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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.165 OF 2023

Mrs Gabriela Gracias
Aged 60 years,
Ex-Asst. Teacher,
Dr T.B. Cunha Higher
Secondary School,
Resident of A/201,
House of Lords,
Miramar, Panaji-Goa.

...Petitioner

Versus

1. State of Goa,
Through Chief Secretary
Porvorim – Goa.

2. Directorate of Education,
Through the Director,
Porvorim – Goa.

3. Directorate of Accounts,
Through its Director,
Having office behind
old Secretariate,
Panaji – Goa.

4. The Principal,
Dr T.B. Cunha Higher
Secondary School,
Campal, Panaji – Goa.

... Respondents

Mr Chaitanya Padgaonkar with Ms Vaishali Mahato and Ms
Simran Kanekar, Advocates for the Petitioner.

Mr Shubham Priolkar, Additional Government Advocate for

Respondent Nos.1,2 and 3.

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

DATE : 18th SEPTEMBER 2025

JUDGMENT : (*Per Ashish S. Chavan, J.*)

1. By way of the present Writ Petition, the Petitioner, a retired school teacher, has approached this Hon'ble Court seeking various reliefs. Firstly, she has prayed for the disbursement of her pensionary benefits accrued to her up to her superannuation. Secondly, she is aggrieved by the purportedly arbitrary decision of the Government to grant her Senior Scale and Selection Scale from the date of taking over of the Respondent No.4 – School by the Government, instead of the date of her original appointment, which has consequently caused great financial loss to her. As a fallout of this arbitrary decision of the Government to revoke her earlier Senior Scale and Selection Scale, an action is initiated by the Government to recover the purportedly excess amount that was paid to her as salary. This is her third grievance.

2. Vide order dated 15.11.2022, this Court had issued Rule and expedited the hearing of the petition. By way of interim relief, the Court had also restrained the Respondents from recovering any dues from the Petitioner.

3. The matter was finally heard by consent of the parties.

4. We have heard Mr Chaitanya Padgaonkar along with Ms Vaishali Mahato and Ms Simran Kanekar, learned counsel for the Petitioner and Mr Shubham Priolkar, learned Additional Government Advocate for the Respondent Nos.1 to 3.

5. Before advertg to the stand of the Petitioner, it would be apt to set out a brief chronology of events which are undisputed.

(a) The Petitioner was appointed as an ‘Assistant Teacher’ in Shri Sharada Vidyalaya English High School, Kumbharjua, which was then a Government Aided High School vide order of appointment dated 27.06.1984 with effect from 02.07.1984.

(b) Due to various complaints over mismanagement of its affairs, the said school was taken over by the Government with effect from 01.05.1989 vide Order No.20-(136)-88-Adm.I/257 dated 27.04.1989. The order of takeover clearly sets out that the Government had decided to take over the said school along with its assets and liabilities and to ‘absorb’ the members of staff in Government service with effect from 01.05.1989. The members of the staff of the said school were to be absorbed against the posts in the Directorate of Education, Panaji, in their respective grade and scale of pay. The order grants sanctions for protection of last pay drawn by the members of the staff and stipulates that they shall be absorbed against the posts in respective grade and scale of pay as indicated against their names as per schedule attached to the order.

(c) Consequent upon the absorption of the Petitioner, her seniority was finalised in the post of Assistant Teacher under the Directorate of Education with effect from 01.05.1989 (i.e. from the date of absorption in Government service).

(d) Upon completion of 12 years in service, Senior Scale was granted to her by the Director (Administration), Directorate of Education. Consequent pay fixation order was also made in favour of the Petitioner.

(e) Vide an order dated 04.10.2012, the Petitioner was considered by the Directorate of Education for the grant of Selection Scale in her favour with effect from 01.05.2013, duly taking into consideration her date of appointment in Government service with effect from 01.05.1989.

(f) In the year 2013, the Directorate of Education considered 32 Assistant Teachers for the grant of Selection Scale. The Petitioner was one of these 32 teachers.

(g) The grant of the Selection Scale and Senior Scale was subsequently reviewed by various departments. Even the Directorate of Education and Finance (Rev & Control) Department, recommended that the Senior Scale granted to the Petitioner was not in order, reasoning that the past services of an employee cannot be counted for seniority in

the new school in terms of Rule 86(B)(4) of the Goa School Education Rules 1986 (hereinafter referred to as 'Rules of 1986').

(h) It was advised that since the Petitioner was absorbed in Government service with effect from 01.05.1989, she is entitled for the grant of Senior Scale after completion of 12 years of service, not from the date of her first appointment but from the date of her absorption in Government service.

(i) It was also further advised that the Senior Scale, which was wrongly granted to her along with the excess salary paid to her with effect from 02.07.1996 to 30.04.2001, was to be withdrawn.

(j) In line with the above advice, a Review DPC was convened in October 2014 to reconsider the grant of Senior Scale to the Petitioner. The Review DPC concurred with the advice of the Personnel Department, withdrew the Senior Scale initially granted to the Petitioner and recommended recovery of the purported excess salary paid to her during the said period.

(k) On 01.11.2018, the Petitioner received two orders issued by the Director of Education: in the first order, the recommendations of the aforesaid Review DPC were accepted, the Senior Scale earlier granted to the Petitioner was withdrawn and the recovery of the excess payment made to her during the period from 02.07.1996 to 30.04.2001 was ordered whilst granting the Petitioner Senior Scale with effect from

01.05.2001 (i.e. from the date of her absorption in Government service). The second order granted Selection Scale to the Petitioner with effect from 01.01.2016 (i.e. from the date of her absorption in the Government service).

(l) Aggrieved by both these orders, the Petitioner addressed a letter to the Director of Education requesting to restore the Senior Scale and the Selection Scale originally granted to her by considering her initial date of appointment, i.e. 02.07.1984.

(m) The said representation of the Petitioner was considered by various Departments of the Government, including the Department of Education, the Department of Finance and the Department of Law.

(n) The noting of Department of Education opines that the Petitioner ought to be granted Senior Scale and Selection Scale by considering her past services and not from the date of her absorption in the Government service. It was only when the matter was referred to the Law Department that it was opined that the earlier grant of Senior Scale and Selection Scale based on the date of initial appointment was incorrect and the subsequent grant of Senior and Selection Scale based on the date of absorption was correct.

(o) In terms of the said opinion, the Petitioner received a letter from the Director of Education dated 24.05.2021, whereby she was

informed that her request to grant Senior Scale and Selection Scale from the date of her initial appointment cannot be considered.

(p) Upon receipt of the aforesaid communication, the Petitioner addressed a letter dated 07.07.2021 whereby the Petitioner brought to the notice of the Director of Education that several other teachers who were absorbed from the same school under the same Government order have been granted Senior Scale, Selection Scale from the date of initial appointment and not from the date of absorption and therefore there could not be any discrimination in her case.

(q) The Petitioner followed up this letter with another letter dated 27.09.2021. In the meantime, she retired from service on account of her superannuation with effect from 31.03.2022.

(r) Despite six months having been passed since her retirement since no pensionary and other benefits were extended to her, compounded by the fact that she was at the relevant time living with her husband, who was about 70 years of age, and that her pension was the only source of her livelihood, the Petitioner was constrained to approach this Court by way of the present petition, which she filed in September 2022.

6. The contentions of the Petitioner can be summarised as under:

(a) The Petitioner contends that she was appointed as an Assistant Teacher by virtue of an order of appointment dated 27.04.1989

because the school in which the Petitioner was appointed was a Government Aided High School, and which was taken over by the Government due to complaints of mismanagement of its affairs with effect from 01.05.1989.

(b) Taking over of the school by the Government and consequent absorption of the Petitioner and other similarly placed teachers, can in no manner be construed to be a break in the continuous service of the Petitioner. The terms of the order dated 27.04.1989 clearly stipulate that the members of the staff of the said school were absorbed against the posts in the Directorate of Education in their respective grade pay and service, protecting the last pay drawn by them.

(c) The Petitioner also pointed out Rule 34 of the Rules of 1986, which deals with the absorption of surplus employees and reads as under:

“34. Absorption of surplus employees etc.—

(1) Where as a result of —

(a) the closure of an aided school or any class/classes or divisions [“or discontinuance of any subject”] in any aided school;

(b) withdrawal of aid, from an aided school;

(c) withdrawal of recognition from an aided school, any student or employee becomes surplus, such student or employee, as the case may be, shall be absorbed, in such aided schools, as the Director of Education may specify:

Provided that the absorption in the aided school of any employee who has become surplus shall be subject to availability of a vacancy and shall be subject further to the condition that the concerned employee possesses the requisite qualification for the post

Provided further that where any such surplus employee is absorbed in an aided school, he shall be treated as junior to all the persons of the same category, employed in the aided school on the day immediately preceding date on which he is so absorbed.

(2) While terminating the services of teachers under the preceding rule, the following principles shall be observed namely:—

(a) In the case of reduction in the number of classes/divisions at the Higher Secondary Stage, i.e. Standards XI and XII, the services of the junior-most teachers in the subject/faculty concerned shall be terminated.

(b) In the case of reduction at the High School stage in Standards VIII - X, the services of the junior most teacher in the category of graduate teachers shall be terminated.

(c) In the case of reduction at the middle stage i. e. V - VII the services of the junior most teachers in the category of under graduate/S. S. C., trained teachers shall be terminated.

(d) In the case of reduction at primary stage i. e. Std. I - IV, the principle of seniority shall be observed.

(e) If there are some teachers who entered the service as undergraduate/S. S. C. trained teachers and placed in the graduate category on improving qualifications, and if the situation demands that their services are required to be terminated, they shall be given option to go back to their original category of under-graduate teachers, and on their doing so, the services of the junior most under-graduate teacher shall be terminated.

(f) In case the Management runs more than one school having services of the employees transferable and having common seniority the retrenchment/termination shall be done by following the principle of common seniority in the category of all the schools together, in case surplus employees cannot be absorbed in any of

the schools/institutions under the same management.

*(3) Where any surplus employee is absorbed under sub-rule (1),—
(a) the salary and other allowances last drawn by him at the school from which he is become surplus shall be protected;*

(b) the Provident Fund Account shall be transferred to the school in which he is so absorbed, and thereupon such Provident Fund shall be governed in accordance with the rules and regulations in force in that school, in relation to Provident Funds; and

(c) the period of his qualifying service in the school in which he had worked before, such absorption and any previous period of qualifying service, if any, in any recognised aided school in the territory of Goa, Daman and Diu shall be taken into account for the purpose of computing his pension and other retirement benefits.

(4) Without prejudice to the provisions of sub-rules (1), (2) and (3), where an employee becomes surplus for any reason, such employee shall be absorbed in the first instance, as far as practicable, in such aided school as the Director of Education may specify, and if the post so rendered surplus is subsequently revived or additional post is created or otherwise any vacancy arises anytime thereafter, within a period of three years, such as employee shall be absorbed in the former school, but if such re-absorption does not take place within the period of three years from the date of absorption of such employee in the original school, the services of such employee shall continue in the absorbed school:

Provided that no teacher working on temporary or probationary basis shall qualify for absorption.”]

(5) Re-absorption of an employee in the former school shall not affect his continued service or his seniority in relation to that school or his employments, Provident Fund, gratuity and other retirement benefits.

Explanation: (i) For the purpose of sub-rule (4) and (5), "former school" means the school from which an employee had become surplus.

(ii) This rule shall not apply to unaided minority schools."

(d) The Petitioner would urge that Rule 34 (3) of the Rules of 1986, provide that when there is an absorption of an employee, the period of his qualifying service in the school in which he had worked before shall be taken into account for computing his pension and other retirement benefits.

(e) The Petitioner argues that he is squarely covered by Rule 34 of the Rules of 1986 and there ought to be no ambiguity that her service has to be computed from the date of her initial appointment and not from the date when the school was taken over and she was absorbed in the Government service.

(f) The Petitioner further contends that the Directorate of Education has completely misinterpreted the provisions of law and the entire action of the Respondents, therefore, to withdraw the Senior Scale already granted to her and replace it with the Senior and Selection Scale based on her date of absorption is completely erroneous.

(g) That Sub-rules (3) and (4) of Rule 86(B) of the Rules of 1986, which were relied upon by the Department to revise the Senior and Selection Scales by the Petitioner, are misapplied and misread.

(h) It was contended that Rule 86(B) of the Rules of 1986 deals with the migration of an employee from one aided school to another aided school under a different management. Whereas in the facts of the present case, the earlier school was taken over by an order of the Government and the teachers were absorbed in their respective posts, thus bringing it squarely within the purview of Rule 34.

(i) It was contended by the Petitioner that one Mr Pednekar, a similarly placed teacher, was given the benefit of the Senior Scale from the date of payment and the Petitioner has contended that on parity, her case may also be treated similarly.

(j) Insofar as the benefits given to Mr Pednekar are concerned, the Petitioner submits that it is also undisputed that said Mr Pednekar was employed as a Headmaster in one Ramdas High School, Amona, which was taken over by the Government and Mr Pednekar was absorbed in the same position with effect from the date of taking over of the school. He was initially denied consequential benefits and it was only when Mr Pednekar escalated his grievance right up to the Hon'ble Supreme Court that he was granted all consequential benefits from the date of his appointment.

7. The stand of the Respondent no.2, as evident from the reply affidavit, affirmed by the Directorate of Education, can be summarised as under:

(a) The Director of Education, in his affidavit, says that the earlier orders granting Senior Scale and Selection Scale based on the date of initial appointment were erroneous and the recommendation of the Review DPC which computed the period of service from the date on which the Management of the said school was taken over by the Government (the date of absorption) was correct.

(b) The affidavit also reiterates that the orders withdrawing the Senior Scale and Selection Scale granted earlier are justifiable.

8. The short question that arises for consideration before us is whether the service of the Petitioner is to be computed from the date of her initial appointment in the Government-aided school or from the date of her subsequent absorption as a consequence of the taking over of the school by the Government.

9. The counsel for the Respondents has relied upon the judgments in the case of *C.D. Sharma V/s. Municipal Corporation of Delhi and Ors.*¹ and *State of Punjab and Ors. V/s. Harnam Singh & Ors.*², which deal with the question of whether or not past service of the employee can be counted for the purpose of computing his benefits when he joins the new service and observe that it would depend upon the order passed at the time of the taking over and the terms and conditions stipulated therein. This proposition has been set out by the landmark

¹ 2005 SCC OnLine Del 1291

² (1997) 3 SCC 32

judgment of *State of Punjab V/s. Joginder Singh*³ and subsequently reiterated by various High Courts in a line of judgments which still hold the field.

10. In the wake of the aforesaid facts and circumstances, the order dated 27.04.1989 of the Directorate of Education, *inter alia*, taking over Shri Sharada Vidyalaya English High School by the Government and absorption of members of its staff in the Government service assumes significance. The order clearly stipulates that the Government has taken over the said school along with its assets and liabilities and has decided to absorb members of its staff in Government service with effect from 01.05.1989. It further stipulates that the members of the staff of the said school shall be absorbed against the posts in the Directorate of Education in the respective grade pay and scale as indicated against their name as per the names attached to their order. It further records that the sanction is also accorded for protection of last pay drawn by members of its staff under F.R. 27. This order of taking over of the Government read with Rule 34 of the Rules of 1986 leave no room for doubt that the date for computing the service of the Petitioner cannot be the date of her absorption but the date of her original appointment, i.e. 02.07.1984. In fact the very purpose of initial conferment of Senior Scale and Selection Scale implies that the Petitioner was in 'continuous service' of the Respondent No.2 without any break and hence there is no reason to

³ AIR 1963 SC 913

deny her the benefits accruing from such continuous service. Rule 86(B)(4) of the Rules of 1986 is not applicable to the facts at hand since it applies to the ‘migration’ and not ‘absorption’ of employees. The reliance upon the aforesaid rule by the Department is misplaced in the facts of the present case.

11. Vide orders dated 01.11.2018, the Petitioner was subjected to recovery of the purported “excess payment” made to her during the period from 02.07.1996 to 30.04.2001. It is an admitted position that the Petitioner has superannuated on 31.03.2022. The revoking of the earlier Senior and Selection Scales on the basis of the erroneous computation from the date of absorption would, in any case, invalidate the orders dated 01.11.2018. However, we are also fortified by the view of the Hon’ble Supreme Court in the matter of *State of Punjab and Ors. V/s. Rafiq Rafiq Masih (While Washer) & Ors.*⁴, particularly para 16, which is extracted herein below:

“...Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir’s case, that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to

⁴ (2015) 4 SCC 334

their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation.”

12. Another facet of the matter is that the Department has extended the consequential benefits and continuous service to one similarly placed person, namely Mr G.L. Pednekar, on the basis of the date of his initial appointment and considering his past service. There is no reason why the same treatment is not given to the present Petitioner, who is placed in an identical situation.

13. In the wake of the aforesaid facts and circumstances, we deem it appropriate and in the interest of justice to allow the petition in terms of prayer clause (a) with all consequential reliefs, which reads thus:

“(a) That this Hon’ble Court be pleased to grant a writ of mandamus or a writ, order of direction in the nature of mandamus, or nay other writ, order or direction, directing the Respondents to withdraw the Orders dated 01.11.2018 bearing No. 19 / 25 / 88-ADM.I /B/ Vol.I/ 2014 /1941 and No.19/25/88-ADM.I/B/Vol.I/2014/1942 thereby restoring the Senior Scale of the

petitioner earlier granted vide Order dated 03.04.1997 bearing ref no.19-25-38-Adm-I/Vol.1/20 w.e.f. 02.07.1996 and consequently granting Selection Scale to the petitioner w.e.f. 02/07/2008 with all consequential benefits.”

- 14.** Rule is made absolute in terms of the aforesaid directions.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.