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IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.239 OF 2022**

1. Shri Prakash Narayan Gaude, Son of Narayan Gaude, aged 50 years, Indian National, resident of House. No.106, Madhalawada, Agapur, Durbhat-Agapur, Ponda, Goa 403 401.
2. Shri Premendra Pandurang Naik, Son of Pandurang Naik, aged 51 years, Indian National, resident of 321, Madhala Wada, Savoi-Verem, Verem De Ponda, Goa, 403 401.
3. Shri Vasundhar Ratnakar Naik, Son of Ratnakar Jenu Naik, aged 32 years, Indian national, resident of House No.623, Konar, Gaunem, Bandora, Ponda, Goa 403401.
4. Shri. Atul Ranganath Naik, Son of Ranganath Naik, Aged 33 years, Indian National, Resident House No. 32/A, Warbhat, Bandora, Ponda, Goa, 403401.
5. Shri. Gaurish Gurudas Naik, Son of Gurudas Naik, Aged 34 years, Indian National, Resident of House No. 171, Talulem, Bandora, Ponda, Goa, 403401.
6. Shri. Jeetendra Naik, Son of Somi Naik, Aged 39 years, Indian National, Resident of House No. 2, Gauthan, Queula, Near Shantadurga Temple, Ponda, Goa, 403401.

7. Shri. Prakash Bhanu Naik, Son of Bhanu Naik, Aged 45 years, Indian National, Resident of House No. 454, Mahalwada, Near Drinks Factory, Marcaim, Mardol, Goa, 403404.

...Petitioners

Versus

1. State of Goa, Through its Chief Secretary, Having his office at Secretariat, Porvorim, Goa 403521.

2. Captain of Ports, Government of Goa, River Navigation Department, Betim, Goa 403101.

3. Administrative Cum Accounts Officer, River Navigation Department, Betim, Goa 403101.

...Respondents

Mr S. N. Joshi, Advocate *with* Ms Swapna Joshi, Advocate for the Petitioner.

Mr Manish Salkar, Government Advocate *for Respondents*.

**CORAM: M.S. KARNIK &
VALMIKI MENEZES ,JJ.**

DATE: 29th JUNE, 2024

ORAL JUDGMENT: (*Per M. S. Karnik, J*)

1. Heard Mr S. N. Joshi, learned Counsel for the Petitioners and Mr Manish Salkar, learned Government Advocate for the Respondents.

2. Rule. The Rule is made returnable immediately and heard forthwith with the consent of the learned Counsel for the parties.

3. The petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India praying for the following reliefs:-

'a. Issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Mandamus directing the Respondents to restore the salary of the Petitioners as drawn till July, 2017 with all subsequent consequential benefits.

b. Issue a Writ of Mandamus or any other Writ, Order or Direction in the nature of Mandamus directing the Respondents to refund/repay to the Petitioners the reductions / deductions carried out by them from the salary payable in their favour from August, 2017 onwards till date.'

4. The Petitioners have a common grievance. We refer to the basic facts as regards one of the Petitioners for convenience. The Petitioner was appointed by order dated 08.02.2011 on the recommendation of the Departmental Selection Committee to the post of Workman/Helper Group-D on temporary basis in the pay band of Rs.4400-7440 + GP + ₹1300/-. By a corrigendum dated 11.04.2011 the pay band was changed to Rs.5200-20200+ GP Rs.1800/- instead of Rs.4400-7440 + GP + ₹1300/-.

5. The recommendations of the VIth Pay Commission appointed by the Central Government were accepted and made applicable for the Central Government employees from 1st January 2006. The recommendations were implemented by notifying Central Civil Services (Revised Pay) Rules, 2008.

6. Based on the recommendations of the VIth Pay Commission and in compliance of Central Civil Services (Revised Pay) Rules, 2008, the Government of India decided to upgrade the pay of all the employees in the existing Group 'D' and place them in Group 'C' in Pay Band-1 in the Pay Scale of Rs. 5200-20200 with Grade Pay of Rs.1800.

7. While implementing the VIth Pay Commission recommendations, the Government of India also made it clear that those Group 'D' Employees who did not possess minimum Qualifications were to be imparted training in their field of activity by the concerned Department, preferably within a period of 6 months.

8. The Government of Goa also accepted the recommendations of the VIth Pay Commission in toto and implemented the same for the benefit of its employees. The employees were also paid the arrears of the salary effective from 1st January, 2006. After the training, these employees were to be placed in Pay Band-1 in the Pay Scale of ₹ 5200-20200 with GP of ₹ 1800 with effect from 01/01/2006.

By an order No.8/7/2008-Fin(R&C) dated 10.10.2008, the Government of Goa considered it expedient to allow its employees the benefits of revised pay scales subject to conditions stipulated therein.

9. In exercise of the powers conferred vide Article 309, and clause (5) of Article 148 of the Constitution of India and after consultation with the Comptroller and Auditor General, in relation to persons serving in Indian Audit and Accounts Department, the President made the following Rules called the Central Civil Services (Revised Pay) Rules, 2008.

10. Note 1 is relevant for the purpose of the present matter, clauses (a), (b) and (c) thereof need to be reproduced which read thus:-

Note 1 – (a) In the case of Group D employees, the pay in the revised pay structure will be fixed initially in the -1S pay band as

per Clause (A) above with the appropriate grade pay and arrears paid accordingly. Thereafter, pay of such of those Group D employees who already possess the revised minimum qualifications recommended by the Commission prescribed for entry into PB-1 would be fixed with effect from 1.1.2006 in PB-1 with grade pay of Rs.1800.

(b) Such of those existing Group D employees who do not possess the revised minimum qualifications for entry into PB-1 would be retrained by the concerned Department preferably within a period of six months so that payment of arrears on account of upgradation are not delayed. After re-training, these Group D staff will also be placed in the Pay Band PB-1 with the grade pay of Rs.1800 with effect from 1.1.2006 and arrears drawn accordingly. Once placed in the PB-1 Pay Band, this category of Group D staff will regain their seniority vis-à-vis the other category of Group D staff that already possessed the minimum qualifications and were, therefore, placed in the PB-1 Pay Band as on 1.1.2006. Inter-se seniority of all the employees in erstwhile Group D will be fully maintained with Group D employee in a higher pre-revised pay scale being placed higher vis-à-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.

*(c) Arrears shall be payable with effect from 1.1.2006 in both the cases i.e. to those Group D employees who possess the qualifications and are placed in PB-1 straight away and those Group D employees who do not possess the qualifications and are placed after re-training. **Illustration 3** in regard to fixation of pay for Group D staff is in the Explanatory Memorandum to these Rules.*

11. The grievance of the learned Counsel for the Petitioners is that having fixed the pay of the Petitioners in the year 2011 in the pay band of ₹5200-20200+GP ₹1800, the Respondents were then not justified in placing the Petitioners in the Grade Pay of ₹1300/- from the initial date of their

appointment only because they did not undergo training within 6 months. It is submitted by learned Counsel for the Petitioners that they were never intimated or informed that they had to undergo such a training within such period. Moreover, having undergone the training later, the consequent grade pay of ₹1800/- is to be restored with arrears.

12. Learned Government Advocate vehemently opposed the petition. It is the stand of the Respondents in the affidavit-in-reply that the Petitioners ought to have undergone training within a period of 6 months from the date of appointment. The contention is that the Petitioners were erroneously placed in the grade pay of Rs.1800/- though they were not qualified. In the affidavit-in-reply by the Respondents, the following stand is taken in paragraphs 7 and 8.

'7. I say that vide Order dt. 30/11/2016 the VIIth Pay Commission was implemented and accordingly preparation of Pay fixation was taken up. The department prepared pay fixation as per their pay fixed in 2011 to 2015 in the pay band 5200-20200 plus grade pay 1800. Directorate of Accounts had not approved the same as the employees were not qualified for the grade pay 1800/-.

I say that the Department issued to all the non qualified employees memorandum for training dt. 16/1/2017 and after giving them training as per circular dt. 04/04/2017 and corrigendum dt. 12/09/2017 their pay was fixed w.e.f. 1/1/2016 in the grade pay 1800/-. And accordingly their pay fixation as per VIIth the pay fixation was done w.e.f. 1/1/2016 in the pay scale of Rs.5200-20200 plus grade pay Rs.1800/- and fixed at Rs.18,000/- as on 1/1/2016. Though recovery is due from the Petitioner, till date department had not recovered/deducted from their salary of overpayment done.'

13. Heard learned Counsel. Perused the petition memon, the annexures, the affidavit in reply and the pleadings on record.

14. We find that even as per the affidavit in reply of the Respondents, especially paragraph 6, the Respondents have taken a stand that the Petitioners had to be trained within 6 months of their appointment to be qualified for grade pay of Rs.1800/-. As we understand from the affidavit in reply, the aforequoted Rules are applicable to the Petitioners. Learned Government Advocate was at pains to point out that the Petitioners were informed in the year 2013 that they had to undergo the training. He invited our attention to paragraph 2 of the sur-rejoinder to submit that in the year 2013 it was intimated to the Petitioners that they had to undergo such a training. There is nothing on record to indicate that they have refused to undergo training despite it being so scheduled. In any case, the training was inhouse training. There is nothing on record to indicate that within a period of 6 months from the date of their appointment the Petitioners were asked to undergo the training.

15. The Petitioners were granted grade pay of ₹1800/- when they were appointed in the year 2011. It is in the year 2017 the objection was raised by the Directorate of Accounts that the Petitioners had not undergone training. This objection was at the stage of extending the benefits of Seventh Pay Commission recommendations. The Petitioners were then sent for training which was an inhouse training for six months duration. When sent for the training, the Petitioners immediately underwent the same and completed it successfully. There is nothing on record to indicate that merely because they had not undergone training their work performance in any manner in discharge of their duties since the initial date of appointment was affected. In any case, merely because the Petitioners have completed their training at a later stage should not be a factor to deprive them the benefits of the grade pay of ₹1800/-

already fixed, as in any case the same was to stand restored on completion of training also entitling them to the arrears. This is not a case of overpayment calling for a recovery. No prejudice is caused to the Respondents as a result of granting the grade pay of Rs.1800/- initially as the Petitioners have admittedly completed the training. We do appreciate that the Respondents would have been justified in fixing the pay in the grade pay of ₹1300/- as the Petitioners were not trained, but factually upon completing the training, the Petitioners would then be entitled to the grade pay of ₹1800/- from the date of initial appointment with arrears.

16. The decision of the Respondents to fix the pay of the Petitioners as per the Seventh Pay Commission w.e.f. 01.01.2016 and not from 2011 in the pay scale of Rs.5200-20200 + GP Rs.1800 only because the Petitioners did not complete training till 2017 in our opinion is erroneous. When the Petitioners were sent for training, they successfully completed the same. The purpose of the Rules afore quoted is to ensure that the Petitioners complete their training. It is upon completion of training that they are to be restored in the grade pay of Rs.1800/- with retrospective effect. Upon completion of training, they, in any case, are to be placed in the grade pay of Rs.1800/- and arrears paid. It does not appear to be the intent of the Rules to place the Petitioners in the grade pay of Rs.1800/- from the date of completion of training. The requirement is that upon completion of training, the grade pay of Rs.1800/- is to be granted from the initial date of appointment with arrears. In the present case, what has happened is the Petitioners were granted grade pay of Rs.1800/- before undergoing training. In any case, had the Petitioners completed training, they still would get the grade pay of Rs.1800/- from the date they were initially appointed with

arrears. Completing the training later should not prejudice the Petitioners in the present facts is our considered opinion. This is not a case of unjust entitlement. It is just that the Respondents wrongly placed the Petitioners in the grade pay of ₹1800/- prior to completion of the training, which position would otherwise have restored upon completion of training. The benefits which the Petitioners were entitled to later was received by them earlier. Thus, the Petitioners pay which was initially fixed as ₹5200-20200+GP ₹1800 should be the basis for pay fixation as per Seventh Pay recommendations. The fact that the Petitioners completed the training at a later date should not be a factor to deprive them of the benefits of the grade pay of ₹1800/- fixed at the initial stage.

17. In the light of the aforesaid discussions, the Respondents may now proceed with the pay fixation in terms of the Seventh Pay Commission recommendations on the basis that the Petitioners are entitled to pay fixation in 2011 to 2015 in the pay band of ₹5200-20200+GP ₹1800 i.e. assuming that the Petitioners are qualified for the Grade Pay of ₹1800/- during the period 2011 to 2015.

18. Learned Counsel for the Petitioners further submitted that the Petitioners were entitled for annual increment of 3% of the basic salary and grade pay. It is further urged that under the Seventh Pay Commission, the pay scales fixed by the Department should include the addition of such annual increments. It is open for the Petitioners to make appropriate representation to the concerned Department as now the Petitioners pay will have to be re-fixed. These aspects will be considered at the time of pay fixation.

19. So far as the grievance about the deductions made from the salary of the Petitioners is concerned, the Respondents have in paragraph 9 of the affidavit-in-reply clearly stated that the deductions made are towards insurance and savings, NPS contribution, computer advance, festival advance, bank loan, IWT and LIC and they have provided a breakup of each of the Petitioners salary statement which is at Exhibit R-1. It is thus the stand of the Respondents that the deductions are not towards excess payment made. We do not have any reason to doubt such a stand of the Respondents. The Respondents have stated that the deductions of the excess payment made during the period from February 2017 to August 2017, if any, shall be made after hearing the Petitioners and following the principles of natural justice. Such a situation is not likely to arise in view of the revised pay fixation to be done, but even if does, the same shall be after hearing the petitioners and following the principles of natural justice.

20. In view of the above, the Respondents may fix the pay within a period of six months from the date of uploading of this order. Arrears, if any, be paid expeditiously.

21. Rule is made absolute in the above terms.

22. No costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.