

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-CW-334-2020**

Shivaji Ramchandra Patil ... Petitioner

Versus

State of Goa and others ... Respondents

Mr. Sarvadnya Patil, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General with Mr. Deep Shirodkar,  
Additional Government Advocate for Respondent Nos.1 and 2.

Mr. S.S. Kantak, Senior Advocate with Mr. K. Kerkar, Advocate for  
Respondent No.3.

**Coram:- M. S. SONAK &**

**SMT. M. S. JAWALKAR, JJ.**

**Date :- 5<sup>th</sup> January,2021**

**P.C.:**

Heard Mr. Sarvadnya Patil, learned Advocate for the  
Petitioner, Mr. D. Pangam, learned Advocate General with Mr.  
Deep Shirodkar, learned Additional Government Advocate for  
Respondent Nos.1 and 2 and Mr. S.S. Kantak, learned Senior

Advocate with Mr. K. Kerkar, learned Advocate for Respondent No.3.

2. Rule. The learned Counsel appearing on behalf of the respondents waive service on Rule and therefore, it will not be necessary to issue any fresh notice to the respondents.

3. This is a matter where we are inclined to grant interim relief in favour of the petitioner and therefore, we indicate in brief our reasons for doing so.

4. The petitioner in this case, retired as the headmaster of the respondent no.3-School way back on 31/07/2017. Despite such retirement, the respondent no.3 i.e. the School Management, at least prima facie, without authority of law retained the arrears towards the 7<sup>th</sup> Pay Commission as also leave encashment benefits.

5. The petitioner was then forced to engage in correspondence with the School Management as well as the Director of Education, Government of Goa. Ultimately, the Director of Education, by a detailed order dated 08/07/2020, on an appeal made by the petitioner and after hearing the School Management, directed the School Management to complete the procedure for

payment of dues in relation to the 7<sup>th</sup> Pay Commission arrears and leave encashment dues. This order required the School Management to implement the directions within 15 days failing which, the Director even threatened to initiate legal action in terms of the Goa School Education Act, 1984 and Rules, 1986.

6. Though, the petitioner had retired w.e.f. 31/07/2017, the respondent no.3 issued a Show Cause Notice dated 03/09/2020 to the petitioner making several allegations against him and requiring him to show cause as to why some major penalty be not imposed upon him. In haste, an order was made imposing penalty upon the petitioner even without considering his response. Later on, this order was withdrawn and upon allegedly considering the response of the petitioner yet another order dated 20/11/2020, purportingly forfeit the 7<sup>th</sup> Pay Commission arrears as well as the leave encashment dues to the petitioner. The petitioner by amending the petition, has challenged not only the Show Cause Notice dated 03/09/2020 but also the order of forfeiture dated 12/11/2020 in this petition.

7. The order dated 12/11/2020 goes to the extent of holding that the order of the Director of Education dated

08/07/2020 is not proper and ought not to have been made by the Director of Education. The School Management did not choose to challenge the order of the Director of Education and it is the contention of Mr. S.S. Kantak, learned Senior Counsel appearing for the respondent no.3 that this order was never communicated to the respondent no.3. At least prima facie, this is clearly not acceptable. In any case this order was annexed by the petitioner in this petition even prior to the respondent no.3 making its order dated 12/11/2020.

8. According to us, at least prima facie, the proceedings initiated against the petitioner almost three years post his retirement, were misconceived. This proceedings appear to have a clear nexus with the petitioner's appeal to the Director of Education and the Director of Education's Order dated 08/07/2020, by which the Management was directed to pay the arrears of the 7th Pay Commission as also the leave encashment dues to the petitioner within 15 days. The proceedings at least prima facie, appear to be a counterblast aimed at depriving the petitioner his retiral benefits.

9. At this stage, it is necessary to note that it is the Director of Education i.e. Government of Goa which provides funds for

making such payments. The School Management is only required to disburse this payment to the petitioner. There is prima facie, no justification on the part of the respondent no.3 to withhold such amounts and that too in the manner in which it has been done in the present case.

10. The impugned order dated 12/11/2020 is prima facie unsustainable. Even a proposal to impose further major penalties on the petitioner almost three years after his retirement appear to be prima facie flawed. By these means, the respondent no.3, cannot be permitted to frustrate the order dated 08/07/2020 made by the Director of Education. Even Mr. Kantak, learned Senior Counsel agreed that the respondent no.3 cannot sit in appeal over the order of the Director. He submits that the proper course might be to challenge such order, which the respondent no.3 will now follow.

11. The learned Advocate General also submitted that the respondent no.3 will have to comply with the directions issued by the Director and release the 7<sup>th</sup> pay commission arrears and leave encashment dues. He pointed out that the initiation of proceedings, almost three years from the retirement of the petitioner may not be proper in facts of present case.

12. Accordingly, we stay operation of the order dated 12/11/2020 and restrain the respondent no.3 from taking any further steps of imposing any major penalties upon the petitioner at this point of time, until the final disposal of this petition.

13. As a result of the stay which we have granted, the respondent no.3 will have to forthwith pay to the petitioner the arrears of the 7<sup>th</sup> Pay Commission as well as leave encashment dues. The respondent no.3 will make such payment within one week from today and file a compliance report in this Court by serving an advance copy to the learned Counsel appearing for the petitioner.

14. In case the respondents wish to file any further response in this matter, they may do so within a period of four weeks from today. In case the petitioner wishes to file any rejoinder he is granted two weeks time to file the same upon receipt of the replies.

15. Place this matter for final disposal in the week commencing from 8<sup>th</sup> March, 2021 subject to any overnight part heard matters.

16. It is made clear that the disbursement of amounts in the terms of the order of the Director shall abide by final order in this petition.

17. All concerned to act on the basis of an authenticated copy of this order.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

mv