

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 580 OF 2014

Diocesan Society Of Education,
with its office at Instituto Nossa
Senhorade Piedade, D. B. Marg,
Panaji, Goa, through its President,
Fr. Joseph Assumption Da Silva
son of Geraldo Vicente da Silva,
68 years old, Roman Catholic Priest,
Indian National, residing at 1st Ward,
Colva, Salcete, Goa.

... Petitioner

Versus

1. Mrs. Audrey Fernandes,
major of age, Indian National.
Residing at Raymond, H. No. 1606,
Marlem Hill, Margao, Goa 403 105,
Associate Professor,
Rosary College of Commerce and Arts,
Navelim, Salcete, Goa.

2. Director of Higher Education,
through its Director,
with office at Directorate of Education,
Alto Porvorim,
Bardez, Goa.

Amendment carried out as
per order dated
12/09/2014

... Respondents

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, Advocate for the petitioner.

Mr. R. G. Ramani, Advocate for respondent no.1.

Mr. S. S. Rebello, Additional Government Advocate for respondent no.2.

Coram:-N. M. JAMDAR, J.

Date:- 4 March 2015.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Mr. Ramani, learned Counsel waives service of notice on behalf of respondent no.1. Mr. Rebello, learned Additional Government Advocate waives service of notice on behalf of respondent no.2. Taken up for disposal by consent.

2. By this petition, the petitioner challenges the order passed by the Goa Human Rights Commission, Panaji dated 9 September 2014 on an application filed by respondent no.1, directing the petitioner to decide the application for Child Care Leave.

3. The petitioner is a society registered under the Societies Registration Act. The petitioner is an Educational Institute adopting general educational policy keeping in mind the objects of the church. The Respondent no.1 is working as an Associate Professor in the college established by the petitioner. The respondent no.1 was appointed on 18 April 1994 and was posted at St. Xavier's College at Mapusa. The respondent no.1 is working as Associate Professor in Rosary College of Commerce

and Arts at Navelim. On 2 May 2014, the respondent no.1 applied for the Child Care Leave from 16 June 2014 to 2 May 2015. This application was rejected by the petitioner on 6 June 2014. The respondent no.1 thereafter made an application to the Goa Human Rights Commission, Panaji in which an objection was raised by the petitioner that the Goa Human Rights Commission, Panaji will not have jurisdiction as the subject matter is a service condition of the Respondent no.1. By an interim order dated 9 September 2014, the petitioner was directed to consider the application filed by respondent no.1 within a period of five days. This order is being challenged by way of the present Writ Petition.

4. Mr. Pereira, learned Senior Counsel for the petitioner submitted that Human Rights Commission will have no jurisdiction as grant of Child Care Leave is a part of service condition. He submitted that the application made by respondent no.1 was rightly rejected. He also submitted that the Division Bench of this Court has admitted a Writ Petition No. 438 of 2013 on 27 November 2013 on the ground as to whether the Human Rights Commission could entertain the dispute pertaining to a purely service matter.

5. Mr. Ramani, learned Counsel for respondent no.1 on the other hand submitted that Child Care Leave is a part of human rights and is not a service condition. He submits that the application made by respondent no.1 has been rejected by the petitioner without any reasons. He also submitted that respondent no.1 faces various hardship and is difficult for her to

look after the child while attending to the duties. He also submitted that the Education Department of State of Goa has issued various circulars regarding grant of such Child Care Leave.

6. After hearing the matter for sometime, it was put to the learned Counsel for respondent no.1, as to whether the respondent no.1 would now make an fresh application to the petitioner, under the direction of this Court, as the legal effect of the direction of the Human Rights Commission would require detailed adjudication, and since the Respondent no.1 has an urgency. The learned Counsel for respondent no.1 admitted that even the Human Rights Commission by the impugned order has only directed the petitioner to consider the application filed by the respondent no.1. The impugned direction is only that the application would be considered by the petitioner. The learned counsel for the petitioner submitted that the petitioner institute has framed the rules and also that the leave applications are considered on case to case basis within the ambit of the rules. He however submitted that the petitioner is not averse to consider the application now to be made by the Respondent no.1, as the main argument is that the Human Right Commission has no jurisdiction to issue such direction.

7. Therefore appropriate course of action would be to direct the petitioner to consider the application now to be made by the respondent no.1, as per the rules framed by the petitioner. It is also to be noted that there is no challenge to the rules framed by the petitioner in these proceedings and therefore the application to be made by the respondent no.1 will have to be decided as per

the rules prevailing in the institution of the petitioner. Since it is the grievance made by the respondent no.1 that the earlier rejection was without reasons, the petitioner will decide the application by giving adequate reasons.

8. Considering the fact that petitioner is not only an Educational Institution but is managed by a religious body, it is expected that the petitioner would take sympathetic view on the request made by the respondent no.1, who is working in the Institution since last 20 years. The petitioner will also keep in mind the object behind grant of such leave and that the occasion for a Child Care Leave is a temporary phase in the service career of an employee. Mr. Pereira submits that as much possible sympathetic view will be taken, as permissible under the rules.

9. Accordingly the petition is disposed of by directing the respondent no.1 to make an appropriate application to the petitioner within a period of one week from today. The application will be decided by the petitioner within a period of two weeks thereafter. Mr. Ramani states that therefore at present it is not necessary to go on with the proceedings before the Human Rights Commission and undertakes to withdraw the same within a week from today.

10. In view of this consensus, it is not necessary to go into the various legal arguments raised by both the sides as the impugned order does not survive. All contentions are kept open.

11. The petition stands disposed of in above terms.

N. M. JAMDAR,J.

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