IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 159 OF 2003 AND 196 OF 2005

WRIT PETITION NO. 159 OF 2003

Dr. A. K. Joshi,
Professor & Head,
Department of English &
Dean of Faculty of Languages
& Literature,
Goa University,
Taleigao Plateau,
Tiswadi, Goa. ... Petitioner

versus

1. State of Goa
   through the Chief Secretary,
   Secretariat,
   Porvorim, Goa.

2. Goa University
   through the Registrar,
   Taleigao Plateau,
   Tiswadi, Goa. ... Respondents

Shri S. D. Lotlikar, Senior Advocate with Shri D. S. Shirodkar, Advocate for the Petitioner.

Shri S. S. Kantak, Advocate General with Shri A. Kamat, Additional Government Advocate for Respondent No.1.

Ms. A. A. Agni, Advocate for Respondent No.2.

WRIT PETITION NO. 196 OF 2005

Dr. Joe D'Souza,
Reader, Department of
Microbiology,
Goa University,
Taleigao Plateau,
Tiswadi, Goa. ... Petitioner

versus

1. State of Goa,
   through the Chief Secretary,
   Secretariat,
   Panaji, Goa.

2. Goa University
   through the Registrar,
   Taleigao Plateau,
   Tiswadi, Goa. ... Respondents

Shri S. D. Lotlikar, Senior Advocate with Shri D. S. Shirodkar, Advocate for the Petitioner.

Shri S. S. Kantak, Advocate General with Ms. G. Bhonsule, Additional Government Advocate for Respondent No.1.

Ms. A. A. Agni, Advocate for Respondent No.2.

CORAM : SMT. V. K. TAHILRAMANI &
N. A. BRITTO, JJ.

DATE : **12TH NOVEMBER, 2009.**

JUDGMENT(Per N. A. BRITTO, J.)

Heard.

2. Both these petitions can be conveniently disposed off by this

common Judgment as the issue raised is common, and the issue is that they, the Petitioners, could not have been retired at the age of 58 years and were entitled to continue in service till the age of 60 years.

3. Some more facts are required to be stated to dispose off these petitions.

4. Petitioner Dr. A. K. Joshi was required to retire on 31-5-2003 while Petitioner Dr. Joe D'Souza was required to retire on 31-5-2005. Both the Petitioners had joined the Center of Post-Graduate Instruction and Research(CPIR) at Panaji, Goa, under the University of Bombay on 16-6-1973 and 1-7-1974, respectively. The former had joined as Lecturer in English and retired as Professor and Head of Department of English. The latter had joined as a Lecturer in the Department of Microbiology and retired as a Reader in the same Department.

5. The Goa University came to be created by virtue of the Goa University Act, 1984 from 1-6-1985 or thereabout. An agreement was executed on or about 9-6-1987 between the University of Bombay and the Goa University and at that time the age of retirement of teachers of the University of Bombay was 60 years, and it is stated that even today it continues to be the same. The Petitioners became employees of Goa University by virtue of the

said agreement w.e.f. 1-6-1985. The recitals to said agreement, inter alia, provided that:-

> 11(i). The entire teaching staff at the CPRI having been selected properly under the relevant provisions of the University of Bombay Act,(all the members of the teaching staff) would become employees of the Goa University w.e.f. 1-6-1985. It was agreed that their salary, the scales of pay and the total emoluments as on 31-5-1985 would be protected and that the Bombay University would take care to see that their service records were completed and brought upto date, if not already so.

The agreement also stated that:-

> (iii) The service conditions applicable to the teaching and non-teaching staff at the CPIR would be protected and continue to operate after 1-6-1985, when the Goa University prepares relevant statutes governing the service conditions of all its teaching and non-teaching staff, the Goa University would take care to see that such such conditions would not adversely affect the staff.

Clause (III) of the Agreement provided that the service conditions of the teaching and non-teaching staff of the CPIR shall be as per

the rules and regulations of the University till they are revised by the Goa University on the lines of the service conditions of the employees of the Government of Goa, Daman & Diu(without adversely affecting their total emoluments), and Clause (IV) further provided that the CPIR would be formally closed w.e.f. 19-6-1987, or earlier.

6. The Goa University, then framed its Statutes. There is no dispute that the Statutes framed, by the Goa University, by virtue of Statute SSB-1(xx) provided that the age of superannuation for teachers would be 60 years. It states that:-

> (a) The age of superannuation for teachers will be 60 years and thereafter no extension in service shall be given. However, a teacher including a Head of the Department attaining the age of retirement i.e. 60 years, any day between the first day of the first term and the last day of the second term, may be re-employed by the University, on the last salary drawn. It will be open to the University, to re-employ the superannuated teacher from the last day of the second term upto the day he/she attains the age of 65 years on such terms and conditions as may be mutually agreed upon,

> provided that his/her basic pay is not fixed at any stage above the basic pay last drawn by him/her. He/she will also be entitled to all other benefits in concomitant with the said basic pay.

7. Then came the controversial amendment if we may use that expression, to the Goa University Act, 1984 by which Section 15-A was introduced to the said Act by virtue of Goa University(Amendment) Act, 2002. Section 15-A of the Goa University Act provided that the retirement age of superannuation of the Registrar, Dean of Faculty, Professor, Reader, etc. except employees in 'D' category and the teaching and the non-teaching staff of the affiliated colleges with the exception of employees in 'D' category would be 58 years. A provision was also made as regards those employees who were in service beyond the age of 58 years and had not attained the age of 60 years during the academic year 2002-2003 to continue them in service till the end of that academic year by grant of extension and a further provision was made to enable them to retire at the end of the academic year in case they were due to retire on superannuation in the middle of the academic year. The amending Act also introduced Section 15-B. Section 15-B also provided that the Goa University or for that matter any authority under the Goa University Act, 1984(Act 7 of 1984), shall not have any powers to make any statute dealing with the age of retirement or extension in service of any teaching or non-

teaching staff or any employee of the University or any employee of aided or non-aided colleges affiliated to the said University and any such powers if stands conferred on any authority under the provisions of the said Act, 1984 shall to that extent, stand repealed. Any statute so made or existing shall, to the extent it contravenes any of the provisions of the Goa University(Amendment) Act, 2002, be deemed to be void and of no effect.

8. In other words, by virtue of the said amendment by Act 23 of 2002 the age of superannuation of the Professors/Readers, etc. of the Goa University was curtailed from 60 years to 58 years and not only that, that part of the statute referred to herein above of the University which provided retirement age at 60 was repealed. In other words, both the Petitioners have been retired on attaining the age of 58 years by virtue of Section 15-A r/w Section 15-B of the Goa University Act, 1984. It is also undisputed that presently, by virtue of another amendment carried out to the Goa University Act, 1984 by virtue of the Goa University(Amendment) Act, 2006, the age of retirement has again been restored to 60 years but that is after the Petitioners had retired from service. There is also no dispute, as already stated, that the age of retirement of the teachers of Bombay University continues to be 60 years.

9. The main contention of the Petitioners is that they, having been the employees of Bombay University, absorbed in Goa University, by virtue of

the said agreement dated 9-6-1987 during the course of which various functionaries of the Government had participated, their service conditions, namely, the age of retirement could not have been changed to their disadvantage from 60 to 58 years, and such a reduction is not only arbitrary, unfair and unreasonable, and also violative of Article 14 of the Constitution of India as well the breach of the said agreement. The Petitioners contend that the age of retirement of the teachers of University of Bombay still continues to be 60 years, and thus the Respondents have committed a breach of the agreement dated 9-6-1987, and the Respondents had no right to reduce the age of retirement from 60 years to 58 years, more so because at the time of taking over of the staff, assets and liabilities of the CPIR of the University of Bombay, the Goa University had undertaken to take care to see that while preparing the University statutes, governing the service conditions of the teachers, such conditions would not adversely affect the teaching staff. The Petitioners contend that in order to qualify to be an University teacher, it is mandatory that the candidates must pass NET(National Eligibility Test), conducted by the UGC(University Grants Commission), CSIR(Council of Scientific and Industrial Research) or similar test accredited by the University Grants Commission. The Petitioners submit that even after acquiring a Post Graduate Degree with a minimum percentage of grade or having acquired M.Phil or Ph.D. Degree, a candidate is required to clear a NET to qualify as a lecturer, and by this, the Petitioners wish to emphasize, that this entire

procedure takes quite a number of years as a result of which a University teacher gets less number of years of qualifying service of retirement benefits, and it is keeping in mind these aspects that the University Grants Commission had recommended the age of retirement of the University teachers from 60 to 62 years, and therefore on behalf of the Petitioners it is submitted that the reduction of retirement age from 60 to 58 years by the Goa University pursuant to the said amendment is grossly unjust and unreasonable more so when full pension is admissible to a retired teacher only if he or she completes 33 years of qualifying service. It is also the submission made on behalf of the Petitioners that the retirement age of teachers in all Central Universities and the I.I.T's in the country is 62 years, and not only that the age of retirement has now again increased the age to 60 years w.e.f. 12-5-2006 by another amendment by virtue of Goa Act 11 of 2006. It is also the contention of the Petitioners that by curtailing abruptly by two years the Petitioners are adversely affected in that their financial plans have been upset and the retirement benefits such as pension, gratuity, etc. have been reduced. It is also submitted that the age of retirement at 60 years was in vogue for more than 30 years, and the reduction will only lead to waste of resources, talent, experience, etc., and that, after having realized this that the Government of Goa enacted the said Goa University(Amendment) Act, 2006 bringing back the retirement age to 60 years, and thereby restoring the state which was existing for more than 30 years.

10. On behalf of the Petitioners, reliance has been placed on the decision of the Apex Court in the case of **S. P. Dubey** v. **M.P.S.R.T. Corporation and another**(AIR 1991 SC 276).

11. On the other hand, Shri S. S. Kantak, learned Advocate General has submitted that what was to be protected under the agreement dated 9-6-1987 was the total emoluments to be received by the Petitioners and not their age of retirement and in this context, learned Advocate General has referred to Clause III of the said agreement wherein it is stated that "the service conditions of the teaching and non-teaching staff of CPIR would be as per the rules and regulations of the University of Bombay till the date they are revised by the Goa University on the lines of the service conditions of the employees of the Government of Goa, Daman & Diu(without adversely affecting their total emoluments)". Learned Advocate General has next submitted that the retirement age has been reduced in the case at hand by virtue of an amendment carried out to the main Act, and such an amendment can be assailed on very limited grounds as stated by the Apex Court in the case of **State of Andhra Pradesh and others** v. **McDowell and Co. and others**(AIR 1996 SC 1627) and none of those grounds have been urged on behalf of the Petitioners in support of their petition.

12. Mrs. A. Agni, learned Counsel, appearing on behalf of the Respondent-University, has supported the stand of the Government, and has further submitted that the agreement as such, did not stipulate any age of retirement and that the age of retirement was to be fixed as per the Statutes framed by the University. Smt. Agni has further submitted that retirement age was fixed under the Statute and the same could have been withdrawn unilaterally, as stated by the Apex Court in **Roshan Lal Tandon** v. **Union of India and others**(infra). Learned Counsel further submits that neither the Government nor the University had given any assurance to the employees of CPIR unlike the case of **S. P. Dubey v. M.P.S.R.T. Corporation and another**(supra) that their retirement age would be maintained, and therefore the decision cited would not be applicable, to the facts of this case.

13. In the case of **Roshan Lal Tandon** v. **Union of India and others**(AIR 1967 SC 1889) the Supreme Court stated that the origin of Government service may be contractual in that there is an offer and acceptance in every case but once appointed to his post or office a Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed

by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Sahmond and Williams on Contracts as follows:-

> "So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part

> pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status".

14. Smt. Agni, learned Counsel, has also placed reliance on the case of **B. Bharat Kumar and others** v. **Osmania University and others**((2007) 11 SCC 58) wherein the Apex Court has held that the UGC scheme did not become applicable and it was not obligatory for the Government and the Universities to follow the same. It was further observed that as long as the State Government had not accepted the UGC's recommendation to fix the age of superannuation at 60 years, teachers cannot claim as a matter of right that they were entitled to retire on attaining the age of 60 years. It also appears from that Judgment that a submission was made about the desirability of the age of superannuation being raised to 60 or 62 years, but it was observed by the Apex Court, that it was not for that Court to formulate a policy as to what

the age of retirement should be as by doing so they would be trailing into the dangerous area of the wisdom of the legislation. The Apex Court further observed that if the State Government in its discretion, which is permissible to it under the scheme, decides to restrict the age and not increase it to 60, or as the case may be, 62, it was perfectly justified in doing so.

15. We are entirely in agreement with the submissions made by the learned Counsel on behalf of Respondents. Admittedly, as can be seen from the communication dated 27-7-1998(at page 31 of paper book) addressed to the Secretary, UGC, the age of superannuation for University and college teachers the age recommended was 62 years and neither the Bombay University nor Goa University or Government of Goa had accepted it, and whether to accept it or not, was within their discretion, as stated by the Apex Court in **B. Bharat Kumar and others** v. **Osmania University and others(supra)**. In other words, the Statute SSB-1(xx) had remained the same. It is common knowledge that the retirement age of Government employees at the relevant time was 58 years and yet the University framed the Statute providing the age of 60 years and the same continued, until the Legislature stepped in, and not the Government or the University, though the University also could have unilaterally reduced the retirement age as stated by the Apex Court in **Roshan Lal Tandon** v. **Union of India and others**(supra). The retirement age of the teachers of the University was fixed under the Statute of

the University and not because of any agreement. In fact in terms of Clause III of the agreement, the University could have fixed it at 58 years also in line with the age of retirement of Government employees from the time it was made in the year 1998 or thereabout. None appears to have ever claimed that the age should be 62 years, as recommended by UGC, as the recommendation was only recommendatory and not binding either on the University or the Government, the latter being obliged to meet the financial liabilities arising therefrom. Clause III which appears in the operative part of the agreement, and is very clear and clearly provided that the service conditions would be the same i.e. as those of Bombay University, until they were revised i.e. by Goa University with a further rider that they could be revised in line with service conditions of Goa Government employees. What was protected was total emoluments. Total emoluments would mean the total emoluments which the teachers were receiving at the time of take over and certainly that expression cannot be used to mean the emoluments which the teachers would receive, in case they had worked for another two years, as sought to be contended by the learned Senior Counsel on behalf of the Petitioners. Since Clause III, appearing in the operative part of the agreement is very clear, one need not look at the recitals which could be looked into only in case the operative clause was unclear. If at all the Petitioners, got their retirement age at 60, it was because it was fixed by the Goa University under the statutes and not because it was an age either recommended by the UGC or because that was

the age of retirement of teachers of Bombay University.

16. The case of **S. P. Dubey** v. **M.P.S.R.T. Corporation and another**(supra) stood on its own facts and is entirely distinguishable, and, the Petitioners cannot derive any benefit therefrom. There, the Petitioner Dubey was in the service of a Limited Company(Central Provinces Transport Services Ltd.) whose Board of Directors had fixed retirement age at 60 years. The Company was purchased and taken over by State of Madhya Pradesh by Notification dated 31-8-1955 and the notification expressly provided that the existing staff would not be adversely affected with regard to the terms and conditions of their service. In other words, the service conditions of the employees of the Company were specifically protected. Thereafter the State of Madhya Pradesh established M. P. State Road Transport Corporation w.e.f. 21-5-1962 and Dubey along with others were transferred to the Corporation and again the Corporation by resolution of Board of Directors resolved that their pay scales and conditions of service would not be affected by the transfer. Thereafter the Corporation framed regulations providing that the employees would be compulsorily retired on completion of 58 years unless specifically permitted by the Corporation to continue in service and the Petitioner Dubey was informed accordingly. The Apex Court, therefore, held that when the State Government takes over a private Company and gives an assurance of the (sic. that) type, it is but fair that the State Government should

honour the same, and, the State Service Rules which fixed the age of superannuation at 58 years could not be made applicable to Mr. Dubey and other employees of the taken over Company. The Court further held that:-

> "The State Government and also the Corporation had given assurance to the appellant and other employees who were transferred to the Corporation that their conditions of service would not be adversely affected. The said assurance was incorporated in the directions issued under the Act. The Corporation cannot frame regulations contrary to the directions issued by the State Government under S. 34 of the Act. The age of superannuation which the appellant was enjoying under the State Government could not be altered to his disadvantage by the Corporation. We are, therefore, of the view that Regulation 59 framed by the Corporation was not applicable to the appellant. He was entitled to continue in service up to the age of 60 years".

17. In the case of **State of Andhra Pradesh and others** vs. **Mc.Dowell and Co. and others**(supra) it has been held by the Apex Court that that a law made by the Parliament or Legislature can be struck down by the Courts on two grounds and two grounds alone i.e. (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground. If an enactment is challenged as violative of Article 14, it can be

struck down only if it is found that it is violative of the equality clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom. An enactment cannot be struck down by applying the principle of proportionality when its applicability even in administrative law sphere is not fully and finally settled. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted. The two rules stated above for striking down of enactments are however confined to an Act made by the Legislature.

18. True, the age of retirement of the Petitioners whilst they were the employees of the Bombay University was 60 years but after CPIR became part

and parcel of the Goa University their service conditions were to be framed by the latter, as can be seen from Clause III of the agreement between the Bombay and Goa Universities dated 9-6-1987, and pursuant thereto the Goa University did frame a statute providing the retirement age of 60 years but that was done away with by a Legislative enactment or Act of Legislature and the Act of Legislature could be challenged only on the grounds as indicated by the Apex Court in the decision cited herein above. The Government Officers might have participated in the discussion but the agreement was between the Universities of Bombay and Goa. It is not the Government nor the University which had reduced the age but it was reduced pursuant to the legislative wisdom from 60 years to 58 years, and since the age of a class of employees to which the Petitioners belonged was reduced from 60 to 58 years by a Legislative enactment there is nothing either arbitrary or unreasonable about the same.

19. No submission has been made on behalf of the Petitioners that introduction of Section 15-A or 15-B to the Goa University Act, 1984 was a result of legislative incompetence or violation of any of the fundamental rights guaranteed to the Petitioners. Retirement age of Government employees and the like, always differs from State to State and has always been a gamble, if we may use that expression, but that is a matter of policy of the employer i.e. whether it is a Government or an University as to till what age, their

employees should work and Courts cannot venture in their path. That the Legislature has again extended it to 60 years in 2006 is entirely a different matter and the Petitioners who retired after the first amendment, cannot derive any benefit of the same.

20. We, therefore, find there is no merit in these petitions, and consequently the same are hereby dismissed.

SMT. V. K. TAHILRAMANI, J.

N. A. BRITTO, J.

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