

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.48 of 2015**

Mr. P. Shaliyo, of major
age, Indian National,
Economic Investigator,
Directorate of Industries,
Trade and Commerce,
Government of Goa,
Panaji-Goa .. Petitioner
Vs.

1. The Principal Secretary,
Administrative Reforms
Department, Government of
Goa, having office at
Secretariat, Porvorim,
Bardez-Goa
2. The Principal Secretary
(Industries), Government
of Goa, Industries
Department, Secretariat,
Porvorim, Bardez-Goa
3. The Director of Industries,
Trade and Commerce,
Government of Goa,
Directorate of Industries,
Trade and Commerce, Udyog
Bhawan, Panaji-Goa.
4. State of Goa, through its
Chief Secretary, having
office at Secretariat,
Porvorim, Bardez-Goa .. Respondents.

Mr. D. J. Pangam, Advocate for the petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. P. Dangui,
Additional Government Advocate for respondents.

**Coram :- ANOOP V. MOHTA &
C. V. BHADANG, JJ.**

DATE : - 8th March, 2017

JUDGMENT : (Per C. V. Bhadang, J.)

The petitioner is seeking following substantive reliefs in this petition :

“(A) This Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the respondents to consider the case of petitioner to grant promotion by way of creating a supernumerary post based on the recommendations of the Director of Industries dated 29/07/2011, with all consequential benefits;
(B) In the alternate, this Court be pleased to issue a writ of mandamus or a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the respondents to pass appropriate orders in terms of the petitioner's representations dated 16/9/2014 and 24/9/2014 (“ANNEXURE CC” AND ANNEXURE DD to the petition);”

2. The learned Counsel for the petitioner has referred to a letter dated 29/07/2011, in order to submit that in appreciation of the outstanding work rendered by the petitioner (as set out in the said letter), the Director, Industries, Trade and Commerce (hereinafter referred to as 'Director') had sent a proposal to the Government, for creation of a post of Chief Economic Investigator and to promote the petitioner to the said post. The Director, has

stated in his letter that at the relevant time, there was only one post of Industries Officer vacant and as such, the petitioner, who was then at serial no.4 of the seniority list of Industries Inspector/ Extension Officer (Industries)/ Economic Investigator, had no chance of promotion before his retirement on superannuation on 31/05/2015.

The Government had refused to approve the proposal, which brings the petitioner to this Court.

3. The petitioner had sent two representations, one dated 16/09/2014 to the Director of Industries, Trade and Commerce, Panaji, Goa and the other dated 24/09/2014 to the Director and two others, namely the Principal Secretary (ARD) and Principal Secretary (Industries), Government of Goa, which according to the petitioner, are not decided.

4. We have heard Shri Pangam, the learned Counsel for the petitioner and Shri Lotlikar, the learned Advocate General for the respondent.

5. It is submitted on behalf of the petitioner that the State Government has refused to approve the proposal sent by the Director, on the ground that there is no such power to create a supernumerary post, so that the petitioner could be

accommodated therein. It is submitted that as a governing body, the Government has all the powers to create such supernumerary post.

6. On the contrary, It is submitted by the learned Advocate General that the petitioner has since retired on superannuation with effect from 31/05/2015 and was getting pay scale as Rs.9300-34800 + Grade Pay of Rs.4600/- right from the year 2009. It is submitted that the petitioner would have been entitled to the same pay scale, in the event he was promoted to the post as proposed by the Director.

7. Shri Pangam, the learned Counsel for the petitioner does not dispute that the petitioner was getting the pay scale of Rs.9300-34800 and Grade Pay of Rs.4600/-. However, it is pointed out that the petitioner would have been entitled to a higher Grade Pay of Rs.5400/- in the event of he being promoted to the post created on a supernumerary basis, as proposed. The learned Counsel, therefore, submits that the claim to the extent of difference in the Grade Pay, amounting to Rs.800/- per month (Rs.5400-4600) still survives.

8. We have carefully considered the rival circumstances and the submissions made.

9. The communication dated 29/07/2011 from the Director shows that the petitioner, who was holding the post of 'Apiarist', was also officiating as 'Economic Investigator', from 03/03/1994 and thereafter, was regularly promoted as Economic Investigator with effect from 23/07/2004. Since then he worked as Economic Investigator for a period of 17 years (as in the year 2011). The Director has then set out the nature of the services rendered and overall performance of the petitioner in paras 2 and 3 of the communication and has then proposed for creation of a supernumerary post as 'Chief Economic Investigator.' This was on account of the fact that the petitioner at the relevant time stood at serial no.4 of seniority list of Industries Inspector/ Extension Officer (Industries)/ Economic Investigator and had no promotional prospects before his superannuation as there was solitary post of Industries Officer available. The Government has not accepted this proposal. The question is whether the reliefs as prayed for by the petitioner, can be granted.

10. It is not in dispute that the petitioner was getting the pay scale of Rs.9300-34800 + Grade Pay of Rs.4600/- right from the year 2009. The limited contention is that had the petitioner been promoted to the post created on supernumerary basis as proposed, he would have been entitled to a higher Grade Pay of

Rs.5400/-. In this regard, it would be significant to note the representations made by the petitioner on 16/09/2014 and 24/09/2014, in which the petitioner claims that as per the Government of India's decision in para 5(i) to (v), one of the guiding principles for creation of supernumerary post is that no extra financial commitment is involved in the creation of such post in the shape of increased pay and allowances, pensionary benefits, etc. Not only that in the representation dated 24/09/2014, the petitioner has requested for creation of the post of Chief Economic Investigator, with the pay scale of 9300-34800 with Grade Pay of Rs.4600/-. It can, thus, be seen that on his own saying, the petitioner was claiming creation of the post with a pay scale carrying Grade Pay of Rs.4600/-, which he was otherwise admittedly getting and secondly, according to the petitioner, such creation of supernumerary post, should not involve any additional financial liability. If that be so, the case on behalf of the petitioner for a direction to create supernumerary post, in our view, cannot be accepted. The petition is without any merit and is, accordingly, dismissed.

11. Rule is discharged, with no order as to costs.

C. V. BHADANG, J.

ANOOP V. MOHTA, J.

SMA