

(1998) 09 BOM CK 0062
In the Bombay High Court
Case No : Writ Petition No. 553 of 1993

Dr. Manmohan J. Porobo Dessai

APPELLANT

Vs

State of Goa and others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Goa, Daman and Diu (Administration) Act, 1962 — Section 5

Goa, Daman Diu (Absorbed Employees Conditions of Service) Rules, 1965 — Rule 2

Citation : (1999) 2 BomCR 381

Hon'ble Judges : R.K. Batta, J;J.A. Patil, J

Bench : Division Bench

Advocate : N.K. Sawaikar, for the Appellant; H.R. Bharne, for the Respondent

Judgement

R.K. Batta, J.—The petitioner was appointed on temporary basis pending selection of suitable candidates from the Employment Exchange to the post of Assistant Medical Officer on 9-8-1962 in the pay scale of Rs. 335-15-425. According to the petitioner, the pay of Assistant Medical Officer was covered by letter "N" and carried pay of Rs. 483.33, but he was paid in the scale of Rs. 335-15-425. On representations made by various employees, the Government considered the cases of various persons holding absorbed posts and fixed their pay in terms of The Goa, Daman and Diu (Absorbed Employees) Act, 1965, (hereinafter called the said Act) and The Goa, Daman Diu (Absorbed Employees Conditions of Service) Rules, 1965, (hereinafter called the said Rules). By order dated 23-3-1988 the Government refixed the pay of Dr. R.S. Narvenkar at Rs. 531.66. Likewise, the pay of one Antonio Pedro Crasto who was appointed against the absorbed post on 10-5-1963 was also protected. The petitioner who retired from service on 31-8-1987 approached the Court in the year 1993 claiming protection of pay and re-fixation of his pay. Accordingly, the petitioner seeks directions commanding the respondents to fix the petitioner's pay on the date of his appointment under letter "N" corresponding to Rs. 433.33 and thereafter fix the same considering the post as an absorbed post and give to the petitioner all consequential benefits including the revision in pay recommended

by the various Pay Commissions with all arrears and consequential benefits. No return was filed by the respondents.

2. Learned Advocate Shri N.K. Sawaikar, appearing on behalf of petitioner, stated, that the petitioner was appointed as Assistant Medical Officer on 7-12-1961. This submission of the learned Advocate for the petitioner is not supported by the averments made in the petition and besides that no order has been placed before this Court in order to suggest that the petitioner was appointed on 7-12-1961. What is stated in the petition is that the name of the petitioner was gazetted in the Official Gazette on 7-12-1961 but he was appointed to the post of Assistant Medical Officer vide order dated 9-8-1962, which is at Exhibit "A" at page 17 of the petition. This contention was obviously placed by the Advocate for the petitioner in order to suggest that the petitioner was a pre-liberation employee which would qualify him to be an absorbed employee under the said Act.

3. In the petition parity is claimed on the basis of the case of Dr. R.S. Narvenkar and Shri Antonio Pedro Crasto and relying upon judgment of this Court in Shri Renato Maria Mercês Rego Fernandes v. The Government of Goa, Writ Petition No. 77/1991. Advocate for the petitioner, therefore, submits that the petitioner is to be treated as absorbed employee working against absorbed post and as such the petitioner is entitled to protection of his initial pay under letter "N" which corresponds to Rs. 433.33.

4. On the other hand Government Advocate Shri H.R. Bharné argued before us that the petition is liable to be rejected due to gross laches on the part of the petitioner in as much as that the petitioner is seeking relief of fixation of his pay which relates back to the date of his appointment on 9-8-1962. He also urged that the petitioner neither held any post prior to liberation nor could he be treated as an absorbed employee and placed reliance on a judgment of this Court in Shri Damaso Cota v. The Director, Directorate of Health Services and another, Writ Petition No. 60/1995, to which one of us (Batta, J.,) was a party and submitted that the petition be rejected.

5. There is considerable merit in the submission of learned Government Advocate, Shri Bharné that the petition suffers from gross laches and in fact it is liable to be rejected on that count alone. Be that as it may, we would still examine whether there is any merit in this petition. The said Act was enacted with specific object as can be found in the preamble of the said Act, which reads as under:

"An Act to provide for the regulation of the conditions of service of persons absorbed for service in connection with the administration of the Union Territory of Goa, Daman and Diu and for matters connected therewith."

We may now reproduce the definitions of "Absorbed employee" and "Absorbed post" as contained in the said Act.

a) "absorbed employee" means a person who immediately before the 20th day of December, 1961, was holding an absorbed post and who on and after that date either served or has been serving in that or any other post in connection with the administration of the Union Territory of Goa, Daman and Diu or in any of the departments of the Central Government;

b) "absorbed post" means a civil service or post which existed under the former Portuguese Administration in Goa, Daman and Diu immediately before the 20th day of December, 1961.

In the said Rules the said terms have been defined as under:

"Absorbed employee means an absorbed employee as defined in clause (a) of section 2 of the Act and who on the appointed day is serving either in connection with the administration of the Union Territory or in any department of the Central Government;"

Explanation: Persons who were under orders of transfer from Goa, Daman and Diu and were in transit on the 20th December, 1961 to take up employment in any Portuguese colony but returned to the Union Territory after that date instead of joining their new posts and were allowed to continue in service shall, if they are serving in connection with administration of the Union Territory or in any department of the Central Government on the appointed day, be deemed to be absorbed employees for the purpose of these rules.

"absorbed posts means an absorbed post as defined in clause (b) of section 2 of the Act, which is in existence on the appointed day either for the purpose of Administration of the Union Territory or any department of the Central Government."

The appointed date is 1-2-1966.

In order to qualify as an absorbed employee under the said Act, the following conditions are necessary in terms of section 2(a) of the said Act viz.

i) The employee should immediately before the 20th day of December, 1961 holds an absorbed post and

ii) and who on and after that date either served or has been serving in that or any other post in connection with the administration of the Union Territory of Goa, Daman and Diu or in any of the departments of the Central Government.

6. These conditions must ss together for a person to qualify as an absorbed employee. The definition of "absorbed employee" in Rule 2(f) of the said Rules further provides that in addition to the conditions laid down in section 2(a) of the said Act the employee on the appointed date should be serving either in connection with the administration of the Union Territory or any department of Central Government.

7. The absorbed post u/s 2(b) of the said Act refers to a civil service or post

which existed under the former Portuguese Administration in Goa immediately before the 20th day of December, 1961. Thus in order to qualify as "absorbed employee", for a civil service or post, such post must be in existence under the former Portuguese Administration in Goa, Daman and Diu immediately prior to the 20th day of December, 1961. Goa was liberated on 19-12-1961 and section 5 of the Goa, Daman and Diu Administration Act, 1962 which came into force on 4-3-1962 provided that all previous posts under the Portuguese Administration should continue. The definition of absorbed post in the said Rules is that such posts in addition to its existence under the former Portuguese Administration in Goa, Daman and Diu immediately prior to 20th December, 1961 should also be in existence on the appointed date either for the purpose of administrations pf the Union Territory or any department of the Central Government.

8. The Division Bench of this Court to which one of us (Batta, J.,) was a party has held that;

"The absorbed post has a definite connotation. It means service or the post which existed prior to 20-12-61 under the former Portuguese Administration and has been absorbed under the Union Administration."

At this stage we may also refer to the observation of the Apex Court in Ramakant Shripad Sinai Advalpalkar v. Union of India and others, 1991 Supp.(2) Supreme Court Cases 733, wherein after taking into account the definition of "absorbed employee" and "absorbed post" it has been held that:

"These provisions in the interpretation clause merely indicate that an "absorbed employee" should have held the "absorbed post" immediately before December 20, 1961, and that it did not detract from that position if subsequently he was serving in any other post in connection with the administration of the Union Territory of Goa. It is erroneous to construe that in such circumstances the "other" post would also become an "absorbed post" in relation to such person. He would continue to be "absorbed employee" only in relation to the post he held immediately prior to December 20, 1961. There is no substance in the second contention either."

9. The petitioner's case may now be examined. The petitioner was appointed to the post of Assistant Medical Officer much after liberation by Order dated 9-8-1962. The petitioner was not holding any absorbed post prior to 20th December, 1961. In fact, as already pointed out the petitioner was appointed on 9-8-1962. He, therefore, cannot qualify to be an absorbed employee within the meaning of section 2(a) of the said Act, or Rule 2(f) of the said Rules. The parity claimed by the petitioner on the basis of the case of Dr. R.S. Narvenkar in view of the order dated 23-3-1988 Exhibit "E" at page 25 of this petition is totally misconceived since it is categorically stated in the said order that Dr. R.S. Narvenkar was pre-liberation officer, whereas, the petitioner has been appointed on 9-8-1962 i.e. to say after liberation. Except for the production of the order of Dr. R.S. Narvenkar no other further details were furnished by the petitioner in

this regard in this petition.

10. The petitioner also placed reliance on the case of one Antonio Pedro Crasto who was appointed as Clerk (Aspirante) after liberation vide order dated 10-5-1963 and he was declared to be an absorbed employee, in terms of Order dated 3-6-1989 Exhibit "F" which is at page 27 of the petition and the judgment of this Court in Renato Maria Mercus Rego Fernandes v. The Government of Goa (supra). In Renato Maria Mercus Rego Fernandes v. The Government of Goa, the learned Judges of the Division Bench had held that though the petitioner therein was appointed subsequent to December 20th 1961, as the post was also existing prior to December 20th, 1961 it must be concluded that the petitioner was appointed to the absorbed post. No reasons have been given therein as to how the petitioner could be treated as an absorbed employee even though the stand taken on behalf of the Government in the said petition was that the petitioner was not an absorbed employee. Moreover, in that case, it was found that the petitioner had been appointed under Decree No. 43586 dated April 7, 1961 against a post created prior to the liberation of Goa and the fixed scale of Rs. 291.66 paise could not be reduced without the Decree being amended. In these circumstances it was held that the petitioner's pay was protected and could not be reduced. Hence, the said ruling does not help the petitioner. The case of Antonio Pedro Crasto cannot be treated as binding precedent.

11. In order to qualify to be an absorbed employee, the employee must satisfy the conditions prescribed in that behalf by section 2(a) of the said Act and Rule 2(f) of the said Rules, Merely because a person holds an absorbed post but he does not qualify to be an absorbed employee within the meaning of the said Act and the said Rules, such person cannot be given the benefit of protection of pay. There is no express order absorbing the petitioner against any absorbed post. Moreover, no protection was granted to the petitioner of the then "existing pay" as defined under Rule 2(e) of the said Rules. The petitioner in our opinion does not satisfy the requirements for being treated as an absorbed employee and as such we do not find any merit in this petition.

12. For the reasons mentioned above, the petition is rejected and the Rule is discharged. In the facts and circumstances we shall leave the parties to bear their costs.

Petition rejected.