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IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 322 OF 2023
AND
MISC. CIVIL APPLICATION NO. 276 OF 2024

Mr. Auroliano de Oliveira @ Auro, presently working as a Member of the District Consumer Disputes Redressal Commission, North Goa, aged about 46 years, resident of House no. 4, Sallem Batt, P. O. Santa Cruz, Near Vernekar House, Mercas, Tiswadi, Goa. ... Petitioner

V e r s u s

1. State of Goa, through the Chief Secretary, Secretariat, Porvorim, Bardez, Goa.
2. The Director, Department of Civil Supplies & Consumer Affairs, Ex-officio Joint Secretary, Junta House, 2nd Floor, Panaji, ...Respondents
Goa, 403 001.

Mr. Y. V. Nadkarni, Advocate with *Ms. Simran Khadilkar and Mr. Nilay Naik, Advocates for the Petitioner.*

Mr. Manish Salkar, Government Advocate for the Respondents.

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

RESERVED ON : 16th October 2024
PRONOUNCED ON: 23rd October, 2024

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

1. This petition under Article 226 of the constitution of India is for the following reliefs :

(a) to issue a writ of Mandamus or an appropriate order or direction directing the Respondents to pay to the Petitioner salary in terms of Sub Rules (2) & (4) of Rule 3 of the Consumer Protection (Salary, Allowances and Conditions of Service of President and Members of the State commission and District Commission), Model Rules, 2020 with effect from 20.07.2020 till 3.07.22 with interest at the rate of 12% per annum till date of payment and further additional interest of 9% per annum from the date of order till date of its actual payment.

(b) To issue a writ of Mandamus or appropriate order or direction directing the Respondents to pay to the petitioner the following allowances : (i) D.A. allowance at the prescribed rates on the revised basis pay. (ii) H.R.A. at the rate of 20% on the revised basic as per Model Rules (iii) other applicable allowances such as Medical/Sumptuary allowance, as are admissible to the Deputy Secretary of the State of Goa.

(c) to award costs

(d) to grant such other or further relief as this Hon'ble Court deems just & proper in the circumstances of the case."

2. The facts of the case are that in June 2017, the Government appointed the petitioner as the Member of the Consumer Redressal Forum, North Goa ('*Forum*', for short), in exercise of the powers conferred under section 10 of the Consumer Protection Act 1986 ('*Act*

of 1986', for short) and on recommendation of the Selection Committee under sub-section (1A) of Section 10 of the Act. This appointment was as a whole time Member of the Consumer Forum, North Goa. Under the said order, the petitioner was entitled to receive the salary of the Judge of the District Court.

3. Along with the petitioner, on the same date, Shri Pradip Sawaikar was appointed as a President of the Forum at South Goa. Shri Sebastian Vales was appointed as President of the Forum, North Goa.

4. On 16th October 2018, the respondents enhanced the remuneration of the Members of the District Forums North and South Goa. In the year 2019, Parliament enacted the Consumer Protection Act, 2019 (hereinafter referred to as the 'Act of 2019', for short) to provide for the protection of the interests of consumers and for the said purpose to establish authorities for timely and effective administration and settlement of consumers disputes and for matters connected therewith or incidental thereto. By Notification dated 15.07.2020, the Central Government appointed the 20th day of July 2020 as the date on which the Act of 2019 shall come into force. The Act of 2019 repealed the Act of 1986 and the District Forum was re-designated as District Commission.

5. The petitioner joined the office as the Member of the District Commission North Goa and the tenure of the petitioner as former Member of the Consumer Redressal Forum, North Goa, completed on 03.07.2022; presently the petitioner is re-appointed as a Member of the Consumer Redressal Commission, North Goa.

6. Learned Counsel for the petitioner submits that in view of the Model Rules 2020 (*Model Rules* for short), the petitioner is entitled to receive salary in said scale equal to the pay of the Deputy Secretary of the State w.e.f. 20.07.2020 i.e. the date on which the Model Rules framed by the Central Government came into force.

7. The submission of the learned Counsel for the petitioner is that w.e.f. 20.07.2020 i.e. the date on which the Model Rules were framed by the Central Government came into force, till 03.07.2022 (date on which the petitioner completed his term), the petitioner is entitled to receive salary in the scale equal to the pay of the Deputy Secretary of the State with an annual increase of three percent per annum.

8. Learned Government Advocate Mr. Salkar submitted that the petitioner was appointed as a Member of the Consumer Redressal Forum in terms of the Act of 1986 as a whole time Member. It is by virtue of the appointment under the Act of 1986 that he was entitled to receive the salary of the Judge of the District Court. Upon

enactment of the Act of 2019, it is only those Members who are appointed under the Act of 2019, who are entitled to receive salary and other benefits in terms of the Act of 2019. The Petitioner's entitlement of salary, allowances and other terms and conditions will continue under the Act of 1986. Mr. Salkar submits that Section 31 is specific in as much that the provisions clearly contemplates that the petitioner shall hold office as such Member till the completion of his term for which he has been appointed. This, according to Mr. Salkar means that the petitioner continues to be governed by the provisions of the Act of 1986 and that those appointed after the Act of 2019 came into force, are entitled to the salary and allowances in terms of the Act of 2019.

9. Heard learned Counsel for the parties.

10. Section 30 of the Act of 2019, reads thus :

“30. Salaries, allowances and other terms and conditions of the service of President and members of the District Commission.

The State Government may, by notification, make rules to provide for salaries and allowances and other terms and conditions of service of the Presidents and Members of the District Commission.”

11. Section 31 of the Act of 2019, reads thus :

“31. Any person appointed as President or, as the case may be, a member of the district Commission immediately before the commencement of this Act shall hold office as such President or, as the case may be, a member of the District Commission immediately before the commencement of this Act shall hold office as such President or, as the case may be, as member till the completion of his terms for which he has been appointed.”

12. Section 102 of the Act of 2019, reads thus :

“(1) The State Governments may, by notification, make rules for carrying out the provisions of this Act.

Provided that the Central Government may frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such rules have been framed in respect of such matter they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as practicable, they shall conform to such model rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely-

....

(h) The salaries and allowances payable to and other terms and conditions of service of the President and members of the Commission under Section 30.”

13. Sub-rules (2) and (4) of Rule 3 of the Model Rules, 2020 framed by the Central Government reads as follows :

“3. Salaries & allowances payable to the President & Members of the District Commission.

(1) ...

(2) A Member shall receive a pay equal to the pay at the minimum of the scale of pay of a Deputy Secretary of the State Government and other allowances as admissible to such officer.

(3)...

(4) There shall be an annual upward revision of the pay of the President and the Member at the rate of 3%”

14. In the context of the provisions of the Act of 2019, it is not possible for us to give a narrow meaning to the provisions of Section 31 of the Act of 2019. Undoubtedly, the appointment of the petitioner was in terms of the Act of 1986. The petitioner was receiving salary and allowances in terms of the Rules framed in exercise of the powers conferred by the Act of 1986.

15. Section 31 ordains that a Member who was appointed before the commencement of the Act of 2019, shall hold office as such till the completion of his term for which he has been appointed. The transitional provision therefore enables the Member to hold office till the completion of his term.

16. In terms of Section 30 of the Act of 2019, the State Government is empowered by notification to make rules to provide for salaries and allowances and other terms and conditions of service of the Members of the District Commission.

17. In our considered view, Section 30 cannot be read to mean that it is meant to cover the cases of only those Members who are appointed after the Act of 2019 came into force. Section 30 and Section 31 are to be harmoniously read together. The rules made providing for salary and allowances and other terms and conditions of service of the Members of the District Commission will apply to those Members who continue to hold office under Section 31 after the Act of 2019 comes into force. Whereas Section 31 specifically provides that a Member appointed before the commencement of the Act of 2019 shall hold office as such Member till the completion of his term for which he has been appointed; Section 30 is a provision empowering the State Government to make rules to provide for salaries and allowances and other terms and conditions of service of the Presidents and Members of the District Commission. Section 30 does not make any distinction between a Member who is appointed under the Act of 1986 and continues to hold office after the Act of 2019 came into force and the one who is appointed after the Act of 2019 come into force.

18. There is nothing in Section 30 to indicate that the Members who continue to hold office after the Act of 2019 comes into force are not entitled to the same salary and allowances as those Members

appointed after the Act of 2019 comes into force. The intent of Section 30 is not to create two classes of Members though discharging the same functions as Members of the Commission. Section 30 would include a Member who continues to hold office after the Act of 2019 comes into force, till the completion of his term for which he was appointed.

19. The petitioner is claiming the benefits of salary and allowances for the period from 20.07.2020 till 03.07.2022. Atleast till 03.07.2022, the State Government did not make rules to provide salaries and allowances to the Members in terms of Section 30 of the Act of 2019. In terms of Section 102 of the Act of 2019, the Model Rules 2020 framed by the Central Government are applicable to the Members of the Commission. In terms of such Model Rules, the Member shall receive pay equal to the pay at the minimum of the scale of pay of a Deputy Secretary of the State Government and other allowances as admissible to such officer.

20. Learned Counsel for the petitioner relied upon the decision of the Gauhati High Court in **Vijay Kumar L. vs. The State of Assam & 4 Ors.**¹ We are in respectful agreement with the view taken by the learned Single Judge of the Gauhati High Court.

¹ WP(C) 5223/2022 decided on 05.06.2024

21. We, therefore, have no hesitation in allowing the Writ Petition. The Writ Petition is allowed. The respondents are directed to pay to the petitioner salary in terms of sub-rules 2 and 4 of Rule 3 of the Consumer Protection (Salary, allowances and condition of service of President and Members of the State Commission and District Commission) Model Rules, 2020 w.e.f. 20.07.2020 till 03.07.2022 with all consequential benefits as admissible within a period of three months from today.

22. There shall be no order as to costs.

23. Applications, if any, stands disposed of.

VALMIKI MENEZES, J

M. S. KARNIK, J