



S.

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.213 OF 2024**

Agnelo Gama, Indian National,
Aged 81 years, residing at West-
Wind Apartments, F-2, First
Floor, Behind Don Bosco
Engineering College, Fatorda,
Margao-Goa.

...Petitioner

Versus

1. State of Goa, Through Chief
Secretary, Secretariat, Porvorim-
Goa.
2. Mormugoa Municipal
Council, Through its
Chairperson/Chief Officer,
Vasco Da Gama-Goa, 403802.
3. Directorate of Urban
Development (Municipal
Administration), Through its
Director, 1st Floor, Dempo
Towers, EDC, Patto Plaza,
Panaji, Goa.

...Respondents

**Mr Prabhav Pravin Sirvoicar, Advocate along with Mr S.
Prabhudessai, Advocate for the Petitioner.**

**Mr Neehal Vernekar, Additional Government Advocate for
Respondents No.1 and 3.**

**Mr Ravi Anand Chandra Chaudhary, Advocate (through VC),
for Respondent No.2.**

**CORAM: M. S. KARNIK &
VALMIKI MENEZES ,JJ.**

DATE: 14th October, 2024

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

Heard Mr Prabhav Sirvoicar, learned Counsel for the petitioner, Mr Neehal Vernekar, learned Additional Government Advocate for Respondents No.1 and 3 and Mr Ravi Anand Chaudhary, learned Counsel for Respondent No.2.

2. The petitioner prays for a direction for disbursal of the pensionary benefits due to the petitioner with effect from his date of superannuation from service i.e. 31.10.2001 along with interest @ 12% per annum and a further direction that the petitioner be paid his monthly pension amount regularly and without any default.

3. Learned Counsel for the petitioner invited our attention to the communication dated 16.06.2006 of the Directorate of Municipal Administration, Department of Urban Development, Collectorate Building, Panaji, to the effect informing the Chief Officer of Mormugao Municipal Council, Vasco-da-Gama that if the contract appointment from 10.06.1997 to 30.08.2000 is regularised by Municipal Council as resolved in its meeting held on 22.12.1999, the petitioner will get the normal 15 years of service for eligibility of pensionary benefits. It is further mentioned that as the petitioner is a retired Municipal employee, necessary action to grant benefits is to be taken by the Council. The communication further states that the case of Shri Gama be thoroughly examined in terms of Rule 27 and 28 of CCS (Pension) Rule 1972 and to inform the office for taking further action in the matter.

4. The aforesaid communication referred to the extract of Minutes of Special Council Meeting held on 19.08.2005 at 10:30am. The relevant portion pertaining to the petitioner as contained in the resolution needs to be extracted and reads thus:-

'To discuss and decide the pension matter of Shri Agnelo Gama LDC ex-employee and to condone the break in service.

Res. No.115/05

The above matter along with the file was placed before the Council. The Chief Officer informed the Council that the DMA has requested to get the approval of the Council to be condonation of break in service of Shri. Agnelo Gama, LDC. The Council having discussed the same approved to condone the break in service of Shr. Agnelo Gana LDC retired employee of the Mormugao Municipal Council as below:

	Y	M	D
<i>Break in service -(1) 23rd May 1973 to 2nd January 1978</i>	4	7	9
<i>(2) 6th April 1982 to 8th June 1996</i>	14	2	2
<i>Contract period (3) 9th June 1996 to 30th August 2000</i>	4	2	21

Therefore the total break in service – 18 years 9 months and 11 days and contract period 4 years 2 months and 21 days.

The Council thereafter recommends to the Government to condone the break in service to the extent shown as above.'

5. Learned Counsel for the petitioner submitted that despite the resolution of the Mormugao Municipal Council condoning the break in service thereby entitling the petitioner the pensionary benefits, the pension is not actually paid.

6. Learned Counsel Shri Chaudhary appearing for the Mormugao Municipal Council submitted that they have received a communication dated 12.12.2006 from the Director of Municipal Administration that there is no ground or rule under which the case can be condoned. The communication is placed on record as Exhibit 'X' for identification.

7. The petitioner was an employee of the Municipal Council. The pension is to be paid by the Municipal Council. It is further submitted that because of the communication from the Directorate of Municipal Administration, the pension is being withheld.

8. This stand of the Directorate of Municipal Administration runs counter to the communication dated 16.06.2006 wherein the Additional Director of Municipal Administration has clearly stated that as the petitioner is a retired Municipal employee, necessary action to grant pension is to be taken by the Council. The Council was thereby asked to examine the case of the petitioner in terms of Section 27 and 28 of the CCS (Pension) Rules, 1972. From the stand of the Municipal Council it is seen that as the petitioner's case falls within the scope of Section 27 and 28 of the CCS (Pension) Rules, 1972, the Municipal Council took a decision entitling the petitioner to normal 15 years of service for eligibility of pensionary benefits.

9. Learned Additional Government Advocate, Shri Vernekar when confronted with this submits that he has instructions to state that the decision to grant pensionary benefits is purely in the realm of the

Municipal Council and the State Government only wanted to be informed about the decision taken by the Municipal Council. Learned Additional Government Advocate submitted that if the Municipal Council is willing to pay the pensionary benefits, the State Government cannot have any objection to such a course of action. In this view of the matter, considering the stand of the Municipal Council regularising the contractual appointment of the petitioner from 10.06.1997 to 30.08.2000, and having examined the case of the petitioner in terms of Sections 27 and 28 of the CCS (Pension) Rules, 1972 holding that the petitioner is eligible to get normal 15 years of service for eligibility of pensionary benefits, the petition needs to be allowed.

10. The petitioner is held entitled to pension w.e.f. 31.08.2001 as resolved by the Municipal Council. The arrears to be paid within a period of 3 months from today with interest at the rate of 6% per annum. The petitioner be paid monthly pension regularly.

11. The petition stands disposed of in the above terms. No costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.