
(1998) 01 BOM CK 0057
In the Bombay High Court
Case No : Writ Petition No. 394 of 1991

Shri Joazinho Pereira

APPELLANT

Vs

State of Goa and another

RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Goa, Daman Diu (Absorbed Employees Conditions of Service) Rules, 1965 — Rule 22, 4

Citation : (1998) 2 ALLMR 288 : (1998) 2 BomCR 467 : (1998) 2 MhLj 325

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

Bench : Division Bench

Advocate : E.P. Lobo, for the Appellant; M.S. Joshi, Additional Government Advocate, for the Respondent

Judgement

N.J. Pandya, J.—The petitioner was a Government employee of pre-liberation days. After the date of liberation, he opted for the service of the Union Territory and, therefore, got the benefit of protection of pay. At the relevant time, he was getting salary of Rs. 216/- per month. Later on, pursuant to the Absorption Act of 1965 and the Rules framed thereunder, particularly Rule No. 4, the matter came up for his fitment in the corresponding post with other fixation of pay in the revised scale of that post.

2. The petitioner in pre-liberation days was working as a Guard Grade II. Logically therefore, he would be taken into the Police Department and was put in the post of a Head Constable. The post of Head Constable carried the salary of Rs. 110/- to Rs. 130/-. In order to protect his pay, the balance was treated as personal pay.

3. From the year 1963 to the year 1969, during this interval, he worked as Male Nurse in the Police Dispensary. During that period he was given fixed pay of Rs. 216/-. The break-up was Rs. 130/- plus Rs. 86/-.

4. It came to the notice in the course of auditing that there being no post, no person can be allowed to work as Male Nurse in the said Dispensary. The matter

was taken up with the authorities for creation of the said post. Finally, sanction came about and from the year 1969, the post came to be created. This post carried the pay scale of Rs. 150/- to Rs. 280/-.

5. Obviously, therefore, in keeping with the said Absorption Act, 1965 and the Rules framed thereunder, particularly Rule No. 4, his salary should be fixed in this post. Assuming that fixation having been done in the post of Head Constable on creation of the aforesaid post so far as grant of scale is concerned and in view of the peculiar fact of the pay scale of Head Constable being less than what he was otherwise getting on account of pay protection Rule for service of pre-liberation days, after creation of the post, while fixing the salary with reference to the aforesaid Rule as well as the Fundamental Rule No. 22-C, his salary should have been fixed. That is exactly what was done as per Order dated 13-3-1969 (Exhibit A at page 13). His pay was fixed at Rs. 219A per month in the aforesaid scale of Rs. 150/- to Rs. 280/-.

6. F.R. 22-C of the Fundamental Rules reads as under :---

"F.R. 22-C Notwithstanding anything contained in these Rules, where a Government servant holding a post in & substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued :"

Later on, acting on the aforesaid provision itself, the petitioner was granted 10% increase by Order dated 9th November, 1971 as per Exhibit "C" (page 17). His pay thus came to be fixed at Rs. 240/- per month. Suddenly, by communication dated 10th February, 1972 his salary came to be re-fixed and was brought to the bottom of the pay scale of Male Nurse and was ordered to draw the monthly salary of Rs. 150/- per month and Rs. 88.30 was declared to be personal pay which was to be added to his salary.

7. Arithmetically speaking therefore, there was no reduction in his salary. From the point of view of drawing allowances and other future benefits including promotional prospects, there was adverse effect upon the petitioner. This action of the State is now under challenge. In view of the Fundamental Rules, including the Fundamental Rule quoted above, obviously this could not have been done. It should have been recalled that when the first occasion arose when the Goa, Daman and Diu (Absorbed Employees) Act, 1965 and the Rules framed thereunder particularly Rule No. 4 were brought in force, there being no corresponding pay scale which would have permitted fixation of salary in the stage next higher to which he was getting under the pay protection scheme namely Rs. 216/-, the device of fixed pay was worked out. In this background and in view of these peculiar facts and circumstances of the petitioner, it can

very well be said that the actual exercise of power of absorption and fixation and the occasion arose when the post of Male Nurse came to be created in the year 1969. The action of the Government is to be found in Annexure "A" (page 13) fixing the petitioner's salary at Rs. 219/- followed by the said grant of 10% increase as per Exhibit "C" (page 17) was in fact correct and was (or not) faulty exercise of its power.

8. Obviously, therefore, action in terms of Exhibit "D" cannot be sustained. That order is therefore quashed and set aside. The petition stands allowed and the salary of the petitioner shall be in accordance with the said Order (Exhibit "C") dated 9th November, 1971 with all consequential benefits that are to flow by way of upward revision as may have been done from time to time including all admissible allowances as also of promotion that might have been granted to the petitioner. Rule is made absolute accordingly.

9. Petition allowed.