

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.772 OF 2010

Shri Wilson J. Rebeiro,

Resident of House No.356, Opposite Panaji
Gymkhana, Campal, Panaji, Goa.

... Petitioner

V/s.

1 State of Goa, through its Chief Secretary,
having office at Secretariat, Porvorim,
Bardez-Goa.

2 The Director of Higher Education,
Government of Goa, having office at
Directorate of Education, Junta House,
Panaji- Goa.

3 The Principal,

Carmel College of Arts, Science and
Commerce for Women, Nuvem-Goa.

..... Respondents.

Mr. J.P. Supekar, Advocate for the Petitioner.

Mr. Pravin Faldessai, Additional Government Advocate for Respondent
No.1 and 2.

**CORAM :- G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON :- 9th December, 2022

PRONOUNCED ON: 15th December, 2022

JUDGMENT: (Per BHARAT P. DESHPANDE,J.)

The petitioner is claiming parity of the pay scales for the post of “Laboratory Technician”. The prayer clauses in the petitioner are as under :

“(A) This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondent Nos.1 and 2 to grant correct pay scale of 1200-2040 to the Petitioner from 10/8/1992 and thereafter subsequently correcting the Pay Scale from Rs.3050-4590 to Rs.4000-6000 as stipulated by the Fifth Pay Commission and further correcting the Pay Scale of Rs.5200-20400-2400 to 5200-20400-2800 as stipulated by the Sixth Pay Commission along with all consequential benefits like arrears within a time bound schedule;

(B) This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the Respondents to grant to the Petitioner all the consequential benefits that will arise upon correction of the pay scale;

(C) For such other and further relief that this Hon’ble Court deems fit and proper;

2. In nutshell, the case of the petitioner was that he was appointed on 10/08/1992 as a “Laboratory Technician” in Physics Department with respondent No.3 which was a non-government Aided College. In the appointment letter the pay scale offered to the petitioner was Rs. 950-20-1150-EB-25-1500.

3. The petitioner realised that in fact pay scale of the “Laboratory Technician” in the Government colleges is Rs.1200-2040 plus usual allowances. Accordingly, the petitioner vide his letter dated 20/10/1996 brought it to the notice of respondent No.2/ Director of Higher Education Government of Goa. However, respondent No.2 vide their letter dated 10/12/1996 informed that pay scale of “Laboratory Technician” is not revised. The petitioner then made several representations and thereafter on 16/03/1999 respondent No.2 issued a circular stating that pay scale of “Laboratory Technician” is Rs.1200-2040. Accordingly, the petitioner made several representations to the respondents and other Higher Government Officers. However, there was no response, which led him to file the present petition.

4. We have heard learned Counsel Shri J.P. Supekar for the petitioner and Shir Pravin Faldessai, learned Additional Government Advocate for the respondents- State.

5. Shri Supekar would submit that there is clear anomaly and discrepancy in the pay scale of the “Laboratory Technician” who are working in the Government Aided Colleges. The petitioner was initially appointed as a “Laboratory Technician” in a unaided college i.e. respondent No.3 on the pay scale of Rs. 950-20-1150-EB-25-1500 vide annexure B. Mr Supekar then would submit that at that time pay

scale of the post of “Laboratory Technician” was the same and correctly recorded in the appointment letter. However, he then would submit that the pay scale was enhanced to Rs.1200-30-1560-EB-40-2040 vide order dated 20/03/1995 issued by respondent no.2. Similarly, he pointed out the letter dated 05/10/1995 signed by the Deputy Director of Education and addressed to The Principal of Dhempe College of Arts and Science, Miramar, Panaji Goa. In this letter the Deputy Director of Education informed the Principal of Dhempe College that the pay scale for the post of “Laboratory Technician” (Physics Lab) in the college is Rs.1200-2040. However, this pay scale has not been given to the petitioner in spite of several representations, reminders etc.

6. Mr. Faldessai would submit that the order dated 20/03/1995 relied upon by the petitioner is not with regard to the post of “Laboratory Technician” and therefore, such order is not applicable to the facts and circumstances of the present matter. He then submitted that the anomaly created with the pay scale on which the petitioner was appointed, was cleared by the Government vide letter dated 18/05/2006 and it was directed that the petitioner would be entitled to pay scale of the “Laboratory Technician” of Rs.5200-20200+GP Rs.2040/- from the date of publication of recruitment rules dated

08/12/2011. He, therefore, submitted that earlier there were no recruitment rules for the post of Laboratory Technician and only after framing of such rules for the year 2011, the petitioner was given such scale.

7. Rival contentions fall for our consideration.

8. The petitioner was appointed and rightly so on the pay scale of Rs. 950-20-1150-EB-25-1500 on the post of “Laboratory Technician” w.e.f. 10/08/1992 with the respondent No.3-College. However, the petitioner also failed to produce any document as to when such pay scale of “Laboratory Technician” was revised. He placed reliance on two documents, firstly Annexure ‘D’ which is a letter addressed by the Deputy Director of Education, Principle of Dhempe College of Arts and Science, which reads thus:

*No. DE/Col-Coll/342/94/Prt-11/1232
Government of Goa.
Directorate of Education,
Panaji — Goa.*

Dated: 5/10/1995

*To,
The Principal,
Dhempe College of Arts & Science
Miramar, Panaji — Goa.*

*Sub: Scale of Pay of Laboratory Technician (Phy-Lab) in the
College...*

Sir,

With reference to your letter No.139-D/875/95 dated 6th September,1995, on the subject cited above, it is informed that the Scale of Pay for the post of (Laboratory Technician) (Phy-Lab) in the College is Rs.1200-2040.

Yours faithfully,

Sd/-

(P.V. Salekar)

Dy. Director of Education

9. The petitioner also placed reliance on order dated 05/01/1996 which is at Annexure 'C' addressed by the Director (Administration), Director of Education which reads thus:

No. 10/1939/95-Adm.1/3329
Government of Goa.

Directorate of Education,
Panaji — Goa.

Dated: 5/1/1996

ORDER

Kum. Smita Gangadhar Chitinis is hereby appointed on temporary basis as Technician (Phy. Lab.) in the Govt. College of Arts, Science & Commerce, Sanquelim with effect from 4-12-1995(B.N.) in the pay scale of Rs. 1200-30-1560-EE-40-2040 plus usual allowances as admissible under rules against the post created vide Order No. 23/7/92-Edn/4376 dated 4-3-1994.

Kum. Smita Gangadhar Chitinis shall be on probation for a period of two years.

In case on verification or antecedents something adverse is reported against Kum. Smita Gangadhar Chitinis then her

services are liable to be terminated forthwith without further notice.

The appointment is further subject to the terms and conditions stipulated in the office Memorandum No.5/179/95-Adm.I/2782 dated 24-11-1995.

(S.V. Bhadri)
Director (Administration)
Directorate of Education.

10. Thus, the letter at Exhibit 'D' dated 05/10/1995 as quoted earlier is with respect to a query raised by the Principal Dhempe College of Arts and Science thereby requesting the actual pay scale for the post of "Laboratory Technician" (Physics Lab) in the college. The Deputy Director of Education informed the Principal of Dhempe College that pay scale for the post of "Laboratory Technician" in the college is Rs.1200-2040. However, in this letter the Deputy Director of Education failed to disclose the date on which such pay scale was made applicable to the said post.

11. The order dated 05/01/1996 quoted above shows that Kum. Smita Gangadhar Chitnis was appointed on temporary basis as Technician (Physics Lab) in Government College of Arts, Science and Commerce, Sanquelim w.e.f. 04/12/1995(B.N.) in the pay scale of Rs. 1200-30-1560-EE-40-2040 plus usual allowances as admissible under the Rules.

12. The letter dated 05/10/1995 Annexure D is therefore the older letter than order dated 05/01/1996 showing the exact pay scale of the post of “Laboratory Technician” of Physics Lab.

13. Shri Supekar placed reliance in the case of *Haryana State Adhyapak Sangh and others v/s. State of Haryana and others*¹ wherein the Apex Court has discussed the aspect of parity in employment and held that the petitioners are entitled to parity in pay with teachers of Government schools which were subsequently revised. Such a proposition is squarely applicable to the matter in hand. However, since there is no clarity either from the petitioner or from the respondent about the date when actual pay scale of Rs.1200-30-1560-EE-40-2040 was made applicable to the post of Laboratory Technician in the Government Colleges. We have to consider the letter date 05/10/1995 as the date for applying the pay scale of Rs.1200-30-1560-EE-40-2040 to the case of the petitioner.

14. The contention of Mr. Faldessai that such pay scale was not made applicable to the petitioner since no Recruitment Rules were framed and that the pay scale was revised from 08/12/2011 only if the Recruitment Rules were published, cannot be accepted for simple reason that in absence of Recruitment Rules published by the

¹ [(1988) 4 SCC 571]

Government, the petitioners rights to have parity in pay scale cannot be denied.

15. We, therefore, are of the considered view that the petitioner is entitled to the pay scale of Rs. 1200-30-1560-EE-40-2040 w.e.f. 05/10/1995 and not from the date of his appointment as claimed in the prayer clause.

16. We, therefore, allow the petition by directing the respondent to grant the pay scale of Rs. 1200-30-1560-EE-40-2040 to the petitioner w.e.f. 05/10/1995 and consequently fixation of pay in accordance with subsequent Pay Commissions from time to time and release the arrears, within a period of three months from today.

17. Rule is made absolute in the above terms. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

G. S. KULKARNI, J.

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VISHAL
BHOIR

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