

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 235 OF 2012

Mr. Vithal Kashinath Naik
Son of Kashinath Naik, major of age,
married, Indian National,
resident of Satteri Bhat, Volvoi, Ponda, Goa. ...Petitioner

Versus

1. The State of Goa,
Through the Secretary (Education)
Office of the Secretary (Education)
Government of Goa, Secretariat,
Porvorim, Bardez, Goa.
2. The Director of Education
With his office at the
Directorate of Education,
18th June Road, Panaji, Goa.
3. The People's Education Trust,
An Education Trust
Constituted under the provisions of the
Indian Trust Act, 1885
Through its Chariman and Managing Trustee
Dr. Vinay Surlacar
C/o People's High Secondary School,
Rua de Qurem, Mala, Manaji Goa, 403 001. ...Respondents

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Mr. J.E. Coelho Pereira, Senior Advocate Amicus Curiae with Mr. Sagar Rivonkar, Advocate for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for Respondent Nos.1 and 2.

Mr. A.D. Bhobe a/w Ms. S. Shaikh, Advocate for Respondent No.3.

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CORAM : PRAKASH D. NAIK, &
BHARAT P. DESHPANDE, JJ.

Date of Reserving the Judgment : 15th SEPTEMBER, 2023.

Date of Pronouncing the Judgment : 12th FEBRUARY, 2024.

JUDGMENT : (PER PRAKASH D. NAIK, J.)

1. The Petitioner has approached this Court by invoking Article 226 of the Constitution of India. The Petitioner is seeking directions to grant backwages with bonus and leave encashment from 17.01.1998 to 04.01.2010 with implementation of 6th Pay and 7th Pay commission of Government of Goa and challenges the order dated 15.10.2012 passed by Respondent No.2.`

2. The Petitioner applied for appointment in the school of Respondent No.3 vide application dated 18.04.1988 for the post of Peon. The Petitioner was selected by Respondent No.3 for appointment as Laboratory Attendant in the school. The selection was forwarded to Respondent No.2 for approval vide letter dated 10.06.1988. Vide communication dated 28.06.1988 issued by Assistant Director of Education, the approval of Respondent No.2 to the appointment of Petitioner as Laboratory Attendant in the school was granted. By appointment order dated 01.07.1988 the Petitioner was appointed as a Laboratory Attendant in the school of

Respondent No.3. Vide Circular dated 26.05.1992, the Assistant Director Education called upon Principals of all non governmental higher secondary schools to send information to Respondent No.2 about the number of Laboratory/Library Attendants working in each higher secondary school in the pay scale of 750-950 with the date of appointment as Library/Laboratory Attendant with details of amount towards arrears payable to them by virtue of their pay fixation in the revised pay-scale of Rs.800-1150 w.e.f. 01.01.1986 or from the date of their appointment as Laboratory/Library Attendant, whichever was later. By letter dated 12.07.1993, the Respondent No.3 stated that they had appointed Laboratory/Library Attendants to work in the Laboratory/Library and not as Peon in the pay scale of Rs.750-940 and requested to upgrade the salary of Laboratory Attendants of the School from existing pay-scale of Rs.750-12-870-14-940 to the pay-scale of Rs.800-1150 with effect from 01.01.1986. According to the Petitioner, his pay-scale was updated and arrears of salary in this regard were paid to him.

3. By Circular dated 25.11.1996, the Headmaster/Principal of the School fixed a common work schedule/time-table for all class-IV employees including the Petitioner and assigned them common

duties like maintenance of the store room as and when required and as also to do work as per the time-table and to perform other duties in terms of work allotted to them by Headmaster. The Petitioner contends that this circular sought to club all Class-IV employees of the school into one common category for assigning them common duties and jobs irrespective of the nature of their appointment, the substantive post occupied them and the duties and jobs appurtenant thereto. This clubbing of class-IV employees into one category was arbitrary, illegal and not in conformity with provisions of the Act and Rules. The circular allotted to the Petitioner, a Laboratory Attendant, the duties of sweeping and washing the corridors and class-rooms of the school.

4. According to the Petitioner as Laboratory Attendant he was only required to perform the functions such as to help the Laboratory Assistants and the teachers set up apparatus for experiments proposed for practical work, to help the assistants to maintain the apparatus and laboratories in order, to wash and clean the tables, apparatus after the experiments are done by the students and replace the apparatus in place etc.

5. It was not his duty to sweep the class rooms and hence the Petitioner did not perform this duty of sweeping the class-rooms.

Communication dated 03.10.1997 was issued to the Petitioner by Principal of school directing the Petitioner to be regular in the duties of sweeping the class-rooms with warning that action would be taken against him if he did not do the work. Vide letter dated 14.11.1997 issued by the Principal of the school, the Petitioner was again accused of failing to sweep the class-rooms on 11.11.1997 and 12.11.1997 and charged with misbehaving with staff, who questioned him about non performance of duty. By reply dated 19.11.1997, the Petitioner requested clarification from the Principal of the school as to what rules and regulations issued by the Directorate of Education, a Laboratory Attendant was required to perform the duty of a sweeper.

6. The Petitioner further contends that on 17.01.1998, he went to sign the school attendance register. He found a handwritten note issued by the Principal-Respondent No.3 by which instructions were issued that he should not sign the attendance register till the issue of sweeping of class-rooms of the school was resolved. His signature in the register on 16.01.1998 was encircled. On 17.01.1998 he was prevented from signing the attendance register. He continued to perform his duties in the chemistry laboratory of the school. Vide letter dated 20.01.1998, the Petitioner informed

Respondent No.2 that he was not allowed to sign the attendance register and therefore the Respondent No.2 shall look into the matter immediately. Vide communication dated 23.01.1998 time table of work assigned to the Petitioner and other Laboratory and Library Attendants/Peons as per its decision taken on 20.01.1998 w.e.f. 24.01.1998. The communication indicated that the Respondent No.3 has decided to allot the Petitioner the work of cleaning class-room F-1 from 9.30 a.m. to 12.00 noon and 1.00 p.m. to 6.00 p.m.

7. The Principal of the school informed the managing trustee of Respondent No.3 on 24.01.1998 that the Petitioner has refused to accept the new duties allotted to him on 23.01.1998 and the Petitioner is not signing the muster roll from 17.01.1998. In fact the Petitioner had been attending the School regularly and was discharging his duties as Laboratory Attendant. The communication dated 18.02.1998 issued by the Principal of Respondent No.3 stated that the Petitioner is not signing the attendance register from 17.01.1998 and is absent from his duties from 17.01.1998.

8. The Petitioner forwarded a reply dated 27.02.1998 denying the allegations and made it clear that he had been prevented from

signing attendance register at the instance of Principal. The Petitioner addressed the communication dated 05.03.1998 to Respondent No.3 and letter dated 09.02.1998 to the Assistant Director of Education stating that he was prevented from signing attendance register.

9. Vide communication dated 06.03.1998, the Assistant Director of Education informed the Principal of Respondent No.3 that Group-D posts are sanctioned as per the Rule 80(7)(d) of Goa School Education Rules 1986. The assignment of duties of Class-IV is the internal arrangement /adjustment to be solved by the management. The problem created by the Petitioner may be solved by the Management through mutual understanding.

10. The Petitioner further contends that by letter dated 31.03.1998, the Principal of the school informed the Petitioner that it was his duty as Laboratory Attendant to clean Laboratory and the class-rooms. The Petitioner's designation as Laboratory Attendant carried with it duties of cleaning. The Petitioner instructed his lawyer to address a notice seeking payment to the Petitioner of his salary from January 1998. The Respondent No.3 replied the notice and contended that the Petitioner had refused to clean the Laboratory. The Petitioner addressed a letter dated 21.09.1998 to

the Ministry of Education making grievance about non- payment of a salary by Respondent No.3 and the issue relating to non-attendance of duty by him. The complaint was filed against the Petitioner on 30.09.1998 by the Laboratory Assistant and the teacher in-charge with Principal of School of Respondent No.3 alleging that the Petitioner was not performing his duty in the Laboratory. The Petitioner forwarded the representation. The Respondent No.2 called for explanation from Respondent No.3. False allegations were made by Respondent No.3 vide their reply dated 26.10.1998 against the Petitioner. No communication was received by the Petitioner about his representation dated 21.09.1998. The Petitioner forwarded reminder dated 21.09.1999 to Respondent No.2 to look into the matter. The Petitioner was served with Memorandum dated 03.11.1999 informing that the Respondent No.3 was proposing to hold inquiry against him under Rule-14 of Central Civil Services Rules 1965.

11. By notice of inquiry dated 17.02.2000, the Petitioner was informed that Disciplinary Committee of Respondent No.3 had decided to conduct an inquiry against him and Respondent No.4 had been appointed as an inquiry officer. The Petitioner attended the inquiry on 16.03.2000 and filed his written statement.

Although inquiry was concluded on 02.11.2002, no action was forthcoming in the matter. On 16.11.2004 the Petitioner called upon the inquiry officer to communicate to him whether he has submitted his inquiry report. The Petitioner did not receive any reply. The Petitioner made representations to various authorities expressing his grievance that he was not paid salary and the report of inquiry held against him is not yet made. The Petitioner addressed letter dated 05.07.2005 to the inquiry officer to inform him about decision, however no action was initiated.

12. Vide letter dated 20.07.2005, the Deputy Director of Education called upon Respondent No.3 to furnish the information within a week on the point, whether the Petitioner has been kept under suspension. If so date of suspension, whether the Petitioner has been charge-sheeted for his alleged misconduct. If so, the copy of charge-sheet be furnished, whether disciplinary proceedings has been finalized, if so the date on which the disciplinary proceedings finalized. If the disciplinary proceedings are delayed whether it is due to the reasons directly attributable to the concerned official and whether the findings of the inquiry officer are received, if not, what action the management has taken to get the findings.

13. The Petitioner made a representation dated 12.08.2005 to

Respondent No.2 complaining that Respondent No.3 had not paid him his salary from 17.01.1998 and calling for necessary action to be taken against Respondent No.3. Vide letter dated 18.01.2007, the Deputy Director of Education called upon the Respondent No.3 to meet him on 29.08.2007 to discuss the issue of non-payment of Petitioner's salary. The Petitioner was also called upon to remain present. The Petitioner remained present on 29.01.2007. Vide letter dated 02.02.2007, the Deputy Director of Education once again called upon the managing trustee of Respondent No.3 to remain present for a meeting on 20.02.2007. Both remained present in the office of Deputy Director of Education on 20.02.2007. It was stated at the instance of Respondent No.3 that the disciplinary proceedings are not finalized and amicable solution could be arrived at. The Petitioner met managing trustee of Respondent No.3 on 23.02.2007. The Respondent No.3 refused to pay arrears of salary. The meeting was not successful. The Petitioner informed Respondent No.2 that the settlement has failed. The Petitioner received the information that the Respondent No.3 had claimed salary up to December 1998. The Petitioner addressed letter dated 24.05.2007 to Respondent No.2 stating that though the inquiry was conducted between 1999 and 2001, the report of inquiry was not submitted. There was delay of about 7 years.

14. Show-cause notice dated 07.09.2007 was issued by Respondent No.2 to Respondent No.3. The management of Respondent No.3 was called upon to explain why they should not be asked to reinstate the Petitioner pending the disciplinary proceedings, if any as the reason for delaying the same were directly attributable to the management of the school.

15. The Petitioner filed Writ Petition No.6 of 1999 seeking relief from this Court with regards to withholding his salary. The Petition was withdrawn on 10.03.1999. According to the Petitioner, the withdrawal has no bearing on the present petition. The Petition was withdrawn as it was submitted before the Court that disciplinary proceedings were proposed to be initiated against him by Respondent No.3.

16. The Petitioner received communication dated 22.02.2008 by which inquiry report dated 29.12.2007 was forwarded to the Petitioner. The Petitioner filed Writ Petition No.120 of 2008 before this Court seeking directions to consider the Petitioner as continuing employee of Respondent No.3 and its school and to pay the salary of the post of Laboratory Attendant from 17.01.1998 with all increments and to continue to pay the same until the Petitioner retires. On 10.06.2008 statement was made by the

Advocate for Respondent No.3 that the inquiry has been completed and the decision would be taken within one month. In these circumstances the Petition was allowed to be withdrawn with liberty to take appropriate steps.

17. The Petitioner was informed that the managing committee concurred with report dated 29.12.2007 and the inquiry officer had proposed to impose major penalty of compulsory retirement under Rule (9)(b)(ii) of the said Rules and called upon the Petitioner to show cause why the same should not be imposed upon him vide show cause notice dated 08.07.2008. Approval of Respondent No.2 was sought vide letter dated 20.08.2008. Hearing was given to the Petitioner on 22.09.2008. By order dated 17.12.2008, the Respondent No.2 observed that the proposed punishment of imposing major penalty of compulsory retirement of the Petitioner from services is grossly disproportionate and unjustifiable and consequently rejected the grant of approval to the proposal of Respondent No.3 to impose the major penalty of compulsory retirement on the Petitioner. Vide letter dated 06.01.2009, the Petitioner called upon Respondent No.3 to issue further instructions to him as also pay him the arrears of salary from 17.01.1998. The Respondent No.3 informed the Petitioner that it is proposed to

challenge the order dated 17.12.2008 and it is not possible to comply the request. The order dated 17.12.2008 was not challenged. Hence, the Petitioner forwarded a representation dated 04.02.2009 claiming his arrears of salary. The Petitioner also addressed a representation dated 06.03.2009 to various authorities.

18. The Petitioner filed Writ Petition No.537 of 2009 before this Court. The Respondent No.3 made a statement that in the inquiry it was concluded that major penalty of compulsory retirement is not approved by Respondent No.2 and therefore the Respondent No.3 would contemplate imposing minor penalty. The same would be communicated to the Petitioner. The Respondent No.3 made a statement that they can permit the Petitioner to join as Laboratory Attendant from 05.02.2010. The Petition was disposed of vide order dated 04.02.2010.

19. The Petitioner joined duties from 06.02.2010. Show cause notice was issued to him as to why minor penalty of withholding three increments under Rule 94(1)(d)(iii) of the Goa School Education Rules, 1986 should not be imposed on him. On 17.05.2010, the Respondent No.3 issued an order issuing minor penalty of withholding three annual increments on the Petitioner under Rule 94(1)(d)(iii) of the Goa School Education Rules, 1986.

The Petitioner filed an appeal against order dated 17.05.2010 before Respondent No.2 under Rule 96 of the Goa School Education Rules, 1986. Vide order dated 23.03.2011, the order dated 17.05.2011 was set aside on the ground that misconduct was not proved against Petitioner and the penalty is harsh. The Petitioner was condemned to an existence that has been nothing less than a struggle that the Petitioner was not even paid any salary or subsistence allowance during the said period. The Petitioner made representation to release his salary. The representation was forwarded to Respondent No.3 however; the salary was not released.

20. The Petitioner made representation dated 14.05.2011 to Respondent No.3 to pay him all his outstanding as per his entitlements. The Respondent No.2 sought clarification from Respondent No.3. No clarification was issued by Respondent No.3. The Respondent No.3 contended that the Petitioner was keeping himself busy and was employed at restaurant. The Respondent No.3 was called upon to produce documentary evidence, no action was initiated by Respondent No.3. The Petitioner made representation to Respondent No.2 for releasing his salary and other dues.

21. The Respondent No.2 issued show cause notice to Respondent No.3 dated 27.06.2012 under Section 7(2) of the Goa, Daman and Diu School Education Act, 1984 and Rule 43 of The Goa, Daman and Diu School Education Rules, 1986 for non payment of the dues of the Petitioner. By order dated 15.10.2012, the Respondent No.2 concluded that it is not a fit case wherein Section 7(2) of the Goa, Daman and Diu School Education Act, 1984 and Rule 43 of Goa, Daman and Diu School Education Rules, 1986 should be invoked primarily on the ground that the matter is pending adjudication in the High Court and conduct of the Petitioner also does not fit to be like the model employee and the show-cause notice was disposed of.

22. The Petitioner applied vide his application dated 16.12.2011 to the Public Information Officer seeking information with regards to provide certified copies available with the department. Information was received by the Petitioner stating that the Petitioner was reinstated as Chemistry Laboratory Attendant as per the High Court order dated 05.02.2010. The salary paid to the Petitioner from 05.02.2010 is in sixth pay scale with pay pond of Rs.5200 and Grade of Rs.1800/-.

23. According to the Petitioner he resumed his duties on 05.02.2010 pursuant to the order dated 04.02.2010 passed by this

Court. The Petitioner's pay has not been revised. The Petitioner is entitled to backwages due to the Petitioner along with bonus and leave encashment from the date of 17.01.1998 to 04.02.2010 along with implementation of 6th pay and 7th Pay commission of the Government of Goa.

24. The learned Senior Advocate Mr. Coehlo Pereira, submitted that the Petitioner was appointed as a Laboratory Attendant. He is made to run from pillar to post since last several years for claiming his salary. Disciplinary inquiry was conducted against the Petitioner which went on for a period of 9 years. It was decided to impose major penalty. The order of major penalty was not approved by Respondent No.2. Subsequently it was decided to impose minor penalty. The order of minor penalty was also set aside. Show cause notice was issued to Respondent No.3 by Respondent No.2. Although the Respondent No.3 was castigated for their acts, the show cause notice was disposed of. No action was initiated against Respondent No.3 under Section 7(2) of Goa School Education Act, 1985 and Rules 43 of the Goa, Daman and Diu School Education Rules, 1986. The Petitioner is entitled for backwages due to him along with other benefits.

25. Mr. Pereira has relied upon the decision of the Hon'ble Supreme Court in the case of **R.S. Misra Vs. Union of India and**

others¹ wherein it was observed that the Appellant therein was neither placed under suspension nor paid subsistence allowances hence, payment of full salary for a period cannot be denied to him.

26. Learned Advocate for Respondent No.3 submitted that the Petitioner had preferred Writ Petition No.6 of 1999 before this Court which has been withdrawn on 10.03.1999. The prayer (a) in the said petition was identical with the prayer sought in this petition. On the principle of *res-judicata* the Petitioner cannot be allowed to agitate the same prayers by preferring subsequent petition. In support of his submission, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P. Gwalior and others**² wherein it was observed that withdrawal or abandonment of a Petition under Article 226/227 without permission to file fresh Petition thereunder would bar such a fresh petition in the High Court involving same subject matter. It is further submitted that the Petitioner has accepted order dated 23.03.2011. The said order does not direct payment of salary to the Petitioner. The claim of Petitioner towards the arrears of salary from 1998 is baseless. The Petitioner absented himself from duties from 17.01.1998 to 04.02.2010. The letter dated 19.08.2010,

¹ 2012 (8) SCC 558.

² 1987 (1) SCC 5

issued by Deputy Director of Education to Respondent No.3 indicate that the Directorate of Education had noted the absentee period of Petitioner. The Petitioner had not worked during the period from 17.01.1998 to 04.02.2010 and would not be entitled for any amount during the said period. Vide order dated 23.03.2011, the Respondent No.2 rejected the proposal submitted by school management for minor penalty of withholding three annual increments. The Respondent No.2 has not directed the payment of any amount to Petitioner nor has held the Petitioner to be entitled to salary during the absentee period of the Petitioner w.e.f. 17.01.1998 to 04.02.2010. The Salary paid to the Petitioner was up to 16.08.1998 i.e. the date till the Petitioner had worked. The Respondent No.3 claimed salary of the Petitioner from January - 1998 till December – 1998. The said amount was subsequently adjusted by the Education Department and that no salary claim amount in respect of the Petitioner was left unpaid in the salary account of Respondent No.3. Pursuant to order dated 04.02.2010 passed by this Court, the Petitioner has joined as Laboratory Attendant w.e.f. 05.02.2010. The Petitioner has been paid his salary from 05.02.2010 till date. The Respondent No.3 has neither fixed revised pay of the Petitioner and the same will be forwarded to the Directorate of Education for approval. The Statement that

the Petitioner was prevented from signing the attendance register is denied. There was no occasion for the Petitioner to claim arrears of salary from 17.01.1998 as he has failed to report for duties and absented himself from duties. The Respondent No.3 at no point of time has suggested that the Petitioner is entitled for arrears of salary for the period of 17.01.1998 to 04.02.2010. The Respondent No.3 was agreeable to pay future salary to the Petitioner in the event the Petitioner had reported the duty and performed his duties. The statement that the Petitioner was stopped from signing the muster roll or prevented from performing his duties is not correct. The Petitioner is not entitled to payment of salary for a period of w.e.f.17.01.1998 to 04.02.2010 on account of absenting himself from duties as also on account of withdrawal of Writ Petition No.6 of 1999.

27. Affidavit in reply has been filed on behalf of Respondent No.2. In the said reply it is stated that subsequent to filing the present petition, show cause notice dated 27.06.2012 was issued to the Chairman of Respondent No.3 as to why action should not be taken under Section 7(2) of the Goa, Daman and Diu School Education Act, 1984 and Rule 43 of The Goa, Daman and Diu School Education Rules, 1986. The Respondent No.3 filed reply to

the show cause notice. After considering the reply, the show cause notice was disposed of vide order dated 18.10.2012.

28. The Petitioner was appointed as Laboratory Attendant w.e.f. 01.07.1988. The Petitioner joined the duties in the school of Respondent No.3. The circular dated 25.11.1996 was issued by the School by fixing a common work schedule. In view of the Circular, the Petitioner was directed to perform duties of sweeping and washing corridors and class-rooms of the building of the school. The correspondence placed on record and the pleadings in the Petition indicate that the Petitioner has protested against such work being assigned to him on the ground that his appointment was made as Laboratory Attendant. The Petitioner was accused of failing to sweep the class rooms. Letter was issued to the Petitioner for not discharging his duties. The Petitioner has contended that he was prevented from signing the attendance register. The grievance was made with Respondent No.2 vide letter dated 20.01.1998. The Petitioner had forwarded his reply to the letters issued by the School of Respondent No.3 denying the allegations. Memorandum was served upon the Petitioner on 03.11.1999 intimating that it is proposed to hold inquiry against him. Notice of inquiry dated 17.02.2000 was issued to the Petitioner informing that the

Respondent No.3 has decided to conduct inquiry against him. Inquiry officer was appointed. The Petitioner attended the inquiry and filed written statement of defence. However, no action was forthcoming. Inquiry report was not submitted. The Deputy Director of Education had called upon Respondent No.3 to furnish information whether the Petitioner was suspended, charge-sheeted, whether disciplinary proceedings are finalized etc. The Petitioner has also made a grievance that his salary was not paid. The Respondent No.3 had indicated that they could not finalized the disciplinary proceedings. It is pertinent to note that although the inquiry had commenced in 1999, no decision was taken for period of more than seven years. Show cause notice dated 07.09.2007 was issued by Respondent No.2 to Respondent No.3. Writ Petition No.6 of 1999 preferred by the Petitioner was withdrawn on 10.03.1999 as it was submitted before this Court that the disciplinary proceedings were proposed to be initiated against him by Respondent No.3. In any case there was no adverse observations in the said Petition against the Petitioner while withdrawing the Petition. The Petitioner then received communication dated 22.02.2008 by which the inquiry report was submitted to him. It is relevant to note that the inquiry report was dated 29.12.2007 which was submitted after a long gap of several

years after commencement of inquiry. The Petitioner preferred another Writ Petition No.120 of 2008. On 10.06.2008 it was submitted at the instance of Respondent No.3 that inquiry is completed and decision would be taken shortly, hence the Petition was withdrawn. The Respondent No.3 had decided to impose major penalty of compulsory retirement under Rule 9(b)(ii) of the said Rules and called upon the Petitioner's to show cause why the same should not be imposed. Approval was sought from Respondent No.2 for imposing major penalty. The approval to impose major penalty was not granted by Respondent No.2 on the ground that it was grossly disproportionate and unjustifiable. The order passed by the Respondent No.2 in that regard dated 17.12.2008 was not challenged. Thereafter, Respondent No.3 indicated that the action imposing minor penalty would be initiated against the Petitioner. The Petitioner can join the duties as Laboratory Attendant from 05.02.2010. The Petitioner joined the duties from 06.02.2010. Show cause notice was issued to him about minor penalty in the form of withholding three increments. The order dated 17.05.2010 was passed imposing minor penalty withholding three annual increments on Petitioner. The Petitioner filed an appeal against order dated 17.05.2010 before Respondent No.2. The Respondent No.2 after hearing the Petitioner and Respondent No.3 was pleased

to set aside the order dated 17.05.2011 vide its order dated 23.03.2011 holding that the misconduct was not proved against the Petitioner and the penalty proposed is harsh. It was also observed that the Petitioner was condemned to an existence for over 10 years that has been nothing less than a struggle and that the Petitioner was not even paid any salary or for that matter a subsistence allowances during the said period of his suspension and pending the culmination of disciplinary proceedings.

29. It is pertinent to note that the Respondent No.3 is not paying the salary for a period of 17.01.1998 to 04.02.2010 on the ground that the Petitioner had remained absent on duty. The Respondent No.3 has not proved the said fact. The inquiry was conducted for a period of about 9 years against the Petitioner. The major penalty as well as minor penalty has been set aside. The Petitioner has been made to struggle since last several years without being paid any salary from 17.01.1998 to 04.01.2010. The charge of misconduct was not proved. There is no reason for non payment of salary during the period from 17.01.1998 to 04.02.2010. The order dated 23.03.2011 was in respect of the minor penalty which was imposed against the Petitioner. The contention of the Respondent No.3 that the said order does not order payment of backwages is devoid of merits. Show cause notice was issued against Respondent No.2

which has been disposed of vide order dated 18.10.2012. On perusal of the entire order it is apparent that the Respondent No.2 has criticized and castigated Respondent No.3 for their acts. On the ground that the action was not taken in accordance with Section 7(2) of the Goa, Daman and Diu School Education Act, 1984 and Rule 43 of The Goa, Daman and Diu School Education Rules, 1986, the Petitioner cannot be denied of his salary and other emoluments which were not paid to him.

30. Considering the aforesaid circumstances we are of the considered opinion that the Petitioner is entitled for all backwages due to the Petitioner along with all the benefits from 17.01.1998 to 04.02.2010.

ORDER

- i) Rule is made absolute in terms of prayer clause (bbb) of the Writ Petition.
- ii) Writ Petition is disposed off.

(BHARAT P. DESHPANDE, J)

(PRAKASH D. NAIK, J.)