



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 414 OF 2024.

Shri Satyavan L. Talwadkar, Age 59 years,
Presently working as Joint Director,
(Directorate of Accounts), Resident of F1, B1,
Angafraca Complex Cabese, Santa Cruz,
Tiswadi-Goa. ... Petitioner.

V e r s u s

1. The State of Goa, Through its Chief
Secretary, Secretariat, Porvorim, Goa.
2. Goa University, Through its Registrar,
Taleigao Plateau, Goa. ... Respondents.

Mr Terance Sequeira, Advocate for the petitioner.

Mr Neehal Vernekar, Addl. Govt. Advocate for respondent no.1.

Ms A. A. Agni, Senior Advocate with Mr A. Harihar, Advocate for
respondent no. 2.

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATE: 24th February 2025.

JUDGMENT (PER NIVEDITA P. MEHTA, J.)

1. Rule. Rule made returnable forthwith at the request and consent
of the learned counsel for the parties.
2. By this Writ Petition, the petitioner seeks direction to quash and
set aside the office note dated 5.4.2023 bearing No.GU/IV/PA/SLT

/683/2023/18 and directing respondent no. 2 to grant benefit to the petitioner under paragraph 3(a) of the Office Memorandum(“OM” for short) dated 8.08.2018 along with interest.

3. Brief facts are that the Petitioner was working as Joint Director of Accounts in his parent department viz. the Directorate of Accounts. The Petitioner vide order dated 22.07.2020 was transferred on deputation to Respondent no. 2, Goa University, to the post of Deputy Registrar-Finance as approved by the State Government. The pay scale attached to the post of Deputy Registrar of Finance at Goa University was at Pay Matrix -Level 12.

4. Petitioner while discharging his function as Deputy Registrar Finance was given the full additional officiating charge as Finance Officer by respondent no.2 vide order dated 4.8.2021 during the absence of the regular officer w.e.f. 5.8.2021 until further orders. The Pay scale of a Finance Officer is at Pay Matrix-Level 14. Petitioner contended that he had to work for long hours and often had to work after office hours to complete the work. Even on Saturdays and Sundays, the petitioner was required to work, and this resulted in a stressful work life due to which the petitioner encountered severe lumbar spine back pain.

5. Petitioner vide letter dated 4.4.2022 requested the Registrar of respondent no. 2 to relieve him from Additional Charge of officiating

as Finance Officer w.e.f. 6.4.2022 and requested to grant him a 10% additional charge allowance as per paragraph 3 (a) of the OM dated 08.08.2018. w.e.f. 5.8.2021 on the lines granted to the Ex-Registrar or applicable pay scale of the post of Finance Officer.

6. The petitioner was relieved from the charge of the post of Finance Officer of respondent no. 2 w.e.f. 15.07.2022. The Executive Council in its meeting held on 23.09.2022 sanctioned Rs. 7850/- per month as additional post allowance for six months. The amount of Rs. 7,850/- was based on paragraph 3 (b), instead of paragraph 3 (a) of the OM dated 08.08.2018. The petitioner made a detailed representation dated 17.11.2022 claiming the benefits under paragraph 3 (a) of the OM dated 08.08.2018, as per the Pay Level-14. The respondent no.2 vide order dated 5.4.2023 informed the petitioner that the request for a higher pay scale is not considered as the OM dated 08.08.2018 has not been adopted by the State Government. Hence this petition.

7. Respondent no. 2 in its reply contended that the petitioner was given an additional charge as Finance Officer in terms of SA-9-1(a) of Statutes framed by the Goa University and the same was accepted by him without any protest or inquiry as to whether due to holding of the additional charge he would be entitled to additional allowances. As per the 7th Central Pay Commission, there is no provision for payment of additional allowance if additional responsibilities are being handled by

any incumbents. Goa University Act was amended in 2003 and in terms thereof, it cannot make any provision, statute or ordinances concerning financial implications without obtaining the approval of the State Government of Goa as the entire funding of respondent no. 2 is from the Government of Goa.

8. Respondent no. 2 vide letter dated 23.05.2022 had placed the facts of the petitioner's case to the Directorate of Higher Education and requested to approve the 10% additional allowance w.e.f. 5.08.2021 or applicable pay scale of the post of Finance Officer. The request was not adhered to by respondent no. 2 as the State Government of Goa expressed that the OM dated 08.08.2018 had not been adopted. Respondent no. 2 further stated that it is bound to follow the State Government's decision in finance matters and therefore the claim of the petitioner that he is entitled to draw pay as mentioned in paragraph 3(a) of OM dated 8.08.2018 is incorrect. Therefore, it is denied that the petitioner is entitled to payment of the arrears to the tune of Rs. 5,50,673/-.

9. Learned Counsel Mr T. Sequeira for petitioner raised the following contentions:-

i) The petitioner was transferred on deputation to the post of Deputy Registrar Finance which carries a pay scale at Pay Matrix -Level 12. The petitioner was given full charge of a higher post of Finance Officer

carrying a Pay Scale at Pay Matrix -Level 14. The petitioner continuously worked for almost one year and, therefore, he is entitled to pay as per Pay Matrix -Level 14 which is prescribed for the post of Finance Officer.

ii) The Executive Council of respondent no.2 in the meeting held on 23.09.2022 granted approval for payment of Rs. 7850/- per month as an additional post allowance for six months from 05.08.2021 to 4.02.2022 based on OM dated 08.08.2018. No permission or NOC was sought from the State Government of Goa. Hence, the Executive Council as well as the State Government of Goa cannot deny the benefits on a specious ground that the OM dated 08.08.2018 has not been adopted by the State Government of Goa.

iii) It is further submitted that applying one paragraph of the OM dated 08.08.2018, while ignoring the other paragraph is discriminatory and illegal. The respondents cannot approbate and reprobate at the same time. Once respondent no.2, through its Executive Council, had accepted and acknowledged the applicability of the OM dated 8.08.2018 by sanctioning 10% of the basic pay as per paragraph 3 (b) of OM dated 8.08.2018, respondent no.2 was estopped from saying it is not applicable when the petitioner demanded benefit under paragraph 3 (a).

iv) Respondent no.2 has previously granted an additional post allowance to Professor Radhika S. Nayak based on the very same OM dated 08.08.2018. Hence, respondent no.2 cannot turn around and state that the same does not apply to the petitioner for want of adoption by the State Government of Goa.

v) As per the Office note, no approval was taken for giving an additional charge of Finance Officer to the Petitioner. Respondent no.2 has exploited the petitioner and engaged his services without the knowledge and consent of the State Government of Goa. The petitioner during his tenure as Finance Officer has approved and signed all the finance-related documents, Utilization Certificates and other files received in the Finance Division. Due to which, the petitioner faced health issues.

vi) The Petitioner submits that the least that was expected from respondent no.2 was to grant benefits as per paragraph 3 (b) of the OM dated 08.08.2018.

vii) The petitioner relied on the decision of this Court in ***Diocesan Society of Education vs. University of Goa (Writ Petition 258/2001)*** in support of his submissions.

10. Ms Agni, learned Senior Advocate on behalf of respondent no. 2 argued in rebuttal as under:-

i) The financial powers of Goa University are limited by the State Government of Goa by incorporation of the amendment to the Goa University Act in the year 2003. Without the government's approval, no additional financial expenditure can be incurred by respondent no.2. Respondent no.2 receives the monthly salary grants from the State Government and the University is the disbursing authority concerning the salary and other allowances to its employees.

ii) Respondent no.2 had sent a letter to the Directorate of Higher Education as per the representation of the petitioner wherein he has submitted that he is entitled for a higher pay scale as per paragraph 3(a) of the OM dated 08.08.2018, but there was no response. They had also brought to the notice of the Directorate of Higher Education the case of Dr. Radhika Nayak; who was paid additional allowances for the period of six months while acting as the Office Registrar, Goa University.

iii) Subsequently, it was informed that the State Government has expressed that the OM dated 08.08.2018 has not been adopted by them and hence cannot be made applicable. The petitioner cannot claim that he is entitled to draw pay as per paragraph 3(a) of the OM dated 08.08.2018. The correct interpretation of the said paragraph would be that the employee is eligible for an appointment for the higher post on regular basis if he were to hold such a post, in that case, he could be

considered entitled to draw pay in respect of which he is given additional charge and in all other cases the employee would be covered by second limb of the paragraph 3(a) of the OM dated 08.08.2018.

iv) It is further contended that the OM dated 08.08.2018 issued by the Government of India would apply only if the same is adopted by the State Government of Goa. The additional charge of higher responsibilities of the Finance Officer was assigned to the petitioner in terms of the provision Statutes SA-9(1) (e) and no practice or Rule is contemplated seeking State Government approval for assigning additional responsibilities within the Organization. It is pertinent to mention that the petitioner has not raised any objections/concerns before the State Government.

v) Moreover, if the State Government of Goa has not adopted the OM dated 08.08.2018 while the petitioner was exercising his assigned additional duties as Finance Officer at Goa University, a note ought to have been put about non-adoption of the OM dated 8.08.2018. Accordingly, the additional allowance would not have been paid to the then-incumbent officer Professor Radhika Nayak.

vi) The petitioner has been granted the benefit under paragraph 3(b) of the OM dated 08.08.2018. Although the fact as on date is that OM dated 08.08.2018 has not been adopted by the Government of Goa,

therefore the petitioner is not entitled to pay arrears of Rs.5,50,673/- as contended.

11. Mr N. Vernekar, learned Additional Government Advocate supported the impugned communication and advanced his arguments as under:-

i) Respondent no.2 gets grants from the State Government of Goa and the State Government has not approved the OM dated 08.08.2018. Respondent no.2 cannot adhere to the same without prior approval and grant the claim of the petitioner. The additional duties as Finance officer assigned to the petitioner were without the prior approval of the State Government and as such the State exchequer cannot be burdened with the liability of payment to the petitioner. It is respondent no.2's unilateral decision to grant additional charge to the petitioner as Finance Officer and, therefore, it is the university's sole responsibility to make the payment. Admittedly, no prior approval has been obtained and, therefore, the State Government cannot be saddled with the liability.

ii) The learned Addl. Govt. Advocate relied on the judgments, mentioned herein to support the arguments:-

A) Prf. S.S.Bindra and others vs. The State of Punjab and others, Punjab and Haryana High Court in C.W.P. No 9665/2010

B) Chaitanya Ambalal Somani Vs. Pravinchandra D.Rana, 2001 (10) Supreme Court Cases 276

C) G. Sreedhara Reddy and others vs. Osmania University and others 2007(11) Supreme Court Cases 58

D) K. Meghachandra Singh and others Vs. Ningam Siro and others, 2020 (5) Supreme Court cases 689.

12. We have heard learned Counsel for the parties. The OM dated 08.08.2018 which is relevant in the present context is reproduced below:-

*No.2/13/2017-Estt.(Pay.II)
Government of India
Ministry of Personnel,
Public Grievances & Pensions
Department of Personnel & Training
North Block, New Delhi
Dated: 08 Aug,2018*

OFFICE MEMORANDUM

Subject: Grant of Additional Post Allowance – abolition of existing Acting allowance (being granted in Defence forces), and Dual charge Allowance (being granted in Ministry of Railways)- decision of the Government on the recommendation of the Seventh Central Pay Commission (7th CPC)

The undersigned is directed to say that the decisions of the Government on various allowance based on the recommendations of the 7th Central Pay Commission and in the light of the recommendations of the Committee under the Chairmanship of Finance Secretary have since been

notified vide resolution No.11-1/2016-IC dated 6th July,2017.

2. As mentioned in the Appendix-II of the said Resolution, dated 6th July,2017 the existing allowances viz. Acting Allowance (Sl.No.2 of Appendix-II), and Dual Charge Allowance (Sl.No.52 of Appendix-II), have been abolished as a separate allowance and the eligible employees are now to be governed by the newly proposed Additional Post Allowance.

3. Accordingly, the above allowances shall stand abolished and the president is pleased to decide that the eligible employees shall now be covered under a new additional post allowance which will be administered as under:

a. An employee formally appointed to hold full charge of the duties of a higher post, in addition to the duties of his own post, will be entitled to draw the pay that would be admissible to him if he was appointed to the higher post on regular basis OR 10 percent of his present Basic pay per month, as Additional Post Allowance, whichever is more beneficial, provided the sum total of his Basic pay and additional Post Allowance does not exceed the Apex Pay i.e. Rs.2,25,000/-

b. An employee formally appointed to hold full charge of the duties of a post on similar level as his own post, in addition to the duties of his own post, will be entitled to draw 10 percent of his present Basic Pay per month, as Additional Post Allowance, provided the sum total of his Basic Pay and Additional Post Allowance does not exceed the Apex Pay.

c. No Additional Post Allowance should be paid to an employee who is appointed to hold current charge or the routine duties of an additional post, irrespective of the duration of the current charge.

d. The allowance will be admissible only if the duration of additional charge exceeds 45 days.

e. This arrangement cannot continue for a particular vacant post for more than 1 year, and for a particular employee for more than 6 months at a stretch, In addition, there shall be a minimum gap of 1 year between two such successive appointments of a particular employee.

4. Additional Post Allowance will be granted to Junior Commissioned Officers (JCOs) of the Army & equivalent in Navy and Air force for holding appointment of Captain & equivalent and Major & equivalent.

5. In so far as grant of Additional Post Allowance to officers in Indian Railway is concerned, other terms & conditions as provided in Board's letter dated 19.08.2011 and provisions contained in para 645 to 650 of Indian Railway Establishment Manual Vol.I which are not modified by Provisions of this OM will continue.

6. Additional Post Allowance will not be granted to an employee for holding additional charge of lower post.

*7. These orders shall be effective from 1st July 2017.
(Ashok Kumar Jain)*

Sd/-

Deputy Secretary to the Govt. of India.

(emphasis supplied)

13. The petitioner made representations to grant the pay scale attached to the post of Finance Officer as he was holding additional charge of the said post while discharging his function as Deputy Registrar Finance in respondent no.2 as per the OM dated 08.08.2018.

The petitioner worked in the post of Finance Officer for a total period of 11 months and 11 days w.e.f. 05.08.2021 to 15.07.2022 which is an admitted fact and, therefore, the petitioner sought grant of pay-scale attached to the post of Finance Officer in terms of paragraph 3 (a) of the OM dated 8.08.2018.

14. The Executive Council of the Goa University in its meeting held on 23.09.2022 sanctioned payment of Rs.7,850/- per month as additional post allowance for six months from 05.08.2021 to 04.02.2022 in terms paragraph 3 (b) of OM dated 08.08.2018. However, the claim made by the petitioner for entitlement to the pay scale as prescribed in paragraph 3 (a) of the OM dated 08.08.20218 was rejected by the respondent no.2 on the ground that the State Government of Goa has not adopted the OM dated 08.08.2018.

15. It is pertinent to mention that as per paragraph 3(b) of the OM dated 08.08.2018, an employee is entitled to 10% of the pay scale who holds charge of a post on a similar level. In the case at hand, the petitioner was at the Pay Matrix – Level 12 (pay-scale of Deputy Registrar) and was given full charge of a higher post of Finance Officer having a Pay Matrix -Level 14.

16. The question is whether the petitioner is entitled to the benefits as prescribed in paragraph 3(a) of the OM dated 8.08.2018. Although

the OM dated 08.08.2018 has not been adopted by the State Government of Goa.

17. As stated above the petitioner was given an additional allowance of 10% based on the OM dated 08.08.2018, however, the petitioner was denied a higher pay scale of Pay Matrix-Level 14 as per paragraph 3(a) of the same OM dated 08.08.2018 on the ground that the said OM dated 8.08.2018 has not been adopted by the State Government of Goa, hence the respondent no.2 did consider the entitlement of the petitioner for a higher pay scale. Factually the Executive Committee in their meeting held on 23.09.2022 decided to grant the additional post allowance to the petitioner in terms of paragraph 3(b) of the OM dated 08.08.2018. It is only when the petitioner informed that he is entitled to a higher pay scale as per paragraph 3(a) of the OM dated 08.08.2018, that respondent no.2 took a complete U-turn and stated that they cannot consider the same as the State Government of Goa has not adopted the OM dated 08.08.2018.

18. Respondent no.2 by applying the same OM dated 08.08.2018 granted a 10% additional allowance while ignoring the entitlement of the higher pay scale as prescribed in paragraph 3(a) of OM dated 08.08.2018. It does not stand to reason that a part of the OM dated 08.08.2018 is accepted, whereas for additional charge in terms of paragraph 3(a), the entitlement is refused on the ground that the OM

dated 08.08.2018 has not been adopted by the State Government. Moreover, it is not disputed that the additional post allowance was granted to one Prof. Radhika S. Naik based on the same OM dated 08.08.2018. Hence the stand taken by respondent no.2 of denial to the petitioner's claim for pay of higher post on the ground that the State Government has not adopted the OM dated 08.08.2018 is not reasonable and unjust.

19. It is not in dispute that the petitioner has discharged the functions of the post in which he was transferred and that he has also discharged the duties of the additional post of which he was given charge of. The University has recognised and rightly so that the petitioner must be duly compensated for the additional work that he has discharged of a very responsible post. The absence of adoption of the OM dated 08.08.2018 by the State Government should not be a factor to deprive the petitioner what is reasonably due to him. To extract work from the petitioner without reasonably compensating him would be unjust and unfair. In the absence of any provision prescribing the entitlement for such additional work, the University has in our opinion correctly decided to make a reference to the OM dated 08.08.2018. However, while doing so, there was no reason to deny to the petitioner the full benefit of the OM dated 08.08.2018 which in the present case would be in terms of paragraph 3(a). Merely because the OM dated 08.08.2018 has not been adopted by the state, cannot be a

reason to deny the petitioner his entitlement which is just and fair. It is of course open for the State Government to take a decision on the adoption of the OM dated 08.08.2018. The petitioner having discharged the duties of the post of which he was given additional charge, is justified in claiming benefit in terms of paragraph 3(a) in the absence of any other provision prescribing such entitlement.

20. The OM dated 08.08.2018 is based on the recommendations of the 7th Central Pay Commission. The recommendations of 7th Central Pay Commission had been accepted by the State Government. The decision of the Executive Council in determining the petitioner's entitlement on the basis of the OM dated 08.08.2018 in the absence of any other provision prescribing such entitlement is rational. As per section 18 of the Goa University Act, the Executive Council shall be the principal executive body of the University. The composition of the Executive Council consists of 2 nominees from the State, who are usually Secretary (Education) and Secretary (Finance). Hence, the State Government has sufficient representation on the Executive Council.

21. The Executive Council of Goa University in its meeting held on 23.09.2022 approved payment of Rs. 7,850/- for six months based on paragraph 3(b) of OM dated 08.08.2018. In the peculiar facts of the case, considering the fact that the petitioner has worked in the post of Finance Officer from 5.08.2021 to 15.07.2022 by holding additional

charge of the said post, the petitioner's case would be governed by paragraph 3(a) entitling him to arrears of Rs. 5,50,673/-. The Executive Council has powers to make appointments and fix their emoluments. It has powers to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the University. Hence, respondent no.2 is liable to pay the higher pay scale of the post of Finance Officer to which the petitioner is held entitled.

22. The decision of the Executive Council to apply the OM dated 08.08.2018 for determining the petitioner's entitlement is just and fair. The University had to apply some rational criteria till such time a decision is taken by the State regards the adoption of the OM dated 08.08.2018. However, in doing so, there was no reason then for the University to not have granted the petitioner's entitlement in terms of paragraph 3(a). In the peculiar facts of this case, the State Government ought to have approved the petitioner's entitlement in terms of paragraph 3 (a) of the OM dated 08.08.2018.

23. The judgments relied on by the learned Addl. Government Advocate as well as by the learned counsel for the petitioner are distinguishable on facts and hence do not merit consideration.

24. The petition is allowed in terms of prayer clause (a). The respondent no.2 is directed to pay the arrears of Rs. 5,50,673/- within a period of three months. Rule is made absolute.

25. Petition stands disposed of. No costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.