

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 412 OF 2022
WITH
CIVIL APPLICATION NO. 1584 OF 2022 (F)

Mrs. Pranita P. Veluskar,
age 63 years, Indian National,
Ex UDC (retired),
C/o. Administration of Comunidade,
Central Zone, Panaji, Goa
residing at H.No.-17/17, Sailem Bhat,
Amarcel Bandh, Gtaleigao, Goa. Petitioner.

Versus

(1) State of Goa,
Represented through s Chief Secretary,
Porvorim, Bardez, Goa.

(2) The Collector (North),
Office of the District Collector, North
Goa, Confidential Branch,
Panaji, Goa

(3) The Administrator of Comunidade,
Central Zone,
Panaji, Goa.

(4) The Director,
Directorate of Accounts,
Panaji, Goa.

(5) The Secretary,
Department of Personnel,
Panaji, Goa

.. Respondents.

Mr Vithal Shivanand Naik, Advocate for the Petitioner.
Mr Prashil Arolkar, Addl. Govt. Advocate for the
Respondents.

CORAM : S.V. GANGAPURWALA, ACJ &
M.S. SONAK, J.

DATE : 21ST FEBRUARY 2023

ORAL JUDGMENT : (Per S. V. Gangapurwala, ACJ).

1. The Petitioner was appointed as a Lower Division Clerk in the Office of the Collector of Goa and the Director of Civil Administration under appointment order dated 13/12/1983. On or about 9/4/1990, the Petitioner was promoted to the grade of Upper Division Clerk. It is the case of the Petitioner that on 10/10/2007, the Petitioner completed 24 years of regular service without there being any break or interruption in her service and the Petitioner was entitled for the Assured Career Progression (ACP) Scheme with effect from 10/10/2007. It is further the case of the Petitioner that upon completion of 30 years of service, the Petitioner was entitled for the benefit of Modified Assured Career Progression (MACP) Scheme with effect from 10/10/2013. The Petitioner claims to have been deprived of the benefit of revision in pay structure in terms of the Office Memorandum dated 8/1/2016-Fin (R&C) and dated

30/11/2016. It is contended that the State Government had implemented the revised pay structure as per the Seventh Pay Commission.

2. The Petitioner, on or about 23/6/2017, was served with the charge-sheet and a departmental inquiry was initiated against the Petitioner. On the ground that the Petitioner was paid excess on account of wrong pay fixation, an amount of ₹85,471/- was recovered from her retiral benefits. On or about 30/04/2019, the Petitioner superannuated on attaining the age of superannuation.

3. The learned Counsel for the Petitioner submits that the inquiry initiated against the Petitioner cannot be continued after the Petitioner has superannuated from service. The charge-sheet does not allege any financial irregularities on the part of the Petitioner nor does it allege gross misconduct. The Petitioner was asked to do some additional work of Acting Secretary/Head Clerk vide orders dated 4/3/2014 and 18/7/2016, which the Petitioner politely refused as the Petitioner had already been allotted additional work of handling correspondence of about 30 Comunidade Offices and that there were another two UDCs available in the Office who were senior to the Petitioner. The Petitioner, only on the ground that she did not accept the additional duty of Acting Secretary/Head Clerk, is charge-

sheeted. According to the Petitioner, all other benefits are withheld and after filing of the Petition, some part of leave encashment has been paid to the Petitioner, but other benefits have not been extended.

4. The learned Additional Government Advocate submits that the inquiry was at the fag end. However, in view of the stay granted by this Court, the inquiry could not proceed further. The learned Additional Govt. Advocate submits that the inquiry has commenced prior to the Petitioner attaining superannuation and since the inquiry is pending, the case of the Petitioner for financial benefits as claimed, cannot be considered.

5. We have considered the submissions canvassed by the learned Counsel for the parties.

6. With the assistance of the learned Counsel for the parties, we have perused the charge-sheet issued to the Petitioner. The charge-sheet, it appears, is issued to the Petitioner on 23/06/2017 on account of refusal on the part of the Petitioner in accepting the additional work of Acting Secretary/Head Clerk assigned under orders dated 4/3/2014 and 18/7/2016. It appears that on 20/07/2016, the Petitioner had brought to the notice of the Authorities i.e. Administrator that the Petitioner was already allotted additional work of handling correspondence of about 30

Comunidade, apart from her regular work and on that count, she had expressed her inability to accept the additional duty. The Petitioner bonafidely put forth her stand before the authorities concerned. If the Petitioner had accepted the additional work, and could not have been able to perform it, then again the Petitioner would have been accused of incapability and of misconduct. The Petitioner, in all fairness, brought to the notice of the Authorities the duties required to be performed in addition to her existing work that she was performing. The Petitioner has also attained the age of superannuation. The charge-sheet does not allege gross misconduct nor does it allege any act due to which the financial loss is caused to the Respondents.

7. Considering the aforesaid facts in toto, we are inclined to set aside the inquiry initiated against the Petitioner. Charges against the Petitioner and the departmental inquiry against the Petitioner, stand quashed.

8. The Petitioner, on the date of superannuation, has worked as Class III employee. The recovery claimed is with regard to excess payment being made to her on account of some wrong pay fixation. The same was also much prior. It would be inequitable to recover the amount from the retiral benefits of the Petitioner. The respondents have also not made out a case that it is on

account of misrepresentation or fraud on the part of the Petitioner, the wrong fixation was done. The parameters laid down by the Hon'ble Supreme Court in *State of Punjab vs. Rafiq Masih (While-washer) and ors.* (2015) 4 SCC 334 are attracted and satisfied.

9. In the result, we pass the following order :

(A) The recovery claimed from the Petitioner is hereby quashed and set aside. The amount recovered from the Petitioner, on account of the erroneous pay fixation, be returned to the Petitioner.

(B) The charge-sheet against the Petitioner, pursuant to which the departmental inquiry is initiated, is set aside.

(C) With regard to the other benefits such as financial upgradation, benefits under the Seventh Pay Commission, relief of additional increment, and other financial benefits, the Petitioner shall make a comprehensive representation to the Respondents. The Respondents shall consider the same, on its own merits preferably within 4 (four) months from the date of the application made by the Petitioner. Depending upon the decision taken by the Respondents upon the representation of the Petitioner, the parties may take further steps.

10. Rule is made absolute in the above terms. No costs.

11. Civil Application is also disposed of.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

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S MHAMAL

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