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IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.821 OF 2023
AND
WRIT PETITION NO.822 OF 2023**

The Disciplinary Authority/
School Managing Committee,
Through its Authorized representative &
Trustee of People's Educational Trust,
Dr. Vinay Surlacar, Major of age,
Residing at Mala, Panaji-Goa.PETITIONER

Versus

1. Mr. Anil Govind Naik, Major of age,
Resident of 2/G-3, Duple Residency,
Tambdi Mati, Taliegao Goa, 403002
2. Director of Education,
Education Department, State of
Goa, Porvorim, Bardez, Goa.RESPONDENTS

Mr. Ashwin D. Bhobe with Ms. Shaizeen Shaikh for the Petitioner.

Mr. Anil Govind Naik, Respondent No. 1, present in person.

Mr. Arun Talaulikar, Additional Government Advocate for the
Respondent No. 2.

CORAM: **BHARAT P. DESHPANDE, J**

RESERVED ON: 10th October, 2024.

PRONOUNCED ON: 13th November, 2024

JUDGEMENT :

1. Rule.
2. Rule is made returnable forthwith.
3. Heard finally with the consent of the parties.
4. Writ Petition No. 821/2023 is filed with the following prayers;

a) For an order calling for an writ of certiorari or any other order, direction writ in the nature of certiorari calling for the records and proceedings of appeal no. 2/2019 on the file of Respondent no.2 and the records and proceedings of the order dated 06/01/2018 passed by the Petitioner and upon perusing the propriety and legality of the Impugned Order bearing No. DE/PLAN/HSS/2018/COMPL-2/2157-A dated 02/03/2020 passed by the Respondent no. 2 in appeal no. 02/2019, be pleased to quash and set aside the Impugned Order

bearing no. DE/PLAN/HSS/2018/COMPL-2/2157-A dated 02/03/2020 passed by the Respondent no.2 and thereby dismiss appeal no. 02/2019.

(b) For stay of the execution / operation / implementation of the Impugned Order bearing no. DE/PLAN/HSS/2018/COMPL-2/2157-A dated 02/03/2020 passed by the Respondent no. 2, pending hearing and final disposal of the present petition.

(c) For an interim order in terms of prayer clause (b).

(d) Any other order this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

5. Writ petition 822/2023 is filed with the following prayers.

a) For an order calling for a writ of certiorari or any other order, direction writ in the nature of certiorari calling for the records and proceedings of appeal no. 1/2019 on the file of Respondent no.2 and upon perusing the propriety and legality of the Impugned Order bearing No. DE/PLAN/HSS/2018/COMPL-2/17 dated 07/05/2020 passed by the

Respondent no. 2 in appeal no. 01/2019, be pleased to quash and set aside the Impugned Order bearing no. DE/PLAN/HSS/2018/COMPL-2/17 dated 07/05/2020 passed by the Respondent no.2 and thereby dismiss appeal no. 01/2019.

(b) For stay of the execution / operation / implementation of the Impugned Order bearing no. DE/PLAN/HSS/2018/COMPL-2/17 dated 07/05/2020 passed by the Respondent no. 2, pending hearing and final disposal of the present petition.

(c) For an interim order in terms of prayer clause (b).

(d) Any other order this Hon'ble Court deems fit and proper in the facts and circumstances of the case.

6. Both the above petitions are filed by the Disciplinary Authority of the School Managing Committee against orders passed by the Director of Education in two different appeals filed by Respondent No. 1, challenging the decision taken by the Petitioners in connection with imposing of minor penalty of withholding of three increments and for specific directions

to the school authorities to reinstate, the said Respondent No.1 with all other benefits.

7. Appeal No. 1 of 2019 was filed by Respondent No.1 before the Director of Education/Respondent No. 2 herein under Rule 98 (2) of the Goa School Education Act, 1984 (the Goa School Education Act for short) for specific relief, thereby directing the school authorities to issue reinstatement order, to pay the difference in the salary, subsistence allowance, etc., which was allowed vide order dated 07/05/2020, which is the subject matter of Writ Petition No.822/2023.

8. The Respondent No. 1 filed an Appeal bearing No. 2 of 2019 challenging the order dated 06/01/2018 passed by the Petitioner, thereby imposing a minor penalty of withholding three annual increments. Vide order dated 02/03/2020, the Director of Education/Respondent No. 2 herein, allowed the said appeal and quashed the order of imposing of minor penalty, which is the subject matter of Writ Petition No.821/2023.

9. In order to properly appreciate the facts and the contentions, some relevant dates and events are necessary to be considered, which are as under;

9.1. Respondent No. 1 was appointed as a Teacher Grade-I at People's Higher Secondary School, Panaji, somewhere in June 1989. On the basis of a complaint filed by one of the parents of a student appearing in the High School run by the People's Education Society, some disciplinary action was taken against Respondent No. 1, and accordingly, he was suspended pending departmental inquiry. Even an FIR came to be registered against Respondent No. 1 at the Old Goa Police Station. The school management sought permission from the Director of Education to suspend Respondent No. 1, which was granted. A charge sheet was filed by the Old Goa Police Station before the concerned Magistrate. Simultaneously, a memorandum was served upon Respondent No. 1 *inter alia* starting with the inquiry under the School Education Act and Rules there under.

9.2. After conducting the inquiry, the Inquiry Officer vide his report found the misconduct proved. Respondent No.1 challenged such report of the Inquiry Officer by filing Writ

Petition No.73/2015. By order dated 10/03/2015, this Court allowed the said petition and accordingly, the report as well as recommendation of the Inquiry Officer were withdrawn. The meeting of the Managing Committee was then held to resolve for imposing major penalty on Respondent No.1 and a proposal was submitted to Respondent No.2/Director of Education for approval. However, Respondent No. 2 declined the proposal for imposing of major penalties, but, suggested that the Managing Committee may consider to impose penalties under Rule 94(i)(a)(III) of withholding of increments of pay, not exceeding three at a time.

9.3. Petitioner challenged such order passed by the Director of Education by filing a Writ Petition No. 926/2016 which was disposed of vide order dated 01/12/2016. Accordingly, the Managing Committee proceeded to impose a minor penalty thereby withholding three increments. Respondent No.1 challenged such decision of the Managing Committee by filing another Writ Petition No.533/2017. Vide order dated 14/07/2017, this Court quashed and set aside the order and remitted the matter to the Managing Committee to decide in accordance with the procedure established.

9.4. An opportunity was then afforded to Respondent No. 1 of hearing and accordingly, on 06/01/2018, an order was passed with reasons thereby imposing minor penalties against Respondent No. 1. This order dated 06/01/2018 passed by the Disciplinary Authority was then challenged by the Respondent No.1 by way of filing of Appeal bearing No. 02/2019. Initially, the Appellate Authority refused to exercise jurisdiction which resulted in filing another petition bearing number 503/2019 before this Court in which directions were given to Respondent No. 2 to dispose of such appeal. Accordingly, vide order dated 02/03/2020, Respondent No. 2 allowed the said appeal and set aside the order of the Disciplinary Committee of imposing of minor penalty, which is now challenged in Writ Petition No.821/2023.

9.5. In the meantime, Respondent No.1 filed appeal number 01/2019 with a specific prayer to reinstate with all benefits, which was disposed of vide order dated 07/05/2020, which is challenged in Writ Petition No.822/2023.

10. Mr. Bhobe would submit that the appeal was filed only on limited grounds and since Respondent No.1 was found guilty of the misconduct, the discretion lies with the

disciplinary authority to impose penalty. He would submit that there are contrary findings in the impugned orders and those grounds were not open to Respondent No.1, since earlier petitions were filed and considered by this Court and therefore, such challenge was only restricted to the grounds raised in the memo of appeal. He would submit that the Authority/Respondent No.2 was not entitled to consider the contentions raised by Respondent No.1, which were already agitated before this Court and some of the documents which were not relied upon by Respondent No.1 were also considered and thus, the order impugned in both these petitions are perverse and bad in law.

11. Mr. Bhobe would submit that Respondent No.2 granted permission to the Petitioner to suspend Respondent No.1 which was challenged by Respondent No.1 before this Court. There are certain findings given in the said decision which could not have been agitated before the Director of Education in an appeal. He would submit that earlier permission granted was final and therefore, the question of reopening and reconsidering such as aspects was not open for the said authority.

12. Mr Bhobe would submit that the findings of Respondent No.2 are contrary to the record and the Rules and thus, require interference by this Court.

13. Respondent No.1 who appeared in person, filed written synopsis and also argued orally. While supporting the orders passed by Respondent No.2, he would submit that first of all the person who filed the complaint against Respondent No.1 cannot be considered as parent of a child of a Higher Secondary School wherein Respondent No.1 was appointed as a Teacher. He would further submit that the Disciplinary Authority of the Higher Secondary School was not constituted and the one who issued show cause notice to the Respondent No.1 is by the Chairman who is not the Disciplinary Authority or the Appointing Authority. The show cause notice was issued by the Chairman of the School Managing Committee, which is not a competent authority as per the Goa School Education Act, 1984 and Rules, 1986.

14. Respondent No.1 would submit that the decisions passed by this Court in earlier petitions clearly opined that all other grounds available to Respondent No.1 were kept open.

Accordingly, the impugned orders need no interference in the writ jurisdiction.

15. Rival contentions fall for determination.

16. An order was passed by the Director of Education on 14/10/2014, thereby according approval for suspension of Respondent No. 1 for a period of six months with a direction to School Managing Committee to complete the disciplinary inquiry. This order would go to show that vide letter dated 16/04/2014 from the Chairman of the School Managing Committee of People's Higher Secondary School, Panaji, a request was received to accord approval for immediate suspension of Respondent No. 1

17. Thus, it is clear that a request was made from the chairman of the School Managing Committee of People's Higher Secondary School, Panaji, Goa.

18. The order of suspension dated 16/10/2014 is signed by the Chairman, School Managing Committee of Peoples, Higher Secondary School, Panaji Goa.

19. Though the inquiry was concluded and the Disciplinary Authority proposed for major penalty and sought approval, Director of Education refused such proposal and instead directed the school authorities to impose minor penalties. Thereafter, the school authorities imposed minor penalties by way of withholding of three annual increments. Though Respondent No. 1 filed an appeal challenging such decision, the Appellate Authority refused to entertain such an appeal. Accordingly, Respondent No. 1 filed a Writ Petition before this Court bearing Writ Petition No.503/2019. Wide order dated 19/11/2019, Division Bench of this Court, quashed and set aside Communication dated 20/03/2018 and directed the Director of Education to hear and dispose of the appeal filed by Respondent No. 1 on merits challenging the order dated 06/01/2018, uninfluenced by any previous decision taken by the Department on the subject matter.

20. Similarly, Respondent No. 1 filed a Writ Petition No.533/2017 challenging the imposition of minor penalty and also framing of charges, which was disposed of by the Division Bench of this Court, vide order dated 14/07/2017. While deciding the said petition, the Division Bench of this Court

remitted the matter back to the Disciplinary Authority to proceed with the procedure in accordance with law for the purpose of imposing minor penalty. While doing so, Division Bench has opined that they are not expressing any opinion on merits raised before it since the appeal as provided under Section 96 is available to the aggrieved party.

21. With this background, Appeal number 2/2019 filed by Respondent No. 1 under Section 96 of the Goa School Education Act assumes significance. The prayers in the said appeal clearly show that Respondent No. 1 has challenged the entire disciplinary proceeding carried out by the School Authorities, including violations of provisions of Section 11(3) read with Rule 92(1) of the Goa School Education Act, 1984 and Rules, 1986 thereunder. A prayer to quash and set aside the order of suspension with a direction to reinstate with all other benefits was also made.

22. The Respondent No. 1, while challenging the orders passed by the Disciplinary Authority, questioned the proceedings from the inception, including the power of the Chairman to initiate the proceedings as well as the person who

filed a complaint being not a parent of a child taking education in the school where Respondent No. 1 was appointed as a Teacher. It was his contention that the School Managing Committee of the People's Higher Secondary School was competent authority for institution of the disciplinary proceedings and for issuing order of suspension. It was his main contention that the meeting of Managing Committee of People's Higher Secondary School, which is the Appointing and Disciplinary Authority for Respondent No. 1 was held for the first time after Respondent No.1 was placed under suspension.

23. Respondent No. 2, while deciding such an appeal, framed two separate points, which includes violation of Rule 100 qua the status of the Complainant and second, the procedure of initiating disciplinary proceedings as provided under Section 11(3) and Rule 92(1). While deciding these aspects, Respondent No.2 observed that the order of suspension or even recommendation was issued by the Chairman of the School Authority in his individual capacity and that too, without approval of the Managing Committee and thus, it was *ex facie* bad.

24. The main thrust of Mr. Bhobe is that Respondent No. 1 filed petitions challenging each and every order and those petitions have been disposed of by this Court from time to time wherein such grounds were raised, but the same were not considered and therefore, Respondent No. 1 was not entitled to agitate such grounds in an appeal filed before Respondent No. 2.

25. Per contra, Respondent No.1 would submit that all contentions were kept open while deciding the earlier petitions and therefore, contentions raised by the Petitioners have no substance.

26. Writ petition 73/2015 was filed by Respondent No. 1, which was disposed of by the Division Bench of this Court vide order dated 10/03/2015. This petition was filed seeking directions that the memorandum dated 20/12/2014 to hold an inquiry under the Goa School Education Act, 1984 and Rules, 1986 is patently illegal and unconstitutional. However, while deciding such a petition, this Court observed that though Respondent No.4 therein i.e. the School Managing Committee was directed to withdraw the report dated 30/01/2015 and

recommendation dated 31/01/2015, contentions of both the parties on merit were left open. A perusal of this decision would go to show that the petition was partly allowed only on the ground that the action on the part of Inquiry Officer and that of Respondent No.4 does not appear *bonafide* and in good faith. By keeping the remaining contentions of both parties on merit, open, the Division Bench has made it clear that the parties are entitled to agitate other grounds on merit before the Competent Authority.

27. The Disciplinary Authority that is the Petitioner then approached this Court by filing Writ Petition No. 926/2016, thereby challenging refusal of Director of Education for imposing major penalty. Vide order dated 01/12/2016, this Court observed that findings of Director of Education in refusing to accept the proposal of major penalty cannot be faulted with. In paragraph 7, it is observed by this Court as under.

7. On going through the said report, as rightly pointed out by Mr. A. Khandeparkar, learned Counsel appearing for the Respondent No. 2, such allegations

were basically on an assumption that the Complainant was the Chairman and a parent of a student. But, however, factually the Respondent No 1 has found that both these findings are incorrect. Shri A. D. Bhobe, learned Counsel appearing for the Petitioner has not disputed that the Complainant was neither the Chairman of the Managing Committee formed under Right to Education Act and Manager of the School For Appropriate Learners. In such circumstances, as the foundation which the said charges were framed against the Respondent No. 2 itself does not subsist, the Respondent No. 1 was justified to come to the conclusion that there was no case made out for imposing a major penalty. This Court in its extraordinary jurisdiction under Article 227 of the Constitution of India cannot re-appreciate the evidence nor take a contrary factual findings unless there is perversity in the findings of the facts recorded by the authority below. There is no perversity in the findings rendered by the Respondent no. 1 whilst refusing the consent.

28. Accordingly, the said petition was rejected and the observations of the Director of Education while rejecting the proposal for a major penalty have been accepted.

29. Subsequently, the minor penalty was imposed of withholding three increments, and the same was then challenged by Respondent No. 1 before this Court by filing Writ Petition No.533/2017. The Division Bench of this Court in its order dated 14/07/2017 observed that though the challenge is raised, even to the framing of charge, the same was kept open. While disposing of the petition, the Division Bench observed in paragraph 6 and 7 as under:

6. Learned Counsel representing the Management is fair enough to submit that the matter came before this Court on earlier occasion when it was at the stage of approval by the Director of Education for imposing major penalty. After that, no further opportunity in terms of Rule 96 came to be issued since Director opined that the charges call for minor penalty. Therefore, he fairly submitted that he would leave it to the Court's decision to

take one view or the other in the circumstances available.

7. Since the main arguments seem to be that the status of the person to whom the messages are sent has to be first decided in order to opine that the entire procedure adopted is right or wrong and till such opinion is expressed by the concerned Authority in terms of the procedure, there cannot be imposition of penalty or no further proceedings can be held. Rather, there cannot be any Disciplinary Proceedings at all. Initiation of proceedings itself which has to be considered in terms of the procedure, we set aside the impugned Order dated 10.05.2017 of imposing minor penalty. The matter is remitted back to the Disciplinary Authority to proceed with the same strictly in accordance with the procedure contemplated for imposing minor penalty. We also point out at this stage we are not expressing any opinion on merits on any of the arguments raised before us since the Appeal is provided under Rule 96 where the Petitioner has an opportunity to refer to evidence and material on factual issues.

30. The above observations of Division Bench and more specifically, in paragraph 7 would go to show that the matter was remitted to the Disciplinary Authority to proceed in accordance with the procedure, however, the Court has made it clear that it has not expressed any opinion on merit, though, arguments were raised since the appeal is provided under Section 96 of the said Act.

31. After the decision of the said Writ Petition No. 533/2017, the School Managing Committee passed the order dated 06/01/2018, thereby imposing minor penalty of withholding of three increments.

32. Respondent No. 1 filed appeal challenging the said order, however, initially the said appeal was not entertained vide communication dated 23/03/2018, which resulted in filing of Writ Petition No.503/2019 by Respondent No. 1 before this Court. The Division Bench of this Court vide Judgement/Order dated 19/11/2019 directed Respondent No.2/Director of Education to hear and dispose of the said appeal on merit. Though, in the said petition, Respondent No.1 challenged the suspension order and initiation of the

departmental proceedings, the Division Bench has considered that the main grievance is the Communication dated 23/03/2018, by which the Director of Education refused to entertain the appeal under Section 96 of the Goa School Education Rules, 1986.

33. Observations of the Division Bench in the paragraph Nos. 11 and 12 are relevant which are quoted below for reference:-

11. According to us, the communication dated 23.03.2018 and the consequent refusal to entertain the petitioner's appeal is quite unsustainable. It is true that on the earlier occasion, the Department proposed minor penalty. However, the minor penalty was set aside by this Court and the matter was remanded to the Disciplinary Authority for taking a fresh decision. Accordingly, the respondent no.2 made the order dated 06.01.2018 once again imposing a minor penalty upon the petitioner. As against this, the petitioner in terms of Rule 96, has a right of an appeal. There is a corresponding duty upon the Director of Education to consider such

appeal in accordance with law. Such jurisdiction could not have been declined by the Director by simply observing that on the earlier occasion, some decision was taken in the matter. This was all the more necessary considering the observations made by us in our earlier order dated 14.07.2017 which we have transcribed above. The scope of enquiry at the two stages i.e. at stage of approving penalty and at stage of consideration of appeal, is quite different.

12. Accordingly, we set aside the communication dated 23.03.2018 and direct the Director of Education to hear 'and dispose off on merits the petitioner's appeal against the order dated 06.01.2018 uninfluenced by any previous decision taken by the Department on this subject matter. The Director will, no doubt, would have to comply with principles of natural justice which would include grant of hearing not just to the petitioner but also to the respondent no.2. The Director is now directed to dispose off the pending appeal as expeditiously as possible and, in any event, within a period of three months

from the date of production of the authenticated copy of this order.

34. A perusal of the above decisions passed by this Court from time to time in various proceedings would clearly reveal that though Respondent No. 1 challenged the decision of the Chairman to suspend and to initiate a departmental inquiry, the same were not entertained and such contentions were kept open since the alternate efficacious remedy by way of appeal was available to Respondent No. 1. The order dated 19/11/2019 in Writ Petition No.503/2019 would clearly reveal that the Director of Education was directed to dispose of the appeal on merit and uninfluenced by any previous decision on that subject. Thus, the contention of Mr. Bhobe that grounds in appeal were restricted to the challenge to the minor penalty, are clearly devoid of merit. In none of the decisions passed by this Court in earlier proceedings, such points were concluded. In fact, all other contentions raised by Respondent No. 1, challenging the suspension from the inception were kept open. Accordingly, the contentions of Mr. Bhobe that the Appellate Authority has exceeded its jurisdiction is clearly unacceptable.

35. The observations of Respondent No. 2 that there is a violation of the provisions of the Goa School Education Act, 1984 and Rules, 1986 with regard to issuance of disciplinary proceedings and the suspension order, cannot be faulted with as it is observed that the entire procedure adopted by the School Authorities for institution of disciplinary proceedings, right from the order of suspension is illegal, ultra vires of the School Education Act and Rules there under.

36. Rule 100(1)(A)(xviii) deals with misbehaviour or cruelty towards any parent, guardian, student, teacher, or other employee of the school.

37. Section 2(u) of the School Education Act defines “school”, which includes pre-primary, primary, high school, higher secondary school and also includes any other institution which impacts education or training below the degree level, but does not include an institution which impacts technical education.

38. Rule 46 of the Chapter V of the Goa School Education Rules, 1986 deals with the scheme of management of

recognised school. The Managing Committee shall consist of not more than 10 members of a Recognised Aided School

39. The duty and responsibilities of the Managing Committee includes the control over appointment, disciplinary action and control over Staff.

40. Rule 92 deals with suspension and gives the power to the Managing Committee to place an employee of the Recognised Private School under suspension.

41. Rule 94 deals with penalties and disciplinary authority, which includes minor penalties as well as major penalties. Sub-rule (2) specifically provides that the Managing Committee shall be disciplinary authority for employees of a Recognised Private School whether aided or not. Rule 95 deals with authority to impose penalties and/or to institute disciplinary proceedings. It gives power to the Managing Committee being the Disciplinary Authority to impose any of the minor penalties prescribed under Rule 94. Sub-Rule (2) provides that the Disciplinary Authority shall be competent to institute disciplinary proceedings as provided under Rule 97. Thus, it is clear that the Managing Committee of the particular

school shall be the Disciplinary Authority for the employees therein.

42. In the present matter, the suspension order was issued by Dr. Vinay Surlacar as the Managing Trustee/Chairman of the School Managing Committee, and that too without the approval of the School Managing Committee, which is the Disciplinary Authority. Section 11(3) of the said Act specifically provides that the Managing Committee of a Recognised Private School will intend to suspend any of its employees, such intention shall be communicated to the Director and that no such suspension shall be made, except where a disciplinary proceeding is contemplated or pending, and except with prior approval of the Director. It also provides that the Managing Committee may suspend an employee with immediate effect and without prior approval of the Director if it is satisfied that such immediate suspension is necessary by reasons of the gross misconduct, within the meaning of Code of Conduct prescribed under Section 12 of the employee or where a case against him in respect of any criminal offence involving moral turpitude is under investigation, enquiry or trial.

43. Thus, the Managing Committee of the school, is considered to be the appropriate authority for the purpose of taking any action, including proposal of suspension and initiation of disciplinary proceedings.

44. The matter in hand would go to show that the Managing Committee of the said school was not consulted at all before sending the proposal for suspension of Respondent No. 1. The meeting of Managing Committee was held for the first time on 20/12/2014, that is after the suspension order was issued and that too, to discuss issue relating to disciplinary proceedings against Respondent No. 1. This fact is supported by the minutes of the School Managing Committee meeting dated 03/11/2015 and the remarks therein. Accordingly, the procedure adopted by the School Authorities from the time of issuance of order dated 16/10/2014 as well as issuance of charge sheet, is clearly in violation of the provisions of Goa School Education Act, 1984 and Rules, 1986 there under.

45. The impugned order passed by Respondent No. 2, thus, cannot be interfered while entertaining a Writ Petition filed under Article 227 of the Constitution of India.

46. The impugned order dated 07/05/2020 in Writ Petition No. 822/2023 is again on similar lines, and since the concerned authority found that the suspension itself was illegal, the directions to reinstate Respondent No. 1 cannot be faulted with

47. For all the above reasons, both petitions are having no merit and accordingly, the same stands dismissed

48. Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.