

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 651 OF 2010**

Shri Elvidio B. D'Souza
Craft Instructor (T)
ITI, Mapusa.

... Petitioner

Versus.

1. State of Goa through
its Chief Secretary
Government of Goa,
Having his office
At Secretariat, Porvorim
Bardez-Goa.
2. State Director
Craftsman Training,
Shram Shakti Bhavan,
3rd Floor, Patto Plaza,
Panaji, 403 001 Goa.
3. Director of Industries
Chief Executive Officer,
Tool Room and Training Centre,
Panaji, Goa.
4. Principal
Industrial Training Institute,
Pedem, Mapusa, Bardez, Goa.

.... Respondents.

Mr. Amey Kakodkar alongwith Mr. Pankaj M. Shirodkar, Advocate
for the Petitioner.

Mr. Sagar Dhargalkar, Additional Government Advocate for the
Respondents No. 1 to 3.

**Coram : M. S. SONAK &
NUTAN D. SARDESSAI, JJ.**

Date : 26th September 2019.

Oral Judgment: (Per M. S. Sonak, J.)

Heard Mr. Amey Kakodkar, learned Counsel for the Petitioner and Mr. Sagar Dhargalkar, learned Additional Government Advocate for Respondents No. 1 to 3.

2. This petition under Article 226 of the Constitution of India, the Petitioner seeks the following substantive reliefs:

“a. that this honourable court be pleased to issue writ of certiorari or writ in the nature of certiorari or any other appropriate writ, directions, calling for the records and on perusal thereof set aside/quash the impugned order passed by Respondent no.2;

b. Further as a consequence be [pleased to order regularization of services of Petitioner on the permanent post of Craft Instructor (Turner) at ITI-Mapusa;

19(C). Pending finalization the Respondent No. 1, 2 and 4 be restrained from giving effect to impugned Order dated 27.08.2010, and continue the Petitioner on the available permanent vacancy of Craft Instructor (Turner) at I.T.I. Mapusa-Goa.

(d) Direct Respondent No. 1, 2 and 4 to clear unpaid Salary from July 2008 till date for the Services rendered on the post of Craft Instructor (Turner).

19(dd). That this honorable court be pleased to issue writ of mandamus or writ in the nature of Mandamus or any other appropriate writ, directions or order commanding the Respondents to modify the order dated 25.7.2011 by removing the clause of refund of salary;

11ee. That this honorable court be pleased to command and or order interest at the normal rates on the delayed payment and compensation for the wrongful act of withholding the salary;

e. Ad-interim orders in term of prayer (c) and (d) above;

f. Any other orders deemed fit in the facts of the case;

g. For costs of petition.”

3. Mr. Kakodkar, learned Counsel for the Petitioner states that during the pendency of the present petition, the Petitioner was paid salaries and therefore, the only relief which now survives is the relief of regularisation of the Petitioner's services with effect from 05.07.2008 as a Instructor (Turner) at the ITI, Mapusa, where he is presently discharging duties.

4. In the present case, the record indicates that the Petitioner was appointed as Highly skilled worker (CNC Deckel Milling Machine) in the Tool Room & Training Centre which was a Centre established by the Directorate of Industries & Commerce. Thereafter, by order dated 06.07.2004, the Petitioner was deputed as a Instructor (Turner) at the ITI, Mapusa, only for a period of one year. His deputation was extended from time to time by orders which have been placed on record. Ultimately, on 05.07.2008, the Tool Room and Training Centre to which the Petitioner was initially appointed, came to be abolished. The Petitioner, however, continued to function as a Instructor (Turner) at the ITI, Mapusa, which is managed by the Directorate of Skill Development & Entrepreneurship, Government of Goa and this position continues even till date.

5. In the meanwhile, there were attempts to advertise the post which was held by the Petitioner at ITI, Mapusa. Apprehending that the Petitioner would be displaced, the Petitioner instituted proceedings before this Court. The proceedings were disposed of with direction to consider the Petitioner's representation and dispose of the same by making reasoned orders. The representations of the Petitioner were disposed of cursorily by the following two departments of the Government of Goa:-

i) The Directorate of Industries, Trade &

Commerce, which, as noted earlier, was operating the Tool Room and Training Centre, to which the Petitioner was initially appointed;

- ii) The Directorate of Skill Development & Entrepreneurship, which operates the ITI, Mapusa, where the Petitioner was deputed and still continues to discharge duties as Instructor (Turner).

6. The Director of Industries, Trade & Commerce disposed of the representations in favour of the Petitioner by observing that there can be no bar under the Service Rules for absorbing the Petitioner on the post of Instructor (Turner) at the ITI, Mapusa where he is deputed since the year 2004, now that the Tool Room and Training Centre already stand abolished. The operative portion of the order made by the Director of Industries, Trade & Commerce dated 05.08.2010 reads thus:-

“I do not find any bar as per Service rules for absorbing an employee on deputation into regular post, if it exists. In the given case, as the applicant does not seek any claim/prayer from respondent no. 3, and seeks to be absorbed at ITI, Mapusa, in the post of Craft Instructor (Turner), or a Vocational Instructor, CNC Machining, the State Directorate of Craftsman Training should consider absorbing petitioner in the regular post he is currently working against.”

7. The Directorate of Skill Development & Entrepreneurship, by order dated 27.08.2010, has chosen to reject the Petitioner's representation by referererring to certain Chapters of the Swamy's Manual. The operative portion of this order dated 27.08.2010 reads as follows:

“AND WHEREAS the Recruitment Rules for the post of Craft Instructor redesignated as V.I. by order No. 3/10/2004/SDCT/EST/CRA/5433 dt. 2.8.04 as notified in the Official Gazette, Series I No. 03 dt. 20.4.06 do not provide for appointment by deputation/absorption and hence, the Government is of the opinion that the provisions contained in para 10.2 of Chapter 19 of the Swamy's Manual on Establishment and Administration are not applicable to the Applicant.

NOW, THEREFORE, the Government of Goa hereby rejects the said representation made by the Applicant vide letter dt. 27.1.2009, in respect of absorption and regularization in Industrial Training Institute, Mapusa as a Craft Instructor (Turner) now redesignated as V.I.”

8. Upon due consideration of the submissions made by learned Counsel for the parties, we are of the opinion that the Petitioner cannot be placed in a state of limbo in this manner. The Petitioner was initially appointed at the Tool Room and Training Centre at Kundaim and was discharging his duties there. Thereafter, the Petitioner was deputed to the ITI at Mapusa, and the Petitioner,

since the year 2004 has been discharging duties there. In the meanwhile, the Government has abolished the Tool Room and Training Centre and therefore, there is no position to which the Petitioner can be repatriated. In these circumstances, the two departments of the Government, in co-ordination with each other should have acceded to the request of the Petitioner for absorption at the ITI, Mapusa, since the Petitioner has been discharging duties there since the year 2004, without any break in service.

9. In any case, the Respondents cannot say that the Petitioner can neither be repatriated to the Tool Room and Training Centre which has since been abolished since 2008 nor can the Petitioner be absorbed as surplus staff at ITI, Mapusa, on the basis of some technical or hyper-technical provisions arising out of the interpretation of certain Chapters in Swamy's Manual. Rather, we feel that the Order dated 05.08.2010 made by the Director of Industries, Trade & Commerce, is a proper order in the peculiar facts and circumstances of the present case and it is this order which should have been complied with, insofar as the services of the Petitioner are concerned.

10. In the present case, it is necessary to note that the State has enacted Goa Re-deployment of Surplus Staff against Vacancies of Group C and D Posts Rules, 1993. Rule 2(b) of these Rules define

“surplus staff” to mean persons who have been rendered surplus as a result of abolition or winding up of an organisation of the Government. The Petitioner could have been regarded as surplus staff taking into consideration the definition of Rule 2(b) of the said Rules. The said Rules, in short, require the State Government to re-deploy the surplus staff and to also protect pay and other service benefits of such surplus staff, to the extent indicated in the said Rules.

11. We have noted the aforesaid Rules only for the purpose of indicating that the State on its own should have considered the case of the Petitioner in terms of the said Rules rather than making the Petitioner to virtually run from pillar to post in order to secure the absorption or regularise employment at the ITI, Mapus, where he has been discharging duties right since the year 2004 without any interruption or break.

12. Therefore, in the peculiar facts and circumstances of the present case, we direct the Respondents to absorb the Petitioner and/or to regularise the Petitioner's services at the ITI, Mapusa, which is operated by the Directorate of Skill Development & Entrepreneurship and award the Petitioner all consequential benefits commensurate to such absorption/regularisation in the said post.

13. Formal orders to the aforesaid effect must be issued by

the State Government or the Directorate of Skill Development & Entrepreneurship within a period of 6 weeks from today. In case, any consequential benefits are required to be given to the Petitioner, even they must be given to the Petitioner within the said period of 6 weeks from today.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

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

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

msr.