

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.120 OF 2006**

1. Shri Dashrath K. Kambli,
Senior Lab. Assistant,
Department of Zoology,
Goa University, Taleigao
Plateau, Goa-403 206.

2. Shri Vithal L. Naik,
Senior Lab. Assistant,
Department of Botany,
Goa University, Taleigao
Plateau, Goa – 403 206.

.... Petitioners

V/s

1. The Goa University,
through its Registrar,
having office at Taleigao
Plateau, Goa – 403 206.

2. State of Goa,
through Chief Secretary,
Porvorim – Goa.

.... Respondents

Shri J. Supekar, Advocate for the Petitioners.

Mrs. A. Agni, Advocate for Respondent No.1.

Shri P. Dangui, Additional Government Advocate for Respondent No.2.

**CORAM : B.R. GAVAI &
F.M. REIS, JJ.**

DATE : 11th NOVEMBER, 2013

ORAL JUDGMENT: (Per B.R. GAVAI, J.)

The petitioners have approached this Court being aggrieved by reduction of their pay scale in the scale of Rs.4000-100-6000 from Rs.4500-125-7000.

2. The facts in brief giving rise to the present petition are as under:

The petitioners came to be appointed by respondent no.1 – University from 1/06/1994 in the pay scale of Rs.1200-2040. After successful completion of probation, the petitioners came to be confirmed on 4/07/1996. On 31/03/1997, the petitioners came to be re-designated as 'Senior Laboratory Assistants' in the pay scale of Rs.1200-2040. On 10/02/1999, the Executive Council of respondent no.1 – University framed Recruitment Rules and prescribed pay scale to the Laboratory staff. The post held by the petitioners i.e. the 'Senior Laboratory Assistant' was granted pay scale of Rs.1400-2300. The petitioners were granted this pay scales with effect from 27/02/1999. From 30/03/1999, the petitioners were awarded the benefit of the 5th pay commission. Accordingly, the petitioners drew pay in the scale of Rs.4500-125-7000. On 7/03/2006, the petitioners' pay scale came to be reduced to 4000-100-6000 from Rs.4500-125-7000. As such, the petitioners have served a notice upon the respondents on 14/03/2006. Since there was no reply, the petitioners have approached this Court invoking extra-ordinary jurisdiction under Article 226 of the Constitution of India.

3. Shri J. Supekar, the learned Counsel appearing on behalf of the

petitioners submits that once the pay scale was fixed by the University, the same could not have been reduced by the respondents. In any case, it is submitted that same could not have been done without following principles of natural justice. The learned Counsel further relying on the Statute 19-A of the Statutes framed under the Goa Universities Act, 1984 (herein after referred to as 'the said Act') submits that once a pay scale is determined the same could not have been reduced. The learned Counsel in this respect relies on the judgment of this Court in *Writ Petition no.65/2005* dated 3/10/2013, to which one of us (F.M. Reis, J.) was a party.

4. Mrs. A. Agni, the learned Counsel on behalf of respondent no.1 – University submits that University is receiving 100% financial assistance from the respondent no.2 – State. She submits that since the respondent no.2 – State has refused to grant approval to the petitioners in the pay scale of Rs.4500-125-7000, the University had no other option, but to reduce the pay scale of the petitioners.

5. Shri P. Dangui, the learned Additional Government Advocate, on the contrary, submits that in view of provisions of Section 25-A of the said Act, the respondent no.1 – University could have designated the post

of petitioners as 'Senior Laboratory Assistants' in the higher scale. The learned Counsel further submits that in view of provisions of Section 25-A of the said Act, the University is required to take prior approval of the State Government with regard to any decision wherein financial implications are involved. He further submits that there is no post equivalent in the pay scale of Rs.4500-125-7000 as approved by the University Grant Commission. The learned Counsel further submits that Statute 19-A of the Statutes, would not be applicable to the facts of the present case inasmuch as the said is applicable only to the members of a teaching staff and not for non teaching staff. The learned Counsel further submits that if the petition is allowed, it will have an adverse effect on public exchequer and therefore presses for dismissal of the petition.

6. For considering the rival submissions, it will be necessary to refer to SA 13(vii)(3) of the Statutes framed under the provisions of the said Act, which reads thus:

SA 13(vii)(3) – to create administrative, ministerial and other necessary posts and to make appointment thereto in the manner prescribed by the Ordinances.

7. The petitioners' designation as a 'Senior Laboratory Assistant' was in the year 1997. At the relevant time, the powers to create

administrative, ministerial and other necessary posts and to make appointments were with the Executive Council. The re-designation of the post held by the petitioners at the relevant time was undisputedly been done by the Executive Council of the Universities.

8. In so far as the reliance on provisions of Section 25-A of the said Act is concerned, the said provision has come into statute book on 31/07/2003. In that view of the matter, the said provision which has come into effect on 10/06/1999, cannot be permitted to be used by the respondent no.2 – State for making it retrospectively applicable and reduce the pay scale of the petitioners. We have already discussed herein above, at the relevant time the powers were vested with the Executive Council in view of the Statute framed under the said Act.

9. The petition also deserves to be allowed on the other ground. On one hand, it is the contention of the petitioners that there is no post in the cadre of 'Senior Laboratory Assistant' as approved by the University Grant Commission. However, the perusal of the reply filed by the University itself would reveal that the respondent no.2 – State had granted approval for filling of the post of the 'Senior Laboratory Assistant' to the University on 10/06/1999 itself. Though it is sought to be

contended that the approval granted was for filling posts only by way of direct recruitment, it is not the contention of the respondent no.2 – State that the petitioners do not possess the requisite qualification which has been prescribed for 'Senior Laboratory Assistant'. In any case, the respondent no.2 – State cannot be permitted to discriminate between the promotee and the direct appointee. If the nature of the work and the duties to be performed and the qualification prescribed is the same, a promotee cannot be denied the same pay scale as that of a direct appointee.

10. It is further to be noted that from the affidavit in reply filed on behalf of the State itself it is clear that the respondent no.1 – University had itself recommended to the State Government to grant pay scale to the petitioners on par with Shri Ankush, the Ex-Laboratory Supervisor. It is not in dispute that the State Government had granted the said pay scale to Shri Ankush. The State, as already discussed herein above, cannot be permitted to adopt discriminatory attitude to the persons similarly circumstanced.

11. No doubt that the decision of this Court in Writ Petition No.65/2005 concerns an employee who belongs to the teaching staff.

In the said case also the pay scale which was granted to the employee was prior to year 2003. This Court has taken a view that it is not permissible for the State Government to withdraw a pay scale which is already granted.

12. It is further to be noted that though it is the contention of the State Government that the University Grants Commission has not provided any post of 'Senior Laboratory Assistant' in the pay scale of Rs.4500-125-7000, the respondent no.2 – State has not placed anything on record to substantiate that. The learned Additional Government Advocate fairly states that though communication has been made to the University Grants Commission, the University Grants Commission has not replied to the same. In that view of the matter, we find that reduction of scale is absolutely not justifiable.

13. Rule is therefore made absolute in terms of prayer clause (A). Needless to state that consequences would follow. The respondents shall pay the arrears which the petitioners would be entitled within a period of 6 months from today. Needless to state that the petitioners shall be

regularly paid salary in the pay scale of Rs.4500-125-7000 from
1/11/2013.

F.M. REIS, J.

B.R. GAVAI, J.

NH/-