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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.618 OF 2022

SUREKHA SURESH GAUNS DESSAI,
REP. BY ATTO. SURESH DESSAI

... Petitioner

Versus

STATE OF GOA, THR.
CHIEF SECRETARY AND 3 ORS.

... Respondents

Mr J.P. Mulgaonkar, Senior Advocate with Ms Rupa Banaulikar,
Advocate for the Petitioner.

Mr D. Pangam, Advocate General with Mr Neehal Vernekar,
Additional Government Advocate for Respondent Nos.1 and 2.

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

DATED: 3rd April 2023

ORAL ORDER: (Per Valmiki Sa Menexes, J.)

1. This petition invokes our writ jurisdiction under Article 226 of the Constitution of India, seeking a writ of mandamus to direct the Respondents to grant the following reliefs:-

- “a) To grant full pensionary benefits;*
- b) To Count Petitioner's past services rendered in the educational institutions in the State of Karnataka from 16/06/1969;*
- c) To Re-count the Petitioner's services rendered in the Respondent no.4 School;*

- d) To Correct and refix the Petitioner's basic pay as Rs. 460 as on 19/05/1979 on which day the Petitioner's B.Ed. Results were declared instead of the wrongly taken basic pay of Rs. 440/- + 15;*
- e) To consider the Petitioner's representation against the audit objection of H.M.M no. 22 and corrigendum to letter dated 07/04/1994 bearing ref No.DE/Audit-Cell/HS-S/*
- f) To take into account the Petitioner's Extra ordinary Leave (E.O.L.) sanctioned for B.Ed. Training for the purpose of increments and for pensionary benefit.*
- g) To grant benefits accrued to the Petitioner on account of retirement at the age of 58;*
- h) To Grant benefits of Sixth Pay Commission;*
- I) To pay interest on account of delay in payment of the Petitioner's pension for a period of over one year and 15 days the delayed payments of full pensionary benefits and other dues arising from the wrong fixation of Petitioner's Basic pay.”*

2. It is the Petitioner's case that she was a qualified and trained teacher joining service as an Assistant Teacher with Sadashivgad High School at Uttar Kannada District, Karnataka on 16.06.1969. She then joined Swami Vivekanand High School at Kodibag, Karwar on 21.07.1971 and after her marriage in May 1974 in Goa, she came to reside permanently with her husband at Goa; she was appointed as Assistant Teacher at Shri Dayanand Bandodkar Multipurpose Society High School (“DBM High School”) as a part time Teacher on probation from 10.11.1975; that in terms of Rule 79(6) of the Grant in Aid Code read with Rule 13 of the CCS Rules, 1972, she was entitled to claim qualifying service from 10.11.1975 but was wrongly not granted the same.

3. It is further the Petitioner's case that she was placed on full time Graduate pay scale on 01.06.1976, further to which she received various

increments, and vide order of appointment dated 26.06.1980, she was appointed in St. Francis Xavier High School at Mapusa. That at the relevant time, the Accounts Officer from the Directorate of Education wrongly indicated her basic pay scale as ₹480/- when it ought to have been ₹500/- as on 01.08.1980; that thereafter she joined the Respondent No.3 School at Cuncolim, Salcete, Goa on 08.01.1991 and received a letter dated 12.02.1992 informing her that in the annual audit inspection of that School, an objection had been raised to the grant of her extraordinary leave during her B.Ed. training, alleging that the Petitioner had not completed three years in service prior to her deputation for the training, pursuant to which a deduction of one increment was made in her salary. The Petitioner then states that representations made by her to the Directorate of Education to reverse the alleged illegal deduction, were rejected.

4. The Petitioner claims that correspondence took place between her and her School and the Directorate of Education, commencing from 30.08.1993 on the above issue, with the Directorate of Education maintaining its earlier stand and directing recovery of the excess amount paid earlier to the Petitioner. That the Petitioner had further correspondence with the said School on the mistake committed by the School in raising audit objections as regards sanction of the Extra Ordinary Leave to the Petitioner, which correspondence and representations moved back and forth between the Petitioner, the School and the Department, culminating in the School Management issuing a letter dated 07.04.1994 along with the corrigendum that her Extra

Ordinary Leave was sanctioned and that the Education Department had made a mistake in re-fixation of her basic pay as on 19.05.1979.

The Petitioner then filed her objection to the letter dated 07.04.1994 and correspondence on these objections was recorded amongst the parties on the issue, right through the year 1994 to the year 1996 without any definite conclusion.

5. Amongst the various objections raised by the Petitioner between the year 1994 and 1996, with the School and the Directorate of Education, the main ones are enumerated below:-

- a) That the Directorate of Education ought to have considered continuing the Petitioner's part-time service in DBM High School from 10.11.1975 to 30.05.1976, even though there was no specific rule or provision to include such service, which was part-time service, for the purpose of calculation of increments.
- b) That since the CCS Rules were adopted by the Government of Goa, the Directorate of Education ought to have treated the Petitioner's part-time service as qualifying service for the purpose of pay fixation/increments, and if considered, should have been granted to the Petitioner since 10.11.1975.
- c) That the excess payment recovery of amounts included as increments, even assuming the same were wrongly granted to the Petitioner, were not recoverable from the Petitioner on the basis that an increment once granted, is not recoverable even though the same may have been wrongly granted to the Petitioner.

6. It is then the Petitioner's case that after the Director of Education had rejected her earlier representations, she continued making representations to the Joint Director of Accounts of the Directorate of education through letters dated 27.02.1997, 25.07.1997 and 26.02.2002. Despite her representations, the Assistant Director of Education, vide letter dated 27.03.2002 once again reiterated that her part-time service could not be considered for pensionary benefits and pay fixation. Without approaching this Court, the Petitioner pursued her representations, this time with her School, by writing a letter dated 09.10.2003 claiming that no yearly increment due to the Petitioner since 1991 had been released, nor had pay fixation of the 4th and 5th Pay Commissions been extended to the Petitioner, causing her financial loss; thereafter the Petitioner gave a notice for retirement on superannuation, vide letter dated 05.01.2004, which was accepted and the Petitioner was given a relieving order by her School on 19.03.2004. She claims that when she was relieved from her post on 31.03.2004, she was shocked to find that her service in the State of Karnataka was not counted for pension although she had made a specific request for the same, having completed, according to her, 33 years of service instead of the 27 years and 3 days counted by the School for the purpose of qualifying her for pension.

7. Even after receiving her relieving order in the year 2004, the Petitioner continued to correspond with the Department and her School on her claim of the number of years of service which ought to be counted for pay fixation/increment which she set out in her representation of 29.08.2014. A further representation was made by her to the same effect on 29.10.2015 which was replied to on 24.11.2015 by the Assistant

Director of Education requesting her to submit details of her service to enable the Department to examine the matter. This process went on when on 05.04.2016, the Petitioner claimed interest on her outstanding pension since the question of pay fixation/increment was, according to her, not resolved; on 01.06.2016, the Director of Education once again rejected the Petitioner's claim and called upon her to pay the excess payment received by her.

8. We have heard the learned Senior Advocate Shri Jayant Mulgaonkar for the Petitioner. He has reiterated his submissions raised as grounds in the petition, claiming that the Petitioner was rightfully entitled for full pensionary benefits on the basis of counting her past service rendered in educational institutions in the State of Karnataka from 16.06.1969, which included her probationary service in another State. He further contends that the Department ought to have corrected and re-fixed the Petitioner's basic pay as on 19.05.1979, on which day the Petitioner's B.Ed. results were declared, she being of higher qualification as on that date; that the Department has wrongly taken the basic pay for persons without a B.Ed. qualification, and therefore, the Petitioner would be entitled to claim re-fixation of her basic pay from 19.05.1979. The learned Counsel, therefore, submits that the Petitioner would be entitled to a writ of mandamus to direct the Respondents to recalculate and re-fix the Petitioner's basic pay and benefits by including her service from 16.06.1969, and accordingly grant her the benefits of a higher pension; consequently, the Petitioner would be entitled to payment of interest on account of delay in making the payment to the Petitioner due to wrong fixation of the Petitioner's basic pay.

9. It is a settled principle of law that a petitioner approaching a Writ Court, especially claiming a writ of mandamus, is not only required to make a demand for justice immediately after the cause of action arises to the party, but is also required to approach a Writ Court for appropriate reliefs within a reasonable time of having made the demand. Delay and laches, especially in matters of re-fixation of pay or pension, or in matters where recovery of payments due going back several years is made, bars the grant of such relief by a Writ Court exercising jurisdiction under Article 226 of the Constitution of India, unless the Petitioner demonstrates through pleadings, the reasons and justification for not approaching the Court within a reasonable time.

10. In the present case, the Petitioner has been agitating the question of treating her past service rendered in an educational institution in the State of Karnataka from 16.06.1969, raised by her with the Department for the first time in or around the year 1979. Despite correspondence with the concerned Department, the Department has rejected her claim. Thereafter, without approaching this Court to enforce her claim, the Petitioner continued to agitate this issue along with the second claim that she made for correction and re-fixation of her basic pay as on 19.05.1979, since she claimed she had obtained her B.Ed. degree from that date. This second claim continued to be made through correspondence until her attaining superannuation and being relieved under order dated 19.03.2004. Even then, the Petitioner instead of approaching this Court, continued raising further representations claiming that her pension had to be re-fixed, after considering her service in the State of Karnataka and after considering her higher educational qualifications; the Petitioner

claimed that she had completed 33 years of service and not 27 years of service as claimed by the Department,

The Petitioner has not averred, in her petition, any reasons for the gross delay and laches in making a claim for higher salary and counting her earlier service right from the year 1969. On this count alone, we are of the opinion that the present petition would be barred by the principles of laches and delay.

11. We note, that were the Petitioner to file a civil suit to recover the amount that she claims as back-wages on re-fixation of her pay-scale and recovery of additional pension, such a claim would be grossly barred by limitation and not be recoverable. Even the cause of action would be totally barred by time, considering the claim made in the present petition.

12. The Hon'ble Supreme Court in the case of **S.S. Balu and Anr. vs. State of Kerala; (2009) 2 SCC 479** in para 18 has observed thus:

"18. It is also well settled principle of law that "delay defeats equity". Government Order was issued on 15.1.2002. Appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and State of Kerala preferred an appeal thereagainst, they impleaded themselves as party respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.

In New Delhi Minicipal Council v. Pan Singh and Ors. (2007) 9 SCC 278, this Court held:

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction.""

13. Applying the ration laid down in the above citation to the facts of the present case, we hold that in the facts of this case, the petition is not a fit case to exercise our discretionary jurisdiction in favour of the Petitioner.

14. For all the reasons stated above, in our opinion, the petition deserves to be dismissed, being barred by delay and laches. Accordingly, we dismiss this writ petition. However, in the circumstances of the case, there shall be no order as to costs.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

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DSOUZA

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