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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1165 OF 2016

Shri Veeraju V. (Senior Citizen)
R/o. House No.166, Verem-Reismagos Post,
Bardez Taluka- Goa. ...**Petitioner/ Applicant**

Versus

1 The Addl. Director of Vigilance
Serra Building- Altinho- Panaji-Goa.

2 The Director of Accounts,
Opposite to Old Secretariat- Panaji.

3 The Director of Settlement & Land Records,
Near 2 S T C, Collectorate Building – Panaji

4 The State of Goa (Through)
The Chief Secretary,
Secretariat- Porvorim-Bardez-Goa. **... Respondents**

Mr V. Parsekar, Advocate *for the Petitioner.*

Ms Amira Razaq, Government Advocate *for Respondent Nos.1 to 4.*

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

RESERVED ON : **27th JUNE, 2023**

PRONOUNCED ON : **10th JULY, 2023**

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

1. The petitioner who is retired from the office of respondent No.3/The Director of Settlement and Lond Records, preferred the present petition basically for the re-fixation of his basic pay and other reliefs.

2. Initially, the petitioner filed the petition in person and therefore the pleadings as well as the prayer clauses are not properly drafted as required. However, the prayers in the petition are as under:

> *a. An order may please be passed under articles 227 and 228 of the constitution of India, directing respondent No.2 to revise the Basic pay is Rs.10940/- and other allowances and fix the permanent pension as applicable in the sixth Pay, with direction to allow the petitioner to draw the arrears.*
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> *b. An order may please be passed under articles 227 and 228 of the constitution of India, directing respondent No.2 to pay, the Commutation amount, One month's Leave Salary, unpaid TA bills Amount, unpaid transfer R.A. bill Amount, shown at para Nos. 13,14,15 & 19,20,21,22,23 and 24 the petitioner by an order.*
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> *c. An Order may please be passed under articles 227 and 228 of the constitution of India directing respondent No.2 to transfer the TDS amount to the SB Amount No.0308101043778 of Canara Bank, Mathias Plaza Building, 18th June Road- Panaji.*
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> *d. An Order may please be passed under articles 227 and 228 of the constitution of India directing respondent No.2 to refix the Basic pay and other allowances as applicable in the sixth Pay Commission with permanent pension order to allow the petitioner draw the difference and other consequential reliefs.*

e) For an order in terms of prayer clauses 'a', 'b' and 'c' here in above.

f) For an order in terms of prayer clauses 'd', 'e' and 'f' here in above.

g) Such other and further orders that this Hon'ble Court deems fir and proper may be passed to meet ends of justice."

3. The Counsel from the Legal Aid Panel was then appointed and learned Counsel Mr V. Parsekar appeared for the petitioner. He filed detailed written synopsis with calculations, in consultation with the petitioner and accordingly argued the matter. Such written synopsis is at page 236 onwards.

4. We have heard the learned Counsel Mr V. Parsekar for the petitioner appointed under Legal Aid and learned Government Advocate Ms Amira Razaq for the respondents at length.

5. Mr Parsekar would submit that the main dispute is with regard to the re-fixation of the scale of the petitioner on the basis of parity and he tried to submit that there is variance with regard to the pay scales which were actually given to the petitioner for that of the pay scales claimed on the basis of parity.

6. Ms Razaq appearing for the respondents would submit that there is no illegality or irregularity in pay fixation of the petitioner which was done way back in the year 2006 itself and thereafter in the year 2010 and that there is no inordinate delay in approaching this Court. She further submitted that many aspects which the petitioner trying to claim in the petition are the same which were raised by him in an earlier petition decided by this Court vide Writ Petition No.129 of 2006 dated 08/06/2006. Accordingly, the petitioner is not entitled to re-agitate such issues as his petition was dismissed on merit. She submitted that the only issue which needs consideration in the matter is the claim of the petitioner of re-fixation of his basic pay on the basis of parity. According to her, such re-fixation was carried out as per the norms and regulations and therefore no interference is warranted.

7. Rival contentions fall for consideration.

8. We have gone through the entire petition, reply, and rejoinder filed by the respective parties. First of all, it is difficult to consider the pleadings in the present petition as complex issues have been raised without joining the concerned Bank who deducted some amount of gratuity/pension. Admittedly, the Bank of India is not a party before this Court. Similarly, a civil suit was filed by the petitioner against such Bank wherein such issues were raised, which is clear from the contents of the petition. Thus, it is difficult to entertain such a claim of the petitioner with regard to the alleged deduction of 5% penalty from the accrued amount somewhere in the year 2006 itself.

9. As rightly pointed out by Ms Razaq, all these issues were considered by this Court in Writ Petition No.129 of 2006 filed by the petitioner. The order dated 08/06/2006 needs to be quoted for ready reference as issues which are raised in the petition were already raised and decided in the said petition.

"P.C.:

The petitioner who, at the relevant time was serving as an Inspector, faced departmental inquiry on the allegation that he failed to remain present in a pending case before the Civil Judge, Sr. Division at Panaji, allowing the Court to pass an ex parte decree against the State Government.

2. In his reply, the petitioner came out with a case that he was directed by his superior to go to Fatorda on 13.6.2001 and on 25.8.2001 he attended the matter in High Court and, therefore, he could not remain present before said Court. Pending inquiry, the petitioner was suspended on 27.2.2002. On 10.7.2002, charge-sheet was issued to the petitioner wherein it is alleged that the petitioner deliberately avoided attending the said Court so as to derive undue benefits to the party who had filed the said civil suit. After completion of the inquiry, upon appreciating the material on record including the reply of the petitioner, the Inquiry Officer, recorded a finding that the charge is duly proved against the petitioner. The disciplinary authority thereafter, passed an order on 20.1.2006 in terms of Rule 9 of the CCS (Pension) Rules, 1972 imposing penalty on the petitioner of 5 % cut in the pension for a period of one year.
Hence, the present petition.

3. We have heard the learned Counsel appearing for the petitioner as well as the respondents. The learned Counsel appearing for the petitioner, after taking us to the evidence on record, submitted that the Inquiry Officer could not have recorded the finding against the petitioner that he avoided attending the Court and allowed the Court to pass an ex parte decree against the Government. By inviting our attention to the evidence of other officers, he submitted that the petitioner was, in fact, asked by his officer to attend some other work at some other place. Having carefully examined the reasonings of the Inquiry Officer, we are *fully convinced that the Inquiry Officer has correctly appreciated the evidence on record and recorded the finding namely that the petitioner miserably failed to established that he was asked by his Officer to go to some other place. The said finding having recorded after appreciation of evidence on record, it is not proper for this Court to interfere with the said finding by reappreciating the evidence on record in writ jurisdiction under Article 226 of the Constitution. In this view of the matter, we see hardly any substance in this petition.*

4. An argument was made on behalf of the petitioner that petitioner has not been paid the subsistence allowance during the pendency of the inquiry, and other retirement monetary benefits, over and above the grievance made by the learned Counsel for the petitioner, namely that the penalty imposed on the petitioner is too harsh. We dismiss this petition on merits. However, the petitioner shall make a representation to the concerned Authority in respect of his grievance as regards his monetary benefits. We are sure that the Authority concerned shall take into the representation as and when made by the petitioner and shall pass an appropriate order in accordance with law. Subject to these observations, the petition stands dismissed"

10. It is clear from the above observations of this Court that some departmental enquiry was conducted against the petitioner thereby imposing a penalty of 5% cut in the pension for the period of one year. That decision was challenged by the petitioner in earlier petition No.129/2006 and therefore such contentions cannot be re-agitated before this Court in the present petition. Accordingly, we are not inclined to consider such allegations/averment in the present petition including the so-called claim of the petitioner regarding interest on such 5% penalty, leave salary, T.A. and transfer T.A. Bill, etc.

11. What remains to be considered in the present petition is only with regard to the contention of re-fixation of the scale of the petitioner in the Sixth Pay Commission calculation.

12. In paragraph 16 of the petition, it is claimed by the petitioner that the basic pay fixed was Rs.10,370/-, which was less by Rs.570/- while calculating Sixth Pay Commission and manipulated by the Bank from the year 2006. Accordingly, the pension of the petitioner was wrongly fixed from the year 2006. He then claimed in paragraph No.17 of the petition that only because of this, he is entitled for re-fixation of his basic pay and other allowances as applicable in Sixth Pay Commission. He further claimed that 90% of the earned leave salary encashment was paid to him, however, 10% was illegally retained which amounted to Rs.14,588/-. The petitioner then calculated interest @18% per annum on the said illegally retained amount and claimed around Rs.65,74,740/-. Similar calculations are found in the petition with regard to other aspects such as unpaid T.A. bill and transfer allowances. However, an earlier petition decided by this Court on 08/06/2006 clearly goes to show that all these grounds were available to the petitioner which he failed to agitate, therefore after 10 long years the petitioner cannot be allowed to agitate such aspect and that too in the second petition.

13. The respondents filed an affidavit in reply wherein it has been specifically denied illegal deduction or wrong fixation of the basic pay of the petitioner. As far as 10% retention from the earned leave encashment is justified on the ground that the disciplinary proceedings were initiated against the petition and therefore as per Rule 9 of the CCS (Pension) Rule 1972 the Department is entitled to hold such amount of 10%. After the disciplinary proceedings were over, the petitioner never submitted any such claim to release the remaining 10%. We are in agreement that the contentions raised by the respondents with regard to the retention of 10% of leave encashment in view of Rule 9 since the departmental enquiry was pending at the relevant time which resulted in imposing punishment of 5% of deduction from the pension. There is nothing on record to show that after the departmental enquiry was completed, the petitioner claimed such an amount.

14. It is the contention of the respondent in their reply that the pension was correctly calculated by respondent No.2 and the basic pension came to Rs.4,588/- (Fifth Central Pay Commission) with a deduction of Rs.229/- as per the pension calculation sheet. It is the contention of respondent No.2 that the Bank deducted an amount of Rs.570/- of their own for which respondent No.2 is not responsible. At this stage, it is necessary to note that the pleadings in the petition itself shows that amount of Rs.570/- was deducted from the pension by the Bank of India and for that purpose, Special Civil Suit No.91 of 2008 was instituted and even an order was passed by the Civil Court which is produced on record at page 27 to 29 dated 15/03/2011. This suit was filed by the Bank to adjust the pension and credited amount of defendant No.1/petitioner herein into the loan account. Thus, it is clear that such amount of Rs.570/- was deducted by the Bank and not by respondent No.2. Since the Bank is not a party to the present proceedings and the civil suit was already filed by the Bank wherein the petitioner filed a counterclaim, the matter was subjudice and therefore, such aspect cannot be revisited in this petition.

15. The respondents have produced a copy of order dated 20.01.2006 wherein the Additional Director (Finance), Government of Goa, passed an order in connection with the departmental inquiry and the disciplinary proceedings imposing penalty of 5% cut of pension for a period of one year. Similarly, vide order dated 20.04.2006, the period of suspension of the petitioner from 27.02.2002 upto 25.02.2003 was treated as non-duty and that he was not entitled to pay and allowances during the said period. By separate order dated 06.10.2006, Deputy Director of Accounts informed the Manager of Bank of India withholding 5% pension of the petitioner, out of the sanctioned pension of Rs.4,588/- per month with effect from 01.12.2003. This letter was forwarded in view of the Government order imposing penalty of withholding of 5% of the pension for one year.

16. The petitioner filed affidavit in rejoinder thereby giving some more details with regard to affixation and claimed that the petitioner opted and remained in Land Survey Department as Head Surveyor from February, 1987 and since he completed 12 years in the same post without promotion, was redesignated to the post of Head Surveyor (TBPS) on pay scale of 1640-60-2600-75-2900, somewhere in the year 1989 vide letter dated 05.07.1989. He then claimed that thereafter the petitioner continued to work on the post of Head Surveyor for another 12 years without promotion. Thereafter, Respondent No.3 issued order fixing basic pay of the petitioner in parity with scale 2000-60-2300-75-3200, at Rs.2,600/- with effect from 01.01.1995. Vide order dated 03.01.2000, petitioner was promoted and posted as Surveyor. However, his pay was not protected on parity scale with Fourth Pay Commission. Petitioner was promoted to the post of Head Surveyor with the pay scale of normal promotions and not on parity or TBPS. Later on, vide order dated 10.01.2001, petitioner was further promoted to the post of Inspector of Survey and Land Records.

17. It is the main grievance of the petitioner that his pay fixation is not done at both stages i.e. firstly, when he was promoted to the post of Supervisor and secondly, when he was promoted to the post of Inspector of Survey and Land Records. It is his contention that parity scale implemented vide order dated 28.09.1999 and even contended for fixing basic pay which is equivalent to pay scale 6500-200-10500 in Fifth Pay Commission. However, it was not done. Therefore, in the rejoinder affidavit he claimed the scale of 6500-200-10500 from 01.04.2000 claiming that his basic pay would have been at Rs.10,500/-.

18. Along with the rejoinder affidavit, petitioner has placed certain additional documents which show revised pay fixation statement of the petitioner at page 112 dated 11.04.2001. By this order, the petitioner who was working as Head Surveyor on existing pay scale under Fourth Pay Commission (Normal/TBPS). Finally, his pay was fixed at Rs.9,000/- as on 01.01.2001. It is necessary to note here that these orders were never challenged by the petitioner though he made some representations later on.

However, the fact remains that the pay fixation was carried out on the basis of the earlier pay drawn by the petitioner under TBPS.

19. Respondents filed affidavit in sur-rejoinder which starts from page 137 onwards. It has been specifically clarified that petitioner was granted TBPS with effect from 01.04.1995 and thereafter, vide order dated 28.09.1999, and consequent to grant of TBPS scale, petitioner opted the pay on parity scale which was fixed with effect from 01.04.1995. In this respect, respondents placed reliance on Exhibit P3, the order dated 28.09.1999 which reads thus:-

> "*Consequent upon the grant of T.B.P.S. Scale and upon the exercising the option, the pay of Shri. V. Veeraju, Head Surveyor, is fixed in his existing post the scale of Rs.1640-60-2600-EB-75-2900, and parity scale of Rs.2000-60-23-EB-75-3200.*"

20. In the chart, it is clearly shown as to how the pay fixation where the specific date and on parity scale was fixed. Therefore, the petitioner who accepted such fixation without any grievance in the year 1999 itself cannot now turn away and say that it was wrongly fixed. We find substance in the submissions advanced on behalf of respondents on the above aspect.

21. Respondents further claimed in their sur-rejoinder that the order dated 03.01.2000 (Exhibit P-2) and order dated 28.09.1999 (Exhibit P-3) were accepted by the Petitioner and his pay in the post of Supervisor was correctly fixed at Rs.9,000/-. Prior to that, he was drawing Rs.8,825/- in the pay scale of Rs.5500-150-9000 which was corresponding to the pre-revised scale of Rs.1640-60-2600-75-2900. It is contended by the respondents that Rs.8825/- (pay scale) was the scale in the parity pay scale of Rs.2000-60-2300-EB-75-3200. This contention of the respondents is clearly supported by the documents relied upon by the petitioner and also by the respondents. Before promotion, the petitioner's pay scale was fixed on parity and thereafter, on his own request, such pay scale was fixed on TBPS. The contention of the petitioner that parity has to be considered at each stage of promotion, cannot be accepted.

22. The letter dated 05.03.1999 from the Director, Settlement and Land Records (Exhibit P-38) shows that Respondent No.3 herein addressed a letter to Under Secretary (Revenue) enclosing therewith representation of the petitioner and grievance made by him based on the judgment and order dated 10.11.1998 passed in Writ Petition No.65/1996 by this Court. In this letter, Respondent No.3 specifically asked the Under Secretary to consider the matter and decide whether the benefits of the order in Writ Petition No.65/1996 are to be made applicable to the Head Surveyor and four Field Surveyors. In response to the said representation and the letter, the office of Respondent No.3 issued an order dated 11.08.1999 granting Third Time Bound Promotional Scale (TBPS) with effect from the date shown against the names of the respective candidates including the petitioner. Finally, the order clearly refers to the following:-

> "*The above officials may exercise option, if they so desire within one month from the date of issue of this order, for fixing their pay in the Time Bound Promotional Scale in terms of condition No. 8 of the Government order dated 05-07-1989.*"

23. Admittedly, these orders were not challenged and accepted by the petitioner and thereafter, he was promoted from time to time which is not at all in dispute.

24. Though learned Counsel Mr Parsekar tried to submit that fixation of pay was not proper, we are unable to accept such contention for the reasons that the pay was fixed on the basis of Third Time Bound Promotion and also on the basis of parity. Later on, petitioner was promoted and accordingly his pay was revised and fixed under the relevant pay scales. The contention raised in the petition regarding grant of interest is certainly devoid of merit as there is no irregularity or illegality in fixing the pay scale. Accordingly, we do not find any substance in the petition.

25. The petition stands dismissed. Rule stands discharged. Parties shall bear their own cost.

26. Mr Parsekar, appointed under L.A.S, presented the Petitioner's case ably and fairly. The fact that we may not have agreed with his contentions does not detract from the efforts put by him. We, therefore, thank him. Further, We direct the GLSA to pay his fees according to the rules.

BHARAT P. DESHPANDE, J. **M.S. SONAK, J.**

JOSE FRANCISCO DSOUZA Digitally signed by JOSE FRANCISCO DSOUZA Date: 2023.07.11 10:32:00 +05'30'