

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 926 OF 2016

The Disciplinary Authority,
School Managing Committee,
Through its Chairman, Dr. Vinay M. Surlacar,
Peoples' Higher Secondary School,
Panaji – Goa.

... Petitioner.

Versus

(1) Director of Education
Education Department
Porvorim, Bardez, Goa.
(2) Shri Anil Govind Naik
Teacher Grade-I,
Peoples' Higher Secondary School,
Panaji – Goa.

... Respondents.

Mr. A. D. Bhobe, Advocate with Mr. Raunaq Rao, Advocate for the
Petitioner.

Mr. Abhay Khandeparkar, Advocate with Mr. Rohan Desai, Advocate for
the Respondent No. 2.

CORAM :- F.M. REIS, J.

DATE:- 01st DECEMBER, 2016

ORAL ORDER:

Heard Shri A. D. Bhobe, learned Counsel appearing for the Petitioner
and Shri A. Khandeparkar, learned Counsel appearing for the Respondent
no. 2.

2. The challenge in the petition is to the refusal of consent for major
penalty intended to be imposed on the Respondent no. 2 by an order dated
18.03.2016.

3. Shri Bhobe, learned Counsel appearing for the Petitioner, has pointed out that in view of some obscene messages sent by the Respondent no. 2 to the Chairman/complainant, the Respondent no. 2 was charged for two offenses which were duly inquired by the Inquiry Officer who came to the conclusion that the Petitioner had established both the Articles of Charge. Learned Counsel has thereafter taken me through the inquiry report which, according to him, clearly shows that there was dereliction of duty on the part of the Respondent no. 2, who was also a teacher in the school, and as such, was imposed a major penalty. Learned Counsel further pointed out that the Managing Committee proceeded to impose the major penalty of dismissal of service on the Respondent no. 2 which was forwarded to the Respondent no. 1 for his approval. The learned Counsel further submits that the Respondent no. 1, after hearing both the parties, has come to the conclusion that no case was made out by the Petitioner for imposing major penalty but, however, imposed a minor penalty of withholding three increments. The Learned Counsel further pointed out that the Respondent no. 1 has failed to address the core issues involved whilst passing the impugned order as, according to him, the main concern of the Petitioner was that, the action of the Respondent no. 2 in sending such obscene messages would cause grave prejudice and affect the students studying in the school run by the Petitioner. Learned Counsel further points out that it is the contention of Respondent no. 2 that such messages sent from the

mobile of the Respondent No. 2 were in fact sent by his niece who is dyslexic/slow learner. The learned Counsel further points out that this has not been established by the Respondent no. 2 and, as such, according to him, as the charges were duly proved by the Petitioner, the Respondent no. 1 was not justified to pass the impugned order. The learned Counsel has thereafter taken me through the records to point out that the conduct of the Respondent no. 2 and the messages sent by him deserve a major penalty which was sought to be imposed by the Petitioner. Learned Counsel, as such, pointed out that the impugned order be quashed and set aside.

5. On the other hand, Shri A. Khandeparkar, learned Counsel appearing for the Respondent no 2, has pointed out that the Respondent no. 1, on the basis of factual evidence, has rightly come to the conclusion that the complainant was not the Chairman of the concerned establishment nor a parent of any student of the concerned school. Learned Counsel has, thereafter, taken me through the 2 articles of charge framed which clearly pointed out that the charges were on an assumption that the complainant was a chairman and parent of a student. Learned Counsel further submits that as this factual aspects are itself found to be incorrect, there was no basis for the alleged charge which aspect has been clearly noted by the Respondent no. 1 whilst passing the impugned order. Learned Counsel further pointed out that as the niece was a slow learner and this has been

established on the basis of a report of the NGO which has been taken note of by the Respondent no. 1 whilst passing the impugned order would itself show that the contention of the Complainant that such messages were sent by the Respondent no. 2 has no substance and there is no case made out for interference in the impugned order.

6. I have duly considered the submissions of the learned Counsel and I have also gone through the records and the Article of Charges framed against the Respondent no. 2.

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 Institution nor a parent of a student but was only 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 on 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.

8. Considering the above, I find that the Respondent no. 1 has, in fact, on minute examination of the relevant material on record and the evidence adduced by the parties, taken a view that the Petitioners are not justified to impose the major penalty on the Respondent no. 2 but to impose a minor penalty whereby 3 increments have been ordered to be withheld. With the assistance of the learned Counsel, I have also gone through the alleged messages which were stated to be sent by Respondent no. 2 to the original complainant. On going through the text thereof, I find that the Respondent no. 1 was justified to come to the conclusion that the Petitioners were not entitled to impose the major penalty on the Respondent no. 2.

9. With this view of the matter, I find that there is no case made out to interfere in the impugned order and, as such, the petition stands, accordingly, rejected.

F. M. REIS, J.

msr.