
(2006) 09 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 424 of 2006

Thomas A. Fernandes

APPELLANT

Vs

Director and Another

RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Goa Civil Services (Retirement) Rules, 2000 — Rule 3, 3(1)

Citation : (2006) 6 ALLMR 447 : (2006) 6 BomCR 551

Hon'ble Judges : Radhakrishnan S., J; Britto N.A., J

Bench : Division Bench

Advocate : M.S. Sonak, for the Appellant; S.R. Rivankar, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Shri M.S. Sonak, the learned Counsel on behalf of the petitioner and Shri S.R. Rivankar, the learned Government Advocate on behalf of the respondents.

2. Rule. By consent, Rule heard forthwith.

3. In this petition, the petitioner who was appointed as a Laboratory Assistant, in one of the Government High Schools, by Order dated 12.01.1976, seeks, inter alia, for a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, commanding the respondents not to retire the petitioner at the age of 58 years and for a further direction to continue the petitioner in service till the petitioner attains the age of 60 years.

4. The petitioner was appointed as a Laboratory Assistant initially in the Government Higher Secondary School, Panaji, by Order dated 12.01.1976 and is presently posted in a Government High School where there is a Headmaster, Teachers, one Laboratory Assistant (Petitioner), one UDC, one LDC, one Peon and one Watchman. The petitioner was appointed at a time when respondent No. 2 was a Union Territory and it is now a matter of history that the Union Territory of Goa became a full-fledged State w.e.f. 30.05.1987. At the time when the

respondent No. 2 was being administered as a Union Territory, the Central Government, vide communication dated 06.09.1983, conveyed the sanction of the-President of India for the retirement age of all teachers, including Lab. Assistants, Librarians, Principals, Vice Principals, to 60 years, w.e.f. 02.09.1983. The Government of Goa Daman and Diu, pursuant to the said communication dated 06.09.1983 of the Central Government, enhanced the retirement age to 60 years for all categories of teachers including Lab. Assistant, Librarians, Headmaster, Vice Principals and Principals as Goa was then one of the Union Territories.

5. After attaining Statehood, respondent No. 2 framed what are known as Goa State Civil Services (Retirement), Rules 2000, ("Rules of 2000" for short), which came into force from 30.08.2000 i.e. from the date of publication in the Official Gazette and they were made applicable to group "D" post from 31.12.2000. By virtue of Rule 3 of the said Rules of 2000, every Government servant including Workman/Artisan, were required to retire from service on the afternoon of the last day of the month in which he would attain the age of 58 years. In other words, the retirement age was reduced to 58 years. The proviso below Sub-rule (1) of Rule 3 of the said Rules of 2000 stipulated that a Government servant whose date of birth was the first of a month, would retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 years.

6. Thereafter, the Government has published what are known as Goa State Civil Services (Retirement) (Third Amendment) Rules 2006 ("Rules of 2006" - 4 - for short), which came in force from 30.05.2006 i.e. from the date of publication in the Official Gazette. By virtue of these Rules of 2006, Rule 3 of the Rules of 2000 was amended. The controversy raised herein is in relation to the amended proviso which now reads as follows:

provided that a Government servant, in Group D service or post or who is a teacher, and all other teaching staff, shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

7. The contention of the petitioner, in brief, is that he belongs to the category of "other teaching staff" as contemplated by the amended proviso to the Rules of 2006, and therefore, the petitioner is entitled to continue in service till he attains the age of 60 years. It appears that the petitioner's request to retire at 60 has been turned down by the Department of Education vide their letters dated 16.08.2006 and 18.09.2006.

8. The Director of Education in the Affidavit in reply filed has denied that the Central Government always treated Laboratory Assistants as teaching posts as alleged by the petitioner. She has stated that the Laboratory Assistant has been considered as vocational staff for the purpose of only granting vacation as the duty of the Laboratory Assistant is to assist teacher to set science equipments for practicals, and not to teach students. The Laboratory Assistants have been declared as vocational post because the teachers do not generally conduct

practicals during vacations and in order not to keep the Laboratory Assistant idle and without any work, they are granted vacation and treated as vocational staff. The mere fact that the petitioner is enjoying the vacation, cannot be a ground to claim the status as a teacher.

9. Circular No. 5 dated 28.01.1975, pertains to Non-Government Secondary Schools and by virtue of the said Circular, all the Heads of all Non-Government Secondary Schools were informed that the Laboratory Assistants should be considered as vocational Staff on the same lines as teaching staff and that they would enjoy all the benefits that were being enjoyed by the vocational staff of Non Government Secondary Schools. As already noted, there was a demand for enhancement of retiring age of school teachers to 60 years before the Government of India and by virtue of communication dated 06.09.1983, the Government of India decided to extend the retirement age to 60 years not only of all the teachers but also of Laboratory Assistants, Librarians, Principals and Vice Principals working in the Schools and the same benefit thereafter was extended by the Government of Goa to Laboratory Assistants as stated in Para 5 of the affidavit in reply filed by the Director of Education. It has also been stated by the petitioner in his additional affidavit dated 25.09.2006, and which has not been denied on behalf of the respondent, that like the teaching staff, the Laboratory Assistants are also entitled to ten days of Earned Leave but the non-teaching staff like UDC, LDC and Peons, are entitled to 30 days of Earned Leave for each year. By another Circular dated 29.01.1988, the Government of Goa, was pleased to treat the post of Laboratory Assistants both in Government and Non-Government aided schools as vocational taking into consideration their duties and responsibilities which are co-related to those of the teaching staff and the technical qualifications prescribed to them. By another Order dated 29.03.2000, the Government was pleased to raise the age of retirement of Laboratory Assistants/Technicians from 58 years to 60 years. Our attention was drawn also to Circular dated 15.03.2005, issued by the Deputy Director of Education (ACAD). The said Circular was issued in relation to the duties and responsibilities to be allotted to the Laboratory Assistants and the said duties and responsibilities were allotted after taking into account the recommendations of a Committee, which was appointed by the Director of Education. Annexure A to Circular dated 15.03.2005 shows that one of the duties of Laboratory Assistants is to do weekly planning and execution of class-wise practicals and activities in consultation with the science teachers. Their other duty, amongst others, is to guide the students to conduct practicals and activities. Yet another duty is to attend monthly staff meetings. To inform the students about various precautions to be taken specially while handling dangerous chemicals and the resultant dangerous reactions, is yet another part of their duty as specified in the said annexure.

10. From the above, it can be certainly concluded that though Laboratory Assistants in Government Schools are not teachers and therefore would not come under the category "A" and "B" of the staff as enumerated in Para 11 of the

affidavit in rejoinder of the petitioner as teachers, they certainly cannot be categorized under letters D to G of the same affidavit as clerical staff. Though they are not teachers in the strict sense of the term the nature of their duties are of teaching character and have always been considered as part of other teaching staff and extended the benefits which were given to teachers. The Rule making Authority would not have used the words "all other teaching staff" in the amended proviso to the Rules of 2006, in case the benefit of retirement age was to be extended only to teachers. Rule making Authorities do not use words which are redundant. The Laboratory Assistants in Government Schools, therefore, certainly belong to "other teaching staff" as contemplated by the amended proviso to the Rules of 2006 and they always have been considered to be so though not as teachers but as part of other teaching staff giving them benefits of not only of vacations and because of vacations, reduced Earned Leave like the teachers, requiring them to attend staff meeting, etc. In our view, reliance placed on behalf of the respondents on Circular dated 09.03.1990, (Exhibit R2) is now totally misplaced in the light of the amended proviso. The said Circular dated 09.03.1990 only declined to extend the benefits of Chattopadhyaya Commission to the Laboratory Assistants which benefits were applicable to the teaching staff though the same Circular stated that the duties and responsibilities of the Laboratory Assistants are co-related to those of teaching staff though they belong to non-teaching staff cadre. Certainly, the said Circular dated 09.03.1990, cannot be relied upon by the respondents to exclude the petitioner from the benefits of the amended proviso of the Rules of 2006 which extends the retirement age of 60 years in respect of other teaching staff and of Government servant of group "D" service or post or of teachers. The Laboratory Assistants have always enjoyed the same retirement age as that of teachers at least from 02.09.1983, and therefore, there is no need to treat them differently and the Rule making Authority could not be oblivious of this situation when they framed the amended proviso so as to include the words "other teaching staff", there could not be any other teaching staff in the Government school in addition to teachers if the Laboratory Assistants were to be excluded. In our view, the post of a Laboratory Assistant, in the light of duties to be discharged by them, certainly fits in within the expression "other teaching staff" of the amended proviso and therefore is entitled to work till he/she attains the age of 60 years.

11. In the light of the above, the petition is bound to succeed. Consequently, Rule is made absolute in terms of prayer (a) of the petition in that the petitioner shall continue in service of the respondents till he attains the age of 60 years, with no order as to costs.