

Shakuntala

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.66 OF 2015

1. Shri Nuno Alvares Colaco,
1(a) Maria A. Brenda Colaco, Aged 50 years,
(b) Orlando Jose Menezes, aged 52 years,
both residing at House No. 107, Foro Vaddo,
St. Estevam, Ilhas-Goa
(c) Oswald Colaco, Aged 49 years,
(d) Fanny Colaco, Aged 46 years,
(e) Michelle Colaco, Aged 39 years
(f) Raju Sarin, Aged 40 years
All Residing at House No. E-66
Dr. Dada Vaidya Road, Panaji Goa.

2. Shri Sitakant N. Bhandari,
aged 82 years, married,
Indian National, retired,
Accounts Officer, resident of
House No. A2, Vanavai
Niwas Housing Society Ltd.,
St. Inez, Panaji-Goa.

3) Shri Vitorino Rodrigues,
aged 82 years, married,
Indian National retired Director of
Municipal Administration,
resident of F-4, Green Land
Co-operative Housing Society Limited,
Campal, Panaji-Goa.

(4) Shri J. M. S. S. Alexandre Pereira,
aged 83 years, married, Indian National,
retired Director of Transport,
resident of Hill Side Apartments,
Fonta Inhas, Mala, Panaji-Goa.

(5) Shri Jose Luis Floriano Anadade,
aged 77 years, married, Indian National,

retired Head Clerk, resident of
House No. N-60, Monte Peo Quarters,
Altinho, Panaji-Goa.

(6) Shri Paulo J.A.B. Carvalho,
aged 80 years, married, Indian National,
retired Joint Director of Accounts,
resident of House No. 170, Alto Betim,
Porvorim, Bardez-Goa.

(7) Filomena M.A.N. Carvalho,
aged 79 years, married, Indian National,
retired Upper Division Clerk,
Agriculture Department, resident of
House No. 170, Alto Betim,
Porvorim, Bardez-Goa.

(8) Shri Noel C.T.H.R. Noronha,
aged 78 years, married, Indian National,
retired Joint Director of Accounts,
resident of Sapna Centre, Fourth Floor,
Dr. Dada Vaidya Road, Panaji-Goa.

(9) Shri Vithol Datta Naik,
aged 82 years, married, Indian National,
retired Assistant Director of Education,
resident of Housing Board Colony,
Alto Porvorim, Bardez-Goa.

10) Shri Narayana P.S. Nagarcencar,
aged 82 years, married, Indian National,
retired Director of Accounts, resident of
Kamat Classic, Phase IV-S-3,
Caranzalem-Goa-403 002.

11) Shri Harichandra V. Madkaikar,
aged 70 years, married, Indian National,
retired Deputy Director of Accounts,
resident of Patil Colony, Alto Betim,
Porvorim, Bardez-Goa.

- 12) Shri Pritidas N. P. Vaidhya,
aged 74 years, married, Indian National,
retired Deputy Director of Accounts,
resident of Kadpa Band,
opposite Old Singhbal Hospital,
Veer Apartment, Ponda-Goa.
- 13) Sudha N. P. Vaidhya,
aged 72 years, married, Indian National,
retired Junior Gynecologist of Health Department,
resident of Kadpa Band,
opposite Old Singhbal Hospital,
Veer Apartment, Ponda-Goa.
- 14) C. S. Radhakrishna,
aged 72 years, married, Indian National,
retired Deputy Director of Accounts,
resident of Three Building,
Alto Porvorim, Bardez-Goa.
- 15) Shri Aleixo D. D'Costa,
aged 78 years, married, Indian National,
retired Panchayat Secretary,
resident of House No. 17A/A,
Alto Betim, Porvorim, Bardez-Goa.
- 16) Smt. Maria A. Souza,
aged 70 years, married, Indian National,
retired Ward Sister of Goa Medical College,
resident of House No. 174A,
Alto Betim, Porvorim, Bardez-Goa.
- 17) Shri Anurlidhar Desai (since deceased),
through legal heir: Smt. Meena Anurlidhar Desai,
aged 64 years, widow, Indian National,
resident of A/12, Sapana Heritage,
opposite Vaidya Vikas Society,
Monte Hill Road, Margao-Goa.
- 18) Maria Louiza R. Fernandes,
aged 71 years, married, Indian National,

retired Head Clerk, Agriculture Department,
resident of SF-3, Second Floor,
Menezes Braganza Road, Panaji-Goa.

19) Dundappa C. Sajne,
aged 80 years, married, Indian National,
retired Deputy Director of Sports,
resident of House No. 908,
Dudhsagar, Pundalik Nagar,
Alto Betim, Bardez-Goa.

20) Shri Shantaram V. Shet,
aged 78 years, married, Indian National,
retired Police Inspector, resident of
House No. M65, Housing Board Colony,
Penha de Franca, Bardez-Goa.

21) Smt. Seema S. Khadilkar,
wife of deceased Sharad Khadilkar,
aged 76 years, Indian National,
retired Assistant Secretary of G.B.S.S.E.,
resident of M-49, Housing Board Colony,
Alto Porvorim, Bardez-Goa.

22) Chandrakala S. Gaunecar,
wife of deceased Shantaram Gaunecar,
aged 74 years, Indian National,
retired Male Nurse, Health Department,
resident of House No. 958/1,
Opposite Vidhan Sabha Journalist Colony,
Porvorim, Bardez-Goa.

23) Smt. Prema S. Pawar,
wife of the deceased S. M. Pawar,
aged 74 years, Indian National,
retired Head Master of United High School,
Cunculim, resident of Demari,
near Masjid, Cuncolim, Salcete-Goa.

24) Shri Vassudev G. Manerkar,
aged 79 years, married, Indian National,

retired Under Secretary,
resident of Ganesh Krupa,
Pundalik Nagar, Penha de Franca,
Bardez-Goa.

25) Santappa M. Naik,
aged 83 years, married, Indian National,
retired Statistical Officer,
resident of House No. 925/4,
Shantekar Bungalow, B. B. Road,
Alto Torda, Alto Porvorim, Bardez-Goa.

26) Shri Raghunath S. Puranik,
aged 80 years, married, Indian National,
retired Superintending Engineer,
Public Works Department, Goa,
resident of House No. 843,
Pundalik Nagar, Alto Betim,
Bardez-Goa.

.....PETITIONERS.

VERSUS

1) State of Goa, through its
Chief Secretary, having
Office at Secretariat,
Porvorim, Bardez-Goa.

2) The Director of Accounts,
Government of Goa,
having office at
Directorate of Accounts,
Panaji-Goa.

...RESPONDENTS.

Mr. Parikshit Sawant, learned Counsel for the Petitioners.

Mr. Pravin Faldessai, learned Additional Government Advocate for
Respondent No. 1 and 2.

CORAM: BHARAT P. DESHPANDE, &

VALMIKI SA MENEZES, J J.

RESERVED ON: 9th February, 2024

PRONOUNCED ON: 16th February, 2024

JUDGMENT: Per BHARAT P. DESHPANDE, J.

1. Heard Mr. Parikshit Sawant, learned Counsel for the Petitioners and Mr. Pravin Faldessai, learned Additional Government Advocate for Respondent No. 1 and 2.
2. The Petitioners who are all retired employees (Pre-1996) preferred present petition with following prayers:

(A) This Hon'ble Court be pleased to issue an appropriate writ, order or direction, quashing and

setting aside the Impugned Office Memorandum dated 5/5/2014 (ANNEXURE "E" to the Petition);

(B) This Hon'ble Court be also pleased to issue a

writ of mandamus or a writ in the nature of

mandamus or any other appropriate writ, order or

direction, commanding the Respondents Revised to

aware the Pension/Family Pension to the Petitioners

in terms of the Office Memorandum dated 3/9/2013 (ANNEXURE "B" to the Petition) read with Office Memorandum dated 9/11/2011 read with Office Memorandum dated 10/2/1998 (ANNEXURE "A" to the Petition) with interest at the rate of 12% per annum;

(C) This Hon'ble Court also be pleased to issue writ of a mandamus nature or a writ in the of mandamus or any other appropriate writ, order or direction, commanding the Respondents to pay appropriate Pension Petitioners to the for causing financial loss and mental torture to the Petitioners;

(D) Pending the hearing and final disposal of this Petition, this Hon'ble Court be pleased to stay the execution and operation Office of the Impugned Memorandum dated 5/5/2014 (ANNEXURE "E" to the Petition) and direct the Respondents to award Revision Pension/Family Pension to the Petitioners Office in terms Memoranda of dated 10/2/1998; 3/9/2013 and 9/11/2011;

(E) For ad-interim ex parte relief in terms of Prayer

of Clause (C) above;

(F) For such other and further reliefs that this

Hon'ble Court deems fit and proper;

(G) For costs.

3. It is the contention of the Petitioners that Government of Goa accepted the decision of the Central Government to grant the revised pension/family pension to all Pre-1986 and Post-1986 employees of Goa Government. The Office Memorandum dated 09/11/2011 was accepted by the Government of Goa, which is based on the earlier Office Memorandum dated 10/02/1998. Accordingly, the Petitioners filed applications for revised pension/family pension. However, suddenly on 05/05/2014, Government of Goa issued another Office Memorandum thereby revoking its earlier Office Memorandum dated 03/09/2013 granting revised pension/family pension.

4. Basically, the Petitioner who are the retired Government Servants of Pre-1996, challenged the decision of Government of Goa to revoke the Office Memorandum dated 03/09/2013 and thereby refusal for the revision of family pension/pension.

5. Mr. Sawant, learned Counsel appearing for the Petitioners contended that the Office Memorandum of 2011 issued by the Central Government was made applicable in the year 2014. However, though the Government of Goa has adopted the notification of the Central Government thereby extending the time to file application for revision of pension, the Government of Goa had no authority to withdraw such Office Memorandum or the applicability of it. He submits that the purpose of Office Memorandum of the year 2011 was to extend all benefits to the pensioners/family pensioners and it cannot be considered as extension in piece-meal. He submits that by issuing Office Memorandum of 2014 thereby quashing or withdrawing the earlier Memorandum, Government of Goa discriminated the Petitioners who retried prior to 01/01/1996 and thereby right of the Petitioners under Article 14 of the Constitution of India stands violated. He submitted that the Government must act in fair and reasonable manner, however, in this proceedings, the decision to withdraw the Office Memorandum which was initially accepted, is without any fair play and arbitrary.

6. Per Contra, Mr. Faldessai, learned Additional Government Advocate appearing for the State would submit that there was

some mistake on the part of the Government of Goa in issuing the Office Memorandum while extending the benefits, however, it was only for the purpose of extension of time to file applications. He would submit that the Government realised that infact the earlier Office Memorandum of 1998 was not extended/adopted by the Government of Goa and therefore there is no question of discrimination. He submits that there are office notings as well as affidavit filed in reply to show that the mistake was rectified by issuing impugned Office Memorandum.

7. He submits that there was a clear error on the part of Government in the year 2011 by issuing the said Memorandum, even though, the earlier Office Memorandum of 1998 was never adopted by the Government of Goa. He submits that the interpretation of the Petitioners with regard to such Office Memorandums are incorrect.

8. Rival contentions fall for determination.

9. The Government of India vide Office Memorandum dated 10/02/1998 issued directions for revision of pension of Pre-01/01/1986 Pensioners. The copy of such Office Memorandum which was infact printed in the Swamy's Annual Book of 1988 is placed by the Petitioners at annexure 'A' in the present petition.

Though copy from the Gazette notification is not produced there is no dispute with regard to the contents of annexure ‘A’ placed along with the petition.

10. In the said Office Memorandum dated 10/02/1998, Government of India decided that the pension/family pension of all Pre-1986 pensioners/family pensioners who were in receipt of pension as on 01/01/1996 under Liberalised Pension Rules 1950, CCS (Pension) Rules 1972 as amended from time to time or corresponding Rules applicable to Railway Pensioners or Pensioners of all India Services may be revised w.e.f. 01/01/1996 in the manner indicated in the succeeding paragraphs.

11. Thus Office Memorandum dated 10/02/1998 is basically for the revision of pension of Pre-01/01/1986 Pensioners, w.e.f. 01/01/1996. Admittedly, the Petitioners cannot claim that they are also covered under the Office Memorandum dated 10/02/1998 regarding revision of pension of Pre-01/01/1986 Pensioners. Such revision was admittedly considered w.e.f. 01/01/1996. The Petitioners claimed that they are the pensioners/family pensioners Pre-01/01/1996. This means that the Petitioners superannuated/retired prior to 01/01/1996, but after 01/01/1986.

12. The Office Memorandum dated 03/09/2013 issued by the Government of Goa (Annexure B) reads thus:-

*Finance (Rev. & Cont.) Department
Secretariat, Porvorim,
Bardez, Goa.*

Dated: 03.09.2013

OFFICE MEMORANDUM

The Office Memorandum No.45/86/97-P&PW (A)-Part-III dated 9/11/2011 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, New Delhi which transcribed below is hereby adopted by the Government of Goa.

Sd/-

Under Secretary Fin (R&C)

To,

- 1 All Heads of Departments/Offices.*
- 2. All Departments in the Secretariat.*
- 3. The Accountant General(Goa), Audit Bhavan, Porvorim.*
- 4. The Director, Directorate of Accounts, Panaji.*
- 5. Guard File*
- 6. Office Copy.*

***No 45/86/97-P&PW (A)-Part-III
Government of India
Ministry of Personnel, Public Grievances and***

Pensions Department of Pension and Pensioners' Welfare

*3rd Floor Lok Nayak Bhawar
Khan Market, New Delhi 110 003
Dated 9th November, 2011*

OFFICE MEMORANDUM

Subject - Implementation of Government's decision on the recommendations of the 5th Central Pay Commission - Revision of Pension of pre and post-1986 pensioners/family pensioners etc- Consideration of application for revision or pension/family pension.

The undersigned is directed to refer to this Department's OM of even number dated 21/12/2006 wherein the date of submission of applications for revision of pension/family pension w.e.f. 1/1/1996 of pre-1986 pensioners/family pensioners in terms of this Department's OM. No.45/86/97-P&PW(A)-Part II dated 10.02.1998 was extended up to 31/12/2007. It was also decided to extend the date of submission of applications for revision of pension/family pension w.e.f.1/1/1996

13. A perusal of above Office Memorandum dated 03/09/2013 shows that Government of Goa adopted the Office Memorandum issued by the Government of India dated 09/11/2011. Similarly, the

Office Memorandum of Government of India dated 09/11/2011 is with regard to implementation of Government decision on the recommendation of 5th Central Pay Commission and Revision of Pension of Pre and Post 1986 pensioners/family pensioners in connection with consideration of application for revision of pension/family pension. In this Office Memorandum the earlier Department's Office Memorandum dated 21/12/2006 was referred wherein the date of submission of applications for revision of pension/family pension w.e.f. 01/01/1996 of Pre-1986 pensioners/family pensioners in terms of the Office Memorandum dated 10/02/1998 was extended upto 31/12/2007. It was also decided to extend the date of submission of applications for revision and pension/family pension w.e.f. 01/01/1996.

14. Thus, it clearly goes to show that the Office Memorandum of Government of India dated 09/11/2011 was only referring to the extension of time to file applications for revision of pension/family pension of Pre-1986 pensioners/family pensioners w.e.f. 01/01/1996 and such date was extended upto 31/12/2007. The memorandum dated 03/09/2013 issued by the Government of Goa is only adopting the Office Memorandum of Government of India

dated 09/11/2011 regarding extension of date for filing applications for revision of pension/family pension of Pre-1986 Pensioners.

15. The main contention in the present petition is that Government of Goa vide its Office Memorandum dated 03/09/2013 impliedly and expressly adopted the provisions of Office Memorandum dated 10/02/1998 of Government of Goa.

16. The Respondents in their reply affidavit clearly pointed out that the Office Memorandum dated 10/02/1998 was never expressly or impliedly adopted by Government of Goa however the Office Memorandum dated 09/11/2011 issued by Government of India came to be adopted by Government of Goa vide Memorandum dated 03/09/2013. The Office Memorandum dated 09/11/2011 was only in connection with extending the date for submission of application for revision of pension/family pension of pre-1986 pensioners/family pensioners, upto 31/12/2007. Though in the said Office Memorandum dated 09/11/2011, there is reference to the Government of India Office Memorandum dated 10/02/1998, it was only with regard to the date fixed for filing such applications for revision of pension/family pension, which came to

be extended up to 31/12/2007 in connection with pension/family pension of pre-1986.

17. Admittedly, there are no documents placed on record by the Petitioner to show that the Government of Goa adopted the Central Government Office Memorandum dated 10/02/1998. Precisely for this reason and after realizing its mistake, the Office Memorandum dated 03/09/2013 issued by Government of Goa was withdrawn by another Office Memorandum dated 05/05/2014 (Annexure E), which is challenged in the present petition.

18. The reply affidavit filed on behalf of Respondent would reveal that the relevant Office Memorandum for pre-1996 pensions is dated 27/10/1997 which has been adopted by Government of Goa vide order dated 05/12/1997. The Petitioners are therefore governed by the Office Memorandum dated 05/12/1997 in connection with the pensions/family pensions. The Office Memorandum relevant to pre-01/01/1996 pensions/family pensions are not at all applicable to the petitioners.

19. Such submission advanced on behalf of the respondent is perfectly justified. The petitioners in their petition itself claimed that they are governed by the provisions of pension and family

pension in connection with pre-01/01/1996. Thus, the Office Memorandum regarding revision of pension of pre-01/01/1986 produced at Annexure ‘A’ of the petition will not be applicable to the petitioners. Thus the office Memorandum dated 09/11/2011 issued by Government of India only for extending the date for filing applications for revisions of pension/family pension of pre-1986 pensioners/family pensioners are accordingly adopted by Government of Goa vide Office Memorandum dated 03/09/2013, though under bonafide mistake, will not be helpful to the petitioners.

20. The reason disclosed by the Respondents to withdraw Office Memorandum dated 03/09/2013 by the Memorandum dated 05/05/2014 is fully justified for the simple reason that the Office Memorandum of the Central Government dated 10/02/1998 was never adopted by the Government of Goa. Thus, the contention of the Petitioners that while adopting the Memorandum dated 09/11/2011 vide Government of Goa Officer Memorandum dated 03/09/2013, the Government of Goa impliedly adopted the Office Memorandum dated 10/02/1998 of the Central Government cannot be accepted. The question of adopting Officer Memorandum of

Central Government by implication or by other means is not permissible. The Government of Goa is required to look into such Office Memorandum of the Central Government on various aspects including the financial liability and only after the approval from the Finance Department, the Memorandum could be accepted by the procedure as provided under the Government Rules of business. A question of adopting such Office Memorandum by implications therefore ruled out.

21. The Respondents along with their reply affidavit, placed on record the notings of the Finance/Revenue for the reason to withdraw the Office Memorandum dated 03/09/2013 and it has been clearly observed that earlier Notification dated 10/02/1998 was never adopted by Government of Goa and hence it was issued by mistake.

22. Mr. Sawant appearing for the petitioner while placing reliance in the case of **Smt. Poonamal and others v/s. Union of India and others** [(1985) 3 SCC 345] would submit that the right to receive pension is not a bounty or gratuitous payment but it is right recognised under the Constitution. The Government under

the relevant rules is duty bound to pay pension/family pension even as per revised rates.

23. There is no quarrel with regard to such proposition however in the present matter 1998 Office Memorandum of the Central Government was not accepted or adopted by Government of Goa and therefore the Office Memorandum dated 03/09/2013 was issued to correct a bonafide mistake. There cannot be any question of any discrimination as tried to be projected between pre-01/01/1986 pensioners and that of pre-01/01/1996 pensioners.

24. Mr. Sawant while placing reliance in the case of **R.L Marwaha v/s. Union of India and others** [(1987)4 SCC 31] tried to project that the Petitioners have been discriminated and therefore the right of the Petitioners for revision has been erroneously taken away by withdrawing the Office Memorandum dated 03/09/2013.

25. In **R.L. Marwaha**(supra) the question was whether an employee of an autonomous body established under the auspices of the Central Government is entitled to claim the benefit of the period of service rendered by him in a pensionable post under the Central Government prior to his service being absorbed in the

autonomous body for computing qualifying service for purposes of pension. The matter in hand is totally on different facts and circumstances and therefore this decision will not be of any help to the Petitioner.

26. Mr Sawant then placed reliance in the case of **The All Goa Government Pensioners Association and others v/s. State of Goa** [Writ Petition No.430 of 2003 decided on 15/10/2009] wherein the decision of the State Government by imposing cut off date as 01/01/2001 for giving the benefits of pay fixation on the revised/interim revised pay scales with fitment weightage of 40% to only those employees in service as on 01/01/2001 and denying such benefit to all other employees was under question. The Division Bench of this Court observed that the decision of the Government to justify such classification was not found to be reasonable and therefore found to be arbitrary and violative of Article 14 of the Constitution of India.

27. In the present case, the Government of Goa nowhere imposed any cut off date for claiming revised pension or family pension. Such cut off date pre-01/01/1986 and pre-01/01/1996 are found mentioned in the Office Memorandum of the Central

Government, which are not under challenge. Thus, the above decision will be of no help.

28. Mr Sawant while placing reliance in the case of **State of UP v/s Committee of Management Mata Tapeshwari Saraswati Vidya Mandir and others** [(2010) 1 SCC 639] claimed that the arbitrary and discriminative action on the part of the State is clearly violative of the Article 14 of the Constitution. In that case the institutions were recognised as Junior High Schools between 1983 and 1986 and thereafter between 1987 and 1989, they were granted recognition for imparting education at the high school level, subsequently upgraded as intermediate colleges between 1991 and 1999. It was found that the Junior High Schools which were granted recognition after 1984 were not covered by the grant-in-aid scheme of the State Government. Thus, there was disparity amongst the institutions in connection with grants from the State Government. Such a decision will again be of no much help to the Petitioner.

29. Mr Sawant, then would place reliance in the case of **State of Orissa and another v/s. Mamata Mohanty**[(2011) 3 SCC 436] and more specifically paragraph 59 onwards where the Apex Court

discussed the concept of arbitrariness. It observed that the rule of law inhibits arbitrary action and also makes it liable to be invalidated. Every action of the State or its instrumentalities should not only be fair, legitimate and above board, but should be without any affection or aversion. It should neither be suggestive of discrimination nor even give an impression of bias, favouritism and nepotism. Procedural fairness is an implied mandatory requirement to protect against arbitrary action where statute confers wide power coupled with wide discretion on an authority.

30. The above decision is well settled proposition. However, as discussed earlier, the action of Respondent-State in withdrawing the Memorandum dated 03/09/2013 is well explained and cannot be termed as arbitrary, discriminative or otherwise. The reasons are forthcoming by way of affidavit in reply, the office notings which clearly goes to show that there was a bonafide mistake in accepting the Office Memorandum of the Central Government which only extended the time for filing application for revision of pension/family pension as provided under the Office Memorandum of 1998 which was never adopted or accepted by Government of Goa.

31. No document has been placed on record to show that the Office Memorandum dated 10/02/1998 was anytime adopted by the State Government. The contention of the Petitioners that it was impliedly adopted by the Office Memorandum dated 03/09/2013 and subsequently withdrawn by Office Memorandum dated 05/05/2014, has no substance.

32. The petition therefore deserves to be rejected.

ORDER

33. The petition stands dismissed. Rules stands discharged.

VALMIKI SA MENEZES, J. BHARAT P. DESHPANDE, J.