

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.1094 OF 2017***

1. Royale Secondary School
A School established by Xavier
Afonso Memorial Institute,
and recognized by the Directorate of
Education, Government of Goa,
and having its premises at Plot No.'O',
Sailem Bhat, Aradi Bandh,
Taliegao, Goa, through its
Headmistress, MARIAZITA
AFONSO, Major in age,
Indian National,
resident of Bungalow No.3,
Afonso Residency, Taleigao, Goa.
2. Xavier Afonso Memorial Institute,
A Society registered under the
Societies Registration Act, 1986,
having its registered office at Plot No.
'O', Sailem Bhat, Aradi Bandh,
Taliegao, Goa, through its Chairman,
Mr. Christian Po,
Son of Antonio Po,
Major in age,
Indian National,
married, resident of Bungalow No.3,
Afonso Residency,
Taleigao Goa.

... Petitioners

Versus

1. State of Goa,
Through its Chief Secretary,
having office at Secretariat,
Porvorim,
Bardez Goa.
2. Directorate of Education,
Government of Goa,
having office at Directorate
of Education,
Panaji Goa.
3. Tushar Gajanand Narvekar,
Son of Gajanand U. Narvekar,
major of age, Indian National,
Resident of House No.248,
Boca Da Vaca, Panaji Goa. ... Respondents.

Ms. K. Pednekar, Advocate for the Petitioners.

Mr. D. Lawande, Advocate General with Mr. A. Jamadar, Addl.
Government Advocate for Respondent Nos.1 and 2.

Mr. D. Pangam, Advocate for Respondent No.3.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 28 March 2018.

Oral Judgment (Per N.M. Jamdar, J) :

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for final disposal.

2. The Petitioner, an education institution, has challenged the order passed by the Director of Education dated 21 September 2017 under Rule 83 of the Goa, Daman and Diu School Education Rules of 1986.

3. The Respondent No.3 is working as a Physical Education Teacher on probation basis in the services of the Petitioner. On 29 April 2013, the Petitioner issued an advertisement to fill in the post of Physical Education Teacher. On 10 October 2015, the Respondent No.3 submitted the application pursuant to the advertisement. On 19 November 2013, the Petitioner was granted provisional appointment and on 17 January 2014, the Respondent No.3 was appointed on probation. It appears that thereafter certain memorandums were issued to the Respondent No.3 and the Petitioner initiated some proceedings against the Respondent No.3. The Petitioner by letter dated 2 November 2016, requested the Director of Education – Respondent No.2 to grant approval for the dispensation of services of Respondent No.3. By the impugned order dated 21 September 2017, the Director of Education refused the permission.

Hence, the Petitioner has filed the present petition challenging the impugned order.

4. We have heard Ms. K. Pednekar, learned counsel for the Petitioner, Mr. D. Lawande, learned Advocate General for Respondent Nos.1 and 2 and Mr. D. Pangam, learned counsel for Respondent No.3.

5. That the Respondent No.3 is appointed on probation basis is not in dispute. The aspect of probation is covered in Rule 83 of the Rules of 1986. Rule 83 reads thus:

*“83. **Probation.**- (1) Every employee shall on initial appointment be on probation for a period of 2 years which may be extended by the appointing authority by another year and the services of an employee may be terminated with one month's notice without holding any enquiry during the period of probation if the work and the conduct of the employee, during the said period is not, in the opinion of the appointing authority, satisfactory:*

Provided that no termination from the service of an employee on probation shall be made by a recognised non-minority school except with the previous approval of the Director of Education.

Explanation: *The work is said to be unsatisfactory only when written Memos are served on the employee pointing out the defects or acts of misbehaviour and reasonable opportunities are given to the employees to explain and improve; and provided further that those deficiencies/ shortcomings are reflected in the confidential report/reports of the respective year/years.*

(2) If the work and conduct of an employee during the period of probation is found to be satisfactory, he shall be on the expiry of the period of probation or the extended period of probation as the case may be confirmed with effect from the date of expiry of the said period:

Provided that no teacher shall be confirmed unless he/she is trained and completes 2 years post training service; and his/her probation period shall be extended for a further period till he/she gets himself/herself trained:

Provided further, no untrained teacher shall be retained in service for a period of more than 5 years unless he/she joins the Training College before the completion of 5 years untrained service and in such a situation the Director of Education, at his discretion may grant extension by 2 more years i. e. upto completion of 7 years but one year at a time, so as to enable the teacher to complete his/her training, and in case the teacher fails to acquire

the training qualification, during the extended period his/her services shall be terminated by the management after giving one month's notice.

(3) Nothing in this rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period.”

Reading of this Rule shows that the probation period is for two years, which may be extended by the appointing authority, as specified. It is open to the appointing authority to terminate the services of such employee with one month's notice without holding any enquiry during the period of probation, if the work and the conduct of the employee during that period, is not satisfactory. Proviso to Rule 83(1) stipulates that no termination from the services of such an employee be made by a recognised non-minority school except with previous approval of the Director of Education. Explanation to Rule 83(1) explains the term 'unsatisfactory work' and stipulates the work is said to be 'unsatisfactory' when the written memos are served in the manner provided, opportunity is given and shortcomings are reflected in the confidential report etc.

6. Though the services of an employee on probation shall

not be dispensed with, without the previous approval of the Director of the Education, the question is the extent of his jurisdiction. The Goa, Daman and Diu School Education Act of 1984 and the Rules of 1986 clearly show that the Director of Education is not an Appellate Authority. The approval of the Director is a safeguard provided in favour of the employee on probation, and it does not confer any appellate powers on the Director. The parameters within which the Director has to consider the grant approval are indicated in the Rule 83 itself.

7. In the present case, the Director in the impugned order, after recording the facts has observed thus :

“ Assuming that the alleged misconduct has been proved against Physical Education Teacher, I am unable to appreciate the argument of the School Management to terminate the services of Shri Tushar Narvekar, Physical Education Teacher of the School working on probation in terms of Rule 83 of the Goa School Education Rules, 1986. Justice, equity and fair play demand that the punishment must always be commensurate with the gravity of the offence in order to avoid the charge of vindictiveness or arbitrariness.

I therefore in exercise of the powers vested in me under Rule 83 of the Goa School

Education Rules 1986 reject the proposal submitted by the School Management for termination of service of Shri Tushar Narvekar, Physical Education Teacher.”

The Director opined that, even though the misconduct may have been proved, justice, equity and fair play demand that the approval should not be granted. The Director has clearly overstepped his jurisdiction. This ground, at the most, is available to an appellate authority to set aside the order of punishment and that too if the appellate authority is so empowered. The substantive satisfaction of this nature and the doctrine of proportionality are generally within the domain of an appellate Authority, with specific provisions to that effect. Such wide and unguided equity jurisdiction is not conferred on the Director under Rule 83. The Director while exercising powers has to work within the ambit of Rule 83. The Director has to only ensure that the basic ingredients of Rule 83 are satisfied and nothing more. For example he has to see that memos were issued or not or whether entries have been made or not and such other parameters specified. The Director has been entrusted with the powers only to ensure that the safeguards enacted in the Rule 83 have been complied with.

8. In the present case, the Director has not even finally

concluded whether Rule 83 is complied with or not. Since the Director has not examined whether the ingredients of Rule 83 are satisfied or not, the impugned order will have to be set aside and the proposal of the Petitioner dated 2 November 2016 will have to be restored to the Director of Education.

9. The Writ Petition is allowed. The order dated 21 September 2017 is set aside. The proposal of the Petitioner dated 2 November 2016 shall be restored on the file of the Director of Education, who will take a decision thereupon as contemplated under Rule 83 of the Rules of 1986 within a period of three months. We make it clear that we have not commented as to whether in the present case the ingredients of Rule 83 are satisfied or not. It is for the Director of Education to conclude while deciding the proposal of the Petitioner.

10. Rule is made absolute in above terms. No order as to costs.

Prithviraj K. Chavan , J.

N.M. Jamdar, J.