

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 73/2015**

Shri Anil Govind Naik,
major, Teacher Grade I,
People's Higher Secondary School
(presently under suspension),
residing at Flat No.2/G-3,
Dukle Residency,
Tamdi Mati, Taleigao, Goa 403002.

..... Petitioner.

V/s.

1. State of Goa, through the
Chief Secretary, having Office at
Secretariat, Alto Porvorim,
Bardez, Goa.

2. The Secretary (Education),
State of Goa, having Office at
Secretariat, Alto Porvorim,
Bardez, Goa.

3. The Director of Education,
Government of Goa, having
Office at Directorate of Education,
Alto Porvorim, Bardez, Goa.

4. The Chairman,
School Managing Committee,
People's Higher Secondary School,
having office at Rua de Ourem,
Mala, Panaji, Goa.

..... Respondents.

Shri Rohit Bras de Sa, Advocate for the petitioner.

Shri A. N. S. Nadkarni, Advocate General with Shri D. Lawande,
Government Advocate for the respondents No.1 to 3.

Shri Ronak Rao, Advocate for respondent No.4.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 10th March, 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

At the request of Shri Rohit Bras de Sa, learned Counsel appearing for the petitioner, leave to amend. The amendment to be carried out forthwith.

2. Heard Shri R.B. De Sa, learned Counsel appearing for the petitioner, Shri A.N.S. Nadkarni, learned Advocate General appearing for the respondents No.1, 2 and 3 and Shri R. Rao, learned Counsel appearing for the respondent No.4 .

3. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondents waive service.

4. The above writ petition, *inter alia*, seeks a direction that the Memorandum dated 20th December, 2014 bearing No. SMC/PHSS/2014-15/67 issued by respondent No.4 to hold an inquiry against the

petitioner under the Goa School Education Act, 1984, Rules of 1986 and the CCS Conduct Rules as patently illegal, unconstitutional and for a writ directing the respondent No.4 to withdraw the report dated 30.1.2015 and the recommendations dated 31.1.2015.

5. Before we proceed to examine the rival contentions in the above petition, it would be appropriate to record few facts as stated by the petitioner.

The petitioner was appointed as a Teacher Grade-I at People's Higher Secondary School, Panaji on 5/6/1989. Thereafter, on 28/11/2013, an FIR came to be registered at the Old Goa Police Station against the petitioner. The respondent No.4 sought permission for his suspension from the respondent No.3. On 8/10/2014, apparently an application for adjournment was filed by the petitioner before the respondent No.3 which came to be dismissed without hearing the petitioner. The petitioner, thereafter, made a representation on 9/10/2014 to the respondent No.3; the Chief Secretary and the Secretary for Education, *inter alia*, stating that the petitioner's Advocate was not heard before passing of the order dated 14/10/2014. It is the contention of the petitioner that respondent No.3 granted leave to the respondent No.4 to suspend the petitioner for a period of six

month.

In the meanwhile, on 16/10/2014, a letter came to be issued by the respondent No.4 placing the petitioner under suspension. Thereafter, a charge-sheet was also filed by the Old Goa Police Station on 4/11/2014 before the learned JMFC at Panaji. Subsequently, a Memorandum dated 20/12/2014 came to be served on the petitioner on 9/1/2015, *inter alia*, stating that an inquiry was proposed to be held against the petitioner under the Goa, Daman and Diu School Education Act, 1984, Rules of 1986 and the CCS Conduct Rules. It is the contention of the petitioner that a patent illegality can be seen from Article I and the remaining Articles of Charge served on the petitioner. The petitioner has made specific averments to point out the illegalities with regard to the articles in the said Memorandum.

On 19.1.2015, the petitioner filed an application under Section 173(8) of Cr.P.C. 1973 seeking directions to the Police Inspector to hold further investigation in connection with the charge-sheet before the learned JMFC, Panaji. The petitioner apparently sought 10 days' time to file his reply to the said Memorandum which came to be granted and consequently, the petitioner was asked to file such reply on or before 28/1/2015.

In view of some subsequent events, the petitioner

thereafter amended the petition and pointed out that the petitioner had moved this Court for urgent circulation on 28/1/2015 and the circulation was granted for 2/2/2015. It is the contention of the petitioner that on 28/1/2015, a notice informing that the matter was coming up for hearing on 2/2/2015 was sought to be served on the respondent No.4 along with an application seeking extension of time for filing a reply to the said Memorandum. However, it is the contention of the petitioner that in view of the death of G.D. Kamat, C.J. (Retd), who was the Trustee of the respondent No.4, the Office premises were closed for afternoon session of 28/1/2015. It is the contention of the petitioner that on 29/1/2015, the petitioner served the copy of the said notice, as well as an intimation that the above petition was fixed for admission and interim relief on 2/2/2015 on the respondent No.4 personally.

6. Shri Rohit Bras de Sa, learned Counsel appearing for the petitioner has pointed out that as the allegations against the petitioner are subject-matter of the charge-sheet which is under consideration before the learned JMFC, it would be just and fair in the circumstances of the case to stay the disciplinary inquiry initiated by the respondent No.4. The learned Counsel further points out that the articles of

charge against the petitioner are essentially matters which are subject-matter of the charge-sheet and, as such, according to him, the question of proceeding with the disciplinary inquiry would cause grave injustice to the petitioner. The learned Counsel further points out that even the sanction granted by the respondent No.3 to put the petitioner under suspension is in breach of the principles of natural justice as, according to him, no hearing was given to the petitioner before passing such an order. The learned Counsel further points out that the articles of charge as against the petitioner as mentioned in the Memorandum are illegal as, according to him, there are factual incorrect statements made therein.

The learned Counsel has, thereafter, taken us through each of the charges to point out that the allegations and the factual aspects are incorrect on the basis of the record. The learned Counsel has, thereafter, pointed out that on going through the reply filed by respondent No.4, it appears that despite of the fact that the respondent No.4 had knowledge about the filing of the above writ petition on 29.1.2015, the respondent proceeded to endorse the alleged recommendations of the Inquiry Officer dated 31.1.2015. The learned Counsel further points out that respondent No. 4 was aware about the filing of the above writ petition and he indulged in an illegal

expedient to frustrate the reliefs sought by the petitioner by obtaining the recommendations on 30/01/2015 from the Inquiry Officer. The learned Counsel further points out that the petitioner was never informed about the appointment of the Inquiry Officer which is alleged to have taken place on 27.1.2015 though, according to him, the matter was posted for filing reply before respondent No.4 on 28.1.2015. The learned Counsel further points out that even the Inquiry Officer did not give any notice to the petitioner about holding the inquiry in terms of the Rules. The learned Counsel has, thereafter, taken us through the material on record to point out that the order passed by the Inquiry Officer, as well as the recommendations of the respondent No.4 are patently illegal and in breach of the principles of natural justice and stand vitiated. The learned Counsel has thereafter taken us through the material on record to point out that respondent No.4 has not acted bonafide and has indulged upon an illegality in recommending termination of services of the petitioner. The learned Counsel, as such, submits that the impugned orders passed by the Inquiry Officer, as well as the recommendations of the respondent No.4 are in breach of the principles of natural justice and, as such, the orders be quashed and set aside. The learned Counsel further submits that the Disciplinary Inquiry itself should be stayed as, according to him, the

matter is under consideration before the learned JMFC, Panaji and proceeding with such an inquiry would prejudice the case of the petitioner. The learned Counsel, as such, submits that the petition be allowed and the reliefs sought for be granted.

7. On the other hand, Shri A.N.S. Nadkarni, learned Advocate General appearing for respondents No. 1 to 3 has pointed out that the respondent No.3 has not yet given its approval to the recommendations of the respondent No.4 and consequently, it is open to the petitioner to raise all his grievances before the respondent No.3. The learned Advocate General has further pointed out that as the recommendations have already been issued by the respondent No.4 on 31.1.2015, it would be appropriate not to grant any relief to the petitioner in the above writ petition.

8. Shri R. Rao, learned Counsel appearing for the respondent No.4 has supported the impugned order and the recommendations of the respondent No.4, as well as the report submitted by the Inquiry Officer. The learned Counsel further points out that though the office was close in the afternoon session on 28.1.2015, it is not in dispute that the office of the respondent No.4 was open during the morning

session. The learned Counsel further points out that the Inquiry Officer was also appointed by the respondent No.4 on 27.1.2015 and, as such, according to him, as there was no reply filed by the petitioner on or before 28.1.2015, the action of the Inquiry Officer to proceed with the inquiry and submit the report, is justified. The learned Counsel further points out that the respondent No.4 has already sent the approval/recommendations to terminate the services of the petitioner and, as such, according to him, the petitioner has an alternate remedy to raise his grievances. The learned Counsel further submits that as the petitioner did not file any reply to the Memorandum served on him, the Inquiry Officer was justified to make the report. The learned Counsel further submits that taking note of the reliefs sought by the petitioner, the question of granting any relief to the petitioner is not at all justified as, according to him, the petition has become infructuous. The learned Counsel, as such, submits that the petition be rejected.

9. We have carefully considered the rival contentions and we have also gone through the record with the assistance of the learned Counsel. On examining the records and the contentions raised by the Counsel appearing for the respective parties, at the outset, we would

examine the conduct of the respondent No.4 in proceeding to make recommendations despite of the fact that he was very well aware about the filing of the above writ petition and that the petition was posted for admission and interim relief on 2/2/2015. It is an admitted fact that the impugned recommendations were made on 31.1.2015 by which time the respondent No.4 was very well aware about the filing of the above writ petition, as well as the fact that urgent circulation was sought and the matter was posted on 2/2/2015. Apart from that, respondent No.4 who had appointed the Inquiry Officer had knowledge about the filing of the above writ petition, and the posting of the matter for hearing on 2/2/2015 on the basis of the intimation given by the petitioner bringing to the notice of the concerned authority that the above writ petition was filed and posted for hearing on 2/2/2015. The Petitioner also sought time to file the reply to the Memorandum of the Articles along with such intimation. The records further reveal that despite of such knowledge, the respondent No.4 and the Inquiry Officer proceeded not only to hold an inquiry and make report on 30.1.2015, but also proceeded to make recommendations of termination of the services of the petitioner on 31.1.2015.

10. From the afresaid conduct of the respondent No.4 in

making such recommendations and completing the inquiry within two days, the reliefs sought by the petitioner in the above petition became irrelevant and meaningless on account of such action on the part of the respondent No.4 and the Inquiry Officer. Even on perusal of the affidavit filed by the respondent No.4, we find that there are no compelling circumstances disclosed therein which would require such urgency in completing the inquiry, though the matter was already posted for admission and interim relief on 2/2/2015. To our mind, this aspect and the conduct of the Inquiry Officer and the respondent No.4 is a matter of great significance and importance. It is rather unusual and uncommon that the respondent No.4, as well as the Inquiry Officer should proceed to complete the inquiry within a period of two days and make a recommendation to the respondent No.3, though they were very well aware about the filing of the above petition, as well as the date of the hearing. The petitioner had also made a request for granting additional time to file his reply to the Articles of Charge. The respondents have chosen not to touch this aspect of the matter, but only take a technical stand that the relief sought by the petitioner has become infructuous. In such circumstances, it was expected of the respondent No.4 in his affidavit to disclose the reasons for such great hurry to proceed with the inquiry and make the recommendation when

they had knowledge about the above writ petition. This action on the part of the Inquiry Officer and the respondent No.4, *prima facie*, does not appear *bonafide* and in good faith.

11. In such circumstances, taking note of the said conduct of the concerned respondents, we find that an opportunity must be restored to the petitioner if the majesty of the law is to be maintained and the confidence of the litigants in approaching the Courts is to be continued. On the other hand, such acts on the part of the Inquiry Officer and the respondent No.4 should not be condescended by the Court and the respondents should not be allowed to stand on technicalities (that the petition and the reliefs sought have become infructuous in view of such an action on the part of the concerned respondents). This action on the part of the concerned respondents is more or less a case of taking law into their own hands, because you want to achieve what you feel you may not be able to achieve if you were to be heard by the Court. Without expressing anything more, we find that an opportunity has to be restored to the petitioner to file his reply, as well as to proceed with the inquiry in accordance with law.

12. With regard to the contention of the learned Counsel

appearing for the respondent No.4 that the petitioner has an alternate remedy to challenge the orders passed on 30/1/2015 and 31.1.2015, we find that the alternate remedy is not an absolute bar when the order is passed in breach of the principles of natural justice. In the present case, we have already noted herein above the haste in which the Inquiry Officer has conducted the inquiry without even notifying the petitioner about his appointment. Apart from that, the respondent No.4 has also acted in great urgency, without disclosing the reasons for such an action to make recommendations within one day after receipt of the report from the Inquiry Officer. It is to be noted that the purpose of holding an inquiry against a delinquent is not only to establish the charges against him, but also to establish the truth of the matter which may result in establishing or vindicating his stand. As such, fairness on the part of the Authority concerned is of paramount importance. In the present case, we find that the Inquiry Officer and the respondent No.4 have acted in blatant breach of the principles of natural justice and, as such, there is no bar for this Court to interfere in the petition under Article 226 of the Constitution of India.

13. In such circumstances, as it is not disputed that the Office of the respondent No.4 was close during the afternoon session on

28/01/2015, it was not at all appropriate for the Inquiry Officer to proceed on 30th January, 2015 despite of the application filed by the petitioner to seek further time to file his reply to the Articles of Charge and also giving an intimation about the filing of the above writ petition on 29th January, 2015. This conduct on the part of the Inquiry Officer does not disclose any fairness in holding such an inquiry.

14. Apart from that, it is not disputed that the Inquiry Officer has not even given a notice to the petitioner about his appointment, nor of the date fixed by the Inquiry Officer of the inquiry on 29th January, 2015. The records produced by the respondent No.4 also do not disclose that the Inquiry Officer has even taken note of the fact that the petitioner had moved this Court in connection with the Articles of Charge served on the petitioner. There is no mention even of the application seeking time to file written statement and intimation about the filing of the above writ petition which was received by the Disciplinary Authority-Respondent No.4 herein on 24th January, 2015. In such circumstances, we find that the whole exercise on the part of the Inquiry Officer in sending the Report dated 30th January, 2015 and conducting the inquiry exparte, without due notice to the petitioner, as well as the recommendations dated 31st January, 2015 by the

respondent No.4, stand vitiated and cannot be sustained.

15. With regard to the contention of Shri Rohit Bras de Sa, learned Counsel appearing for the petitioner that the inquiry proceedings should be stayed as the same allegations are under consideration before the learned JMFC, we find that this aspect cannot be examined at this stage, as it was not put before the Inquiry Officer and/or the Disciplinary Authority.

16. The judgments relied upon by Shri De Sa, learned Counsel appearing for the petitioner are in the context of the nature of the inquiry to be conducted by the Disciplinary Authority in connection with the alleged charges when proceedings are pending before the Criminal Court. As such, the petitioner, if so advised, can always move the Inquiry Officer with that regard to seek appropriate reliefs. Hence, considering the view which we propose to take in the above writ petition, all contentions of the petitioner with that regard are left open.

17. With regard to the challenge by the petitioner to the approval of suspension granted by the respondent No.3, we find that

such an order was passed on 14th October, 2014 by the respondent No.3 and the petitioner thereafter appeared before the Disciplinary Authority and sought time to file his reply. Hence, as the petitioner initially accepted the said order, which is stated to be in operation only for a period of six months, we find that it would not be appropriate, at this stage, to examine the correctness of such an order passed by the respondent No.3.

18. The contention of Shri R. Rao, learned Counsel appearing for respondent No.4 that the petitioner could have given notice that the Counsel for the petitioner was mentioning the matter for circulation on 27.1.2015, would not justify the action taken by the respondent No.4 despite of the intimation that the matter was posted on 2/2/2015 for consideration.

19. In view of the above, we pass the following order :

The petition is partly allowed. Rule is made absolute in terms of prayer clause (AA), which reads thus :

“(AA) For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the Respondent No.4 to

withdraw the Report dated 30/1/2015 and the Recommendation dated 31/1/2015.”

All the remaining contentions of both the parties, on merits, are left open. The petition stands disposed of accordingly. There shall be no order as to costs.

K.L. WADANE, J.

F.M. REIS, J.

ssm.