

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 415 OF 2011

- 1) DR. VANITA DA GRACIA
PINTO DA
SILVA ALIAS DR. VANITA G.
PINTO, Assistant Professor,
Department of PSM, Goa
Medical College, Bambolim-
Goa ... Petitioner

Versus

- 1) STATE OF GOA, through its
Chief Secretary, having
office at Secretariat,
Porvorim, Bardez, Goa.
- 2) THE DEAN, Goa Medical
College, having office at
Bambolim – Goa.
- 3) DR. HEMANGINI K. SHAH,
Professor, Department of
PSM, Goa Medical College,
Bambolim, Goa. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. A. Naik, Advocate
for the petitioner.

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

**Coram:- S. C. GUPTE &
NUTAN D. SARDESSAI, JJ.**

Date :- 9th July 2019

ORAL JUDGMENT (Per S.C. Gupte, J)

Heard learned Counsel for the petitioner and learned Additional Government Advocate for respondents No.1 and 2.

2. This Writ Petition challenges an order passed by Joint Secretary (Health) on 11th October, 2011 fixing a higher grade pay under Dynamic Assured Career Progression Scheme ("DACP", for short) for the petitioner with effect from 9th August, 2011. The grievance of the petitioner is that the petitioner was entitled to, and was already granted, higher pay grade under DACP with effect from 1st April, 2009 alongwith all consequential benefits including the higher designation of 'Professor' in terms of orders dated 17th July, 2009 and 26th July, 2010.

3. The petitioner has been working as a Doctor with the Department of Preventive and Social Medicine at Goa Medical College. She was initially appointed in the grade pay of Rs.5400/- in PB-3. She was upgraded to grade pay of Rs.6600/- PB-3 after 4 years of regular service in the grade pay of Rs.5400/-. By an order dated 24th February, 2009 passed under DACP, for Doctors appointed in grade pay of Rs.6600/-

upgradation to grade pay of Rs.8700/- in PB-4 was provided on the condition of regular service of six years in grade pay of Rs.6600 in PB-3 including service rendered for the pre-revised pay scale. By an order dated 17th July, 2009, passed by Joint Secretary (Health), the petitioner's financial upgradation under DACP to the grade pay of Rs.8700 in PB-4 was accepted with effect from 1st April, 2009. The order, however, was not implemented. On 7th October, 2009, another general order was passed by Joint Secretary (Health) which added the word "directly" to the category of Doctors appointed in the grade pays of Rs.5400 and 6600/-. Based on this order, a submission was put up by the Public Health Department for grant of benefit of DACP to the petitioner. It was pointed out in the submission that not granting such benefit to the petitioner had led to a situation where a Doctor junior to her had got DACP/ designation, while the petitioner had not got either the higher grade of pay or the higher designation. Secretary of Health did not approve the submission that the petitioner should be granted financial upgradation or higher designation. He relied on the word "directly" as a suffix to the word "appointed" in the Government order on 7th October, 2009, implying thereby that

since the petitioner was not appointed directly under the grade pay of Rs.6600/-, she was not entitled to upgradation after 6 years, but after 9 years as applicable to doctors appointed directly in grade pay of Rs.5400/-. The noting made by the Secretary was overruled by the Minister of Health, who approved the submission that the petitioner should be accorded higher grade of pay as well as designation. It is the grievance of the petitioner that in spite of the submission in her case having been processed as above, by the impugned order dated 11th October,2011, she was granted higher grade pay and designation only with effect from 9th August,2011, and not from 1st April,2009 on which date it was due to her and from which day it was already granted to her by an order passed in her case and officially approved by Minister of Health.

4. Learned Additional Government Advocate appearing on behalf of the State submits that since the petitioner was not directly appointed in grade pay of Rs.6600/- but she was appointed in the grade pay of Rs.5400/-, in her case she must complete 4 years' service in the grade pay of Rs.5400/- in PB-3 and 9 years of service in the grade pay of Rs.6600/- and only thereafter she is entitled to the grade pay of Rs.8700/- in PB-4.

Considering the fact that the petitioner was employed in the year 1999, the argument of learned Additional Government Advocate does not explain why higher grade pay was granted to the petitioner with effect from 9th August,2011 by the impugned order. Besides, neither the order passed in the petitioner's case nor in the case papers is there any explanation for granting higher grade pay to the petitioner with effect from 9th August,2011 on the lines now suggested by the State. Besides, the date with effect from which upgradation has been granted to the petitioner would entail a palpable injustice of a doctor junior to her being granted a higher pay / designation as pointed out in the authorities' own submission.

5. The record of the case clearly bears out that on the basis of the order of 24th February,2009, the petitioner was already granted higher grade pay and designation by an order dated 17th July,2009 passed in her case. Such upgradation was granted with effect from 01st April,2009. This order has been affirmed by the Authorities, that is, as indicated above, by the Minister of Health accepting the petitioner's case for upgradation. There is absolutely no reason in that case for the upgradation being granted to the petitioner only with effect

from 9th August, 2011. This date has no consequence either from the point of view of the order passed in the petitioner's case or from the point of view of the submissions made by the learned Additional Government Advocate across the bar.

6. In the premises, Rule is made absolute and the petition is allowed by granting prayer clauses (A) and (AA) thereof.

NUTAN D. SARDESSAI, J.

S. C. GUPTE, J.

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