Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.225 of 2024

Mr Jagdish Pundalik Phadke, Aged 63 years, R/o. H. No. 776, Behind Sumangal Society, Durbhat, Ponda -403401. ... Petitioner.

Versus

1. The State of Goa Through Chief Secretary, Porvorim, Bardez - Goa.

2.. Director of Education, Porvorim, Goa.

3. Deputy Director of Education (Zonal Officer), Central Education Zone, Panaji, Goa.

4. Mr Mahanand Shet, The Chairman Sharda English High School, Durbhat, Ponda, Goa.

5. Mr Pradeep Shet, The Manager, Sharda English High School, Durbhat, Ponda, Goa.

6. Mr Vaman Gaonkar, Headmaster, Sharda English High School, Durbhat, Ponda Goa. .... Respondents.

Mr Vivek Rodrigues and Mr Kevin Braganza, Advocates for the petitioner.
Ms Sulekha Kamat, Addl. Govt. Advocate for respondent nos. 1 to 3.
Mr Parikshit Sawant, Advocate for respondent nos. 4 to 6.

CORAM: BHARATI DANGRE & NIVEDITA P. MEHTA, JJ.

Date: 24th July 2025.

ORAL JUDGMENT *(PER BHARATI DANGE, J).*

1. The petitioner superannuated on 30.6.2022 after rendering 40 years of service in Sharda English High School, Durbhat Ponda, in the capacity as Laboratory Assistant. Immediately after his retirement he received a pension of Rs.36,000/- which was paid to him from 25.07.2025. However, his grievance is about the delay in payment of the amount in his General Provident Fund to the extent of Rs.2,95,934/-from the total amount of Rs.14,97,149/- lying to his credit and amount due on Leave Encashment amounting to Rs.3,18, 826/- being Earned Leave, for a total period of 99 days.

2. We have heard Mr. V. Rodrigues, learned counsel for the petitioner, Ms S. Kamat, learned Addl. Govt. Advocate for the respondent nos. 1, 2 and 3 and Mr P. Sawant, learned counsel for respondent nos.4, 5 and 6.

3. By consent of the parties, we issue 'Rule' by making it returnable forthwith.

4. The petitioner restricts to the interest payable on two components, namely the General Provident Fund and Leave Encashment, as he has already received the pension and gratuity in due time.

Since benefit of General Provident Fund and Leave Encashment was not bestowed upon him, he filed the present petition on 15.2.2024 praying for steps to be taken for payment of the outstanding General Provident Fund amount and Earned Leave with the interest of 10% per annum and also pray for fixing the responsibility for the inaction and wilful avoidance, as for no reason the amount could have been retained despite he rendering 40 years of his life in serving the management.

Upon the writ petition being filed, on 14.8.2024 the management disbursed a sum of Rs.3,18,826/- towards encashment of Earned Leave and this was done after a delay of 24 months. On 23.1.2025 the school released the unpaid General Provident Fund amount to the tune of Rs.2,92,493/- which was after a delay of 29 months.

5. Learned counsel Mr Rodrigues appearing for the petitioner fairly submits that as far as Leave Encashment is concerned there is no provision which make it imperative to pay the interest, when there is delay in its release but by applying the normal parlance of service jurisprudence, he submits that whenever there is delay in releasing the pensionary benefits due to the person on his retirement and particularly the person like the petitioner, who has rendered long service of 40 years, withholding of this amount without any justifiable reason, definitely warrant an interest.

6. As far as General Provident Fund amount he would place reliance upon the office memorandum dated 16.1.2017 issued by the Ministry of Personnel, PG & Pensions, Department of Pensions and Pensions Welfare as well as subsequent office memorandum dated 25.10.2024 issued by the same Ministry

The memorandum dated 16.1.2017, invoke Rule 34 of General Provident Fund (Central Service) Rules, which provides that when the amount standing at the credit of a subscriber in the General Provident Funds becomes payable, it shall be the duty of the Accounts Officer to make the payment. It clearly stipulates that the authority for the amount payable is to be issued at least a month before the date of superannuation, but payable on the date of superannuation.

7. A clarification is also offered in the said circular by clearly stating that the requirement of submission of written application by the retiring government servant for General Provident Fund final payment has been dispensed with by the department's notification dated 15.11.1996 and it was so notified on 23.11.1996.

Clauses 3 and 4 of the office memorandum dated 16.1.2017 is of utmost significant and is reproduced below:-

> *"3 As per Rule 11(4) of GPF Rules, in case the GPF balance is not paid on retirement interest on the GPF balance is required to be paid for the period beyond the date of retirement also. While interest for the first six months beyond retirement can be allowed by the PAO in the normal course, approval of Head of the accounts office is required for payment of interest beyond six months and that of Controller of Account/Financial Adviser beyond a period of one year*
>
> *4 To ensure timely final payment of GPF and to avoid unnecessary financial burden on account of interest beyond retirement, it has now been decided that every case, in which payment of interest on General Provident Fund becomes necessary in terms of Rules 11(4) of GPF Rules 1960, shall be put up for consideration to the Secretary of the Administrative Ministry/Department. In all such cases, the Secretary of the Administrative Ministry/Department will fix responsibility at all levels to take appropriate action against the Government servant or servants who are found responsible for the delay in the payment of the General Provident Fund."*

8. In continuation of the said directions, another office memorandum was issued offering clarification regarding the timely payment of General Provident Fund (final payment) to the retiring government servant on 25.10.2024 and the said office memorandum contain the following instructions:-

> *"2. In this connection, it may be stated that detailed clarifications regarding timely payment of GPF final payment to the retiring Government servant were furnished to all Ministries/Departments vide this Departments' Office Memorandum No.3/3/2016-P&PW(F) dated 16th January, 2017 (copy enclosed).*
> *3. The per Rule 34 of General Provident Fund (Central Service) Rules, 1960 clearly provides that when the amount standing at the credit of a subscriber in the General Provident Fund becomes payable, it shall be the duty of the Accounts Officer to make payment.*
> *4. It is also added the amount deposited in the General Provident Fund Account is solely the asset of the individual Government servant. Any disciplinary case pending or penalty imposed against him does not have any impact on the disbursement of the GPF amount. As per Rule 11(4) of GPF Rules, in case the GPF balance is not paid on retirement, interest on the GPF balance is required to be paid for the period beyond the date of retirement also."*

9. It is therefore evidently clear that the amount of General Provident Fund, if not paid timely and as indicated by Rule 34, if not disbursed upon superannuation, it shall definitely carry an interest in the terms of Rule 11(4) of the General Provident Fund Rules.

As far as the petitioner is concerned, he superannuated on 30.6.2022 but the amount lying in the General Provident Fund was released in his favour on 23.1.2024 after a delay of 29 months.

10. In response to the petition, respondent no. 2 Director of Education as well as the management have filed their reply affidavits.

On perusal of the affidavit, we can just observe that each one is trying to shift the blame to the other. The Director of Education in his affidavit, has categorically put the blame upon the management but to the fortune of the petitioner, the Director of Education has annexed with the affidavit filed by the Director of Education i.e respondent no.2, on 7.7.2025, a circular dated 14.9.2004 issued by Government of Goa, which read thus:-

"No. DE.Accts.2004-05/2172
Government of Goa,
Directorate of Education,
Panaji-Goa.
14/9/04.

C I R C U L A R

In continuation to this Office Circular No.DE/Accts/2004-05/1625 dated 4-8-2004, it is brought to the notice of the Management of the aided Schools that Government has taken a serious note of *the delay in settling some cases towards final payment of balances in Provident Fund Account of the employees and it has been decided that the Management of the Schools concerned will be personally held responsible and the interest on Provident Fund balances beyond a period of six months will have to be borne by them failing which the amount of interest payable / paid beyond a period of six months after the month in which such amount becomes payable, will be deducted from the grants-in-aid released to the schools.*

The contents of this Circular may be brought to notice of the staff working in the aided Schools.

Sd/-
(Ashok N. P. Dessai)
Director of Education

Copy to:-
1. Joint Director of Accounts, Education Department.
2. All Secondary/Hr Secondary Schools."

11. Therefore, even the Director of Education has no doubt about the interest being payable if the amount of General Provident Fund is not released forthwith as contemplated by the Rules and the Director of Education himself and by way of general directions had directed that in such a case the amount of interest, which will be levied as being payable will be deducted from the grants in aid released in favour of the school.

12. The management which has filed its affidavit in reply, has placed reliance upon the communications addressed to the petitioner at pages 63, 64 and 65 but we must observe that unfortunately these communications are addressed after filing of the petition in the month of February 2024.

The repeated communications addressed to the petitioner, ask him to report to the school office on particular time, without any reason being assigned and we are also unable to gauge for what reason the petitioner's presence was sought in the school. If it is for obtaining his signature or expecting an application for release of the provident fund, this mode is not at all available when the employer knows that his employee has retired and there is some amount lying in his general provident fund, it is his money and which must be paid in time.

Therefore, we are not satisfied with the stand adopted by the management saying that they were waiting for the petitioner to report to the school as some information was sought from him.

13. In absence of any such particular information being highlighted in these communications, we are not ready to buy the arguments of the learned counsel for the management that it was the fault of the petitioner that the General Provident Fund amount could not be released.

14. From the pleadings in the petition as well as the contrary stand which we have received in the form of the affidavits, filed the Director of Education as well as Management, one thing is very clear, that it is not the petitioner who should be blamed for causing the delay in release the amount of General Provident Fund and if at all the blame has to be taken, it is either by management or the officer of the Director of Education.

In any case, in the wake of directions and circulars issued by the Ministry on which the petitioner has placed reliance, we deem it appropriate to direct interest to be paid on the amount of General Provident Fund which was due and payable to the petitioner and which has been released in his favour after 29 months and the interest shall be paid in terms of Rule 11(4) of the General Provident Fund Rules.

15. We direct the Director of Education to make the necessary computation and release the amount in favour of the petitioner within a period of six weeks from today.

However, when the question comes as to who shall bear the brunt i.e who is responsible for the delay and who shall actually bear the interest amount since Circular issued by the Director of Education had made it clear that if at all management is at fault in not disbursing the amount of General Provident Fund within the timely manner as stipulated by the Rules, it shall be recovered from the grant which is payable to the school, as it is the stand of the school that it was not at fault and since the Director's office insisted upon filling of the form, the amount was not disbursed.

16. We do not intend to get into this aspect and we deem it appropriate to direct the Director of Education i.e respondent no. 2 to fix up the responsibility and to recover the said amount from the officer whosoever is responsible, after affording an opportunity of hearing to the management as well as officers of the Director of Education.

Upon a conclusion being reached as to who was responsible for the delay, the amount which is paid to the petitioner by way of interest is permitted to be recovered from the said officer/officers.

We expect this exercise to be followed subsequent to the payment of the amount of interest in favour of the petitioner.

17. As far as payment of Earned Leave Encashment to the tune of Rs.3,18,826/-, which was received by the petitioner on 14.8.2024 after delay of 24 months, on the similar line we direct that the interest shall be payable on the said amount from the date it was due and payable till the date it is actually paid at the rate of 6%.

18. We direct respondent no. 2 to clear interest on both heads i.e. Leave encashment and General Provident Fund, to the petitioner within a period of six weeks from today.

Rule is made absolute in the aforesaid terms.

NIVEDITA P. MEHTA, J. **BHARATI DANGRE, J.**