

---

**(2011) 01 BOM CK 0118**  
**In the Bombay High Court**  
**Case No : First Appeal No. 285 of 2004**

State of Goa

APPELLANT

Vs

Nuno Alvares Colaco

RESPONDENT

---

**Date of Decision :** 20-01-2011

**Acts Referred:**

**Citation :** (2011) 01 BOM CK 0118

**Hon'ble Judges :** F.M. Reis, J

**Bench :** Single Bench

**Advocate :** Susan Linhares, Additional Government Advocate, for the Appellant;  
D. Pangam, for the Respondent

---

## Judgement

F.M. Reis, J.—Heard learned Additional Government Advocate for the Appellants and learned Counsel for the Respondent.

2. The above appeal challenges the judgment and Decree passed in Civil Suit No. 71 of 2004 by the learned I Ind Adhoc Additional District Judge at Panaji dated 27-8-2004.

3. In brief, the facts of the case are that the Respondent filed a suit in respect of the non computation of his services from 2-12-1960 to 12-8-1961 and from 29-12-1961 to 23-5-1963 which were rendered by him during the erstwhile Portuguese regime to different departments, namely, Directorate of Planning and Statistics, Police Department and Post and Telegraphs Department. It was his contention that his service records clearly disclosed that his said services were duly recorded but, however, during the computation of his pension the period of his service was excluded without valid justification. Accordingly, the suit came to be filed on the ground that the service book arbitrarily forfeited and/or omitted the calculations for the purpose of pension, the said period without even issuing the show cause notice to the Respondent. It was further his case that when he sought for the certified copy of his service book on 9-12-1992 after his retirement, the Deputy Director of Accounts issued the copy thereof and he was

surprised with the said arbitrary and illegal remarks recorded thereon, under his undated signature at page 10 of the said service book "as service will not be counted as differential service in view of F.D's letter dated 19-6-1991". It is further his case that the said letter of the Finance Department was not an order of a competent authority and for other reasons as stated in the plaint the said Respondent prayed for a decree of declaration that he is entitled for a higher pension of Rs. 1,548/- per month w.e.f. 1-12-1992 on the basis of the qualifying service of 30 years, 3 months and 17 days together with interest thereon.

4. The Appellants filed a written statement opposing the claim of the Respondent and stated, *inter alia*, that the suit was not maintainable and that the Respondent was not entitled for the prayers as prayed in the suit. It was further their case that though there was pre-liberation service to his credit, the pension contribution was not deducted from his salary. It is further their contention that the Respondent had malafide intention while depositing a sum of Rs. 147/- in the name of the Directorate of Accounts being pension contribution w.e.f. 1-12-1960 to 12-8-1961 by challan dated 10-12-1991. It is further their case that the Appellants by letter dated 4-12-1991 brought to his notice that his services for the said period cannot be considered for the purpose of pension, unless there is a specific order to count his pre-liberation period from the Government and the break in service from 13-8-1961 to 28-12-1961 and from 24-5-1963 to 22-9-1964 is condoned by the Government. All the contentions raised by the Respondent in the plaint were disputed by the Appellants by filing their written statement and consequently prayed that the suit deserves to be dismissed.

5. The learned Judge after framing the issues and recording the evidence, by judgment and Decree dated 27-8-2004 decreed the suit filed by the Respondent and directed the Appellants to grant higher pension to the Respondent as prayed for by considering his total service of 30 years, 3 months and 17 days and to pay interest at 10% on the arrears of the pension.

6. Being aggrieved by the said Judgment, the Appellants had to prefer the present appeal. The learned Additional Government Advocate has assailed the said judgment and submitted that the learned Judge failed to consider the contentions of the Appellants and as such came to an erroneous conclusion that the Respondent was entitled to the decree as prayed for in the suit. Learned Counsel has taken me through the notes of the evidence and pointed out that the learned Judge has not at all appreciated the evidence on record whilst passing the impugned Judgment. Learned Counsel took me through the impugned judgment and pointed out that the points raised by the Appellants during the course of the submissions which go to the root of dispute were not at all considered by the learned Judge whilst passing the Judgment. Learned Counsel has submitted that the judgment passed by the learned Judge deserves to be set aside.

7. Shri D. Pangam, learned Counsel for the Respondent has supported the impugned Judgment. He pointed out that the learned Judge has rightly come to

the conclusion that there was a breach of the principles of natural justice whilst holding that the Respondent was not entitled for higher pension. Learned Counsel further submitted that the learned Judge has rightly appreciated the evidence on record and has come to the correct conclusion that the suit filed by the Respondent deserves to be decreed.

8. After hearing the learned Additional Government Advocate and the learned Counsel at length, and on perusal of the record and the impugned judgment I expressed that it would be appropriate that the matter be remanded to the learned Judge to decide the suit afresh on the basis of the material on record after hearing both the parties, as there were no reasons on the issues framed by the learned Judge, on the basis of the contentions raised by the respective parties with regard to the claim of the Respondent.

9. At this stage, both the learned Additional Government Advocate and the learned Counsel appearing for the Respondent submitted that no reasons may be given for remanding the matter to the learned Judge as any such reasons would prejudice the case advanced by the rival parties at the time of disposal of the suit by the learned Judge at the time of hearing, and they have no objection for such remand.

10. As such, considering the facts and circumstances of the case, I pass the following order:

#### ORDER

1. The appeal is partly allowed.
2. The Judgment and Decree dated 27-8-2004 is quashed and set aside.
3. Civil Suit No.71 of 2004 of the learned IInd Adhoc Additional District Judge at Panaji is restored to file of the learned Judge.
4. The learned Judge is directed to decide the said suit afresh after giving both the parties an opportunity to be heard in accordance with law, as expeditiously as possible and in any event on or before 31-3-2011.
5. All the contentions raised by the parties are kept open.
6. Parties are directed to appear before the learned Judge on 7-2-2011 at 2.30 p.m.