

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 65/2005

Dr. Bugui Dessai.
major, married,
Department of Chemistry,
Goa University.
Bambolim, Goa. Petitioner.

Vs.

1. Goa University, through its Registrar,
Taleigao Plateau,
Bambolim, Goa.

2. Director of Higher Education,
Government of Goa,
Junta House,
Panaji, Goa.

3. State of Goa,
through its Secretary of Education.
Panaji, Goa. Respondents.

Mr. V. A. Lawande, and Ms. Matshaya Pinto, Advocates for the
petitioner.

Ms. A. A. Agni, Advocate for respondent No.1.

Mr. A.N.S. Nadkarni, Advocate General and Mr. D. Lawande.
Government Advocate for respondents No.2 & 3.

**CORAM :- NARESH H. PATIL &
F.M. REIS, JJ.**

Reserved on : 3rd October, 2013.

Pronounced on : 10th October, 2013.

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J U D G M E N T :- (PER NARESH H. PATIL, J.)

The petitioner prays for a writ of certiorari to quash and set aside the impugned order dated 24th April, 2003 passed by respondent no.1 refixing and revising the scale granted to the petitioner with retrospective effect and the order dated 16th December, 2004 passed by respondent No.2, along with the interim reliefs, as prayed in the petition.

2. The petitioner contends that he was appointed as a Reader in Inorganic Chemistry in June, 1987 by the respondents. He was confirmed in service w.e.f. 20th June, 1989, after 2 years' of probation as per the Rules in force at the relevant time. By an order dated 12th September, 1992, the respondent informed the petitioner that the Vice Chancellor was pleased to appoint the petitioner to the post of Reader in Inorganic Chemistry under Statute No.107.13 on a basic pay of Rs.3700/- in the pay scale of Rs.3700-125-4950-150-5700 with effect from 1.1.1986 and that the date of increment should be 1.1.1987.

3. The petitioner contends that he was placed in that pay scale under Statute 102 and not under Statute 107 which was corrected by the respondents by subsequent orders. By order dated 17th October,

1996, the respondents fixed the basic pay of Rs.3700/- p.m. with effect from 1.1.1986 and released increment of Rs.125/- from 1.3.1986, raising the basic pay to Rs.3825/- in the pay scale of Rs. 3700-125-4950-150-5700. It was further ordered, on appointment to the post of Reader, to fix the pay at Rs.4200/- with effect from 1.7.1987 and to release further increments from 1.7.1987 to 1.7.1996.

4. The petitioner contended that on implementation of University Grant Commission revised scales and Notification dated 12th January, 2000, the basic pay of the petitioner was refixed at Rs.15,360/- with effect from 1st January, 1996 in the pay scale of Rs.12000-420-18300 by the respondent. The next increment accrued was on 1st July, 2000.

5. The petitioner states that on realising that there was some anomaly in the fixation of the pay scale of the petitioner, respondent No.1 finally, by order dated 17th January, 2001, in supersession of all previous orders, granted sanction and ordered to fix the basic pay of the petitioner at Rs.4,200/- w.e.f. 1st July, 1987 in the pay scale of Rs.3700-125-4700-150-5300-200-5700 in accordance with Statute 102 of the Goa University. The scale was refixed to Rs.15780/- with effect

from 1st January, 1996 in the pay scale of Rs.12000-420-18300 and the increments accrued during the said years were shown in the said order from 1st July, 1996 to 1st July, 2000.

6. The petitioner states that apart from the petitioner, other faculty members, namely Dr. Pradoshi and Dr. J. K. Kirtani were placed in the similar pay scales in consonance with Statute 102 of the Goa University. The petitioner placed reliance on SA19 (xxv) which mandates that once the basic pay of the petitioner was fixed, the same should not be revised if it is adverse to the interest of the teacher concerned.

7. The petitioner contends that the impugned order revising the pay scale of the petitioner by reducing it from the existing pay sales with retrospective effect is in violation of SA-19(xxv) and the same being adverse to the interest of the petitioner and contrary to the Statute. The petitioner had paid income tax on the additional amount received on account of the order dated 17th January, 2001 and if the recovery is initiated, he will suffer monetary loss and prejudice.

8. The petitioner submits that he was drawing salary/ emoluments on the basis of the revised pay scales since 1st January,

1996 till July, 2003. The petitioner approached the Court stating that approximately one year of service had left and at the fag end of his service such an illegal action on the part of the the respondent would be arbitrary and would amount to infringement of fundamental rights of the petitioner.

9. The petitioner had earlier approached this Court by filing Writ Petition No. 628/2003, challenging the impugned order dated 24th April, 2003. The said petition came to be disposed of by this Court by a speaking order. The petitioner was allowed to make a representation to the Director of Higher Education. It was directed that the Director of Higher Education shall decide the representation within a period of one month from the date of the petitioner appearing before the Director. The petition was disposed of on 7th June, 2004 by the Division Bench of this Court. A copy of the order dated 7th June, 2004 was applied on 14th June, 2004 which was delivered on 18th August, 2004. The petitioner contends that he made representation to the Director of Higher Education on 21st June, 2004. Without providing any opportunity of hearing, the Director dismissed the representation, without deciding the same. It is submitted that the petitioner addressed a letter dated 4th October, 2004 to respondent No.1 bringing the above

facts to their notice. On 5th October, 2004, respondent No.1 responded to the petitioner, which was in complete defiance of the order of the Court dated 7th June, 2004. By letter dated 8th October, 2004, the petitioner replied to the letter dated 5th October, 2004 stating the correct facts. The petitioner was informed that the hearing of the matter was fixed on 18th October, 2004 at 5 p.m.. It was informed that the representation was placed before the Director of Accounts through Finance (Rev. & Control) Department, Government of Goa and they had upheld the decision of the Director of Higher Education, as regards the pay fixation of the petitioner.

10. The petitioner contends that the order dated 16th December, 2004 is illegal, perverse and is in breach of principles of natural justice, and is in contravention of the direction of this Court, since it was the Director of Higher Education who was to decide the representation of the petitioner without being influenced by his earlier decision. It is submitted that the order has been passed under the influence of the Government and not as an independent authority.

11. An affidavit-in-reply was filed by Prof. Jayant Budkuley, Registrar of Goa University on 19th April, 2005. Inter alia, the

deponent submitted that the petitioner was given higher basic on the basic pay of Rs.15780 w.e.f. 1.1.1996, as it was noticed that Dr. P. S. Raikar who was granted the the scale of 3700-5700, was having basic pay of Rs.15780/- w.e.f. 1.1.1996.

12. In paragraph 15, the deponent contended that the pay re-fixation of the petitioner had been done in terms of approval of the Director of Higher Education. The UGC guidelines are required to be implemented with the approval of Government of Goa in so far as they referred to the pay scale and other service conditions, as the University is funded by the Government of Goa. The other allegations made by the petitioner were refuted by the deponent. It was submitted that the order dated 16th December, 2005 was passed after hearing the petitioner and even the first order dated 24th April, 2003 was passed after the petitioner was heard on 14th March, 2003.

13. In respect of the claim of the petitioner to the revised pay scale, the Registrar submitted in paragraph 17 as under :

“17. The petitioner can get the increments in terms of the appropriate pay fixation. In fact it is not in dispute that the pay scale of the petitioner is 12,000-420-18,300 and the petitioner was fixed in the pay scale of 15,360

w.e.f. 1/1/96. It is also not in dispute that the petitioner had never represented against this pay fixation, in fact the unrevised scale of the petitioner was also admittedly 3700-5700. As on 1/7/96 he was at the stage of Rs.5400 (pre-revised scale) which would be corresponding to Rs.15,780. As on 1/1/96, his pay scale was fixed at Rs.15,360. Vide order dated 22/5/2000, it was notified that the basic pay of the petitioner was fixed at Rs.15,360 w.e.f. 1/1/96 in pay scale of 12,000-420-18,300. There was no representation made against this order. This order dated 17/1/2001, was issued thereby refixing the pay of the petitioner at Rs.15,780 as on 1/1/96 in view of the fact that Dr. Raikar who was junior to the petitioner had been granted a higher pay scale and not because he was entitled to be in the said pay scale."

14. Respondent No.2 also filed Affidavit-in-reply on 27th September, 2005. In para 10, the deponent contended as under :

"10. It is stated that in pursuance to the Order of this Hon'ble Court dated 7/6/2004, the Petitioner did not appear before the Directorate of Higher Education on 14/6/2004 at 10.00 a.m. as directed by the said order. The Directorate however processed the representation and re-examined the case of pay fixation of the Petitioner and it was decided that there was no case to

review the earlier order. Petitioner was also given another opportunity of appearing before the Director on 18/10/2004. However, the Petitioner did not appear for personal hearing on that date.”

15. The petitioner filed an affidavit-in-rejoinder and placed on record a copy of the order dated 12/2/2013 issued by the Under Secretary (Higher Education), Government of Goa, confirming their stand to recover the excess salary paid to the petitioner.

16. Mr. V.A. Lawande, learned Counsel appearing for the petitioner submitted that inspite of order passed by this Court in Writ Petition No. 628/2003, dated 7th June, 2004, the Director of Higher Education did not pass order, instead the State passed the order, which would be contrary to the orders passed by this Court. The petitioner had also paid the income tax on the emoluments received from time to time. In case the recovery is initiated, the petitioner would face hardships. The pay scale of the petitioner was fixed in accordance with Statute 102 and not Statute 107. The revision in the pay scale, adverse to the interest of the petitioner, was done without hearing the petitioner. Therefore, such a refixation/recovery of the alleged excess amount paid to the petitioner requires to be set aside. In the facts of

the case, the petitioner was entitled for the appropriate revision which was granted to the petitioner by the respondents-Authorities. The learned Advocate contended that the University acted on the dictates of the State Government. In view of the provisions of SA 19(xxv), the alleged excess recovery, adverse to the petitioner's, interest cannot be effected now. The petitioner was not given any show cause before the impugned decision was taken.

The learned Counsel for the petitioner placed reliance upon the following judgments :

- (a) *Shyam Babu Verma and others vs. Union of India and others*, (1994) 2 SCC 521;
- (b) *Bhagwan Shukla s/o. Sarabjit Shukla vs. Union of India and others*; (1994) 6 SCC 154;
- (c) *Sahib Ram vs. State of Haryana and others*, (1995) Supp (1) SCC 18;
- (d) *Union of India vs. Lala Jagannath Prasad*, 1995 Supp (1) SCC 282;
- (e) *Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma and others*, (1998) 5 SCC 87;
- (f) *State Govt. Houseless Harijan Employees' Association vs. State of Karnataka and others*, (2001) 1 SCC 610;

(g) *Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others*, (2002) 1 SCC 1;

(h) *State Bank of India and others vs. K. P. Subbaiah and others*, (2003) 11 SCC 646;

(i) *Smt. Vaishali Samant vs. State of Goa and others*, 2006 (2) ALL MR 12; and

(j) *Syed Abdul Qadir and others vs. State of Bihar and others*, (2009) 3 SCC 475.

17. Ms. A. Agni, learned Counsel appearing for respondent No.1-Goa University submitted that the State certainly has a say in respect of the grant of pay scale, as the University is funded by the State. It is submitted that in 2001 the benefits were given from 1/1/1996 in favour of the petitioner, but in the year 2003, by an order, the said benefit of excess amount was withdrawn. Such an action was taken against two other employees from whom the excess amount was already recovered. The petitioner became Reader on 12/9/1992. The benefit was given to the petitioner wrongly and if some mistake takes place in grant of pay scale/revision of pay scale, the University is not estopped from taking appropriate steps, by initiating recovery proceedings. Moreover, the petitioner has given an undertaking that

he would refund the excess amount. Therefore, the University has acted strictly in accordance with law and the facts of the case.

The learned Counsel for respondent No.1-University relied upon the following judgments :

- (1) *Registrar, Cooperative Societies Haryana and others vs. Israil Khan and others*, (2010) 1 SCC 440; and
- (2) An un-reported judgment of this Court in *Mr. Anil V. Kamat vs. The Director of Education and others*, (W.P. No.22/2005, dated 16th June, 2011);

18. Mr. A.N.S. Nadkarni, learned Advocate General appearing for respondents No. 2 and 3 supported the contentions raised by the learned Counsel appearing for the University and submitted that this is not a case of extreme hardships where the respondents should be prevented from initiating the proceedings for recovery of the excess amount paid to the petitioner. It is submitted that the petitioner's basic pay was the same under Statutes 102 or 107 of the Goa University. The basic pay of the petitioner was Rs. 3700/-.

The learned Advocate General, in support of his contentions, relied upon a judgment of the Apex Court in the case of *Chandi Prasad Uniyal and others vs. State of Uttarakhand and*

others, (2012) 8 SCC 117.

The case-law cited by the learned Counsel for the petitioner is as below :

19. In *Shyam Babu Verma's* (supra), the Apex Court, in the facts of the case, in para 11 observed as under :

“ 11. Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

20. In *Sahib Ram* (supra), the Apex Court, in the facts of the case, in para 5 observed as under :

“5. Admittedly the appellant does not possess the

required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

21. In *Union of India* (supra), the Apex Court, in the facts of the case, in para 7 observed as under :

“7. It is not disputed by the learned counsel for the parties that the respondent has since retired from service. Despite the view we have taken, we direct the railway authorities not to vary to his detriment or reduce the pension and other retiral benefits which the respondent is already drawing or has drawn. Even if any benefit has been given to the respondent as a result of the High Court judgment the same shall not

be withdrawn.”

22. In *Secretary-cum-Chief Engineer, Chandigarh* (supra), the Apex Court, in the facts of the case, in para 8 observed as under :

“8. Learned counsel for the appellant attempted to contend that when the respondent was promoted in stop-gap arrangement as Junior Engineer I, he had given an undertaking to the appellant that on the basis of stop-gap arrangement, he would not claim promotion as of right nor would he claim any benefit pertaining to that post. The argument, to say the least, is preposterous. Apart from the fact that the Government in its capacity as a model employer cannot be permitted to raise such an argument, the undertaking which is said to constitute an agreement between the parties cannot be enforced at law. The respondent being an employee of the appellant had to break his period of stagnation although, as we have found earlier, he was the only person amongst the non-diploma-holders available for promotion to the post of Junior Engineer I and was, therefore, likely to be considered for promotion in his own right. An agreement that if a person is promoted to the higher post or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher

salary or other attendant benefits would be contrary to law and also against public policy. It would, therefore, be unenforceable in view of Section 23 of the Contract Act, 1872.”

23. On the requirement of principles of natural justice, the Counsel for the petitioner relied on the *State Govt. Houseless Harijan Employees' Association* (supra).

24. In *Pradip Chandra Parija and ors;* (supra), the Apex Court, in the facts of the case, in para 6 observed as under :

“6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier

judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.”

25. In *State Bank of India and ors.*, (supra), the Apex Court, in the facts of the case, in paras 18, 19 and 22, observed as under :

“18. Public services comprise different grades and, therefore, different pay scales are provided for different grades. The pay of an employee is in that background fixed with reference to a pay scale. This is necessary to be done because the pay of an employee does not remain static.

19. It has to be noted that an employee starts with a particular pay which is commonly known as initial pay and the periodical increases obtained by him are commonly known as increments. When the highest point is reached, the employee concerned becomes entitled to what is known as ceiling pay. It is, therefore, a graded upward revision.

22. As noted above, a pay scale has different stages starting with initial pay and ending with ceiling pay. Each stage in the scale is commonly referred to as basic pay. The emoluments which an employee gets is not only the basic pay at a particular stage, but also the additional amounts to which he is

entitled as allowances e.g. DA etc. Therefore, when a question of pay protection comes, the basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that the total emoluments are not reduced.”

25. In *Smt. Vaishali Samant*, (supra), Division Bench of this Court, in the facts of the case, has observed that University is an autonomous body and therefore, the State Government will not be entitled to interfere with the internal administration of the University, notwithstanding the fact that the State Government is the funding body unless and until the University Statutes provide for the same or there is any Act of legislation conferring that power on the State.

26. In *Syed Abdul Qadir and ors.*, (supra), the Apex Court, in the facts of the case, in paras 57 and 58, observed as under :

“ 57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be

erroneous.

58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana*, (supra) *Shyam Babu Verma v. Union of India*, (supra) *Union of India v. M. Bhaskar*, (1996) 4 SCC 416. *V. Gangaram v. Director* (1997) 6 SCC 139; *Col. B.J. Akkara (Retd.) v. Govt. of India* (2006) 11 SCC 709; *Purshottam Lal Das v. State of Bihar* (2006) 11 SCC 492, *Punjab National Bank v. Manjeet Singh* (2006) 8 SCC 647 and *Bihar SEB v. Bijay Bhadur* (200) 10 SCC 10 SC 99.

The case-law cited by the learned Counsel for respondent

No.1-University is as below :

27. In *Regisrar, Co-operative Societies Haryana and ors.*, (supra), the Apex Court, in the facts of the case, in paras 7 and 10, observed as under :

“ 7. There is no “principle” that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following conditions were fulfilled:

“(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.”*

10. ... Most of the employees who received similar relief have refunded or have agreed to refund the excess payment. Making any exception in the case of the respondents would also lead to discrimination.”

28. In *Anil V. Kamat*, (supra), Division Bench of this Court, in the facts of the case, in para 6, has observed as under :

“6. It was lastly urged by Shri S. D. Lotlikar, learned

Counsel for the petitioner that since the petitioner is not guilty of misrepresentation or fraud before he was granted Selection Grade, the recovery against him for extra payment in such Selection Grade is not justified. It is not possible to accept the contention in view of the clear and unequivocal undertaking given by the petitioner that he will refund the excess amount at any time if called upon to do so.”

The case-law cited by the learned Advocate General for respondents No. 2 and 3 is as below :

29. In *Chandi Prasad Uniyal and ors.*, (supra), the Apex Court, in the facts of the case, in paras 13, 14 and 15, observed as under:

“13. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or were on the verge of retirement or were occupying lower posts in the administrative hierarchy.

14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in *Syed Abdul Qadir case*^(supra), and in *Col. B.J. Akkara case*

(2006) SCC 709, the excess payment made due to wrong/irregular pay fixation can always be recovered.”

30. We have perused the record placed before us, considered the provisions of The Goa University Act, 1984, Statutes framed thereunder along with the amended Statutes.

31. Statute 102 relates to the revision of pay scale of teachers of Goa University in accordance with the University Grants Commission Scheme, 1986. Statute 107 relating to pay scales of the teachers of the Goa University was framed and amended vide Government of India's letter dated 22.7.1988. Statute 107 incorporates revised scheme in supersession of Statute 102 of the Goa University. Both these amended Statutes were placed on record during the course of hearing of the petition.

32. SA-19 (xxv), as amended upto 31st December, 2000, reads as under :

“SA-19 (xxv) Notwithstanding anything contained in this Statute, the basic pay of a teacher already fixed in operation of Statute SA-19 now amended, as on the date of implementation of this Statute, will not be

revised if it is adverse to the interest of the teacher concerned. Selection/promotion/fixation already carried out between 1.1.96 and the date of implementation of this Statute shall not be reopened and such an incumbent shall be given the benefit of such Selection/promotion/fixation from the date of his/her eligibility and scale/designation shall be fixed accordingly.”

33. We have perused the order passed by this Court in Writ Petition No.628/2003 on 7th June, 2004 and the communication made by the petitioner to the Director of Higher Education. By the communication dated 29th September, 2004, the Officer on Special Duty, Directorate of Higher Education Mr. M:T. Verlekar informed the petitioner that his representation was referred to the Government as per Court's Order and the Government desired to look into his case papers of fixation of pay made from time to time. A further communication dated 5th October, 2004 made by the Director of Higher Education to the petitioner is placed on record at Exhibit “I” colly. By the said communication, the petitioner was informed that if he was interested in being heard, he may approach the Director, with prior appointment. By a further communication dated 13th October, 2004, the petitioner was informed that his representation was fixed in the Chamber of the

Director of Higher Education on 18th October, 2004 at 5.00 p.m. Final order passed on 12th February, 2013 by Mr. R.H. Halarnkar, Under Secretary (Higher Education), was placed on record by the State on 30th April, 2013. In the said order, it was observed that the decision conveyed earlier vide letter dated 11th April, 2003 stands to be in order.

34. The order passed by this Court in Writ Petition No.628/2003 ought to have been well understood and appreciated by the State Authorities, including the Director of Higher Education. The said order ought to have been complied within a reasonable time-frame. The Under Secretary, Higher Education, passed the order on 12th February, 2013 instead of Director of Higher Education passing the order. We express our displeasure over the manner in which the State Authorities, including the Director of Higher Education, have dealt with the matter, after the order was passed by this Court in Writ Petition No. 628/2003 on 7th June, 2004.

35. The law in respect of recovery of the alleged excess amount paid to an employee has been well settled by now. The learned Advocate General has placed reliance on the judgment in the

case of *Chandi Prasad Uniyal and others*, (supra) to submit that this is not a case of extreme hardship so as to grant the petitioner the benefit of retaining the excess amount. Allowing the petitioner to retain such an amount would amount to unjust enrichment.

36. The learned Counsel for the petitioner submitted that the judgment, in the case of *Syed Abdul Qadir and others* (supra) was delivered by Three Judge Bench of the Apex Court, while the judgment in the case of *Chandi Prasad Uniyal and others*, (supra) was delivered by Two Judge Bench of the Apex Court. We have minutely perused both the judgments cited supra. In the case of *Chandi Prasad Uniyal and others*, (supra), the Apex Court observed that in Syed Abdul Qadir's case directions were given in view of the peculiar facts and circumstances of that case.

37. SA-19(xxv) is very clear in respect of rights of the respondents to revise the pay scales which would be adverse to the interest of the petitioner. The petitioner has placed heavy reliance on this Statute and rightly so. From the record placed before this Court and considering the submissions advanced, we do not find that the petitioner has, at any time, misrepresented or committed any fraud in

getting these benefits. In the facts of the case, the issue is required to be considered in equity, while exercising judicial discretion. The facts reveal that the petitioner has not sat over the matter considerably over a long time and prior to approaching this Court, the petitioner was pursuing the matter with the respondents-Authorities, which is clear from the order dated 12.2.2013. The petitioner was granted the benefit in the year 2001 w.e.f. 1/1/1996 which benefit was taken away by the order passed in the year 2003. Soon thereafter, after making certain representations, the petitioner approached this Court. The second round of litigation started when the petitioner filed this writ petition. At the time of filing of this writ petition, the petitioner was to retire after one year.

38. The orders passed on 12/9/1992 and 17/10/1996, by the Registrar of the University, which are at pages 33 and 34 of the paper book, read as under :

“ GOA UNIVERSITY.

Ref. No.GU/IV/PT/RST/96/92/8374 Date : 12-9-92

ORDER

Pursuant to the Executive Council's resolution in its meeting held on 29.11.1992, the Vice-Chancellor is pleased to appoint Dr. D.B. Desai, then

lecturer in Inorganic Chemistry to the Post of Reader in Inorganic Chemistry under Statute S.107.13 on a basic pay of Rs.3700-125-4950-150-5700 with effect from 1.1.1986.

The date of his next increment shall be 1-1-1987.

Sd/-
(G.V. Kamat)
REGISTRAR

To,
Dr. D.B. Desai,
Reader in Inorganic Chemistry,
Department of Chemistry,
Goa University.

Copy to :-

1. The Finance Officer, Goa University.
2. The System Analyst, Goa University with a request to prepare due drawn statement & authorise payment accordingly.
3. Personal file.
4. Concerned File No.96.
5. Guard file.

“ GOA UNIVERSITY.

Ref. No.GU/4/PT/BDD/4/8796/9712. Date : 17.10.96

ORDER

In supersession of all previous orders, sanction is hereby conveyed for the following in respect of Dr. B.D. Dessai, Reader, Department of Chemistry.

1. To fix his basic pay at Rs.3700-00 p.m. with effect from 1.1.86 and to release increment of Rs.125/- w.e.f. 1-7-86 raising his basic pay to Rs.3825-00 in the pay scale of Rs.3700-125-4950-150-5700.

2. On appointment to the post of Reader in

Chemistry to fix his pay at Rs.4200-00 w.e.f. 1-7-87.

3. To release further increments as shown

below :

<u>Date of increments</u>	<u>Stages</u>
1.7.87	Rs.4200-00
1.7.88	Rs.4345-00
1.7.89	Rs.4450-00
1.7.90	Rs.4575-00
1.7.91	Rs.4700-00
1.7.92	Rs.4825-00
1.7.93	Rs.4950-00
1.7.94	Rs.5100-00
1.7.95	Rs.5250-00
1.7.96	Rs.5400-00

The pay fixation is ordered at sr.No.1 above is in pursuance of Govt. Circular No.DE/Audit-Cell/RSS-CELL/11(2)/8316 dated 11-12-1995.

Sd/-

D.V. Borkar
REGISTRAR

To,
Dr. D.B. Desai,
Reader,
Dept. of Chemistry,
Goa University."

39. In case the recovery is allowed to be initiated in respect of the revised pay scale, then the same would affect the total emoluments of the petitioner. The Counsel appearing for the respondents submit that the basic pay of Rs.4200/- as on 1.7.1987 was fixed at Rs.3700/-

and the petitioner would not suffer any prejudice. In the case of *State Bank of India and ors.* (supra), the Apex Court observed that when a question of pay protection comes, the basic feature is that the fitment or fixation of pay in a particular scale must be such as to ensure that the total emoluments are not reduced. The view of the Apex Court applies to the facts of the present case and the plea raised by the petitioner herein. The petitioner would certainly be put to hardships in case the payment made to him under the revised pay scale orders is now sought to be recovered.

40. It is an admitted fact that the petitioner has already superannuated. The submission that the amount was recovered from two other employees would not be of any help to the respondents, as the facts of the case and the pleas raised by the contesting parties have been considered by us in the light of the views expressed by the Apex Court in dealing with service matters of the employees.

41. Considering the facts of the case, we are of the view that the equity would tilt in favour of the petitioner. In the facts and circumstances of the case and in view of the law laid down in respect of the issue involved herein, we find that judicial discretion is required

to be exercised in favour of the plea raised by the petitioner. The petitioner is justified in placing reliance on Statute SA-19(xxv) which mandates that the pay of a teacher shall not be revised if it is adverse to the interest of the teacher concerned.

41. The writ petition is allowed. The impugned order dated 24th April, 2003 passed by respondent no.1 and order dated 16th December, 2004 passed by respondent No.2, are quashed and set aside. In case the amount equal to the excess amount payable to the petitioner, is retained with the respondents, we direct the respondents to release the said amount and pay the same to the petitioner, within four weeks from today.

42. Rule is made absolute in the above terms. There shall be no order as to costs.

NARESH H. PATIL, J.

F.M. REIS, J.

ssm.

