

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 375 OF 2011

Smt. Madhuri S. Savaikar
maidan name Mandaquini
alias Manda Boto Nigolie,
major, married, r/o. Yash Bldg.,
G-2, Behind Govt. Hospital,
Chicalim 403711, Mormugao Goa.

.... Petitioner

Versus

1. STATE OF GOA, through the
Chief Secretary, having office at
Secretariat, Porvorim, Goa.

2. The Directorate of Health Services,
Govt. of Goa, Campal, Panaji-Goa.

3. Institute of Nursing Education
through its principal, having its
office at Bambolim, Goa.

4. Goa University,
through its Registrar
Taleigao Plateau, Goa.

.... Respondents

Mr. V. A. Lawande, learned Advocate for the petitioner.

Ms. Susan Linhares, learned Additional Government Advocate for
Respondent no.1, 2 & 3.

Ms. A. Agni, learned Senior Advocate along with Advocate Ms. J.
Sawaikar for the Respondent no.4.

Coram:- M.S. SONAK &
NUTAN D. SARDESSAI, JJ.

Date:- 26th September, 2019

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. V.A. Lawande, learned advocate for the petitioner, Ms. Susan Linhares, learned Additional Government Advocate for respondent no.1, 2 and 3 and Ms. A. Agni, learned Senior Advocate along with Ms. J. Sawaikar for respondent no.4.

2. This petition was instituted by the petitioner on 27.06.2011, on which date she had just crossed the age of 60 years, seeking appropriate writ, order or direction to direct the respondents no.1, 2 and 3 to continue the petitioner in service until she attains age of 62 years, which, according to the petitioner, was the age of superannuation applicable to her in terms of Section 15A of the Goa University Act, 1984.

3. The case of the petitioner, as articulated by Mr. V. Lawande, learned counsel for the petitioner is that the petitioner is a “Sister Tutor” in the institution of Nursing Education (respondent no.3), which admittedly is an institution affiliated to the Goa University (respondent no.4). Mr. Lawande submits that there is overwhelming

material on record to establish that the petitioner is a teaching staff of the affiliated college i.e. respondent no.3 and is actually involved in imparting instructions or discharging teaching duties at the affiliated college i.e. respondent no.3. He submits that even the Goa University, by its communication dated 08.04.2011, has supported the case of the petitioner that she should continue in service until she attains the age of 62 years. He submits that from the reply filed by the respondents no.1, 2 and 3 it is clear that the only reason why the petitioner has been denied the benefit of continuing in service until she attains age of 62 years is because according to respondents no.1, 2 and 3 the petitioner, has not been declared as teacher of Goa University.

4. Mr. Lawande submits that it is not even the case of the petitioner that the petitioner is a teacher or a member of the teaching staff of respondent no.3, which is an affiliated college of the Goa University. He submits that the provisions of Section 15A of the Goa University Act are very clear, inasmuch as the extended the age of superannuation of 62 years, applies both, in case of members of teaching staff of the Goa University and members of the teaching staff of affiliated colleges of the Goa University. Mr. Lawande submits that inasmuch as this distinction has not been noted by respondent no.1, 2 and 3, the forced retirement of the petitioner upon attaining age of 60 years is required to be struck down and the petitioner, at this point of time, is required to be given all the financial benefits on the basis that she was continued

in service until she attained age of 62 years, which is the correct age of superannuation of the petitioner in terms of Section 15A of the Goa University Act, 1984.

5. Ms. Susan Linhares, learned Additional Government Advocate for respondents no.1, 2 and 3 at the outset pointed out that the reliefs in writ petition have been rendered infructuous because by the time the petitioner instituted her petition, she had already retired. Ms. Linhares submits that the petitioner has not been declared as a teacher of the Goa University and this is evident from the communication dated 29.11.2017 addressed by the principal of respondent no.3 to the Director (Administration), Directorate of Health Services. Ms. Linhares points out that this communication very clearly states that the staff that has been declared Post Graduate teachers by the Goa University included Professors, Associate Professors and Lecturers. No other posts have been declared as teachers by the Goa University. She submits that even the provisions of the Goa University Act and the statutes made thereunder, make it clear that no positions which have not been declared as teachers by the Goa University, can claim to be the teachers of the Goa University, and seek to continue in service till age of 62 years.

6. Ms. Linhares, without prejudice, points out that the petitioner was only placed on probation as a Sister Tutor in respondent no.3

institution. She points out that the petitioner does not possess qualifications of M.Sc. in nursing and therefore, in terms of the Recruitment Rules as well as the notification issued by the UGC was not entitled to be appointed as Sister Tutor. Ms. Linhares therefore submits that there is nothing wrong in retiring the petitioner consequent upon her attaining age of 60 years which is the correct age of superannuation. For all the aforesaid reasons Ms. Linhares submits that this petition may be dismissed.

7. Ms. A. Agni, learned Senior Advocate for the respondent no.4 submits that the petitioner may not be the teacher of the University but if the petitioner is imparting instructions or teaching at the respondent no.3 institution, it is possible that the petitioner is construed as member of the teaching staff of an affiliated college. She admits that the respondent no.3 is indeed an affiliated college.

8. The rival contentions now fall for our determination.

9. The preliminary objection raised on behalf of respondent no.1, 2 and 3 deserves no acceptance. It is true that the petitioner retired or rather, was made to retire on 30.06.2011, consequent upon her attaining the age of 60 years on 13.06.2011. However, the record indicates that this petition was filed on 27.06.2011, when, the petitioner was still in service. In any case, even if the petition were to

be instituted within some reasonable period from the petitioner being made to retire, it cannot be said that such petition would not be maintainable. It is well settled that this court has ample powers to mould the relief assuming that the petitioner is found to be entitled to such reliefs in the matter. Accordingly we are unable to uphold the preliminary objection raised by respondents no.1, 2 and 3.

10. The record indicates that at the time when the petitioner was made to retire on 30.06.2011, the petitioner, was admittedly working as a Sister Tutor in respondent no.3 institution, which again, is admittedly an affiliated college. The contention that the petitioner was appointed on probation or the contention that the petitioner was not at all entitled to be appointed as a Sister Tutor cannot be considered in the present proceedings and that too, at the behest of respondents no.1, 2 and 3 who have themselves appointed the petitioner as Sister Tutor and made her discharge duties as a Sister Tutor.

11. In any case, we note from the Recruitment Rules framed under the provisions of Article 309 of the constitution, which have been placed on record by the respondents no.1, 2 and 3 themselves, that the post of Sister Tutor is required to be filled in by promotion, failing which by direct recruitment. The qualification of Masters Degree in Nursing failing which B.Sc./Post Basic B.Sc. failing which Diploma in Nursing Education and Administration or any other equivalent Post

Basic Diploma in Nursing basically apply for direct recruitment. In the present case, the petitioner was promoted to the post of Sister Tutor and the feeder grade includes Sister/Public Health Nurses/Ward Masters/Brother/ Clinical Supervisor with 4 years regular service in respective grade. There is really no material placed before us to indicate that the petitioner did not have requisite experience in the respective grade. Even assuming this was so, there is really no occasion to get into these issues because it is the respondents no.1, 2 and 3 themselves who have promoted the petitioner. Besides, rule 5 of the said Recruitment Rules, specifically confers power of relaxation upon the Government.

12. In any case, at this stage, we cannot permit the respondents no.1, 2 and 3 to question the very promotion of the petitioner, when, the only issue in the present petition is whether the petitioner, who is admittedly the Sister Tutor in the respondent no.3 institution, was entitled to continue in service until she attains the age of 62 years and not merely 60 years.

13. Section 15A of the Goa University Act, which was introduced by way of an amendment which came into force on 02.09.2009 reads as follows:

“15A. Retirement age.-(1) The retirement age on superannuation of the teaching staff of the Goa University and

of the affiliated colleges of the Goa University, whether aided by the Government or not, including the Principals of such colleges, shall be sixty two years.”

14. There is no dispute that respondent no.3 institution is a college/institution affiliated to the Goa University. The material on record also indicates that the petitioner, as a Sister Tutor, was a member of the teaching staff of respondent no.3. The petitioner has made clear averments in the petition that she was discharging teaching duties at the respondent no.3 institution. In paragraph 3 of the affidavit filed by Shri Raju Gawas, the Director (Administration), Directorate of Health Services-respondent no.2, the affiant, has himself stated that the petitioner was appointed as Sister Tutor and was a “*part of the regular staff involved in teaching and guiding students.*”

15. Besides, even the communication dated 29.11.2017, which was relied upon by Ms. Linhares at the time of final hearing, specifically states that Sister Tutors are involved in teaching and guiding students. It is pertinent to note the communication dated 29.11.2017 as addressed by the Principal of the Nursing Education, Bambolim, to the Director (Administration), Directorate of Health Services. According to us, all this material is more than sufficient to conclude that the petitioner was indeed the member of the teaching staff of the respondent no.3, which admittedly is the college affiliated to the Goa University.

16. Thus, the petitioner, was entitled to the benefits of the provisions under Section 15A of the Goa University Act and to continue in service until she attains the age of 62 years, which was a correct age of superannuation in so far as she was concerned.

17. From the perusal of affidavit filed by the Director (Administration), it appears that the main objection raised on behalf of respondents no.1, 2 and 3 was that the petitioner was not a teacher of the Goa University or that the petitioner has not been declared to be a teacher of the Goa University. According to us, this objection, is not sufficient to deny the petitioner the benefit of provisions under Section 15A of the Goa University Act, 1984 because Section 15A very clearly extends the age of retirement on superannuation upto 62 years, in respect of not only the teaching staff of the Goa University but also the staff of the affiliated colleges of the Goa University. There is no dispute whatsoever that the respondent no.3 is a college/institution affiliated to Goa University.

18. At this stage, we note that the definitions of teacher in the Goa University Act or statutes made thereunder also, make reference to the persons appointed for imparting instructions or conducting research in the University or in any college or institutions maintained by the University and designated as such by the Ordinances. The Statutes, in particular, Statute SA-1(xxxiii) refer the teacher, including a tutor.

However, we do not propose to examine, in detail, this definition because in the facts and circumstances of the present case, we are satisfied that there is enough material on record to hold that the petitioner, as a Sister Tutor, was a member of the teaching staff of respondent no.3, which is admittedly a college affiliated to the Goa University.

19. Similarly we note the communication dated 08.04.2011 addressed by the Deputy Registrar of the Goa University to the counsel for the petitioner who had addressed a legal notice to the Goa University, which states that the retirement age of Sister Tutor would be 62 years in accordance with the 2009 amendment to the Goa University Act by which, Section 15A came to be introduced in the said Act. According to us, it is not necessary to deliberate any further upon this communication, because such communication, in no manner governs statutory construction, particularly, by a court of law. Mr. Lawande relied upon this communication, because the communication supported the case of the petitioner herein.

20. For all the aforesaid reasons, we allow this petition, but by moulding the reliefs, direct respondents no.1, 2 and 3 to pay the petitioner all the financial benefits like differential salary, increments, etc. on the basis that the petitioner continued in service until she attained age of 62 years. Petitioner's retiral benefit will also have to be

reworked and paid to the petitioner on the said basis. All this exercise to be completed within 3 months from today, failing which respondents no.1, 2 and 3 are directed to pay interest on these amounts at the rate of 9% per annum.

21. The Rule is made absolute in the aforesaid terms. There shall be no orders as to costs.

22. All concerned to act on the basis of an authenticated copy of this order.

NUTAN D. SARDESSAI, J.

M. S. SONAK, J.

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