

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.416 OF 2024

Eunice Braganza, Aged 40 years, resident of
H.No.265/4, Premeiro Waddo, Divar, Goa
403403

...Petitioner

Versus

1. State of Goa, Through the Chief
Secretary, Government of Goa, Porvorim-
Goa.
2. Directorate of Education, Through its
Director, Government of Goa, Porvorim-
Goa.
3. Jesus and Mary Sarvajanik School High
School, Through its Manager Kalpora,
Carambolim-Tiswadi, Goa, 403 110.
4. The Jesus and Mary Goa Education
Society, Through its Chairman/Secretary,
Kalpora, Carambolim-Tiswadi,
Goa 403 110.

...Respondents

**Mr S. D. Lotlikar, Senior Advocate with Mr Terence Sequeira,
Advocate for the Petitioner.**

**Ms Maria Simone J. Correia, Additional Government Advocate for
Respondents No.1 and 2.**

**Mr Vledson Braganza with Mr Vilas Pavithran, Advocates for
Respondents No.3 and 4.**

**CORAM: M. S. SONAK &
VALMIKI MENEZES, JJ.**

DATE: 6th MAY 2024

ORAL JUDGMENT:

1. Heard Mr S. D. Lotlikar, learned Senior Advocate who appears with Mr Terence Sequeira for the Petitioner, Ms Maria Simone Correia, learned Additional Government Advocate for Respondents 1 and 2 and Mr Vledson Braganza who appears with Mr Vilas Pavithran, learned Counsel for Respondents No.3 and 4.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned Counsel for the parties.
3. The Petitioner seeks a writ of mandamus directing the Respondents to permit her to resume duties as a Trained Under Graduate Teacher in the third Respondent School along with all consequential benefits including backwages and arrears of the salary from the date of her appointment.
4. After complying with the prescribed selection procedures, the petitioner was appointed as Trained Graduate Teacher (Under Graduate category) vide order dated 06.10.2022. This order was provisional in the sense that the same was pending approval from the Directorate of Education.
5. The record shows that the third and fourth Respondents delayed seeking such approval from the Directorate of Education. Such approval was ultimately applied for on 09.06.2023 after a delay of almost 9 months. Throughout this period, the petitioner was not paid any salary.
6. The application dated 09.06.2023 is at page 34 of the paper-book. On 03.10.2023, the Directorate of Education called upon the third and fourth Respondent to explain the delay in applying for approval. Such explanation was

furnished by the third and fourth Respondent on 06.10.2023. (Page 36 of the paper-book). The third and fourth Respondent requested the Directorate of Education to condone the delay and grant approval for the petitioner's appointment.

7. The petitioner has placed on record another communication dated 05.12.2023 addressed by the Manager and the Headmistress to the Director of Education (page 37 of the paper-book). In this communication, the Manager and the Headmistress apologised for the lapses on their part for the inadvertent delay in submitting the approval files of three teachers, including the Petitioner herein. The communication requests that the delay be condoned and assures the Director that this kind of lapse will not occur in the future.

8. Finally, the Director of Education, after condoning the delay, granted approval for the petitioner's appointment vide communication dated 01.02.2024 (Exhibit -E at page 39 of the paper-book). This approval was w.e.f 08.10.2022.

9. The petitioner's case is that on 30.01.2024, when the petitioner reported for duties as usual, she was denied the permission to sign the Muster Roll. The petitioner has complained that from that date, the petitioner was prevented from discharging her duties as a teacher. The petitioner has also placed on record her complaint dated 06.02.2024 addressed to the Goa Human Rights Commission complaining, inter alia, of her being prevented from discharging her duties and the non-payment of salaries since the date of the initial appointment, i.e. 08.10.2022. This complaint before the Human Rights Commission is still pending.

10. Mr Vledson Braganza, learned Counsel for third and fourth Respondents has submitted that it was the Petitioner who abandoned her duties and failed to attend the School. He submitted that a show cause notice was issued to the Petitioner, and the third and fourth Respondent proposed initiating disciplinary proceedings against the Petitioner for her unauthorised absence/abandonment and other charges. Mr Braganza pointed out that the interim reply was filed before the Goa Human Rights Commission. Mr Braganza submitted that the third and fourth Respondents were forced to appoint a substitute teacher because the Petitioner failed to attend the duties. He, however, admitted that the tenure of the substitute teacher has now ended.

11. From the material placed before us and the submissions made, we find that the Petitioner was appointed as a teacher based on recommendations of a duly constituted selection committee by following all the prescribed procedures. The Petitioner was also appointed as a teacher effective from 08.10.2022. The third and fourth Respondents were duty-bound to immediately apply for and obtain approval from the Directorate of Education so that the Petitioner would receive her salary and other benefits post her appointment as a teacher w.e.f. 08.10.2022. However, there was a delay on the part of the third and fourth Respondents, for which they apologised to the Director of Education. By communication dated 01.02.2024, the Director of Education approved the Petitioner's appointment w.e.f. 08.10.2022.

12. At least after the order dated 01.02.2024, there should have been no difficulty in allowing the Petitioner to resume her duties and for payment of her salary and consequential benefits. At this stage, we do not propose to go into the issue of whether the Petitioner abandoned her services or whether the

Petitioner was prevented from discharging her duties. These are disputed questions of fact. In any case, if the third and fourth Respondents are of the opinion that the Petitioner has indulged in any misconduct, it is always open to them to initiate disciplinary proceedings against the Petitioner in accordance with rules and prescribed procedures. But that would not be sufficient justification for not allowing the Petitioner to resume her duties or for not paying the Petitioner her salary and consequential benefits for the services rendered w.e.f. 08.10.2022.

13. Neither the third/fourth Respondent nor the Directorate of Education have otherwise faulted the Petitioner's selection or appointment as a teacher. There was a delay in seeking approval, for which the third and fourth Respondents accepted the responsibility and even apologised to the Director of Education. Now that the Director has approved the Petitioner's appointment w.e.f. 08.10.2022, it is only appropriate that the Respondents permit her forthwith to resume duties and pay her the salary and other consequential benefits w.e.f. 08.10.2022.

14. Accordingly, we direct the Respondents, including, in particular, the third and fourth Respondents, to immediately permit the Petitioner to resume duties as a Trained Graduate Teacher (Undergraduate category). The salary and consequential benefits w.e.f. 08.10.2022 must also be paid to the Petitioner by the respondents within six weeks from today.

15. The above directions would not preclude the third and fourth Respondents from initiating disciplinary proceedings against the Petitioner, if they so desire, in accordance with rules and prescribed procedures.

16. Mr Lotlikar, learned Senior Advocate for the Petitioner, on instructions from the Petitioner, states that the Petitioner will not press the proceedings before the Goa Human Rights Commission and will, in fact, apply for withdrawal of such proceedings no sooner the Petitioner is allowed to resume duties and is paid salary and other consequential benefits in terms of the directions that we have now issued. This statement is accepted, and we expect the Petitioner to act accordingly.

17. After this order was dictated, we suggested to the learned Counsel for the parties that this matter ought to be settled on terms acceptable to both parties. We thought the Petitioner would now be employed in the third and fourth Respondents' schools, and there was no point in starting or continuing her career with such acrimony. We are happy to record that the Petitioner and the third and fourth respondents responded most gracefully to this suggestion.

18. Mr Braganza, learned Counsel for the 3rd and 4th respondents, on instructions from Sr. Lavita Fernandes, Headmistress of the School, present in Court, submitted that the Petitioner did not report for duties from 05.06.2023 to 29.01.2024. He submitted that for this period, the third and fourth Respondents had to appoint a substitute teacher who was paid ₹10,000/- per month from out of the school funds. He submitted that if the Petitioner agrees to make good this amount and assures she will be regular in the future, the third and fourth Respondents would not be interested in initiating any disciplinary proceedings against the Petitioner.

19. Mr Lotlikar, based on instructions from the Petitioner, who is present in the Court, stated that from out of the dues payable to the Petitioner towards

salary and other benefits w.e.f. 08.10.2022, the Petitioner will pay an amount of Rupees One Lakh to Respondents 3 and 4 without prejudice to her rights and contentions. On instructions, he stated that the petitioner is not interested in any acrimony and will attend to her duties regularly and cooperate with the headmistress and the management.

20. Accordingly, we record the statements made on behalf of the Petitioner and Respondents No.3 and 4 and accept the same. The Petitioner, in terms of her statement, should pay the third and fourth Respondents an amount of Rupees One Lakh within a month from the receipt of her dues towards salary, etc., effective from 08.10.2022. Upon receipt of this amount, the third and fourth Respondents, consistent with their statements, should not initiate disciplinary proceedings against the Petitioner. According to us, this is a settlement on fair, proper and honourable terms to all the parties. This Court appreciates the reasonable and gracious approach of the parties and their Counsel in sorting out the differences amicably.

21. The Rule is accordingly made absolute in the above terms without any cost order.

22. This Petition is disposed of by recording the above agreement between the parties. All concerned to act on an authenticated copy of this order.

VALMIKI MENEZES, J.

M. S. SONAK, J.