

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A.No.120/86, 649/86 AND 33/88

Date of Decision 26.10.1989

I.J. NAIK

Petitioner

in person

Advocate for the Petitioner

Versus

Union of India & ors

Respondent

Sh. D.K. Sinha

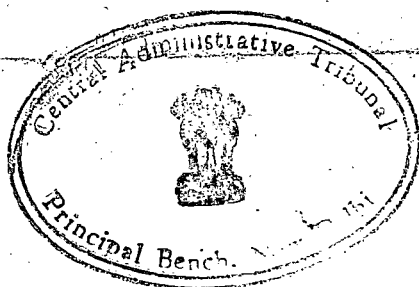
Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman

The Hon'ble Mr. D.K. Chakravarty,

Member (A)



JUDGEMENT

As parties in these cases are common and the question that arises for determination are inter-connected, we propose to dispose of them by a common order.

2. Goa, Daman and Diu which were formerly Portuguese territories became a Union Territory from 19th December 1961. Under the Goa, Daman and Diu Reorganisation Act, 1987 (Central Act No.18 of 1987) Goa has become a State from 30th May 1987 and Daman and Diu have continued to be a Union Territory. Shri Ishvar

J. Naik (I.J. Naik) who is the common applicant in all these cases, was working as Lecturer in Gujarati in the Government College of Arts and Science, Goa, Daman and Diu, now called as Government College, Daman.

3. On 5.6.1976, served on 10.6.1976, the then Administrator of Goa, Daman and Diu (Administrator) terminated the services of the applicant, the validity of which was challenged by him in a writ-petition under Article 226 of the Constitution of India before the High Court of Bombay (Goa Bench) in Special Civil Application No.84-B of 1977. On 8.8.1983 a Division Bench of the High Court, allowed the said petition of the applicant and quashed his termination as illegal and invalid. In obedience to this order of the High Court the applicant was reinstated to service and he reported for duty on 10.3.1985.

4. On re-instating the applicant to service, the Administrator by his memorandum No.15/3/85/EDN dated 28.7.1986 (Annexure B in O.A. 649/86) issued him a show cause notice proposing to regulate the period of his absence from duty with effect from 5.6.1976 to 9.3.1985, as set out in the said notice. On

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filing his representation and objections to the same, the applicant approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 (the Act) in O.A. 649/86 challenging the said memorandum of the Administrator on diverse grounds.

5. While O.A. No.649/86 was pending before this Bench, the applicant filed O.A.No.120/86 under Section 19 of the Act before the Bombay Bench of this Tribunal, claiming certain increments denied to him with effect from 1.5.1978. In pursuance of an order made by the Hon'ble Chairman, this application has been withdrawn from Bombay Bench to this Bench and the same is continued with the same number before this Bench. During the pendency of these applications, the applicant has also filed O.A. No.33/88 under Section 19 of the Act challenging the pay slip issued to him on his reinstatement to service.

6. In O.A.No.649/86 the applicant had sought for an interim direction on the payment of arrears of salary and increment due to him from 10.6.1976 to 9.3.1985. On notifying the respondents, a Division Bench of this Tribunal consisting of Hon'ble Justice K. Madhava Reddy, the then Chairman and Hon'ble Shri Kaushal Kumar, the then Member (A) made an interim order in favour of the applicant in these words:

"Heard the petitioner in person and Shri M.L. Verma learned counsel for the respondents. The petitioner's services were terminated on 5.6.1976. That order was quashed by a Division Bench of Bombay High Court at Goa on 8.8.1983. Pursuant to that judgment, order re-instating the petitioner was issued by the Government of Goa, Daman and Diu on 2.4.1984 which so far as relevant to our present purpose reads as follows:

"The Administrator of Goa, Daman and Diu hereby rescinds the said order with immediate effect.

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Consequently, Shri I.J. Naik shall be deemed to be in continuous service and holding the post of lecturer in Gujarati from the date of termination of his services."

The petitioner was directed to join duty within a period of one week. But he joined duty actually on 9.3.85. Ever since he is continuing in service as a lecturer. That order of course further states as under:-

"The order for regularisation of the period of absence from duty from 5.6.1976 to the date of his joining the same will be issued as per rules".

2. We are presently not concerned with that question. The petitioner's grievance is that he has not been paid the salary and allowances for the period intervening the date of termination of his services that is 5.6.1976 and the date of order of his reinstatement dated 2.4.84. We see no reason for withholding his salary and allowances. It is now over 3 years that the judgment of the Bombay High Court has become final. When the order of re-instatement itself states that "he shall be deemed to be in continuous service and holding the post of Lecturer in Gujarati from the date of termination of his services", he cannot be denied salary due to him for that period. He is also entitled to the annual increments due to him during that period. The salary and other emoluments due to him together with the annual increments shall be calculated and paid to him within a period of two months from today.

3. What other reliefs he is entitled to shall be considered at the time of final hearing. For final hearing call on 25.3.87. Petitioner is allowed to take dasti order".

On a review petition filed by the respondents in M.P. 203/87 this order was modified in some respects and that order which is material reads thus:

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"This is a petition by the respondents for review of our order dated 29.12.1986 in M.P.No.853/86.

2. We have heard both the parties and do not find any reason to set aside our order directing payments of salary and allowances to the applicant Shri Ishverlal J. Naik. The learned counsel for the respondents contends that this relief was specifically refused by the Bombay High Court in its judgment dated 8.8.83 (Ishverlal J. Naik v. S.C. Arya, Principal, Government Arts and Science College, Daman and others - 1984 (1) All India Services Law Journal - page 1). He brings to our notice the prayer clause 38(A)(v) which reads as follows:-

"To direct the Respondents to pay the petitioner all pay, allowances, etc. to which the petitioner is entitled as a confirmed lecturer in the said permanent post with effect from 11.6.76 f.n. with 12% interest on arrears".

He also states that this relief was specifically refused by the Bombay High Court while allowing the writ Petition and therefore, the applicant is not entitled to receive any arrears of salary and allowances ...

3. ...

4. ....

5. Call for the records of O.A. 120/86 from the New Bombay Bench of the Central Administrative Tribunal. O.A.No.649/86, O.A. No.120/86 to come up on 27.4.87 for final hearing."

In pursuance of these interim orders, the salary and allowances due to the applicant from 10.6.1976 to 2.8.1984 aggregating to Rs.1,24,000/- had been paid to him.

7. Shri Naik appeared in person and argued his cases.

Shri D.K. Sinha, learned Senior Standing Counsel has appeared for the respondents in all these cases.

8. Shri Naik contends that on the terms of the order made by the Bombay High Court, from the date of his removal to the date he was reinstated to service, he has to be treated as in service only and, therefore, it was not open to the Government to regulate the same as anything other than that, and the memorandum dated 28.7.1986 of the Administrator proposing to regulate the same as otherwise then on duty, was illegal and impermissible.

9. Shri Sinha contends that notice issued was authorised, valid and does not call for our interference at all.

10. We have earlier reproduced the two interim orders made by the Division Bench which really cover the very period proposed by the Administrator in the impugned notices. In compliance with these orders the salary and allowances due for the said period had been paid to the applicant.

11. Shri Sinha is right, that the interim orders and the payments made to the applicant are subject to the orders to be made at the time of final hearing of these cases.

12. We have re-examined the same in all its aspects. We are of the view that those orders do not require any modification in any manner by us. From this it follows, that the payments made to the applicant, should be treated as payments made for the periods in dispute and the matters

regulated on that basis only. In other words payment of Rs.1,24,000/- should stand and the respondents are not entitled to recover anything from that amount paid to him as salary and allowances. This declaration substantially disposes of all these cases except to the extent of one claim of the applicant for increments from 1.5.1977 which we now proceed to deal.

13. Shri Naik contends that on the terms of the order made by the High Court in W.P. No.71/1978 decided on 16th November 1984 (Annexure A-4 in O.A. No.120/86), he was entitled for increments from 1.5.1977 and every year thereafter.

14. Shri Sinha refuting the contention of the applicant contends that he cannot claim increments as he had not performed his duties.

15. We have carefully read the order made by the High Court in W.P. No.71/78 dealing with the case of withholding the increment due at crossing the Efficiency Bar (EB). We find that the High Court had declared that he had crossed the EB on 1.5.1975 and was entitled for his increments on that date. On the basis of the High Court order, the increment which fell due on 1.5.1976 has been allowed to the applicant. If that is so then the applicant cannot be denied the increments that accrued to him on 1.5.1977 and onwards. We are of the view that the applicant is entitled for this limited relief in all these cases and no other relief.

16. We have not examined and decided the absence of the applicant, if any, from 9.3.1984 and the actions, if any,

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that can be taken against him by the respondents and the same is left open.

17. In the light of above discussion we make the following orders and directions:

(i) We declare that the interim orders made by the Division Bench on 29.12.1986 and 25.2.1989 shall be treated as also made finally in respect of matters covered in all these cases and the payments made thereof to the applicant shall stand.

(ii) We direct the respondent to allow all the increments due to the applicant in the cadre of Lecturer from 1.5.1977 and onwards till he reaches the maximum of the time scale.

18. Applications are disposed of in the above terms. But in the circumstances of the cases we direct the parties to bear their own costs.

(D.K. Chakraverty)  
Member (A)

(K.S. Puttaswamy)  
Vice Chairman

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20/10/89  
SECRETARY  
Central Board of Secondary Education  
New Delhi