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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.361 OF 2023

Nalini Naik,
57 years, Asst. Teacher,
Madkaikar Navchaitanya High School,
Tiswadi, Goa.
r/o. Talaulim, Ponda, Goa.

... Petitioner.

Versus

1. The Director,
ACAD, Directorate of Education,
Porvorim, Goa.

2. The Chairman,
Madkaikar Navchaitanya High School,
Corlim, Tiswadi, Goa.

... Respondents.

Mr Chaitanya Padgaonkar with Mr Terence Sequeira and Ms
Vaishali Mahato, Advocates for the Petitioner.

Ms Sulekha Kamat, Additional Government Advocate for
Respondent No.1.

Mr Pankaj Vernekar with Ms N. Nadkarni, Advocates for
Respondent No.2.

CORAM:

BHARAT P. DESHPANDE, J.

RESERVED ON:

06 July, 2023

PRONOUNCED ON:

15 July, 2023

JUDGMENT:

Rule was issued vide order dated 15.06.2023 and the matter was directed to be taken up for final hearing since the issue involved in the present petition is with regard to the order of compulsory retirement from service.

2. Heard Mr Chaitanya Padgaonkar along with Mr Terence Sequeira and Ms Vaishali Mahato, learned Counsel for the Petitioner, Ms Sulekha Kamat, learned Additional Government Advocate for Respondent No.1 and Mr Pankaj P. Pai Vernekar with Ms N. Nadkarni, learned Counsel for Respondent No.2.

3. Mr Padgaonkar submitted that Petitioner served with Respondent No.2 with unblemished career service for long, however, when the vacancy was created in the year 2017 to the post of Headmistress, which is required to be filled in only by seniority, the Petitioner being the senior-most, was sidelined with mala fide intention by issuing suspension order and thereafter conducting departmental proceedings against her. He submitted that the first suspension order issued was challenged before this Court, however, the second suspension order was issued followed by charge-sheet. The inquiry was conducted in most biased manner without following the principles of natural justice. Petitioner was not given opportunity to lead defence evidence. Similarly, Petitioner was not given time of 15 days to file reply to the report of the inquiry officer. The Petitioner was not questioned on the circumstances which were brought on record during evidence of the departmental witnesses. These three aspects were precisely argued as grounds by Mr Padgaonkar, learned Counsel for the Petitioner, thereby challenging the inquiry report, the

order of compulsory retirement and the dismissal of appeal by the Administrative Tribunal. He would submit that even approval was granted without following the principles of natural justice and that such approval was purely considered as perverse when mandatory provisions have been ignored. He submitted that the learned Tribunal failed to consider all these aspects and arrived at erroneous findings. Mr Padgaonkar has invited attention of this Court to various documents and the Rules of Goa Daman and Diu School Education Act, 1984 and Rules of 1986 as well as CCS(CCA) Rules which are applicable to the Petitioner.

4. The following decisions were relied upon by Advocate Padgaonkar:-

i. Ministry of Finance and Ors. vs. S.B. Ramesh; AIR 1998 SC 853,

ii. B.M. Mittal vs. Union of India and Ors.; 2019(1) MhLJ 878 and

iii. Shubhangi Manerkar and Ors. vs. The State of Goa and Ors.; 2019 SCC OnLine Bom 5775.

5. Per contra, learned Counsel Mr Pai Vernekar appearing for the school management submitted that there are concurrent findings of fact of two authorities and therefore, this Court should be slow in interfering with such findings. According to him, both the impugned orders are passed by following all the procedures, rules and by adhering to principles of natural justice. He submitted in the alternative that even if this Court comes to the conclusion that the Petitioner was not given

sufficient time to file reply or that the inquiry officer failed to examine the Petitioner under Rule 14(18) of CCS Rules, that by itself cannot be a ground to set aside such orders unless Petitioner proves actual prejudice. He submitted that there is absolutely no defence put forth by the Petitioner during inquiry proceedings or to the charges levelled against her. In fact, Petitioner was represented by a representative and she cross examined all the witnesses of the department. Mr Pai Vernekar then would submit that it was for the Petitioner to request the inquiry officer to allow her to examine herself since she failed to submit list of witnesses when called upon to do so.

6. Mr Pai Vernekar then would submit that the provisions of Rules relied upon by the Petitioner are not mandatory and therefore, even if such Rules were not directly followed, the inquiry cannot be quashed and set aside unless serious prejudice is shown by the Petitioner. He submitted that the order of the inquiry officer was approved and the Petitioner was called upon to submit her reply by giving sufficient time. Since the Petitioner failed to submit her reply, the appointing authority after considering all aspects including the service put forth by the Petitioner, imposed punishment of compulsory retirement. According to Mr Pai Vernekar, this also follows that the appointing authority was mindful of the fact that the Petitioner served the institution since long and therefore, punishment of only compulsory retirement as imposed. He therefore submitted that there is no violation of principles of natural justice. He then submitted that detailed written arguments filed by the

Petitioner were also considered and accordingly, the action of the management was reasonable.

7. Following decisions were relied upon by Advocate Pai Vernekar:-

i. Kishor vs. The Municipal Commissioner and Ors.; 2015(4) MhLJ 836,

ii. Sunil Kumar Banerjee vs. State of West Bengal and Ors; (1980) 3 SCC 304,

iii. B.M. Mittal vs. Union of India and Ors.; 2019(1) MhLJ 878,
and

iv. UOI and Ors. vs. Pradeep Kumar Modwilll and Ors.; MANU/DE/2661/2013.

8. Rival contentions fall for determination as under:-

9. The Petitioner was appointed as Assistant Graduate Teacher somewhere in July, 1991. Somewhere in April, 2017, the Headmaster of Respondent No.2 was due to retire. Anticipating such vacancy somewhere in February, 2017, the Petitioner started writing letters to the management claiming that she should be promoted to the post of Headmistress being the senior-most. Somewhere in March, 2017, a new seniority list was circulated wherein Petitioner was shown as Serial No.3. The Petitioner challenged such seniority list by filing appeal before the Director somewhere in April, 2017, however, such appeal was kept pending without any decision. On reopening of the school after summer vacation i.e. somewhere in June, 2017, Petitioner noticed that Mrs Sunita G. Amonkar started occupying the cabin of Headmistress of the school.

Immediately, Petitioner preferred an application seeking various documents in connection with service records. However, on 21.08.2017, the Petitioner received notice of immediate suspension. Such suspension order was approved by the Director of Education without hearing the Petitioner. Subsequently, the Petitioner received a charge-sheet, somewhere in December, 2017 which was replied by her denying all the charges. The Petitioner then addressed letters to the school authorities seeking documents, however, there was no response. Writ Petition bearing No.130/2018 was filed by the Petitioner challenging the notice of immediate suspension. This petition was disposed of vide order dated 29.01.2018. By this order, a Coordinate Bench of this Court quashed the NOC granted by Director of Education dated 06.09.2017 as it was not issued by giving an opportunity to the Petitioner to be heard. A statement was made on behalf of the Government that the Director of Education be permitted to withdraw impugned order dated 06.09.2017. Accordingly, the suspension order dated 21.08.2017 and order dated 07.09.2017, were quashed and set aside. The other reliefs in the petition were kept open. However, it was made clear that quashing of the said orders will not preclude Respondent No.3 from proceeding afresh against the Petitioner in accordance with law.

10. Upon disposal of such Writ Petition, thereby quashing suspension order and the approval of the Director of Education, the Petitioner was served with suspension notice dated 19.07.2018. She was asked to appear before Director of Education on 08.02.2018 who then granted approval for immediate suspension vide order dated 12.02.2018. The Petitioner

was then served with a modified charge-sheet dated 28.02.2018. Petitioner filed written arguments against the charges. Another Writ Petition was filed by the Petitioner bearing No.157/2018 seeking quashment of second suspension. However, this petition was withdrawn by the Petitioner.

11. Inquiry was conducted against the Petitioner. However, it is her case that at every stage the Petitioner was prevented or curtailed from cross examining the witnesses or proving her defence. After the presenting officer closed his case on behalf of management, Petitioner was not given a single opportunity to lead evidence in her defence, neither was she confronted with the evidence which was produced by the management. The inquiry report was submitted and thereafter Petitioner was called upon to attend a personal/oral hearing on 19.07.2018. The Petitioner sought 15 days time vide her letter dated 19.07.2018 to file detailed written submissions, however, same was rejected. Similarly, vide letter dated 21.07.2018, the Petitioner was called upon to appear before the management, however, on that day also, the request of the Petitioner to grant 15 days time as provided under Rule 14 of Rule 15 of CCS (CCA) was refused. Finally, on 24.07.2018, the order passed by the managing committee was served upon the Petitioner. The Director of Education then called upon Petitioner to give her comments on the decision of managing committee to impose compulsory retirement. Petitioner appeared before the Director and filed detailed reply. Vide order dated 16.11.2018, Director of Education granted approval to the proposal of the managing committee to impose major penalty of compulsory retirement.

Consequently, vide order dated 26.11.2018, Petitioner was served with the order of imposing major penalty of compulsory retirement under Rule 94 of Goa School Education Rules 1986 with effect from 23.11.2018.

12. Petitioner then preferred an appeal challenging such order of the managing committee, before the Administrative Tribunal which was registered as Education Appeal No.3/2018. Vide Judgment and Order dated 12.06.2020, the learned Administrative Tribunal rejected the appeal and hence the present petition.

13. After the inquiry was completed by the inquiry officer Shri Pandurang R. Nadkarni, the inquiry report dated 13.07.2018 was forwarded to the Petitioner by Respondent No.2 vide their letter dated 17.07.2018. She was informed that the inquiry officer in his inquiry report found her guilty of the charges specified therein. Accordingly, Respondent No.2 called upon Petitioner for personal/oral hearing either in person or through her defence assistant on 19.07.2018 at 11:00 a.m. in the school. It was then informed to her that while attending personal hearing, the Petitioner may additionally also file written submissions, if she so wishes to file. The letter further disclosed as under:-

“Kindly note that since the matter is time bound and as per the directions of the Director of Education the entire enquiry has to be concluded by 29th July 2018. No adjournment shall be granted to you on the scheduled date of personal hearing.”

14. Mr Padgaonkar, learned Counsel for the Petitioner strongly submitted that there was delay on the part of Respondents to initiate

inquiry and therefore, above direction issued by the management in their letter dated 17.07.2018 by giving only two days and warning the Petitioner that no further time would be granted, is only an attempt to preclude the Petitioner from preparing her written submissions and accordingly, the management could pass suitable order. He forcefully submitted that there is clear cut breach of natural justice as only two days time was granted instead of 15 days mandatory time as required under Rule 15(2) of CCS (CCA) Rules.

15. Learned Counsel Mr Vernekar appearing for Respondent No.2 invited attention to the inquiry report and more specifically page 2 para 1.1 wherein the inquiry officer has observed thus:-

“Due to inordinate delay in the appointment of Defence Assistant by the CO, the hearing could not be conducted on 23rd Jan., 2018, 07th Feb., 2018, 20th Feb, 2018, 08th March, 2018 and 19th March, 2018 were postponed. Shri Dattaram Vithal Chari was appointed as the Defence Assistant only on 19th March, 2018 who requested for the extension of time and thus the regular hearing could start only from 28th March, 2018. The Defence Assistant actively participated in the inquiry procedure and assisted the CO to defend all the article of charges as mentioned in Annexure I of the Charge sheet.”

16. The inquiry report further shows the dates of hearing in para 1.2 and the dates on which hearing in the inquiry was held. In all, 24 hearings were held during the proceedings.

17. The contention of Mr Padgaonkar is that at least 15 days time ought to have been granted to the Petitioner to file her written

submissions. He heavily relied upon Rule 15(2) of CCA Rules. Rule 15(2) reads thus:-

“15 Action on the inquiry report

(1)

(2) The Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the Disciplinary Authority or where the Disciplinary Authority is not the Inquiring Authority, a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

18. Plain reading of this provision shows that the Disciplinary Authority shall forward or cause to be forwarded a copy of the report of the inquiry, held by the Disciplinary Authority to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within 15 days irrespective of whether the report is favourable or not. Thus, the wordings, “*within 15 days*”, which means that such written submissions, if any, needs to be filed within a period of 15 days from the date of receipt of the inquiry report. Record clearly goes to show that the Petitioner appeared personally before the Disciplinary Authority on 19.07.2018, and handed over letter of the same date, but made a request to grant her 15 days time claiming it as mandatory requirement to make her written representation. Admittedly, the inquiry report was served on her on

17.07.2018 and she appeared before the Disciplinary Authority on 19.07.2018. On same day, vide letter dated 19.07.2018, the Disciplinary Authority through its authorized signatory informed the Petitioner that her request for grant of 15 days time cannot be granted as the matter is time bound and required to be decided by 29.07.2018. This letter was received by the Petitioner at 2:15 p.m. on 19.07.2018 itself. In the same letter, the Disciplinary Authority staged thus:-

“In the interest of natural justice, Managing Committee has decided to give you time to oral hearing on Monday 23rd July, 2018 at 3.00 p.m. in the school premises.”

19. Thus, it means that though the Petitioner failed to file her written submissions on 19.07.2018, and requested 15 days time which was rejected, she was granted one more opportunity till 23.07.2018.

20. The Petitioner vide her letter dated 21.07.2018, again requested for 15 days time as per Rules to file her representation and claimed that non granting of such time would violate the Apex Court decision and also the Government of India decision. The management vide their letter dated 22.07.2018 informed the Petitioner that she was given opportunity to appear before the managing committee to enable her to give her personal hearing. She was further informed that 15 days time cannot be granted as it is not mandatory. However, the reply has to be filed within 15 days. The managing committee decided to adhere to its earlier date of personal hearing fixed on 23.07.2018.

21. Admittedly, the Petitioner failed to appear before the Disciplinary Authority on 23.07.2018 at 3:00 p.m. for personal hearing. Similarly, she did not submit any written submissions to the inquiry report. The Disciplinary Authority took the decision on 23.07.2018 and decided to impose a punishment of compulsory retirement. Accordingly, the Disciplinary Authority decided to refer the proposal/order awarding compulsory retirement to the Petitioner, to the Director of Education for his approval as provided under Rule 97(2).

22. First of all, both the letters of the Petitioner dated 19.07.2018 and 21.07.2018 request time to file written submissions only based on the Rule wherein Petitioner claimed that she has a right to get 15 days time to file written submissions. Both these letters nowhere mentioned that the time granted to the Petitioner was insufficient to prepare written submissions. Her consistent view was only insisting upon 15 days time to file reply as of right. In this matter, learned Counsel Mr Vernekar rightly placed reliance on the decision in the case of *Kishor* (supra) of the learned Single Judge of this Court wherein the provisions of Section 53(1) of Maharashtra Regional and Town Planning Act, 1966 is considered and interpreted. In that provision, the wordings, “*within such period being not less than one month*” has been interpreted. While relying on earlier Division Bench decision in the case of *Commissioner of Income-Tax vs. Ekbal & Co.*; MANU/MH/0086/1944, following is observed in para 10:-

“In my judgment, expressions “within 30 days” and “not less than 30 days” are two quite different things. “Within 30 days” is within two points of time, one at which the period begins and the other at which it expires. On the other

hand, “not less than 30 days” is outside these two points of time. There must be an interval of not less than 30 days and that means 30 days clear. The period must continue beyond the expiration of the stated time. Whereas “within” the stated period must mean what it says, something less than the moment of expiration. In my opinion, therefore, the notice is invalid and the question referred to must be answered in the negative.

11. From the aforesaid, it is clear that both the said expressions are different. While “within thirty days” is a shorter period, the expression, “not less than thirty days” connotes larger period of time. It was then held that by using the expression “within thirty days”, the noticee did not get thirty clear days period as was contemplated by the expression “not less than thirty days”. The factual position in the present case is some what similar. While provisions of Section 53(1) of the said Act prescribe period being not less than one month, the impugned notice grants time for steps to be taken within a period of one month. Thus there is no notice of period of not less than one month as contemplated by Section 53(1) of the said Act. Hence, there is considerable force in the submission of the learned counsel for the appellant that notice dated 18.11.2010 by prescribing a shorter period than the one prescribed by Section 53(1) of the said Act cannot be called a notice under Section 53(1) of the said Act.”

23. In the present matter, admittedly, Rule 15(2) of CCS (CCA) Rules as quoted above used the expression “within 15 days”. Thus, such expression clearly goes to show that the noticee did not get 15 clear days period to submit written submissions. The insistence of the Petitioner in both her letters dated 19.07.2018 and 21.07.2018 is only on 15 clear days. There is no other ground mentioned in both these letters for grant of time to submit her written submissions. She never complained that the

time granted to her of two days initially and thereafter further four days upto 23.07.2018 was not at all sufficient to prepare the reply. Thus, the contention of Mr Padgaonkar cannot be accepted. The provision of Rule 15(2) of CCS (CCA) Rules nowhere provide 15 clear days as mandatorily to be given by the Disciplinary Authority to the delinquent officer for filing written submissions. Thus, there is no breach of principles of natural justice or even a breach of provisions as tried to be contemplated.

24. Though Petitioner appeared before the Disciplinary Authority on 19.07.2018, she did not submit anything orally. Admittedly, she did not attend the proceedings on 23.07.2018. Therefore, the action of the Disciplinary Authority in passing the order on 23.07.2018 thereby awarding compulsory retirement, cannot be faulted with on this ground.

25. Learned Counsel Mr Padgaonkar submitted that after the evidence of the department was over, the inquiry officer failed to ask the Petitioner to lead defence evidence if any, which is again a breach of the principles of natural justice. He further submitted that Petitioner did not lead any defence evidence and therefore, it was incumbent upon the inquiry officer to ask the Petitioner questions on the evidence led by the department, which is akin to recording statement under Section 313 of Cr.P.C. In this respect, he placed reliance on Rule 14(18) of CCS (CCA) Rules, which read thus:-

“14. Procedure for imposing major penalties

.....

.....

(18) The Inquiring Authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.”

26. He invited attention of the daily order sheet dated 04.06.2018 which reads thus:-

“PO stated that with this, the case of the Presenting Officer was over. The DA and the CO were informed to submit the written briefs on their part for which the DA requested for a time of fifteen days”.

27. After the order dated 23.07.2018 passed by the managing committee thereby proposing to impose/award compulsory retirement to the Petitioner and forwarding it to the Director of Education for his approval, the Petitioner was called upon by the Director of Education to submit her say. Accordingly, on 22.09.2018, Petitioner filed her comprehensive reply against the inquiry report dated 13.07.2018 which proposed major penalty of compulsory retirement. In this comprehensive reply, she raised the ground that the inquiry stands vitiated as no opportunity was given to her to lead her evidence, to produce documents, list of witnesses, thereby the inquiry officer failed to afford reasonable opportunity to her to present her case. She also quoted Rule 14(18) of CCS Rules claiming that she was not examined by the inquiry officer after closure of evidence of the department and specifically when she was not given any opportunity of leading defence evidence. She filed

additional reply on 08.10.2018 again reiterating her contention of not been given opportunity to lead defence evidence and non examination by the inquiry officer under Rule 14(18) of CCS (CCA) Rules.

28. The Director of Education in its detailed order dated 16.11.2018 considered all the defences raised by the Petitioner including the above two referred ones. Even written arguments were filed by the Advocate of the Petitioner and that of the management of the school. Oral arguments were also submitted which is clear from the report of the Directorate of Education. The education officer observed that the onus is on the charged officer to lead evidence if he/she so wishes and it is not for the inquiry officer to suggest to the charged officer to lead evidence. He further observed that the charged officer/Petitioner neither submitted her list of witnesses nor informed the inquiry officer that she desired to lead evidence. Therefore, he observed that the charged officer/Petitioner voluntarily chose not to lead evidence and hence found no defect in the procedure adopted by the inquiry officer. Finally, the Director of Education in exercise of the powers vested in him under Section 11(2) of Goa School Education Act 1984 read with Rules 95(2) and 97(2) of Goa School Education Rules 1986 granted approval to the proposal of the Disciplinary Committee for imposing major penalty of compulsory retirement.

29. The Petitioner challenges such decision of compulsory retirement including the approval granted by the Director of Education before the Administrative Tribunal in Education Appeal No.3/2018. Said appeal

was decided by the Administrative Tribunal vide its judgment dated 12.06.2020.

30. In the case of *Ministry of Finance and Ors. vs. S.B. Ramesh* (supra), in para 7 and para 14 referred to Rule 14(18) of CCS (CCA) Rules, which according to the learned Counsel Mr Padgaonkar are mandatory to be followed when a delinquent officer is not leading any evidence. However, the Division Bench of this Court in the case of *B.M. Mittal* (supra), clarified that in *S.B. Ramesh* (supra), the Apex Court has not itself discussed and held that the provisions of Rule 14(18) of the said Rules are mandatory in nature. The Apex Court only refused to interfere with the findings recorded by the Tribunal, particularly in absence of full material, which the appellant therein despite opportunities failed to produce before it.

31. The Division Bench in *B.M. Mittal* (supra) further in para 24 referred to decision of Apex Court delivered by the Bench of three Judges in the case of *Sunil Kumar Banerjee vs. State of West Bengal* (supra), considered the issue as to whether the provision para materia to Rule 14(18) of the Rules is to be construed as directory or mandatory.

32. In this respect, Mr Vernekar placed reliance in the case of *Sunil Kumar Banerjee* (supra), wherein the Apex Court after noting that the appellant was not questioned by the inquiry officer under Rule 8(19) of the All India Services (Discipline and Appeal) Rules 1955 went on to observe as follows:-

“It may be noticed straightaway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and

Section 313 of the Criminal Procedure Code of 1973. It is now well established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide, K. C. Mathew v. State of Travancore-Cochin; Bibhuti Bhusan Das Gupta v. State of W.B. We are similarly of the view that failure to comply with the requirements of Rule 8(19) of the 1969 Rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned single Judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegation in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with Rule 8(19).”

33. In the case of *UOI and Ors. vs. Pradeep Kumar* (supra), the Division Bench of Delhi High Court while dealing with Rule 14(18) of CCS (CCA) Rules observed in paras 54 and 55 that non adherence of the said Rule by the inquiry officer is fatal only if it is shown that the delinquent was prejudiced on account of such non adherence.

34. Thus, it is for the Petitioner to show that non adherence of Rule 14(18) by the inquiry officer prejudiced her. In this respect, except claiming such non adherence, there is no material brought on record to show any prejudice to the Petitioner. The Petitioner was represented by a defence assistant from the beginning who attended the inquiry proceedings on all days in presence of the Petitioner and cross examined

all the witnesses of the department. After the inquiry was over, detailed written submissions were filed which were considered by the inquiry officer. This aspect has been considered by the learned Administrative Tribunal in great detail including the decisions. Such findings cannot be termed as perverse as the same are based on record placed before it.

35. Having said so, the impugned orders cannot be faulted with. The petition deserves to be rejected.

36. Hence, I pass the following:-

ORDER

Petition stands dismissed. Rule stands discharged.

Parties shall bear their own cost.

BHARAT P. DESHPANDE, J.

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DSOUZA

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