

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 144 OF 2018
WITH
MISC. CIVIL APPLICATION NO.90 OF 2023.
IN

WRIT PETITION NO. 144 OF 2018

Mrs. Meena P. Gaykar, Major in age, Indian National, Residing at G-3, Gangotri Apartment, B. B. Borkar, Alto Porvorim-Goa. ... Petitioner.

1. Prabodhan Education Society, Through its Chairman & School Managing committee, Prabodhan Pratamik Vidyala, Porvorim-Goa.
2. The Director of Education, Government of Education, Porvorim – Goa ...Respondents.

Mr. H. D. Naik, Mr. A. Naik and Ms. P. Gaykar, Advocates for the Petitioner.

Mr. P. Sawant, Advocate for respondent no.1.

Mr. M. Salkar, Govt. Advocate for respondent no.2.

CORAM: M. S. KARNIK, J
DATED: 23rd MARCH 2023

ORAL JUDGMENT.:-

1. Heard Mr. H. D. Naik, learned Counsel for the petitioner, Mr. M. Salkar, learned Government Advocate for respondent no.2, and Mr. P. Sawant, learned Counsel for respondent no.1.

2. This petition is under Articles 226 and 227 of the Constitution of India. The petitioner is challenging an order compulsorily retiring her from service as a primary teacher. She was working in the school run by respondent no.1/society.

3. This petitioner was appointed sometime in the year 1997. A chargesheet dated 10.1.2014 came to be issued to her for alleged misconducts. The petitioner was called upon to respond to as many as seven charges. Since disciplinary action was initiated under the provisions of the Goa School Education Rules, 1986, the inquiry proceeded in terms of the provisions of CCS (CCA) Rules.

4. During the course of the inquiry, the management proposed to examine ten witnesses. Factually five witnesses were examined. The Inquiry Officer found the charges proved. Against the report of the Inquiry Officer, representation was made by the petitioner on 23.2.2016 on various grounds.

5. The Director of Education in exercise of the power vested in him under Rule 97(1) of the Goa School Education Rules, 1986, for the reasons recorded by him, accorded the approval to respondent no.1 to impose a major penalty in terms of Rule 14 of the CCS(CCA) and Rule 94(1)(b)(ii) of the Goa School Education Rules 1986 of

compulsory retirement. The management by an order dated 25.6.2016 compulsorily retired the petitioner w.e.f. 30.6.2016.

6. The petitioner challenged the order of compulsory retirement before the Administrative Tribunal Goa. The Administrative Tribunal by the judgment and order dated 6.9.2017 dismissed the appeal.

7. Learned Counsel for the petitioner challenged the impugned order on various grounds. It is submitted that the inquiry was conducted in breach of the principles of natural justice. It is submitted that there is a breach of the procedure that has been prescribed by Rule 14 of CCS(CCA) Rules, for imposing a major penalty. It is submitted that the entire action of the management was motivated one, as her frankness was not liked by the then secretary of the school Mr. Subhash Velingkar who was instrumental in and at whose behest the inquiry proceedings were initiated.

8. The learned Government Advocate opposed the petition. My attention is invited to the findings recorded by the Inquiry officer, the order granting approval, and the order of Compulsory retirement. It is submitted that because the new management perceives the issue differently is no ground to doubt the efficacy of the proceedings as it then stood. He submits that the inquiry was conducted in consonance with the provisions of law. It is submitted that proper procedure

has been followed. It is further submitted that so far as the order dated 28.1.2022 is concerned, the same cannot be said to be arbitrary or illegal. The management is virtually trying to re-open the inquiry, which is impermissible.

9. The learned Counsel for respondent no.1 management submitted that the petitioner was treated unfairly at the behest of the erstwhile secretary and therefore, the management after going through the record decided to take corrective steps to do away with the injustice that the petitioner faced as a result of the order of compulsory retirement passed against her. The learned Counsel prayed that the petition be allowed.

10. During the pendency of the petition, respondent no.1 addressed a communication dated 12.10.2021 to the Director of Education. In the said letter, it is mentioned as under :-

The earlier Management of our Society / School under the Chairmanship of Shri. Prabhakar N. Bhate had initiated disciplinary proceeding against Mrs. Meena Prashant Gaykar (Pimary Teacher) which culminated into imposing major penalty of her 'compulsory retirement'.

Against the action of the disciplinary proceedings and the punishment of compulsory retirement imposed by the Management the matter is now pending before the Hon'ble High Court.

Present Management has considered the records and other material of the said disciplinary proceedings and it appears to the Management that the disciplinary action was initiated at the instance and behest of Shn. Subhash B. Velingkar who was the then Secretary of our school.

Considering the same Management is now of the opinion that injustice has been done to Mrs. Meena Prashant Gaykar (Primary Teacher) and as such the Management has taken de“ision to reinstate her services in the school as Primary Teacher as such we request you to kindly grant approval for reinstate Mrs. Meena Prashant Gaykar to the post of Primary Teacher in our school along with full back wages /Salary.

- 11.** Along with the communication, a resolution from the School was enclosed which reads thus:-

Resolution No.5:Resolved that the decision of earlier management under the Chairmanship of Shri Prabhakar N. Bhate which had initiated disciplinary Proceeding resulting into Compulsory Retirement of Mrs. Meena Prashant Gaykar, the presently pending before Hon’ble High court be considered sympathetically and injustice done to her be removed and services of said Mrs. Meena Prashant Gaykar be reinstate with full back wages/Salary and approval of the same be sought with the Directorate of Education. Govt. of Goa.

12. By an order dated 28.1.2022, the Director of Education was of the opinion that since no new facts are brought to his notice to grant approval of reinstatement of the petitioner, hence, the representation was not accepted. The same was disposed of.

13. I have considered the rival submissions. Intervening events are placed on record by way of amendment and the challenge is mounted to the order dated 28.1.2022 of the Director of Education as well.

14. Upon considering the inquiry officer's report, I am of the opinion that the same does not comply with the requirements of clause 23 of Rule 14 of the CCS (CCA) Rules. Rule 14(23) reads thus:-

(23)(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(b) the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

(d) the findings on each article of charge and the reasons therefor.

EXPLANATION- If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include :-

(a) the report prepared by it under clause (i).

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

Reading of the inquiry report indicates that there is no assessment of the evidence in respect of each article of charge; nor is any finding recorded on each article of charge and the reason therefor. The Inquiry report does not contain articles of charge and the statement of the conduct or imputation of the misconduct of the behaviour. The Inquiry report has made general observations on the nature of evidence. It records that on perusal of all the charges, the gist is about the behaviour of the charged officer, and defamatory

remarks against Mr. Velingkar. There is no manner of doubt that the Inquiry Officer's report contravenes clause 23 of Rule 14 of the CCS(CCA) Rules.

15. I further find that there is contravention of Rule 14(18) of the CCS(CCA) Rules as well. Rule 14(18) reads thus:-

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.

16. It is pertinent to note that there is nothing on record to suggest that after the petitioner closed her case, in terms of clause 18 of Rule 14, as the petitioner had not examined herself, the Inquiry Authority generally questioned her on the circumstances appearing against her in the evidence for the purpose of enabling the petitioner to explain any circumstances appearing in the evidence against her. It is thus seen that there is a breach of clause 18 of Rule 14 as well.

17. In ordinary course, I would have remitted the matter back for the Inquiry Officer to proceed from the stage of clause 18 Rule 14 of the CCS(CCA) Rules. I do not intend to do so in the peculiar facts of

this case considering the nature of the charges leveled against the petitioner and after considering the changed stand of the management during the pendency of the petition. The present management is convinced upon consideration of the record that disciplinary action was initiated at the instance and at the behest of Mr. Subhash Velingkar who was the then secretary of the Management. The petitioner had some issues with Mr. Subhash Velingker. It is stated in the communication dated 12.1.2021 addressed to the Director of Education reproduced hereinbefore that management is now of the opinion that injustice has been done to the petitioner and as such management has taken a decision to reinstate the petitioner in services of the school as a primary teacher and therefore request is made to the Director of Education to grant approval along with full back wages/salary.

18. In the light of the changed stance of the management, proceeding with the inquiry apart from being an empty formality will also be to the petitioner's detriment who already has suffered so long only because the petitioner's actions were perceived by the then secretary as behavioral concerns such that it called for the management to impose a major punishment. There is nothing on record to indicate that the petitioner's integrity being in doubt. It is further not the case that she was derelict in the discharge of her duty as a primary teacher. It appears that there was something to do with

her behaviour that was not appreciated by the then secretary Shri Subhash Velingkar which resulted in the disciplinary action. Ordinarily, I would not have adopted this course of accepting the changed stance of the management and proceeding to pass appropriate orders in this petition itself instead of remitting the matter back to the Inquiry Officer. The petitioner is out of employment since June 2016. For the misconduct alleged, the trauma of being out of employment suffered by the petitioner who has 19 years of unblemished service as a primary teacher is in itself a major suffering considering the nature of the alleged misconduct. It is therefore that the stand taken by the management deserves acceptance to do away with injustice done to the petitioner.

19. The orders impugned in this petition are set aside. The petition is allowed. The petitioner is directed to be reinstated to the post of primary teacher with respondent no.1 with continuity of service.

20. So far as the back wages are concerned, the management and/or petitioner may make a representation placing on record all the facts before the respondent no.1. The management supports the petitioner's claim of full back wages. The Petitioner case be considered sympathetically by the respondent no.2. The issue of back wages be decided by the respondent no. 2 on its own merits without

being influenced by the observation made in his earlier order dated 28.1.2022.

21. Such representation/s be decided preferably within a period of three months from the date of its receipt. The learned counsel for the petitioner as well as the respondent no.1 stated that the representation/s will be made within four weeks from the date of uploading this order either by management or by the petitioner. Needless to mention that it will always be open for the petitioner to challenge the order passed by the Director of Education, in the event the order is adverse.

22. The petition is partly allowed.

23. Rule is made partly absolute in the above terms with no order as to costs.

24. Misc. Civil Application also stands disposed of.

M. S. KARNIK J.