

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 611 OF 2019

MR. K. HENRY DANIEL

Son of K.V. R. Daniel,
aged 60 years, Indian National,
resident of Flat No.8, Block A,
Type E, Goa Medical College Campus,
Bambolim, Tiswadi – Goa.

... Petitioner

Versus

1. STATE OF GOA, THR. ITS CHIEF
SECRETARY, having office at Secretariat,
Porvorim, bardez- Goa.

2. THE DIRECTORATE OF SKILL
DEVELOPMENT AND ENTREPRENEURSHIP
(formerly DIRECTORATE OF CRAFTSMEN
& TRAINING), Government of Goa,
having office at Shram Shakti Bhavan,
Patto Plaza, Tiswadi, Panaji – Goa.

... Respondents

Mr. Parikshit Sawant, Advocate for the petitioner.

Mr. Pravin N. Faldessai, Additional Government Advocate for the
respondents No.1 and 2.

Coram :- **M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**
Date :- **29th July, 2019**

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

Heard Mr. P. Sawant, learned Counsel for the petitioner and
Mr. P. Faldessai, learned Additional Government Advocate for the
respondents.

2. Taking into consideration the short issue involved and the fact that the matter relates to payment of provisional pension, we issue Rule. At the request of and with the consent of learned Counsel for the parties, the Rule is made returnable forthwith.

3. Admittedly, there are disciplinary proceedings pending against the petitioner who has already retired on attaining the age of superannuation w.e.f. 31/05/2018. The petitioner had instituted Writ Petition No.269 of 2017 before this Court contending that there is a criminal case pending against the petitioner and if the disciplinary proceedings are continued, the petitioner will be prejudiced in the matter of his defence. On this basis, the petitioner had applied for a stay of further continuance of the disciplinary proceedings. The petitioner's Writ Petition No.269 of 2017 was disposed by this Court vide Judgment dated 10/12/2018. The operative portion of this Judgment and order at paragraph No.3 reads thus:

"3. There is no dual opinion as regards the facts. The charges framed against the petitioner in the departmental proceedings are identical to the allegations levelled against him in the criminal trial and the continuance of the disciplinary proceedings is likely to cause prejudice since the petitioner will be required to disclose his defence

before the criminal Court. It would be necessary therefore to draw a balance between the need for a fair trial to the petitioner on the one hand and continuation of ongoing disciplinary proceedings on the other hand. It would also be necessary in the circumstances to direct the Trial Court i.e. the Judicial Magistrate First Class, Panaji before whom the Criminal Case No. 242/2015/A is pending for trial as well as the Additional Sessions Judge, Panaji, before whom SPL/TRAP/Case No.1/2018 is pending, to complete the criminal trial in both the cases referred to above as expeditiously as possible and preferably within a period of one year from today. The concerned trial Court shall take effective steps to ensure that the witnesses are served, appear and are examined on day-to-day basis. In case any adjournment become inevitable, it should be fortnightly whenever it is necessary. The respondent/State as well as the petitioner shall extend cooperation to the Trial Court for early disposal of the trial. The trial in respect of offence for which the petitioner is charged i.e. Criminal Case No. 242/2015/A pending before the Judicial Magistrate First Class, Panaji and SPL/TRAP/Case No.1/2018 pending before the Additional Sessions Judge, Panaji, shall be completed within a period of one year from the date of this order. In the meanwhile, the departmental proceedings initiated against the petitioner shall stand stayed for a period of one year from today. The protection granted to the petitioner as above of keeping the disciplinary proceedings in abeyance shall

continue only for a period of one year and the same shall stand vacated after the expiry of one year from the date of this order, in the event of failure by the Trial Court to complete the criminal trial initiated against the petitioner referred to in detail as above. Rule is accordingly made absolute to the extent as specified as above. There shall be no order as to costs."

4. In the meanwhile, the respondents vide order dated 31/05/2018 had accorded sanction for release of 60% Provisional Pension in terms of Rule 69 of CCS Rules, 1972 for a period of Six months w.e.f. 01/06/2018 to 30/11/2018.

5. Mr. Sawant, learned Counsel for the petitioner points out that up to 30/11/2018, the payment of provisional pension to the petitioner has been discontinued. He submits that this is not at all proper because the disciplinary proceedings are pending against the petitioner and further, this Court has already directed the Trial Court to dispose of the Criminal Case within a period of one year which is to expire in December, 2019.

6. Mr. Faldessai, learned Additional Government Advocate submits that Provisional Pension is normally granted for a period

of 6 months because, it is expected that disciplinary proceedings, if any, will be disposed of during the said period. He submits that in the present case, it is the petitioner who has secured the stay on the disposal of the disciplinary proceedings and therefore, the petitioner cannot be heard complaining of any delay for the disposal of the disciplinary proceedings and on such basis insist upon payment of Provisional Pension.

7. In the peculiar facts and circumstances of the present case, though, it is true that the petitioner has himself applied for a stay on further progress in disciplinary proceedings, there is no justification to deny the petitioner Provisional Pension at least up to December,2019. This is because, in terms of this Court's order dated 10/12/2018, in the Writ Petition No. 269 of 2017, this Court, accepted the petitioner's case and even directed the Trial Court to dispose of the criminal proceedings within a period of one year which is to expire by December,2019. In this order, it was made clear that the stay on the disciplinary proceedings will stand vacated on 10/12/2019 irrespective of whether or not the Trial Court completes the criminal trial initiated against the petitioner or not. Mr. Sawant, accepts that the petitioner will not insist upon any

further stay on the disciplinary proceeding even if in the meanwhile, if for any reason, the Trial Court is unable to dispose the criminal case against the petitioner.

8. It is only in the aforesaid peculiar circumstances we are inclined to direct the respondents to continue to pay the petitioner Provisional Pension at least up to at the end of December,2019. This means that the respondents will have to pay the Provisional Pension from the date the same was discontinued and until the end of December,2019.

9. Thereafter, we will say that if the disciplinary proceedings against the petitioner are not disposed by 31st March, 2020 for any reasons not attributable to the petitioner, then the petitioner is at liberty to once again apply for the release of Provisional Pension. This application may be considered in accordance with law and if the outcome is adverse to the petitioner, the petitioner will have liberty to challenge the same.

10. Accordingly, the respondents are directed to release the Provisional Pension to the petitioner, from the date the same was discontinued until the end of December,2019. The arrears of

Provisional Pension to be cleared within a period of 4 weeks from today.

11. The rule is made partly absolute in the aforesaid terms. There shall be no order as to costs.

12. All concerned to act on the authenticated copy of the order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

mv