

(2020) 01 BOM CK 0168
In the Bombay High Court
Case No : Writ Petition No. 267 Of 2016

Sanjay V. Redkar And Ors

APPELLANT

Vs

State Of Goa And Ors

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 13, 16
Constitution Of India, 1950 — Article 14, 16

Citation : (2020) 01 BOM CK 0168

Hon'ble Judges : M.S. Sonak, J; M.S. Jawalkar, J

Bench : Division Bench

Advocate : A. Agni, Jay Sawaikar, Manish Salkar

Final Decision : Partly Allowed

Judgement

M.S. Sonak, J

1. Heard Mrs. Agni, the learned Senior Advocate along with Advocate Jay Sawaikar for the petitioners and Mr. Manish Salkar, the learned

Government Advocate for respondent nos. 1 to 10. The remaining respondents, though served, are neither present nor represented.

2. The petitioners are all Lower Division Clerks (LDCs), working as such, in various Departments of the Government of Goa.

3. In pursuance of a Scheme known as Pre-Employment Trainees Scheme (PETS), formulated by the State Government, an advertisement was

issued, inviting applications for various posts including LDCs. The advertisement merely stated that in terms of PET Scheme, applicants, upon

selection, will be appointed as trainees against the stipend of Rs.1,500/- per month, which the trainees will have to refund, if they discontinue the

training course, amidst the training or do not accept the job offered to them

upon satisfactory completion of the training. The advertisement also indicates that there are 350 probable vacancies for the post of LDC.

4. The petitioners were selected and offered purely temporary appointments in terms of memorandum dated 16.02.2004, which is representation of the memorandum issued to several petitioners in this Petition. For sake of convenience and with the consent of the learned Counsel for the parties, we take the case of petitioner no. 6, Suvarna R. Sarmalkar as representative of cases of other petitioners in the present Petition.

5. The offer of appointment had made it clear that the appointment is under the PET Scheme on a stipend of Rs.1,500/- per month during the 18 months of the training period. The offer also made it clear that the appointment is temporary and will not confer any title to the permanent appointment. The aforesaid would be subject to several other conditions, which was reflected in memorandum dated 16.02.2004. The petitioners were also required to sign an agreement, which has been placed on record and it contains terms similar to those set out in the offer of appointment. After all this, the petitioners were appointed as trainee LDCs under the PET Scheme on a stipend of Rs.1,500/- per month during the 18 months training period.

Insofar as the petitioner no. 6 is concerned, the date of commencement of her training was 01.06.2004.

6. The petitioners have pleaded that all the petitioners completed their 18 months training on 31.12.2005. There is no serious dispute on the part of respondent nos. 1 to 10 to this position.

7. The petitioners were however, not offered any regular appointment to the post of LDCs, even though, it is their case that the PET Scheme contemplates such offer of regular appointment, no sooner 18 months training period is successfully completed. The petitioners have placed on record a news bulletin dated 16.03.2005, which inter alia speaks about the review of the PET Scheme. The news bulletin inter alia provides that the claim was discontinued, but, would continue to apply only to 1030 trainees, in respect of Government Primary Teachers, Assistant Teachers, Steno Typists, LDCs, Graduates and Drivers, till they are all absorbed. The news bulletin also states that the absorption of all these 1030 trainees will take time and their training will not be extended beyond 31.03.2005.

8. There is no serious dispute that the petitioners were included in 1030 trainees

referred to in the news bulletin dated 16.03.2005. There is also no dispute that notwithstanding what was provided in the news bulletin, the training of the petitioners continued until 31.12.2005 i.e. beyond 31.03.2005.

9. As noted earlier, the petitioners upon completion of training were not provided any regular appointment as LDCs, instead, there was proposal to fill

in post of LDCs by direct recruitment. The petitioners apprehending that the posts against which they ought to have been regularized, would be filled

in by such direct recruits and further apprehending that their services as trainees would be discontinued, instituted Writ Petition No. 131/2006 in this

Court. On 03.05.2006, this Court made an interim order directing that if any other LDCs are appointed by direct recruitment, their appointment will be

subject to the orders that will be made in the said Petition. Later on 31.07.2006, further interim order was made restraining the respondents from

terminating the services of the petitioners as trainees.

10. During the pendency of the Petition, it appears that the State Government came up with a policy to reserve 50% vacancies, inter alia to the post of

LDCs, to be filled in from the trainees under the PET Scheme vide circular dated 16.08.2010. The Scheme possibly contemplated the creation of

supernumerary posts and appointment/ regularization of the trainees against such supernumerary posts, until the availability of regular vacancies in the

cadre of LDCs.

11. Some of the appointments of the petitioners, included in particular, the petitioner no. 6, who came to be appointed as LDC (supernumerary) vide

order dated 07.10.2010, inter alia by relaxing the provisions in the Recruitment Rules in relation to age, educational qualification etc. This was

approved vide order dated 29.10.2010.

12. Consequent upon availability of regular vacancies and in furtherance of Scheme/policy, some of the petitioners, including the petitioner no. 6, in

particular, came to be regularly appointed as LDCs w.e.f. 01.11.2010 B.N. This was vide order dated 06.01.2011, which makes reference to the

earlier order dated 29.10.2010. By this order, the petitioner no. 6 was in fact, placed on probation for two years. Clearly, therefore, the order dated

06.01.2011 has all the attributes of regularization or regular appointment of petitioner no. 6 w.e.f. 01.11.2010 B.N.

13. It appears that the aforesaid order dated 06.01.2011 was not placed before

this Court in Writ Petition No. 131/2006, even though, one of the main prayer in the said Petition was for regularization of the services in the post of LDC. The Petition, accordingly, remained pending. During the pendency of Writ Petition No. 131/2006, the Government issued yet another order dated 05.03.2014, which is the fulcrum of the institution of the present Petition.

14. The order dated 05.03.2014 reads thus:

Government is pleased to extend the benefit of notional fixation of pay to the trainees under Pre-Employment Training Scheme considering them as regular employees from the date as specified below in their respective grades without consequential monetary benefits.

1. All those who were not regularised prior to 28/10/2005, shall be considered as on regular basis for the purpose of counting the period for duty for

drawal of increments, as on 28.10.2005.

2. Those who have not completed the required number of months of training prior to 28.10.2005, shall be considered for drawal of increments after

completion of the 18 months training period.

3. The cut out date of 28.10.2005, is only in cases of those who have not yet been regularised prior to cabinet decision of 28.10.2005.

4. They shall not be entitled for the consequential benefits like GPF (Pre 05.08.2005), pensionary benefits, MACPS, next below consideration,

seniority and promotional benefits and other benefits under various Civil Service Rules.

5. The petitioners shall give an undertaking before the Hon. High Court that no such demands will be made in consequence of the offer made.

This shall not be applicable to those Pre-employment Trainees who have been terminated/resigned/technically resigned and expired.

This shall also not be applicable to the lone Government Primary Teacher and a Driver who continue to work as Pre-employment trainees and who

have been allowed to improve their performance within the stipulated period till they prove the same to the satisfaction of their appointing authority.

The issue regarding assigning of seniority to these employees shall be decided separately.

The cases of employees initially recruited as PETS trainees and opted for transfer under F.R. 15 shall not be placed before the three members

Committee to be constituted by the Government in view of the specific option given by these trainees to forgo the seniority.

All Heads of Departments are hereby instructed to extend the benefits of notional fixation of pay to the PETS employees in accordance with the

above decision of the Government and to submit compliance to this Department accordingly.

The concerned Departments where these regular/supernumerary employees are working shall also make necessary entries in their service books.

15. In the context of the aforesaid order dated 05.03.2014, the petitioners, have instituted the present Petition. The petitioners instituted the present

Petition seeking the following reliefs:

a. For a declaration that clauses 4 and 5 of the order dated 5/3/2014 are null and void and the same violate the fundamental rights of the petitioners

guaranteed under Article 14 and 16 of the Constitution of India and that the service rendered by the Petitioners with effect from 31/12/2005 is regular

service and for direction to the respondents to show the date of regular appointment of the Petitioners as 31/12/2005 and further for direction to the

Respondents to regularize the services of Petitioner no.17 with effect from 31/12/2005.

b. For a writ of certiorari and/or writ in the nature of certiorari, or any other writ direction or order thereby quashing and setting aside clause no.4 and

5 of the order dated 5/3/14.

c. For a writ of mandamus writ in the nature of mandamus and other appropriate writ direction or order directing the respondents to pay to the

Petitioners arrears of increment with effect 31/12/2005 and to release increments to the Petitioners.

d. That this Hon'ble Court be graciously pleased to issue a writ of mandamus or a writ in the nature of mandamus and other appropriate writ, order or

direction commanding the respondents to consider the petitioners promotions to the post of Upper Division Clerks and refrain the respondents from

making any appointment by way of promotion for the post of Upper Division Clerks.

e. ex-parte add interim reliefs in terms of prayer clause c and d.

f. Such other and further relief as this Hon'ble court deems fit in the circumstances of this case.

g. For costs.

16. Thereafter, this Petition was amended by adding further reliefs in terms of prayer clause (aa) for writ of certiorari to quash and set aside orders

dated 27.05.2010, 30.01.2010, 25.02.2009, 12.08.2014, 05.02.2016, 13.07.2016 and 17.08.2016, by which, some LDCs were promoted to the post of

UDC. This prayer clause (aa) also prays for writ of mandamus to direct the respondents to consider the petitioners for promotion as against the said

posts of UDC. Interim relief in substantially similar terms was also prayed for by adding prayer clause (cc).

17. Mrs. Agni, the learned Senior Counsel for the petitioners submitted that in terms of the PET Scheme, an assurance was given to the petitioners

that no sooner they complete their 18 months training, they would be absorbed in regular services as LDCs. She submits that the petitioners were

made to sign an agreement to the effect that they would have to refund stipend, in case, they refused to accept the regular appointment as LDC, post

successful completion of the training period. She submits that there is no dispute whatsoever that the petitioners did complete their 18 months training

period on 31.12.2005. She submits that in these circumstances, the Government in terms of its own policy was duty bound to regularize the service of

the petitioners w.e.f. 01.01.2006. She submits that non regularization from the said date violates the guarantee of non-arbitrariness contained in Article

14 of the Constitution of India.

18. Mrs. Agni, the learned Senior Advocate, without prejudice to the aforesaid, submitted that at least, after the issuance of order dated 05.03.2014,

which contains policy conditions of the services of the petitioners and employees similar to the petitioners, were to be regarded as regular service for

the purpose of drawal of increment and pay scale. She submits that there is absolutely no justification to deny the petitioners consequential benefits

like GPF, pensionary benefits, MACPS, seniority and promotional benefits under various Civil Service Rules. She submits that clause 4 of the order

dated 05.03.2014, which denies such benefits to the petitioners, is ex facie illegal, ultra vires and unconstitutional.

19. Mrs. Agni, the learned Senior Advocate referred to the provisions as contained in Rule 13 of the Central Civil Services (Pension) Rules, 1972,

which inter alia provides that qualifying service of a Government servant shall

commence from the date he takes charge of the post, to which he is first appointed either substantively or in an officiating or temporary capacity. She submits that in the present case, the petitioners may, at the highest, to be said to be appointed in temporary capacity w.e.f. 01.06.2004. In any case, she submits that the petitioners ought to have been appointed w.e.f. 01.01.2006, post completion of their training. Relying upon Rule 13 of the Central Civil Services (Pension) Rules, 1972 as aforesaid, she submits that there is absolutely no reason for not to count the petitioners service between 01.01.2006 and 01.11.2010 as qualifying service for the purpose of pension.

20. Mrs. Agni, the learned Senior Counsel submits that if in terms of order dated 05.03.2014, the services of the petitioners or similarly placed employees can be considered as regular service for the purpose of drawal of increment and for fixation of pay, there is absolutely no reason as to why such services should not be counted for other purposes like seniority, MACPS, promotion etc. She relies on *Baleshwar Dass & Others Vs. State of U.P. & Others*, AIR 1981 SC 41 and *Secretary, Minor Irrigation Department and Roads Vs. Narendra Kumar Tripathi*, (2015) 11 SCC 80 to submit that the nomenclature of the appointment is really not important and as long as the appointment has attributes of regularity, the Government cannot refuse to consider such services for normal service benefits like seniority, MACPS etc. She also relied on *Dwijen Chandra Sarkar & Another Vs. Union of India & Others*, (1999) 2 SCC 119 in support of her contention that services of the petitioners between 01.01.2006 and 01.11.2010 should be counted for the purpose of beneficial Scheme like MACPS, which offers succour to the employees on account of unwanted stagnation in service.

21. Mrs. Agni, the learned Senior Counsel submits that clause 5 of the order dated 05.03.2014 is manifestly arbitrary and unconstitutional, in as much as it requires the petitioners to give an undertaking that the petitioners will not make any demand for consequential benefits like GPF, pensionary benefits, MACPS, seniority, promotional benefits etc. as required under clause 4 of the order dated 05.03.2014 as the pre-condition for grant of even limited benefits under the order dated 05.03.2014. She submits that such a clause is manifestly arbitrary and such clause denies the petitioners access to justice. She submits that both clauses 4 and 5 being illegal, unconstitutional

and ultra vires are liable to be declared as such and thereafter struck down. She submits that once, these two clauses are struck down, the petitioners should be granted the benefit of regular services right from

01.01.2006, which clause 4 of the order dated 05.03.2014 unjustifiably denies the petitioners.

22. Mr. Salkar, the learned Government Advocate refutes the contentions raised by and on behalf of the petitioners. He submits that under the PET

Scheme there was never any obligation to appoint the trainees, no sooner they completed their training period. He submits that the Scheme had even

been discontinued and it was continued only in respect of some of the trainees. He submits that the petitioners were appointed as trainees against a

stipend and they were not regularly appointed as LDCs. He submits that the petitioners continued as trainees by virtue of the interim order dated

31.07.2006 in the Petition instituted by the petitioners. He submits that the petitioners were initially appointed against supernumerary posts and

thereafter, against the regular posts, sometime in the year 2011 and such appointments were accepted by the petitioners without any protest or demur.

23. Mr. Salkar, the learned Government Advocate submits that the order dated 05.03.2014 merely grants the trainees, who were ultimately

regularized, some additional benefits of notional pay without any consequential monetary benefits of pay. He submits that the Government was not

even duty bound to award this, but, having granted such benefits, it cannot be said that the Government is obliged to grant all other benefits, as claimed

by the petitioners in the present Petition. He relies on the decision of Madras High Court in the case of P . Perumal Vs. A.V. Sureshbabu, 2007 Law

Suit (Madras) 3780 in support of his submissions. He pointed out that except for the LDCs in the present Petition, all other trainees similarly placed,

have already furnished undertaking as contemplated by clause 5 of order dated 05.03.2014 and are in receipt of notional fixation of pay. He submits

that since the petitioners have refused to give an undertaking till date, there was no question of extending benefit of notional fixation of pay. For all

these reasons, he submits that the present Petition may be dismissed.

24. Rival contentions now fall for our determination.

25. The relevant facts have been set out at the opening of this judgment and order and they bear no necessity of repetition.

26. The advertisement in pursuance of which the petitioners had applied and ultimately selected as trainees was issued in the year 2001, when the

Recruitment Rules for the post of LDC were issued in 2002. That apart, the advertisement clearly states that the proposal was not for appointment of

LDCs or other posts referred to in the advertisement, but the proposal was really for appointment of trainees, who could then be considered for

appointment of LDCs and other posts on regular basis. The advertisement is very clear, in which, it states that the trainees will only be paid stipend of

Rs.1,500/- per month, which they will have to refund, if they do not accept the job offered after satisfactory completion of the training. The

advertisement itself refers to acceptance to the job offered after the satisfactory completion of the training. Therefore, the advertisement never

offered job as such, to the petitioners, but, merely offered them appointment as trainees under the PET Scheme.

27. The advertisement is quite consistent with the PET Scheme itself. This position is further clarified from the offer of the appointment, coupled with

the agreement, which the petitioners had signed at the time of their induction that the petitioners were appointed as trainees. Therefore, the petitioners

cannot confuse their appointment as trainees with their appointment as LDCs, as such, whether on temporary or any other basis.

28. The record does bear out that on 31.03.2005, the petitioners successfully completed their 18 months training period in terms of the Scheme, which

was continued for at least, insofar as the petitioners are concerned, till 31.12.2005. The petitioners become eligible for appointment as LDCs, however,

this is far from saying that the petitioners had acquired any indefeasible rights to be appointed to the post of LDC or to be absorbed to the post of

LDC in the absence of any clear and categorical Scheme or policy in this regard.

29. The petitioners apprehending termination even as trainees instituted Writ Petition No. 131/2006 in this Court and were protected by interim order

dated 31.07.2006. By virtue of interim order, it is not as if the petitioners continued in service as LDCs, but, the petitioners continued in service only as

trainees against the stipend, which, no doubt, was revised from time to time, but bore no relation to the regular pay scale awarded to the LDCs.

30. Thereafter, there was revision in the policy of the Government and it was decided that at least 50% of the posts of LDCs and other posts must be

filled in or reserved for the PETS trainees. As a result of this policy, the petitioners were appointed as LDCs against the supernumerary posts. This

clearly indicates that there were no regular posts and hence, the necessity of accommodating the petitioners against the supernumerary posts arose.

31. The record also indicates that by October, 2010 or thereabouts, there were some regular vacancies, against which, the petitioners could be

absorbed/regularized. Accordingly, the Government made the order dated 06.11.2011 in terms of it, the petitioners including in particular, the petitioner

no. 6 came to be appointed on regular basis as LDC w.e.f. 01.11.2010 B.N. Mrs. Agni, the learned Senior Counsel pointed out that similar orders

were issued in respect of other petitioners as well though precise dates of appointments may differ.

32. There is nothing on record to indicate that the petitioners raised any contention with regard to their orders of appointment/absorption against

supernumerary posts or against regular vacancies. In fact, these orders were not even annexed to the present Petition. So also, these orders were not

brought to the notice of this Court when it disposed off Writ Petition No. 131/2006 vide judgment and order dated 21.04.2014.

33. The judgment and order dated 21.04.2014 disposing Writ Petition No. 131/2016, however, makes reference to the order dated 05.03.2014 and

grants liberty to the petitioners to make a representation with regard to their grievances in respect of Clause 4 of the order dated 05.03.2014. This

Court also made it clear that there was no question of giving any undertaking to this Court. Accordingly, the Government modified clause 5 of the

order dated 05.03.2014 and substituted the words 'Hon. High Court' appearing in clause 5 of the order dated 05.03.2014 with the words

'Personnel Department'.

34. Pursuant to the liberty so granted, the petitioners made representations, which were ultimately rejected by the Government vide communication

dated 30.03.2015, which led to the institution of the present Petition.

35. The order dated 05.03.2014 merely extended benefit of notional pay to the trainees considering them as regular employees from the date specified

without any consequential monetary benefits.

It is clear that the petitioners could not have claimed even these benefits as matter of right. Accordingly, merely because such relief was extended by

the Government to the petitioners, the petitioners cannot be heard to say that their service as trainees between 01.01.2006 and 01.11.2010 or such

other dates, as may be indicated in order dated 05.03.2014, must be considered as regular service, not only for the purpose of notional fixation of pay

and drawal of increments, but, also for other benefits like GPF, pensionary benefits, MACPS, seniority, promotion etc.

36. The Central Civil Services (Pension) Rules, 1972, which were relied upon by Mrs. Agni, the learned Senior Advocate for the petitioners, merely

speaks about taking into consideration the officiating service for the purpose of determining the qualifying service. The petitioners continuance as

trainees on the strength of interim order made by this Court, for the period between 01.01.2006 to 01.11.2010 or slightly earlier, can hardly be

described as officiating service as LDCs and be counted as qualifying service. This continuance cannot be regarded as officiating service or

temporary service because this service was really on the strength of interim order made by this Court and that too as only trainees against payment of

stipend.

37. Mr. Salkar, the learned Government Advocate also pointed out that Rule 16 of the Central Civil Services (Pension) Rules, 1972, which provides

that service as an apprentice shall not qualify, except in the case of SAS apprentice in the Indian Audit and Accounts Department or the Defence

Accounts Department. We agree with Mr. Salkar, the learned Government Advocate that the continuance of the service of the petitioners between

01.01.2006 and the date of the order was more in the nature of apprentice, since, such continuance was only as trainees and that too, on the strength

of the interim order made by this Court.

38. Besides, in the absence of any obligation to even grant notional fixation of pay, it cannot be said that if the service, is treated as notionally regular

for one purpose, then, there is obligation to treat the service as regular for all other purposes as well. A fiction cannot be extended beyond the

legitimate purpose for which it was created. Even the decisions in the case of Baleshwar Dass (supra), Narendra Kumar Tripathi, (supra) and Dwijen

Chandra Sarkar (supra) operate in entirely different facts, which bear no relation to the present case, where the petitioners continued as trainees on

the strength of interim order made by this Court on 31.07.2006. The decision in

the case of P. Perumal (supra), is closer on facts and therefore, the observations therein will be applicable in the present matter as contended by Mr. Salkar, the learned Government Advocate.

39. Accordingly, we seen no good ground to declare clause 4 of the order dated 05.03.2014 as illegal, ultra vires or unconstitutional. However, when it comes to clause 5 of the order dated 05.03.2014, we agree, to some extent with Mrs. Agni, the learned Senior Advocate for the petitioners that the said clause does, to a certain extent, take away the rights of the petitioners to seek redressal as against clause 4 of the order dated 05.03.2014 or to seek redressal from the Court of law, even though, they perceive that there has been violation of their rights.

40. Mrs. Agni, the learned Senior Advocate pointed out that because the petitioners refused to give the undertaking in terms of clause 5 of the order dated 05.03.2014, till date, the petitioners have not been given even the benefits under the order dated 05.03.2014. She pointed out that if, the petitioners had given an undertaking in terms of clause 5, in all probabilities, the respondents would plead estoppel or waiver in the present Petition.

41. According to us, the Government, was not justified in insisting upon such undertaking from the petitioners as a pre-condition for extending the benefits under the order dated 05.03.2014. The undertaking virtually means that the petitioners accept the benefits in the order dated 05.03.2014 and gave up their rights to claim any additional benefits, even though, they perceive that such benefits are due to them. Though, the Government is well within its rights to offer only limited reliefs to the petitioners, in the facts and circumstances of the present case, the Government cannot take away the rights of the petitioners to seek judicial redressal by insisting upon such undertaking.

42. Now that the petitioners, have been heard in this Petition, the issue of validity clause 5 of order dated 05.03.2014 is really academic. However, we direct the Government to extend the benefits of order dated 05.03.2014 to the petitioners, in case, the same is not extended without insisting upon the petitioners filing any undertaking in terms of clause 5 of the order dated 05.03.2014. This will have to be done within a period of three months from today.

43. This Petition is therefore partly allowed and Rule is made partly absolute to

the aforesaid extent only. In the facts of the present case, there shall be no order as to costs.