Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.835/2017

1. ALL GOA GOVERNMENT PENSIONERS ASSOCIATION, a Society registered under Societies, Registration Act, 1860, having its office, at Colaco Building, 2nd Floor, L.C. Monteiro Road, Margao Goa 403601, through its President, Shri. Antonio Walter Do Rosario Colaco alias Walter Colaco, Son of Late Jose Antonio Manuel Cruz do Rosario Colaco, 76 years old, married, Indian National, Retired Govt. Of Goa Pensioner, resident of Collaco Building, 2nd Floor, L.C. Monteiro St. Margao, Goa 403601.

2. SHRI ANTONIO WALTER DO ROSARIO COLACO ALIAS WALTER COLACO, Son of Late Jose Antonio Manuel Cruz do Rosario Colaco, 76 years old, married, Indian National, Retired Govt. Of Goa Pensioner, resident of Collaco Building, 2nd Floor, L.C. Monteiro St. Margao, Goa 403601.

3. GOA ASSOCIATION OF PREMATURELY RETIRED GOVERNMENT EMPLOYEES, an Unregistered Association of Prematurely Retired Goa Government Employees, having its office at House

No. 872, Sai Kripa, New Pundalik Nagar, Alto Porvorim, Bardez, Goa, 403 521, through its President Shri. Mohan V. Rivankar, Son of late Vinayak M. Rivankar, Age 71 years, major in age, Indian National, Retired Govt. Servant, R/O H. No. C-16/17, Near Shri Ram Temple, Batlem, Panaji Goa.

4. SHRI. MOHAN V. RIVANKAR, son of late Vinayak M. Rivankar, age 71 years, major in age, Indian National, Retired Govt. Servant, R/O H. No. C-16/17, Near Shri Ram Temple, Batlem, Panaji Goa. ... Petitioners

Versus

1. GOVERNMENT OF GOA, Through its the Chief Secretary, Office of the Chief Secretary, Government of Goa, Goa Secretariat, Alto Porvorim, Bardez, Goa - 403 521.

2. SECRETARY (FINANCE), Office of the Secretary (Finance), Government of Goa, Department of Finance (Revenue and control) Secretariat, Alto Porvorim, Bardez - Goa - 403 521.

3. DIRECTOR OF ACCOUNTS, Office of Director of Accounts, Directorate of Accounts, Government of Goa, Old Fazenda Building, Behind old Secretariat, Panaji Goa.

4. GOVERNMENT OF INDIA,

Through the Secretary, Ministry of Personnel, Public Grievances and pensions, Dept. Of Pensions and Pensioners' 'Welfare' Lok Nayak Bhawan, New Delhi – 110 003. ... Respondents

Mr. S. G. Desai, Senior Advocate with Ms. A. Gaude, Advocate *for the Petitioners*.
Mr. Pravin Faldessai, Additional Government Advocate *for the Respondents*.

CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.

DATED: 5th SEPTEMBER 2022

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

1. Heard Mr. S. G. Desai, learned Senior Advocate who appears along with Ms. A. Gaude for the petitioners and Mr. Pravin Faldessai, learned Additional Government Advocate for the respondents.

2. The petitioners, who claim to be an association representing the interests of prematurely retired Goa Government employees, have instituted this petition seeking the following reliefs:

> *"**A.** For writ of mandamus or a writ, direction or order in the nature of mandamus or any other appropriate order, writ or direction under Article 226 of the Constitution of India, commanding/directing the Respondent State*

Government to pay all monetary or other benefits to prematurely retired pensioners, family pensioners, as if employee is continued with employment till he attains the age of 60 years of employee concern, and pay such monetary benefits to prematurely retired pensioners family pensioners along with the arrears from the date of their premature retirement till the writ is passed within 30 days from the date of the writ.

B. *For any other appropriate writ, direction, order under Article 226 of the Constitution of India not specifically prayed for yet available in fact and circumstances of the case.*"

3. Mr. Desai, learned Senior Advocate for the petitioners, submits that the issue raised in this petition is squarely covered by the decision of this Court in ***Laxman J. Chavan & Ors. v. Chief Secretary, State of Goa & Ors. - 2020 (5) MLJ 428*** as modified by the Hon'ble Supreme Court in ***M. L. Patil (dead), through LRs v. State of Goa & Ors. - 2022 SCC (SC) 685***. Mr. Desai submits that the issue is also covered in ***Zilo Zo & Ors. v. State of Goa & Ors. - MANU/MH/0655/2011***.

4. Mr. Desai submits that the petitioners must be granted the reliefs as prayed for, considering the law laid down in *Laxman Chavan (supra), Zilo Zo (supra) and M. L. Patil (supra).*

5. Mr. Faldessai learned Additional Government Advocate states that the decisions relied upon by Mr. Desai will have to be followed, provided the cases of the retired Government employees whose cause the petitioners claim to espouse are indeed identical to the petitioners in *Laxman Chavan (supra), Zilo Zo (supra) and M.L. Patil (supra)*. He points out that in this case, the petitioners have not bothered to state any particulars about the Government employees whose cause they seek to espouse. He points out that even the prayer clause is entirely vague. For these reasons, he submits that no relief may be granted in this petition

6. The rival contentions now fall for our determination.

7. There is substance in Mr. Faldessai's contention about the absence of particulars and the vagueness in the reliefs applied. However, at the same time, it does appear that several Government employees, entitled to continue in service until they attain the age of 60 years, were retired at the age of 58. These were employees appointed before the appointed date, i.e. 30.05.1987, as provided under the Goa, Daman and Diu Reorganization Act, 1987 (Reorganization Act).

8. Section 60(6) of the Reorganization Act reads as follows:-

> *"**60(6)** Nothing in this section shall be deemed to affect, on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the State of Goa or the Union:*
>
> *Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government."*

9. Considering the above provisions and several precedents on the subject, this Court, in *Laxman Chavan (supra)*, disposed of Writ Petition Nos.439 of 2014, 961 of 2015, 453, 461 and 569 of 2016 on 11.02.2020. The operative portion in para 65 reads as follows:

> *"(a) We declare that the action of the State Government in requiring the Petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years was illegal, null and void;*
>
> *(b) However, notwithstanding the aforesaid declaration, none of the Petitioners will be entitled to any salary/back wages for the period of two extra years they would have got in service, mainly on the ground of delay with which most of the petitions were instituted;*

(c) We however declare that the Petitioners will be entitled to the pension on the basis that they continued in service until they attain the age of 60 years;

(d) Notwithstanding the aforesaid declaration, the Petitioners will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020;

(e) We grant the Respondents three months time to work out the revised pension payable w.e.f. 1st January, 2020 and thereafter commence such payment;

(f) We clarify that though three months time is granted, the arrears regards the revised pension will have to be paid w.e.f. 1st January, 2020;

(g) In case, as a result of aforesaid benefit, any of the Petitioners are required to refund any benefits which they have already received, the Respondents will not insist upon the actual return/recovery. However, the State Government, will be at liberty to make suitable adjustment so that, any double benefits are not received by the Petitioners. In particular, we clarify that the Petitioners will not be entitled to the benefits of order dated 9th October, 2014, in addition to the benefits which we have now extended to the Petitioners;

(h) We clarify that except for direction of payment of revised pension on the basis that the Petitioners had continued in service upto the age of 60 years w.e.f. 1st January, 2020, we have not awarded the Petitioners any other financial benefits on the basis of declaration that they

were entitled to continue in service until they attain the age of 60 years. Therefore, on the basis of such declaration the Petitioners, will not be entitled to raise any further financial claim except for claim of revised pension that too w.e.f. 1st January, 2020 only.

(i) Rule in each of these petitions is disposed of in the aforesaid terms. There shall be no order as to costs."

10. The Petitioner in Writ Petition No.961/2015 carried the matter to the Hon'ble Supreme Court aggrieved *by the denial of back wages and pension arrears*.

11. The Hon'ble Supreme Court did not interfere with the denial of the back wages for the two extra years that the petitioners would have continued in service but for their premature retirement at the age of 58 years. However, the Hon'ble Supreme Court held that there was no justification for denying the pension arrears to the petitioners as if they would have been retired/superannuated at the age of 60 years.

12. The discussion on the above issue is found in paragraphs 2.1, 3 and 4 of *M. L. Patil (supra),* and the same is transcribed below for the convenience of reference:

*"**2.1.** Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court to the extent denying the back wages for the period of two extra*

years and observing and directing that original writ Petitioner will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020, the original writ Petitioner of Writ Petition No. 961/2015 has preferred the present appeal.

3. *Having heard Shri Rahul Gupta, learned Counsel appearing on behalf of the Appellant and Shri Ravindra Lokhande, learned Counsel appearing on behalf of the Respondent-State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original Petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the Appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ Petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.*

4. *In view of the above and for the reasons stated above, the present Appeal Succeeds in Part. The impugned*

> *judgment and order passed by the High Court to the extent of denying any arrears of pension and holding that the Appellant shall be entitled to the pension at the revised rates only from 1st January, 2020 is hereby quashed and set aside. It is held and ordered that the Appellant - original writ Petitioner shall be entitled to pension at the revised rates from the date he attains the age of 60 years. Now the arrears accordingly shall be paid to the Appellant within a period of four weeks from today. Present Appeal is Partly Allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs."*

13. Thus, in principle, there could be no dispute that if the employees, whose cause the petitioners claim to espouse, were indeed appointed before the appointed date, i.e. 30.05.1987 and further, if before the appointed date, their service conditions entitled them to continue in service until they attain the age of 60 years, then, there was no justification in retiring such employees upon their reaching the age of 58 years, in the absence of compliance with the provisions of Section 60(6) of the Reorganization Act. However, the question is whether the petitioners indeed represent the cause of such prematurely retired Government employees.

14. In the absence of any details or particulars in the petition or its accompaniments, it will be difficult for us to make any specific orders granting specific relief to the petitioners or the employees whose cause the petitioners claim to espouse. At the same time, considering that we are dealing with the cases of senior citizens, who may have been prematurely retired in breach of the provisions of Section 60(6) of the Reorganization Act and the law laid down by us in *Laxman Chavan (supra)* as modified by the Hon'ble Supreme Court in *M. L. Patil (supra)*, the petitioners cannot be sent back empty handed. This is a case where the relief will have to be moulded so that there is neither any injustice to the prematurely retired Government employees nor is the State required to extend the benefits to employees who do not deserve or are not entitled to the same.

15. Therefore, considering the above aspects and balancing the interests of the allegedly prematurely retired employees and the State Government, we grant the petitioners liberty to furnish the respondents a representation accompanied by a detailed chart giving the names and details of the allegedly prematurely retired Government employees. The petitioners will have to provide all necessary information in the chart and make out a case that these prematurely retired Government employees are identical to or substantially similar to the cases of the petitioners in *Laxman Chavan (supra)* and connected matters. Mr. Desai, on instructions, states that such representation, accompanied by a chart, would be submitted to the concerned respondents within two months from today.

16. Mr. Faldessai states that such representation may be addressed to the Under Secretary (Personnel), Government of Goa. The Under Secretary or, for that matter, the appropriate authority must examine the representation and details furnished along with in the context of the law laid down in *Laxman Chavan (supra)* and *M. L. Patil (supra)*.

17. Suppose the appropriate authority finds that the cases of the employees whose details have been set out in the chart are indeed covered by the law laid down in *Laxman Chavan* (supra) and *M. L. Patil* (supra). Accordingly, in that case, the respondents are directed to extend such employees the same benefit that was extended in *Laxman Chavan (supra)* as modified in *M. L. Patil (supra)*. However, suppose the appropriate authority finds that cases of the employees or some of the employees are not covered; in that case, the appropriate authority should communicate this decision to the petitioners along with brief reasons indicating why the employees are not covered.

18. The appropriate authority is directed to complete the above exercise as expeditiously as possible and not later than four months from the date of receipt of the representation/particulars from the petitioners. If the concerned authority finds that the details furnished by the petitioners are lacking or deficient, it shall be at liberty to seek clarifications from the petitioners. The petitioners should also provide the necessary clarifications expeditiously. In any case, we expect the appropriate authority to complete the exercise within four months, including the period involved in seeking and obtaining clarifications.

19. Further, since this is a case involving senior citizens who have already retired, we expect the appropriate authority to examine the data available with itself and determine whether the instances of the allegedly prematurely retired employees are indeed covered by the decisions in *Laxman Chavan (supra)* and *M. L. Patil (supra)*, and if so, to grant the financial benefits to them within the timeline indicated above.

20. If the appropriate authority's decision aggrieves the allegedly prematurely retired employees, they shall have the liberty to question such decision in accordance with the law. Moreover, even the petitioners are granted liberty to institute a fresh petition on behalf of such aggrieved employees if and when the occasion arises.

21. Suppose the appropriate authority is satisfied that the cases of the allegedly prematurely retired employees, or any of them, are indeed covered by the law laid down in *Laxman Chavan (supra)* and *M. L. Patil (supra)*. In that case, the concerned authorities must extend the benefits in terms of these two decisions to such employees as expeditiously as possible and within two months from the date of such decision/satisfaction.

22. The Rule is made absolute in the above terms. Accordingly, there shall be no order for costs.

BHARAT P. DESHPANDE, J. **M. S. SONAK, J.**

SUCHITRA NANDAN SINGBAL Digitally signed by SUCHITRA NANDAN SINGBAL Date: 2022.09.06 11:10:26 +05'30'