

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 801 OF 2016**

Shri Shrikant S. Vengurlekar,
Asst. Teacher, Vikas High School,
Valpe, Virnoda, Pernem Goa
R/o H.No.92, Village Korgao,
Pernem Taluka Goa.

.... Petitioner

Versus

1. The Chairman,
School Managing Committee,
Virnoda Education Society's,
Vikas High School,
Valpe, Virnoda, Pernem Goa

2. The Director of Education,
Government of Goa,
Directorate of Education,
Porvorim Goa.

.... Respondents

Mr. Vallabh D. Pangam, Advocate for the petitioner.

Mr. A. Gosavi, Advocate for the respondent no.1.

Mr. Vishwadh Sardessai, Addl. Government Advocate for the respondent no.2.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 27th September, 2016

ORAL JUDGMENT (Per F. M. Reis,J)

Heard Mr. V. Pangam, learned counsel appearing for the petitioner, Mr. A. Gosavi, learned counsel appearing for the respondent no.1 and Mr. V. Sardessai, learned Addl. Government Advocate appearing for the respondent no.2.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. The above petition inter alia prays for an appropriate writ or direction to quash and set aside the order dated 12.07.2016 passed by the respondent no.2 bearing No. Acad/PER/3/91/Vol. IV/1669. By the said order, the respondent no.1 has granted the extension of suspension of the petitioner for a period of three months with effect from 16.07.2016.

5. Briefly, it is the contention of the petitioner that the

respondent no.2 has granted the extension of suspension of the petitioner without notifying or hearing the petitioner. It is further the case of the petitioner that the respondent no.1 sought an extension of suspension for a period of three months to complete the disciplinary inquiry against the petitioner which came to be granted by the impugned order. It is further pointed out that the charge-sheet is not filed within the period of 90 days from the date of prior approval and that the petitioner has not been served with the documents which are forming part of the charge-sheet. As no hearing was given to the petitioner, the impugned order according to the petitioner deserves to be quashed and set aside.

6. Mr. Pangam, learned counsel appearing for the petitioner has taken us through the relevant provisions of the Goa, Daman and Diu School Education Act as well as the Rules to point out that even for extension of suspension, the petitioner has to be heard before any order is passed by the respondent no.2. The learned counsel has relied upon the provisions of Rule 92 of the Education Rules as well as the provisions of sub-section (3) of Section 11 of the said Act in support of the said contention.

7. On the other hand, Mr. V. Sardesai, learned Addl. Government Advocate appearing for the respondent no.2 has submitted that a hearing was given to the petitioner while issuing the original order of suspension and as such according to him there is no requirement for another hearing at the time of extension. It is further pointed out that the application filed by the respondent no.1 for extension of suspension was granted by accepting the reasons therein. However, it is pointed out that the respondent no.2 shall give a hearing and take a decision on the application filed by the respondent no.1.

8. Upon hearing the learned counsel appearing for the respective parties, a short point for consideration is whether the impugned order dated 12.07.2016 stands vitiated for not giving a hearing to the petitioner. Rule 92(2) of the Education Rules reads thus :

“92. Suspension.-- (1).....

(2) No order of suspension shall remain in force for more than 6 months unless the managing committee, for reasons to be

recorded by it in writing, directs the continuation of the suspension beyond the period of six months, subject to sub-section (3) of Section 11 of the Act.”

9. The said Rule clearly provides that the order of suspension is not in force for more than six months unless the respondent no.1 for the reasons to be recorded in writing direct the suspension beyond the period of six months subject to sub- section (3) of Section 11 of the Act. Section 11 (3) of the said Act reads thus :

“11. Terms and conditions of service of employees of recognized private schools.-

(1).....

(2).....

(3) Where the managing committee of a recognized private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except where a disciplinary proceeding is contemplated or pending, and except with the prior approval of

the Director:

Provided that no such suspension shall remain in force for a period exceeding six months, which may, with the prior approval of the Director and for reasons directly attributable to the teacher and recorded in writing, be extended by a further period of three months at a time:

.....”

10. Sub Rule 4 of Section 11 clearly provides that where there is an intention to suspend an employee, the Director/respondent no.2 after hearing both the parties has to be satisfied that there are adequate and reasonable grounds for such suspension. For extension of the period of suspension the reasons have to be attributed to the petitioner/teacher. Admittedly, in the present case, the petitioner was not heard when the period of suspension was extended and as such on this ground alone the impugned order deserves to be quashed and set aside and the respondent no.2 be directed to decide the application filed by the respondent no.1 dated 01.07.2016 afresh after giving hearing to the petitioner.

11. In view of the above, we pass the following :

ORDER

- (i) The impugned order dated 12.07.2016 is quashed and set aside.
- (ii) The respondent no.2 is directed to take a fresh decision on the application dated 01.07.2016 for extension of suspension of the petitioner in the light of the observations made herein above in accordance with law.
- (iii) All contentions of the parties on merits are left open.
- (iv) Rule is made absolute in the above terms.
- (v) The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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