

.. Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.580 OF 2010

Ganu S. Gaonkar,
Work Assistant, Office of the
Executive Engineer,
Works Division III (PHE),
Public Works Department,
St. Inez, Panaji, Goa.

..... Petitioner.

Versus

(1) The Executive Engineer,
Works Division III (PHE),
Public Works Department,
St. Inez, Panaji, Goa.

(2) The Principal Chief Engineer,
Government of Goa, having office
at Public Works Department,
Altinho, Panaji, Goa.

(3) State of Goa, through its
Chief Secretary, having Office
at Secretariat, Porvorim, Bardez, Goa.

..... Respondents.

Mr. Parikshit Sawant, Advocate for the Petitioner.

Mr. P. Dangui, Government Advocate for the Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 6 September 2018.

ORAL JUDGMENT: (Per N.M. Jamdar, J.)

Heard the learned Counsel for the Petitioner and the learned Government Advocate for the Respondents.

2. The Petitioner by this Petition seeks a writ in the nature of mandamus directing the Respondents to cancel or withdraw the impugned order dated 29 June 2010 by which recovery has been sought from the Petitioner.

3. The Petitioner was appointed on 2 November 1982 as Work Assistant in the Public Works Department, Government of Goa. On the recommendations of the Departmental Selection Committee, the Petitioner was appointed as Assistant Mestry on Work Charged Establishment. A Petition was filed by the Petitioner in which a statement was made on behalf of the Respondent-State that the Petitioner's services would be regularised and the salary would be notionally fixed. The Petitioner's services were regularised on 26 July 2006. The Petitioner was awarded the first increment in the pay scale of ₹ 950-1500. The Petitioner was paid arrears amounting to ₹ 83,598/-. Thereafter, Respondent No.1 passed the impugned order directing recovery of the amount of ₹83,598/- from

the Petitioner. Being aggrieved, the Petitioner has filed the present Petition.

4. At the time of issuance of Rule, by an interim order the recovery as against the Petitioner was stayed. The matter was, thereafter, referred to the Lok Adalat and inspite of the learned Advocate General making a statement at one time that, in all probabilities recovery will not be insisted upon, after adjournment, the matter could not be settled.

5. We have heard Mr. P. Sawant, learned Counsel for the Petitioner and Mr. P. Dangui, learned Government Advocate for the Respondents.

6. The impugned order states that the Petitioner was paid an amount of ₹ 85,598/- on 30 December 2008. Thereafter, the recovery was ordered on 29 February 2010. In the affidavit-in-reply filed, it is states that it is not ₹ 85,590/-, but ₹ 61,466/- is recoverable. In the reply itself, the Respondents have referred to the decision of the Apex Court in the case of *Sayed Abjdul Qadir vs. State of Bihar*, reported in (2009) 3 SCC 475. The Apex Court has held that the relief against recovery can be granted by the Court not in recognizing

any right, but on the ground of equity considering hardships that would be caused if recovery is ordered when the amounts are disbursed without any misrepresentation on the part of the Government servant. In the present case, after almost two years, the same is sought to be recovered. There is no allegation that the Petitioner committed fraud or was guilty of misrepresentation.

7. Considering the status of the Petitioner in Cadre and his financial position, the amount, must have been spent. Such recovery, in the facts and circumstances of the present case, after a period of two years, would cause extreme hardships to the Petitioner. Therefore, in the peculiar facts and circumstances of the present case, we are of the opinion that insistence of the State on recovery of the amount of ₹ 61,466/- from the Petitioner is unduly harsh and oppressive. The learned Government Advocate submitted that the Government is not precluded from recovering the amount even after the employee is retired. It is not the question of right of the Government, but fairness of the actions of the State as a model employer and its impact on otherwise innocent employee.

8. In view of this position, and considering the fact that the interim order is operating since last eight years, we allow this Petition in terms of prayer clause (a). Rule is made absolute in the above terms. No costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.