

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.23 OF 2004.

Prof Olivinho J.F.Gomes
411 La Oceana I
Dona Paula, Goa.

.. Petitioner

Versus

(1) The Chief Secretary
State of Goa, Panaji,
Goa.

(2) The Vice Chancellor
Goa University,
Talegao Plateau,
Dona Paula, Goa.

(3) The Registrar,
Goa University,
Taleigao Plateau,
Dona Paula,Goa.

(4) The Director of Accounts,
Govt. of Goa.
Opp. Secretariat Panaji,
Goa.

.. Respondents.

Mr. J. Vaz, Advocate for the petitioner.

Mr. S. R. Rivonkar, Government Advocate for the respondent
Nos. 1 & 4.

Mrs. A. A. Agni, Advocate for the respondent Nos. 2 and 3.

**CORAM :- B. P. DHARMADHIKARI &
U. D. SALVI, JJ.**

DATE : 9th July, 2009.

ORAL JUDGMENT : (PER B. P. DHARMADHIKARI)

1. This petition under Article 226 of Constitution of

India seeks to challenge denial of full pension for service rendered by the petitioner with the respondent Nos. 2 and 3. The order dated 5.10.2007 holding him entitled to pension for a period of 6 years 6 months only passed by Under Secretary (Higher Education) for Government of Goa, is also impugned.

2. The facts are not in dispute at all. The petitioner, who was in Indian Revenue Service, last worked as an additional Collector, Central Excise and Custom Department at Aurangabad. Because of his inclination towards academics, he applied for voluntarily retirement at the age of 44 years and was permitted accordingly on 18.06.1987 under Rule 48-A of CCS(Pension) Rules 1972 as he had completed requisite 20 years of actual service. As per the said scheme, his employer i.e. the Central Government gave him weightage of 5 years as he had actually worked for 21 years 6 months and 18 days. This weightage was notional and definitely not for making up for a short fall in service. The petitioner was accordingly fixed and started receiving his pension.

3. Because of his attitude mentioned above, the

petitioner then applied to Goa University, an autonomous body and after open selection process, was selected and appointed as a professor of Konkani with effect from 20.06.1987. He was initially fixed @ Rs.2,125/- in then prevailing Professor's scale of Rs.1500-2000/- as a special case. Later on he was fixed @ Rs.4500/- in UGC pay scale of Rs.4500-7000/-. This was not his reemployment but a fresh employment. Vide order dated 27.10.1994, he was confirmed in the post of Professor with effect from 20.06.1989 as he had satisfactorily completed his probation period of 2 years. He was asked to contribute to G.P.F. like any other pensionable University employee, which he did for balance period of his service of 15 and half years. He retired on superannuation on 31.01.2003 and at that time, he had clear 15 years, 7 months and 11 days of service. He claimed pension for entire length of service put in by him as a Professor from the respondent Nos. 2 and 3. There was some correspondence on the issue and then because of provision of Rule 49 read with Rule 7 of CCS(Pension) Rules 1972, the respondent Nos. 1 and 4 found that he was entitled to pension for a period not exceeding 33 years in toto. As he was already receiving pension for his service of 26 years and 6 months with the Central Government, in order to make up

deficit, he was sanctioned pension for 6 years and 6 months by the present respondents. It is not in dispute that the University of Goa though an autonomous body, has adopted the CCS(Pension) Rules 1972 for its employees.

4. In this background, Advocate Vaz for the petitioner has contended that neither the provisions of Rule 7 nor Rule 49 were applicable and attracted in case of the petitioner as his employment with the respondent Nos. 2 and 3 was fresh and unconnected with his previous employment with the Central Government. He has relied upon the judgment of the Hon'ble Apex Court reported in AIR 1992 SC 768 All India Reserve Bank Retired Officers Association Versus Union of India and AIR 1983 SC 130 D. S. Nakara Versus Union of India to contend that the pension is not a bounty dependent upon discretion of employer and is a matter of Rules or Regulations and those Rules and Regulations are also subject to requirements of Article 14 and Article 21 of Constitution of India. Though not necessary, he has attempted to show how initially the entitlement of the petitioner was examined by the office of Law Secretary and on 24.11.2004 the entitlement of the petitioner to service calculated on the basis of 15 years and 6

months was accepted. He argues that though the Central Government granted the petitioner weightage for 5 years, it was notional and the petitioner did not earn any increment or gratuity for the said period. He states that as both the services are distinct, recourse to Rule 7 and Rule 49 in the present matter is misconceived.

5. The learned Government Counsel for the respondent Nos. 1 and 4 has stated that the bar contained in Rule 7 of CCS(Pension) Rules 1972 is in public interest and to avoid unnecessary burden on public exchequer. According to him, had the petitioner continued with the same employer, he would have been subjected to ceiling of qualifying service of 33 years and merely because he joins another employment, he cannot be permitted to defeat the said ceiling limit. He points out that the pension being paid on account of service rendered with Goa University by the petitioner is also through the public exchequer and hence, the purpose of Rule 7 and Rule 49 must be looked into. He also points out that very same provision in the shape of Rule 7 and 49 is applicable to the petitioner as an employee of Goa University also. He states that action taken by the respondents is in accordance with law and in any case in

public interest and there are no malafides in the matter.

6. The learned Counsel appearing for the respondent Nos. 2 and 3 states that the University had, in accordance with rules, forwarded the papers for consideration to the respondent No.4 and has adhered to the decision given by the respondent No.4. She contends that the University is bound to act in accordance with law as may be found by this Court.

7. It is not in dispute that the petitioner has not worked throughout with one and the same employer. His initial service till reaching the age of 44 years was with the Central Government and after obtaining voluntary retirement he joined the service of an autonomous body namely Goa University and worked there till he reached superannuation age. He has thus worked under two different employers at two different – distinct times and his service is separate and has not been treated as continuous. Earlier, he was governed by Rules framed under Article 309 of Constitution of India and those rules were the Central Civil Services (Pension) Rules 1972. After he became the employee of Goa University, Article 309 ceases to apply to him and the rules

became applicable to him as service rules adopted by Goa University.

8. Provisions of Rule 49(2)(b) of Central Civil Services (Pension) Rule, 1972 read thus :

“Rule 49(2)(b) - In the case of a Government Servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than (rupees three hundred and seventy five per mensem).”

In view of this provision, the respondents have found the petitioner entitled to receive maximum pension of 33 years and as it was noticed by them that he had put in 26 years and 6 months of service with the Central Government, his period of 6 years 6 months has only been reckoned as qualifying service so as to make it a total service of 33 years.

9. Bare reading of Rule 49 shows that it speaks of a government servant and length of service put in by him

under the Central Government. The said service and said length loses its significance after the petitioner became the employee of the respondent Nos. 2 and 3 because of his fresh selection. It is not in dispute that his selection is in open competitive process and hence, not reemployment or continuous of earlier employment. In this background the provisions of Rule 7 which limit the number of pension assumes importance and the said Rule 7 reads as under :

“Rule 7 – Limitations on number of pensions :

(1) A Government servant shall not earn two pensions in the same service or post at the same time or by the same continuous service.

(2) Except as provided in Rule 19, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment.

10. Even if Rule 49 read with Rule 7 is read as referring to an employee of University, it is clear that the Rules operate for employment with one and the same employer. The bar is on earning two pensions in the same service or in the same post or at the same time. The service of the petitioner with the Central Government and with Goa

University cannot be treated as “ same service” or “in same post” and, in any case, definitely the service is not at the same time. The remaining part of Rule 7 sub rule 1 speaks of “by the same continuous service”. It is again clear that the petitioner's employment with the University is not falling under last part of subrule 1 of Rule 7 as it is not same or even continuous service. Subrule 2 speaks of reemployment and reemployment necessarily has to be by the earlier employer i.e. the Central Government. It is nobody's case that the employment of the petitioner with Goa University is his reemployment. Thus, we find that on bare reading of Rule 7 whether it is read as applicable to the petitioner while he was in the employment of the Central Government or then as an employee of Goa University, it cannot be used against the petitioner and it cannot be said that the petitioner is earning two pensions at same time as contemplated therein. Two pensions mentioned therein are for the same service or then for service on same post or then by same continuous service. It is apparent that recourse to said Rule 7 by the respondents in the present matter is misconceived and unsustainable.

11. In view of this position, we find that the

impugned order dated 5.10.2007 is unsustainable and the same deserves to be quashed and set aside. The ceiling of 33 years imported by the respondents for regulating the pension of the petitioner for his service rendered with University, is unsustainable and the pension of the petitioner, therefore, needs to be refixed in accordance with the rules applicable to him for the entire length of his service with University. His qualifying service, therefore, needs to be recalculated and his entitlement also needs to be recomputed afresh. Though there is a prayer for interest @ 18 % in the petition and Advocate Vaz has vehemently argued for the same, we are inclined to accept the argument of the respondents that the action taken by them is neither malafide nor on account of any victimisation. Hence, we reject the said prayer for grant of interest @ Rs.18 %. For the period from 5.10.2007 till 30.06.2009, the petitioner shall be paid interest @ Rs.6 % p.a. on the additional amount of pension to which he will become entitle after the exercise of recomputation as mentioned above is completed. The said interest will be paid by the respondent Nos. 1 and 4, who are liable to pay the pension to the petitioner. The exercise of recomputation be completed as early as possible and in any case by 31.10.2009 and consequential benefits be made over to the petitioner by

31.03.2010. If the amounts are not so made over, the petitioner shall be entitled to interest as per the Government Circulars from 5.10.2007 onwards till the date of actual payment to him. Rule accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

B. P. DHARMADHIKARI, J.

U. D. SALVI, J.

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