

A SHRI M.L. PATIL (DEAD) THROUGH LRS

v.

THE STATE OF GOA AND ANR.

(Civil Appeal No. 4100 of 2022)

B MAY 20, 2022

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

C *Service Law: Pension – Arrears of pension – Denial of – Order passed by the High Court that the retirement age of the writ petitioners was 60 years and they were wrongly superannuated/ retired at the age of 58 years, however, since they approached the High Court belatedly, they would not be entitled to any salary/back wages for the period of two extra years they would have got in service; that though they would be entitled to the pension, but would not be entitled to any arrears of pension; and that the pension at the revised rates would become payable only from 1st January, 2020 – On appeal, held: Pension is a continuous cause of action – There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years – There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020 – Order passed by the High Court is quashed and set aside – Writ petitioner entitled to pension at the revised rates from the date he attains the age of 60 years and accordingly, arrears would be paid to them.*

F **Partly allowing the appeal, the Court**

G **HELD: 1.1** The High Court erred in observing that the appellant would not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1st January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no

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justification at all by the High Court to deny the pension at the revised rates and payable only from 1st January, 2020, thus, the impugned judgment and order passed by the High Court to that extent is quashed and set aside. The appellant-original writ petitioner would be entitled to pension at the revised rates from the date he attains the age of 60 years. The arrears would be paid to the appellant within the stipulated period. [Para 3, 4][364-E-H; 365-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.4100 of 2022.

From the Judgment and Order dated 11.02.2020 of the High Court of Bombay at Goa in Writ Petition No.961 of 2015.

Rahul Gupta, Adv. for the Appellants.

Ravindra Lokhande, Abhishek Atrey, Nring Chamwibo Zeliang, Advs. for the Respondents.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned final judgment and order dated 11.02.2020 passed by the High Court of Bombay at Goa in Writ Petition No. 961/2015, by which, though the High Court has allowed the said writ petition by holding that the respective writ petitioner sought to have been superannuated/retired at the age of 60 years instead of 58 years, the High Court has refused arrears of pension and has observed that the pension at the revised rates will become payable only from 1<sup>st</sup> January, 2020, the original writ petitioner has preferred the present appeal.

2. That the appellant – original writ petitioner of writ petition No. 961/2015 and others filed the writ petitions before the High Court challenging the action of the respondents in superannuating/retiring them at the age of 58 years. According to them, the retirement age was 60 years. By the impugned judgment and order, the High Court has held that the retirement age of the respective original writ petitioners was 60 years and they were wrongly superannuated/retired at the age of 58 years. However, as the respective writ petitioners approached the High Court belatedly, the High Court has held that none of the writ petitioners

A shall be entitled to any salary/back wages for the period of two extra years they would have got in service. The High Court has also observed that though the writ petitioners would be entitled to the pension on the basis that they continued in service until they attain the age of 60 years, they would not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1<sup>st</sup> January, 2020.

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2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court to the extent denying the back wages for the period of two extra years and observing and directing that original writ petitioner will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1<sup>st</sup> January, 2020, the original writ petitioner of Writ Petition No. 961/2015 has preferred the present appeal.

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3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent – State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1<sup>st</sup> January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1<sup>st</sup> January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.

4. In view of the above and for the reasons stated above, the present Appeal Succeeds in Part. The impugned judgment and order passed by the High Court to the extent of denying any arrears of pension and holding that the appellant shall be entitled to the pension at the revised

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rates only from 1<sup>st</sup> January, 2020 is hereby quashed and set aside. It is A  
held and ordered that the appellant – original writ petitioner shall be entitled  
to pension at the revised rates from the date he attains the age of 60  
years. Now the arrears accordingly shall be paid to the appellant within  
a period of four weeks from today. Present Appeal is Partly Allowed to  
the aforesaid extent. In the facts of the case, there shall be no order as to B  
costs.

Nidhi Jain

Appeal partly allowed.