

(2011) 02 BOM CK 0161
In the Bombay High Court
Case No : Writ Petition No. 377 of 2002

Shri Keshav K. Parab

APPELLANT

Vs

The Executive Engineer, Div. XIX (Bldg.), Bambolim Medical
Project, The Dy. Director of Administration and The State of
Goa

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 9A

Citation : (2011) 5 BomCR 454

Hon'ble Judges : S.B. Deshmukh, J;F.M. Reis, J

Bench : Division Bench

Advocate : D.P. Bhise, for the Appellant; S. Bandodkar, A.G.A., for the
Respondent

Judgement

F.M. Reis, J.—The above petition seeks for a writ or direction in a nature of writ of certiorari and quash and set aside the order of superannuation dated 24/02/2001 and also the order dated 28/02/2001 to the extent it orders superannuation of the Petitioner. The Petitioner in the nature of certiorari or any other appropriate writ quashing the Rule 3 of the Goa State Civil Services (Retirement) Rules, 2000 so far as it relates to workman/artisan as it is contrary to the conditions of service as applicable to the Petitioner workman and in violation of Rule 56 (B) of the fundamental rules.

2. It is the case of the Petitioner that he was appointed as an Assistant Carpenter on N.M.R. basis in P.W.D., S.D. II, Work Division-1 (Bldg.) at Mapusa on 1/09/1976 and that he was thereafter regularized on the post of carpenter and subsequently promoted in the year 1997 and confirmed as carpenter on 31/12/1997. It is further his contention that he was served with written order of suspension on 10/08/2000 by the Chief Engineer, P.W.D., Bambolim. It is further his contention that he represented against the said suspension order by an application dated 14/08/2000 and as no reply was received, challenge was made

to the said suspension order before the appropriate authority by an appeal preferred on 2/11/2000. It is further his case that he was informed on 24/01/2001 that he was due for retirement on superannuation from Government service as carpenter w.e.f. 28/02/2001. It is further his case that on 28/02/2001, the suspension order was revoked and on the very same day the Respondent No. 1 invited the Petitioner in his office and informed that he stood retired from that day onwards. It was further his case that he could not be superannuated at the age of 58 years as according to him he was entitled to work up to the age of 60 years. It is further his case that the retirement is a condition of service and a condition of service as applicable to the Petitioner workman just a day prior to 31/05/1987 cannot be altered to his disadvantage without giving notice to the workman as required u/s 9A of the Industrial Disputes Act. It was further his case that the Respondent State Government is not competent to challenge the condition of service of the erstwhile employees of the Union Territory of Goa, Daman & Diu and to deny the advantage of retirement at the age of 60 years by introducing fresh rules under Article 309 to the disadvantage of the Petitioner. He further stated that he was under the bonafide expectation that the State Government would reverse the decision. He accordingly filed the above petition seeking the aforesaid reliefs. The Respondents failed to file any reply to the above petition.

3. Shri Bhise, the learned Counsel appearing for the Petitioner has submitted that prior consent of the Central Government was not obtained for reducing the age of retirement on superannuation to 58 years while framing the Goa State Civil Services (Retirement) Rules, 2000 as the Petitioner was working as an employee of the Union Territory of Goa, Daman & Diu. He further submitted that the Goa State Civil Services (Retirement) Rules, 2000 are ultra vires to the extent of reducing the age of superannuation to 58 years to the fundamental rules. He further submitted that as no prior consent of the Central Government was obtained, the Petitioner was not entitled to be superannuated at the age of 58 years.

4. On the other hand, Shri Bandodkar, learned Additional Government Advocate appearing for the Respondent has submitted that even assuming such prior consent was required, nevertheless ex-post facto approval to the Rules was granted by the Central Government for altering the age of retirement from 60 years to 58 years. He further submitted that as such the contention of the learned Counsel for the Petitioner that Goa State Civil Services (Retirement) Rules, 2000 to the extent that the age of superannuation is reduced to 58 years is ultra vires and has no substance. He further pointed out that in view of the said ex-post

5 facto approval, the Respondents were entitled to get the Petitioner retired on Upon hearing the learned Counsel and on considering the material on record, we find that the points involved in the present petition are no longer rest integral in view of the judgment of the Division Bench of this Court reported in 2004(2) G

L.R. 273 in the case of Shri Ramnath Parwatkar v. State of Goa through its Chief Secretary and Anr. The Division Bench of this Court has at para 15 held thus:

15. Even if this Court was called upon to decide the question whether ex-post facto approval could be granted and even if this Court was to hold in favour of the Petitioners that ex-post facto approval could not be granted, the Petitioners would be entitled for the monetary relief, which the Government in the affidavit, referred to above, in paragraph 3 has stated that the Government would grant pay and allowances to the Petitioners till the date preceding the day of approval of the Central Government.

6. In view of the said finding of this Court, we find that as the Petitioner has been superannuated on 28/02/2001 and ex-post facto approval was obtained vide letter dated 30/07/2001 granting such approval to the said Rules under the provisions of Section 60(6) of the Goa, Daman and Diu Re-organization Act, 1987, for altering the age of retirement from 60 to 58 years, the Petitioner would be

6 entitled to the pay and allowances only for the aforesaid period. The learned Additional Government Advocate in fact did not dispute that the same statement as recorded by the Division Bench of this Court in the said judgment in the case of Shri Ramnath Parwatkar v. State of Goa through its Chief Secretary and Anr. would also be applied to the Petitioner herein.

7. In view of the above, we direct the Government to grant pay and allowances to the Petitioner till the date preceding the day of approval of the Central Government to the Goa State Civil Services (Retirement) Rules, 2000.

8. Rule is made absolute in the above terms with no orders as to costs.