

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.200 OF 2022

1 Shri Shashikant K. Usgaokar
Aged 85 years, retired Joint Secretary
1/5/S Kamat Complex
Tonca Panjim
Goa 403202

2 Shri Shrinivas R. Shinkre,
Aged 85 years,
Retired Chief Electrical Engineer,
Resident La-Campala Colony
Campal Panjim Goa.

... Petitioners

Versus

1 Directorate of Accounts
Government of Goa
Office at Panaji Goa

2 State of Goa,
Through Chief Secretary
Secretariat Porvorim Goa.

... Respondents

Ms A. A. Agni, Senior Advocate with Ms Jay Sawaikar, Advocate for the Petitioners.

Mr D. Pangam, Advocate General with Ms Sulekha Kamat, Additional Government Advocate for the Respondents.

CORAM:

**M. S. SONAK &
VALMIKI SA MENEZES, JJ**

Reserved on : 18th APRIL 2023

Pronounced on: 21st APRIL 2023

JUDGMENT (Per M. S. Sonak, J)

1. Heard Ms A. Agni, learned Senior Advocate with Ms Jay Sawaikar, learned counsel for the Petitioners and Mr D. Pangam, learned Advocate General with Ms Sulekha Kamat, learned Additional Government Advocate for the Respondents.

2. Rule. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

3. The Petitioners, who superannuated from service on 31.10.1994 as Joint Secretary, Government of Goa and the Chief Electrical Engineer, Government of Goa, seek the following substantive relief by instituting the present petition.

"(A) For a writ of mandamus, writ in the nature of mandamus, any other writ direction or order directing the respondents to fix the revised pension of the petitioners as provided in OM dated 12/5/2017 No.38/37/2016-P&PW(A) and revise pension payable to the petitioner no.1 at Rs.48300 and family pension Rs.28980/- and the monthly pension payable to the Petitioner no.2 at Rs.72900 and family pension Rs.43740/- and for payment of the arrears of revised pension from 1/1/2016."

4. Ms Agni learned Senior Advocate for the Petitioners, submits that in terms of the Office Memorandum dated 12.05.2017, the notional pay fixation under each intervening pay commission based on

the Formula prescribed would have to be carried out. In particular, she submitted that 50% of the notional Pay as of 01.01.2016 would have to be determined as the revised pension in terms of clause 4 of the Office Memorandum dated 12.05.2017. She submits that the Respondents have failed to comply with the mandate of clause 4 of the Office Memorandum dated 12.05.2017. Consequently, the Petitioners are deprived of the full pension they are entitled to under the law. She submits that the pension is not a bounty but a right guaranteed by the Pension Rules and Article 21 of the Constitution of India. Therefore, she presents that denial of the portion of pension legitimately due to the Petitioners amounts to a violation of Articles 14, 21, and 300A of the Constitution.

5. Ms Agni submits that Para 4 of the Office Memorandum dated 12.05.2017 binds the Respondents and not the illustration tables or other executive instructions issued in aid of the Office Memorandum dated 12.05.2017. She submits that in case of any conflict between the illustration tables or similar administrative instructions, what prevails is the Office Memorandum dated 12.05.2017. By giving undue precedence to the illustration table or other executive instructions, she presents that the Respondents are depriving the Petitioners of the full pension that is due and payable to them. Ms Agni relied on *State Bank of India and others Vs K. P. Subbaiah and others*¹ and *State*

1 (2003) 11 SCC 646

*of Maharashtra Vs Jagannath Achyut Karandikar*² to support her contentions.

6. Ms Agni submits that based upon the proper calculations and after due compliance with clause 4 of the Office Memorandum dated 12.05.2017, Petitioner No.1 is entitled to a pension of ₹48,300/- and a family pension of ₹28,980/-. Similarly, Petitioner No.2 is entitled to a pension of ₹72,900/- and a family pension of ₹43,740/-. Accordingly, she submits that the Respondents must pay the arrears on this basis from 01.01.2016.

7. The learned Advocate General submitted that there was no error in determining the pension payable to the Petitioners. He offered that before the pension can be determined, placing the Petitioners in the appropriate pay scales consequent upon accepting pay commission recommendations is necessary. He submitted that such pay fixation has to be undertaken in terms of the State Government's order dated 27.10.1997. He offers that the Petitioners' pay fixation in the 5th Pay Commission scale was indeed made after due compliance with the order dated 27.10.1997 and the illustration statements appended to the same. Based upon such pay fixation, the pension payable to the Petitioners was determined after giving due credence to clause 4 of the Office Memorandum dated 12.05.2017.

8. The learned Advocate General submitted that the principles applied to in-service employees for their pay fixation under the 5th Pay Commission Pay Scales were applied to the Petitioners' pay fixation. Therefore, if some other principles proposed by the Petitioners are to be used, an anomalous situation would arise. Besides, the learned Advocate General pointed out that the Petitioners would receive the pension over their entitlement.

9. The learned Advocate General submitted that there was no question of any conflict between the statutory rules and executive instructions involved in the present matter. He offered that the Central Civil Services (Pension) Rules do not *per se* apply to State Government employees. He submitted that such rules were adopted after making necessary modifications by the State Government. Therefore, he proposes that the decision in *Jagannath Achyut Karandikar* (supra) would not apply. Further, he submitted that the facts in *K. P. Subbaiah* (supra) and the present Petitions are dissimilar. Therefore, some of the observations in the said decision would not apply to the present case.

10. The learned Advocate General submitted that there was no error in determining the pension payable to the Petitioners. Therefore, this petition may be dismissed.

11. The rival contentions now fall for our determination.

12. The Petitioners in the present case retired from Government service on 31.10.1994. Petitioner No.1 retired as Joint Secretary, Government of Goa, and Petitioner No.2 retired as Chief Electrical Engineer.

13. The Petitioners have themselves pleaded that at the time of their retirement, they were paid pension in terms of the prevalent pension rules and the Office Memorandum issued by the Government of India as adopted by the Government of Goa.

14. The Petitioners referred to the Office Memorandum dated 04.08.2016 issued by the Government of India, providing that the pension payable to pre-2016 pensioners had to be revised by multiplying the existing pension amount with the term factor of 2.57. The Petitioners have also referred to the Government of Goa's order dated 30.11.2016, by which the Government of Goa accepted the Government of India's Office Memorandum dated 04.08.2016. Therefore, in terms of the Government of Goa's order, the pension based on the Formula prescribed in the Office Memorandum dated 04.08.2016 would be the basis for a revised pension effective from 01.01.2016.

15. The Petitioners have then referred to the Office Memorandum dated 12.05.2017 issued by the Government of India. The Petitioners

emphasized on clause 4 of the Office Memorandum dated 12.05.2017 which reads as follows:-

"4. The aforesaid Committee has submitted its Report and the recommendations made by the Committee have been considered by the Government. Accordingly, it has been decided that the revised pension/family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/family pensioners, including CAPF's, who retired/died prior to 01.01.2016, may be revised by notionally fixing their Pay in the pay matrix recommended by the 7th CPC in the level corresponding to the Pay in the pay scale/pay band and grade pay at which they retired/died. This will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of Pay. While fixing Pay on notional basis, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. 50% of the notional Pay as on 01.01.2016 shall be the revised pension and 30% of this notional Pay shall be the revised family pension w.e.f. 1.1.2016 as per the first Formulation. In the case of family pensioners who were entitled to family pension at enhanced rate, the revised family pension shall be 50% of the notional Pay as on 01.01.2016 and shall be payable till the period up to which family pension at enhanced rate is admissible as per rules. The amount of revised pension/family pension so arrived at shall be rounded off to next higher rupee."

16. The Petitioners have also referred to the Office Memorandum dated 06.07.2017 issued by the Government of India stating that there would be concordance tables based on the fitment tables to

facilitate revision of pension of pre-2016 pensioners/family pensioners. However, this Office Memorandum dated 06.07.2017 only points out that concordance tables are only to facilitate the revision of pension. Therefore, should there be any inconsistency between the concordance table and relevant rules, the revised pension must be paid in accordance with the rules.

17. The Petitioners have pleaded that the Government of Goa, by order dated 01.08.2019 adopted the Government of India's Office Memorandums dated 12.05.2017 and 06.07.2017. This order further provided that the revised pension would be paid to pre-2016 pensioners but only with effect from 01.01.2019 and not from 01.01.2016.

18. The Petitioners have pleaded that their pension was revised but not to the full extent of their entitlement. Therefore, the Petitioners addressed representations dated 21.07.2020 and 30.07.2020 requesting correct revision in clause 4 of the Office Memorandum dated 12.05.2017. The Petitioners pointed out that the difference between the pension to which Petitioner No.1 was entitled and paid was ₹10,590/- and in the case of Petitioner No.2, the difference was ₹11,450/-. Since there was no response, the Petitioners addressed yet another representation on 17.09.2021. By communication dated 20.10.2021, the Petitioners' representations were rejected. Hence, this petition was instituted on 27.04.2022.

19. The learned Advocate General has placed on record a chart to enable us to understand not only the methodology of pension determination but also precise points on which the versions of the Petitioners and the Respondents diverged. The chart relates to the fixation of Petitioners' pay scales because it is admitted that once the appropriate pay scale is fixed, there is no dispute between the parties on the methodology of pension fixation.

20. The chart submitted by the learned Advocate General explaining the Petitioners' and Respondents' versions is transcribed below for the convenience of reference.

PETITIONER'S CASE

Revised Scale
10,000-325-15200

Existing scale Pay
3000-100-3500-125-4500

Special Pay
Rs.250/-

Weightage – 40%
Rs.1750/-

DA – Rs.4857/-

Interim Relief I & II Rs.538/-
Rs.11,770/-

Next Stage Rs.11,950/-

OR

Increments

Rs.11950 + (4x325) = Rs.13,250/-
Highest of the above Rs.13,250/-

RESPONDENT'S CASE

Revised Scale
10,000-325-15200

Existing scale Pay
3000-100-3500-125-4500

Special Pay
Rs.250/-

Weightage – 40%
Rs.1750/-

DA – Rs.5,180/-

Interim Relief I & II Rs.538/-
Rs.12,093/-

Next Stage Rs.12,275/-

OR

Rs.10,000 + (325 x 4) = Rs.11,300/-
Highest of the above Rs.12,275/-

21. Ms Agni learned Senior Advocate for the Petitioners, submitted that the Petitioners' version complies with clause 4 of the Office Memorandum dated 12.05.2017. The learned Advocate General offers that the Respondents' version also complies with clause 4 of the Office Memorandum dated 12.05.2017. However, the Petitioners and the Respondents agreed that the pay fixation consequent upon revising pay scales is the first and most crucial step for determining the appropriate pension.

22. The Petitioners retired on 31.10.1994. Accordingly, the Government of Goa accepted the 5th Pay Commission scales effective from 01.01.1996. This acceptance was vide the Government of Goa's order dated 27.10.1997.

23. The Government of Goa's order dated 27.10.1997 provides that the Government of Goa considers it expedient to allow its employees the benefit of revised pay scales on par with the Central Government employees as hitherto mentioned, subject to certain modifications. Accordingly, the order dated 27.10.1997 directed that the Central Civil Services (Revised Pay) Rules, 1997 of the Government of India would be adopted and made applicable to the employees of the Government of Goa with effect from 01.01.1996 subject to certain conditions specified in the said order.

24. To the order dated 27.10.1997, a statement of fixation of Pay under the CCS (Revised Pay) Rules, 1997, as modified by the Government of Goa, is annexed. As noted earlier, the CCS (Revised Pay) Rules, 1997, *per se*, do not apply to the employees of the Goa Government. Only under the Government of Goa's order dated 27.10.1997 the 1997 Rules came to be adopted subject to certain conditions. Therefore, this is not a case of executive instruction supplanting the Rules. Therefore, the principles in *Jagannath Achyut Karandikar* (supra) will not apply in this case.

25. Further, the pay fixation in terms of the 5th Pay Commission Scales as accepted by the Government of Goa would have to be carried out by adhering to the modifications and conditions set out in the Government of Goa's order dated 27.10.1997. The pay fixation would therefore have to be carried out in terms of the statement of fixation of Pay annexed to the Government of Goa's order dated 27.10.1997.

26. The Respondents' version in this case, as reflected in the chart submitted by the learned Advocate General, shows that the same is wholly aligned with the statement of fixation of Pay annexed to the Government of Goa's order dated 27.10.1997. For pay revision, the Respondents have taken into account in the case of Petitioner No.1 the basic Pay of ₹10,000/- in the revised scale of 10,000-325-15200. In contrast, the Petitioners insist upon taking into account, not the basic Pay of ₹10,000/- in the revised scale but the Pay of ₹11,950/-

based upon their interpretation of clause 4 of the Office Memorandum dated 12.05.2017. This is the primary point upon which the versions of Petitioners and the Respondents diverge.

27. However, according to us, the pay fixation consequent upon the Government of Goa accepting with modification the recommendations of the 5th Pay Commission have to be undertaken by giving due credence to such modification. Therefore, the revised pay fixation has to be in terms of the order dated 27.10.1997, read with the statement of fixation of Pay annexed to this order.

28. Accordingly, we are satisfied that the Respondents have not erred or even ignored clause 4 of the Office Memorandum dated 12.05.2017 in the context of pay fixation. Instead, the Respondents, in this case, have correctly fixed the Petitioners' revised Pay by adhering to Government of Goa's order dated 27.10.1997, read with the statement of pay fixation annexed to this order. Further, after giving due credence to clause 4 of the Office Memorandum dated 12.05.2017, the Respondents have determined the appropriate pension payable to both the Petitioners.

29. The observations in *K. P. Subbaiah* (supra) do not assist the Petitioners' case. The issue in the said decision was not similar to the issue in the present petition. Apart from the chart submitted by the learned Advocate General, Dilip Humraskar, the Director of Accounts

has filed a detailed affidavit explaining how in the first instance, the Petitioners' revised pay scales were fixed and, secondly, based upon the revised Pay scales, the revised pension amount payable to the Petitioners came to be determined.

30. In the context of the Office Memorandum dated 12.05.2017, the Director of Accounts explained that since the Petitioners retired on 31.10.1994, their revised pension had to be determined by taking into account the pay revision based upon intervening recommendations of the Pay Commission. Accordingly, the Director has referred to the Central Civil Services (Revised Pay) Rules, 1997 (5th Pay), 2008 (6th Pay), and 2016 (7th Pay). These Revised Pay Rules have to be applied subject to conditions subject to which the Pay Commission recommendations came to be accepted by the State Government.

31. Again, in the precise context of Rule 7 of the CCS (Revised Pay) Rules, 1997, and clause 4 of the Office Memorandum dated 12.05.2017 and the proviso thereunder, the Director of Accounts has explained in para 13 as follows:-

"13. I say that the difference of opinion as pointed out by the petitioners is with reference to interpretation of Rule 7 of C.C.S (Revised Pay) Rules, 1997 and paragraph 4 of OM dated 12/5/2017 and proviso thereunder. The relevant provision is reproduced herewith :-

{Provision below rule 7 of C.C.S.(Revised Pay) Rules, 1997}

"Provided also that – The fixation thus made shall ensure that every employee will get at least one increment in the revised scale of pay for every three increments [inclusive of stagnation increments(s), if any] in the existing scale of pay".

(Proviso vide Para 4 of OM dated 12/05/2017)

"The aforesaid Committee has submitted its Report and the recommendations made by the Committee have been considered by the Government. Accordingly, it has been decided that the revised pension/family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/family pensioners, including CAPF's, who retired/died prior to 01.01.2016, may be revised by notionally fixing their Pay in the pay matrix recommended by the 7th CPC in the level corresponding to the Pay in the pay scale/pay band and grade pay at which they retired/died. This will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of Pay. While fixing Pay on notional basis, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. 50% of the notional Pay as on 01.01.2016 shall be the revised pension and 30% of this notional Pay shall be the revised family pension w.e.f. 1.1.2016 as per the first Formulation. In the case of family pensioners who were entitled to family pension at enhanced rate, the revised family pension shall be 50% of the notional Pay as on 01.01.2016 and shall be payable till the period up to which family pension at enhanced rate is admissible as per rules. The amount of revised

pension/family pension so arrived at shall be rounded off to next higher rupee".

whereas, the petitioners request and interpretation is that they are further entitled for four additional increments to the resultant Pay which is absolutely incorrect."

32. In our judgment, there is no error in revising the Petitioners' pay scales from time to time and determining the revised pension payable to the Petitioners based upon revised pay scales. Due credence has been given to the Office Memorandum dated 12.05.2017. Besides, as was pointed out by the learned Advocate General, if the Petitioners' version is to be accepted, then possibly the Petitioners would have to be fixed in the revised pay scales that would be greater than the revised pay scales in which in-service employees have been placed. If the Petitioners' interpretations were correct, this would not be a much relevant consideration. However, we find that the Petitioners' interpretation is incorrect; consequently, there is no error in the revised pension that is now being paid to the Petitioners.

33. For all the above reasons, we cannot accept the Petitioners' case or grant the Petitioners any relief in this petition.

34. Accordingly, the rule is discharged. However, there shall be no order for costs.

VALMIKI SA MENEZES, J

M. S. SONAK, J