
(1995) 01 BOM CK 0034
In the Bombay High Court
Case No : Writ Petition No. 474 of 1994

Smt. Yvette Pereira A.E. Costa

APPELLANT

Vs

State of Goa and Another

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Constitution of India, 1950 — Article 226, 239
Goa, Daman and Diu (Administration) Act, 1962 — Section 5
Goa, Daman Diu (Absorbed Employees Conditions of Service) Act, 1965 — Section 3
Goa, Daman Diu (Absorbed Employees Conditions of Service) Rules, 1965 — Rule 3

Citation : (1996) 5 BomCR 160

Hon'ble Judges : T.K. Chandrashekhara Das, J; E.S. Da Silva, J

Bench : Division Bench

Advocate : S. Naik, for the Appellant; G.U. Bhohe, G.A., for the Respondent

Final Decision : Allowed

Judgement

E.S. Da Silva, J.—Rule made returnable forthwith by consent.

2. The challenge in this petition is the order of the Government dated 27th December, 1990 purporting to revoke its earlier order dated 20th September, 1989. Therefore, a prayer is made by the petitioner seeking for a writ of certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction to quash and set aside the impugned order along with an additional prayer for a writ of Mandamus or a writ in the nature of Mandamus commanding the respondents to restore the order dated 20-9-1989.

3. It is the case of the petitioner that she is the widow of Shri Francisco Joao A. D'Costa who has served as "Escrivao de Juizo do Julgado Municipal de Diu" in which post he retired. He, however, expired on 18th October, 1993. The deceased husband of the petitioner was appointed in the Government service under direct recruitment to the said post of "Escrivao" after liberation of Goa, Daman and Diu in the Court of Civil Judge, Senior Division and Chief Judicial Magistrate, Panaji, by Order dated 25-3-1963 against an existing pre-liberation

post. The post of "Escrivao do Julgado" to which the petitioner was appointed existed under the former Portuguese regime immediately before 20-12-1961 which post had been created under Decree No. 4 dated 7-4-1961. During the erstwhile Portuguese regime the conditions of service including designation of posts and pay-scales were regularised by law known as "Estatuto do Funcionalismo ultramarino" (hereinafter referred to as "E.F.U.").

Under the former Portuguese administration all the posts along with the scales carrying the said posts were classified under various alphabets varying from A to Z and each alphabet had corresponding pay assigned to the corresponding post. Thus, according to the said category, the post of "Escrivao de Juizo" was grouped under alphabet "N" and the pay assigned to it was 2,900 Escudos equivalent to Rs. 483.33. After the liberation of Goa, Daman and Diu, for the period from 19-12-1961 till 5-3-1962 there was no specific law regularizing the conditions of service of its employees as the existing laws were not saved nor any other laws extended to the Territory. During the said period the administration of Goa, Daman and Diu was run by the Administrator appointed under Article 239 of the Constitution of India. The Administrator so appointed, in exercise of his administrative powers, issued instructions fixing the pay-scales for some posts which were notified on 15-9-1962 and which covered the cases of the persons who had joined Government services from 10-5-1962.

Though the petitioner's late husband was entitled to receive the pay which was assigned to his post and which was Rs. 483.33, he was, however, sanctioned only a pay-scale of Rs. 335-15-425 as an ad hoc salary, relying on the revision of pay-scales purportedly approved by Order dated 23-8-1962 and published in the Government Gazette dated 20-9-1962. Therefore a law was enacted by the Parliament known as the Goa, Daman and Diu (Absorbed Employees) Act, 1965 (hereinafter called "the Absorbed Employees Act") which was brought into force with effect from 1-2-1966. Under the said Act "absorbed post" was defined as civil service of the posts which existed under the former Portuguese Administration in Goa, Daman and Diu immediately before 20-12-1961. The said Act and more particularly its section 3 enabled the Central Government to make Rules for the regulation of recruitment to the absorbed posts and the conditions of service of the absorbed employees. In exercise of powers vested under this section 3, the Central Government made Rules known as the Goa, Daman and Diu (Absorbed Employees) Rules, 1965 (hereinafter called "the Rules"). Rule 3 of the said Rules declared that as from the appointed date every absorbed employee in the absorbed post should be brought on such revised scale of pay as of the Central Government or the Administrator with the prior approval of the Central Government made by an order and determined as per Rule 2(c). "Appointed day" meant the 1st day of February, 1966. As per Rule 3 various absorbed posts were confirmed and brought on Central Government scales of pay with effect from 1-2-1966. The post of "Escrivao de Juizo" to which the petitioner was initially appointed by order dated 25-3-1963 is an absorbed post inasmuch as it satisfies all the requirements as defined in section 2 of the

Absorbed Employees Act and the said post of "Escrivao de Juizo" was equated to the post of U.D.C. and brought on the revised Central Government scale of pay of Rs. 130-300 with effect from 1-2-1966.

It was further stated that under the Organizacao Judiciaria do Ultramar (O.J.U.) the appointing authority in respect of each Comarca Court was the Presiding Judge of the said Comarca Court. The petitioner's late husband as also the similarly placed persons like him were appointed pursuant to the powers conferred on such Presiding Judges under Article 71, No. 18, of the said enactment. It was also stated that the Constitution of India became applicable to the Territory of Goa, Daman and Diu with effect from 5-3-1962 and the same Territory was declared to be an Union Territory of India and the Goa, Daman and Diu Administration Act, 1962 was also deemed to have come into force with effect from 5-3-1962. The petitioner states that, as per section 5 of the said Act, all the laws in force before the appointed day in the Territory of Goa, Daman and Diu were directed to continue to be in force until amended by the competent registering or other competent authority. As such the E.F.U. was one of such laws which was in force immediately before the appointed day and which was regulating the recruitment and conditions of service of the Government employees of Goa, including the salaries payable in the respective posts. Therefore any amendment or revision in the salaries of the absorbed posts or of the absorbed employees in the absorbed posts could only be effected either by a competent registering or other competent Authority. Since the Territory of Goa, Daman and Diu was declared as Union Territory, the Rules under the Administration of Union Territory of Goa, Daman and Diu were in force and therefore the conditions of service of the employees of the Union Territory could only be regulated either by the law made by the Parliament or under Rules made by the President of India in exercise of powers vested in him under the proviso to Article 309 of the Constitution of India.

The powers vested in the President under the said Proviso were delegated to the Administrator of Goa, Daman and Diu only under letter No. F-7(II)62-Goa dated 25-7-1963 of the Government of India, Ministry of External Affairs. Thus, under the circumstances, neither the Administrator nor the Government of Goa, Daman and Diu had any valid legal authority to exercise the powers to amend or revise any pay scale assigned to any post including the absorbed post. Therefore the revised pay scale fixed by order dated 23-8-1962 and approved by the Government Order of Goa, Daman and Diu dated 23-8-1962 published in the Official Gazette dated 20-9-1962 was without any legal authority and, as such, null and void.

It was stated that in the meantime persons serving in the administration of the Union Territory of Goa, Daman and Diu who had been similarly placed as the petitioner's late husband and who were appointed after the liberation of Goa, Daman and Diu had been represented to the Government regarding the fixation of pay-scales under the provision of E.F.U. Consequent upon those

representations the Government was pleased to protect the pre-liberation pay of the absorbed posts and the Under Secretary (Law) in the name of the Governor of Goa by Order dated 20-9-1989 was pleased to sanction the protection of the pay of the absorbed posts held by the petitioner's late husband from the date of his appointment. As a result of this Order, the injustice done to the petitioner's late husband and other employees who had been similarly placed in denying them the salary to which they were legally entitled to at the time of their initial appointment to the respective pre-liberation posts was finally redressed by the said Order and the petitioner's husband was given pay corresponding to this post of "Escrivao do Julgado" and his pay was fixed at Rs. 403/- with effect from 30-11-1963. However, subsequently on 27-12-1990 the Government of Goa issued a fresh Order whereby the earlier Order dated 20-9-1989 was revoked and the petitioner's pay-scale with other similarly placed absorbed employees was re-fixed based on the provisional scale of pay.

Several petitions were filed against this Order dated 27-12-1990 and by judgment dated 30-8-1993 passed Writ Petitions Nos. 77 of 1991 and 79 of 1991, this Court found that the Order dated 27-12-1990 was misconceived and unsustainable. Accordingly, the said Order was quashed and set aside and the petitions were allowed with costs. It was also contended by the petitioner that the impugned Order dated 27-12-1990 was issued without even a show cause notice having been served on the petitioner's husband and he was also not given an opportunity to show cause against the said Order. It was stated that the work done by the petitioner at the time of his appointment was the same as done by the persons who were holding the same or similar posts. The petitioner's husband's pay ought to have been therefore the same as per the said pre-liberation post to which he was appointed irrespective of the date of appointment.

4. Mrs. Naik, learned Counsel for the petitioner, has contended that irrespective of the intrinsic merits of this petition, the subject matter of this case has been already concluded by this Court not only by the aforesaid judgments dated 30-8-1993 in Writ Petitions Nos. 77 of 1991 and 79 of 1991, but also in more recent judgments delivered by another Division Bench of this Court in Writ Petition Nos. 392 of 1994 and 393 of 1994. It was further urged by the learned Counsel that the facts of this case are similar to the ones referred to in the earlier writ petitions and therefore there was no reason for the Government to deny to the petitioner the benefits sought for by her in respect of the pay of her late husband.

5. On behalf of the respondents no return or affidavits were filed by the Government. Mr. Bhobe, learned Government Advocate, however, fairly conceded that the facts of this case are not different from the ones referred to in the earlier judgments of this Court either in Writ Petitions Nos. 77 of 1991 and 79 of 1991 or in Writ Petitions Nos. 392 of 1994 and 393 of 1994. A copy of the judgments dated 5th/6th December, 1994 in Writ Petition No. 392 of 1994 and 6th December, 1994 in Writ Petition No. 393 of 1994 was produced by the

learned Counsel and taken on record.

6. Upon hearing the learned Counsel and going through the record, in our view, the case of the petitioner is entirely covered, on facts and in law, by the earlier judgments of the Division Bench of this Court in Writ Petitions Nos. 77 of 1991 and 79 of 1991 as well as in the subsequent judgments of another Division Bench of this Court, in which one of us (Silva, J.) was a party, in Writ Petition No. 392/94 delivered on 5th/6th December, 1994 and Writ Petition No. 393/94 delivered on 6th December, 1994.

7. This being the position this petition is also bound to succeed. However, before we part with this case we are constrained to record our deep unhappiness and take strong exception at the obstinacy of the State Government and to the cantankerous attitude of the officials of the concerned Department in their attempt to continue to sideline the aforesaid judgments and therefore obstruct the due course of justice in this issue thus showing scant respect for the commands issued by the courts. We particularly note with pain and anguish that despite clear and unambiguous pronouncements delivered by two separate Division Benches of this High Court the State of Goa regrettably persists in ignoring the true ratio of these judgments and is refusing to strictly adhere and implement them in its letter and spirit.

We are nevertheless advised, even at this stage, to exercise utmost restraint in the hope that better sense would prevail and the concerned officials of the Government will realize that it is neither safe nor permissible for them, to flout a judicial Order with impunity any more. We therefore request the Chief Secretary of the Government to personally look into this matter and take whatever corrective steps he deems fit in this regard.

8. In the result, the petition is allowed and Rule accordingly made absolute in terms of prayers a) and b) with costs which we quantify at Rs. 1,000/-. We, however, direct that the Government shall recover these costs from the particular official/officials who are to be found responsible for unduly denying to the petitioner the benefits to which she was entitled in this case. The State of Goa is further directed to implement the order contained in this judgment with regard to the substantive benefits awarded to the petitioner on merits, including the payments of the arrears due to her, within the time-frame of 10 weeks from today, positively. Let a copy of this judgment be sent to the Chief Secretary of the Government for necessary action and compliance.