

**GOA HUMAN RIGHTS COMMISSION**  
**PANAJI –GOA**

**Proceeding No. 83/2013**

**Proceeding No. 210/2013**

**INQUIRY REPORT**

By this common order, we propose to dispose of both the proceedings mentioned above as they are interlinked and are essentially between the same Parties.

2. Proceeding No.83/2013 relates to non-payment of salaries of six ECG technicians of Goa Medical College and Hospital, Bambolim for the period from 01/03/2013 to 11/07/2013 and proceeding No.210/2013 relates to non-payment of Subsistence Allowance for the period from 14/06/2013 to 30/09/2013 in respect of very same employees, namely 1) Shri Fidelis Rafael Fernandes, 2) Shri Vivek Morajkar, 3) Smt. Vinda Gaonkar, 4) Shri Tushar Rane, 5) Shri Audhoor Madkaikar, and 6) Smt. Shoba Naik.

3. On behalf of the above mentioned employees, Goa Government Employees' Association approached this Commission alleging that non-payment of salaries and non-payment of Subsistence Allowance amounts to gross violation of human rights of the said employees. In proceeding No.83/2013, this Commission issued notices to 1) The Dean, Goa Medical College, Bambolim, 2) Secretary (Health), Secretariat, Porvorim and 3) the State of Goa through the Chief Secretary, Secretariat, Porvorim – Goa and in proceeding No. 210/2013, this Commission issued notice to the Dean, Goa Medical College, Bambolim. In pursuance to the notices, the Respondent No.1 filed reply dated 13/09/2013 (proceeding No.83/2013). The Respondent No.2 and 3 filed a joint reply dated 31/10/2013. In proceeding No.210/2013 the Respondent filed reply dated 07/11/2013.

4. As far as non-payment of salary is concerned, the Respondent No.1 has taken a stand that the ECG technicians were not following the time-table given to them by the Head of the Department of Medicine, Dr. Edwin Gomes and were following old time-table. It is stated that the Head of the Department of Medicine brought to the notice of the Director (Administration) that the ECG technicians were following the time-table by which they were working for less hours than required as per the Rules. Therefore, oral directions were given to the Head of Department of Medicine to change the Duty Chart and implement the same. However, the ECG technicians refused to follow the new modified Duty Chart

given by HOD and continued their duty as per the old time-table. Therefore, the Dean, Goa Medical College issued Circular dated 27/11/2012 directing ECG technicians to strictly follow the modified time-table prepared by HOD. It is further stated that the ECG technicians continued defying Head of Department (Medicine) as well as the directions of the Director (Admn.) Therefore, Head of Department (Medicine) refused to sign the Effective Report of the ECG technicians. However, the Accounts Section paid the salary of technicians till February, 2013. It was at that time and in view of non-availability of Effective Report from Head of Department (Medicine) a note dated 13/03/2013 was moved to stop crediting salary of the employees till orders of superiors were obeyed and proper time-table was followed by them. It is further stated that another Memorandum was issued on 16/05/2013 again directing the employees to follow the revised time-table wherein it was clearly mentioned by the Director (Admn.) that payment of salary without Effective Report and non-adherence to revised Duty Chart is not possible. It is also stated that since the employees did not obey the directions given to them, it was decided to take legal action against the erring employees and disciplinary proceedings were contemplated against them and the said employees were placed under suspension.

5. The Respondents No.2 and 3 in their reply have stated that the proceedings have been mis-directed against these Respondents as they have no role to play in this case and the allegations made therein pertain to Dean of Goa Medical College and Hospital and these Respondents cannot be made liable or responsible for the acts which are not within the control or knowledge of these Respondents. It is also stated by these Respondents that the aggrieved persons never approached them with any grievance and hence there is no reason even to allege any violation of human rights by them.

6. In so far as Subsistence Allowance is concerned the Respondent/Dean, Goa Medical College has stated that that the suspended employees submitted their non-employment certificates at the entry Section of the Office of the Dean without endorsement/approval of Head of Department of Medicine who is the Reporting Officer for the suspended employees. It is further stated that a note was moved to Head of Department, Department of Medicine by the Joint Director of Accounts for necessary approval who commented that he cannot comment on the said matter as none of the said staff had reported to his office to sign the roster during the period of suspension. It is further stated that on account of this fact, mis-communication had taken place as the suspended employees had furnished their non-employment certificates to the Dean's Office instead of Head of Department, Department of Medicine, Goa Medical College.

7. The Respondents also have taken a plea that that this Commission has no jurisdiction to deal with this matter as the disputes raised by the Petitioners come within the purview of service matter.

8. We have gone through the complaints filed by Goa Government Employees' Association and the replies filed by the Respondents in the respective proceedings. We have also heard the Learned Adv. Shri Savio Soares on behalf of the Respondent.

9. It is contended on behalf of Respondents that the disputes raised by the petitioners come within the purview of service matter and therefore this Commission has no jurisdiction to deal with this matter. We do not find any force in this contention of the Respondents for the simple reason that we are not dealing with issue relating to legality of the order of non-payment of salaries and orders of suspension. The question for determination before this Commission is about the delay in payment of monthly salaries and Subsistence Allowance which is required to be paid by the Respondents to the suspended employees. There cannot be any doubt that unjustified delay in payment of salaries of the employees and delay in payment of Subsistence Allowance is an infringement of fundamental rights of any employee within the meaning of Article- 21 of the Constitution of India and would thus amount to violation of Human Rights. Right to life as contemplated under Article-21 of the Constitution of India includes right to live with human dignity and decency. Therefore, it follows that the delay in payment of salaries which were admittedly due and the delay in payment of Subsistence Allowance to the suspended employees would amount to deprivation of right to live with human dignity and decency. As per Section 2(1) (d) "Human Rights" means the rights relating to life, liberty, equality and dignity of the individual granted by the Constitution or embodied in the International Covenants and enforceable by Courts in India. Now, even assuming but not admitting that the issues raised by the Petitioners fall within the purview of service matter, it is not expected of the State Government to contend that the affected employees should not have approached the Human Rights Commission. The Administrative Tribunal Act, 1986, which confers exclusive jurisdiction to the State Administrative Tribunal to deal with dispute relating to "service matter" is not applicable to the State of Goa. So far as State Government Employees are concerned in as much as no such State Administrative Tribunal has been established. No doubt the aggrieved State Government Employees can approach a Civil Court or Hon'ble High Court for redressal of their grievances. However, in the back drop of the stark reality that the Civil Courts and the Hon'ble High Court are already heavily overburdened with numerous litigation, the hyper technical

objection of the State can at best be described as cynical. Moreover, unlike in the Regulations of the National Human Rights Commission, in the Goa State Human Rights Commission Regulation, no absolute bar has been envisaged and it is provided that “ordinarily the State Commission may not entertain dispute relating to service matters.” In the present proceedings there is no dispute whatsoever regarding the payability of salary and Subsistence Allowance and the only question is whether there was any justification in non-payment for considerable period. This contention relating to the jurisdiction of this Commission to deal with this matter is liable to be rejected. We are therefore positively convinced that non-payment of salaries in time and non-payment of Subsistence Allowance in time is in clear violation of human rights of the concerned employees.

10. In the case of O.P. Gupta V/s Union of India and Other (1987) 4 SCC 328 the Supreme Court observed as follows:

*“An order of suspension of Government servant does not put an end to his service under the Government. He continues to be a member of service inspite of order of suspension. The real effect of suspension as explained by this Court in Khem Chand V/s Union of India 1958 SCR 1080 (AIR 1958 SC 300) is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance generally called- Subsistence Allowance- which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless, the departmental inquiry is concluded within reasonable time, affect a Government servant injuriously. The very expression “Subsistence Allowance” has an undeniable penal significance. The dictionary meaning of the word “Subsists” as given in the Shorter Oxford English Dictionary, Vol. II at P. 2171 is “to remain alive as on food; to continue to exist”. Subsistence means – means of supporting life, especially a minimum livelihood”*

11. In case of Capt. M. Paul Anthony V/s Bharat Gold Mines Ltd., and Another the Supreme Court has observed as follows:-

***“The act of non-payment of subsistence allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of subsistence allowance, would gradually starve himself to death.” It is***

**Further observed “On joining Govt. service a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Govt. only because it has the power to appoint does not become the master of the body and soul of the employee. The Govt. by providing job opportunities to its citizens only fulfils its obligation under the Constitution, including Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like instrumentalities of the Govt. or Statutory or Autonomous Corporation etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Govt. under the Proviso Article 309 of the Constitution or other Statutory Rules including Certified Standing Orders. **The Fundamental Rights, including the right to life under Article 21 of the Constitution or basic human rights are not surrendered by the employee. The provision for payment of Subsistence Allowance made in the Service Rules only ensures non-violation of right to life of the employee.****

12. In the case of State of Maharashtra V/s Chanderbhan reported in AIR 1983 SC 803, the Supreme Court struck down a Service Rule which provided for payment of a nominal amount of Rupee one as a Subsistence Allowance to an employee placed under suspension.”

13. In the case of Kapila Hingorani V/s State of Bihar reported in AIR 2005 S.C 980 Supreme Court held **“Where employees of Public Sector undertaking were not paid salaries for years and were starving and State bound to protect human rights and fundamental rights directed to deposit sum of Rupees 125.50 crores for payment of arrears of salaries”.**

14. The contention of the Respondents No.2 and 3 that they have no role to play in this case as the allegations made therein pertain to the Dean of Goa Medical College and Hospital and that these Respondents cannot be made liable or responsible for the acts which are not within the control or knowledge of these Respondents is also devoid of any merits. There cannot be two opinions that the State of Goa as an Employer is vicariously liable for the wrong acts of its employees. Therefore, it shall not be correct to hold that the Respondents No.2 and 3 cannot be held liable or responsible for the acts committed by the Dean of Goa Medical College and Hospital.

15. Admittedly, the Respondent did not pay the monthly salaries to the said employees for a period 01/03/2013 to 11/07/2013 and also did not pay Subsistence Allowance to the suspended employees during the period of suspension in time. The justification given by the Respondents for the delay in payment of salaries to its employees and delay in payment of Subsistence Allowance to the suspended employees in time is not at all convincing and satisfactory. The Dean, Goa Medical College has taken a stand that the salary was withheld as the concerned employees defied the directions given by the Respondent to follow the revised time-table. We are not persuaded to accept this stand taken by the Respondent. In the event the employees had disobeyed the orders of the superiors, there was nothing to prevent the Head of the Department to initiate appropriate action against the erring employees. But then, it was certainly not open to the Head of the Department to stop payment of monthly salary to its employees on the ground of indiscipline or insubordination. This act of the Respondent to stop the salary smacks arbitrariness and high handedness.

16. The records reveal that Dr. Edwin Gomes, Head of Department (Medicine) is mainly instrumental for such high handedness. It appears that Dr. Edwin Gomes has misled the Dean, Goa Medical College and succeeded in stopping the salaries of the concerned employees which is against all the canons of principles of natural justice. Needless to say that non-payment of salary to the concerned employees is a clear infringement of Fundamental Rights of the employees. Article-21 of the Constitution of India guarantees Right to Life which includes right to live with human dignity and decency.

17. It is also an admitted fact that the Respondent did not pay Subsistence Allowance to the suspended employees during the period of suspension in time. The justification given by the Respondent for this delay in non-payment of Subsistence Allowance to the suspended employees in time does not appeal to our mind. There is no dispute that the suspended employees had submitted their non-employment certificates in the Office of Dean, Goa Medical College in time. The Respondent cannot take a stand that non-employment certificates were not produced before the Head of Department, Department of Medicine by the suspended employees. Once the non-employment certificates were produced in the Office of Dean, Goa Medical College, it was the duty of the Department to consider the said non-employment certificates and cannot make a lame excuse that the non-employment certificates were not submitted directly to Head of Department, Department of Medicine.

18. As per F.R. 53 of Fundamental Rules and Supplementary Rules, a Govt. Servant under suspension is entitled for Subsistence Allowance and other allowances from the date and during the period of suspension. The Subsistence Allowance shall not be denied on any ground unless Govt. Servant is unable to/or does not furnish a certificate that he is not engaged in any other employment, business, profession or vocation during the period of suspension.

19. The records of this case clearly indicate that initially the Dean, Goa Medical College and Hospital withheld the salaries of its employees for more than four months. Thereafter, the concerned employees were placed under suspension and as if to rub salt to the injury, the said employees were deprived of payment of Subsistence Allowance for more than two months. On the basis of the records, it can be safely inferred that the concerned employees were deprived of their lawful dues with malafide intention at the instance of Dr. Edwin Gomes, Head of Department of Medicine and they were made to suffer mental agony. This act of non-payment of salaries and non-payment of Subsistence Allowance in time deserves condemnation which we hereby do.

20. In view of the above discussions, we are satisfied that non-payment of salary in time and non-payment of Subsistence Allowance in time has grossly violated human rights of the concerned employees.

21. The Commission therefore makes the following recommendations:

*The Dean Goa Medical College/Respondents shall pay a sum of Rs.5,000/- (Rupees five thousand only) as compensation to each of the concerned employees. The compensation shall be paid within a period of one month from the date of receipt of the recommendation by the Dean, Goa Medical College/Respondents. It is made clear that it would be open to Respondents to recover the said amount from the defaulting officials belonging to Goa Medical College, by initiating appropriate proceeding against such errant officials.*

Action Taken Report shall be submitted by the Respondents before this Commission within 30 days.

Date: 29/04/2013

Place: Panaji

Sd/-  
(Justice P. K. Misra)  
Chairperson  
Goa Human Rights Commission

Sd/-  
(A. D. Salkar)  
Member  
Goa Human Rights Commission

Sd/-  
(J. A. Keny)  
Member  
Goa Human Rights Commission

