

***IN THE HIGH COURT OF BOMBAY AT GOA***

***WRIT PETITION NO.46 OF 2019***

Mrs. Ujjaini Prabhu Dessai,  
major in age,  
Indian National,  
presently working as Head Clerk,  
C/o Curchorem Cacora  
Municipal Council,  
Curchorem Goa. ... Petitioner

***Versus***

1. The Curchorem Cacora  
Municipal Council,  
Represented through its Chief Officer,  
Curchorem Goa.
2. The Director,  
Directorate of Municipal Administration,  
Panaji Goa.
3. Mr. Kapil Phadte,  
C/o The Curchorem Cacora  
Municipal Council,  
Curchorem Goa. ... Respondents

Mr. Vivek Angelo Rodrigues, Advocate for the Petitioner.

Mr. P. Talaulikar, Advocate for Respondent Nos.1 and 3.

Mr. P. Dangui, Government Advocate for Respondent No.2.

***Coram : M. S. Sonak &  
Prithviraj K. Chavan, JJ.***

***Date : 26<sup>th</sup> February, 2019***

**Oral Judgment ( Per M. S. Sonak, J)**

Heard Mr. V. Rodrigues, learned counsel for the Petitioner, Mr. P. Talaulikar, learned counsel for Respondent Nos.1 and 3 and Mr. P. Dangui, learned Government Advocate for Respondent No.2.

2. Rule. With the consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3. The learned counsel appearing for the respective Respondents waive service on Rule.

4. The challenge in this petition is to the order dated 6th December, 2018 and the consequential Memorandum dated 21st December, 2018 issued by the Chief Officer of Curchorem- Cacora Municipal Council.

5. The main order dated 6th December, 2018 places the

Petitioner under suspension and further purports to transfer the Petitioner, who has headquarters of Curchorem-Cacora Municipal Council as Head Clerk of the Ponda Municipal Council, Ponda Goa or in any case, the impugned order purports to change the headquarters of the Petitioner from Curchorem- Cacora Municipal Council to Ponda Municipal Council, Ponda. The Memorandum dated 21st December, 2018, which is purely consequential requires the Petitioner to report the Quepem Municipal Council since, it was reported that Ponda Municipal Council was not ready to accept the Petitioner as Head Clerk.

6. According to us, the portion of the impugned order dated 6th December, 2018, to the extent, the Chief Officer of Curchorem-Cacora Municipal Council purports to transfer or change the headquarters of the Petitioner to Ponda Municipal Council or for that matter the Quepem Municipal Council is *ex facie* without jurisdiction. The Chief Officer has no jurisdiction to order the transfer of an employee of one Municipal Council to some other Municipal Council or to order the change of the headquarters of the employee of one Municipal Council to some other Municipal Council. In fact, such portion of the impugned order was not even defended by Mr. Talaulikar, learned counsel appearing for Respondent Nos.1 and

3.

7. On the previous occasion even the learned Advocate General who had appeared in the matter did not defend the aforesaid portion of the impugned order. Mr. Dangui, learned Government Advocate also accepts that the Chief Officer has no jurisdiction to order such transfer or to order such change of headquarters. Accordingly, there can be no difficulty in interfering with the portion of the impugned order to the extent the same transfers or purports to change the headquarters of the Petitioner. The portion of the impugned order which is indicated in bold letters below, is hereby quashed and set aside.

No. CCMC/CO-Admn/2018-19/3543

Date : 06/12/2018

**O R D E R**

*WHEREAS disciplinary proceedings against Smt. Ujjaini Prabhu Dessai, Head Clerk of this Office are contemplated towards dereliction of duties inter alia misconduct and other administrative lapses.*

*NOW THEREFORE, I KAPIL PHADTE, CHIEF OFFICER Curchorem Cacora Municipal Council Curchorem Goa in exercise of the power conferred by Sub-Rule (1) of Rule 10 of Central Civil Service (Classification, Control and Appeal ) Rules, 1965 hereby place Smt. Ujjaini Prabhu Dessai under suspension with*

*immediate effect.*

***It is further ordered that during the period of force of this order the Headquarters of Smt. Ujjaini Prabhu Dessai, Head Clerk shall be Ponda Municipal Council, Ponda Goa. Smt. Ujjaini Prabhu Dessai, Head Clerk shall not leave the said Headquarters without the prior permission of the Chief Officer Ponda Municipal Council. Smt. Ujjaini Prabhu Dessai, Head Clerk shall not visit this Office without the prior approval of the undersigned.***

*Further, Smt. Ujjaini Prabhu Dessai, Head Clerk shall hand over all files, keys of cupboards and other gadgets along with all passwords if any in her possession to Shri Ramesh Prabhu Dessai, UDC.*

*During the period of suspension, subsistence allowance shall be admissible to Smt. Ujjaini Prabhu Dessai, Head Clerk as per rules.*

Sd/-  
( KAPIL PHADTE)  
CHIEF OFFICER

8. The consequential Memorandum dated 21st December, 2018 cannot survive the setting aside the aforesaid portion of the impugned order and consequently even the same is hereby set aside. Accordingly, it is clarified that though the Petitioner may remain under suspension, the headquarters shall nevertheless be the Curchorem- Cacora Municipal Council.

9. In so far as the issue of suspension is concerned, Mr. Rodrigues, on the basis of the instructions from the Petitioner, does not press the challenge to the order of suspension at this stage.

10. Mr. Talaulikar, learned counsel appearing for Respondent Nos.1 and 3 has made a statement that the inquiry proceedings will be concluded as expeditiously as possible and in any case within a period of three months from today. Mr. Talaulikar further makes a statement that though the Respondent No.3 does not admit any allegation of malafides levelled against him by the Petitioner, nevertheless, the inquiry will be held by some other Inquiry Officer and not by the Respondent No.3. In fact, this was one of the grievances of the Petitioner and one of the reliefs claimed in this petition was that the Respondent No.3 may not be permitted to conduct the inquiry in this matter.

11. There is no necessity to go into the issue of malafides, in view of the aforesaid development. However, it is open to the parties to raise such issue before the appropriate forum at the appropriate stage. We clarify that we have not gone into such issue and therefore the contentions of both parties are kept open.

12. Mr. Rodrigues further points out that though the Petitioner is placed under suspension by order dated 6th December, 2018, the subsistence allowance has not yet been paid to the Petitioner.

13. Mr. Talaulikar, learned counsel for Respondent Nos.1 and 3 points out that the subsistence allowance was not paid because there were no compliances of certain procedural formalities on behalf of the Petitioner. Mr. Rodrigues, learned counsel for the Petitioner on the basis of the instructions from the Petitioner states that the Petitioner will comply with all such formalities within one week from today. Mr. Talaulikar states that the Respondent Nos.1 and 3 will inform the Petitioner the formalities which are required to be complied with within two days from today, if not already informed. Mr. Talaulikar in fact states that such requirements have already been informed to the Petitioner. He states that no sooner such formalities are complied with the subsistence allowance will be released.

14. The Petitioner to report to the Curchorem- Cacora Municipal Council, which is her headquarters in order to comply with the procedural formalities necessary for payment of subsistence allowance on 27th February, 2019 at 10.00 a.m.

15. Accordingly, rule is made absolute in the aforesaid terms. All contentions of all parties are kept open. There shall be no order as to costs.

16. All concerned to act on the basis of the authenticated copy of this order.

***Prithviraj K. Chavan, J.***

***M. S. Sonak, J.***

***at\****