

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 385/2001.

1. Dr. Maruti Jagannath Audi
M-131, Housing Board Colony,
Alto-Beti, Goa 403 521. .. Petitioner.

Versus

1. Goa University
through Registrar, Taleigao
Plateau, P.O.Goa University,
Goa403 206.
2. State of Goa
Through Secretary,
Directorate of Higher Education,
JuntaHouse, Panaji,
Goa 403 001. .. Respondents

Mr. R. G. Ramani, Advocate for the petitioner.

Mrs. A. Agni, Advocate for the respondent No.1.

Mr. S. R. Rivonkar, Govt. Advocate for the respondent No.2.

Coram :- S. A. BOBDE &
R. C. CHAVAN, JJ.

Date :- 13th June, 2008.

ORAL JUDGMENT : (PER S. A. BOBDE, J.)

1. The petitioner has prayed for a declaration that he is entitled to encash earned leave for 240 days and a direction to respondent No.1 to pay him the balance of the earned leave of 199 days together with together with interest @ Rs.12 % p.a. from 01.06.1997 till

payment. He has also prayed for declaration that the Statute No. SSB-1(x) (existing Statute S.115.12) regarding vacation salary applicable to University as illegal and that the University teachers are entitled for vacation salary as applicable to the college teachers.

2. The petitioner has stated that he has rendered service from 16.6.1970 to 15.6.1973 at Smt. Parvatibai Chowgule Cultural Foundation's College, Margao and from 16.6.1973 to 30.04.1997 he was serving as a Lecturer in the Centre of Post Graduate Instruction and Research (CPIR) of Goa University. According to him, his total earned leave comes to 324 days and he is entitled to earned leave under the recast Statute SSB-1(xi) (B) (II) which does not permit accumulation of earned leave beyond 240 days. He is, therefore, entitled to encash earned leave for a period of 240 days. The respondents have admitted that the petitioner is entitled to earned leave for a period of 41 days and state that they have paid that amount to him.

3. There is no dispute that the recast Statute SSB-1 (xi) (B) (II) has come into existence from 9.12.2000. Before this Statute, S.115.13(2) was in force from the year 1993. According to the respondents, the petitioner is entitled to have earned leave only corresponding to 41 days since those number of days were found to his credit from the date of coming into force of the Statute in 1993 till the

date of retirement on 1.5.97. According to Mr. Ramani, the learned Counsel for petitioner, the petitioner is entitled to have earned leave computed for the actual service rendered by him in terms of the Statute from 1970. The petitioner having been absorbed in the Goa University in the year 1985, the petitioner is entitled to have earned leave for the entire period from 1970 and at any rate from 1985. We find that, there is no record of the petitioner's earned leave produced before the Court. That apart, the petitioner's contention is not correct in view of the admitted position that the Statute which confers entitlement of a University teacher to earned leave, came into force in the year 1993. Prior to that there was no provision in the conditions of service which entitled a University teacher to earned leave. The term actual service in the Statute refers to actual service rendered by a teacher after the Statute came into force. That term cannot have the effect of making the Statute retrospective and conferring entitlement to commute earned leave for a period prior to its existence. It is well known that earned leave involves a financial burden on the employer and there must be a specific provision in that regard binding the employer. It would not be possible to cast a burden on earlier employers who had not made any provision for paying earned leave to these employees.

4. It was next contended by the learned Counsel for the petitioner that the Statute SSB-1(x) (existing Statute S.115.12)

regarding vacation salary applicable to the University teacher is illegal since there is discrimination between the entitlement of vacation salary of college teachers and vacation salary of University teachers. It is not possible for us to go into this contention since the petitioner has not produced sufficient material to show how the two categories of teachers are doing identical work. In the absence of such material, we reject this contention.

5. Lastly, it was contended by the learned Counsel for the petitioner that the petitioner is entitled for vacation salary in terms of recast Statute No.SSC-1(i) (Existing Statute S.70) and new recast Statute No.SSC-1(ii) (Existing Statute S.71). He submitted that the petitioner is entitled to vacation salary in terms of new recast Statute SSB-1(x) (Existing Statute S.115.12). We find from the reading of that Statute that the petitioner has been paid properly in accordance with the said Statute. Admittedly, the petitioner retired in the end of second term in the year 1997 and had availed his vacation at the end of first term. He is, therefore, entitled to vacation salary for 15 days and not 30 days. Only a teacher who has not availed his vacation at the end of first term is entitled to pay and allowances for 30 days at the end of second term. The said provision reads as follows :

“ **SSB-1(x) Vacation Salary** - A teacher who ceased to be member of the Staff in the University at the end of the first

term or at the end of the academic year, as the case may be, shall be paid his/her pay and allowances in the following manner :

i) If he/she has served for the whole of the first term or for the major part of the first term, he/she shall be paid his/her pay and allowances for 15 days at the end of the first term in lieu of the vacation earned by him/her.

ii) If he/she has served for the whole of the second term or for the major part of the second term and has not availed his/ her vacation at the end of the first term he/she shall be paid his/her pay and allowances for 30 days at the end of the second term. ”

6. In this view of the matter, we see no merit in the petition which is hereby dismissed.

S. A. BOBDE, J.

R. C. CHAVAN, J.

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