Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.100 OF 2021

Smt. Aruna Vishnu Wagh …. Petitioner.

Versus

1. Chief Secretary, State of
Goa and another ….. Respondents.

Mr. Nihal Pramod Kamat, Advocate for the Petitioner.

Mr. D.J. Pangam, Advocate General with Mr. S.P. Munj, Additional Govt. Advocate for the Respondents.

Coram:- DIPANKAR DATTA, CJ. &
M. S. SONAK, J.

Date:- 23rd March 2021

P.C.:-

The petitioner is the widow of late Vishnu Surya Wagh, former member of the Legislative Assembly of Goa, as well as its Deputy Speaker, during the period 19/03/2012 to 14/03/2017.

2. The husband of the petitioner passed away on 08/02/2019 in Johannesburg, South Africa.

3. It is not in dispute that the petitioner is employed as an Education Officer in the National Board for Worker Education and Development, Ministry of Labour and Employment, Government of

India and is presently posted at Ponda.

4. A legislation was enacted in 2004 titled as the “Goa Salary, Allowance and Pension of Members of Legislative Assembly Act, 2004” (hereafter referred to as the 2004 Act). The petitioner, being the widow of the deceased member of the Legislative Assembly, had applied for pension in terms of Section 11 of the 2004 Act. Such application has been spurned by the Assistant Accounts Officer, Goa Legislature Secretariat by an order contained in a communication dated 27/8/2019 addressed to her. The ground on which the Assistant Accounts Officer spurned such request of the petitioner is that Section 11(2)(iii) of the 2004 Act creates a bar on grant of pension to her owing to her employment as noted above, and drawal of a salary of ₹1,19,232/- per month. This communication forms the subject-matter of challenge in this writ petition.

5. Mr. Kamat, learned Advocate has appeared in support of the writ petition. According to him, the Assistant Accounts Officer misconstrued the provisions of the 2004 Act whilst spurning the request of the petitioner for pension. According to him, notwithstanding the petitioner's employment as an Education Officer, she is entitled to grant of pension under Section 11 of the 2004 Act in view of absence of any express bar. It is also submitted that the fact that the petitioner’s husband was a former Deputy Speaker of the Legislative Assembly escaped the

notice of the Assistant Accounts Officer. He has, accordingly, prayed that the impugned communication be set aside and a direction given for release of pension as admissible in terms of the 2004 Act.

6. Having heard Mr. Kamat and on perusal of Section 11 of the 2004 Act, we did not consider it necessary to call upon Mr. Pangam, the learned Advocate General for the State to advance arguments although an affidavit-in-reply has been filed by him in Court today on behalf of the respondent no.2.

7. For facilitating appreciation of the contention of Mr. Kamat, we consider it appropriate to reproduce hereinbelow Section 11 of the 2004 Act to the extent the same is relevant for the purpose of a decision on this writ petition. It reads:

> "*11. Pension.— (1) Subject to the other provisions of this Act, with effect from the 1st day of July, 2004, there shall be paid to every person who has been a member, a pension of rupees five thousand per mensem for the first year and one thousand rupees per month for every successive year of his membership in the Assembly subject to a maximum of rupees twenty seven thousand per month and while reckoning the period of one year, days exceeding 180 days in a calendar year shall be counted as one year:*
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> *Provided....*
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> *Provided....*
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> *Provided...*
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> *Provided that after the death of the person as aforesaid, the*

pension shall be payable to his widow or her widower, as the case may be, as long as she or he does not remarry and after the death of the widow or widower, as the case may be, the pension shall be payable to the dependent family members of the person as aforesaid till they attain the age of 25 years + and to unmarried dependent daughter till she gets married or till her death, whichever is earlier, and such pension shall be payable subject to the provisions in the succeeding sub-sections of this section and the other provisions of this Act.

(2) The pension payable to a person under sub-section (1) in case there be any outstanding amount or loan or any facilities availed under this Act, it shall be first adjusted towards repayment of such outstanding amount or loan or any facility availed of, including interest payable thereon, till such entire outstanding amount or loan or facility is cleared.

(3) Where any person entitled to pension under sub-section (1) —

(i) is elected to the office of the President or Vice-President or is appointed to the office of the Governor of any State or the Administrator of any Union Territory; or

(ii) becomes a member of the Council of States or the House of the People or any Legislative Assembly of a State or Union Territory or any Legislative Council of a State; or

(iii) is employed on a salary under the Central Government, or any State Government or any Corporation owned or controlled by the Central Government or by any State Government or any local authority or becomes otherwise entitled to any remuneration from such Government, Corporation or local authority,

such person shall not be entitled to any pension under sub-section (1) for the period during which he continues to hold *such office or as such member, or is so employed, or continues to be entitled to such remuneration:*

Provided that where the salary payable to such person for holding such office or being such member or so employed or whom the remuneration referred to in clause (iii) payable to such person is, in either case, less than the pension payable to him under sub-section (1), such person shall be entitled only to receive the balance as pension under that sub- -section.

(4) Where any person entitled to pension under sub-section (1) is also entitled to any pension from the Central Government or any State Government, or any corporation owned or controlled by the Central Government or any State Government, or any local authority under any law or otherwise, then,

(a) where the amount of pension to which he is entitled under such law or otherwise, is equal to or in excess of that to which he is entitled under sub-section (1), such person shall not be entitled to any pension under that sub-section; and (b) where the amount of pension to which he is entitled under such law or otherwise, is less than that to which he is entitled under sub-section (1), such person shall be entitled to pension under that sub-section only of an amount which falls short of the amount of pension to which he is otherwise entitled under that sub-section:

Provided....”

8. Reading of Section 11 of the 2004 Act would make it clear as crystal that reference to clause (iii) of sub-section (2) of Section 11 of the Act by the Assistant Accounts Officer in the impugned communication is a patent mistake. Clause (iii) appears under sub-section (3), and not under clause (ii). Regard being had to the settled position of law that

mere erroneous reference to a statute would not vitiate an order, if the power therefor is otherwise traceable in the relevant statute, the order of the Assistant Accounts Officer does not call for an invalidation because of such erroneous reference. To be fair to Mr. Kamat, he did not urge us to do so.

9. Sub-section (3) of Section 11 of 2004 Act ordains that any person entitled to pension under sub-section (1) acquires a disqualification to grant of pension in case of occurrence of any one of the contingencies stipulated in clauses (i), (ii) and (iii). The word “person”, wherever it occurs in Section 11, although is not defined in the 2004 Act, it takes colour from “a member” as referred to in sub-section (1) of Section 11. The word “member” as defined in clause (g) of Section 2 of the 2004 Act means a member of the Assembly. The contention of Mr. Kamat that the petitioner's husband was a Deputy Speaker of the Assembly and that the Assistant Accounts Officer failed to notice it, in our opinion, does not make any difference in view of the fact that the petitioner’s husband held the position of Deputy Speaker, obviously because he was a member of the Assembly first. In fact, neither have we found any special provision relating to a Deputy Speaker in the 2004 Act, nor can we assume that the family members of a member of the Legislative Assembly, who was also a Deputy Speaker (since deceased), would be entitled to a preferential treatment over and above what is available to the widow/widower/dependent family member of a deceased

member of the Assembly.

10. Next, although the focus of Mr. Kamat has been on the first part of the fourth proviso to sub-section (1) of Section 11 of the 2004 Act, his argument appears to us to be devoid of any merit, having regard to the second part of such proviso, which mandates that pension to a deceased member's widow/widower and in case of her/his death the dependent family member, shall be payable subject to the provisions of the sub-sections succeeding sub-section (1) of Section 11 of the 2004 Act and the other provisions thereof. There can be no manner of doubt that the bar created by the provision in clause (iii) of sub-section (3) of Section 11 is attracted *qua* the petitioner and spurning of the application for pension citing such provision does not suffer from any legal infirmity warranting interference.

11. While reading Section 11 entirely, we had noted from the first proviso to sub-section (3) that mere employment or drawing of salary by any widow/widower/dependent family member of the deceased member would not *ipso facto* create a disqualification and that if the salary receivable is less than the pension payable, the balance amount would be payable to such widow/widower/dependent family member. In the present case, the maximum amount of pension per month that is payable under the 2004 Act is ₹ 70,000/-, which is less than the salary of the petitioner that she has been receiving on account of her employment as

an Education Officer. Considered from this angle too, the communication of the Assistant Accounts Officer, impugned in this writ petition, does not call for any interference.

12. For the reasons discussed above, the writ petition fails and is dismissed. However, the parties shall bear their own costs.

M.S. Sonak, J. ***Chief Justice***

SANTOSH S MHAMAL Digitally signed by SANTOSH S MHAMAL Date: 2021.03.30 11:26:55 +05'30'