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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 551 OF 2023

1. Shri Ramesh Damu Gaude,
Son of Damu Atma Gaude,
Aged 45 years, Occupation Service,
Residing at H. No. 983, Dhat wada,
Usgao, Ponda Goa 403 406.
 2. Shri Anil Ballappa Jamuni,
Son of Ballappa Jamuni,
Aged 37 years, Occupation Service,
Residing at H. No. 40, Dande wado,
Near Cine Lata, Margao,
Goa - 403 601.
 3. Shri Bhisu Gadu Velip,
Son of Gadu Malu Velip,
Aged 54 years, Occupation Service,
Residing at H. No. 258, Karegal Cola,
Cancona Goa – 403702.
 4. Shri Jaywant Vithu Gaude,
Son of Vithu Babani Gaude,
Aged 53 years, Occupation Service,
Residing at H. No. 657, Palwada,
Usgao, Goa 403 406.
 5. Pandhari Dattaram Nanshikar,
Son of Dattaram Liku Nanshikar,
Aged 36 years, Occupation Service,
Residing at H. No. 38/A, Nanus Usgao,
Ponda Goa 403 406.
-Petitioners.

Versus

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

2. Director,
Directorate of Health Services,
Government of Goa, Campal
Panaji-Goa, 403001.

.....Respondents.

Mr S. N. Joshi with Ms S. Joshi, Advocates for the Petitioners.
Ms Sapna Mordekar, AGA for the State.

CORAM:

**M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

Reserved On:-

12th November 2024

Pronounced on:-

25th November 2024

JUDGMENT: (Per Nivedita P. Mehta, J) :

1. The present petition is filed by the petitioners under Article 226 of the Constitution of India with a prayer that the petitioners are entitled to grant of pay scale of Rs.5200-20200 with Grade Pay of Rs.1800/- from the date of their joining in compliance with the circular dated 15.04.2009 along with all consequential benefits including yearly increments and benefits of 7th Pay Commission recommendations along with payment of arrears. Petitioners are also seeking for quashing and setting aside of the Office Memorandum dated 21.11.2016 issued by the Government of Goa, Department of Personnel.

Factual Matrix:-

2. Petitioner nos. 1 to 3 were appointed as Surveillance Workers appointed in pay scale of Rs. 4440-7440 with grade pay of Rs.1400/-

vide appointment order dated 25.06.2009. The petitioners nos. 4 and 5 were appointed as "Field Workers" in the pay scale of Rs. 4440-7440 with grade pay of Rs.1400/- vide order dated 10.07.2009. The grievance of the petitioners is that they were not granted Pay Band-I with the pay scale of Rs.5200-20200 with Grade Pay of Rs.1800/- from the date of their appointment. It is the submission of the learned counsel for the petitioners that the circular dated 15.04.2009 of the Department of finance (Revenue and Control), Government of Goa while implementing the 6th pay Commission confers on them the benefits of Pay Band-I as Group 'D' employees from the date of their appointment or at least from the date when they complete their training specified therein. It is the submission that even by the Office Memorandum dated 21.11.2016 the employees recruited after 01.01.2006 and who were not covered by the circular dated 15.04.2009, had to undergo training within the period of three months. This circular clearly stipulates that after the training the Group 'D' staff will be placed in Pay Band-I in the Grade Pay of Rs.1800/-.

Submissions:-

3. Learned counsel for the petitioners submitted that inspite of the training in view of the circular dated 15.4.2009, the petitioners were not granted pay band with a pay scale of Rs.5200-20200 with

grade pay of Rs.1800/- from the date of their appointment. Learned counsel further contended that the petitioners are also entitled to annual increments of 3% in the revised pay scale. The learned counsel further submitted that by the issuance of the circular dated 04.04.2017 an attempt has been made on behalf of the respondents to take away the benefits accrued in favour of the petitioners in view of the circular dated 15.04.2009. This act of the respondents considering the grant of pay scale of Rs.5200-20200 with grade pay of Rs.1800/- to Group "D" employees from the year 01.01.2016 amounts to hostile discrimination and is in violation of Articles 14, 39(D) and 21 of the Constitution of India. The learned counsel further submitted that the Government of Goa cannot brush away the right accrued in favour of the petitioners by circular dated 15.04.2009 by issuing subsequent circular dated 04.04.2017 and prayed that the said circular should be quashed and set aside. The learned counsel further submitted that the petitioners are entitled for revision of the pay scale from the date of joining service along with all consequential benefits.

4. Per contra, Ms Mordekar, learned Addl. Govt. Advocate appearing on behalf of the respondents vehemently opposed the said petition and submitted that the petition is hopelessly barred by limitation and suffers from delay and laches. She further stated that after the implementation of the 7th Pay Commission, the

Government vide its order dated 30.11.2016 constituted an "Anomaly Committee" headed by Ex-Director of Accounts and all the parties/Government servants aggrieved in any manner with the implementation of the 7th Pay Commission were requested to file their petitions/grievances before the Anomaly Committee and the said committee was initially constituted for a period of two years and thereafter from time to time the tenure of the said committee was extended. However, the petitioners did not raise any grievance before the said Anomaly Committee. She contended that vide circular dated 15.04.2009, the minimum qualification for Group "D" staff was revised to matriculation/ITI.

5. Another Office Memorandum dated 30.04.2010 was issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training mentioned model Recruitment Rules for the posts which were in Group "D" scale prior to Sixth Pay Commission and which have been placed in Group "C" and requested all the departments to amend the Recruitment Rules accordingly. According to her erstwhile Group "D" posts were then upgraded to Group "C" posts and merged in pay band-I with grade pay of Rs.1800/- and re-designated as "Multi Task Staff". She further submitted that Office Memorandum dated 21.11.2016 was issued in furtherance of the policy decision of the Government of India for taking necessary steps in order to mitigate the hardships faced by the

employees as many of the recruitments were made in Group “D” posts in several departments under the erstwhile recruitment Rules wherein many non-matriculation/non ITI candidates were selected and appointed to various posts.

6. Learned Addl. Govt. Advocate further submitted that the petitioners are not entitled to any benefits under the circular dated 15.04.2009 as benefits contemplated therein are available only to the employees who were in service as on the date of issuance of the circular dated 15.04.2009. She further submitted that the circular dated 21.11.2016 which provided for the extension of benefits to Sixth Pay recommendations for grant of grade pay to Group "D" employees, classified the said employees into two broad categories. One category comprises Group "D" employees who had the minimum educational qualification of SSC/matriculation or ITI passed and the second category was those who did not possess this minimum qualification. Admittedly according to her, the petitioners when appointed did not possess the requisite qualification of SSC matriculation/ITI. She further argued that the petitioners were given training in the year 2010 and, as such, even the applicability of this Office Memorandum dated 21.11.2016 can at the most be from the year 2010 i.e. after the training was imparted to the petitioners and therefore, there is no merit in the submission of the petitioners that they are entitled to the pay scale of Rs.5200-20200 with grade pay of Rs.1800/-from the

date of their appointment.

Findings and analysis:-

7. At this juncture, it is relevant to notice a circular dated 15.04.2009 issued by the Department of Finance (Revenue and Control), Government of Goa wherein the subject was regarding implementation of the Sixth Central Pay Commission-Decision relating to the benefits of Pay Band-I to Group “D” Employees. The petitioner nos.1 to 3 were appointed as Surveillance Workers on 25.06.2009 and the petitioner nos. 4 and 5 were appointed as field workers on 10.07.2009. Admittedly, the petitioners were recruited after the issuance of the said circular. The benefits contemplated therein were made available only to the employees who were already in service as on the date of the issuance of the circular. The circular reads thus:-

CIRCULAR

“Sub:-Implementation of the Sixth Central Pay Commission-Decision relating to the benefits of Pay Band-I to group- ‘D’ employees.

Government of Goa has accepted the recommendation of the Sixth Central Pay Commission vide Order No.8/7/2008-Fin(R&C) dated 10/10/2008.

As per the Notification dated 29/08/2008 from Ministry of Finance (Department of Expenditure), Government of India; the pay of Group-D employees, in the revised pay structure will be fixed initially in the -1S pay band as per Clause (A), 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 01.01.2006 in PB-1 with grade pay of Rs. 1800.

Such of those existing Group-D employees who do not possess the revised minimum qualification for entry into PB-1 would be retrained by the concerned Department preferably within a period of 6 months so that payment of arrears on account of upgradation are not delayed. As per the report of Sixth Pay Commission the training package would need to be evolved separately for each of the individual Ministry/Department /Organization keeping in view their specific needs. After retraining, 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-I Pay Band, this category of Group-D staff will regain their seniority vis-a-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 01.01.2006. 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-a-vis an employee in a lower pay scale. Within the same pre-revised pay scale, seniority which existed prior to revision would continue.

All Heads of Departments are therefore required to evolve suitable training package keeping in view their specific needs and retain their Group- 'D' employees who do not possess the revised minimum qualification recommended by the Sixth Pay Commission, as early as possible, so that payment of arrears on account of upgradation are not delayed."

8. The petitioners did not possess minimum educational qualification i.e. SSC/Matriculation and therefore, they were required to undergo training. In view of the circular dated 15.04.2009, an Office Memorandum dated 12.03.2010 was issued by Urban Health Centre, Margao imparting training to the petitioners from 17.03.2010 to 06.04.2010 to enable them to get a Pay Scale of Rs.5200-20200

with grade pay of Rs.1800/-. Accordingly, a certificate of training was issued in favour of the petitioners.

9. Subsequently, the Personal Department, Government of Goa issued an Office Memorandum dated 21.11.2016 which reads thus:-

***“Sub: Extension of the benefits of the Sixth Central Pay Commission recommendation of grantion Pay Band-I, Rs. 5,200-20,200 with Grade Pay of Rs.1,800 to Group ‘D’ employees.*”**

The Government of Goa had extended the benefits of the Sixth Central Pay Commission recommendations of granting Pay Band-I, Rs. 5,200-20,200 with Grade Pay of Rs. 1,800 to Group ‘D’ employees vide Circular No. 8/21/2008-Fin(R&C) Part-I dated 15-04-2009.

Vide Office Memorandum No. AB-14017/6/2009-Estt(RR) dated 30-04-2010 of the Government of India, Ministry of Personnel, Public Grievances & Pensions, Dept. Of Personnel & Training, has recommended that all Group ‘D’ Posts in the Government will stand upgraded to Group ‘C’, in Pay Band-I, with Grade Pay of Rs. 1,800/-. Accordingly, the Department of Personnel, Government of Goa, framed Recruitment Rules vide Notification No. 1/2/2012-PER dated 13-03-2015 published in the Official Gazette SERIES I No. 52 dated 26-03-2015, whereby all such Group ‘D’ category Staff, have been designated as ‘Multi Tasking Staff’ with essential qualification of SSCE (Xth) Standard)/ITI pass.

It is observed that, pursuant to the Circular dated 15-04-2009, issued by Finance (R&C) Department, most of the Departments have continued with the recruitment of various Group ‘D’ staff, under the old Recruitment Rules, as existing, wherein many non-matriculate/non-ITI candidates were selected and appointed.

Further, it has been observed that most of the Departments are now facing problem in re-designating the existing Group ‘D’ employees, more particularly due to the fact that many from existing Group ‘D’ employees are not fulfilling the requirement of educational qualifications.

In view of the above, and in order to mitigate the

hardship faced by these set of employees, as well as the Departments concerned, Government has decided that;

(i) All employees recruited after 01/01/2006, under various posts in Group 'D' category and who possesses the minimum educational qualification of SSCE (Xth) pass/ITI pass, shall be placed in Pay Band-I, Rs. 5,200-20,200 + Rs. 1,800/- (Grade Pay).

(ii) All those Group 'D' employees who do not posses the revised minimum educational qualification of (SSCE (Xth) pass/ITI pass, recruited after 01/01/2006 and who were not covered under the Finance (R&C) Departments circular dated 15/4/2009, shall undergo a training preferably within a period of 03 months. The training package would need to be evolved separately for each of the individual Departmental Organisation keeping in view their specific needs. After retraining, these Group 'D' staff will also be placed in the placed in the Pay Band-I, with Grade Pay of Rs. 1,800/-.

(iii) All the Group 'D' employees shall be classified as Group 'C' and designated as 'Multi Tasking Staff' with the actual duties as enumerated in Annexure appended. For other categories of posts, Departments may adopt single designation for such position whose duties are similar in nature and where the officials can easily be switched over from one task to another; other than those which are enumerated for the Multi Tasking Staff as listed in Annexure appended; and refer the same to the Department of Personnel for amendment to the Recruitment Rules and for clubbing up of the posts in question.

(iv) All Recruitment Rules relating to various posts in Group 'D' categories shall be rescinded and henceforth, only one singular Recruitment Rule for Multi Tasking Staff shall be in force as published vide Notification No.1/2/2012-PER dated 13-03-2015 in Official Gazette Series I no. 52 dated 26-03-2015.

(v) The fixation of pay shall be notionally done as on date of appointment or as on date of completion of training, as the case may be and actual benefits shall be gives from 01-01-2016 or on the date of completion training, as the cases may be.

(vi) Recruitment to all type of Multi Tasking Staff (earlier Group 'D' position) in all Departments of the Government shall be stopped forthwith. So also, all Recruitment

process initiated individually shall be stopped forthwith. These instructions shall also apply to staff drawing funds from the state treasury under charged establishment etc.

(vii) All types of recruitments to the various posts other than 'Multi Tasking Staff', as specified in item (ii) above, shall be outsourced through the Goa Human Resource Development Corporation or such other agency as decided by the Government.

(viii) In case of other categories of employees in Group 'C' having minimum qualification as non-matriculate, the notified Recruitment Rules shall stand rescinded. The Department of Personnel shall notify the Recruitment Rules for said Group 'C' categories with minimum qualification as SSCE (Xth)/ITI pass. Individual Departments having such Group 'C' posts with such Recruitment Rules, prescribing non-matriculate educational qualification should inform the Department of Personnel for making changes to the Recruitment Rules concerned immediately.

It is therefore enjoined upon all the Heads of Departments /Offices/ Corporations/ Autonomous Bodies above decision of the Government for strict compliance.

This has the concurrence of Finance (R&C) Department vide their U.O. No. 1456879 date 22-08-2016 and the Council of Ministers vide decision taken in the XXXXIst Cabinet Meeting held on 28-10-2016.

The receipt of this communication shall be acknowledged."

10. The Office Memorandum dated 21.11.2016 of the Finance Department considered the extension of benefits of Sixth Pay Commission recommendations to Group "D" employees. The aforesaid circular was issued as most of the departments were facing problems in re-designating the existing Group "D" employees, more particularly due to the fact that many of the existing Group "D"

employees are not fulfilling the requirement of educational qualification.

11. In pursuance of the circular dated 15.04.2009 issued by the Finance (Revenue and Control) Department; most of the departments continued with the recruitment of various Group "D" staff under the old Recruitment Rules as existing wherein many non-matriculation/non-ITI candidates were selected and appointed.

12. Again another circular dated 04.04.2017 was issued by the Department of Finance (Revenue & Control), Government of Goa giving clarification to the Office Memorandum dated 21.11.2016 as the Directorate of Accounts encountered doubts during the process of scrutiny/approval of the pay fixation statement in respect of Group "D" employees as contemplated in the circular dated 04.04.2017 which is reproduced below:-

CIRCULAR

" The Personnel Department vide above O.M. dated 21-11-2016 (read at (L) above) has issued guidelines regarding extension of the benefits of the Sixth Central Pay Commission recommendation of granting pay Band-1, Rs.5,200-20200 + GP Rs. 1800 to Group 'D' employees.

Subsequently, Government vide Order date 30-11-2016 (read at (2) above) has implemented VII Central Pay Commission recommendation as adopted by Government of India, to the employees of the State Government and GIA Education Institutions.

The Directorate of Accounts has encountered with certain points of doubts during the process of scrutiny/approval of pay fixation statements in respect

of Group 'D' employees and has requested the Finance Department for intervention/ examination and clarification with reference to the above referred orders.

Finance (R&C) Department has examined the matter in detail in consultation with Department of Personnel and in order to resolve the issue pertaining to pay and allowance in respect of Group 'D' employees the following clarifications are given:

Clarifications as per O.M. 1/2/2012-PER dated 21-11-2016.

(a) Those Group 'D' employees who have been recruited on or after 01-01-2006 and who possess SSCE (X) or ITI, shall be placed in PB-1, Rs. 5200-20200 + GP Rs. 1800.

Illustration: Mr. ABC was appointed as a Peon, in XYZ Department in the pay scale 1S- Rs. 4,440+7,440 + GP Rs.1,300 on 01-01-2011. At the time of appointment, he was possessing Std. X pass qualification. However, since his appointment was done as per the RR's prevailing, his pay was fixed at Rs. 4440-7440 + GP Rs. 1300.

In such case, his pay as on 01-01-2011, will be fixed at Rs.5,200 with GP Rs.1,800, in the PB-1, Rs. 5200-20200 + GP Rs.1800 [as per clause (v) of the O.M. dated 21-11-2016]. The fixation of pay shall be notionally done w. e. f. 01-01-2011 up to 31-12-2015, and he will be able to draw monetary benefit w.e.f. on or after 01-01-2016.

(b) There may be cases, where Group 'D' employees have acquired Std. X or ITI qualification after their appointment in the service. e.g. A Peon or a Lab. Attendant has acquired Std. X (SSCE) through National Institute of Open Schooling.

Than in such applying the same principle as in clause (a) above, the employee shall be placed in PB I, Rs.52,00-20,200 + GP Rs.1800 and his pay shall be notionally fixed w. e. f. the date of acquiring this qualification. For the purpose of determining the date of acquiring this qualification, the date of issue of mark sheet or passing certificate shall be considered.

(c) There are many cases in certain Departments, who have been granted the pay scale of PB 1, Rs. 5200-20200 + GP Rs.1800, even when the employee did not possess the required qualification of SSCE pass or ITI

pass. The pay scale granted is not according to the RR's in force which were not amended neither was the relevant pay scale in pay Band 1-S replaced.

In such cases, the employees pay shall be fixed in relevant Pay Band 1S, notionally w. e. f. from late of appointment and he shall than be placed in PB I, Rs.5200-20200 + GP Rs.1800 w. e. f. 01.01.2016. In terms of the clause (ii) of O.M. dated 21-11-2016 these employees will have to undergo training.

(d) (i) As per clause (ii) of O.M. dated 21-11-2016, all Group 'D' employees who do not possess requisite qualification of Std & pass or ITT pass those who were not trained in terms of Fin. (R&C) Dept. Circular dated 15-04-2009, have to undergo training. Upon completion of this training their pay shall be fixed in terms of clause (V) of the O.M. dated 21-11-2016, in those cases whose appointment was made upto 31-12-2015.

(ii) In cases of those who have been appointed on or after 01-01-2016 and who do not possess the requisite qualification as on the date of their appointment, shall have to undergo training and their pay shall be fixed in PB-1, Rs.5200-20200 + GP RS.1300 on the date of their appointment, only after successful completion of their training as certified by the Appointing Authority. Till such time, they will continue to draw their pay in the pre-revised VI Pay Scale."

13. No doubt the petitioners were appointed after the issuance of the circular dated 15.04.2009. The petitioners were appointed by the respondents in the posts which according to the respondents was done mistakenly though the petitioners did not possess the requisite qualifications. Therefore an Office Memorandum dated 12.03.2010 was issued by the Urban Health Center, Margao imparting training to the petitioners from 17.03.2010 to 06.04.2010 to enable them to get the pay scale of Rs.5200 – 20200 with Grade Pay of Rs.1800/-. Accordingly, a certificate of training was issued in favour of the

petitioners. A reading of the Office Memorandum dated 21.11.2016, specially clause (iv) makes it clear that all recruitment rules relating to various posts in Group 'D' categories shall be rescinded and henceforth only one singular Recruitment Rule for Multi Tasking Staff shall be in force as published vide Notification No.1/2/2012-PER dated 13.03.2015 in Official Gazette Series I no.52 dated 26.03.2015. Further, the fixation of pay shall be notionally done as on the date of appointment or as on the date of completion of training as the case may be and actual benefits shall be given from 01.01.2016.

14. The Office Memorandum dated 21.11.2016, in our opinion, makes it clear that even in respect of those employees appointed after 15.04.2009, they were permitted to undergo training and it is on the date of the completion of training or on the date of their appointment if they had requisite qualifications the fixation of pay has to be notionally done and actual benefits should be given from 01.01.2016 or on the date of completion of training as the case may be in terms of clause (v) of the circular. Thus, the Office Memorandum dated 21.11.2016 extended the benefits of circular dated 15.04.2009 with slight modifications.

15. As per the Office Memorandum dated 12.03.2010 the petitioners were allowed to complete the training which they completed by 06.04.2010 and in any case before 26.03.2015 on which

date the Recruitment Rules relating to various posts in Group 'D' categories were rescinded. The petitioners having undergone the training and completed the same before 26.03.2015, according to us, entitles them to a placement in Pay Band-I of Rs.5200 – 20200 with Grade Pay of Rs.1800/- from the date when they completed their training.

16. The Government of Goa Department of Finance (Revenue and Control) issued circular dated 04.04.2017 clarifying the Office Memorandum dated 21.11.2016 wherein clarification mentioned in clause (d)(i) contemplated that Group "D" employees who did not possess requisite qualification of matriculation/ITI passed and those who were not trained in terms of the circular dated 15.04.2009 have to undergo training and upon completion of this training their pay shall be fixed in terms of clause (v) of the Office Memorandum dated 21.11.2016 in those cases whose appointments were made upto 31.12.2015.

Conclusion:-

17. The petitioners were imparted training by the respondents in the year 2010 which they successfully completed. The guidelines laid down in the circular dated 15.04.2009 were applied to the petitioners. The respondents were conscious that the petitioners were appointed though they did not possess the necessary qualifications

and it is with a view to allow them to acquire such qualifications that the petitioners were allowed to undergo training by extending the benefits of circular dated 15.04.2009. Having consciously taken such a stand and issued an Office Memorandum dated 21.11.2016, the respondents cannot then unilaterally take away the benefits accrued in favour of the petitioners by issuing a clarificatory circular dated 04.04.2017. In our opinion, the petitioners are entitled to be placed in the Pay Band-I of pay scale of Rs.5200 – 20200 with Grade Pay of Rs.1800/- from the date they completed their training in 2010. The respondents shall then have to upgrade the pay scale admissible to the petitioners as per the recommendations of the 7th Pay Commission with effect from 01.01.2016. However, the pay fixation in the Pay Band-I from the date of completion of training shall be done notionally till 31.12.2015. The petitioners are entitled to arrears of upgraded equivalent pay fixation in terms of the recommendations of 7th Pay Commission with effect from 01.01.2016. This exercise of revision of the pay scale and payment of arrears to the petitioners shall be done within a period of six months from the date of uploading of this order.

18. It is one of the contentions of the respondents that there is delay on the part of the petitioners in challenging the decision regarding pay fixation. It is for this reason that we are not inclined to grant arrears to the petitioners upto 31.12.2015 but grant them the

relief of notional pay fixation. However in our opinion the petitioners should not be deprived of the difference of arrears in the upgraded equivalent pay scale in terms of the 7th Pay Commission recommendations with effect from 01.01.2016. We are not inclined to accept the contention of the learned counsel for the petitioners that they should be given pay scale in Pay Band-I from the date of their appointment.

19. The Writ Petition is partly allowed.

20. Rule is made partly absolute.

21. Petition stands disposed of without any order for costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.