile Village Panchayat of Virdi, Harvalem, Sanquelim-Party No. 2 (hereinafter referred to as the Village Panchayat).

3. Feeling aggrieved by the termination, the petitioner raised an Industrial Dispute, in which the following dispute was referred to the Tribunal for adjudication:-

(1) Whether the action of the Village Panchayat, Sanquelim, Harvalem & Virdi, Goa in terminating the services of Shri Santosh R. Shirodkar, with effect from 15-09-1995, is legal and justified ?

(2) If not, to what relief the workman is entitled ?

The reference was registered as Reference I.T. No. 57/2002.

4. The petitioner filed a statement of claim contending that he had rendered honest and unblemished service to the Village Panchayat. He was served with a memorandum dated 17.04.1995 and was placed under suspension, however, was not paid any subsistence allowance. The petitioner filed a reply to

the memorandum refuting the imputations made against him.

5. The petitioner appeared before the Inquiry Committee, wherein the statement of the petitioner was recorded on 12.08.1995. It was contended that the petitioner was never issued with any formal charge sheet. It was contended that after the oral statement of the petitioner came to be recorded, there was no further evidence led nor the petitioner was subjected to any cross examination. The Village Panchayat did not lead any evidence in rebuttal. Nonetheless, the petitioner came to be dismissed from services by an order dated 15.09.1995, without payment of a month's salary as required under law. It was contended that the dismissal was in flagrant violation of the principles of natural justice. It was contended that no copy of the inquiry report of the Committee was furnished to him. The petitioner sought reinstatement of service with full back wages and continuity of service etc.

6. The Village Panchayat (party no. 2) filed its written statement and resisted the claim. It was contended that the petitioner was employed in services and was designated as a Supervisor and he was performing duties of managerial/administrative nature. It was contended that it was revealed

during his tenure of service, that the petitioner had directly addressed a letter dated 02.02.1995 to the Hon'ble Chief Minister of Goa making false and baseless allegations against the Panchayat and its officers. It is contended that in the said letter, the petitioner had reported that the Panchayat was making unauthorised payment to one Supervisor, showing him as having worked on Sundays and holidays and there were also allegations made that the Secretary of the Panchayat had purchased a colour T.V. for his own use, out of the Panchayat funds. This according to the Village Panchayat was in the nature of gross and serious misconduct. Hence, a memo was issued to the petitioner on 15.02.1995 asking him to submit his explanation, which was found to be not satisfactory. There were other allegations made about the petitioner having collected the disbursement book of one I.P.A. beneficiary by name Radha Hazare after obtaining her thumb impression on two blank papers. This according to the Village Panchayat was with the intention of filing a false complaint against the Village Panchayat and its officers. It was contended that the memo dated 17.04.1995 was issued to the petitioner requiring his explanation. Yet another memo was issued to him on 23.03.1995 in respect of his unauthorised absenteeism. The reply filed by the petitioner to these memos was not found to be

satisfactory. The petitioner was accordingly placed under suspension from 26.03.1995 and after the submission of the report by the Inquiry Committee, the services of the petitioner came to be terminated with immediate effect by an order dated 15.09.1995. The Village Panchayat thus opposed the claim for reinstatement.

7. The Tribunal found that the petitioner was a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (Act, for short) and that the party no. 2 (before the Tribunal) was an "Industry" within the meaning of Section 2(j) of the said Act. The Tribunal found that admittedly, no enquiry was conducted before terminating the services of the petitioner and the party no. 2 (Village Panchayat) had sought leave to adduce evidence before the Tribunal, to substantiate the charges of misconduct. However, despite opportunity, the party no. 2 did not adduce any evidence of misconduct and consequently, there was no evidence to substantiate the charges of misconduct, which warranted any penal action. In that view of the matter, the Tribunal answered the issue nos. 2 and 3 in the affirmative, holding that the termination of the services of the petitioner was illegal, malafied and unjustified.

8. The Tribunal thereafter has addressed to the issue of relief to be granted while deciding issue no. 7. The Tribunal found that the services of the petitioner were terminated in the year 1996, after which a period of more than fourteen years has elapsed and there was no evidence to indicate that the petitioner was not employed since the date of his termination or to show that the post held by the petitioner was still vacant. In that view of the matter, the Tribunal found that this was not a fit case for granting reinstatement and the interest of justice would be met if, compensation is awarded in lieu thereof. Considering the fact that the petitioner had put in services of about fourteen years, the Tribunal found that a compensation of Rs.25,000/- would be just and fair compensation. Feeling aggrieved by the refusal to grant reinstatement the petitioner is before this Court.

9. I have heard Shri Pangam, the learned Counsel for the petitioner and Shri Padiyar, the learned Counsel for the respondent. Perused record and the impugned award.

10. The only contention raised on behalf of the petitioner is that the Tribunal after coming to the conclusion that the termination was illegal and unjust, ought to have directed

reinstatement. Alternatively it is submitted that the compensation granted is grossly inadequate, looking to the service left, to the credit of the petitioner, at the time of his termination. The learned Counsel has pointed out that the Date of Birth of the petitioner is 15.10.1969 and looking to the fact that the age of retirement is 60 years, the petitioner would have retired from services in the year 2029. The learned Counsel has also referred to a memorandum of settlement under Section 12(3) of the Act before the Conciliation Officer, wherein it was agreed between the parties that the petitioner will be reinstated with continuity of service w.e.f. 02.08.1993. He therefore submits that the part of the impugned award, refusing reinstatement be set aside and to direct the respondent to reinstate the petitioner with full back wages, continuity of service and other consequential benefits.

11. On the contrary, it is submitted by Shri Padiyar, the learned Counsel for the respondent, that there is no appointment letter produced by the petitioner and it is not clear as to which post he was appointed and whether it was a substantive appointment after following due procedure of law. In the absence of the same, the respondent cannot be foisted with an order of reinstatement. It is submitted that such an

order of reinstatement presupposes that the initial appointment was a regular appointment and against a clear and vacant post, which may still be available to be filled in. In the submission of Shri Padiyar, in the absence of this requirement, the Tribunal has rightly refused to grant an order of reinstatement. Insofar as the compensation in lieu of reinstatement is concerned, Shri Padiyar, in all fairness, submits that this Court may pass appropriate order as may be deemed fit in the facts and circumstances of the case.

12. I have carefully considered the rival circumstances and the submissions made. It is undisputed that the petitioner was appointed by the erstwhile Village Panchayat of Sanquelim, Viridi, Harvalem, of which the respondent-Municipal Council is a successor. Before the Tribunal, it was the Village Panchayat, which was the party no. 2. Be that as it may, according to the petitioner, he was appointed as a Peon, while the Village Panchayat contended that the petitioner was appointed as a Supervisor. That issue has been set at rest by the Tribunal by holding that the petitioner was a "Workman" within the meaning of Section 2(s) of the Act. None of the parties have produced the letter of appointment or any other document to show that the appointment of the petitioner was made after

following due procedure of law and that too, against a clear vacant post, which is duly sanctioned. On his own saying, the petitioner claims that he was appointed as a Peon in the year 1987 and was discharging the duties such as to regulate the vendors in the market, to clean the drainage and to serve the notices etc. Further according to the petitioner, he was paid a consolidated salary of Rs.600/- per month. However, according to him, in the cash book, it was shown as Rs.1,500/- per month. From the aforesaid contentions in the statement of claim, it is clear that the appointment of the petitioner was not governed by any sanctioned pay scale, attached to a post having clear vacancy.

13. The contention based on the memorandum under Section 12(3) of the Act, cannot be accepted for more reasons than one. Firstly, it is difficult to understand as to how the reference came to be made if, the dispute was successfully conciliated. That apart, the said memorandum is neither produced before the Tribunal nor before this Court and there is no ground based on the said memorandum raised before the Tribunal or this Court. The said memorandum was referred to only during the course of the arguments at Bar. For this reason, it is not possible to act on the same or grant any relief on that basis.

14. The learned Tribunal has held and to my mind rightly so, that whatever inquiry was conducted against the petitioner cannot be said to be fair and proper. The Village Panchayat had also sought leave to substantiate charges by leading evidence before the Tribunal. However, no such evidence was led. Thus, the finding of the Tribunal that the termination was illegal and unjustified, needs to be affirmed. However, the question is about the relief to which the petitioner is entitled.

15. As noticed earlier, there is no evidence on record that the petitioner was appointed on regular basis, against a vacant post after following due procedure of law. The contents of the statement of the claim would make it clear that the petitioner was being paid a consolidated salary and his appointment was not governed by any sanctioned pay scale as such. In such circumstances, it is difficult to hold that the petitioner would be entitled to reinstatement in service at this distance of time alongwith full back wages and other consequential benefits. The Tribunal has instead thought it fit to grant compensation in lieu of such reinstatement and has assessed the quantum at Rs.25,000/-.

16. In my considered view, looking to the fact that the petitioner had put in services of about fourteen years on the date of termination and looking to his age, the quantum of compensation granted appears to be on a lower side. On his own saying, the petitioner was being paid a consolidated salary of Rs.600/- per month, which would translate into salary of Rs.7,200/- per annum. Making a reasonable allowance for appropriate escalation, an average salary of Rs.10,000/- per annum can be reckoned for the purposes of arriving at the amount of compensation. It is trite that the assessment of compensation in such a case presupposes a certain amount of reasonable guess work. Looking to the service already rendered and the period left and the imponderables of life, in my considered view, an amount of Rs.1,50,000/- (representing salary/wages for 15 years) would be just and proper compensation.

17. In the result, the following order is passed:

ORDER

- (a) The petition is partly allowed.
- (b) The impugned award is modified.
- (c) The respondent is directed to pay to the

petitioner a compensation of Rs.1,50,000/-, within three months from today, failing which, the amount shall carry interest at the rate of 10% per annum, from 18.03.2011 (the date of the award of the Tribunal) till realisation.

(d) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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