

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 130 OF 2022**

Elizabe de Maria A. J. de S. Simao  
Rodrigues, major of age, 62 years of  
age, H. No. 4/255/11, Flat No. 11,  
Neugi Nagar, Rua de Ourem, Portais,  
Panaji Goa.

... PETITIONER

Versus

1. State of Goa, Through Chief  
Secretary, Secretariat, Alto  
Porvorim, Bardez Goa.
2. Department of Art and Culture,  
Through its Director,  
Sanskruithi Bhavan, Patto,  
Panaji Goa.
3. Department of Accounts,  
Through its Director, Faizanda  
building, Panaji Goa.

... RESPONDENTS

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Mr. S.D. Lotlikar, Senior Advocate with Ms. Priyadarshini  
Volvoikar, Advocate for the Petitioner.

Mr. Manish Salkar, Government Advocate for the Respondents.

**CORAM: BHARATI DANGRE &  
NIVEDITA P. MEHTA, JJ.**

**DATED: 6<sup>th</sup> AUGUST 2025**

**ORAL JUDGMENT:** (per BHARATI DANGRE, J.)

1. The Petitioner, appointed as Junior Library Assistant in the  
year 1987 has attained the age of superannuation in the year 2018.

He is aggrieved by the distinct orders passed by his

Employer i.e. Respondent No. 2, thereby declaring that the benefit of 2<sup>nd</sup> MACPS conferred on him w.e.f. 01.09.2008 is wrongly assigned and further directing recovery of the said amount. He is also aggrieved by the conferment of the 2<sup>nd</sup> MACPS by order dated 26.07.2019 w.e.f. 30.03.2010.

The Petitioner is also aggrieved by the order dated 04.02.2019, thereby withdrawing the benefit and the subsequent order dated 26.07.2019, thereby fixing the date of 2<sup>nd</sup> MACPS as 30.03.2010 instead of 01.09.2008.

The Petitioner is also aggrieved by the communication dated 04.05.2020, issued by the Goa State Central Library, ordering the recovery of an amount of Rs.26,472/- from the Petitioner on account of the revision of the 2<sup>nd</sup> financial upgradation of the MACPS w.e.f. from 30.03.2010 instead of 01.09.2008.

2. We have heard the learned Senior Counsel, Mr. Lotlikar for the Petitioner and the learned Government Advocate, Mr. Salkar, representing the Respondents.

By consent of the respective Counsel, the Petition is taken up for final hearing by issuing 'Rule', which is made returnable forthwith.

3. The Petitioner was appointed as Junior Library Assistant by the order issued by the Deputy Director of Education on 24.11.1987 in the pay scale of Rs.975-25-1150-EB-30-1540 along

with usual allowances as admissible against the post created on 27.08.1987. The order of appointment referred the appointment as 'Ad-hoc' with a declaration that it shall not bestow any claim for regular appointment or seniority.

Respondent No. 3 has offered an explanation for the nomenclature 'Ad-hoc' in the affidavit in reply by stating that the Petitioner, along with others, was appointed as Junior Library Assistant, at the time when there was a requirement for one year course of diploma, after passing of the SSC examination.

The new Recruitment Rules were thereafter published in the Government Gazette on 10.03.2000, thereby replacing the earlier qualification of one year degree/diploma in Library Science with six weeks Library certificate course.

4. The post of Junior Library Assistant held by the Petitioner was re-designated as 'Librarian Grade-III' by an order dated 15.12.2000. Since the Petitioner continued in service, he was conferred with the benefit of 2<sup>nd</sup> MACPS w.e.f. 01.09.2008 by order dated 30.03.2012.

The said order specifically mention that on the recommendation of the Departmental Screening Committee, the Petitioner was placed in the pay band of Rs.5,200-20,200 + GP Rs.2,400 and was conferred with the said benefit by granting GP of Rs.2,800 w.e.f. 01.09.2008. However, by order dated 01.11.2002, once again, on

the recommendation of the Departmental Selection Committee, the Ad-hoc appointments of the Librarian in Grade-III were regularised, which included the Petitioner, but this was done w.e.f. 10.03.2000 and the date of publication of the Recruitment Rules was considered to be the date of the regular appointment of these Librarians including the Petitioner, who found himself at Serial No. 7 of the order dated 01.11.2002.

The Petitioner immediately raised a protest in respect of fixing of the date of regularisation and was even constrained to approach this Court by filing a Writ Petition No. 297 of 2006, which came to be disposed of on 22.11.2012 as the grievance of the Petitioner was satiated as he was conferred with the Grade Pay.

5. Mr. Lotlikar, the learned Senior Counsel for the Petitioner would submit that it is too late in the day to withdraw the said benefit as the benefit of 2<sup>nd</sup> MACPS was granted w.e.f. from 01.09.2008, after being recommended by the Departmental Screening Committee and in any case, the Petitioner is not to be found at fault for the said benefit being bestowed on him.

6. Mr. Salkar, however, relying upon the affidavit in reply filed on behalf of Respondent No. 3, would submit that the date for counting of regular service as per the MACPS norms should be from the date of regular appointment and therefore, it was erroneous on the part of the Department to compute his length of

service w.e.f. 12.10.1987 and it ought to have been computed from the year 2000 i.e. when the regularisation was granted.

7. On considering the rival contentions placed before us by the respective Counsel, in the sequence of events placed before us, it is evident that the Petitioner was appointed on Ad-hoc basis w.e.f. 12.10.1987, however, the order merely referred to his appointment as 'Ad-hoc' without justifying it to be so, as it does not specify that the Petitioner or other similarly situated persons were not qualified to be appointed to the said post and in fact, at the relevant time, the Petitioner possessed a diploma after SSC, which was prescribed as essential qualification and it is not the fault of the Petitioner that the new Recruitment Rules were published in the official Gazette on 10.03.2000, thereby prescribing the qualification of SSC or equivalent along with six weeks Library certificate course as an essential qualification and desirable qualification to be the degree/diploma in Library Science of recognized University.

8. The Petitioner could not be said to be at fault, when he was appointed on Ad-hoc basis after following the due process of selection, but the Department chose to consider his regularisation from the said date when the Recruitment Rules were published in the official gazette i.e. from 10.03.2000. For this reason, it cannot be said that the appointment of the Petitioner was 'Ad-hoc' in that

sense as it was perceived as stop gap arrangement and in fact, from the sequence of events, it can clearly discerned that the Petitioner continued to render his services along with others, being appointed as Assistant Librarian throughout, and his services were never discontinued. He continued to be appointed in the regular pay scale against the existing vacancies and therefore, in our considered opinion, it is a wrongful assumption of the Respondents that his appointment was purely 'Ad-hoc'.

9. Undisputedly, Mr. Salkar, has invited our attention to the office memorandum dated 19.05.2009 published by the Government of India as regards the fixation of MACPS and in particular clause 9, which has defined 'Regular Service' for MACPS to commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment or on absorption/re-employments. The said clause clarify that the service rendered on adhoc/contract basis before regular appointment or pre-appointment training, shall not be taken to be reckoned.

However, looking to the facts of the case, since we are of the view that except describing the appointment of the Petitioner to be 'Ad-hoc', we do not find any contingency in the appointment, to perceive it to be Ad-hoc i.e. the stop gap arrangement, we do not find any justification in conferring the benefit from the date of

regularisation as ultimately, the MACPS benefit deserve to be conferred on an employee on account of continuous length of service by the Petitioner and because no promotional avenue is available to him and to do away with the stagnation.

It is on the recommendation of the Screening Committee that the Petitioner was conferred the benefit of 2<sup>nd</sup> MACPS w.e.f. 01.09.2008 by an order dated 30.03.2012 and therefore, to reverse this order at a later point of time and seek recovery of the said amount, without the Petitioner having played any role in the conferment of the said benefit from 2008, in our opinion, cannot be justified.

10. Mr. Lotlikar has rightly placed reliance upon the decision of the Apex Court in the case of **State of Punjab & Others Vs. Rafiq Masih (White Washer) & Others**<sup>1</sup>, where the Apex Court has deprecated such decisions of recovery of amounts paid in access, without the fault of the recipient. The said decision follows the long line of decisions right from **Shyam Babu Verma Vs. Union of India**<sup>2</sup> as well as the decision in the case of **Syed Abdul Qadir Vs. State of Punjab**<sup>3</sup>. The relevant observations of the Supreme Court are to the following effect:-

*“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue*

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1 (2015) 4 SCC 334

2 (1994) 2 SCC 521

3 (2009) 3 SCC 475

*of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:-*

*(i) Recovery from employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

*(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

**11.** In the wake of the above, since we find that the Petitioner has already superannuated from service and it is not the case of the Respondents that he was in any way at fault in procuring the benefit of conferment of the 2<sup>nd</sup> MACPS w.e.f. 01.09.2008, but it is the Screening Committee which has permitted to cross the benchmark and conferred the benefit of MACPS, and since we find

that the appointment of the Petitioner as 'Ad-hoc' was merely to describe the nomenclature and was not an Ad-hoc appointment in that sense as contemplated as a fortuitous appointment, we deem it appropriate to allow the Writ Petition by quashing and setting aside the impugned order.

The amount of Rs.26,472/-, if already recovered, shall be released in favour of the Petitioner, within a period of four weeks, at the time when his pension shall be re-worked by considering his date of 2<sup>nd</sup> MACPS to be 01.09.2008.

**12.** Rule is made absolute in the aforesaid terms.

**NIVEDITA P. MEHTA, J.      BHARATI DANGRE, J.**