

(1998) 02 BOM CK 0028
In the Bombay High Court
Case No : Writ Petition No. 94 of 1997

P.K. Zachariah

APPELLANT

Vs

The State of Goa and others

RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (1998) 2 ALLMR 290 : (1998) 3 BomCR 106 : (1998) 2 MhLj 344

Hon'ble Judges : R.K. Batta, J;N.J. Pandya, J

Bench : Division Bench

Advocate : G. Vidyadharan, for the Appellant; C.A. Ferreira, A.G, for the Respondent

Judgement

N.J. Pandya, J.—The petitioner herein came to be appointed as a Laboratory Assistant, by order dated 28th June, 1987, Exh. P.1 at page 21. He came to be confirmed in the year 1972, in the said post. On formation of the State of Goa, the question of absorption of the employees of the erstwhile Union Territory was dealt with by passing appropriate orders, statutes and sub-rules. One statute that has come on record and is referred to for the purpose of the controversy in question, is extracted and is to be found as Exh. P/4 at page 27. The service conditions are not to be altered without prior approval of the Central Government.

2. Before these events took place in the year 1983, a decision was taken by the Central Government that the retirement age of Laboratory Assistants, School Teachers and others, shall be 60 years.

3. Obviously therefore, so far as the petitioner is concerned, his retirement age will be 60 years and it could not be altered without prior approval of the Central Government. The affidavit-in-reply is filed on behalf of the respondent No. 3, Principal, Goa College of Engineering, by the Principal himself. The only case put forth by the said deponent in para 2 of the affidavit is that the decision of the Central Government, Exhibit P/5 at page 31 will not be applicable to Laboratory Assistance and Librarians, of Professional Colleges and Institutions.

4. Obviously, Laboratory Assistants are employees of a particular cadre and they have been treated as such all throughout and this has been submitted by the petitioner in the rejoinder by filing three documents as Exhibit P/8 Colly. (i). Apart from this, alongwith the amendment which has been allowed today, he has cited an example of a colleague of the petitioner who retired on attaining the age of 60 years. His name appears at Serial No. 3 of the common cadre seniority list at page 26. The petitioner's name appears at Serial No. 6 of that very list at page 26.

5. In view of the documents produced alongwith the affidavit in rejoinder, which indicate that there is interchangeability of Laboratory Assistants from colleges, Polytechnics and Schools and that there is a common seniority list as per page 26, the case of the petitioner is established that this is a distinct cadre by itself.

6. If such a distinct cadre is established, all its service conditions shall be uniform and shall apply to each of the members of the cadre, irrespective of the place of his/ her working. It cannot be that if a member of the cadre is working in a College he would retire on attaining, the age of 58 years, but he will have two years of extra service if he is working in a School.

7. If this view is accepted a situation can well be contemplated where a Laboratory Assistant working in a School would lose those two years if, on account of inter-changeability and transferability he is brought into a College and vice-versa.

8. This is clearly a case where the petitioner will succeed. Accordingly, therefore, petitioner succeeds. It is declared that his retirement age is 60 years. By interim order he has been allowed to work, but without pay. He shall continue to work as Laboratory Assistant on full-fledged basis until he attains the age of 60 years with all remuneration payable to him as is admissible to a member of that cadre. Rule made absolute accordingly.

9. Petition succeed.