

Sonam

IN THE HIGH COURT OF BOMBAY AT GOA
MISC. CIVIL APPLICATION NO. 105 OF 2024
IN
WRIT PETITION NO. 481 OF 2022

- 1) IDC Retired Staff Welfare Association
Through its President, Uday Manguesh Rege,
Flat No. 244, Landscape Pinto Park,
Behind Reliance World,
Campal, Panaji, Goa-403001.
- 2) GDDIDC Employees Union,
Through its President, Hemant S. Vernekar,
Flat No. 244, Landscape Pinto Park,
Behind Reliance World,
Campal, Panaji, Goa-403001.
- 3) Goa IDC Staff Welfare Association,
Through its President, Balkrishna V. Desai,
Flat No. 244, Landscape Pinto Park,
Behind Reliance World,
Campal, Panaji, Goa-40300. ...APPLICANTS/
PETITIONERS

Versus

- 1) State of Goa,
Through its Chief Secretary,
Secretary, Porvorim, Goa.
- 2) Goa Industrial Development Corporation
Through its Managing Director,
Goa-IDC,
Panaji, Goa.
- 3) Directorate of Industries, Trade and Commerce,

Udyog Bhavan,
Government of Goa,
Panaji, Goa.

4) The Secretary Finance,
Finance Department,
Government of Goa.

5) The Under-Secretary Finance (Budget-II)
Finance Department
Government of Goa.

6) The Secretary (Industries),
Industries Department,
Government of Goa.
Secretariat, Porvorim, Goa.

... RESPONDENTS

Mr Dattaprasad Lawande and Mr Pradosh Dangui,
Advocates for the applicants.

Mr Manish Salkar, Government Advocate for Respondent
No. 1, 3, 4, 5 and 6.

Mr A. D. Bhobe with Ms A. Fernandes, Advocates for
Respondent No. 2.

CORAM:- M. S. SONAK &

VALMIKI MENEZES, JJ.

DATED :- 27th March, 2024.

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

1. Heard Mr Lawande, who appears with Mr Pradosh Dangui for the Petitioners; Mr M. Salkar, a learned Government Advocate, who appears for Respondent Nos.

1, 3, 4, 5, and 6; and Mr A. D. Bhobe, who appears with Ms A. Fernandes for Respondent No. 2.

2. Rule. The rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.

3. The 1st Petitioner is the Goa Industrial Development Corporation (IDC) Retired Staff Welfare Association. The 2nd and 3rd Petitioners are also Associations of the GIDC employees. The GIDC is a statutory Corporation established by State Legislation.

4. By instituting this Petition, the Petitioners sought to implement the recommendations of the 7th Pay Commission by arguing that some other Corporations had already implemented such recommendations. The Petitioners also pointed out some GIDC resolutions that implement the service conditions generally applicable to government employees.

5. During the pendency of this Petition, the GIDC, which is a statutory Corporation, in its 385th meeting of the Board of Directors held on 21/06/2023, unanimously resolved as follows:

“8. Implementation of 7th Pay commission regarding.

The board deliberated and passed the following resolution.

Resolution no. 19/2023

Resolved unanimously to pay 7th Pay Commission arrears to all staff of Goa-IDC w.e.f. 01/01/2018 as proposed in the Agenda Note, subject to the condition that this shall be applicable where there is no pending litigation. Further resolved that wherever there is pending litigation, the payment of 7th Pay Commission arrears shall be put on hold till the resolution of the litigation. "Resolved further that the Managing Director be and is hereby authorized to take all further necessary action in the matter",

6. The Petitioners, therefore, filed MCA No. 105/2024 seeking implementation of the above Resolution dated 21/06/2023 as an interim measure pending Resolution of the Petitioners' grievance that such recommendation should have been made applicable from 01/01/2016.

7. Mr Lawande points out that even the agenda note of the meeting held on 21/06/2023 had proposed the extension of the benefits of the 7th Pay Commission scales from 01/01/2016. Mr Lawande also pointed out that there was no clarity on the issue of the pensioners, i.e. GIDC

employees who retired before 01/01/2018, getting the benefits of the Resolution dated 21/06/2023.

8. Mr Bhobe learned Counsel for the GIDC, submitted that the Board of Directors has unanimously resolved to pay 7th Pay Commission arrears to all the staff of the GIDC with effect from 01/01/2018 as proposed in the agenda note subject to the condition that this shall be applicable where there is no pending litigation. He submitted that the Resolution provides that the payment of arrears in terms of the 7th Pay Commission shall be put on hold until the Resolution of the litigation.

9. Mr Bhobe, on instructions, states that if the Petitioners propose any modification of the above Resolution dated 21/06/2023, then the matter will have to be again placed before the Board of Directors. He submitted that the Managing Director himself would not have the power to modify or alter the decision incorporated in the meeting dated 21/06/2023.

10. Accordingly, we have heard the learned counsel for the parties and assessed the rival contentions in light of the Resolution dated 21/06/2023, unanimously passed by the Board of Directors of the GIDC.

11. In terms of the Resolution dated 21/06/2023, as it stands, it is clear that the GIDC has resolved to implement the recommendations of the 7th Pay Commission to all its employees with effect from 01/01/2018. The Resolution states that even the arrears with effect from 01/01/2018 would be paid to all the staff of the GIDC. However, such implementation or, rather, the payment of arrears is hedged with the condition that there should be no pending litigation.

12. In principle, we cannot appreciate this position of GIDC imposing the condition that benefit of the recommendation of the 7th Pay Commission would be implemented or arrears paid only where there is no pending litigation. In other words, it amounts to compelling the employees not to pursue their grievances before the Court of Law; It amounts to telling the employees and pensioners that they would not be granted the benefit of the recommendation of the 7th Pay Commission or the arrears with effect from 01/01/2018 unless they withdraw this Petition. Such an approach is improper because it is the right of the employees to approach the Court of Law to redress all their grievances. At least the Government or Statutory Corporations should not adopt such an approach.

13. In any case, since we propose to dispose of this Petition and Mr Lawande states that there are no other litigations pending on this issue, we take it that this condition will not come in the way of the Petitioners receiving the benefits of the Resolution dated 21/06/2023. In any case, we strike down the condition about pending litigation and direct that the benefit of the resolution shall not be denied on this ground.

14. One of the issues raised by the Petitioners was that the employees of the GIDC who retired before 01/01/2018 and are now drawing pensions must also benefit from the recommendations of the 7th Pay Commission insofar as revision of their pension is concerned. Now that the recommendations of the 7th Pay Commission are going to be implemented from 01/01/2018, some of the GIDC employees who have retired before this date would be entitled to benefits of the recommendations of the 7th Pay Commission concerning the revision of their pension and other applicable retiral benefits.

15. Therefore, the reference to arrears in the Resolution dated 21/06/2023 will have to be construed as a reference to the arrears of the revised pension insofar as the employees who retired before 01/01/2018 are concerned. Such arrears constituting the difference between the

present and the revised pension will have to be paid to such employees. However, this will have to be calculated from 01/01/2018, as stated in the Resolution.

16. The Petitioners' other grievance was that the benefits were not extended from 01/01/2016. This was mainly because, according to the Petitioners, the Government and certain Statutory Corporations or Government Corporations had extended benefits with effect from 01/01/2016.

17. Ordinarily, the extension of the recommendation of the 7th Pay Commission or extension of its benefits to the employees of the Statutory Corporation, etc., is in the realm of policy. This depends on a host of factors. Therefore, unless any arbitrariness or breach of any statutory provisions is established, the Courts may have little scope to interfere. The GIDC has now unanimously resolved to extend the benefits of the recommendation of the 7th Pay Commission with effect from 01/01/2018.

18. Therefore, at this stage, we do not think it is appropriate to issue any writ to the GIDC for implementation from 01/01/2016. Several other facts would have to be considered, and it is only appropriate that the GIDC itself first considers such matters. Besides,

no material suggests that the GIDC's Resolution is applied unequally to the Petitioner's members. At least prima facie, the resolution applies equally to all concerned.

19. In any case, we permit the Petitioners to make a detailed representation to the GIDC within a month from today, seeking the implementation of the 7th Pay Commission benefits from 01/01/2016 instead of 01/01/2018. If such a representation is made within a month from today, we direct the GIDC to consider such a representation in accordance with the law and on its own merits and dispose it of within 3 months of receipt. The GIDC must convey its decision to the Petitioners within 3 months from the date of receipt of their representation. In case the Petitioners are not satisfied with the decision, it is open for them to pursue such legal remedies as may be available to them.

20. Accordingly, we dispose of this Petition by directing the GIDC to implement its Resolution dated 21/06/2023 and extend to all GIDC employees the benefits of the recommendation of the 7th Pay Commission with effect from 01/01/2018. The arrears from 01/01/2018 must be paid to all employees within a maximum of 6 months from today. Further, we clarify that insofar as the employees who had retired before 01/01/2018 are concerned, the

arrears would mean the arrears towards the revised pension. The salaries, revised pensions, and other emoluments, according to the recommendations of the 7th Pay Commission, must start within 3 months from today.

21. Now that we are disposing of this Petition, there would be no “pending litigation”. As such, GIDC should have no further excuse for not implementing its unanimous Resolution dated 21/06/2023 within the timelines indicated above.

22. The rule is accordingly made absolute in the above terms. There shall be no order for costs.

23. All concerned to act on an authenticated copy of this order.

24. MCA No. 105 of 2024 also stands disposed of.

VALMIKI MENEZES, J. M. S. SONAK, J.