

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 503 OF 2019

Anil Govind Naik
Major age 53 years, Teacher
Grade-I, People's Higher
Secondary School, Residing
at Flat No.2/G-3, Dukle
Residency, Tambdi-Mati,
Taleigao - Goa - 403 002.

... Petitioner

V e r s u s

1. The Director o Education
having office at Directorate
of Education, Alto-Porvorim,
Bardez-Goa.

2. The Chairman,
School Managing Committee,
The People's Higher
Secondary School, Having
office at Rua de Qurem,
Mala,Panaji-Goa.

... Respondents

Petitioner is person.

Ms. Susan Linhares, Additioanl Government Advocate for the
Respondent no.1.

Mr. A. D. Bhobe, Advocate for the Respondent no.2.

Coram :- M. S. SONAK &
 C. V. BHADANG, JJ.

Date : 19th November, 2019.

ORAL JUDGMENT (*Per M. S. Sonak, J.*)

1. Heard Mr. Anil Naik, the petitioner in person, Ms. Linhares, learned Additional Government Advocate for the respondent no.1 and Mr. Bhohe, the learned Counsel for the respondent no.2.

2. Rule. The rule is made returnable forthwith with the consent of the learned Counsel for the parties.

3. The petitioner has raised several challenges in this petition including challenge to suspension order dated 16.10.2014. According to us, at this stage, it is not possible to go into all such challenges. The real grievance of the petitioner, at the present stage, appears to be the communication dated 23.03.2018 addressed by the Director of Education (ACAD) virtually refusing to entertain his appeal under Section 96 of the Goa School Education Rules, 1986, questioning the order dated 06.01.2018 imposing a minor penalty upon the petitioner.

4. The petitioner has chosen to challenge the order dated 06.01.2018 but there is no formal prayer to challenge the communication dated 23.03.2018 by which the Director has declined to exercise appellate jurisdiction.

5. Since the petitioner appears in person and further since we find that the communication dated 23.03.,2018 by which the Director has refused to exercise appellate jurisdiction is quite unsustainable, we, with consent of learned Counsel for parties, addressed the said issue directly without requirement of any formal amendment as such.

6. The record indicates that earlier the respondent no.2 had held Departmental Proceedings against the petitioner and proposed to the Director of Education, a major penalty. The Director of Education, however, returned the proposal by observing that only a minor penalty can be said to be warranted in the circumstances.

7. Based upon the aforesaid, minor penalty was imposed upon the petitioner by order dated 10.05.2017. The order dated 10.05.2017 was challenged by the petitioner in instituting Writ Petition No.533/2017.

8. Writ Petition No.533 of 2017 was disposed of by this Court by setting aside the order dated 10.05.2017 and remitting the matter to the disciplinary authority to proceed in accordance with the order imposing minor penalty. This Court also made it clear that no opinion on merits was being expressed since appeal is provided under Rule 96, in case, any minor penalty is once again imposed.

9. The relevant observation of paragraph 7 of our order dated 14.07.2017 disposing off Writ Petition No.533 of 2017, reads as follows :

“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.”

10. In pursuance of the remand, the respondent no.2 has once again imposed a minor penalty against the petitioner vide order dated 06.01.2018. As against the same, the petitioner instituted an appeal before the Director of Education. By communication dated 23.03.2018, the Director has held that there is no point in

hearing the appeal because on the same subject matter, earlier the case was heard by the Department and order dated 18.03.2016 was made.

11. According to us, the communication dated 23.03.2018 and the consequent refusal to entertain the petitioner's appeal is quite unsustainable. It is true that on the earlier occasion, the Department proposed minor penalty. However, the minor penalty was set aside by this Court and the matter was remanded to the Disciplinary Authority for taking a fresh decision. Accordingly, the respondent no.2 made the order dated 06.01.2018 once again imposing a minor penalty upon the petitioner. As against this, the petitioner in terms of Rule 96, has a right of an appeal. There is a corresponding duty upon the Director of Education to consider such appeal in accordance with law. Such jurisdiction could not have been declined by the Director by simply observing that on the earlier occasion, some decision was taken in the matter. This was all the more necessary

considering the observations made by us in our earlier order dated 14.07.2017 which we have transcribed above. The scope of enquiry at the two stages i.e. at stage of approving penalty and at stage of consideration of appeal, is quite different.

12. Accordingly, we set aside the communication dated 23.03.2018 and direct the Director of Education to hear and dispose off on merits the petitioner's appeal against the order dated 06.01.2018 uninfluenced by any previous decision taken by the Department on this subject matter. The Director will, no doubt, would have to comply with principles of natural justice which would include grant of hearing not just to the petitioner but also to the respondent no.2. The Director is now directed to dispose off the pending appeal as expeditiously as possible and, in any event, within a period of three months from the date of production of the authenticated copy of this order.

13. The parties to appear before the Director on 02.12.2019 at 11.00 a.m. and file authenticated copy of this order. We make it

clear that we have not adverted to the merits of the parties and, therefore, all rival contentions of the parties are left open for adjudication before the Education Director.

C. V. BHADANG, J.

M. S. SONAK, J.

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