Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 296 OF 2008
WITH
MISC. CIVIL APPLICATION NO. 578 of 2019

1. Maria A. Pires,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, Survey and Registration of
URD dealers in Tiswadi Taluka,
Panaji Ward, Tiswadi, Goa.

2. Ismail A. K. Shaikh,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, -Enforcement and Entertainment
(South) on ad hoc basis with Headquarters
at Assistant Commissioner's
Office (South) Goa.

3. Maria C. Varela,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, Bicholim Ward,
Bicholim, Goa.

4. Deepali D. Naik,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax

Officer, Survey and Registration of
URD dealers in Vasco Ward,
Vasco da Gama Ward, Vasco
da Gama, Goa.

5. Violet Gomes,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, Survey and Registration of
URD dealers in Sanguem and
Curchorem, Curchorem Ward,
Curchorem, Goa. ..... Petitioners.

Versus

1. The State of Goa,
through the Chief Secretary
having his office at Secretariat,
Porvorim, Goa -

2. Department of Commercial Taxes,
Government of Goa, through the
Commissioner of Commercial Taxes,
having office at Panaji, Goa.

3. Ulhas Naik,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, Entertainment (North),
Legal, Audit and Recovery in the
Office of the Commissioner of
Commercial Taxes and Incharge of
Survey of URD Dealers in Panaji City,

c/o. Office of the Commissioner of
Commercial Taxes, Panaji, Goa.

4. Diogo Fernandes,
Currently occupy the substantive
post of Assistant Commercial Tax
Officer, and promoted as Commercial
Tax Officer on ad hoc basis,
Vasco da Gama, Goa;

5. Xec Jainodin,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, Entertainment (North),
on ad hoc basis at Headquarters,
Department of Commercial Taxes,
Panaji, Goa.

6. Alexio Vaz,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, Registration of URD
dealers at Margao City, Margao Ward,
Margao, Goa.

7. Swati Dalvi,
Assistant Commercial Tax Officer,
Department of Commercial Taxes,
currently posted as Commercial Tax
Officer, Survey and Registration of
URD dealers in Salcete Taluka,
Margao Ward, Margao, Goa.

8. Goa State Public Service Commission,
EDC Complex,
Panaji, Goa.

9. Smt.. Prasanni P. Halarnkar,

10. Smt. Asha Harmalkar,

11. Smt. Catherine D'Souza &

12. Smt. Lata Madangerikar,
All Commercial Tax Officers,
C/o. Commercial Tax Department,
Government of Goa,
Panaji, Goa. ...... Respondents.

Mr. A. D. Bhobe, with Ms. K. Govekar, Advocate for the Petitioners.

Ms. Amira Abdul Razaq, Government Advocate for Respondents No.1 and 2.

Coram : M.S. Sonak &
Nutan D. Sardessai, JJ.

Date : 18th September, 2019.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Mr. A.D. Bhobe for the Petitioners and Ms. Amira Razaq, learned Government Advocate for Respondents No.1 and 2. Private Respondents, though served, are neither present nor represented. Ms. Razaq points out that some of the Petitioners have already retired.

2. The Petitioners, in the present case, basically seek the implementation of the recommendation made by the Ombudsman in his report dated 17th August, 2007, in the context of award of '*deemed date*' for their promotions to the post of Assistant Commercial Tax Officer.

3. The operative portion of the ombudsman's report dated 17th August, 2007, reads as follows :

> *"In view of the above discussion, my finding and recommendation is that Government should treat the ad hoc service rendered by the officials promoted as Assistant Commercial Tax Officers after 1996, with effect from the date the vacancy against which they were regularized, occurred, as regular only for the purpose of promotion to the post of Commercial Tax Officer. These officials will include petitioners as well as Respondents except Respondent No.1. Once this is done Assistant Commercial Tax Offices with three years regular service in the Department will be available and eligible to be considered for promotion to the post of Commercial Tax Officer."*

4. On behalf of Respondents No.1 and 2, reliance is placed upon the communication dated 26/10/2007 addressed, *inter alia*, to the Petitioners herein informing that the Government has refused to consider the recommendation made by the Ombudsman in his report dated 17.8.2007 for regulating the services of the Petitioners and the

Respondents from the date of their respective ad hoc appointments. The communication dated 26.10.2007, reads as follows :

"No.CCT/1-1/07-08/1672
Government of Goa,
Office of the Commissioner of
Commercial Taxes, Panaji,
Dated, 26th October, 2007.

To,
All the Petitioners & Respondents.

Ref : Case No.OMBD/2-72/2007-08

Sir/Madam,

I am directed to inform you that the Government in terms of para 6.4.4 of the Government O.M. No.12/14/89-PER, dated 26.09.1990, and OM No.2/4/96-PER dated 26.3.1996, has refused to consider the recommendation made by the Ombudsman in his report dated 17.08.2007 for regulating the services of the Petitioners and Respondents from the date of their adhoc appointment.

Yours faithfully
Sd/-
Asst. Commissioner of Commercial Taxes".

5. The State Government, vide notification published in the official gazette dated 14.6.2001, has formulated the Goa Government Employees (Redressal of Grievances Forum) Scheme, 2001 (said Scheme). The said Scheme provides for appointment of an ombudsman for inquiring into petitions/complaints/grievances by/or Government employees in respect of their service and for matters

connected therein.

6. Clause 12 of the said Scheme is most important for the purposes of the issues raised in this Petition and the same reads as follows :

> *"12. Recommendations of Ombudsman how far binding.- The recommendations made by the Ombudsman shall ordinarily bind the Government unless otherwise directed by the Chief Minister, on the advice tendered by the Council of Ministers, supported by reasons for not giving effect to such recommendations."*

7. The aforesaid contemplates that the recommendation made by the Ombudsman shall ordinarily bind the Government, unless, otherwise directed by the Chief Minister on the advice tendered by the Council of Ministers, supported by reasons for not giving effect to such recommendation.

8. On perusal of the communication dated 26.10.2007, it is not at all clear whether the recommendation of the Ombudsman was considered by the Government or not. This is because the communication states that the Government *"has refused to consider the recommendation"*. Besides, the consideration of the recommendation has to be in accordance with the provisions of Clause 12 of the said Scheme.

9. The aforesaid means that the recommendation shall ordinarily bind the Government. However, the Chief Minister, on the advice tendered by the Council of Ministers, can direct that the recommendation be not accepted. Clause 12 further contemplates that even such decision has to be supported by reasons for not giving effect to such recommendation. From the perusal of the communication dated 26.10.2007, again it is not at all clear whether the provisions of Clause 12 of the said Scheme have at all been followed in this case.

10. Ms. Razaq, learned Government Advocate points out that Additional Commissioner of Commercial Taxes, in his return filed on 9/2/2009, has already explained the circumstances in which the recommendation of the Ombudsman was not accepted. She submits that there are specific instructions issued by the Government in the context of *ad hoc* appointments with retrospective effect. She submits that in fact, the Government Circular dated 26/3/1996 specifically provides that *ad hoc* promotion cannot be given retrospective effect. She submits that it is in these circumstances, it was not possible for the Government to accept the recommendation of the Ombudsman made in his report dated 17.08.2007.

11. According to us, at this stage, we are really not concerned with the final decision in the matter. We are more concerned with

the decision making process, which led to the issuance of the communication dated 26.10.2007. If the scheme formulated by the Government provides that the recommendation made by the Ombudsman shall ordinarily bind the Government, unless, otherwise directed by the Chief Minister, on the advice tendered by the Council of Ministers, supported by reasons for not giving effect to such recommendation, then, the procedure prescribed in Clause 12 of the said Scheme was required to be followed when dealing with the recommendation of the Ombudsman. Since, this has not been done, the decision making process stands vitiated, thereby rendering the communication dated 26.10.2007 quite unsustainable.

12. Accordingly, we have no hesitation in quashing and setting aside the communication dated 26.10.2007 and further directing the Government to take a decision on the recommendation of the Ombudsman in his report dated 17.08.2007, this time, by adhering to what is set out in Clause 12 of the said Scheme.

13. We direct the Government to complete the aforesaid exercise as expeditiously as possible, and in any case, within a period of three months from today and, thereafter, communicate its decision to the Petitioners, as well as the Respondents.

14. In case, the Petitioners or any of the Respondents are

aggrieved by the decision of the Government, needless to add that they shall be at liberty to challenge the same on all grounds, including the grounds which have been raised in the present Petition or in defence of the present Petition.

15. We, accordingly, make the Rule absolute in the aforesaid terms. There shall be no order as to costs.

16. In view of the disposal of the Petition, the civil application stands disposed of.

17. All concerned to act on the basis of an authenticated copy of this order.

Nutan D. Sardessai, J. ***M.S. Sonak, J.***