

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 416 OF 2009**

Shri Agnelo Fernandes,
R/o 12/69,
Khorlim, Mapusa, Goa.

.... Petitioner

V e r s u s

M/s. Fomento Corp.,
represented by Dilip Timblo,
Attorney, Salgaonkar Chambers,
Luis Miranda Road, Margao,
Goa, 403 601.

..... Respondent

- (i) Smt. Sushilabai Modu Timblo,
Major of age, Wife of late Mr. Modu Timblo,
Residing at Zaiwanti, Cupangal, Gogol,
P.O. Fatorda, Margao, Goa 403 602.
- (ii) Mr. Auduth Timblo,
Major of age, Son of late Mr. Modu Timblo,
Having office at Villa Flores D'Silva,
Erasmoo Carvalho Street, Margao, Goa 403 602,
Residing at La Marvel Colony,
Dona Paula, Goa.
- (iii) Mr. Dilip Timblo,
Major of age, Son of late Mr. Modu Timblo,
Residing at Zaiwanti, Cupangal, Gogol,
P.O. Fatorda, Margao, Goa 403 602.
- (iv) Mr. Prashant Timblo,
Major of age, Wife of late Mr. Modu Timblo,
Residing at Samara Samudradarshan,
Goa University,
P.O. Bambolim 403 206,
Also at Parijat, 95 Marine Drive,
Mumbai 400 002.

.... Respondents

(Amendment carried out as per orders dtd.
10.9.2014 and 30.10.2014 in MCA 370/2014 in
W.P. no.416/2009).

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

Shri Nigel Da Costa Frias with Ms. Maria Correia and Ms. Babina Kunkollikar, Advocates for the Respondent.

CORAM: C. V. BHADANG, J.
Reserved on : 21/09/2018
Pronounced on: 27 /09/2018.

JUDGMENT:

The petitioner joined the services of M/s. Auto Universal as a Branch In-charge at Mapusa on 6/2/1983. M/s. Auto Universal was taken over by the respondent Formento Corporation on 27/2/1987. The petitioner continued to work as a Branch In-charge of the respondent Corporation at Mapusa till 20/1/1988, when he was transferred to the stores room at Margao, where he worked till 7/3/1988. The services of the petitioner came to be terminated w.e.f 8/3/1988. The petitioner raised an industrial dispute being Reference I.T No.31/1989 which was dismissed by the Industrial Tribunal on 8/5/1993. The Tribunal, although came to the conclusion, that the petitioner was a workman, held that the action of the Corporation, in terminating the petitioner, was legal and valid. The petitioner challenged the same before this Court in W.P. No.201/1994 which was allowed on 7/7/1997, directing reinstatement of the petitioner along with back wages and all consequential

benefits. The respondent/Corporation unsuccessfully challenged the said decision in LPA No.2/2000 which was dismissed on 18/1/2000.

2. As the respondent did not comply with the order of reinstatement the petitioner filed Contempt Petition no.13/1998. During the pendency of the contempt petition, the petitioner was allowed to join the duties at Margao on 11/7/2000. The last drawn salary of the petitioner when his services came to be terminated was Rs.850/- per month. On reinstatement w.e.f 11/7/2000, the petitioner's salary was fixed at Rs.2500/- per month. During the pendency of the contempt petition the petitioner was also paid an amount of Rs.1,23,859/- vide cheque dated 31/3/2000.

3. According to the petitioner, the amount paid towards the arrears of the back wages have not been properly calculated taking into account the annual increment of Rs.100/- and in terms of the judgment of this Court in W.P. No.201/1994. The petitioner also claimed that he is entitled to bonus and traveling expenses from Mapusa to Margao. The petitioner, therefore approached the Labour Court under section 33-C (2) of the Industrial Disputes Act, 1947 (Act, for short) claiming an amount of Rs.2,59,650/- (Annexure I) towards the arrears of the back wages/salary, Rs.21,448/- (Annexure II) towards bonus from the year 1988-1989 to 2000-2001 and

traveling expenses of Rs.1,09,153/- (Annexure III).

4. The claim was resisted by the respondent on the ground that the petitioner is not entitled to any annual increment and whatever amount has been paid to the petitioner is properly calculated in terms of the judgment of this Court.

5. The petitioner examined himself and produced certain documents. The respondent/corporation did not examine any witness.

6. The Tribunal by the impugned judgment dated 29/6/2007 has partly allowed the application in the sum of Rs.15,371/-. The Tribunal has not accepted the claim of the petitioner towards traveling expenses. Feeling aggrieved by the inadequate amount granted, the petitioner is before this Court.

7. I have heard Shri Pangam, the learned counsel for the petitioner and Shri Costa Frias, the learned counsel appearing for the respondent. With the assistance of the learned counsel for the parties, I have gone through the record.

8. At the outset it may be mentioned that the petitioner is not pressing the claim towards traveling expenses. In so far as the claim towards bonus is concerned, the Tribunal has granted an amount of Rs.11,730/- which is also said to be paid. Thus the dispute is essentially limited to the arrears of back wages on account of the claim of the petitioner that he was entitled to annual increments of Rs.100/-. Shri Pangam, the learned counsel for the petitioner submits that the last drawn salary of the petitioner on 8/3/1988 when his services came to be terminated was Rs.850/- per month and the salary which was fixed on reinstatement in service on 11/7/2000 was Rs.2500/-. It is submitted that this itself would be indicative of the fact that the petitioner was entitled to annual increments.

9. On the contrary it is submitted by Shri Costa Frias, the learned counsel appearing for the respondent that the petitioner has not produced his appointment letter and has not otherwise shown whether he was entitled to an annual increment of Rs.100/-. It is submitted that in the absence of any evidence to that effect, the Tribunal was justified in refusing to grant the claim in its entirety.

10. The Tribunal has dealt with the claim as to the arrears of back wages while dealing with issue no.1. The petitioner had relied upon a chart prepared

on the basis of the returns of contribution, under the Employees State Insurance Act, a copy of which was produced at Exhibit A-13. The Tribunal has found that the said chart (Form no.6) and the copies of the returns would not be sufficient to support the claim in so far as it relates to the annual increment is concerned. Hence the Tribunal has calculated the arrears of salary at the rate of Rs. 850/- p.m. for 150 months i.e from 8/3/1988 to 11/7/2000 amounting to Rs.1,27,500/-. The net claim granted by the Tribunal is after deducting the amount which was already paid to the petitioner. In my considered view what the Tribunal has lost sight of is that the respondent/corporation itself had fixed the wages/salary of the petitioner on his reinstatement at Rs.2500/- pm. on 11/7/2000. Thus, if according to the respondent the petitioner was not entitled to any increment and was expected to work at a fixed salary of Rs.850/- p.m there was no occasion for the Corporation to fix the salary in July 2000 at Rs.2500/-.

11. In my considered view, having regard to the fact that the respondent itself had fixed the salary of the petitioner at Rs.2500/- p.m. from Rs.850/- p.m. which was the last drawn salary when the services of the petitioner were terminated, it cannot be accepted that the petitioner was not entitled to any increment. In that view of the matter, I find that the petitioner would be entitled to the amount as mentioned in Annexure I to the application i.e.

Rs.2,59,650/-. The petitioner has admittedly been paid an amount of Rs.1,23,859/-. Thus, the petitioner would be entitled to an amount of Rs.1,35,791/-. The impugned order is accordingly modified. The respondent would pay to the petitioner a sum of Rs.1,35,791/- (Rupees One lakh thirty five thousand seven ninety one only). Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

Ap/