



Shakuntala/Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.311 OF 2015

Shri Anant S. Patil,
Junior Programmer,
Department of Computer Science
S.P. Chowgule College,
Margao-Goa

...PETITIONER

VERSUS

1) State of Goa, through,
Directorate of Higher Education,
having office at DTE Complex,
Alto Porvorim, Goa.

2) Goa University,
Through its Registrar,
Taleigao Plateau, Goa.

3) The Principal,
Smt. Parvatibai Chowgule College
of Arts & Science, Margao-Goa.

.....RESPONDENTS

Mr. Nitin Sardessai, Senior Counsel with Ms. Gautami Kamat, Advocate for the Petitioner.

Mr Manish Salkar, Government Advocate for Respondent No.1.

Ms A. A. Agni, Senior Advocate with Mr Junaid Shaikh, Advocate for Respondent No.2.

Mr. Prasheen Lotlikar, Advocate for Respondent No. 3.

CORAM : BHARATI DANGRE &

NIVEDITA P. MEHTA, JJ.

DATE : 27th MARCH 2025

JUDGMENT: (*Per Nivedita P. Mehta, J.*)

1. The instant Writ Petition has been filed by the petitioner praying for directions from this Court to quash and set aside the Order dated 02.03.2015 issued by the respondent no.1, and that the *status quo* in terms of the service conditions applicable to the petitioner as were prevalent for over 24 years prior to the issuance of the Impugned Order be maintained. This Court vide order dated 27.04.2015 had granted *ad-interim* stay of the Impugned Order and directed that the benefits available to the petitioner based on the order granting *ad-interim* stay shall be subject to the result of the petition.

2. Briefly, the factual background of the instant Writ Petition is as follows:

2.1. The petitioner was appointed by respondent no. 3 to the full-time post of Programmer in the subject of Computer Science vide order dated 06.07.1988. Subsequently, the appointment of the petitioner was confirmed vide communication dated 05.06.1990.

2.2. It is pertinent to note that as per the letter of appointment dated 06.07.1988, the service conditions of the petitioners would be governed by the provisions of the Goa University Act, 1984 and the Statutes, Ordinances and Regulations of the governing body, not inconsistent with the Statutes, Ordinances and Regulations of the

University.

2.3 On 19.08.1992, a letter was addressed to the petitioner by respondent no. 2 stating therein that the post of Junior Programmers had been categorised as 'Supporting Academic Staff'. This categorisation was put into effect after respondent no. 2 addressed a letter dated 14.01.1993 to respondent no. 3 which specified that such categorisation would be retrospective in effect from the initial date of appointment.

2.4 On 29.03.1993, respondent no.1 addressed a communication to respondent no.3 seeking clarification as to whether 'Supporting Teaching Staff' is to be classified as teaching staff or Non-teaching staff. Vide letter dated 26.04.1993, respondent no.3 replied that the post of Junior Programmer is to be considered as 'Academic or Teaching Posts'. Respondent no. 3 vide reply dated 26.04.1993 clarified that the post of Junior Programmer is considered as an 'Academic or Teaching Post' by Goa University.

2.5 Respondent no. 1 accepted the classification and proceeded to state that since Goa University is competent to accord approval for the Teaching/Academic Staff of the College, no separate approval from the Directorate of Education or the State Government is necessary.

2.6 On 12.02.2009, respondent no. 1 addressed a letter to respondent no. 3 taking a contrary view, stating therein that the

petitioner, being a member of the non-teaching staff, is not eligible to avail vacation at par with the teaching faculty as their services are governed by the CCS Rules, and that this facility is not available to the non-teaching staff. In this respect, a clarification was sought from respondent no.3 as to how the petitioner had been allowed to avail the benefit of vacation at par with the teaching faculty. The letter specified that in case, such availing of vacation is in contravention of the statutory norms, the period of vacation may be debited to his earned leave account. Further, the letter categorically clarifies that it may be ensured that no one may avail benefits available to both the teaching faculty as well as the non-teaching staff.

2.7 The letter dated 12.02.2009 was challenged before this Court in Writ Petition 578 of 2010 and was quashed and set aside vide order dated 07.09.2010. The order records that the letter dated 12.02.2009 was passed without affording an opportunity to the petitioner to be heard. The order specifies that once the respondents have heard the petitioner, they may proceed to pass appropriate orders and that all contentions raised in the Writ Petition shall remain open.

2.8 On 11.07.2011, respondent no.1 addressed a letter to the petitioner, calling upon the petitioner to appear before respondent no.1 on 19.07.2011. A copy of this letter was also addressed to respondent no.3. The petitioner raised preliminary objections against the letter and claimed that the Director of respondent no.1 was personally biased against the petitioner. The hearing concluded on

09.08.2011. The minutes of this meeting were enclosed with a letter dated 06.09.2011 from respondent no.1 addressed to the petitioner. On 29.02.2012, the petitioner submitted his objections to minutes of the meeting dated 09.08.2011. There were no adverse orders passed after the conclusion of the meeting until 22.09.2014.

2.9 On 22.09.2014, respondent no.1 addressed a letter to the petitioner stating that the Secretary, Higher Education had scheduled a meeting on 07.10.2014 to discuss the service conditions of the petitioner. The petitioner addressed a reply to the Secretary, Higher Education, containing all the relevant facts of his case. A copy of the reply was also sent to respondent no.1.

2.10 On 13.10.2014, the Secretary, Higher Education issued a notice dated 13.10.2014 to the petitioner, asking him to be present on 28.10.2014 so that appropriate orders may be passed in view of the order dated 07.09.2010 of this Court in Writ Petition 578 of 2010.

2.11 On 09.12.2014, the petitioner appeared before the Secretary, Higher Education and raised a preliminary objection to the jurisdiction of the Secretary, Higher Education to hear the matter. Notice dated 13.10.2014 was withdrawn vide an order dated 09.12.2014 stating that the Secretary, Higher Education was not the competent authority to decide the matter.

2.12 On 23.01.2015, the petitioner filed an application under the Right to Information Act, 2005 before respondent no.3 seeking

information as to whether the petitioner had been marked absent on the muster roll for the winter vacation, summer vacation, Ganesh break, and Christmas break since April 2009 till the date of the application. The petitioner also sought certified copies of the college muster roll containing his attendance records from April 2009 till the date of the application.

2.13 On 07.02.2015, the Public Information Officer of respondent no.3 issued a response to the petitioner stating that he had been marked absent for the winter vacation, summer vacation, Ganesh break, and Christmas break since April 2009 and furnished certified copies of the muster roll.

2.14 On 02.02.2015, the petitioner addressed another application under the Right to Information Act, 2005 seeking information as to whether the orders of this Court in Writ Petition 578 of 2010 had been complied with and whether respondent no.3 had allowed the petitioner to avail the benefits available to him before the issuance of the two communications that were set aside by this Court vide order dated 07.09.2010 in Writ Petition 578 of 2010. The Public Information Officer, vide reply dated 26.02.2015, communicated to the petitioner that the Principal of respondent no.3 was awaiting directives from respondent no.1.

2.15 On 02.03.2015, respondent no.1 issued the Impugned Order stating, *inter alia* that the appointment of the petitioner was categorised as Supporting Academic Staff in 1992 and subsequently

clarified as non-teaching staff in the year 2003. Further, the order concludes that the order dated 12.02.2009 of the respondent stands valid.

3. Aggrieved by the Impugned Order, the petitioner has sought relief from this Court.

4. To substantiate the stance of the petitioner, Mr. Nitin Sardesai, learned senior counsel for the petitioner made the following submissions:

4.1 The post held by the petitioner was classified as a teaching post and the petitioner discharged his duties as teaching staff. Further, he availed the corresponding benefits awarded to the teaching staff, particularly in the matters of availing of vacation which the petitioner enjoyed the benefit of until 2009.

4.2 There was no compliance with the principles of natural justice and fair play before the issuance of the communication dated 25.02.2009.

4.3 The petitioner made various representations with regards to the issue of change of status from teaching staff to non-teaching staff and further requested the respondents to forward necessary information as to whether resolution of Academic Council dated 16.04.2003 can be made applicable to the petitioner since the petitioner's appointment was made prior to the resolution dated 16.04.2003.

4.4 The respondents by various communications had specifically accorded, approved and confirmed the status of the petitioner as 'Supporting Teaching/Academic staff' and there was no withdrawal of such status.

4.5 Respondent no. 3 could not have noted the absence of the petitioner since the communication dated 12.02.2009 and 25.02.2009 were quashed by this Court and the status of the petitioner stood restored, whereby he continued to enjoy all benefits as had been in subsistence.

4.6 The petitioner was also informed by respondent no.3 that they are awaiting the directives from respondent no.1 as the College is receiving grant in aid from respondent nos.1 and 2. However, respondent no.1 had restored and revived the communication dated 12.02.2009 and the same was informed to the petitioner vide letter dated 02.03.2015.

4.7 On 06.07.1988, the petitioner was appointed as Junior Programmer in the College of the respondent no.3 and the appointment order of the petitioner mentioned that the petitioner was appointed as a full time Programmer on probation for one year and the petitioner's service will be governed by the provisions of Goa University Act and the Statute, ordinances, regulations and Rules therein.

4.8 The Goa University Act, 1984, and the Statutes, Ordinances, Regulations and Rules are applicable only to the teaching staff and the non-teaching staff are governed by the CCS

Rules. Subsequently, the petitioner's services were confirmed as a Junior Programmer with retrospective effect and vide letter dated 19.08.1992, Goa University, i.e. respondent no.2, approved the petitioner as 'Supporting Teaching/Academic staff', however, the letter does not say that the CCS Rules will be applicable to the petitioner. On 29.03.1993, the Government sought clarification from the respondent no.3, whether the petitioner should be regarded as Supporting Teaching/teaching or non-teaching staff. This clarification sought by the Government itself demonstrates that the petitioner was classified as teaching staff. Respondent no.3 clarified that the petitioner is not non-teaching staff and continued to treat him as teaching staff.

4.9 The petitioner was not informed about the decision by the Academic Council wherein it was resolved that the Junior Programmers in College are to be considered as non-teaching staff and the petitioner continued to avail vacation as well as holidays that were applicable to the teaching staff.

4.10 In 2009 for the very first time, the petitioner was informed by the Government that the Junior Programmers are non-teaching staff and the vacation availed shall be debited to the petitioner's Earned Leave Account, and the tenor of the letter suggested that the same has to be applied retrospectively. Petitioner had challenged these two communications, i.e. letters dated 12.02.2009 and 25.02.2009 by preferring a Writ Petition No. 578 of 2010 wherein this Court had quashed and set aside the said communications vide judgment and order dated 07.09.2010.

4.11 After a gap of approximately 4 years, the Director of Higher Education has passed the Impugned Order. The Impugned Order was not a reasoned one and no findings of any nature were given therein, which is bad in law.

4.12 It is contended that there was no fraud or misrepresentation alleged against the petitioner and the petitioner continued to avail the benefits of vacation as available to the teaching staff, merely, on a misunderstanding/misrepresentation of rules/negligence of the respondents and therefore, no recovery can be initiated against the petitioner for availing the vacation and treating the same as earned leave.

4.13 Reliance is placed on the rulings in *Thomas Daniel V/s. State of Kerela and others*,¹ and *Micaela Gracey De Olivera Vs. CCP*².

5. Ms Agni, the learned senior counsel, representing respondent no.2 - Goa University made the following submissions:

5.1. At no point in time has Goa University accepted the post of Junior Programmer as teaching staff and therefore, there was no question of the petitioner being made liable to discharge the duties of teaching staff. Nowhere in the petition has the petitioner spelt the duties of the teaching staff which he has discharged.

5.2. The petitioner was appointed as a Junior Programmer in the subject of computer science on the pay scale of Rs. 1740-60-

¹ 2022 SCC OnLine, 536

² Writ Petition No. 336/2022 decided on 08/07/2024

2700-75-300 on 6.07.1088. It was when respondent no.3 started a B.Sc. (Computer Science) course that the need for two individuals in the petitioner's post arose. Subsequently, vide communication dated 19.08.1992, respondent no.2 granted approval to respondent no.3 to classify junior programmers as Support Teaching Staff with retrospective effect from the date of initial appointment and therefore the excess amount was to be recovered in installments. It was informed by respondent no.2 in unequivocal terms that the Junior Programmers are to be considered at par with non-teaching staff.

5.4. Respondent no.1 had also informed the respondent no.3 vide communication dated 08.12.2003 that Junior Programmers, being non-teaching staff, were entitled to earned leave but not entitled to vacation. The petitioner was granted ACPS (Assured Career Progression Scheme) with effect from 6th July 2000 as non-teaching staff. The teaching staff are not entitled to ACPS or MACPS. Respondent no.1 vide communication dated 12.02.2009 had asked respondent no. 3 to debit the vacation period availed by the petitioner from his earned leave balance.

5.5. On 14.01.2019 the petitioner addressed a letter to respondent no.3 requesting to implement the ACP Pay Scale, which were made applicable to the non-teaching staff and thus the petitioner accepted the fact that his post was classified as non-teaching staff.

5.6. The Deputy Registrar of respondent no.2 vide letter dated 14.01.1993, with a reference to the letter of the Principal dated 13.11.1992 informed respondent no.3 that they are permitted to declare the existing Junior Programmer as Supporting Teaching Staff

with retrospective effect from the date of their initial appointment. It was also clarified that the Supporting Teaching Staff cannot be taken as equivalent to or the same as a teaching staff or Academic staff. The duties of the teaching staff or the Academic staff are different from that of the support staff.

5.7. The petitioner was appointed as Supporting Academic Staff, which means he is to support the teaching staff and it is nowhere mentioned that he was appointed as teaching staff. The duties of teaching staff of the College, which is affiliated to the Goa University, are spelt out in Statute SC-5. The teaching staff are required to deliver lectures to students and complete the workload as set out in the Statutes of the University. The teaching staff must complete the period as set out in the previously mentioned Statutes of Goa University. The duties of the petitioner as a Junior Programmer are technical and by way of supporting staff to the teaching staff.

5.8. Respondent no.2 has informed the petitioner that the post of Junior Programmer is classified as a supporting staff to the teaching or academic staff and further classified at par with the non-teaching staff, and therefore, the question of the petitioner being made liable to discharge the duties as the teaching staff does not arise. The petitioner has nowhere demonstrated that the duties of the teaching staff have been discharged by him. Hence, the claim of the petitioner that he was conferred the benefits applicable to the teaching staff is totally incorrect and based on incorrect assumptions and the petitioner was never awarded any benefits in the matter of

availing of the vacation, nor the continuation of the same till the year 2009. Respondent no.2 had informed respondent no.1 that the Academic Council, in its meeting held on 16.04.2003, had resolved that Junior Programmers are to be considered at par with non-teaching staff of colleges.

5.9. The petitioner had accepted his appointment order, which deemed him to be the support staff to the teaching staff, and therefore, the allegations of violation of principles of natural justice, illegality, and arbitrariness do not arise.

5.10. There is no reclassification or change of classification. The petitioner, from the inception to the post of Junior Programmer, has been classified as support staff to the teaching/academic staff, which is not at par with teaching or academic staff, and therefore, the changed decision to visit the petitioner with serious civil consequences is incorrect. The petitioner had accepted the appointment order showing him to be a support staff of the teaching staff, hence the violation of principles of natural justice does not arise. The petitioner has not performed the duties of teaching staff, and merely because he availed benefits as alleged by him would not make him a teaching staff. The classification of the petitioner as supporting staff to the teaching staff dates back as early as the years 1988-1992. There is no correlation between earned leave and the classification of the petitioner as a supporting staff to the teaching staff. The petitioner was labouring under the misconception that reclassification was done in 2009. The petitioner's appointment

mentioned him to be a supporting staff to the teaching staff. Hence, there is no merit in the petition.

6. The learned Government Advocate, Mr. Salkar, appearing on behalf of respondent no.1, adopted the arguments advanced by the learned senior counsel on behalf of respondent no.2, and further submitted as under:

6.1. The petitioner has, admittedly, never discharged the duties as a teaching staff as given under the provisions of the Goa University Act, 1984, the Statutes and Ordinances. Therefore, awarding the benefits applicable to the teaching staff, particularly the availability of vacation, is unacceptable.

6.2. The petitioner wrongly availed the benefits of the teaching staff by availing the vacation which he was never entitled to. Moreover, he has also asked for a grant of MACP, which is made applicable to the non-teaching staff. The petitioner has also been granted ACP meant for non-teaching staff. The ACP is not made applicable to the teaching staff.

6.3. The petitioner has taken undue advantage of the availability of vacation, which is exclusively available to the teaching staff.

6.4. Therefore, the petitioner's benefits, which he is entitled to as a staff of non-teaching, shall be paid after adjusting the vacations taken by the petitioner as earned leave and no exemption from recovery may be claimed in light of the order of this Court dated 27.04.2015 in the instant petition granting ad-interim stay.

6.5. Summarily, the petitioner cannot, at the same time, avail the benefits as available to both the teaching as well as the non-teaching staff.

7. Mr. Prasheen Lotlikar, learned counsel appearing on behalf of respondent no. 3 submitted as given hereunder:

7.1. The petitioner was appointed to the post of full-time programmer in the subject of computer science and was informed that his services will be governed by the provisions of the Goa University Act, 1984 and the Statutes, Ordinances, Regulations, and Rules of the Governing Body not inconsistent with the Act, Statutes, Ordinances Regulations and the Rules of the University. The petitioner was put to notice at the time of confirmation that his appointment is subject to the terms and conditions as laid down by the respondent nos.1 and 2

7.2. The petitioner is interpreting the duties of teaching staff wrongly, and he was never assigned any teaching duties in the department of computer science. The petitioner was assigned duties to be performed by a Junior Programmer, such as installation of software, configuration of the network, writing computer programs as per requirement, maintaining inventories, etc. and other duties performed by non-teaching staff.

7.3. Respondent no.3 has permanent affiliation to the respondent no.2 and is recognized by respondent no.1; hence governed by the orders of respondents nos.1 and 2.

7.4. The post of Junior Programmer has been classified as support staff to the teaching/academic staff from the inception, and the same is not at par with the teaching or academic staff. The University and College Teachers Association of Goa (UCTAG) is an association of teaching staff working in Goa University and colleges affiliated to the Goa University. The petitioner wrongly approached UCTAG as he does not fulfil the qualification to be a teaching staff and is trying to gather sympathy by involving them. The petitioner took it for granted that his services are equivalent to the teaching staff and are eligible for Summer/Winter vacations and Chaturthi/Christmas breaks, and availed the same, which the petitioner was never eligible for.

7.5. The petitioner has wrongly interpreted the communication dated 26.02.2015 given by the PIO of the respondent no.3 to the petitioner. The respondent no.3 has not marked the petitioner as absent during vacation/s, but his absence was noted. The respondent no.1 concluded that the decision dated 12.02.2009 stands to be in order and the respondent no.3 should act accordingly. The decision does not warrant any interference, as from the very inception of the appointment, the petitioner was aware that his appointment order mentions him as supporting staff to the teaching / academic staff.

7.6. The respondent no.3 in his reply has contended that the post held by the petitioner of the Junior Programmer in the Department of Computer Science was never classified as being a teaching post and the petitioner was never made to discharge the

duties of the teaching staff and therefore, the question of awarding the benefits applicable to the teaching staff particularly in the matters of availment of vacation is out of question. Hence, the claim of the petitioner that the petitioner's post was classified as a teaching post is unsustainable in the facts of the case.

8. Having heard the learned Senior Counsel appearing for the petitioner and the learned counsels for the respondents, rival contentions now fall for our determination.

9. The primary controversy in issue that arises for consideration in the instant Writ Petition is whether the post of the petitioner may be classified as a teaching or non-teaching. Such classification would determine the nature of benefits as well as service conditions available to the petitioner, specifically, benefits in relation to vacation.

10. Before delving into the various instances of correspondence and executive action undertaken by the respondents that have transpired leading up to the filing of the instant Writ Petition, it is important that we understand the import of the terms teaching and non-teaching staff. The ordinary import of the terms is that a person, who, in the course of their employment renders the duties of a teacher would be teaching staff and as a *sequitur*, a person whose nature of job doesn't involve rendering the duties of a teacher, cannot be stated to be a member of the teaching-staff and would consequently fall under the head of non-teaching staff.

11. In this regard, we may look at the definition of ‘teacher’ as given under the Goa University Act, 1984 which has been extracted hereunder for convenience:

“(18) "teachers of the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instruction or conducting research in the University or in any college or institution maintained or recognised by the University and designated as such by the Ordinances;”

12. A more exhaustive definition of the term ‘teacher’ has been contemplated in the text of the Statutes of the University, specifically in Statute SA-1, the relevant portion of which has been extracted hereunder for convenience:

“(xxxix) "Teachers of the University for the purpose of statutes governing terms and conditions of service of teachers appointed in the University" means Professors, Readers, Lecturers and such other persons as may be appointed for imparting instructions or conducting research in the University or in any college or institutions maintained by the University and designated as such by the Ordinances.

(xxxvii) "Teacher" for the purpose of statutes governing terms and conditions of services of teachers appointed in Non-Government Constituent colleges and Affiliated colleges in the Faculties of Arts (including Education, Science, Commerce and Law means - fulltime Professor, Associate Professor, Reader, Lecturer, Demonstrator, Tutor, Master of Method or Director of Physical Education, if any, in any conducted, constituent or affiliated college or recognized institution in the University include

(a) Part-time Professor, Associate Professor, Reader, Lecturer, Demonstrator, Tutor, Master or Method or Director of Physical Education, if any, in any conducted constituent or affiliated college or recognized institution in the University, provided he/she imparts instructions for at least 4 hours per week.

(b)

(xxxiii) "Teacher" for the purpose of statute relating to the rules and procedures for Election of members of the Statutory and Non-Statutory Bodies of the University means a full-time Professor, Associate Professor, Reader, Lecturer, Demonstrator, Tutor, Master of Method, Director of Physical Education, Director of Sports, Director of Students Welfare and Cultural Affairs, Director of Extra-Mural Studies and such other persons as may be appointed for imparting instructions or conducting research in any affiliated College or the University teaching department.

In addition to what is mentioned in (a) above, a "Teacher" shall also include - a part time Professor, Associate Professor, Reader, Lecturer, Demonstrator, Tutor, Master of Method, Director of Students Welfare and Cultural Affairs, Director of Extra-Mural Studies and such other persons as may be appointed for imparting instructions or conducting research in any affiliated colleges or a University teaching department provided he/she imparts instructions for at least 4 hours per week.

The term "Teacher" shall include all permanent, temporary, acting and officiating teachers but will not include the contributory/visiting teachers.

No person who is not designated as a teacher under clauses (a) and (b) of this statute shall be a teacher for the purpose of election."

13. Further, the duties, service conditions and mode of appointment of a teacher have been set out in the text of the Statutes and has been extracted hereunder for convenience:

“SB-5 Statute Governing Terms and conditions of Service of Teachers Appointed in the teaching Departments/Centres/Institutes of the University.

SB-5 1 Short Title, Scope and Commencement:

This Statute may be called statute governing terms and conditions of service of teachers appointed in the teaching Departments/Centres/Institutes of Goa University. The terms and conditions of service of teachers shall apply to teachers appointed in a time-scale of pay. The statute came into force with effect from 23.11.1993 the date on which the same was assented to by the Visitor. For details see schedule SSB-1.

SB- 5 (Effective from 19th June, 2013) Statute Governing Terms and conditions of Service of Teachers Appointed in the teaching Departments/ Centres/ Institutes of the University:

SB- 5 (i) Duties of the Teachers:

(a) A Teacher shall comply with the provisions of the Act, Statutes, Ordinances, Regulations, Rules and other directions or orders issued there under from time to time by the University.

(b) A Teacher shall engage classes regularly and punctually and impart such lessons and instructions and do such internal assessment/examination evaluation work as the Head of the Department shall allot to him from time to time and shall not remain absent from work without prior permission of the competent authority or grant of leave. No remuneration shall be payable to the teachers from internal assessment/home examinations conducted by the Department in the University.

(c) A Teacher shall help the Head of the Department to enforce and maintain discipline among the students.

(d) A Teacher shall teach the entire syllabus prescribed for the course during the prescribed working days.

(e) A Teacher shall perform co-curricular and extra-curricular work related to the University as may be

assigned to him from time to time by the Vice-Chancellor or other competent authority.

(f) Head of the Department/Dean of the Faculty shall be on duty during vacation. In case the Head of the Department desires to avail of vacation/part of thereto, the University shall appoint on the recommendation of the Head of the Department a senior most teacher and failing him/her the next senior teacher in the Department to officiate as Head of the Department. In case the Dean desires to avail of the vacation, the Vice-Chancellor shall appoint an officiating Dean as provided in the Statute SA-7 their respective duties shall be prescribed by the University from time to time.

Schedule SSB -1

SSB-1 Terms and Conditions of service of University Teachers appointed in the Department/Centres/ Institutions of the Goa University.

SSB-1 (i)(a) All the teachers of the University shall, in the absence of any agreement to the contrary, be governed by the terms and conditions of service as specified in the Statutes, the Ordinances and the Regulations of the University.

(b) Pay-scale, qualifications, cadre advancement, appraisal of performance of the teachers appointed in the Goa University shall be as prescribed by the Govt. of Goa and as recommended by the Goa University in consonance with the guidelines provided by the University Grants Commission from time to time.

(c) Every teacher of the University shall be appointed on a written contract, in the prescribed form B -1 or B - 2 as the case may be. A copy of the contract shall be deposited with the Registrar.

SSB-1 (ii) Mode of Appointment :

University teachers shall be appointed under Statute SB-2 on the recommendation of the appropriate selection committee. They will be appointed by the Executive Council to the post of Professor, Reader and Lecturer. The composition of the Selection Committee

shall be as specified in the Statute SB-2(ii) and as amended from time to time.”

14. Upon perusal of the relevant policy as extracted in the preceding paragraphs, it is clear that the fundamental nature of work of the petitioner is distinct from that of a teacher. The petitioner has not been appointed in a post that involves imparting instructions to students or conducting research. At no point in time, was the petitioner assigned lectures or practicals. Further, the petitioner's name never even reflected in the teaching workload of the Computer Science Department.

15. In rendering his service as a Junior Programmer, the petitioner's duty, *inter alia*, was restricted to making arrangement for the smooth conduct of practical experiments by the students, installation of softwares, configuration of networks, writing computer programs and maintaining inventories. It is demonstrably true that none of the tasks undertaken by the petitioner are that of the teaching staff. Even the mode of appointment for the petitioner differs from the teaching staff.

16. A supporting teaching staff cannot be taken as equivalent to or the same as a teaching staff. The teaching staff is required to deliver lectures, complete the workload and the contact hours as set out in the University Statutes. Whereas the duties of a Junior Programmer are of a technical nature which are in the nature of supporting staff to the teaching staff. In fact, the body of the petition is silent as to whether the petitioner has ever conducted a lecture or by any positive action, rendered his duty consistent with what would be required of teaching staff.

17. It is an undisputed fact that the petitioner has availed the benefit of the Assured Career Progression Scheme (hereinafter referred to as 'ACPS'), which only non-teaching staff is entitled to. The benefit of ACPS is not available to the teaching staff. It is therefore clear that the petitioner seems to be trying to straddle two lanes simultaneously in order to reap the benefit of both. It would be a fallacious inference bordering on the absurd that one person who in the capacity of an employee can only do the job of one person, but for such duty rendered, be allowed the benefit of two posts.

18. Due to the petitioner's retirement on superannuation on 31.01.2025 during the pendency of the instant Writ Petition, it was argued before this Court by the learned senior counsel for the petitioner, that in light of the position taken by the Hon'ble Supreme Court in *Thomas Daniel* (supra) and *Michaela Gracey de Olivera* (supra), recovery may be disallowed. Summarily, the principle elucidated in the two rulings that the learned counsel seeks to draw our attention to is that recovery cannot be effected because the excess amounts had been received without any fraud or misrepresentation on the part of the employee. However, we find this proposition is distinguishable in the present factual matrix given that vide order dated 27.04.2015, this Court clearly specified that any benefits that petitioner may take based on the *ad-interim* relief granted to him shall be subject to the result of the petition. The petitioner, having been made well aware of the fact that his eligibility to enjoy benefits is contingent on the decision of this Court, cannot now seek exemption stating that since he has retired, no recovery may be made. Whether or not he stands eligible to the benefit has been *sub judice* for the

period of pendency of the instant Writ Petition. It would be a subversion of this Court's judicial exercise that was initiated at the behest of the petitioner, to now allow exemption under such a defense.

19. The order of this Court in Writ Petition 578 of 2010 dated 07.09.2010 had set aside letter dated 12.02.2009 for want of compliance with the principles of natural justice, which has, since been restored by the Impugned Order. The order stipulated that all contentions of the parties remained open and that respondent no.1 may proceed to pass an order that it deems appropriate once an opportunity to be heard has been afforded to the petitioner. Given that the petitioner was duly heard and his objections to the minutes of the hearing were taken into record, we find that there is no infirmity in the Impugned Order.

20. In light of the aforesaid discussion, we are of the considered view that the petitioner falls squarely in the ambit of non-teaching staff. Therefore, the petitioner is directed to repay the payment received by him towards the vacation period availed by him during his service tenure, failing which, the college may recover such amount out of his balance earned leave amount or gratuity or general provident fund final payment or any other arrears payable to the petitioner. The petitioner was not granted the 2nd and 3rd financial upgradation in terms of the Modified Assured Career Progression Scheme due to his claim of belonging to teaching staff. Further, it is clarified that the petitioner is eligible for all the benefits available to the non-teaching staff.

21. Accordingly, the petition is dismissed with no order as to costs.

NIVEDITA P. MEHTA, J.

BHARATI DANGRE, J.