

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 533 OF 2017

Shri Anil Govind Naik

..... Petitioner

V e r s u s

1. The State of Goa & anr.

..... Respondents

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

Mr. V. Sardesai, Addl. Government Advocate for the Respondent no. 1.

Mr. A. D. Bhobe and Ms. S. Bhobe, Advocates for the Respondent no. 2.

**Coram : MANJULA CHELLUR, C.J. &
F. M. REIS, J.**

Date : 14th July, 2017.

ORAL ORDER

Heard the learned Counsel appearing for the Petitioner as well as the Respondent-Management. Apparently, in respect of certain messages said to have been sent by the Petitioner, a Departmental Inquiry as well as penal action proceedings were initiated. However, so far as the penal action is concerned, it was held that no case is made out. Immediately, after the initiation of Departmental Proceedings, though the Petitioner seems to have approached this Court challenging the initiation of proceedings alleging that the charges framed are not maintainable, the Court did not consider the same on merits and disposed of the Petition keeping all the contentions

open. That means, even the contention of challenging the very framing of charges based on the alleged material, was kept open.

2. Again, when the Disciplinary Proceedings came to be concluded, opining that the Petitioner is guilty of the misconduct proposed a major penalty. The matter was sent for the approval of the Director of Education in terms of the procedure for approval. At that point of time, the Director of Education opined that the material or the evidence brought on record would not constitute a charge for imposing of major penalty and it would only lead to minor penalty and suggested imposition of minor penalty.

3. Challenging the same, the Management approached this Court seeking intervention of this Court contending that the decision of the Disciplinary Authority was justified. This Court by detailed Order disposed of the Petition opining that the Petitioner i.e. the Management was not justified to impose a major penalty on the material available. Subsequent to this Order dated 01.12.2016, the Disciplinary Authority seems to have confirmed the minor penalty and have proceeded to impose minor penalty of withholding of three increments of the present Petitioner. Aggrieved by the said Order, the present Petitioner is before this Court opining that in terms of Rule 100(xviii) even the charge could not have been framed for minor penalty.

4. Apparently, as stated above, at the beginning of the proceedings of Disciplinary Inquiry, such an attempt was made by the Petitioner which came to be disposed of without opining on merits the challenge made by the Petitioner. Now, on perusal of Rule 94, 96 and 100 of The Goa, Daman and Diu School Education Act & Rules, 1984, Rule 96 refers to procedure for imposing minor penalty which reads thus :

"96. Procedure for imposing minor penalty - No order imposing the minor penalty shall be made except after informing the employee in writing of the proposal to take action against him and the allegation on which such action is proposed to be taken and except after giving to the employee an opportunity to make any representation to the Disciplinary Authority" against the proposed action.

Provided that any employee of an recognized private school, who is aggrieved by any order imposing on him any such penalty, may within 30 days from the date of receipt by him of such an order, prefer an appeal to the Director of Education, through proper channel as laid down in the rule 90(5)."

5. In terms of Rule 96, an opportunity must be given to the employee by the Disciplinary Authority against the proposed minor penalty

and then after giving such opportunity must proceed to confirm the minor penalty proposed or modify the same as the case may be.

6. Learned Counsel representing the Management is fair enough to submit that the matter came before this Court on earlier occasion when it was at the stage of approval by the Director of Education for imposing major penalty. After that, no further opportunity in terms of Rule 96 came to be issued since Director opined that the charges call for minor penalty. Therefore, he fairly submitted that he would leave it to the Court's decision to take one view or the other in the circumstances available.

7. Since the main arguments seem to be that the status of the person to whom the messages are sent has to be first decided in order to opine that the entire procedure adopted is right or wrong and till such opinion is expressed by the concerned Authority in terms of the procedure, there cannot be imposition of penalty or no further proceedings can be held. Rather, there cannot be any Disciplinary Proceedings at all. Initiation of proceedings itself which has to be considered in terms of the procedure, we set aside the impugned Order dated 10.05.2017 of imposing minor penalty. The matter is remitted back to the Disciplinary Authority to proceed with the same strictly in accordance with the procedure contemplated for imposing minor penalty. We also point out at this stage we are not expressing any opinion on merits on any of the arguments raised before us since the Appeal

is provided under Rule 96 where the Petitioner has an opportunity to refer to evidence and material on factual issues.

F. M. REIS, J.

MANJULA CHELLUR, C.J.,

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