

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.381 OF 2021

1. Shri. Dinkar Maruti Shirodkar,
60 years of age, Goa university,
Taleigao-Plateau, Panaji, Goa.

2. Shri. Ivo Simao Dias,
60 years, Goa university,
Taleigao-Plateau, Panaji, Goa.

3. Shri. Nanda Kankonkar,
59 years, Goa university,
Taleigao-Plateau, Panaji, Goa.

4. Smt. Sharad R. Gawde,
50 years, Wife of late
Shri. Ratnakar D. Gawde,
R/o. H. No. 356, Kharya Bhat,
Banastari, Adcolna,
Marcela, Ponda, Goa.

5. Shri. Shanu Kuttikar,
59 years, Goa University,
Taleigao-Plateau, Panaji, Goa.

6. Shri Suria Andrade @ Surya Rajaram
Hadkonkar, 60 years, Goa University,
Taleigao-Plateau, Panaji, Goa.

7. Shri. Yogeshwar Satarkar,
60 years, Goa university,
Taleigao-Plateau, Panaji, Goa.

8. Shri. Vincent R. Azavedo,
60 years, Goa University,
Taleigao-Plateau Panaji, Goa.

...Petitioners

Versus

1. Government of Goa,
Through Chief Secretary, Secretariat,
Porvorim-Goa.

2. The Registrar of Goa University,
Taleigao Plateau, Panaji, Goa.

3. Under Secretary (Higher Education),
Directorate of Higher Education,
Secretariat Building, Alto, Porvorim-Goa.

4. Directorate of Accounts,
Government of Goa,
Near old Secretariat building,
Panaji, Goa.

...Respondents

Mr. J. Godinho with Mr. Manoj Jalmi, *Advocates for the
Petitioners.*

Mr. Pravin Faldessai, *Additional Government Advocate for
Respondent Nos.1,3 & 4.*

Ms. A. Agni, *Senior Advocate* with Ms. Jay P. Sawaikar, *Advocate
for Respondent No.2.*

**CORAM: M. S. SONAK &
MANISH PITALE, JJ.**

DATED: 15th FEBRUARY 2022

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

1. Heard Mr. J. Godinho, learned Counsel appearing for the petitioner. Mr. Pravin Faldessai learned Additional Government Advocate appears for respondents nos.1,3 & 4 and Mrs. A. Agni

learned Senior Counsel appears along with Ms. Jay Sawaikar, learned Counsel for respondent no.2.

2. Rule. The rule made returnable forthwith at the request and with the consent of the learned Counsel for the parties.

3. The petitioners (except Petitioner No. 4) are Class IV Group D employees (Gardener/Mali) employed at the Goa University since the years 1990, 1991, 1992, or thereabouts. The Petitioner No.4 is the widow of an erstwhile mali who was employed at the Goa University.

4. The petitioners, by instituting this petition, challenge the order dated 23.09.2020, which has the effect of reducing their pay scale from ₹775-1025/- to ₹750-940/- (in terms of the Fourth Pay Commission Scales) and subsequent revision in pay scales corresponding to the pay scale of ₹775-1025/- in the subsequent pay commission scales as applicable to them. The impugned order also orders recoveries of the allegedly excess payments made to the petitioners.

5. The Goa University has filed an affidavit in this matter stating therein that there was no error in fixing the pay scales of the petitioners and other similarly appointed employees. They have, however, stated that the directions of the Government were complied with and recoveries were made.

6. Mrs. A. Agni learned Senior Counsel appearing for the Goa University submits before us that there was no error in the original pay scales as fixed and the recoveries were made only

because of the directions from the State Government. She submits that otherwise University is an autonomous institution but has to rely on the State Government for its finances.

7. Mr. Faldessai, learned Additional Government Advocate, submits that there was indeed an error in fixing the pay scales. He submits that this error was committed by the University. Once this was realized, the impugned order was made.

8. Now, in this case, there is no dispute whatsoever that before the impugned order dated 23.09.2020 was made, there was no show cause notice issued to any of the petitioners nor were any of the petitioners otherwise granted any opportunity to show cause as to why their basic pay should not be reduced and that too with retrospective effect. Neither the Government nor the University even bothered to comply with the principles of natural justice before reducing the pay and ordering recoveries. This action has even affected the family pension or other retiral benefits payable to Petitioner No.4. a widow.

9. According to us, the impugned order/action visits the petitioners with very serious civil as well as pecuniary consequences and therefore such an order could not have been made without minimum compliance with principles of natural justice and fair play. Even otherwise, the Respondents are required to follow the law laid down by the Hon'ble Supreme Court in the case of *State of Punjab and Ors. V/s. Rafiq Masih (White Washer) & Ors.*¹, when it comes to ordering recoveries,

¹ (2015) 4 SCC 334

particularly from Group D or Class IV employees. On this short ground, the impugned order is required to be set aside.

10. In *Bhagwan Shukla V/s. Union of India & Ors.*², the Hon'ble Supreme Court quashed the order reducing the basic pay of an employee with retrospective effect only on the ground that such an order could not have been made without granting an opportunity to such employee to show cause. The Hon'ble Supreme Court noted that there was a flagrant violation of principles of natural justice and based thereon quashed the order reducing the basic pay with retrospective effect. This decision applies in the facts of the present case to the petitioners before us.

11. Therefore, we quash and set aside the impugned order dated 23.09.2020 and order the restoration of the status quo *ante*. This means that the petitioners will now have to be paid in terms of their existing scales without reference to the reduction sought to be made by the impugned order dated 23.09.2020 that we have now set aside.

12. As a consequence, the amounts that the respondents have recovered in pursuance of the impugned order dated 23.09.2020 will have to be paid back/restored to the petitioners within four weeks from today. All the respondents are jointly and severally liable for such restoration and are directed to act accordingly, failing which the Respondents will have to pay interest @ 7%p. a to the Petitioners from the dates of recovery till the date of payment. This is without prejudice to the action that the

2 AIR 1994 SC 2480

Petitioners might initiate for the disobedience of our order for the restoration of the recovered amounts within four weeks.

13. Though we have quashed the impugned order for the failure of natural justice, it is clarified that nothing in this order shall prevent the respondents from taking such action as may be warranted in law. But if such action is to visit the Petitioners with any civil or pecuniary consequences, then the Respondents will be duty-bound to comply with the principles of natural justice and fair play.

14. The rule is accordingly made absolute in the aforesaid terms. There shall be no order for costs.

MANISH PITALE, J.

M. S. SONAK, J.