

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.574 OF 2019

DAMODAR G. PHADTE ... Petitioner

Versus

STATE OF GOA, THR. THE CHIEF
SECRETARY AND 2 ORS. ... Respondents

Ms. S. Kenny, Advocate for the Petitioner.

Mr. Devidas J. Pangam, Advocate General with Mr. T. Gawas,
Additional Government Advocate for the Respondents.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ**

DATED : 31st JANUARY 2023

ORAL ORDER (Per M. S. Sonak, J)

1. Heard Ms S. Kenny, learned counsel for the Petitioner. Mr D. Pangam, learned Advocate General appears along with Mr. T. Gawas, learned Additional Government Advocate for the Respondents.

2. The Petitioner challenges the Order dated 28.06.2019 by which the Director of Education has refused to approve the extension of the Petitioner's services in terms of Rule 88(2) of the Goa School Education Rules, 1986 (the said Rules).

3. The Petitioner was appointed as a Lab Assistant on 25.11.1978. He was promoted from time to time and ultimately, in 1995, became Headmaster of the High School. The Petitioner has pleaded that he received several awards at the National as well as the State level for the services rendered by him as an educationist. Additionally, the Petitioner has pleaded that he received Goa States Teacher Award from the Government of Goa in 2014 in the "Headmaster category". All these facts have not been denied and, in any case, are supported by documentary evidence produced on record by the Petitioner.

4. The Petitioner has then pleaded about some disputes *inter se* between members comprising the Managing Committee or the Society that has established and operates the school in which the Petitioner was holding the post of Headmaster. The Petitioner has pleaded about the civil suits, allegations, and counter allegations and how to a certain extent, all this affected his functioning as a Headmaster of the said school. The Petitioner, in the ordinary course, would have to retire on 30.04.2019 on attaining the age of superannuation. However, relying on Rule 88 of the Goa School Education Rules, the Petitioner applied for an extension by one year, mainly because he was a State awardee. This request of the Petitioner was forwarded to the Government by the acting Chairperson of the Managing Committee of the said school.

5. The Petitioner has further pleaded that the rival factions, claiming to be of the actual Managing Committee, opposed the grant of extension. Perhaps based on this opposition, the Deputy Director of Education, by his communication dated 26.03.2019, declined to consider the proposal for an extension of the Petitioner's services.

6. The Petitioner, therefore, instituted Writ Petition No.351 of 2019, which was disposed of on 16.04.2019, directing the Director of Education to decide the proposal for an extension of the Petitioner's service by one year. By Order dated 29.04.2019, however, the Director of Education rejected the proposal for an extension of the Petitioner's services by one year. Again, the Petitioner challenged this rejection which was set aside by this Court vide Order dated 30.04.2019, and the Director was directed to decide the issue again afresh. On 28.06.2019, the Director again rejected the proposal for an extension of the Petitioner's services. Therefore, the Petitioner instituted this petition in the first week of July 2019.

7. This petition was admitted on 30.07.2019. Ad-interim relief granted on 05.07.2019 was confirmed for the reasons referred to in our Order dated 30.07.2019. Accordingly, the Petitioner has continued during the extended period, which has also since concluded.

8. The issue of retirement and extension is governed by Rule 88 of the Goa School Education Rules. The retirement age of employees in the ordinary course is 60 years, as provided in Rule 88(1). However, Rule 88(2) provides that notwithstanding anything contained in sub-rule (1), where a teacher has been awarded a National or State Award for rendering meritorious service as a teacher or where he/she has received both the National and State awards as aforesaid, the period of service of such teacher may be extended by one year by general or special Order of the Administrator. Proviso to this Rule provides that for grant of extension, the Director of Education has to consider the Managing Committee's opinion that such a teacher is fit for extension and that he has no mental or physical capacity which would disentitle him to get such an extension. However, this is subject to the condition that the teacher himself must desire to enjoy the benefit of such an extension.

9. The learned Advocate General had submitted that no employee, including the present Petitioner, has an unqualified right to seek an extension. This is correct. However, at the same time, even the authorities have no absolute right to reject the extension without cogent reason, particularly when the extension is claimed in Rule 88(2) of the said Rules. In any case, a teacher who has been awarded a National or State award for rendering meritorious service as a teacher is entitled to at least have his/her Application considered reasonably. This is more so when the teacher claims that he/she has complied with

the conditions prescribed in Rule 88(2) of the said Rules. The rejection of a proposal for extension, mainly where predicates of Rule 88(2) of the said Rules are complied with, cannot be based on irrelevant or extraneous considerations.

10. In the present case, on the first occasion, the Petitioner's Application for extension was rejected on the sole ground that there was no Managing Committee in existence or that the term of the previous Managing Committee had already expired. Accordingly, this Order was set aside by this Court, impliedly holding that the Petitioner could not be made responsible for not having any Managing Committee in place. Additionally, directions were issued to the Director to consider Petitioner's Application, *among other things*, by advertng to the aspect of the mental and physical capacity of the Petitioner.

11. Though it was never the Order's intention that extension should be granted no sooner the mental and physical capacity of the Petitioner was found to be in Order; nevertheless, we did expect the Director of Education to take an independent decision in the matter without being influenced by allegations and counter allegations by rival factions in the society or the managing committee.

12. On the first occasion, whilst rejecting the Petitioner's Application for extension, there was no reference to any allegations

against the Petitioner, who has been functioning as a Headmaster at the school for the last 24 years. However, on the latter occasions, there is a reference to several allegations, mostly emanating from one Mr Vinayak Naik, who claims to be the Secretary of the society and a member of one of the rival factions in the society. No doubt, as pointed out by Mr D. Pangam, the learned Advocate General, there are also some allegations made by the PTA or by one of the teachers whose pension papers were not processed in time.

13. However, suppose we peruse the Order dated 28.06.2019. In that case, we find that one of the principal grounds on which extension has been denied to the Petitioner is that it is the Petitioner who constituted an ad-hoc Managing Committee for the management of the school after the term of the earlier Managing Committee expired on 06.07.2018. To this, the Petitioner had replied that some of the members of the rival factions constituted that ad-hoc Managing Committee. But, after that, the impugned Order refers to the Petitioner's involvement in Civil Suits pending between the rival factions. For this, the Petitioner explains that he is also one of the members of the society, and it is in that capacity that he was a party in the Civil Suit.

14. Although we agree with the contention of the learned Advocate General that the Headmaster of a school must not concern himself or get involved with rival factions which claim to manage the society or

manage the school, we cannot lose sight of the fact that on some occasions, acts of a Headmaster of a school can be perceived as partisan by one of the two rival factions, whether or not they are partial or not. In such a charged atmosphere, rival factions may make allegations and counter allegations, and it is the Headmaster who is caught in the crossfire. In pursuance of our earlier Order, the Director of Education was required to consider the matter from all perspectives, including such a perspective. This was more so because the Director of Education, in his earlier Order declining extension, had not at all adverted to such allegations and counter allegations. Ms Kenny has contended that such allegations and counter-allegations surfaced only after this Court, in the earlier round of litigation, set aside the Director's Order and directed reconstitution of the issue.

15. The material on record indisputably establishes that the Petitioner is a State awardee, has functioned as Headmaster of the school for the past 24 years, and is an officer with the physical and mental capacity to hold the position of the Headmaster. Besides, it was not pointed out that any disciplinary proceedings were initiated against the Petitioner or that he was penalized for any misconduct. The Director completely ignored all these aspects whilst declining the extension. Instead, it does appear that the Director has overemphasized the aspect of allegations and counter-allegations. The allegations and counter-allegations have not been considered from the perspective that, admittedly, two rival factions are claiming to be the

management of the school, and in such a situation, the Headmaster may find himself in the crossfire.

16. For all the above reasons, we allow this petition by making the rule absolute in terms of prayer clauses (i) and (ii), which read as follows:-

"(i) This Hon'ble Court be pleased to issue a Writ of mandamus, or any other Writ, Order or direction in the nature of Mandamus, or any other Writ, Order or direction, directing cancellation of the Impugned Order dated 28.06.2019 bearing No. D.E./Acad/Pon/Ext in Service/2018/1311 and consequently grant extension of services to the Petitioner for one year service beyond the normal age of superannuation;

(ii) For an appropriate Writ, Order or direction quashing and setting aside the Order dated 29.04.2019 bearing reference No.DE/Acad/Pon/Ext.inservice/2018/770.

17. As noted earlier, the Petitioner was granted interim relief. In terms of interim relief, the Petitioner has served during the extended period. Accordingly, the Petitioner, if not already been paid, must be paid all his retiral dues and benefits following the law by taking into account the extended service. If any retiral dues remain to be paid to the Petitioner, the same must be paid within three months from today.

18. The rule is made absolute in the above terms. There shall be no order for costs. The Misc. Civil Application does not survive the disposal of the writ petition, and the same is disposed of accordingly.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

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