

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NOS.117 to 121 OF 2011****WRIT PETITION NO.117 OF 2011**

K.M. Ramdasan  
Forest Surveyor,  
South Goa Division,  
Forest Department,  
Government of Goa,  
r/o. D1, Fores Dept. Complex,  
Aquem, Madgao, Goa.

....Petitioner

V/s.

1 State of Goa,  
Through the Chief Secretary,  
Secretariat, Porvorim, Goa.

2 The Additional Principal  
Chief Conservator of Forests,  
Gomantak Maratha Samaj  
Bldg., Government of Goa,  
Panaji, Goa.

....Respondents

Shri Nitin Sardesai, Senior Advocate with Shri L. Raghunandan,  
Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the  
Respondents.

**WITH****WRIT PETITION NO.118 OF 2011**

N. Subramanian  
Chief Forest Surveyor,  
Forest Department,  
Government of Goa,  
R/o S-1, Suraksha Apts.,  
Fatorda, Margao, Goa.

....Petitioner

V/s.

1 State of Goa,  
Through the Chief Secretary,  
Secretariat, Porvorim, Goa.

2 The Additional Principal  
Chief Conservator of Forests,  
Government of Goa, Panaji,  
Goa.

....Respondents

Shri Nitin Sardesai, Senior Advocate with Shri L. Raghunandan,  
Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the  
Respondents.

**WITH  
WRIT PETITION NO.119 OF 2011**

V.K. Parmeshwaran,  
Rtd. Chief Forest Surveyor,  
r/o. Vaishnavi Nilayam,  
P.O. Madakkathra (Via),  
Mannuthy, Tissur District,  
Kerala,  
Represented by duly  
constituted power of attorney,  
Shri S. Lakshmipathy  
r/o. H.No.C-36, "C" type Govt.  
Qtrs., Altinho, Panaji-Goa.

....Petitioner

V/s.

1 State of Goa,  
Through the Chief Secretary,  
Secretariat, Porvorim, Goa.

2 The Additional Principal  
Chief Conservator of Forests,  
Government of Goa,  
Panaji, Goa.

....Respondents

Shri Nitin Sardesai, Senior Advocate with Shri L. Raghunandan,  
Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the  
Respondents.

**WITH  
WRIT PETITION NO.120 OF 2011**

S. Lakshmipathy,  
Forest Surveyor,  
Wildlife & Eco-Tourism  
Division, Forest Department,

Government of Goa,  
r/o. C-36, "C" Type Govt.  
Qtrs., altinho, Panaji, Goa.

....Petitioner

V/s.

1 State of Goa,  
Through the Chief Secretary,  
Secretariat, Porvorim, Goa.

2 The Additional Principal  
Chief Conservator of Forests,  
Government of Goa, Panaji,  
Goa.

....Respondents

Shri Nitin Sardessai, Senior Advocate with Shri Shivan Fadte, Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the Respondents.

**AND  
WRIT PETITION NO.121 OF 2011**

P.P. Janardhan,  
Forest Surveyor,  
North Goa Forest Division,  
Ponda, Forest Department,  
Government of Goa,  
r/o. H.No.869/10-A,  
Pandegal, Shiroda, Ponda,  
Goa.

....Petitioner

V/s.

1 State of Goa,  
Through the Chief Secretary,  
Secretariat, Porvorim, Goa.

2 The Additional Principal  
Chief Conservator of Forests,  
Government of Goa, Panaji,  
Goa.

....Respondents

Shri Nitin Sardessai, Senior Advocate with Shri L. Raghunandan, Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the Respondents.

**Coram:- DAMA SESHADRI NAIDU &  
NUTAN D. SARDESSAI, JJ.**

**Date:- 23rd January 2020**

**ORAL JUDGMENT:**

**FACTS:**

In this batch of Writ Petitions, there are five petitioners. All joined the Forest Department of the State of Goa in the cadre of Forest Surveyor. All have held a diploma. In the end, all but one have retired as the Chief Forest Surveyors, the promotional post. During their career, the petitioners applied for and were given the benefit of Assured Career Progression Scheme (ACPS).

2. Under ACPS, the petitioners were, in fact, given two upgradations, for their entitlement to upgradation had never been in dispute. Indeed, the dispute concerns the scale of pay that should be taken as the basis for the upgradation. Though the Government twice provided the upgradation to the petitioners, it was not at the scale they desired. So the Government referred the matter to the Ombudsman. On 15th March 2010, the Ombudsman recommended in the petitioners' favour.

3. But the Government refused to act on the Ombudsman's representation; it rejected the recommendation on the premise that the Ombudsman lacked power to recommend on an issue affecting the pay scale. Aggrieved, the petitioners have filed this Writ Petition.

4. As a matter of later development, pending these Writ Petitions, the Government provided these petitioners the third upgradation. It

followed the same pattern of pay scale as it did with the earlier two upgradations. Thus, the petitioners' grievance remained unredressed.

**Submissions:**

**Petitioners:**

5. In the above factual backdrop, Shri Nitin Sardessai, the learned Senior Counsel for the petitioners, has submitted that the Government has been approbating and reprobating. It initially rejected the petitioners' claim for the upgradation with a different pay scale on the premise that the post they held was an isolated one. But, later, the Government realised that its plea held no water. So it went on changing its stand. Shri Sardesai has elaborated on how the Government took inconsistent or contradictory stands.

**Respondents:**

6. On the other hand, Ms. Susan Linhares, the learned Additional Government Advocate, has taken me through the Government's reply to contend that the Government has examined the petitioners' claim and rightly rejected it. Even the Ombudsman's recommendation is beyond his jurisdiction. Then, Ms. Linhares has submitted that between the equivalent posts in PWD and Land Survey Department, the Government has found the latter corresponding more accurately as being the analogous post. So, it has justly refused to take a different pay scale as the basis, though it has granted the upgradations.

7. To support her contentions, Ms. Linhares has relied on *Raghunath B. Desai v. State of Goa, through its Chief Secretary*<sup>1</sup>; *Secretary Government of NCT of Delhi v. Grade-I DASS Officers' Association*<sup>2</sup>; and *Ms. Bindu Sehgal v. Union of India*<sup>3</sup>.

8. Heard Shri Nitin Sardessai, the learned Senior Counsel for the petitioners, and Ms. Susan Linhares, the learned Additional Government Advocate for the State.

**Discussion:**

9. The dispute here concerns the pay scale that should have been applied as the basis for the benefit extended to the petitioners under ACPS. Initially, acting on the petitioners' complaints, the Government referred the matter to the Ombudsman, who recommended in the petitioners' favour. But the Government refused to act on the recommendation on the premise that it was beyond the Ombudsman's jurisdiction. Once the Ombudsman has no power to consider the dispute, leave alone recommend; the Government's referring the matter, in the first place, does not estop the Government. It can refuse to act on the recommendation. On the Ombudsman's jurisdiction or the lack of it, the petitioners have not seriously challenged the Government's action. So the issue needs no elaboration.

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<sup>1</sup> . 2013 5 ALLMR 770

<sup>2</sup> . 2014 (9) Scale 25

<sup>3</sup> . 103 (2003) DLT 504

10. Now, we may turn to the substantive aspect of the case: Which pay scale should the Government have adopted when it applied ACPS to the petitioners?

11. True, the Government initially maintained that it was an isolated post. That plea could not be sustained because an isolated post should have neither a feeder category nor a promotional avenue. Here, the post of Forest Surveyor has a promotional avenue: Chief Forest Surveyor. The Government has, perhaps, realised the flaw in its assertion; then, in its correspondence with the petitioners, it has told them that their position can be likened to the post of Junior Engineer in the PWD. And their promotional post of Chief Forest Surveyor, according to the Government, stands on a par with that of the Assistant Engineer.

12. In the light of the Government's assertion that the petitioners have their comparable cadres in PWD, the petitioners have maintained that even if the Government's altered position was accepted, still they would be entitled to the benefit they had claimed.

13. But, once again, the Government wanted to recant its own assertion. And that recantation took place in the Government's reply to this Writ Petition. Here, the Government maintained that the petitioners' position as Forest Surveyors could only be compared with the Surveyor, Grade I, in the Department of Survey and Land Records. This changed stand, as the petitioners have contended, does suffer from a flaw. The post of Chief Forest Surveyor is the immediate promotional post, whereas the

post of Surveyor in the Survey Department has two intermediary ranks between the feeder category and this promotional post. Thus, these two posts, as the Government would have this Court believe, do not seem analogous.

14. Now, the dispute can be narrowed down to this singular aspect: Is the petitioners' post as Forest Surveyor analogous to that of Assistant Engineer in Public Works Department?

15. Here, we may note two aspects: first about the principle of estoppel and second about the parity among different posts. It is well settled that “public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.” Succinctly stated, State cannot supply reasons post factum; they are tied down to what they had asserted before the dispute began. And this proposition brooks no exception.

16. In fact, the Supreme Court in *Mohinder Singh Gill v. The Chief Election Commissioner*<sup>4</sup>, quotes with approval its earlier judicial dictum that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be

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4. AIR 1978 SC 851

supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad initially may, by the time it comes to court because of a challenge, gets validated by additional grounds later brought out.

17. That is, Government could sustain its action based on the reason it has assigned for its refusing to act, but not based on the reason it later supplies during the judicial proceedings. Here, while rejecting the Ombudsman's recommendation, the Government cited the reason only of his lacking the jurisdiction to recommend on the pay scales. To that extent, Government stands on a sound footing. But the Government itself has put its stand on record in response to the petitioners' claim for change in pay scale: that the post of Junior Engineer in PWD should be the analogous post. Later, the Government has withdrawn that concession.

18. I reckon, in this context, the time-tested principle of estoppel binds and prohibits the Government from approbating and reprobating. True, if the Government's assertion or concession violates a statutory mandate, the common-law principle of estoppel, now having the statutory sanction, has no role to play. Its assertion or concession, then, remains a mistaken one.

19. Here, it is a matter of conscience, calibrated decision the Government communicated to the petitioners that the post they held is comparable to that of Junior Engineer in PWD. Later, the Government retracted from this plea. It has neither supplied any reason for its change

of stand nor has it, at least here before the Court, demonstrated how its earlier concession contradicts any statutory mandate or service regulation.

20. It is the Government's contention that the Forest Surveyors have no functional similarity with the Junior Engineers in PWD. Regrettably, when it comes to the posts being analogous, the discharge of functions cannot be the sole criterion—not an essential criterion, at least. It is for the simple reason that departmentally duties differ. On the contrary, it is the qualification, pay scale, method of recruitment, promotional avenues, and so on that are material criteria for our deciding whether two posts are analogous or otherwise.

21. “Analogous post” as such is not a statutorily defined term, though it has been frequently employed in service jurisprudence. In *M. Hara Bhupal v. Union of India*<sup>5</sup>, has considered departmental instructions of the Department of Personnel and training, Union of India, what could be treated as “Analogous Posts”. Those instructions, as met the Supreme Court’s acceptance, show that (i) though the scale of pay of the two posts which are being compared may not be identical, they should be such as to be an extension or a segment of each other; (ii) both the posts should be falling in the same group of posts as departmentally defined; (iii) the levels of responsibility and the duties of the two posts should also be comparable; (iv) where specific qualifications for transfer on deputation/transfer have not been prescribed, the qualifications and experience of the officers to be selected should be comparable to those

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<sup>5</sup>(1997) 3 SCC 561

prescribed for direct recruits to the 'post where direct recruitment has also been prescribed as one of the methods of appointment in the recruitment rules'. This Court in *Dnyaneshwer Purshottam Kudalkar (Dr.) v. Union of India*<sup>6</sup>, has held that the word "*Analogous post*" meant that the post of which the duties and level of responsibilities and/or the pay ranges are comparable to those of the post to which the selection was to be made.

22. In *Vice Chancellor, L.N. Mithila University v. Dayanand Jha*<sup>7</sup>, the Supreme Court has held that status and nature of responsibilities and duties attached to the two posts should be the same to treat these posts as equivalent. Thus, we may have to look at not only the duties of the two different posts in question, by also the scales of pay which the posts carry, as well as the category to which the two posts belong, among other things.

23. Even otherwise, the petitioners have demonstrated that they have been discharge similar functions to those of Junior Engineers. In that regard, the Government maintained that only in a few, select stations the functional similarity is found, but not in all other places. As we have already held, functional similarity cannot be the sole criterion; so the Government stand fails to impress us.

24. In the alternative, the Government has maintained that they have analysed and found that the post of Surveyor in Land Survey Department accords well with the petitioners' post of Forest Surveyor.

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<sup>6</sup>(2006) 3 Bom CR 544

<sup>7</sup>(1986) 3 SCC 7

But there too, the promotional avenues have no parity. In the Land Survey Department, the promotional post comparable with that of the Chief Forest Surveyor has two intermediary positions. So that plea, too, fails.

25. The learned Additional Government Advocate has cited the judgment of this Court in *Raghunath B. Desai*. There, the question was whether the employees were entitled to the third upgradation. On the merits, the Division Bench of this Court has held that the employees were not entitled. As we have already noted, here it is not the question of upgradation but that of the scale of pay to be the basis for that upgradation. That is why, that judgment does not help the Government.

26. Then in *Secretary, Government of NCT of Delhi*, the respondents claimed benefits under ACPS that would exceed the benefits they would have had if they had been actually promoted. In that context, the Supreme Court has held that the financial upgradation under the ACPS is not only in lieu but also in anticipation of regular promotion. According to it, fairness on the part of the State is a constitutional obligation and hence “a pay scale, which regularly promoted employee earlier belonging to Grade I (DASS) could not get due to established hierarchy for promotion, cannot be granted to those like the respondents on the plea that the financial upgradation to which they are found entitled as per existing hierarchy is too meagre.” The Supreme Court has also pointed out the anomaly: the respondents would have their pay reduced on their promotion because in the name of upgradation they would draw more pay in the lower grade.

27. In *Ms. Bindu Sehgal*, a Division Bench of the Delhi High Court found the petitioner to be a direct recruit not belonging to any cadre or hierarchy. Nor did she have any promotional avenues available to her. She had already earned two promotions in 24 years. So the Court has ruled that she could not get any further financial upgradation. But as I have noticed, the petitioner appealed to the Supreme Court against this judgment. In turn, the Supreme Court, in *Bindu Sehgal v. Union of India*<sup>8</sup>, has noted that the High Court of Delhi has not considered certain key aspects of the Scheme. So it has set aside that judgment and remanded the matter.

### **Result:**

Under these circumstances, we reckon the petitioners are entitled to the benefit. As a result, these Writ Petitions are allowed in terms of

Corrections carried  
out as per order  
dtd.05/03/2020.  
Sd/-  
(PS.)  
06/03/2020

prayer clauses ~~(1), (2), (3) & (6)~~. (i),(ii)(iii) and (iv-A) of Writ Petitions No.117,119,120 & 121 of 2011 and prayer clauses (i),(ii),(iii) & (vi) of Writ Petition No.118 of 2011.

**NUTAN D. SARDESSAI, J.**

**DAMA SESHADRI NAIDU, J.**

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