

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 376 OF 2015

1. Venkatesh Chodankar,
major of age,
Retired Station Operator,
r/o Dhakti Chandai,
Pirna, Bardez Goa.
2. Gunaji A. Bicholkar,
59 years of age,
Division IX,
Electricity Department,
Tivim, Bardez Goa.
3. K. D. Metti,
major of age,
Retired Station Operator,
r/o D-1, Electricity Colony,
Near Power House,
Aquem, Margao-Goa.

.... Petitioners

Versus

1. State of Goa
through its Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Bardez Goa.
2. The Chief Electrical Engineer,
with office at Vidyut Bhawan,
Panaji – Goa.

.... Respondents

Mr. A. D. Bhobe, Advocate for the Petitioner.

Mr. S. Dhargalkar, Additional Government Advocate for Respondents no.1 and 2.

Coram:- M.S. SONAK &
SMT. M. S. JAWALKAR, JJ.

Date:- 10th December, 2019

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. A. Bhobe for the petitioners and Mr. S. Dhargalkar, learned Additional Government Advocate for the respondents.

2. Rule. Rule is made returnable forthwith with the consent and at the request of learned counsel for the parties. The counsel appearing for the respondents waives service.

3. The petitioners, complain that there is no implementation of the orders made by this Court on 17.02.2009 and 14.03.2009 in Writ Petition No.551 of 2006 in the matter of grant of 40% fitment weightage on the revised/interim revised pay scale payable to the petitioners. Despite several opportunities, the State, has not bothered to file any reply to the petition. Mr. Dhargalkar, learned Additional Government Advocate has however submitted that there is full

compliance of the orders made by this Court and on the basis of the averments in the petition itself, he would be in a position to demonstrate that there is no illegality in the action of the respondents.

4. The petitioners, along with some others, had instituted Writ Petition No.551 of 2006 before this Court which came to be disposed of by order dated 17.02.2009. In fact, the petition was disposed of on the basis of the statement made by the learned Advocate General which is recorded in paragraph 3 of our order dated 17.02.2009 and reads as follows:

“3. The learned Advocate General, on the other hand, submitted that as per the Revised Pay Fixation Statement, the proposed scale of pay under the Vth Pay Commission, was required to be fixed at Rs. 4000-6000 w.e.f. 01.01.1996 in view of the High Court's Judgment. It is submitted that the proposed scale which is fixed at Rs.3050-75-3950-80-4590 under Clause 2(c) and 5 in the Revised Pay Fixation Statement is, as such, shall be considered by the State as Rs.4000-6000 w.e.f. 01.01.1996. As per the Order of the Division Bench, the learned Advocate General submitted that necessary amendment will be carried out and instead of Rs.3050-75-3950-80-4590 under Clauses 2(c) and 5, Rs.4000-6000 will be made and this fixation will be accordingly made w.e.f. 01.01.1996 and, on the basis of such revision in the scale if the said petitioners are entitled to any difference, the same will be paid to them. The pay scale to be revised accordingly in the aforesaid terms.”

5. The petitioners took out Miscellaneous Civil Application

No.217/2009 for speaking to minutes of the order dated 17.02.2009 and the same was disposed of on 04.03.2009 by the order which reads as follows:-

“ Heard Mr. Lobo, learned Advocate for the applicants and the learned Advocate General for the respondents on the application for speaking to the minutes. Learned Advocate General has pointed out that the format was already placed on record, on the basis of which the petition was disposed off and, therefore, whatever benefits the petitioners are entitled to, are to be given in the light of the said format which is at Exhibit P-2 at page 43 to the petition.

2. Considering the said aspect, no other words are required to be added in the Judgment. The application for speaking to the minutes is disposed off in view of what is stated above.”

6. Thereafter, the respondents issued an order dated 24.07.2009 purporting to comply with the directions in Writ Petition No.551 of 2006 and this order dated 24.07.2009 reads as follows:-

“ **ORDER**

In pursuance to the Oral Judgment dated 17-2-2009 in Writ Petition No.551 of 2006 and dated 4-3-2009 in Miscellaneous Civil Application No.217 of 2009 in Writ Petition No.551 of 2006 of the Hon'ble High Court of Bombay, the Government is pleased to grant to the Station Operators of Electricity Department to draw 40% fitment weightage with reference to the last pay drawn as on 1-1-1996 in the revised pay scale of Rs.4000-100-6000 and fixation of pay in the said scale under clause 2(c) and 5 in the revised pay fixation statement in terms of Govt. order No.8/1/98/Fin(R&C)/Part-Id dated 11-4-2001.

All other conditions for grant of 40% fitment weightage as stated in the order No. 8/1/93/Fin. (R&C) Part-I dated 11-4-2001 shall apply.

This issues with the concurrence of the Finance Department vide U.O. No.4101-F dated 10-7-2009.”

7. Despite the aforesaid order, there was no actual compliance on the part of the respondents. As a result, the petitioners instituted Contempt Petition No.10/2010 which was however withdrawn with liberty to file appropriate proceedings. This is recorded in the order dated 28.10.2010. The petitioners, then, instituted Writ Petition No.336/2012 before this Court basically, to seek implementation of the aforesaid order dated 24.07.2009.

8. When Writ Petition No.336/2012 came up for consideration, the respondents made a one line order dated 21.06.2012 withdrawing the earlier order dated 24.07.2009 or rather, cancelling ab-initio the order dated 24.07.2009. The one line order dated 21.06.2012 made by the Chief Electrical Engineer & Ex-Officio Addl. Secretary to Government of Goa reads as follows:-

“ ORDER

The Order issued vide No: CEE/Estt-W.P. No. 551/2006(S.O.)/1858 dated 24-7-2009 stands cancelled ab-initio.”

9. Based upon the aforesaid order, this Court, disposed of Writ Petition No.336/2012 by granting liberty to the petitioners to take out appropriate proceedings, inter alia, to question the aforesaid order dated 21.06.2012. The order dated 28.06.2012 records that all the contentions of the parties are kept open.

10. The petitioners thereafter instituted the present petition to inter alia challenge the order dated 21.06.2012 and to seek restoration of the order dated 24.07.2009.

11. We heard the learned counsel for the parties and we are satisfied that the order dated 21.06.2012 is required to be quashed and set aside for various reasons.

12. In the first place, the order dated 21.06.2012 seeks to withdraw the earlier order dated 24.07.2009, by which, certain benefits had been extended to the petitioners. The order dated 24.07.2009 itself states that the same was made in pursuance to our orders dated 17.02.2009 and 04.03.2009 in Writ Petition No.551/2006. The order dated 24.07.2009 could therefore, have not been withdrawn in such a summary fashion without any compliance with the principles of natural justice and fair play. Since, there was no compliance whatsoever, of the principles of natural justice and fair play before

making the impugned order dated 24.07.2009, the same is required to be set aside.

13. The principles of natural justice and fair play also require indication of reasons in the order. The impugned order dated 21.06.2012 is bereft of any reasons and this again, constitutes violation of principles of natural justice and fair play. This is yet another ground to set aside order dated 21.06.2012.

14. Once the impugned order dated 21.06.2012 is set aside, naturally, the earlier order dated 24.07.2009 stands restored. Even according to the respondents, order dated 24.07.2009 was made in pursuance to our orders dated 17.02.2009 and 04.03.2009 in Writ Petition No.551/2006. This is additional reason for restoration of the order dated 24.07.2009.

15. The order dated 24.07.2009 itself clarifies that all other conditions for grant of 40% fitment weightage as stated in order dated 11.04.2001 are to apply. The petitioners, in paragraph 15 of the petition, have themselves quoted the relevant extract from the order dated 11.04.2001, which clearly provides that the pay fixation for the concerned employees shall be done with reference to the last pay drawn as on 01.01.1996 on the revised/interim revised pay scales with fitment

weightage of 40% with further condition that the maximum benefit on such pay fixation as on 01.01.1996 shall not exceed ₹500/- per month. Therefore, in terms of the order dated 24.07.2009 itself this ceiling of ₹500/- per month has been taken into consideration.

16. Mr. Dhargalkar, Additional Government Advocate, tried to point out that the orders made by this Court have been duly complied with. He tried to point out that there is compliance with the chart at page 27 of the paper book of this petition which is, in fact, the chart/format referred to in our order dated 04.03.2009 while disposing of Miscellaneous Civil Application No.217/2009. In the said order, the chart/format is referred to as Exh.P2 at page 43 to the petition. Mr. Dhargalkar also pointed out that the petitioners have themselves admitted that the respondents have considered 40% fitment weightage on the revised/interim revised pay scale of ₹1200-1800.

17. According to us, the contention of the learned Additional Government Advocate cannot be accepted. The averments in paragraph 18 of the petition cannot be read in that manner. In any case, now that we find that the order dated 24.07.2009 had itself stated that the same is in pursuance of our orders dated 17.02.2009 and 04.03.2009 in Writ Petition No.551/2006, this order, had made specific reference to other conditions in the order dated 11.04.2001 as

well, there is no reason not to restore the order dated 24.07.2009, which was withdrawn by the respondents without even minimum compliance with the principles of natural justice and fair play.

18. Accordingly, we set aside the impugned order dated 21.06.2012 and restore order dated 24.07.2009. In terms thereof, we direct the respondents to pay to the petitioners all financial benefits as expeditiously as possible and in any case within a period of two months from today. If, any amounts have already been paid towards fitment, necessary credit will be available to the respondents in respect thereof. In case, the financial benefits are not paid to the petitioners within two months from today, then, they shall carry interest @ 7% per annum effective from 24.07.2009 until the date of actual payment. We make it clear that merely because we have provided for interest, that will not preclude the petitioners to take out contempt proceedings in case there is non-compliance of this order.

19. In this case, we are constrained to observe that the petitioners had to file more than three proceedings in this Court i.e. two writ petitions and one contempt petition. This is the fourth petition. Accordingly, we direct the respondents to pay to the petitioners costs which we quantify at ₹5000/- to each of the petitioners. These costs will also have to be paid within two months from today.

20. The Rule is made absolute in the aforesaid terms, with costs.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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