

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.290 OF 2007**

Shri Vithal Shanker Kerkar,  
Son of Shankar Kerkar,  
aged about 60 years,  
resident of Deugim,  
Chodan, Tiswadi-Goa.

.... Petitioner

V/s

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

2. The Goa University,  
through its Registrar,  
Taleigao Plateau, Goa.

3. The Chancellor,  
Goa University, Raj Bhavan,  
Dona Paula, Goa.

4. The Director,  
Directorate of Higher Education,  
Govt. of Goa, Panaji-Goa.

5. Directorate of Accounts,  
Pension Section, Panaji-Goa.

6. Executive Council,  
Goa University,  
Taleigao Plateau, Goa.

.... Respondents

Shri M.S. Joshi, Advocate for the Petitioner.  
Shri M. Salkar, Government Advocate for Respondents No.1,4 & 5.  
Mrs. A. Agni, Advocate for Respondents No.2,3 & 6.

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

**DATE : 20<sup>th</sup> NOVEMBER, 2013**

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

The petitioner has approached this Court praying for directions to the respondents to pay the retirement benefits including pension, gratuity, commutation, arrears of pension along with 18% interest from 1<sup>st</sup> February, 2005 with full and final payment.

2. The petitioner was appointed to the post of Laboratory Attendant on 15<sup>th</sup> October, 1970. The petitioner came to be appointed as Laboratory Technician on 16<sup>th</sup> March, 1979. The petitioner came to be promoted to the post of Senior Laboratory Assistant on 16<sup>th</sup> October, 1989. The petitioner was promoted to the post of Laboratory Supervisor on 16<sup>th</sup> October, 1997. Vide communication dated 18<sup>th</sup> November, 1999 issued by respondent no.2 the petitioner's pay scale was revised in the pay scale of Rs.5500-175-9000 with effect from 16<sup>th</sup> September, 1997. Since the petitioner was due to retire in the year 2005, necessary papers for preparation of provisional benefits were submitted by him. The petitioner stood retired with effect from 31<sup>st</sup> January, 2005. After the retirement, the petitioner was paid G.P.F. without interest. However, since the petitioner's pension was not released, Writ Petition being Writ Petition No.460/2005 came to be filed before this Court. During the pendency of

the petition, an order came to be passed by the respondent no.2 – University that the pay scale of the petitioner was regulated in the pay scale of Laboratory Technician and pay scale of the petitioner was re-fixed in the scale of Rs.4500-125-7000. On 4<sup>th</sup> April, 2006, the petitioner withdrew the petition with liberty to file the petition afresh.

3. Though the petitioner had requested for fixation of his pension in the pay scale of Rs.5500-175-9000, the same was not responded and, as such, the present petition has been filed.

4. Heard Shri M.S. Joshi, the learned Counsel for the petitioner, Shri M. Salkar, the learned Government Advocate for respondents no.1,4 and 5 and Mrs. A. Agni, the learned Counsel for respondents no.2,3 & 6.

5. Shri M. Salkar, the learned Government Advocate submits that the petitioner's claim cannot be entertained inasmuch as higher pay scale was granted to him by the University without prior approval of the State. He submitted that if the University or its own accord erroneously granted a higher pay scale, respondent no.1/State cannot be fastened with responsibility of the same.

6. Mrs. A. Agni, the learned Counsel on behalf of the respondent no.2/University submits that since the University receives 100% financial assistance from respondent no.1/State, it is bound by the directions issued by it.

7. This Court in Writ Petition No.65/2005 concerning the petition by teachers has taken a view that pay scale which was granted to the employee prior to the year 2003 cannot be withdrawn.

8. A similar view in so far as the employees in the Laboratory Department of the University has been taken by this Court in Writ Petition No.120/2006 vide judgment and order dated 11<sup>th</sup> November, 2013.

9. In that view of the matter, we are of the considered view that the respondents could not have withdrawn the pay scale which was already fixed in favour of the petitioner. In any case, the same could not have been done in the case of the petitioner who had already retired. It is to be noted that in an identical case, the State Government had granted pay

scale to one Shri Ankush Kinalkar, who had also retired as ex-laboratory supervisor. The petitioner's case is totally identical with the said case of Ankush Kinalkar. The State as a model employer cannot discriminate between two employees who are similarly circumstanced.

10. In that view of the matter, the petition is allowed. The respondents are directed to fix pensionary benefits to the petitioner in the pay scale of Rs.5500-175-9000. The re-fixation shall be done within a period of four weeks from today. The arrears of pension to be worked out on the basis of what has been directed herein above and shall be paid to the petitioner within a period of three months from today. We make it clear that since the view taken by this Court has been taken recently in the two judgments, Writ Petition No.65/2005 and in Writ Petition No.120/2006 delivered on 11/11/2013, we are not inclined to grant the payer for interest as made by the petitioner. Needless to state that if the arrears are not paid within a period of three months from today, the same shall carry interest at the rate of 10% p.a.

**F.M. REIS, J.**

**B.R. GAVAI, J.**

NH/-