

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 422 OF 2019**

**GOA INSTITUTE OF MANAGEMENT, REP.
BY ITS DIRECTOR, AJIT PARULEKAR., ... Petitioner**

Versus

**Shri Christo Fernandes,
Aged 43 years,
S/o Joaquim Fernandes,
Resident of C-16/188,
Voddlem Bhat,
Taleigao-Tiswaid-Goa. ... Respondent**

Shri V. Menezes with Ms. S. Narvekar, Advocates for the Petitioner.

Shri G. K. Sardesai with Mr. A. Carvalho, Advocates for the Respondent.

**CORAM: C. V. BHADANG, J.
Date: 20th June, 2019.**

Oral Order:

The challenge in this petition is to the order dated 18/1/2019 passed by the College Tribunal (Tribunal, for short) refusing to uphold the preliminary objection raised by the petitioner (the respondent before the Tribunal) to the maintainability of the appeal.

2. The brief facts are that, the petitioner is a private unaided recognized educational institution, which is not affiliated to the Goa University. The

respondent has been working with the petitioner as an Associate Professor . His services came to be terminated w.e.f 20/10/2016, which termination the respondent has challenged before the Tribunal. The Tribunal has registered the said matter as Case No.01/2018.

3. The petitioner raised a preliminary objection on the ground that the College Tribunal has no jurisdiction to entertain the challenge and secondly that the appeal was barred by limitation. The Tribunal has held that it has jurisdiction and the 'appeal' is not barred by limitation.

4. I have heard Shri Menezes, the learned counsel for the petitioner and Mr. Sardessai, the learned counsel for the respondent. Perused record.

5. It is submitted by Mr. Menezes, the learned counsel for the petitioner that the College Tribunal constituted under Statute 95(A) of the Goa University Statutes, is not having jurisdiction to entertain the challenge to the termination of the respondent. It is submitted that the challenge so raised by the respondent can also not be treated as an 'appeal', referable to Statute 95-A of the Goa University Statues. It is submitted that the fact that the tribunal has treated the said challenge as an 'appeal', would prejudice the interest of the petitioner inasmuch as the scope of the challenge would be enlarged. The

learned counsel has taken me through paras 231 and 232 of the judgment in the case of **T.M.A Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481**, in order to submit that the Supreme Court has stipulated the scope and ambit of the challenge to the disciplinary action of such private unaided recognized institutions by the management.

6. In so far as the limitation is concerned, the learned counsel was at pains to point out that it was the alternate submission of the petitioner before the Tribunal that in the event the challenge by the respondent is referable to Statute 95-A then, the said challenge was barred by limitation as per Statute 95-B (2), which provides limitation of 30 days from the date of receipt of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be. It is submitted that the tribunal has not properly recorded the contentions as raised while dealing with point 2. Lastly, it is submitted that this Court may keep the contention about scope and ambit of the challenge open to be gone into by the Tribunal.

7. Mr. Sardesai, the learned counsel for the respondent has supported the impugned order. The learned counsel has taken me through para 64 of the judgment of the Supreme Court in the case of **T.M.A. Pai Foundation (supra)** and the Notification dated 13/4/2018, in order to submit that the

College Tribunal constituted under Statute 95-A of the Goa University Statutes has been clothed with jurisdiction to entertain the challenge by the employees of the aided and unaided private recognized educational institutions. It is submitted that the issue about the scope and ambit of the challenge has been left open by the tribunal itself. It is submitted that the finding as against the point no.2, has been recorded in the context of the objection raised on behalf of the petitioner that the appeal/challenge was barred by limitation.

8. I have carefully considered the rival circumstances and the submissions made. As noticed earlier, admittedly the petitioner is not affiliated to the Goa University. The Supreme Court in the case of **T.M.A. Pai Foundation** in para 64 has held thus:

An educational institution is established only for the purpose of imparting education to the students. In such an institution, it is necessary for all to maintain discipline and abide by the rules and regulations that have been lawfully framed. The teachers are like foster- parents who are required to look after, cultivate and guide the students in their pursuit of education. The teachers and the institution exist for the students and not vice versa. Once this principle is kept in mind, it must follow that it becomes imperative for the teaching and other staff of an educational institution to perform their duties properly, and for the benefit of the students. Where allegations of misconduct are made, it is imperative that a disciplinary enquiry is

conducted, and that a decision is taken. In the case of a private institution, the relationship between the Management and the employees is contractual in nature. A teacher, if the contract so provides, can be proceeded against, and appropriate disciplinary action can be taken if the misconduct of the teacher is proved. Considering the nature of the duties and keeping the principle of natural justice in mind for the purposes of establishing misconduct and taking action thereon, it is imperative that a fair domestic enquiry is conducted. It is only on the basis of the result of the disciplinary enquiry that the management will be entitled to take appropriate action. We see no reason why the Management of a private unaided educational should seek the consent or approval of any governmental authority before taking any such action. In the ordinary relationship of master and servant, governed by the terms of a contract of employment, anyone who is guilty of breach of the terms can be proceeded against and appropriately relief can be sought. Normally, the aggrieved party would approach a court of law and seek redress. In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State -- the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in

number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service. “

(Emphasis supplied)

9. In pursuance of the said direction, the State Government in consultation with the High Court by a Notification dated 13/4/2018 has permitted “allotment of the grievances of the employees of aided and un-aided private recognized educational institutions in Goa to the College Tribunal.”

10. The Notification dated 13/4/2018 reads thus:

Read: Notification No.7/3191-EDN/MISC/535/2894 dated 14/12/2017

The Government has constituted College Tribunal in exercise of the powers conferred under Statute 95 A of the Goa University Statutes and in consultation with the Goa

University, and Shri Desmond D' Costa, Retired District Judge is appointed as Presiding Officer for a period of five years for the whole State of Goa for the purpose of the said Statute vide Notification No.7/32/91-EDN/MISC/535/2620 dated 23/11/2017.

Now, Government has decided that the grievances of employees of aided and un-aided private recognized educational institutions shall also be heard by the said College Tribunal (as contemplated in the Judgment of TMA Pai Foundation case).

This issues with approval of Chief Justice of Hon. High Court of Bombay, as conveyed by Registrar (Administration), High Court of Bombay at Goa, vide letter No.HCB/Goa/REG./83/2018 dated 23/3/2018, permitting allotment of grievances of the employees of aided and unaided private recognized education institutions in Goa, to the College Tribunal, Goa in accordance with the directions of the Hon'ble Apex Court given in the case of T.M.A Pai Foundation Vs. State of Karnataka.

The Notification shall come into force with effect from the date of the publication in the Official Gazette.

This issues in superstitution of notification No.7/32/91-EDN/MISC/535/2394 dated 14/12/2017.

By order and in the name of the
Governor of Goa
Sd/-
Under Secretary (Higher Education)

It can thus clearly be seen that the State Government in accordance with the directions of the Supreme Court in the case of **T.M.A Pai Foundation** and with the approval of the Hon'ble the Chief Justice of this Court, has permitted “allotment of the grievances of the employees of aided and un-aided private recognized educational institutions in Goa to the College Tribunal”, already constituted as per Statutes 95-A of the Goa University Statute.

11. Although it was contended on behalf of the petitioner that the Tribunal has treated the challenge by the respondent as an 'appeal' under Statute 95-A of the Goa University Statutes, the impugned order does not show anywhere that there is any such finding recorded by the College Tribunal that the challenge by the respondent is treated as an appeal under Statute 95-A of the Goa University Statutes. Thus the said contention to my mind cannot be accepted. A perusal of the impugned order shows that the tribunal in para 18 of the impugned order, has kept the question of the “scope of the powers in the appeal open. It is obvious that the parties will be entitled to raise appropriate contentions on the scope and ambit of the challenge so raised by the respondent and the tribunal shall decide the same on its own merits and in accordance with law. It is trite that merely because the tribunal has referred to the challenge as an 'appeal' does not decide the scope and ambit of the

challenge, inasmuch as the nomenclature of the challenge is not decisive.

12. Coming to the issue of limitation, the Tribunal while dealing with point no.2 has held that the Tribunal (for the purpose of entertaining the challenge by the employees of the private aided/unaided recognized institutions) was constituted by Notification dated 13/4/2018 which was published in the Government Gazette on 19/4/2018 and the appeal being filed on 14/5/2018 was within 30 days from the constitution of the Tribunal. Hence the Tribunal has refused to accept the preliminary objection on the point of limitation. A perusal of para 19 of the impugned order shows that this was in pursuance of a contention raised on behalf of the petitioner (the respondent before the College Tribunal) that under Statute 95-B (2) of the Goa University Statutes, the period of limitation is thirty days. Although it was contended on behalf of the petitioner that this was an alternate submission, the petition does not contain an averment or a ground that the Tribunal has incorrectly recorded the contention on the point of limitation. Be that as it may, even according to the petitioner, the challenge as put forth by the respondent before the Tribunal is not an appeal referable to Statute 95 A of the Goa University Statutes. In that view of the matter, the contention about limitation which is raised on the basis of Statute 95 B-2 of the Goa University Statutes cannot be accepted. Thus, no case for interference is made out. The petition is accordingly

dismissed with no order as to costs. It is made clear that all the rival contentions of the parties including the scope and ambit of the challenge are expressly kept open.

C. V. BHADANG, J.

Ap/