IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 56/2017, 437/2018
with
CONTEMPT PETITION NO. 33/2017
with
MISC. CIVIL APPLN. NO. 23/2018

WRIT PETITION NO. 56/2017

Maura Gonsalves, Chidvilas Colony, St. Inez-Goa.
(since deceased through LRs.)
1(a). Anthony Gonsalves, major of age, R/o Chidvilas Colony, St. Inez, Goa.
1(b). Bertha Gonsalves, major of age, R/o Chidvilas Colony, St. Inez, Goa. …. Petitioner

Versus

1. The State of Goa, Through the Director of Sports and Youth Affairs, having office at Panaji-Goa.
2. The State Chief Commissioner, Bharat Scouts and Guides-Goa State, having office at Panaji-Goa. …. Respondents

WRIT PETITION NOS. 437/2018

Sheela Sansgiri, Retired LDC/ACP, Bharat Scouts & Guides, State of Goa, R/o Flat No. 104, First Floor, Prime Complex Cooperative Hsg. Society Ltd., Near Kadamba Bus Stand, Vasco-Da-Gama. …. Petitioner

Versus

1. The State of Goa, Through the Director of Sports and Youth Affairs, Campal, Panaji, Goa 403 001.

2. The State Chief Commissioner, Bharat Scouts and Guides, State of Goa, having office Near Cine National, Panaji-Goa. …. Respondents

CONTEMPT PETITION NO. 33/2017

Maura Gonsalves, Chidvilas Colony, St. Inez-Goa. …. Petitioner

Versus

1. V. M. Prabhudesai, Director of Sports and Youth Affairs, Government of Goa, having office at Panaji-Goa.
2. P. R. Nadkarni, The State Chief Commissioner, Bharat Scouts and Guides-Goa State, having office at Panaji-Goa. …. Respondents

MISC. CIVIL APPLN. NO. 23/2018

Director, Directorate of Sports and Youth Affairs, having office at Panaji-Goa. …. Applicant

Versus

Maura Gonsalves, Chidvilas Colony, St. Inez-Goa. …. Respondent

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Mr. Chaitanya Padgaonkar, Advocate for the Petitioner in Writ Petition No. 56/2017, Contempt Petition No. 33/2017 and for the Respondent in Miscellaneous Civil Application No. 23/2018.

Mr. Vallabh Pangam, Advocate for the Petitioner in Writ Petition No. 437/2018.

Mr. Pravin Faldessai, Additional Government Advocate for the Respondent No. 1 in Writ Petition Nos. 56/2017, 437/2018, Contempt Petition No. 33/2017 and for the Applicant in Miscellaneous Civil Application No. 23/2018.

Mr. S.N. Joshi with Ms. Snehal Rawool, Advocates for Respondent No. 2 in Writ Petition Nos. 56/2017, 437/2018 and Contempt Petition No. 33/2017.

Coram:- M.S. SONAK &
SMT. M.S. JAWALKAR, JJ.

Date:- 13th February, 2020

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

Heard Mr. Chaitanya Padgaonkar, the learned Counsel for the legal representatives of the deceased petitioner in Writ Petition No. 56/2017 and Contempt Petition No. 33/2017, Mr. Vallabh Pangam, the learned Counsel for the petitioner in Writ Petition No. 437/2018, Mr. Pravin Faldessai, the learned Additional Government Advocate for the respondent no. 1 in both these Petitions, Contempt Petition No. 33/2017 and for the applicant in Miscellaneous Civil Application No. 23/2018 and Mr. S.N. Joshi, the learned Counsel along with Ms. Snehal Rawool for the respondent no. 2 in both these Petitions and Contempt Petition No. 33/2017.

2. The learned Counsel for the parties agree that both these Petitions as well as Miscellaneous Civil Application No. 23/2018 and

Contempt Petition No. 33/2017can be disposed off by a common judgment and order.

3. The original petitioner in Writ Petition No. 56/2017 retired as Upper Division Clerk (UDC) with the Bharat Scouts and Guides-Goa State, after having rendered services of 39 years. So also, the petitioner in Writ Petition No. 437/2018 retired from Bharat Scouts and Guides-Goa State as Lower Division Clerk (LDC), after having rendered 38 years of service.

4. By instituting these Petitions, both the petitioners applied for substantially the following reliefs:

(a) For a direction to the respondents to release the amounts towards encashment of earned leave and gratuity and

(b) For a direction to the respondents to refund the deducted amount of ₹90,000/- (in respect of the petitioner in Writ Petition No. 56/2017) and an amount of ₹67,496/- (in respect of the petitioner in Writ Petition No. 437/2018), which, both the petitioners claim was wrongfully deducted by the respondents, while they were in service.

5. When Writ Petition No. 56/2017 came up for admission, statements were made by the learned Additional Government Advocate appearing for the respondent no. 1 that the amounts towards encashment of earned leave and gratuity will be paid to the petitioner in Writ Petition No. 56/2017 and accepting such statements, this Court, in its order dated 12.06.2017, noted that the first grievance of the petitioner in Writ Petition No. 56/2017 stands redressed. Rule was therefore issued only in relation to the second grievance regards the grievance of an amount of ₹90,000/-.

6. Since, there was no compliance with the statements made on behalf of the respondents, the petitioner in Writ Petition No. 56/2017, took out Contempt Petition No. 33/2017. During the pendency of the Contempt Petition, the respondent no. 1 took out Miscellaneous Civil Application No. 23/2018, seeking for modification/recall of the order dated 12.06.2017, *inter alia*, on the ground that the statements made by the learned Additional Government Advocate was not correct or properly made.

7. In the meanwhile, Writ Petition No. 437/2018 was also filed and the same was taken up for consideration along with Contempt Petition No. 33/2017, Miscellaneous Civil Application No. 23/2018 and Writ Petition No. 56/2017. On 28.08.2018, this Court, directed that all these matters will be heard together. Directions were

also issued to the respondents to deposit the amounts towards encashment of earned leave and gratuity and liberty was also granted to the petitioners to claim such amounts, subject to furnishing of sufficient security to the satisfaction of the Registrar. It was also clarified that the withdrawal of the amount will be subject to the outcome of these Petitions.

8. The record indicates that the original petitioner in Writ Petition No. 56/2017 expired and her legal representatives have already been brought on record. The legal representatives have chosen not to withdraw the amount of ₹17,49,000/-, which the respondent no. 1 had deposited in Writ Petition No. 56/2017. However, the record indicates that the petitioner in Writ Petition No. 437/2018 has already withdrawn an amount of ₹11,00,726/- by furnishing a Bank Guarantee to the satisfaction of the Registrar of this Court.

9. Mr. Joshi, the learned Counsel for the respondent no. 2, with whom the two petitioners were employed as UDC and LDC respectively, supported the case of the petitioners, insofar as their encashment of earned leave and gratuity is concerned. He submits that throughout, in matter of pay and pay fixation, the entitlements of a Government servant were made applicable and this was never objected to by the Government itself for all these years. Mr. Joshi, the learned Counsel pointed out that the respondent no. 2 does not have any

substantial independent income and therefore, has to depend on the grants given by the respondent no. 1.

10. However, insofar as the issue of refund of deducted amounts is concerned, Mr. Joshi, the learned Counsel submitted that such deductions were made because of shortage of stocks, which were detected and the undertakings furnished by the petitioners themselves, record their responsibility for its shortage. Mr. Joshi, the learned Counsel pointed out that even apart from the undertakings submitted by the petitioners, an enquiry was held in the matter. He pointed out that since, undertakings were furnished, lenient view was taken in the matter and apart from the recovery, no further action was taken against the petitioners. He pointed out the Petitions, insofar as the relief of refund of deductions is concerned, is barred by inordinate delay and laches. For all these reasons, he submits that though, the first grievance of the petitioners may be legitimate, the second grievance is not and therefore, no relief must be granted qua the second relief.

11. Mr. Pravin Faldessai, the learned Additional Government Advocate for the State submits that the petitioners cannot claim to be Government servants and on that basis, seek encashment of earned leave or gratuity. He pointed out that according to the consistent pattern of assistance given by the Government to the respondent no. 2, the Government had assumed responsibility towards salary of one

UDC, one LDC and one Peon and maintenance is granted towards it under certain percentage. He submits that no grants were either paid or liable to be paid towards any encashment of earned leave or gratuity. He submits that the statements made by the learned Additional Government Advocate was on the basis of insufficient instructions and such statements, being incorrectly made, the State Government cannot be held liable for payment of such amounts. He pointed out that on merits, since the petitioners have failed to establish that they were entitled to encashment of earned leave or gratuity, no reliefs may be granted in this Petitions. He makes reference to a note dated 25.04.2011, annexures of the same and the order dated 13.02.2012, all of which, have been annexed to Miscellaneous Civil Application No. 23/2018, seeking recall of order dated 12.06.2017 passed by this Court. For all these reasons, Mr. Faldessai, the learned Additional Government Advocate states that these Petitions are liable to be dismissed.

12. Mr. Padgaonkar and Mr. Pangam, the learned Counsel for the petitioners submit that the petitioners, throughout their services, have not only been paid through the grants received from the respondent no. 1, but, further, they have been paid benefits like Time Bound Promotional Scheme (TBPS), Modified Assured Career Progression Scheme (MACPS), Increment, Pay Commission Revision etc. They, therefore, submit that there is no basis, whatsoever, to deny

to the petitioners the benefit of encashment of earned leave and gratuity, particularly because, apart from these amounts, the petitioners, cannot be entitled to any other retiral benefits. They submit that clear statements were made by the learned Additional Government Advocate appearing for the respondent no. 1 and that there is no good ground for recall of order dated 12.06.2017.

13. Mr. Pagaonkar, the learned Counsel for the petitioner in Writ Petition No. 56/2017 pointed out that the application for recall was not maintainable and if, the application for recall is to be treated as Review Petition, the same was barred by the limitation prescribed. He submits that the application was not made in good faith, as the same was instituted after the Contempt Petition for enforcement of order dated 12.06.2017 was filed.

14. Mr. Padgaonkar and Mr. Pangam, the learned Counsel for the petitioners submit that the so called undertakings obtained from the petitioners were obtained by coercion and not voluntarily. They submit that in such matters, enquiry is must and only thereafter, deductions can be made from the salary. They submit that in the absence of any enquiry and considering that the undertakings were secured by coercion, the second grievance of the petitioners is also liable to be redressed.

15. After having considered the rival contentions and evaluating the material on record, we are satisfied that both these petitioners are entitled to encashment of earned leave and gratuity amount, pursuant to their retirement. However, when it comes to deductions, the petitioners have failed to make out a case for entitling them to any relief on that score.

16. There is material on record, both, in the form of pleadings and documents, which is sufficient to show that during the course of their services, the petitioners were not only paid salary from the 100% grants received from the Government, but, grants were also received from time to time for other components like TBPS, MACPS, TA, DA, increment and other allowances. Even the recommendations of the Pay Commission were accepted, insofar as these petitioners were concerned and their salary was revised from time to time. At no stage, there was any dispute raised as regards to the petitioner's entitlement for encashment of earned leave and gratuity. The dispute, if any, was raised only after the order dated 12.06.2017 was made in Writ Petition No. 56/2017 and the petitioner in Writ Petition No. 56/2017 instituted Contempt Petition No. 33/2017 for its enforcement.

17. Even if we proceed on the basis that there was some communication gap, on the basis of which, the learned Additional

Government Advocate made statements before this Court, on merits, we are satisfied that the petitioners are entitled to succeed, only insofar as their claim for encashment of earned leave and gratuity is concerned. In this regards, we refer to the order dated 13.02.2012, upon which, reliance was placed by Mr. Faldessai, the learned Additional Government Advocate, issued by the Government of Goa. This order clearly states that respondent no. 2 is being given 100% Grants towards Salary of Administrative Staff (01 UDC, 01 LDC and 01 Peon/Attendant). ***Salary and Grants towards increment to salary and allowances as scheduled to Goa Government Employees from time to time***.

18. The italicized portion above would obviously refer to encashment of leave salary and gratuity, particularly, taking into consideration the undisputed material that is on record that the grants covered not merely the salary and increments, but, also allowances like TBPS, MACPS etc. Thus, construed, it cannot be said that there was no obligation on the part of the respondents and in particular, on respondent no. 1, to pay to the petitioners the amount of encashment of earned leave and gratuity. Since, the petitioners, were entitled to succeed on merits, the issue as to whether, the statement made by the learned Additional Government Advocate, when we made our order dated 12.06.2017, was correct or not, really fades into insignificance. As we have made clear that even if, the statements are permitted to be

withdrawn, on merits, the petitioners are entitled to succeed, only insofar as their claim for encashment of earned leave and gratuity is concerned. Accordingly, there is no case made out to withdraw or recall our order dated 12.06.2017 in Writ Petition No. 56/2017.

19. Insofar as the issue of deductions is concerned, however, the petitioners have not made out any case. The deductions were made in pursuance of the petitioners admitting their lapse and even furnishing undertakings on 04.08.2014 in the matter of recovery. These undertakings have been signed by both the petitioners. However, on 17.09.2014, the petitioners, did attempt to backtrack. If the communication dated 17.09.2014 is perused, there are no allegations of coercion, but, there are vague statements that the petitioners were unwilling for the deductions.

20. These Petitions were instituted only in the years 2017 and 2018. For a period of almost three years there was no reaction. Throughout this period, the deductions were effected and there was really no protest to these deductions. Mr. Joshi, the learned Counsel for the respondent no. 2 pointed out that an enquiry was held, which might have resulted into a penalty. Perhaps to ward off this penalty, the petitioners furnished the undertakings and suffered deductions, which was in fact a lenient action taken by the respondent no. 2 in this matter. In these circumstances, we do find that the petitioners have

made out any case with regards to their second grievance relating to the deductions.

21. The respondent no. 1, insofar as Writ Petition No. 56/2017 is concerned, has deposited an amount of Rs.17,49,000/-. However, Mr. Faldessai, the learned Additional Government Advocate has placed before us a note, in which, the amounts have been recalculated by Deputy Director of Accounts, insofar as the petitioner in Writ Petition No. 56/2017 is concerned. As per this noting, the correct amount is ₹15,84,833/- and not ₹17,49,000/-. At least, *prima facie*, we accept this recalculation as correct. However, we grant liberty to the legal representatives of the petitioner in Writ Petition No. 56/2017 to represent to the respondent no. 1, if, the legal representatives are of the opinion that the original deposit of ₹17,49,000/- is itself the correct calculation. If such representation is made, the respondent no. 1 to dispose off the same within eight weeks from the date of its receipt.

22. Since, there was some dispute with regard to the entitlement of the petitioners for encashment of earned leave and gratuity and further, since, the respondent no. 2 is functioning on the basis of grants from the Government, in the peculiar facts of this case, we do not think that the petitioners have made out any case for claiming any interest. Further, we find that the respondent no. 1 has

deposited the amount in this Court, though, with some delay. The petitioner in Writ Petition No. 437/2018 has already withdrawn the amount also. For all these reasons, we decline the prayer for interest, except for the interest as accrued on the deposited amount, insofar as the deposit made in Writ Petition No. 56/2017 is concerned.

23. For the view which we have taken in these matters, there is really no necessity to make any orders on the Contempt Petition. Mr. Pagaonkar, the learned Counsel for the petitioner in Writ Petition No. 56/2017 has quite fairly not pressed for any orders and Mr. Faldessai, the learned Additional Government Advocate for the respondent no. 1 has quite fairly pointed out that the respondent no. 1 has tendered an apology in the matter. Accordingly, the Contempt Petition No. 33/2017 is disposed off.

24. For the aforesaid reasons, we make the Rule partly absolute in both these Petitions and dispose of both these Petitions by making the following order:

(a) The petitioners are held entitled to receive the amounts towards encashment of earned leave and gratuity.

(b) Since, the petitioner in Writ Petition No. 437/2018 has already withdrawn the amount of ₹11,00,726/-, towards the encashment of earned leave and gratuity, such withdrawal is declared as absolute. The Bank Guarantee furnished by the petitioner in Writ Petition No. 437/2018 is accordingly discharged. Registry to do the needful in the matter so that the same is discharged.

(c) The legal representatives of the petitioner in Writ Petition No. 56/2017 are permitted to withdraw an amount of ₹15,84,833/- along with proportionate interest, if any, that may have accrued on the said amount from the Registry, unconditionally.

(d) The balance amount along with accrued interest, if any, to be returned to the respondent no. 1 by the Registry again unconditionally. However, it is made clear that this return of the amount to the respondent no. 1 will abide by the ultimate decision, which the respondent no. 1 may take on the representation, if any, that may be made by the legal representatives of petitioner in Writ Petition No. 56/2017. If the legal representatives of the petitioner in Writ Petition No. 56/2017 wish to make any representation, the same must be made within a period of three months from today and not later.

(e) Apart from the aforesaid, no further relief is granted to the petitioners.

(f) In the peculiar facts and circumstances of the present case, there shall be no order as to costs.

(g) Miscellaneous Civil Application No. 23/2018 and Contempt Petition No. 33/2017 are also disposed off in the aforesaid terms.

(h) All concerned to act on the basis of an authenticated copy of the order.

SMT. M.S. JAWALKAR, J. **M. S. SONAK, J.**

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