

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 293 OF 2008**

1. Mrs. Maria Ilda Margarida
Quiteiro E. Cortez.

2. Ms. Mariella Quiteiro Cortez,

3. Ms. Luzella Quiteiro Cortez,
All r/o B-S-3, Palmar Apartments,
Altinho, Mapusa, Bardez, Goa.

.... Petitioners

V e r s u s

M/s. Fomento Corp.,
Margao, Goa, Salgaonkar Chambers,
Luis Miranda Road, Margao,
Goa, 403 601.

..... Respondents

(i) Smt. Sushilabai Modu Timblo,
Major of age, Wife of late
Mr. Modu Timblo,
Resident of 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.
19.2.2014 and 5.7.2016.

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 Kunkolikar, Advocates for the Respondent.

CORAM: C. V. BHADANG, J.

Reserved on: 21/9/2018.

Pronounced on: 27/9/2018.

JUDGMENT:

Amancio Peter Cortez (since deceased) joined the services of the respondent on 23/3/1987 as a Garage -In-charge at Mapusa Goa. His services came to be terminated on 1.2.1988. Amancio raised an industrial dispute being Reference IT No.8/1989 before the Industrial Tribunal at Panaji, Goa. The Tribunal dismissed the Reference on 6/5/1993 which was challenged by Amancio before this Court in W. P. No.201/1994. This Court allowed the petition on 7/7/1997 directing reinstatement of Amancio along with full back wages and all consequential benefits. The respondent/Corporation unsuccessfully challenged the same before this Court in LPA No.19/1999 which was dismissed on 10/11/1999.

2. As the respondent did not comply with the order of reinstatement, Amancio filed a Contempt petition before this court. During the pendency of the contempt petition Amancio came to be reinstated on 1/12/1999 and was paid an amount of Rs.1,10,205/- vide cheque dated 9/12/1999. According to

Amancio his last drawn wages on his termination were Rs.700/- p.m. The respondent/Corporation fixed the wages of Amancio on reinstatement at Rs.2000/- p.m., which according to Amancio were on a lower side, than what were drawn by similarly situated employees. Be that as it may, Amancio approached the Labour Court with an application under section 33 -C (2) of the Industrial Disputes Act for arrears of the back wages of Rs.2,00,300/- from January 1988 to March 2000. Amancio claimed an amount of Rs.1,09,295/- after deducting an amount of Rs.1,10,205/ paid under cheque dated 9/12/1999. Amancio also claimed statutory bonus of Rs.17,400/- from the year 1987-88 to 1999-2000.

3. The application was resisted by the Corporation on the ground that Amancio was not entitled to any annual increment. The claim towards bonus was disputed.

4. Amancio died during the pendency of the application some where in March 2000. The petitioners are the legal heirs of the Amancio being his widow and two daughters.

5. The petitioner Maria Ilda examined herself as AW1 along with Agnelo Fernandes AW2, who was working as a Branch Manager with the

Corporation till 21/2/2001 Agnelo produced a copy of the chart of the contribution under the Employees State Insurance Act. The Labour Court by the impugned judgment and order dated 2/7/2007 has partly allowed the application granting an amount of Rs.6142/- to the petitioners. Feeling aggrieved by the inadequate amount granted, the petitioners have approached this Court.

6. I have heard Shri Pangam, the learned counsel for the petitioners 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.

7. It is submitted by Shri Pangam, the learned counsel for the petitioner that the petitioner was entitled to the annual increment of Rs.100/- and the Tribunal was not justified in refusing to grant the claim. The learned counsel referred to the observations and the finding of the Court in para 11 of the impugned judgment wherein the Labour Court has found that the case made out by the petitioners that the deceased was entitled to annual increments “appears to be more probable and convincing and therefore it can safely be accepted.” It is submitted that in the face of the said finding the Tribunal could not have refused to grant the claim.

8. On the contrary it is submitted by Shri Costa Frias, the learned counsel appearing for the respondent that the petitioners have not produced the appointment letter of the deceased in order to show that the deceased was drawing wages, in a time scale of pay or was entitled to annual increments. It is submitted that thus the Labour Court was justified in refusing to grant the claim as made.

9. I have carefully considered the rival circumstances and the submissions made. It is not in dispute that the last drawn wages of the deceased when his services came to be terminated were Rs.700/- p.m.. When he was reinstated on 1/12/1999, his wages were fixed at Rs.2000/- p.m.. This itself would suggest that the deceased was entitled to annual increment and was not working at a fixed salary, else otherwise the Respondent had no reason to fix his wages at a rate higher than the last drawn wages of the deceased on the date of his termination. In that view of the matter in my considered view the Tribunal was not justified in refusing to grant the claim. In fact, as noticed earlier, in para 11 of the impugned judgment, the Tribunal has clearly come to the conclusion that the case of the petitioner that the deceased was entitled to annual increments “appears to be more probable and convincing and therefore it can safely be accepted”.

10. In para 18 of the impugned judgment it has calculated the back wages at the rate of Rs. 700/- p.m. for a period of 142 months i.e. from 1.2.1988 to 1/12/1999 at Rs.99,400/-. The Tribunal has further found that the deceased died in the month of March 2000 and hence granted an amount of Rs.8000/- as wages for four months from December 1999 to March 2000. Thus the Tribunal has arrived at a total amount of Rs.1,07,400/- and the Tribunal has further found that the deceased was entitled to bonus of Rs.8947/-. Thus the total amount to which the deceased was found entitled was Rs.1,16,347/-. After deducting an amount of Rs.1,10,205/- paid to the deceased on 9/12/1999, the Tribunal has arrived at Rs.6114/- which has been granted by the impugned judgment. In my considered view the Tribunal lost sight of the fact that the respondent itself had fixed the wages of the deceased at Rs.2000/- p.m. on reinstatement and thus, it cannot be accepted that the deceased was working at a fixed salary without any annual increment. We also have the evidence of Agnelo Fernandes, who was the Branch Manger, who has stated about the annual increments admissible. In that view of the matter, the deceased was entitled to Rs.2,19,500/- towards the arrears of back wages out of which the deceased was paid an amount of Rs.1,10,205/-. Thus the petitioners would be entitled to an amount of Rs.1,09,295/- towards the arrears of the back wages, in addition to the amount of Rs.17,400/- towards bonus. Thus the petitioners would be entitled to a total amount of

Rs.1,26,695/-. The petition is accordingly allowed. The impugned order passed by the Labour Court is modified. The respondent do pay to the petitioners an amount of Rs.1,26,695/- (Rupees One lakh twenty six thousand six hundred ninety five only). Rule is made absolute in the aforesaid terms with no order as to costs.

C. V. BHADANG, J.

Ap/