

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1108 OF 2018

Dr. Mohammad Modassir,
son of M. Mozammil,
aged 63 years, Pensioner,
Residing at 31, 'Sagar Society'
Dona Paula, Goa. Petitioner.

Versus

1. State of Goa, through its
Chief Secretary, having office at
Secretariat, Porvorim, Goa.

2. The Director of Accounts,
Government of Goa,
Panaji, Goa.

3. State Bank of India,
Link Branch, Panaji, Goa, 403 001. Respondents.

Mr. Shashikant Joshi, Advocate for the Petitioner.

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

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 9th December, 2019.

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

Heard Mr. Shashikant Joshi for the Petitioner and Ms.
Amira Razaq, Government Advocate for Respondents No.1 and 2.

2. On 18th September, 2019, we had made it clear that taking into consideration the issues raised in this Petition, this matter would be disposed of at the stage of admission. On the said date, we had granted liberty to the parties to complete their pleadings. The pleadings have now been completed and the matter has come up for final disposal. We accordingly grant Rule. Rule made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. Mr. Joshi for the Petitioner, at the very outset, states that several issues were raised in this Petition and most of them have been resolved. He submits that the only issue which remains to be resolved is that of part payment of retirement gratuity. He submits that according to the Petitioner, the Petitioner is required to be paid retirement gratuity by taking into consideration the proviso to Rule 12 of the Goa Panchayat Raj (Conditions of Service of State Election Commissioner) Rules, 1997 and the corresponding Central Civil Services (Revised Pay) Rules, 2016 (VIIth Pay Commission) as adopted by the State Government. He submits that in terms of these Rules, the total retirement gratuity payable to the Petitioner comes to approximately Rs.32.00 lakhs or thereabouts. He, however, submits that in terms of the Rules, based upon the recommendations of the VIIth Pay Commission, there is a ceiling of Rs.20.00 lakhs and

accordingly, the Petitioner has restricted his claim to Rs.20.00 lakhs. Mr. Joshi points out that an amount of Rs.9,76,280/- has already been paid to the Petitioner. He, therefore, submits that the present petition is now restricted to the recovery of balance amount of Rs.10,23,720/-, along with interest thereon for the delayed payment.

4. Ms. Razaq, learned Government Advocate points out that the Petitioner was relieved from the Government service on 14th January, 2011, in order to take over as the State Election Commissioner. She submits that in terms of Rule 12 of the Rules of 1997, the Petitioner was not entitled to be paid any pension during the period he held the office of the Commissioner and on his ceasing to hold the office, the pension to which he was entitled, became payable. She submits that though the Petitioner retired as Commissioner on 31st March, 2017, what became payable to the Petitioner was the pension which he was entitled to as on 14th January, 2011, which is the real date on which the Petitioner ceased to be the Government servant. She submits that as on 14th January, 2011 what were in force, were the rules for implementation of the VIth Pay Commission. In terms of these Rules, the ceiling was Rs.10.00 lakhs. Accordingly, the retirement gratuity which came to Rs.14,74,279/-, was reduced to Rs.10.00 lakhs. Thereafter, since it was found that the Petitioner would have to repay Rs.23,720/-, this amount was determined as Rs.9,76,218/-. She submits that the

Respondents have correctly read and interpreted the relevant service rules and there is no question of any additional retirement gratuity payable as claimed by the Petitioner.

5. Rival contentions now fall for our determination.

6. The record indicates that the Petitioner joined the Government service on 11th July, 1979 and continued therein until 14th January, 2011, on which date he was technically relieved pursuant to his request for voluntary retirement in order to take up the position of the State Election Commissioner.

7. The conditions of service of the State Election Commissioner are governed by Goa Panchayat Raj (Conditions of Service of State Election Commissioner) Rules, 1997 (1997 Rules). Rule 12 of the 1997 Rules is relevant and the same reads as follows :

“Pension.- Where a serving Government Officer is appointed as Commissioner, no pension for its previous service shall be payable during the period he holds the office of the Commissioner and on his ceasing to hold that office, the pension to which he was entitled shall be paid.

[Provided that the Commissioner, who, at a time of his appointment as such has rendered not less than twenty years pensionary service in the Government and not less than five years in the Commission, shall be eligible for full pension in the pay scale of the Commissioner as is applicable to the Government employees of the Central Civil Services (Revised Pay)

Rules, 2008, as amended from time to time where completed service is twenty years.]”

[emphasis supplied]

8. The Petitioner served the State Election Commission from 14th January, 2011 upto 31st March, 2017. In terms of Rule 12 of the 1997 Rules, where a serving Government Officer is appointed as Commissioner, no pension for its previous service shall be payable during the period he holds the office of the Commissioner and on his ceasing to hold that office, the pension to which he was entitled, shall be paid. Proviso to Rule 12, however, provides that the Commissioner who, at a time of his appointment as such has rendered not less than 20 years pensionary service in the Government and not less than 5 years in the Commission, shall be eligible for full pension in the pay scale of the Commissioner as is applicable to the Government employees of the Central Civil Services (Revised Pay) Rules, 2008, as amended from time to time where completed service is 20 years.

9. In the facts of the present case, it is apparent that the Petitioner is entitled to the benefit of the proviso to Rule 12 of the 1997 Rules. This is because the Petitioner, at the time of his appointment as the Commissioner had put in 31 years, 6 months and 4 days of pensionary service in Government. Besides, the Petitioner had put in about six years service in the Commission. The Petitioner,

therefore, was eligible for full pension in the pay scale of the Commissioner as is applicable to the Government employees of the Central Civil Services (Revised Pay) Rules, 2008, as amended from time to time where the completed service is 20 years.

10. The Respondents have, in fact, tacitly accepted that the case of the Petitioner is covered under proviso to Rule 12 inasmuch as the Petitioner has in fact been granted full pension in the pay scale of the Commissioner as is applicable to the Government employees of the Central Civil Services (Revised Pay) Rules, 2008 as amended from time to time. The 2008 Rules actually referred to in the proviso to Rule 12 of the 1997 Rules, came to be amended from time to time to accommodate the recommendations of the subsequent pay commissions. This is quite clear from paragraph 4 of the Additional Affidavit-in-rejoinder filed on behalf of the Respondents.

11. In paragraph 4 of the additional affidavit dated 18th September, 2019, which has been deposed to by Shri Prakash Pereira, Director of Accounts, Panaji, Goa, it is stated that on demitting office at the State Election Commissioner on 14th January, 2017, the pension has been authorized to the Petitioner in terms of Central Civil Services (Revised Pay) Rules, 2016 (VIIth Pay Commission) as adopted by the State Government.

12. If that be the accepted position, it was necessary for the Respondents to have taken into consideration the ceiling prescribed in the Central Civil Services (Revised Pay) Rules, 2016 (VIIth Pay Commission) as adopted by the State Government, which ceiling is Rs.20.00 lakhs in terms of the Rules amended in pursuance of acceptance of the VIIth Pay Commission Scales.

13. The Respondents have, therefore, clearly erred in applying the ceiling of Rs.10.00 lakhs, when, in fact, the ceiling which was applicable to the case of the Petitioner was Rs.20.00 lakhs. The fact that such ceiling has been applied is apparent from the averments in paragraph 5 of the affidavit dated 18th September, 2019, which reads as follows :

“5. I say that Retirement Gratuity has been paid to the petitioner as per the CCS (Pension) Rules 1972 and the provisions thereunder by which he was governed at the time of his retirement as IAS Officer. He has accordingly been sanctioned and authorized an amount of Rs.9,76,280/- as gratuity as calculated hereunder :

<i>$\frac{93605}{4} \times 63 = \text{Rs.}14,74,279/-$</i>	<i>(Restricted to Rs.10,00,000</i>
	<i>Less:- Dues Rs.23,720=</i>
	<i>Rs. 9,76,280)</i>

I say that the ceiling on retirement gratuity in force at the time of his retirement as IAS officer under VIth Pay Commission was Rs.10,00,000/-.”

14. According to us, once it is clear that the case of the

Petitioner was covered under the proviso to Rule 12 of the 1997 Rules, the Petitioner was entitled to receive the full pension in the pay scale of the Commissioner as is applicable to the Government employees of the Central Civil Services (Revised Pay) Rules, 2008, as amended from time to time where the completed service is 20 years. As noted earlier, consistent with these provisions, full pension has in fact been awarded to the Petitioner. However, when it came to payment of retirement gratuity in its entirety, the Respondents have gone by the date of 14th January, 2011, on which date, the Petitioner technically ceased to be in Government service in order to take up the responsibility of the post of the State Election Commissioner. According to us, the Respondents were not entitled to take into consideration the position as on 14th January, 2011 now that it is established that the case of the Petitioner was clearly covered under the proviso to Rule 12 of the 1997 Rules. Accordingly, we hold that the ceiling applicable to the Petitioner was that of Rs.20.00 lakhs and not merely Rs.10.00 lakhs.

15. The retirement gratuity in terms of the Central Civil Services (Pension) Rules, 1972 is required to be calculated at the rate equal to 1/4th of his emoluments for each completed six monthly period of qualifying service, subject to a maximum of 16 ½ times of emoluments. Upon such calculation, there is no serious dispute that the amount of retirement gratuity comes to about Rs.32.00 lakhs or

thereabout. However, the ceiling of Rs.20.00 lakhs will have to be respected and this amount will have to be scaled down to Rs.20.00 lakhs. The deduction of sum of Rs. 23,720/- will also have to be respected. An amount of Rs.9,76,280/- has already been paid to the Petitioner. This means that the Petitioner will now have to be paid balance amount of Rs.10.00 lakhs and not Rs.10,23,720/- as claimed by the Petitioner.

16. So far as the issue of interest on the aforesaid amount is concerned, it is necessary to note that there were no malafides or any deliberate delay on the part of the Respondents as such. Substantial amounts of pensionary and other benefits have already been paid to the Petitioner. We accept the contention of Ms. Razaq that there was genuine difficulty in the matter of interpretation of various rules as applicable to the Petitioner. Since, this is not at all a case of some willful or deliberate delay, we do not think that this is a fit case to award any interest on the amount of Rs.10.00 lakhs, now payable to the Petitioner, at least in the first instance.

17. We accordingly direct the Respondents to pay to the Petitioner the amount of Rs.10.00 lakhs towards the balance of retirement gratuity, within a period of eight weeks from today. Mr. Joshi for the Petitioner states that if the Petitioner is required to complete any formality or sign any papers, he will do so no sooner

he receives the necessary intimation from the Respondents.

18. We, however, make it clear that if the aforesaid amount is not paid within eight weeks, this amount will carry interest at the rate of 8% per annum from the date this amount became due to the Petitioner *i.e.* with effect from 31st March, 2017, till the date the same is actually paid to the Petitioner. This will, of course, without prejudice to the rights of the Petitioner to urge that the inaction on the part of the Respondents sounds in the arena of the Contempt of Court.

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

20. All concerned to act on the basis of an authenticated copy of this judgment and order.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.