



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 453 OF 2023

Dr. Dilip Amonkar, age 68 years, Plot no. 41,
Lakie View, La Campala Lane 2, Miramar, ... Petitioner
Panaji, Goa.

V e r s u s

1. State of Goa, Through its Chief Secretary,
Government of Goa, Secretariat, Porvorim,
Goa.
2. Secretary – Health, Government of Goa,
Secretariat, Porvorim, Goa.
3. Secretary – Finance, Government of Goa,
Secretariat, Porvorim, Goa.
4. Director of Vigilance, Government of Goa,
Serra Building, Near All India Radio, Altinho,
Panaji, Goa.
5. Director – Administration, Goa Medical
College & Hospital, Bambolim, Goa.
6. The Dean, Goa Medical College &
Hospital, Bambolim, Goa.
7. Joint Secretary – Health, Public Health
Department, Government of Goa, Panaji,
Goa.
8. Director of Accounts, Government of Goa,
Panaji, Goa.
9. Inquiry Officer, Directorate of Women &
Child Development, Government of Goa, ...Respondents
Panaji, Goa.

All registered Addresses.

Mr. S. D. Lotlikar, Senior Advocate with Ms. Sailee Keny,
Advocate for the Petitioner.

Mr. Prashil Arolkar, Additional Government Advocate
the Respondents-State.

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, J**
RESERVED ON : 19th September, 2024
PRONOUNCED ON: 3rd October, 2024

JUDGMENT (*Per M. S. Karnik, J.*)

1. By this petition under Article 226 of the Constitution of India, the petitioner prays for quashing and setting aside the inquiry/disciplinary proceedings initiated belatedly against the petitioner ten years after the actual incident had occurred. It is further prayed that directions be issued to release forthwith the pensionary and retirement/terminal benefits payable to the petitioner including the payment of gratuity.

2. The facts of the case in brief are as under :

The petitioner was appointed to the post of Lecturer on ad-hoc basis at the Goa Medical College and Hospital (GMC). Over a period of time, the petitioner became the Professor & Head of the Department of Surgery at GMC from 11.12.2002 which post he held right until his retirement at the age of 65 years on 31.12.2018. The incident which was the cause for initiating disciplinary proceedings against the petitioner happened some time in July 2010.

3. Briefly stated, a Doctor, a specialist in the field of female diseases was treating a patient Ms. 'R'. She was admitted in a private Nursing Home situated in Vasco Da Gama. Upon her clinical examination, the Doctors opined that Ms. 'R' was suffering from acute appendicitis and was in need of undergoing an urgent operation so as to prevent any risk and threat to her life. The surgery was scheduled in the morning of 3rd July 2010. The surgeon normally operating such cases was unavailable and as the operation had to be carried out on an emergency basis, the petitioner's help was requested for. On the assessment of her condition and considering the risk perception, the petitioner after following the standard Alvarado test, proceeded to perform the emergency operation with all the skills at his command taking all due care, caution and diligence in conducting the operation. It was reported that the surgery was completed successfully.

4. However, on 09.07.2010, the patient complained discomfort and pain and had to be re-admitted. The patient was rushed to GMC for treatment. She had to be operated by a team of Doctors at GMC due to some complications that had arisen. Post operation the patient was found to be stable. Later on, the condition of the patient deteriorated and she unfortunately expired on 29.10.2010.

5. A medico legal case was recorded by the police. The patient's sister filed a complaint on 02.08.2010 alleging that death of her sister was due to medical negligence. A Committee was formed by the Government under the Chairmanship of Secretary (Health) to conduct an inquiry into the allegations made vide the complaint dated 02.08.2010. The patient's father filed another complaint before the Disciplinary Committee of Goa Medical Council on 07.12.2011. It was alleged that the death was due to the gross negligence of the Doctors including the petitioner.

6. On the basis of the preliminary inquiry conducted by the Committee, the Director of Vigilance issued a memorandum to the petitioner with the imputations of misconduct and articles of charge by the Directorate of Vigilance. The Disciplinary Committee after conducting a detailed investigation into the complaint, arrived at a decision on 12.09.2016 that none of the charges framed against the petitioner were substantiated and, as such, the petitioner was exonerated of the charges.

7. The petitioner continued to function as a Professor & Head of the Department of Surgery at GMC till 31.12.2018. The petitioner was also granted an extension of 3 years after attaining the age of 62 and eventually retired on attaining the age of 65. Two years after the petitioner retired from service, he received a notice dated 21.07.2020

from the Inquiry Authority to conduct the disciplinary proceedings against the petitioner.

8. Learned Additional Government Advocate, Mr. Arolkar, vehemently opposed the petition.

9. Heard. The unfortunate incident is of the year 2010. The petitioner continued as Professor & Head of the Department of Surgery at GMC till his retirement in 2018. The petitioner was granted three years extension of service even after attaining the age of 62 years. There is nothing on record to indicate that during his long stint as a Professor & Head of Surgery at GMC, there is any complaint in the discharge of his duties except for the alleged incident. After the disciplinary inquiry was initiated against the petitioner on 05.11.2015, the Disciplinary Committee after conducting a detailed investigation into the complaint made by the victim's father and the allegations/charges made therein arrived at a decision that none of the charges framed against the petitioner are substantiated and as such the petitioner was exonerated of the charges.

10. We find that the charges levelled against the petitioner have been sufficiently investigated by the Disciplinary Committee of the Goa Medical Council which exonerated the petitioner of all the charges. A team of expert Doctors who were part of the Committee

opined that there is no negligence on the part of the petitioner. Thus, the inquiry conducted by the Committee constituted by the Goa Medical Council had exonerated the petitioner. The petitioner had to perform the operation in a private hospital on the request made as a result of an emergency. There is nothing to indicate that as a result of attending to the call for an emergency operation at a private hospital, had resulted in neglect of performing his duties at the GMC. In fact, post this incident of 2010, the petitioner continued as a Professor & the Head of the Department of Surgery till his retirement in 2018 upon grant of three years extension of service was after reaching the age of 62 years.

11. The inquiry was initiated five years after the incident on the basis of a preliminary report of the Committee. After the inquiry was initiated in 2015, the Committee of the experts Doctors constituted by the Goa Medical Council exonerated the petitioner of all the charges and found that there was no negligence on his part and that all due care and caution was exercised as expected in performing the surgery and post operative care. In the disciplinary inquiry which commenced in 2015, the Inquiry Officer was appointed in 2020 almost two years after the petitioner retired. This petition was filed in September, 2020. It must be mentioned that during the pendency of the proceedings, the inquiry proceeded.

12. Learned Additional Government Advocate submitted that as the inquiry is at its fag end, the petition should not be entertained only on the ground that there is a delay in completing the nquiry having regard to the gravity of the charges.

13. During the course of the hearing, the inquiry report of the Inquiry Officer dated 18.09.2024 was placed on record. We have perused the findings and the conclusions arrived at by the Inquiry Officer holding that the articles of the charges against the petitioner are not proved. No doubt, upon considering the inquiry report, the Disciplinary Committee can always take a different view and hence it was urged by learned Additional Government Advocate that directions be issued to complete the inquiry proceedings in a time bound manner. In ordinary course, we would have accepted the submissions of learned Additional Government Advocate. In the present facts, we are not in favour of subjecting the petitioner to any further disciplinary proceedings.

14. The disciplinary inquiry was initiated after five years post the incident on the basis of a preliminary inquiry report of the Committee constituted by the Goa Medical Council. The petitioner has been ultimately exonerated by the Committee of all the charges levelled against him. The petitioner was not found to be negligent in any manner. The petitioner was competent and qualified to perform the

surgery. The petitioner continued for eight years as a Professor and Head of the Department of Surgery after the incident. In fact the petitioner was granted an extension of three years even upon attaining the age of 62 years. But for the unfortunate incident, the track record of the petitioner holding such a responsible position, appears to be without any blemish. The inquiry officer was appointed in 2020, two years after the petitioner retired in the year 2018. The Inquiry Proceedings continued for a period of nine years since the time of its initiation in 2015. The delay is not solely attributable to the petitioner. Apart from the fact that the inquiry officer held the charges against the petitioner as not proved, it is pertinent to note that the Committee consisting of expert Doctors, has already exonerated the petitioner. Though the inquiry is at an advanced stage, in the facts and circumstances of the present case and also on the ground of delay in initiating the inquiry and concluding the inquiry, we are inclined to allow the petition.

15. The petitioner has suffered enough mental agony on account of the disciplinary inquiry. We rely upon the observations of the Hon'ble Supreme Court in **P. V. Mahadevan vs. Md. T. N. Housing Board**¹ and **State of Andhra Pradesh vs. N. Radhakishan**², to support the view that we take.

¹ (2005) 6 SCC 636

² MANU/SC/0278/1998-(Civil Appeal no. 3503/1997 decided on 07.04.1998)

16. The petition is accordingly allowed in terms of prayer clause (A) and (B), which read thus :

“(A) For a writ of mandamus or any other writ, direction or order in the nature of mandamus, quashing and setting aside the inquiry/disciplinary proceedings initiated belatedly against the petitioner ten years after the actual incident in question had occurred and sought to be initiated by appointing an Inquiry Officer two years after the retirement of the petitioner; and

(B) For a writ of mandamus or any other writ, direction or order in the nature of mandamus, directing the respondents to release forthwith the pensionary and retirement/terminal benefits payable to the petitioner including the payment of gratuity.”

17. There shall be no order as to costs.

VALMIKI MENEZES, J

M. S. KARNIK, J