

Sonam

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 415/2023

1. Lorraine Carolina Fernandes,
Wife of Gavin Dias,
Aged about 39 years,
Residing at H. No. 3/118,
Mudda Vaddo, Saligao,
Bardez, Goa -403511.
2. Kanaya Pundalik Naik,
Daughter of Pundalik Naik,
Aged 31 years,
Residing at H. No. 167,
Kurpas Bandora,
Ponda, Goa-403401.
3. Ronald Antonio Alfreda Mequita,
Son of Narciso Antonio Mesquita,
Aged 38 years,
Residing at H. No. 212/D,
Vasudha Housing Colony,
Alto Santa-Cruz, P. O. Bambolim Complex,
Tiswadi, Goa -403202.
4. Supriya A Naik alias Supriya Khandeparkar,
Wife of Abhinay Khandeparkar,
Aged about 35 years,
Residing at H. no. 232, Zorwaddo,
Near Chivar Ground, Anjuna,
Goa-403509.
5. Dwarkanath S. Kamat,

Son of Sadanand Kamat,
Age 33 years,
Residing at S-2, Arsies Enclave,
Bamanbhat, Mercers,
Goa – 403005.

6. Runella D'Souza,
Daughter of Neville D'Souza,
Aged about 32 years,
Residing at H. No. 151, Mae-De-Deus Vaddo,
Sangolda, Bardez, Goa-403511.

7. Siddhika H. Raul,
Daughter of Harishchandra Raul,
Aged about 26 years,
Residing at H. No. 139/4B2/T2,
Eliza Estate, Karaswada, Mapusa,
Bardez, Goa-403526.

... Petitioners

Versus

1. Sanjay Centre for Special Education
Through its Member Secretary
Having their office at Pundalik Nagar,
Porvorim, Bardez, Goa-403521.

2. The Directorate of Education,
Through the Director of Education,
Having their office at Porvorim,
Bardez, Goa-403521.

... Respondents

Mr Nikhil Deelip Pai, Advocate for the Petitioners.

Mr Deep Shirodkar, Additional Government Advocate for Respondent
No.1

Ms Maria Correia, Additional Government Advocate for Respondent No.2.

CORAM: M. S. SONAK &
VALMIKI SA MENEZES, JJ.

DATED: 30th JANUARY, 2024

ORAL JUDGMENT: (Per M. S. SONAK, J.)

1. Heard Mr Nikil Pai, for the Petitioners, Mr Deep Shiordkar, learned Additional Govt. Advocate for Respondent No.1 and Ms Maria Correia, Addl. Govt. Advocate for Respondent No.2.

2. Rule. The rule is made returnable immediately at the request of the learned counsel for the parties.

3. The Petitioners before us are Physiotherapists and Occupational Therapists in Respondent No. 1's school, which is a fully Government Aided Society working for children with special needs. By instituting this Petition, the Petitioners apply for quashing of certain orders and restraint against disciplinary proceedings for non-compliance with these orders. The orders basically relate to the Petitioners being required to attend school during vacations. The Petitioners claim that no children were attending school during vacations, and therefore, it was futile, in any case not proper, to insist upon the Petitioners attending the school during vacations.

4. On hearing the parties, we thought that this was a matter which the Petitioners and the Respondents could have sorted out. The learned Advocate General also expressed the same view. Therefore, on 29/08/2023, we made the following order:

“P.C.:

1. According to us, this is a matter which should be sorted out by the Petitioners and the Respondents through discussion and mutual consultations. The learned Advocate General also expresses the same view.

2. Accordingly, the Head Master of the institution, the Member Secretary and the Chairperson of the institution should consider having a meet and sort out the issues which have arisen.

3. The Petitioners must render full cooperation at this meet so that the issues are sorted out.

4. All concerned must remember that this is an institution that caters to the needs of special children. Therefore, the focus of all concerned with this institution must be the welfare of these special children.

5. Stand over to 03.10.2023.”

5. In the meanwhile, the Petitioners submitted an action plan dated 07/11/2023 which, according to the Petitioners, would sort out the issues without compromising the interest of the students for whose benefit this school was founded.

6. Accordingly, on 07/11/2023, we requested the Director of Education to intervene in the matter and to hold a meeting with the Petitioners and the Management of Respondent No. 1. We requested the Director of Education to keep in mind the concerns of all stakeholders, including, in particular, the students and parents to find out some amicable solution so that the interest of management, staff and students are achieved. The Director was also requested to decide on the action plan now submitted by the Petitioners and to ensure that the action plan was implemented with or without modification.

7. The order made by us on 07/11/2023 reads as follows:

“P.C.:

Heard Mr Nikhil Pai, learned counsel for the Petitioners. Mr D. Pangam, learned Advocate General appears along with Mr Deep Shirodkar, learned Additional Government Advocate for Respondent No.1, and Ms Maria Correia, learned Additional Government Advocate for Respondent No.2.

2. The Petitioners have submitted an action plan dated 07.11.2023 and the same is taken on record. However, it is not possible for this court to examine the action plan and therefore, it would be in the WP 415 of 2023 interests of all concerned if the Director of Education intervenes in the matter and holds a meeting with the Petitioners and the Management of Respondent No.1.

3. The Director, at this meeting, keeping in mind the concerns of all stakeholders including in particular the students and parents to find out some amicable solution

so that the interest of management, staff, and students are best achieved. The Director to also decide on the action plan now submitted by the Petitioners and see whether this action plan can be implemented with or without modification at least until this Court can hear the matter after the conclusion of the vacation. We post this matter on 06.12.2023. This action plan as we understand is basically to operate in the vacation period. The action plan contemplates having special therapy sessions.

4. The learned Advocate General states that the meeting will be held by the Director on 10.11.2023 at 11.00 a.m. in the Director's chamber.

5. We post the matter on 06.12.2023 and expect all concerned to cooperate with each other keeping in mind the best interest of the students at the Sanjay Centre for Special Education.

6. Stand over to 06.12.2023.”

8. We are happy to note that the Director of Education did hold a meeting on 10/11/2023, and the learned counsel for the parties reported that most of the issues raised in this petition have been sorted out during this meeting. Ms Maria Correia learned Additional Government Advocate appearing for Respondent No. 2 has placed the minutes of the meeting held on 10/11/2023 on record.

9. The minutes, duly signed by the Director of Education, read as follows:

“MINUTES OF THE MEETING HELD ON 10TH NOVEMBER, 2023 IN THE CONFERENCE HALL OF DIRECTORATE OF EDUCATION AT 11.00 A.M. IN ACCORDANCE TO THE ORDER PASSED BY HON'BLE HIGH COURT OF BOMBAY AT GOA DATED 07TH NOVEMBER, 2023 IN WRIT PETITION NO. 415 OF 2023.

The Directorate of Education had convened a meeting of Headmaster and physiotherapists conducting physiotherapy session during vacation.

1. The Director of Education gave the opportunity to aggrieved physiotherapist to express their grievance.

2. Aggrieved physiotherapist expressed that, the physiotherapists have been granted all types of leave, including vacation, similar to the other regular teaching staff of the institute since the date of their appointment.

However,

vide Order dated 25th April, 2023 the Management of Sanjay Centre, Porvorim has directed these physiotherapists to conduct physiotherapy sessions for its students during vacation. Whereas, due to prior commitments and pre-planned holidays, it was not feasible for the physiotherapist to conduct these sessions and hence the action taken by the management cannot be justified.

3. The Headmaster was of the opinion that, the physiotherapy is a continuous process and there shall be no gap in physiotherapy sessions of the students, further headmaster added that, exceptions may be granted during small vacations like Ganesh Chaturthi holidays and Christmas holidays etc. Secondly, the management has agreed to compensate these physiotherapists with the

earned leaves for working during vacation as per admissibility. With regards to action taken, he clarified that the action was taken against only one physiotherapist.

4. One of the aggrieved physiotherapist claimed that, in pursuance to order, he did the assessment of the students to provide treatment and therapy, whereby he had shortlisted two students in need of therapy and had accordingly prepared a plan and placed it before the management. However, the parents of these students were unable to get them to the school for the therapy during vacation. When reported, the Headmaster insisted the physiotherapist to be present in the school irrespective students being available or not.

5. Another physiotherapist suggested that instead of sitting idle in the school physiotherapist may be called to conduct session only when the needy student is willing to come to school. Secondly, he raised a concern/ query that, when rest of the special schools have not called their physiotherapist to school during vacation, why only this institute has directed them to conduct this sessions.

6. One Physiotherapist expressed her plight narrating an incident, where she was made to stand out of office and was not allowed to enter the therapy room for several days just because she did not conduct therapy sessions during vacation. As per her claim, when she contacted the parents for therapy sessions she did not receive a good response from parents and secondly, most her students parents were out of State.

7. The Headmaster did not agree with any allegation put forth by the Physiotherapist.

8. When asked, whether schools have called their teacher to school during vacation, it was informed that all teachers of other school including ayas avail vacation along with students.

9. When Director of Education questioned Headmaster on the reason why the parents and students were called during vacation, the Headmaster replied that, it is a good process and the management has come up with this idea of providing therapy to students during long vacation. Further he added that, even being the Headmaster, he does not look after the Administration.

10. The physiotherapists added that, the parents of the needy students are instructed on therapy routine to be performed by the students during vacation.

11. In view of the above, after taking the interests of all the stakeholders into account, it is proposed as under:-

a. At least one month before every vacation, the Management will have to ascertain the needs and requirements of the students/ parents about therapy for that particular vacation.

b. The Management should then hold a meeting with the Petitioners and prepare a Schedule of the number of days when the concerned Physiotherapists / Speech Therapists are required to attend.

c. The Management should divide the said staff into two parts for the respective parts of the vacation period and call one section of the staff during the particular part.

d. The Management should ensure that the required supportive staff should be on duty at the relevant time,

which can also be divided into batches, to assist the Petitioners/ Speech Therapists.

e. The proposal of the Petitioners that they should be allowed to leave the School as soon as the therapy session is over is not acceptable. This is because the staff is paid salary for the day when they attend duty. On a particular working day, the staff has to be in the School for the minimum duty hours which are fixed. It is also possible that though some student/parent has not indicated willingness to attend on a particular day, the parent may bring the student to the School in case therapy is felt necessary at any time. No student should have to return back for non-availability of Physiotherapist/Speech Therapist, if the School is otherwise open. If the therapy is over soon, the Petitioners can utilise the balance duty hours to enhance/improve their skills by conducting further reading, studies, acquainting themselves with the latest techniques and procedures, etc. which will help them as well the students in their day to day lives.

Sd/-
(Shailesh R. Sinai Zingde)
Director of Education”

10. The matter was adjourned to enable the learned counsel for the Petitioners and the Respondents to obtain instructions because, prima facie, we proposed to accept the proposals put forth by the Directorate of Education. These proposals are reflected in paragraph 11 of the above minutes of the meeting held on 10/11/2023.

11. Mr. Pai, learned Counsel for the Petitioners, submits that the Petitioners are satisfied with the proposals made by the Director of Education. Mr. Pai, however, submitted that it would be better if Special Educators were also requested to remain present on duty whenever Special Therapy sessions are held during vacations. He submitted that such special educators were necessary to enable the petitioners to discharge their duties.

12. Mr Deep Shirodkar learned Additional Government Advocate, rightly invited our attention to para 11(d) of the meeting, which provides that the management should ensure that the required supportive staff should be on duty at the relevant time, which can also be divided into batches, to assist the Petitioners / Speech Therapists. On instructions, he submitted that special educators are not always required as urged by Mr Pai. But he submitted that such matters be best left to the management to decide based on the exigencies.

13. According to us, the issue of requiring special educators to invariably attend is best left to the management. As and when there is such a requirement, we are sure the management will ensure their presence. Neither the Petitioners nor the management must consider such matters with a spirit of one-upmanship or let any egos of any parties seep into their decision-making. Here, the staff and the management must work in tandem to ensure that the students get the best that they deserve. Any discord between the Staff and the

management is bound to take its toll on the quality of service at the school. We are happy to record that the Director of Education, who was requested to intervene, approached the issue from a very positive perspective and has come out with proposals in the best interests of all the stakeholders.

14. Accordingly, we accept the proposals made by the Director of Education as recorded in the minutes. We also direct all concerned, including the Petitioners and the Management of Respondent No.1, to abide by these proposals. Again, we emphasise that the staff and the management of Respondent No. 1 should work in tandem and cooperate with each other to see that the students for whose benefit the said School is established get the best out of this institute. Neither should ever forget that they are at this institute to serve the interests of the students who require their services intensely. The Government Aid is mainly to enable the staff and the management to serve such students. Therefore, sincere cooperation between the staff and management is a must.

15. Learned counsel for the parties agree that the orders impugned in this Petition, i.e. orders dated 25/4/2023 and 01/11/2023 in their present form, will no longer hold good and will stand superseded by the proposals now made by the Director of Education and accepted by both the parties. Thus, based on those orders, there will be no question of initiating any disciplinary proceedings.

16. Again, we appreciate the proactive role of Mr Shailesh Zingde, Director of Education, in assisting the parties to arrive at this solution in the best interest of all the stakeholders. We do sincerely hope that the staff and the management abide by such proposals, keeping in mind the object of the establishment of this institute and the reason why the Government, through the tax-payers money, is funding it. The focus must be on the students and their needs. The staff and the management must bury their differences and work unitedly to render the best services to the students of this institute. A house divided against itself, cannot stand. Together, the staff and the management must strive to give their best to these students.

17. The rule is made absolute in the above terms with no order as to costs.

18. All concerned to act based on an authenticated copy of this order.

VALMIKI SA MENEZES, J.

M. S. SONAK, J.