

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.225 OF 2020

1. Sandhya Kanekar
Major of age,
R/o H. No.396/A-1,
Behind Govt. Primary School
D'Mello Vaddo, Canca, Parra,
Bardez, Goa.
 2. Usha Priolkar
Major of age,
R/o H. No.950/2,
Ambirna, Socorro,
Bardez, Goa.
 3. Meena Shirodkar
Major of age,
R/o Flat No.UG F-1,
Solson's Valley View (I)
Behind Britania House,
Alto-Porvorim,
Bardez, Goa.
 4. Sapna Tivrekar
Major of age,
R/o Sundharam Building
Near Vividha Urban Co-op. Bank
Jagadyachi Hali
Sanquelim, Goa.
 5. Rajeshwari Mayekar
Major of age
R/o Flat No.G-1/163 B
The Welcome Co-operative Housing
Society Ltd.
Alto-Torda, Porvorim
Bardez, Goa.
- ... Petitioners

Versus

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

2. The Chairman,
Goa Board of Secondary and Higher
Secondary Education,
Alto-Porvorim,
Bardez, Goa.

...Respondents

Mr. S. D. Lotlikar, Senior Advocate *with* Mr. J. Karn and Ms. Sailee Keny,
Advocates for the Petitioners.

Mr. Devidas J. Pangam, Advocate General *with* Mr. S.P. Munj, Additional
Government Advocate for Respondent No.1.

Mr. J. P. Mulgaonkar, Senior Advocate *with* Ms. Rupa Benaulikar,
Advocate for Respondent No.2.

**CORAM : SANDEEP K. SHINDE &
R.N. LADDHA, JJ.**

Reserved on : 24.06.2022

Pronounced on : 08.07.2022

JUDGMENT: (Per R. N. Laddha, J.)

By this Writ Petition under Article 226 of the Constitution of India, the petitioners seek directions to the respondents to regularize their services and appointments on regular basis with retrospective effect. Further, a direction is also sought to order the respondents to

extend all the pensionary and/or terminal benefits to them, under the Old Pension Scheme (OPS).

2. It is the case of the petitioners that they were initially engaged, on daily wage basis, with respondent No.2-Board. In 1996, three of the persons so engaged as seasonal clerks filed a writ petition bearing Writ Petition No.341 of 1996 before this Court. The said Petition was disposed of based on the affidavit filed by the respondent-Board that the petitioners would be conferred temporary status with effect from 1st November 1999 under the Daily Wagers (Grant of Temporary Status) Scheme of the Government. The order further directed that as and when regular vacancies would arise, the Board shall consider the petitioners and other employees on whom temporary status has been conferred for appointment to regular vacancies subject to relevant Recruitment Rules. Later on, petitioners were conferred the status of temporary employees with retrospective effect from 1st November 1999. On 2nd May 2004, the Government granted permission to the respondent-Board to absorb the petitioners against the regular vacant posts. However, respondent No.2 failed to regularize the services of the petitioners even though clear vacancies were existing. The petitioners services were however regularized and they were appointed

as Lower Division Clerks (LDCs) on regular basis with effect from 1st July 2010. Thereafter in the year 2013, the appointments of the petitioners to the regular posts of LDCs were also confirmed. As the petitioners services were regularized with effect from 1st July 2010, they were not entitled to any pensionary and/or terminal benefits under the Old Pension Scheme nor the New Pension Scheme upon attaining the age of superannuation.

3. Heard Mr. S. D. Lotlikar, learned Senior Counsel for the petitioners, Mr. Devidas J. Pangam, learned Advocate General for the respondent No.1 and Mr. J. P. Mulgaonkar, learned Senior Counsel for the respondent No. 2.

4. Upon perusal of the record, it is seen that the parties have not disputed that the posts held by the petitioners are permanent and against clear vacancies. It is admitted position that this Court, on 15th March 2000 in Writ Petition No.341 of 1996 had directed the respondent-Board to consider the petitioners and other employees on whom temporary status has been conferred for appointments to regular vacancies. Further, it is not in dispute that the petitioners were appointed by following the prescribed selection process. The fact that the petitioners were conferred the status of temporary employees with

retrospective effect from 1st November 1999, is also not in dispute. It is also undisputed that in the year 2004, the Government had conveyed its approval to the respondent-Board for filling up the existing posts of LDCs but at that time these posts were not filled. Thereafter, in the year 2010 only, the services of the petitioners were regularized.

5. As the services of the petitioners were already regularized and they were already appointed as LDCs on regular basis from the year 2010 and thereafter their services were also confirmed, the only question, that remained was from which date the petitioners services should be regularized.

6. In this context, upon perusal of the record, it is seen that in the year 2004 Government had conveyed to the respondent-Board its approval for filling up the existing posts of LDCs, meaning thereby that the posts were vacant at that time. But, the respondent-Board delayed the actual regularization nor filled the posts as permitted by the Government. The reason assigned for the delay was stated as "administrative exigencies" but without specifying what the exigencies were. If the petitioners services had been regularized within a reasonable period from the date of Government approval, i.e. 2nd May 2004, they would have been held eligible for the Old Pension Scheme

and would have been entitled to all the benefits thereunder. The petitioners, for absolutely no fault of theirs, were not covered under the Old Pension Scheme. In fact regularization from 2010, would not make petitioners eligible for claiming benefits under New Pension Scheme, for want of qualifying service. The petitioners as such are deprived of availing of any benefits under the New Pension Scheme, as well. The respondent-Board has not bothered to implement the decision of the Government of the year 2004 diligently. Mr. Lotlikar, learned Senior Counsel, also made a passing reference to the affidavit filed on behalf of respondent No.1 which states that the Personnel Department of the Government directed the respondent-Board to clarify why the incumbents were not regularized in the year 2004 as per the approval given by the Directorate of Education.

7. Thus, the basic premise of appointing the petitioners as LDCs on regular basis only with effect from 1st July 2010 does seem to have been based on any legal or logical principle.

8. Needless to state that as the petitioners services were regularized and they were appointed on a regular basis so also their appointments were confirmed, suggesting that the respondents have

examined and considered the petitioners cases on merit and therefore issued an order of regularization of their services.

9. For the foregoing reasons, we hold that respondents decision in treating the services of the petitioners and their appointments on a regular basis only since 1st July 2010 is illegal. We thus proceed to direct the respondents to treat the petitioners as regular employees from 2nd May 2004 instead of 1st July 2010 and they shall be entitled to all the pensionary and/or terminal benefits, under the Old Pension Scheme from 2nd May 2004.

10. Rule is made absolute in the above terms.

R.N. LADDHA, J.

SANDEEP K. SHINDE, J