

Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.767 OF 2019**

Jessy Fernandes

... Petitioner

Versus

School Management Committee
Dnyanprassarak Vidhyalaya, thr.
its Chairman And 5 Ors.

...Respondents

Mr J. J. Mulgaonkar, Advocate and Ms D. Sharma,
Advocate for the Petitioner.

Mr Sudin Usgaonkar, Senior Advocate with Ms. T. Mashelkar, Advocate *for respondents No.1 to 4.*

Ms Sapna Mordekar, Additional Government Advocate *for the Respondent No.5.*

**CORAM:
DATED :**

**PRAKASH D. NAIK, J
4th SEPTEMBER, 2023**

ORDER:

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India and sought to challenge the judgment dated 12.07.2019 passed by learned Principal District Judge, Panaji in Civil Appeal (Education) No.11/2015 and consequently sought quashing of order dated 30.09.2014 of the School Managing Committee and order dated 25.09.2014 passed by the Director of Education.

2. The petitioner joined Dnyanprassarak Vidhyalaya School as an Assistant Teacher in 1998. Disciplinary proceedings were

initiated against the petitioner. The School Management conducted enquiry through Inquiry Officer, Mr. S. A. Kuvelekar. The Inquiry Officer submitted his findings vide report dated 30.01.2014. The School Managing Committee decided to impose major penalty on the petitioner by compulsory retirement from service. Approval of Director of Education was sought and vide order dated 25.09.2014 the imposition of major penalty or compulsory retirement to the petitioner was approved.

3. The petitioner filed Education Appeal No.5/2014 before the Administrative Tribunal at Panaji. The Administrative Tribunal recused from hearing the appeal and the appeal was transferred to the Court of Principal Judge at Panaji and was renumbered as Civil Appeal No.11/2015.

4. The respondent filed an application for striking out parties on 07.12.2016. Vide order dated 04.07.2018 the learned Principal District Judge disposed of the said application below Exhibit 8 and ordered that respondent No.2 is the Manager and 3 is the Incharge Head of the School. Both these respondents are part and parcel of the same school. The said respondents become necessary parties to the proceedings because it is possible that the letter of termination issued by respondent No.1 passed through the hands of respondents No.2 and 3. Respondent No.6 who was the defence assistant who left the proceedings halfway on the ground that the Manager of the School subjected her to ridicule. Respondent No.6 is not represented in the proceedings although she was served.

Respondent No.6 is impleaded in the proceedings to show instance similar to the one committed against the appellant. No prejudice will be caused if respondent No.6 remains party to the proceedings. Respondent No.5 is the Chief Secretary and is duly represented in the proceedings. The Chief Secretary being head of the State of Goa and all the departments, becomes formal party to the proceedings and even if no specific relief is claimed against the Chief Secretary, the said respondent cannot be deleted from the proceedings.

5. Respondent preferred another application about preliminary objection for rejecting appeal memo. The said application was partly allowed vide order dated 04.07.2018 and the appellants were directed to place on record specific grounds of appeal within 30 days from the date of passing the order. It was observed that the appeal memo is very verbose and does not spell out specific grounds of appeal. It is required to call upon the appellant to submit specific ground of appeal. The appellants then filed grounds of appeal on 26.07.2018.

6. Vide order dated 12.07.2019 the appeal preferred by the petitioner was dismissed.

7. Learned advocate Mr J. J. Mulgaonkar, submitted that the petitioner joined the respondent School as Assistant Teacher. It is fully aided school. Disciplinary proceedings were initiated against the petitioner on 4 charges such as non-holding remedial classes, disobeying instructions to hold a meeting of English

subject teachers, willfully neglecting to submit submissions of the supplementary examination of Standard IX and threatening another teacher that she would be taken to court. Inquiry was conducted by Mr S. A. Kuvelekar. The petitioner was not given adequate opportunity to participate and objections filed by the petitioner at various stages were not taken on record. The order of Director of Education which approved the imposition of major penalty of compulsory retirement does not make reference to the cross-examination conducted by petitioner. The order discloses non-application of mind. The reasons for approving the major penalty were few and without reference to the material on record. The petitioner had filed application seeking copies of various documents which were sought to be relied upon. The documents were not supplied. The fact of non-supply of documents and unreasoned order discloses grave procedural lapse on the part of respondent and violation of principles of natural justice. The report of Inquiry Officer is in violation of Rule 14 Clause 23 of the CCS(CCA) Rules which requires specific compliance while submitting report of the Inquiry Officer. The Principal District Judge dismissed the appeal and upheld the major penalty. The order of the learned Principal District Judge is contrary to law. The procedure followed is arbitrary and unreasonable. The authority failed to supply material to the petitioner despite the application made by the petitioner in that regard.

8. It is further submitted that, the petitioner was not permitted to effectively cross-examine the witness of respondent. The order of Director of Education dated 25.09.2014 is a non-

speaking order. The procedure followed by Inquiry Officer is in violation of Rule 14(23) and Rule 14(18) of CCS (CCA) Rules. The charges against the petitioner do not warrant the penalty of compulsory retirement. The petitioner was not supplied with copies of all the documents in the proceedings held before the Director of Education despite specific demands made by the petitioner by filing application. The proceedings were continued without supplying the documents to the petitioner. The orders are in violation of principles of natural justice. The Article of Charge-I pertains to taking remedial classes. There is no provision of law under which the petitioner may be compelled to work beyond working hours. The petitioner was in service for 16 years. There was no adverse remark or warning and she had enjoyed unblemished record. The charges were imaginary. The punishment is not commensurate with charges.

9. Learned advocate for the petitioner has relied upon the following decisions:

a)	<i>Marwari Balika Vidyalaya v/s. Asha Srivastava And Others¹</i>
b)	<i>Om Kumar And Others v/s. Union of India.²</i>
c)	<i>Ranjit Thakur v/s. Union of India And Others³.</i>
d)	<i>Diocesan Society of Education & Another v/s. Administrative Tribunal Panaji & Ors⁴.</i>

¹ (2020) 14 SCC 449

² (2001) 2 SCC 386

³ (1987) 4 SCC 611

⁴ CDJ 2010 BHC 2356

10. Learned senior advocate Mr Sudin Usgaonkar appearing for respondents No.1, 2, 3 submitted that there is no infirmity in the impugned orders. Inquiry was conducted by adhering to rules and regulations and principles of natural justice. The charges were proved against the petitioner. The respondents were constrained to initiate departmental inquiry against the petitioner. The petitioner who was functioning as Assistant Teacher refused to engage remedial classes during October Vacation 2004 inspite of instructions issued by the Headmaster of the school. She corresponded with the superiors in the matter of remedial classes by using objectionable language. The petitioner disobeyed the instructions given to her by Head of School on 11.06.2009. The petitioner was instructed to hold a meeting of English subject teachers to discuss the curriculum for the academic year 2009-2010. She did not obey the instructions and argued with the Head of the school and refused to hold meeting. While functioning as Assistant Teacher, petitioner threatened Mrs Phalgaonkar, an Assistant Teacher on 03.08.2012 threatening her that she will be taken to the Court for adding and writing some sentence to the minutes of the staff meeting held on 28.03.2012. Due to threat, Mrs Phalgaonkar who was pregnant got disturbed and suffered mental stress and strain. The Inquiry Officer conducted an inquiry and submitted a report for major penalty. Approval was granted by the Director of Education vide order dated 25.09.2014. The respondent no.1 ordered major penalty of compulsory retirement from service against the petitioner from 01.10.2014. The appeal preferred by the petitioner was dismissed vide order

dated 12.07.2019. The conduct of the petitioner was undisciplined. She acted with insubordination.

11. Mr Usgaonkar, has relied upon the following decisions:-

a)	<i>Thermax Limited v/s. Vishwanath N. Jadhav and Ors⁵</i>
b)	<i>Sarabhai M. Chemicals (S.M. Chemicals and Electronics), Ltd. V/s. M. S. Ajmera and another⁶</i>
c)	<i>S. R. Tewari v/s. Union of India And Another⁷.</i>
d)	<i>Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh And Others⁸.</i>
e)	<i>Chandrama Tewari v/s. Union of India (Through General Manager, Eastern Railways)⁹.</i>
f)	<i>Natwar Singh v/s. Director of Enforcement And Another¹⁰.</i>
g)	<i>Nathalal Maganlal Chauhan v/s. State of Gujarat¹¹.</i>
h)	<i>Garment Craft v/s. Prakash Chand Goel¹².</i>
i)	<i>Kendriya Vidyalaya Sangathan v/s. Arunkumar Madhavrao Sinddhaye And Another¹³.</i>
j)	<i>Trigun Chand Thakur v/s. State of Bihar</i>

⁵ 2009 (2) Mh.L.J.

⁶ Spl. Civil Application No.1777 of 1975 dated 12.07.1979

⁷ (2013) 6 SCC 602

⁸ (2009) 1 SCC 59

⁹ 1987 (Supp) SCC 518

¹⁰ (2010) 13 SCC 255

¹¹ 2020 SCC OnLine Guj 1811

¹² (2022) 4 SCC 181

¹³ (2007) 1 SCC 283

	<i>And Others¹⁴.</i>
k)	<i>Kanji Kurji v/s. Kala Gopal¹⁵</i>

12. The petitioner was functioning as Assistant Teacher at Dnyanprassarak Vidhyalaya, Mapusa. Inquiry was conducted by Mr S.A. Kuvelekar. Charges levied against the petitioner were indicated in memorandum dated 27.12.2012.

13. As per Article of Charge-I the petitioner while functioning as Assistant Teacher refused to engage remedial classes during October Vacation 2004, inspite of instructions issued by the Headmaster of the School. She corresponded with superiors in the matter of remedial classes by using indecent language. According to respondents, the petitioner is guilty of misbehaviour by disobeying the instructions of the superiors and acted in a manner unbecoming of a teacher, thereby violating Rule 100(1)(a) (i), Rule 100 (1) (a) (v) and Rule 100 (1) (a) (xviii) of Goa School Education Rules, 1986.

14. Article of Charge-II is that the petitioner while functioning as Assistant Teacher disobeyed the instructions given to her by the Head of the school. On 11.06.2009 the Headmistress Ms Maria Colaso instructed her to hold a meeting of English subject teacher to discuss the curriculum for the academic year 2009-2010. Instead of obeying the instructions, she argued arrogantly

¹⁴ (2019) 7 SCC 513

¹⁵ 1957 SCC OnLine Bom 213

in loud voice with the Head of the school and refused to hold the meeting on 11.06.2009.

15. Article of Charge-III is that the petitioner willfully neglected to submit the results of the supplementary examination of Std IX (English subject) on 21.05.2012, inspite of agreeing to the instructions issued by the Head of the school in the staff meeting held on 28.03.2012. The petitioner had violated Rule 100(1)(a) (i) and Rule 100 (i)(a)(xviii) of the Goa School Education Rules, 1986.

16. Article of Charge-IV is that the petitioner while functioning as Assistant Teacher threatened Mrs Phalgaonkar, Assistant Teacher, on 03.08.2012 that she will take her to Court for adding and writing some sentences to the minutes of the staff meeting held on 28.03.2012. Mrs Phalgaonkar was pregnant. She got disturbed and suffered mental stress and strain and required to consult a gynecologist. The petitioner violated Rule 100(i)(a)(xviii) of Goa School Education Rules, 1986.

17. Inquiry was conducted by Shri Kuvelekar. Notice was issued to the charged officer (petitioner) for preliminary hearing. Statement of Articles of Charge was framed against the petitioner. The disciplinary authority examined 5 witnesses. The witness No.S-1 was Shri Shri Vinayak D. Virnodkar whose examination in chief was recorded by Presiding Officer of the disciplinary authority. Cross-examination was conducted by defence assistant. Smt Shanti Sirsat was examined as S-2 for the

disciplinary authority. She was cross-examined by the defence assistant. Mr Haresh Melwani was examined as witness No.SW-3 for the disciplinary authority. He was cross-examined. The Inquiry Officer submitted report dated 30.01.2014. The report indicated that the Inquiry Officer had recorded assessment of evidence. According to Inquiry Officer there is ample evidence, oral and documentary, that the Charged Officer failed to conduct remedial classes during October Vacation 2004. There is documentary evidence dated 18.11.2004 which the Charged Officer sent in response to the letter dated 01.11.2004 of the ex-Headmaster Shri V. D. Virnodkar was irrelevant to the issue involved in the letter dated 01.11.2004. The reply dated 18.11.2004 also contain allegations against the Chairman and Manager, indecent language and arrogant way of addressing her superior. It was further observed that the charged officer did not produce any oral or documentary evidence to rebut the charges other than the evidence in the cross-examination of the witnesses. However, the evidence does not help the charged officer to rebut the charges. There is ample evidence oral and documentary that the charged officer disobeyed instructions given to her by the Head of the school on 11.06.2009. In spite of disobeying the instructions she argued arrogantly in a loud voice with the Head of the school and refused to hold meeting on 11.06.2009. The petitioner did not produce any oral or documentary evidence to rebut the charge. There is ample evidence that the petitioner willfully neglected to submit the result of supplementary examination of Std. IX English subject. The charged officer did not produce any oral or documentary evidence to rebut Charge No.-III. There is ample evidence that

the charged officer threatened Mrs Phalgaonkar on 03.08.2012. Due to threats Mrs Phalgaonkar who was pregnant got disturbed and suffered mental stress. The Inquiry Officer assessed the said evidence. The Inquiry Officer also assessed the evidence produced by charged officer. The petitioner examined the witness. The witness was cross-examined. The Inquiry Officer in his report dated 30.01.2014 has opined that the charged officer/petitioner did not subject herself to the cross-examination of the disciplinary authority and questions under Sub-rule 18 Rule 14 of CCS/CCA Rules, 1965. Thus, the charge that the petitioner threatened Mrs Phalgaonkar stands proved.

18. Respondent No.1 forwarded a proposal dated 08.04.2014 to the Director of Education with a request to accord approval to impose major penalty under Rule 94(2)(ii) of Goa Daman & Diu School Education Act, 1984 and Rules, 1986 for imposing penalty of compulsory retirement. Approval was granted vide order dated 25.09.2014. The Director of Education in the order dated 25.09.2014 observed that during the course of hearing the advocate for the petitioner filed an application for copies of documents and information on 13.06.2014. The petitioner has called for about 18 documents. The respondents filed a reply to the application and contended that documents demanded by the petitioner are irrelevant. The Director, Education, observed that the reply filed by the petitioner before the Chairman of the School Managing Committee dated 11.03.2014 was perused stating that she does not accept the findings of the Inquiry Officer and the Inquiry Report is malafide. After careful examination, the entire material on record produced by the

school management and also the charged officer, it was concluded that the alleged misconduct has been proved against the charged officer. The proposed penalty is commensurate with gravity of the charges levied against the charged officer, as it is a decision taken by the employer against the employee whom they know better. The punishment of imposing major penalty of compulsory retirement from service is proportionate and justifiable.

19. Pursuant to the approval order the respondent No.1 ordered major penalty of compulsory retirement from service under Rule 94(1) (b) (ii) on the petitioner from 01.10.2014.

20. The petitioner preferred appeal before the Administrative Tribunal. The proceedings were then transferred to the Principal District Judge. Vide judgment dated 12.07.2019 the learned Principal District Judge dismissed the appeal preferred by the petitioner.

21. The learned Principal District Judge has held that it was within the powers of Managing Committee to order compulsory retirement.

22. According to school management specific instructions were given to the petitioner by the Headmaster of the school. The petitioner did not conduct remedial classes and according to respondent, she has misbehaved with her superior teachers/staff of the school. The learned Principal District Judge has observed

that the petitioner refused to conduct remedial classes and it was pleaded that every teacher has to work during the school hours specified by Director of Education under Rule 20 of Goa Education Act, 1984. It was also contended that no teacher can be forced to take up extra classes. The said contention was dealt with by learned Judge by observing that the respondent No.1 is a private school and not a public school as defined under Section 2(r) of Goa Education Act. The employees are private employees. The post held by the petitioner is not a civil post. Even though the school is aided by the Government, the teachers are not government servants. Remedial classes are provided to the students for betterment of the students so that they can secure good marks. Such classes are for the benefit of poor people who cannot afford to take extra classes. School tries to work for the betterment of students. It is the duty of the teachers to conduct classes by following the instructions of the school. The Head of the institution and Managing Committee are supreme and they have all the powers to supervise and regulate the conduct and approach of teachers in all respects. If they find that teachers do not obey their instructions they have every right to take action against the teacher. The appellant conducted remedial classes on 28.10.2004 and thereafter refused to conduct remedial classes. This was brought to the notice of the Headmaster and explanation was called for from the petitioner vide letter dated 01.11.2014. The appellant vide letter dated 18.11.2004 replied that she does not know who is the Chairman of the school or the Manager of the school. It was claimed that as per Rule 46 only school managing committee can give any such directions. The directions were issued in contravention of Rule 46. Vacation is a

matter of right and there cannot be any agreement in contravention of statutory provisions and contrary to law. No programme was prepared by the school. She does not have health problems but only legal problems. According to her, she did not conduct remedial classes because the rules do not authorise school managing committee to conduct such classes. She also contended that she was compelled to take religious functions of the school. The management issued warning letter to the petitioner on 08.12.2004 and called for explanation. In the reply the petitioner used indecent language towards superiors. She challenged the authority of the Chairman who had appointed her and also promoted her to the post of Assistant Teacher on the condition that she would accept whatever work given to her and would serve in cooperation with the management towards progress of the students. The fact that the petitioner tried to create communal crisis amongst the school employees in the letter dated 18.11.2004 was not liked by the Committee. The petitioner forwarded another letter dated 01.12.2004 and gave some baseless explanation. By letter dated 14.12.2004 the Chairman wrote to the petitioner that her explanation is not accepted. She was invited for a meeting on 23.12.2004. In the meeting she gave oral apology and undertook to give unconditional apology. She did not submit written apology. Note was issued that the petitioner did not obey instructions. On 04.06.2012 the petitioner was asked to submit result of supplementary examination conducted for Std. IX on 25.02.2012. The petitioner did not submit the report. The petitioner disobeyed the instructions given to her by Head of school on 11.06.2009. The Headmistress had instructed her to

hold meeting to English subject teachers to discuss curriculum for the academic year 2009-2010. The petitioner did not follow the instructions. She behaved rudely and argued arrogantly in loud voice. She failed to submit result of supplementary examination held on 25.01.2012. Letter was issued to the petitioner to submit report. The petitioner did not follow instructions. The petitioner threatened Mrs Phalgaonkar, the Assistant Teacher on 03.08.2012.

23. The relevant provision with regard to imposition of major penalty is Section 11(2) of the Rule 97 which reads as under:-

'Section 11(2): Subject to any rules that may be made by this behalf, no employee of the aided school shall be dismissed, removed, reduced in rank, compulsorily retired or terminated, except with prior approval of the Director.'

24. Sufficient opportunity was given to the petitioner. There was no violation of principles of natural justice. Charges were proved. The action of imposing major penalty was justified. All the procedural safeguards were complied while imposing the penalty against the petitioner. It cannot be said that the penalty is not commensurate with the charges levelled against the petitioner. The impugned order dated 12.07.2019 is well reasoned. The learned Judge has scrutinized all the facts and documents. The Inquiry Officer has conducted inquiry in detail. Witnesses were examined. The petitioner was also given an opportunity to cross-examine the witnesses of respondent and to examine the witnesses on behalf of the petitioner. Approval was

granted by the Director of Education by assigning reasons. Order dated 30.09.2014 was passed by respondent No.1 imposing penalty and the said order is confirmed by the learned Principal District Judge by giving cogent reasons on 12.07.2019.

25. In the case of **Marwari Balika Vidyalaya v/s. Asha Srivastava And Others** (supra), it was observed that writ petition against private unaided school is maintainable. In the case of **Om Kumar And Others v/s. Union of India** (supra), it was held that if action is challenged as discriminatory under Article 14 of the Constitution, the principle of proportionality is applied on merits by court by way of primary review. But if action is alleged to be violative of Article 14 on ground of arbitrariness, Wednesbury principle is applied by court by way of secondary review. In the case of **Ranjit Thakur v/s. Union of India & Ors** (supra), it was held that statutory provisions for compliance with procedural safeguards must be followed before imposing punishment. In the case of **Diocesan Society of Education & Anr., v/s. Administrative Tribunal Panaji & Ors.** Passed by this Court it was held that rules are to be followed. Major penalty cannot be imposed mechanically.

26. In the case of **Thermax Limited v/s. Vishwanath N. Jadhav and Ors.**(supra), it was observed that the conduct of declining to obey an order which not only results in disobedience but the conduct of the workman would also amount to insubordination. In the case of **Sarabhai M. Chemicals (S.M. Chemicals and Electronics), Ltd. V/s. M. S. Ajmera and another**(supra), it was held that workman

disobeying lawful orders of superior officer would be guilty of insubordination. Misconduct of disobedience and insubordination amounts to indiscipline. It is not necessary that there must be a series of disobedient conducts or acts of indiscipline before a workman can be charged with insubordination or indiscipline. In the case of ***S. R. Tewari v/s. Union of India and Anr*** (supra), it was held that the Court can interfere with quantum of punishment only where punishment awarded is found to be shockingly or strikingly disproportionate to gravity of misconduct or is arbitrary, violating Article 14 of the Constitution. In the case of ***Director (Studies), Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh & Ors*** (supra), it was observed that purity and discipline is necessary in the field of education for progress of the nation. In the case of ***Chandrama Tewari v/s. Union of India (through General Manager, Eastern Railways)*** (supra), it was held that it is not necessary that each and every document must be supplied to the delinquent. Material and relevant documents are necessary to be supplied. In the case of ***Natwar Singh v/s. Director of Enforcement And Anr*** (supra), it was observed that while applying doctrine of fair play there must be real flexibility. Concept of fairness is not a one-way street. Supply of relied on documents based on which the law has been set into motion would meet the requirements of principles of natural justice. In the case of ***Garment Craft v/s. Prakash Chand Goel*** (supra), it was observed that High Court exercising supervisory jurisdiction under Article 227 does not act as a Court of first

appeal to re-appreciate, reweigh evidence or facts upon which determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when final finding is justified or can be supported. High Court is not to substitute its own decision on facts and conclusion, for that of inferior court or tribunal. Jurisdiction exercised is in nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. Power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or finding is so perverse that no reasonable person can possibly come to such a conclusion that court or tribunal has come to. The High Court exercising supervisory jurisdiction does not act as court of first appeal to appreciate evidence. In the case of ***Kendriya Vidyalaya Sangathan v/s. Arunkumar Madhavrao Sinddhave And Another***(supra), it was observed that the respondent therein was appointed as Teacher in a school and as such he does not hold a civil post within the meaning of Article 311 of the Constitution of India and the said provision does not apply to him. In the case of ***Kanji Kurji v/s. Kala Gopal*** (supra), it was observed that in exercise of writ jurisdiction the Court is concerned with finding out whether there is an error apparent on the fact of the record and, therefore, the parties cannot be allowed to argue entirely new point which was never canvassed before the Tribunal and which has not been dealt with by them and in respect of which it cannot be said that there is an error apparent on the face of the record.

27. Thus, no interference is called for in the impugned orders.
The petition is devoid of merits and deserves to be dismissed.

ORDER

- (i) Writ Petition is dismissed.
- (ii) Disposed of.

(PRAKASH D. NAIK, J.)

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