

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.229 OF 2023

Mrs. Sharmila Manohar Joshi
Wife of Shri Manohar Joshi,
Aged 58 years, Occupation Service,
Residing at House No.21
Malpan, Sattari, Goa 403 506.

...Petitioner

Versus

- 1 State of Goa
Through its Chief Secretary,
Having his office at
Secretariat, Porvorim, Goa 403 521.
- 2 The Director,
Directorate of Education,
Government of Goa,
Porvorim, Goa – 403 501.
- 3 Headmaster,
Barabhum High School,
Tamdi Surla, Sacorda, Goa- 403 406
- 4 The Chairman,
Barabhum Education Society,
Tamdi Surla,
Sacorda, Goa 403 406.

...Respondents

Mr. S.N. Joshi with Ms. Swapna Joshi, Advocates for the
Petitioner.

Mr Devidas Pangam, Advocate General with Mr G. Shetye,
Additional Government Advocate for the Respondents No.1 and
2.

Mr. Nikhil Pai, Advocate for Respondents No.3 and 4.

**CORAM: M. S. SONAK AND
VALMIKI SA MENEZES,JJ.**

DATED : 11th APRIL,2023

ORAL JUDGMENT: (Per M.S. SONAK, J)

1. Heard Mr S.N. Joshi appears with Ms Swapna Joshi, learned Counsel for the petitioner, Mr Devidas Pangam learned Advocate General appears with Mr G. Shetye, learned Additional Government Advocate for respondents No.1 and 2 and Mr Nikhil Pai learned Counsel for respondents No.3 and 4.
2. Rule. The rule is made returnable immediately at the request and with the consent of the learned Counsel for the parties.
3. The petitioner challenges her suspension and denial of salary during such suspension *inter alia* on the ground of breach of the provisions under Section 11(3) of the Goa School Education Act,1984 and the Rules made thereunder.
4. The bare facts essential to consider the challenge are that the petitioner was placed under suspension on 22/02/2023 by respondent No.4. Admittedly, no prior approval from the Director of Education was obtained before issuing the suspension order. Further, there is also no dispute that such approval has not been obtained within 15 days from the date of the suspension order.

5. Section 11 (3) of the Goa State Education Act, 1984 reads as follows:

11. Terms and conditions of service of employees of recognised private schools.-

(3) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except where a disciplinary proceeding is contemplated or pending, and except with the prior approval of the Director:

Provided that no such suspension shall remain in force for a period exceeding six months, which may, with the prior approval of the Director and for reasons directly attributable to the teacher and recorded in writing, be extended by a further period of three months, at a time:

Provided further that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reasons of the gross misconduct, within the meaning of the Code of Conduct prescribed under section 12 of the employee or where a case against him in respect of any criminal offence involving moral turpitude is under investigation, enquiry or trial:

Provided also that no, such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.”

6. Thus, it is clear that the normal rule is that a suspension can be effected only after obtaining prior approval of the Director of Education. However, the Managing Committee is empowered to suspend an employee

with immediate effect and without prior approval of the Director if it is satisfied that immediate suspension is necessary by reasons of the gross misconduct, within the meaning of the Code of Conduct prescribed under Section 12 or where a case against him in respect of any criminal offence involving moral turpitude is under investigation, enquiry or trial. Further, no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.

7. Mr Joshi learned Counsel for the petitioner contends that this was not a case for placement of the petitioner under immediate suspension because the alleged charge, if any, against the petitioner would never amount to any misconduct under Section 12 of the Goa School Education Act. He also contends that there was not even the slightest allegation on the petitioner involving any criminal offence involving moral turpitude. He submits that the petitioner fractured her leg as a result of which she was unable to attend school. He submits that leave was granted by the school but later on quite arbitrarily the same was sought to be cancelled. Based upon such arbitrary cancellation, unauthorized absence is alleged and suspension in breach of the law was imposed. He submitted that to harass the Petitioner, no orders for subsistence allowance were made. Instead, an order was made for denying salary during the suspension period.

8. Mr. Pai disputes the above contentions. He submits that there was no question of harassing the Petitioner. He submits that powers of immediate suspension were validly exercised.

9. However, at this stage, we do not propose to examine the contentions based on the rival versions of the facts. Because even if we accept the management's version, the impugned orders are vulnerable due to the breach of the legal provisions.

10. The record shows that the power of immediate suspension under the second proviso to section 11(3) was resorted to. However, there is no dispute that such immediate suspension was not approved by the Director within Fifteen days time lime prescribed under Section 11(3) of the Goa School Education Act, 1984. In a somewhat similar situation the Division Bench of this Court in *Suryakant B. Naik v/s. The Chairman, Keerti Vidyalaya High School and Anr* (Writ Petition No.435 of 2014 decided on 05/08/2014) quashed and set aside the suspension order as there was no ex-post facto approval from the Director within Fifteen days from the suspension order. Following this decision, the impugned suspension order will have to be set aside.

11. Accordingly, we are satisfied that there is a breach of Rule 11(3) of the Goa School Education Act,1984 as a consequence of which the impugned suspension order dated 22/02/2023 warrants interference. The impugned order is accordingly quashed and set aside. The consequential order of denial of salary during the illegal suspension period is also illegal and is hereby set aside. The school management should have at least ordered the payment of a subsistence allowance.

12. The petitioner is directed to be reinstated immediately with all

consequential benefits. The consequential benefits must be paid to the petitioner within two weeks from today.

13. This order will however not preclude respondents No.3 and 4 from taking such steps as they may be advised by following the law.

14. The rule is made absolute in the above terms without any order for costs. All concerned must act on an authenticated copy of this order.

VALMIKI SA MENEZES,J.

M. S. SONAK, J.

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VISHAL
BHOIR

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