Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 39 OF 2023

Mrs. Anita Anil Morajka Alias Sharayu Balkrishna Kanekar, Age-60,
Indian National,
resident of House No. 42/D/11,
Dicarpale Davorlim, Salcete Goa. …. Petitioner.

Versus

1. The State of Goa
Represented through Chief Secretary Porvorim, Bardez Goa.

2. The Director,
Directorate of Education,
Alto Porvorim, Bardez Goa.

3. The Director, Directorate of Accounts,
Alto Porvorim, Bardez Goa.

4. The Principal,
The Government Multipurpose Hr. Secondary, Borda, Margao, Goa. …. Respondents

Mr Vithal Naik, Advocate *for the Petitioner.*

Mr D.J. Pangam, Advocate General with Mr Suhas Parab, Additional Government Advocate *for the Respondents-State.*

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

DATE : 30th January 2023

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

1. Heard Mr Vithal Naik for the Petitioner and Mr D.J. Pangam, learned Advocate General, who appears along with Mr Suhas Parab, Addl. Govt. Advocate for the Respondents.

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

3. The Petitioner seeks a writ of Mandamus in terms of prayer clause (a) of the Petition, which reads as follows :

> *"Issue a writ of Mandamus or writ in nature of the Mandamus directing Respondent No. 03 to forthwith withdraw the Letter dated 13/12/2021 outwarded on 13/01/2022 bearing Ref. No. DA/PA-I/PENS(06)/2021-2022/356 and the consequential correspondence issued by the Directorate of Accounts directing the recovery of an excess amount paid to the Petitioner and further direct the Respondent No. 03 to release the amount of Rs. 3,12,977/-. (Three Lakhs Twelve Thousands Nine Hundred and Seventy Seven only,) in favour of the Petitioner."*

4. The Petitioner was appointed Assistant Teacher in the Government High School, Bicholim, on 9/7/1987. After that, the Petitioner was granted the senior scale on 5/11/1999 and the selection scale on 20/4/2014. The Petitioner was promoted on an ad hoc basis to the post of Teacher Grade I with effect from

7/6/2013. The Petitioner was promoted to the post of Teacher Grade I in level 8 of the pay matrix of the Seventh Pay Commission scales.

5. Since the Petitioner was due to retire on attaining the age of superannuation on 28/2/2022, her pension papers and service book were forwarded to the Directorate of Accounts well in advance on 13/12/2021. The Directorate of Accounts returned the pension papers and the service book with the endorsement that some excess payment was made to the Petitioner.

6. Upon getting wind of the above endorsement and apprehending difficulties in releasing her retiral benefits, the Petitioner addressed a representation dated 26/02/2022 protesting the endorsement of any alleged excess payment. In any case, the Petitioner pointed out that since she was due to retire on 28/2/2022, no recoveries could be made.

7. The Petitioner has pleaded that by order dated 20/1/2022, the order granting the selection scale to the Petitioner was revised without notice or minimum compliance with the principles of natural justice and fair play. Possibly, it is based on this order that the Directorate of Accounts made the endorsement about the recovery of the alleged excess payment.

8. The Petitioner was permitted to retire on attaining the age of superannuation, i.e. on 28/2/2022. However, on 14/3/2022, the Petitioner was re-employed in the same post until the end of the academic year, i.e. 30/4/2022.

9. On 17/8/2022, the Respondents recovered the alleged excess payment made to the Petitioner amounting to ₹3,12,977/-. Again, this was without even complying with the principles of natural justice and fair play. The amount was immediately recovered from out-of-the-terminal benefits payable to the Petitioner. The Petitioner's representation dated 12/11/2022 was not responded to, forcing the Petitioner to institute the present Petition on 20/12/2022.

10. Apart from the failure to comply with the principles of natural justice and fair play, we think that the Respondents' action is contrary to the principles 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]. Both these decisions hold that where monetary benefits were given to the employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities in

1. AIR 2015 SC 696

2. 2022 SCC OnLine SC 536

determining the emoluments payable to them, and the employees were not guilty of furnishing any incorrect information/misrepresentation/fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees, no recoveries must be ordered or enforced after the retirement of such employees. In fact, the direction was not to recover from the retired employees or the employees who were due to retire within one year of the order of recovery.

11. Based on the decision in *Rafiq Masih* (supra), the Central Government issued an Office Memorandum dated 2nd March 2016 concerning the recovery of wrongful/excess payments made to Government servants. The Office Memorandum dated 2nd March 2016 was adopted by the Government of Goa vide Office Memorandum dated 7th March 2017.

12. The impugned recovery in the present case is contrary to the law laid down in *Rafiq Masih* (supra) and *Thomas Daniel* (supra). The impugned recovery is also in breach of the Office Memorandum dated 7th March 2017, issued by the State Government, adopting the Office Memorandum dated 2nd March 2016, issued by the Central Government. Besides, the impugned recovery visits the Petitioner with serious civil consequences. Yet the same was effected without minimum compliance with the principles of natural justice and fair play.

13. For all the above reasons, this Petition succeeds. The Respondents should now refund the recovered amount of ₹3,12,977/- to the Petitioner as expeditiously as possible and in any case not later than 3 (three) months from today. If this amount is not paid to the Petitioner within 3 (three) months from today, the same will carry interest at the rate of 8% per annum, beginning from the date of this order till the date of payment.

14. Liability to pay the interest will not absolve the Respondents from complying with the writ of Mandamus that we have issued today by this Judgment and Order.

15. The rule is accordingly made absolute in the above terms. There shall be no order for costs.

16. All concerned must act on an authenticated copy of this order.

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