

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.193 OF 2020
WITH
MISC. CIVIL APPLICATION NO.2545 OF 2021 (F)

Mrs. Juliana Pereira,
55 years of age, married,
‘Head Clerk’
Santa Cruz High School,
r/o. H.No.1004 Dhat Cansa,
Tivim Bardez Goa. ... Petitioner

v/s.

1. State of Goa,
Through Chief Secretary,
Having office at Secretariat,
Porvorim- Goa.
2. The Secretary,
Diocesan Society of Education,
Instituto Nossa Senhora de Piedade,
D.B. Marg, Panaji Goa.
3. The Manager,
School Managing Committee,
Santa Cruz High School,
Santa Cruz Goa.
4. The Director of Education,
The Government of Goa,
Directorate of Education.
Porvorim- Goa. ... Respondents

Mr T. Sequera, Advocate for the petitioner.

Mr J.E. Coelho Pereira, Senior Advocate with Mr. Pancham Phadte,
Advocate for the respondents.

Mr V. Sardesai, Additional Government Advocate for Respondent No.1.

CORAM: BHARAT P. DESHPANDE,J.

DATED : 31st August, 2023

ORAL JUDGMENT:

1. Heard Mr T. Sequera, learned Counsel for the petitioner, Mr J.E. Coelho Pereira, learned Senior Advocate with Mr. Pancham Phadte, Advocate for the respondents and Mr V. Sardesai, Additional Government Advocate for Respondent No.1.

2. Rule. Rule returnable forthwith with the consent of the parties

3. The petitioner has challenged the Judgment dated 06/11/2019 passed by the Administrative Tribunal in Education Appeal No.2 of 2017 by which the learned Tribunal dismissed the appeal filed by the petitioner thereby challenging the dismissal order issued by the respondents dated 20/05/2017.

4. The petitioner was appointed as Upper Division Clerk w.e.f. 30/03/1983 and thereafter completed 12 years of service when she was granted Time Bound Promotion scheme somewhere in the year 1995. She was then promoted to the post of Head Clerk on 20/11/2004. Subsequently disciplinary proceedings were initiated and the respondents passed an order of dismissal from the service on the basis of the enquiry report wherein the charges were considered to be proved.

5. The petitioner challenged such order before the learned Tribunal wherein after considering the entire material on record the appeal was dismissed, which is challenged in the present proceedings.

6. After hearing learned Counsel for the respective parties for some time, it is observed that the petitioner has put more than 30 years of service with the respondents and as on date it is reported that the date of superannuation is 30/11/2021. It is therefore submitted that even if the present petition is allowed, the question of re-institution is out of the question.

7. Upon considering the grounds on which the present petition is filed including the reasons given by the learned Tribunal, it is clear that the punishment imposed on the petitioner of dismissal from the service is considered to be harsh. Admittedly, the petitioner served the respondent- Society from the year 1983 and initially the service tenure of the petitioner was unblemished.

8. Subsequently, there are some instances wherein it is noticed that the petitioner adopted a move of insubordination which amounts to misconduct. Further looking at the totality of the circumstances and the matter, imposing a major penalty of dismissal/termination is considered to be harsh, though charges stand proved.

9. Since the petitioner has now already crossed the age of 60 i.e. on 30/11/2021, the purpose would be served in the interest of justice, to

reduce the punishment imposed of termination to the one of compulsory retirement w.e.f. 20/05/2017 i.e. a date when the impugned order of termination was granted. The learned Senior Counsel Mr J.E. Coelho Pereira fairly submitted that he will not oppose if such recourse is adopted since the petitioner has worked with the society for a longer period.

10. Considering the above submissions, it would not be proper to go into the merits of the grounds raised in the present petition since it would be appropriate to reduce the punishment imposed of termination and convert it into a compulsory retirement w.e.f. 20/05/2017.

11. Having said so, the petition can be disposed of by observing that the order of termination is hereby modified by holding that the petitioner stood compulsory retired w.e.f. 20/05/2017.

12. Rule is made absolute in the above terms.

13. MCA stands disposed of as infructuous.

BHARAT P. DESHPANDE, J.

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