

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.396 OF 2023

Shri Bholanath P. Desai,
Age 60 years,
Retired Junior Engineer,
(Electricity Department)
Resident of Flat No.F-4, A-1 Bldg.,
Kurtarkar Classic, Near Power House,
Aquem Alto Margao.
Aquem, Salcete, South Goa,
Goa 403 601

... Petitioner

Versus

1 The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim Goa.

2 Secretary- Finance
Government of Goa,
Secretariat, Porvorim Goa.

3 Directorate of Accounts,
Through Director of Accounts,
Government of Goa,
Panaji Goa.

4 The Electricity Department,
Through Chief Electrical Engineer,
Office of the Chief Electrical Engineer,
4th Floor, Vidyut Bhavan,
Panjim Goa 403 001

...Respondents

Mr S. D. Lotlikar, Senior Advocate with Mr Terence Sequeira,
Advocate for the Petitioner.

Mr Pravin Faldessai, Additional Government Advocate for the
Respondents.

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

DATED : 24th JULY 2023

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

1. Heard Mr Lotlikar, learned Senior Advocate who appears along with Mr T. Sequeira for the Petitioner and Mr P. Faldessai, 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 Petitioner challenges the orders dated 02.09.2022 and 09.09.2022 withdrawing the financial upgradation granted to the Petitioner vide Order dated 24.04.2017 effective from 28.06.2012.

4. Pursuant to the impugned orders, the Respondents have already recovered an amount of ₹6,87,768/- from the Petitioner on the ground that this was an excess payment made to the Petitioner.

5. In so far as the recovery of the amount of ₹6,87,768/- is concerned, it is necessary to note that the Petitioner was a Junior Engineer who retired from service on 31.05.2022 after attaining the age of superannuation. The recoveries have been made post the

Petitioner's retirement. Before any recoveries were made, there was no compliance with the principle of natural justice and fair play. There is no allegation that the Petitioner was involved in any misrepresentation.

6. Therefore, considering the above aspects and the law laid down by the Hon'ble Supreme Court in *State of Punjab Vs Rafiq Masih*¹ and *Thomas Daniel Vs State of Kerala and Ors.*² and this Court in *Anita Anil Morajka Vs The State of Goa and others*³, we quash the recoveries and direct the Respondents to pay the Petitioner recovered amount of ₹6,87,768/- within two months from today. However, if the amount is not paid within two months from today, then the same will carry interest at the rate of 7% per annum from the date the same was recovered till the date of return of this amount to the Petitioner.

7. The impugned orders dated 02.09.2022 and 09.09.2022 purport to take away the benefit of financial upgradation which was granted to the Petitioner by order dated 24.04.2017. Before such orders could be made, the principle of natural justice should have been followed because such orders visit the Petitioner with serious pecuniary circumstances. On this short ground, we set aside the impugned orders dated 02.09.2022 and 09.09.2022 to grant the Respondents' liberty to issue a show cause notice to the Petitioner and upon

1 (2015) 4 SCC 334

2 AIR 2022 SC 2153

3 2023 (3) MhLj 82

considering the cause shown to decide the matter. This exercise must be completed within two months from today.

8. If the above exercise is not completed within three months from today, then the Petitioner should be paid pension based on the financial upgradation order dated 24.04.2017.

9. The rule is disposed of in the above terms without any order for costs.

10. All concerned to act based on the authenticated copy of this order.

BHARAT P. DESHPANDE, J

M. S. SONAK, J