

State of Goa and Another

Vs

Yvette Pereira A. E. Costa (Smt)

Civil Appeals No. 7566 of 1996

(K. Ramaswamy, G.B. Pattanaik JJ)

12.04.1996

JUDGMENT

1. Delay condoned.
2. Leave granted. We have heard learned counsel on both sides.
3. The question of law raised by Mr Dhruv Mehta, the learned counsel for the appellant, is whether the respondents are absorbed employees within the meaning of Section 2(a) of the Goa, Daman and Diu (Absorbed Employees) Act, 1965 (for short 'the Act'). The admitted position is that Goa, Daman and Diu which hitherto was under the hold of the Portuguese, was liberated on 20-12-1961 and integrated as part of Indian territory. The posts in the Judicial Department were created by a Portuguese decree. All the respondents came to be appointed on or after 20-12-1961, sometime in the year 1963. The Commissioner (Finance) of Goa, Daman and Diu Administration had issued a circular on 15-9-1962 prescribing pay scales to various posts. For the posts in the Judicial Department held by the respondents, the pay scale was Rs 335-525. Their representation to the Government for fixation of pay scales prescribed for the posts created by the Portuguese administration, was considered and an order came to be passed on 20-9-1989 under which they are made entitled to the pay scales initially prescribed to the posts under the Portuguese decree. But, subsequently, the Government, having realised the mistake had cancelled the same by proceedings dated 27-12-1990. That order came to be challenged in the High Court which had held that by operation of Section 5 of the Goa, Daman and Diu (Administration) Act, 1962 (1 of 1962), the respondents came to be continued on the posts created prior to 20-12-1961 and, therefore, they were entitled to the pay scales prescribed for those posts. The said order of the High Court was made in Writ Petition No. 77 of 1991, dated 30-8-1993 and followed in other cases which are the subject-matter of these appeals.
4. The Act defines "absorbed employee" in Section 2(a) thus:

"2. (a) 'absorbed employee' means a person who immediately before the 20th day of December, 1961, was holding an absorbed post and who on and after that date either served or has been serving in that or any other post in connection with the administration of the Union Territory of Goa, Daman and Diu or in any of the Departments of the Central Government."
5. "Absorbed post" defined under Section 2(b) means a civil service or post which existed under the former Portuguese administration in Goa, Daman and Diu immediately before the 20th day of December, 1961.

6. Admittedly, after the appointed day, rules have been made on 27-12- 1965 under which Rule 2(c) defines "appointed day" to be the 1st day of February, 1966. Under Rule 2(e), "existing pay" means the pay admissible to an absorbed employee immediately before the appointed day by way of basic pay and shall include complementary pay and the charge allowance granted under Rule 15. "Absorbed employees" as again defined, means an absorbed employee as defined in clause (a) of Section 2 of the Act and who on the appointed day is serving either in connection with the administration of the Union Territory or in any department of the Central Government. The explanation amplifies as to who are intended to be absorbed employees. Rule 3 prescribes revision of rates of pay of absorbed posts thus:

"As from the appointed day, every absorbed post shall be brought on such revised scale of pay as the Central Government or the Administrator with the prior approval of the Central Government, may by order determine."

7. Rule 4 deals with the fixation of pay in the revised pay scale with which we are not concerned in this case.

8. Thus a reading of these relevant provisions would clearly indicate that a person eligible for the benefit of Section 5 of the Administration Act must be an employee existing as on 20-12-1961 on the post held under the Portuguese administration and was continuing as on the appointed day under the Rules. Such persons are eligible to the benefit of Rule 7 of the Rules. Admittedly, the respondents came to be appointed after the Administrator had issued the circular for the fixation of the scale of pay referred to hereinbefore. Under those circumstances, they are not eligible to the pay of the posts prescribed in the decree granted by the Portuguese administration.

9. The appeals are accordingly allowed. However, the amounts paid under the erroneous orders issued by the Government may not be recovered from the respondents. This order would be worked out for the purpose of fixation of their pension. No costs.