

ITEM NO.21

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.464/2023

RE: PENSION BENEFITS FOR EMPLOYEES RETD. FROM HIGH COURT OF BOMBAY
AT GOA

(With IA No.234832/2023 - CLARIFICATION/DIRECTION, IA No.
234833/2023 - EXEMPTION FROM FILING O.T. and IA No.234830/2023 -
INTERVENTION/IMPLEADMENT)

Date : 24-07-2024 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

Mr. Mahfooz Nazki, Adv. (Amicus Curiae)

For Petitioner(s)

By Courts Motion

For Respondent(s)

Mr. Abhay Anil Anturkar, Adv.
Mr. Dhruv Tank, Adv.
Mr. Aniruddha Awalgaonkar, Adv.
Ms. Surbhi Kapoor, AOR
Mr. Sarthak Mehrotra, Adv.
Mr. Bhagwant Deshpande, Adv.

Mr. Shrirang B. Varma, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.

Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.
Ms. Preet S. Phanse, Adv.
Mr. Adarsh Dubey, Adv.

Mr. Sandeep Sudhakar Deshmukh, AOR

Mr. Atmaram N.S. Nadkarni, Sr. Adv.
Mr. Salvador Santosh Rebello, AOR
Ms. Kritika, Adv.
Mr. Prateek Tanmay, Adv.
Ms. Manisha Gupta, Adv.
Ms. Deepti Arya, Adv.
Ms. Arzu Paul, Adv.
Mr. Rishikesh Haridas, Adv.
Ms. Himanshi Nagpal, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

IA No 234830 of 2023 In Writ Petition (Civil) No 464 of 2023

- 1 In exercise of the constitutional authority vested in the Chief Justice under Article 229 of the Constitution, the Chief Justice of the High Court of Judicature at Bombay, following the rules framed by the Rules Committee, forwarded the High Court of Bombay at Goa Officers and the Members of the Staff on the Establishment (Recruitment and Conditions of Service) Rules 2023 to the State government.
- 2 The Government of Goa issued a notification dated 3 June 2023, notifying certain rules. The rules which have been notified contain a prefatory statement that they have been made by the Chief Justice of the High Court of Judicature at Bombay in exercise of the power conferred under Article 229 of the Constitution. However, the rules are significantly at variance with what was submitted to the Government of Goa under the authority of the Chief Justice.

- 3 An affidavit has been filed by the Registrar (Legal and Research) before the High Court of Bombay at Goa in pending matters (Writ Petition No 186 of 2023 and Writ Petition No 409 of 2023). The affidavit states that in the guise of complying with the order of this Court, the Government of Goa has framed rules governing the service conditions which were not approved either by the Rules Committee of the High Court or by the Chief Justice.
- 4 A chart has been tendered on behalf of the High Court indicating the divergence between the rules as approved by the Rules Committee of the High Court and the rules as notified by the Government of Goa.
- 5 We are apprised of the fact that the above writ petitions (Writ Petition No 186 of 2023 and Writ Petition No 409 of 2023) are due to come up for hearing before the High Court tomorrow (25 July 2024). We are not restraining the High Court from hearing the petitions and from passing appropriate orders.
- 6 This Court has taken *suo moto* cognizance of the grievances of former employees of the High Court of Bombay at Goa to whom their terminal dues, including pensionary benefits were not being paid. The rules which have been framed by the Government of Goa would undoubtedly affect the retiral dues of the employees who have served the High Court.
- 7 The course of action which has been followed by the State Government, *prima facie*, is contrary to the settled position of law and the remit of Article 229 of the Constitution. In this context, the attention of the Government of Goa has to be drawn to the judgment of this Court in ***Union of India and Another vs S B Vohra and Others***,¹ rendered by a three-Judge Bench of this Court in which it was held:

“Having regard to the aforementioned authoritative

1 (2004) 2 SCC 150

pronouncements of this Court, there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed themselves on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question as regards fixation of a revision of the scale of pay of the High Court being within the exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons.

The High Court, however, should not ordinarily issue a writ of or in the nature of mandamus and ought to refer the matter back to the Central/State Government with suitable directions pointing out the irrelevant factors which are required to be excluded in taking the decision and the relevant factors which are required to be considered therefor. The statutory duties should be allowed to be performed by the statutory authorities at the first instance. In the event, however, the Chief Justice of the High Court and the State are not ad idem, the matter should be discussed and an effort should be made to arrive at a consensus.”

- 8 It is extraordinary that the Government of Goa has purported to notify rules under Article 229 of the Constitution in the name of the Chief Justice though the rules in the form in which they were notified were not recommended by the Chief Justice nor was any consultative exercise conducted pursuant to the recommendation by the Chief Justice.
- 9 In order to furnish the State Government with an opportunity to rectify what *prima facie* seems to be a clear breach of law laid down by this Court, we direct that the proceedings be listed on 2 August 2024.
- 10 Mr Abhay Anil Anturkar, counsel appearing on behalf of the Government of Goa shall communicate a copy of this order to the Chief Secretary to the Government of Goa. The Chief Secretary shall file a personal affidavit in

these proceedings on the next date of hearing.

- 11 List the Petition on 2 August 2024.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar