

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 948 OF 2019***

Smt. Shanti Makwana Harding
Junior Scale Officer, Goa Civil Service,
Presently posted as Deputy Registrar,
Government Polytechnic Panaji,
major of age, Indian National,
resident of House No.A/23 B/23,
Navelcar Hill City, Kadamba Road,
Baiguinim, Old Goa, Goa-403402.

.... Petitioner

Versus

1. State of Goa
Through the Chief Secretary,
Secretariat, Porvorim, Goa.
2. The Director (Vigilance) &
Ex-Officio Joint Secretary to
Government, Directorate of
Vigilance, Serra Building,
Altinho, Panaji, Goa.
3. The Under Secretary (Personnel-I),
Secretariat, Porvorim, Goa.
4. The Director, Directorate of Accounts,
Government of Goa, Panaji, Goa.
5. The Chairman,
Goa Public Service Commission,
E.D.C. House, Dr. Dada Vaidya Road,
Panaji, Goa.

.... Respondents

Mr. Raunaq Rao, Advocate for the petitioner.

Mr. Manish Salkar, Government Advocate for Respondents.

Coram:- M.S. SONAK &
C. V. BHADANG, JJ.

Date:- 13th November, 2019

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

Heard Mr. Raunak Rao, Advocate for the petitioner and Mr. Manish Salkar, learned 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 petitioner challenges the order dated 06.02.2019 imposing upon her a penalty of reduction of rank to a lower stage in the time scale of pay (by one stage) from ₹77,700/- to ₹75,400/- for a period of three years without any increments during three years with cumulative effect from the date of issue of the order. The petitioner also complains about nonpayment of salary from 01.01.2019 onwards.

4. At the very outset, we inquired from Mr. Rao as to why the

petitioner should not be relegated to the remedy of appeal which is available in the Service Rules against the order imposing penalty in departmental proceedings. Mr. Rao then referred to the Notification dated 18.12.2003 to point out that in case of penalty specified in Clauses (v) to (ix) of Rule 11 of the CCS (CCA) Rules, 1965, the authority competent to impose penalty is the minister in-charge of the concerned department. He submitted that in the present case it did not appear that the penalty has been imposed by the minister in-charge of the concerned department who is supposed to be the Chief Minister.

5. Accordingly, we required the learned Government Advocate to seek instructions in the matter by the next date which is today.

6. Mr. Manish Salkar, learned Government Advocate states that the penalty in this case is imposed by the order dated 06.02.2019 which was made by the Chief Minister, who is the minister of the concerned department. He therefore submits that there is absolutely no breach of the notification dated 18.12.2003. He further points out that the petitioner has already instituted an appeal before the Governor, who is, the appropriate appellate authority in the matter.

7. By recording the statement of learned Government Advocate

that the impugned order has in fact been made by the Chief Minister, we relegate the petitioner to pursue the appeal which she has already instituted before the Governor.

8. We make it clear that we have not adverted to the merits of the matter and therefore the appeal will have to be dealt with on its own merits and in accordance with law.

9. In so far as the aspect of nonpayment of salary since January, 2019 is concerned, we see no reason as to why such salary should be withheld at least in the lower stage in the time scale of pay of ₹75,400/-. As long as the order dated 06.02.2019 is not stayed or set aside, the respondents will at least have to pay to the petitioner the salary in the lower stage in the time scale. Accordingly, we direct the respondents to pay to the petitioner the salary in the lower stage in the time scale, including arrears if any, within a period of four weeks from today.

10. Mr. Manish Salkar, learned Government Advocate states that it is possible that there was some issue of salary because the petitioner has not reported to her new posting as Section Officer in the Secretariat vide order dated 09.09.2019. Mr. Rao, learned counsel for the petitioner, on the basis of instructions from the petitioner states that

the petitioner has till date not been relieved from the present post and therefore was not in position to report to the Secretariat. Mr. Salkar states that necessary relieving orders will be issued within eight days and Mr. Rao states that the petitioner will report to the post of Section Officer in Secretariat without prejudice to her rights and contentions within a period of eight days from the receipt of the relieving order. Both these statements are accepted.

11. The Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

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

C. V. BHADANG, J.

M. S. SONAK, J.