

GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA
ANNUAL REPORT
2016 – 2017

This is the sixth Annual Report of the State Human Rights Commission for the year 2016-2017.

2. The Protection of Human Rights Act, 1993 provides for the constitution of National Human Rights Courts for better protection of human rights and the matters connected therewith or incidental thereto.

3. As per Section 2 (1) (d) “human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India. The Constitution of India has also guaranteed a right to life to all persons under Article 21. This right has been given a new dimension by the Court in the last three decades by interpreting the right to life in a liberal way. It has been held in catena of cases that the right to life includes the right to live with a dignity and decency and also in a clean and healthy environment. Thus, any infringement of fundamental right also amounts to violation of human rights.

4. This Commission has made several recommendations from time to time in respect of the violation of basic human rights such as delay in payment of pension to the Government servants, delay in payment of salaries to the government servants, police atrocities against public members, illegal detentions of the persons by the Police allegedly involved in commission of crimes, blocking of right of access of the persons to reach their respective properties, etc. These recommendations were widely reported by press which made public members aware about their fundamental rights and also about the basic human rights which are available to them under the law. In absence of State Human Rights Commission in the State of Goa, the persons whose human rights were allegedly violated by the public functionaries were constrained to approach before the normal court of law which involves long and cumbersome procedure apart from being a costly affair. The establishment of State Human Rights Commission has fulfilled the aspirations of the people of Goa who, now, have an easy access to justice to ventilate their grievances against public servants in the matter of violation of human rights.

5. The Government of Goa has allotted adequate office premises to the Commission consisting of 609.39sq.mts in the Old Education Department Building at Panaji and has also provided adequate infrastructure for smooth functioning of the Commission.

Constitution of Commission

The Goa Human Rights Commission was constituted in the month of March, 2011 to exercise the powers conferred upon and to perform the functions assigned to the State Commission under Chapter IV of The Protection of Human Rights Act, 1993. Section 21 (2) of the said Act lays down that the State Human Rights Commission shall consists of

- (a) A Chairperson who has been a Chief Justice of a High Court.
- (b) One Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years' experience as District Judge.
- (c) One Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Constitution of the Commission during this period was as under:

- (i) Shri A. D. Salkar, Member (Former District Judge of State of Goa).
- (ii) Shri J. A. Keny, Member (Former Member of the Goa Public Service Commission).

Section 27 of the said Act mandates that the Government shall make available an Officer not below the rank of a Secretary to the State Government who shall be the Secretary of the State Commission and such Police and Investigative Staff under an Officer not below the rank of Inspector General of Police and such other Officers and Staff as may be necessary for efficient performance of the functions of the State Commission. Police Officer of the rank of Inspector General of Police has not been provided by the State Government to this Commission so far as there are no sufficient number of Police Officers of the rank of Inspector General of Police with police force. Presently, Officer of the rank of Dy. Superintendent of Police is functioning as head of Police Investigation Team.

6. **Functions of State Commission.**

Section-12 read with Section 29 of The Protection of Human Rights Act, 1993 provides for the functions of the State Human Rights Commission which inter alia includes the following functions:-

- (a) To inquire suomotu or on a petition presented to it by the victim of any person on its behalf or on directions or on order of any Court into the complaint of:
 - (i) Violation of human rights or abetment thereof; or*
 - (ii) Negligence in the prevention of such violation, by a public servant;**
- (b) To intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;*
- (c) To visit notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of State Government, where persons are detained or lodged for purpose of treatment, reformation or protection, for the study of living conditions of inmates thereof and make recommendation thereon to the Government;*
- (d) To review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;*
- (e) To review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;*
- (f) To spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means;*
- (g) To encourage the efforts of non-governmental organisations and institutions working in the field of human rights;*
- (h) To such other functions as it may consider necessary for the promotion of human rights.*

7. **Procedure adopted by the State Commission**

The Goa Human Rights Commission has notified its own Regulation namely Goa Human Rights Commission (Procedure) Regulations, 2011, which is published under Section 10 and Section 29 of The Protection of Human Rights Act, 1993. One of the most important functions of the State Commission is to inquire suo motu or on a petition presented to it by the victim into the complaint of violation of human rights by a public servant. The State Commission has devised a simple procedure for receiving and dealing with complaints. A complaint can be filed either in person or through post or via e-mail. The State Commission does not charge any fee from the people for filing complaints.

8. **Powers of the Commission**

The State Commission while inquiring into the complaints under the Act have powers of civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely:

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;*
- (b) Discovery and production of any document;*
- (c) Receiving evidence on affidavits;*
- (d) Requisitioning any public record or copy thereof from any court or office;*
- (e) Issuing commissions for the examinations of witnesses or documents;*
- (f) Any other matter which may be prescribed.*

9. **Complaints not ordinarily entertainable.**

As per Regulation 9 of the Goa Human Rights Commission (Procedure), Regulations, 2011, the Commission may not entertain complaints:-

- (a) which are vague or anonymous or pseudonymous or trivial in or frivolous in nature;*
- (b) which are pending before any other Commission;*
- (c) which raise dispute of civil nature, such as property rights or contractual obligations;*
- (d) which relate to service matters or industrial disputes;*
- (e) which are not against any public servant;*
- (f) which do not make out any specific violation of human rights;*

- (g) which are covered by a judicial verdict or decision of the Commission;*
(h) which are outside the purview of the Commission.

10.Grants by State Government

As per Section 33 of The Protection of Human Rights Act, 1993, the State Government shall pay to the State Commission by way of grants such sums of money and the State Commission may spend such sums as it thinks fit for performing the functions under Chapter V. However, the Goa Human Rights Commission preferred to seek the provision in the Budget and powers are vested in the Secretary to the Commission who has also been delegated with powers of Head of Department to incur the expenditure on the affairs of the Commission and all the expenditure incurred are being pre-audited by the Directorate of Accounts. This arrangement was preferred by the Commission at par with the Goa Public Service Commission. During this period a Budget provision of Rs. 249.00 lakhs (Rupees Two hundred and forty nine lakhs only) was made. The Commission spent an amount of Rs. 179.32 (Rupees One hundred seventy nine lakhs and thirty two thousand only).

The Commission is also required to prepare an annual statement of accounts in such form as may be prescribed by the State Government in consultation with Comptroller and Auditor General of India. However, as stated earlier, all the expenditure made, by the Commission is out of the provision in the Budget Estimates of 2015-16, and pre-audited by the Directorate of Accounts.

Hence, it is not necessary to prepare its Annual Statement of Accounts and submit the same to the State Government as per provisions in The Protection of Human Rights Act, 1993.

11. During the period under consideration, the Police Investigation Team headed by ShriKiran D. Poduval, Dy. Superintendent of Police investigated 20 cases of human rights violation as per the directions of this Commission. The Commission looks into such reports at the time of deciding the complaints.

12. During this period the Commission disposed off 266 cases for the period 2016-2017 and 132 complaints pertaining to the period of 2015-2016. During this period the Commission received 378 complaints.

13. Few cases based on complaints for the period which have been disposed off during this year by making recommendations as indicated below:

Proceeding No. 227/2014:

This case has been disposed off on 20/04/2016. The Inquiry Report and the recommendations made therein are indicated below:-

The Complainant was working as a primary teacher of Lions KG and Primary School at Jaycee Nagar, Ponda – Goa. The Complainant was due for retired from service after superannuation in the month of January, 2013. However, her services were extended till the end of April, 2013. The grievance of the Complainant is that there was inordinate delay in payment of terminal benefits. According to the Complainant, the Respondent No.1/Lions KG and Primary School is responsible for the delay in payment of her pension and other pensionary benefits. She claims interest on the delayed payment and has also claimed compensation as the Complainant had to undergo financial difficulty, mental agony and physical harassment.

2. The Complainant has indicated the delay on various heads as under:

i) Provident Fund Rs.5,20,000/- (interest on the amount of PF for one year – Rs.52,000/-)

ii) Gratuity Rs.3,57,570/- (interest on the amount of Gratuity for 1 & ½ years delay is Rs.53,635/-).

iii) Pension amount Rs.2,90,864/- (interest on the amount of pension if Rs.23,263/- upon delay of 18 months)

iv. Commutation Rs.3,70,107/- (interest on the amount of commutation Rs.55,516/- upon the delay of 1 & ½ years.

v) Leave encashment for 180 days Rs.2,40,000/- (interest on the amount of Leave encashment of Rs.42,000/- upon delay of 1.5 years)

vi) Extension pay of 3 months Rs.75,000/- (interest on the above amount of Rs.13,125/- upon delay and being not received for one year).

3. This Commission issued notices to 1) Headmaster, Lions KG and Primary School at Jaycee Nagar, Ponda – Goa, 2) Director of Education, Porvorim – Goa and 3) Director of Accounts, Panaji – Goa. The Respondents have filed their respective replies separately. The Complainant has filed Rejoinder to the reply of Respondent No.1. The Respondent No.1 has also filed Sur-Rejoinder.

4. We have heard the Parties. We have also perused the records of this case.

5. Admittedly, there was inordinate delay in processing the pension and pensionary benefits of the Complainant. The Respondent No.1 blames the Complainant herself for delay in processing the pension papers. The Respondent No.1 has stated that the Complainant was in charge of school for the period from August, 2006 to April, 2009 and inspite of that the Complainant did not complete her Day Book and other papers which were supposed to be completed by her and the Complainant also did not submit papers such as Medical Fitness Certificate while joining. It is further stated that the Complainant did not sign her retirement papers in time since she was expecting further extension of service. The Respondent No.1 has also stated that the pension papers which were submitted to Central Education Zone were returned from time to time with several observations which were complied by Respondent No.1. In short, according to Respondent No.1 there is no negligence on the part of Respondent No.1 but the settlement of pension was delayed on account of the fault of the Complainant to complete her Service Book and other related papers.

6. As per the reply filed by Respondent No.2/Director of Education, the pension case of the Complainant was received on 02/07/2013 and the pension papers were submitted to Directorate of Accounts on 08/07/2013. However, the pension papers were returned back by Directorate of Accounts on 23/08/2013 for compliance of observations raised by Pension Cell of Directorate of Accounts which were in turn returned to the School for compliance of the observations. The Respondent No.3 has stated that the pension case of the Complainant was received for the first time on 08/07/2013 and it was immediately scrutinised and the same was returned on 23/08/2013 for compliance of the observations raised. The Respondent No.3 has further stated that again the pension papers had to be returned twice vide letter dated 21/01/2014 and 27/03/2014 for non-compliance of observations raised earlier. The pension papers were finally received for the fourth time from Respondent No.2 by letter dated 24/04/2014 and the same was finalised and the authorisation of pension and other retirement benefits were intimated to the Complainant vide letter dated 04/06/2014 under Pension Payment Order No.T-4589. According to the Respondent No.3 there was no delay on the part of the Respondent No.3 for payment of pensionary benefits to the Complainant.

7. The records indicate that there was inordinate delay in payment of pension and pensionary benefits to the Complainant. The Complainant

cannot be wholly held responsible for this inordinate delay. It was the duty of the School Authority to submit the pension papers to the Concerned Department six months in advance. The delay in processing the pension papers is mainly on account of negligence on the part of the Respondent No.1. The main grievance of the Complainant is that she is entitled for interest on delayed payment on various heads as discussed above. However, we are not inclined to go into the question of payment of interest to the Complainant. It shall be open to the Complainant to approach the Appropriate Forum in respect of her claim for interest on delayed payment.

8. As far as GPF claim is concerned, the Complainant is entitled for interest on delayed payment as there was no fault on the part of the Complainant. As per Rule-11(4) of General Provident Fund (Central Services Rules, 1960) and C&A.G.'s decisions, the interest is to be allowed in case delay has occasioned by circumstances beyond the control of the subscriber and purely due to administrative reasons.

9. However, in the facts and the circumstances of this case, we are of the view that the delay in processing the pension file of the Complainant has caused mental agony to the Complainant and the same amounts to infringement of her fundamental right guaranteed under Article 21 of the Constitution of India and also amounts to violation of her human rights on account of inordinate delay in settling her pension and pensionary benefits. The Complainant therefore is entitled for reasonable compensation on account of delay in settling her pension claim.

We therefore make the following recommendation:

- (i) *The Respondent No.1/Headmaster, Lions KG and Primary School at Jaycee Nagar, Ponda - Goa shall pay compensation of Rs.15,000/- (Rupees fifteen thousand only) to the Complainant within a period of 60 days.*
- (ii) *Respondent No.3/Director of Accounts shall consider Complainant's claim for interest on delayed payment of GPF as per GPF Rules and C&A.G.'s decisions cited above.*

Proceeding No. 46/2012:

This case has been disposed off on 15/078/2016. The Inquiry Report and the recommendations made therein are indicated below:-

This is a complaint filed by the Complainant against Police Inspector ShriSagarEkoskar/Respondent No.4 herein attached to Ponda Police Station

alleging that the Respondent No.4 misbehaved himself while discharging his official duties and got furious and asked the Complainant to get out of his cabin and also physically pushed the Complainant outside the cabin.

2. This Commission issued notices to 1) The State of Goa through the Chief Secretary, Secretariat, Porvorim – Goa, 2) The Secretary (Home), Home Department, Secretariat, Porvorim – Goa, 3) The Superintendent of Police (South), Margao – Goa and 4) ShriSagarEkoskar, Police Inspector, Ponda Police Station, Ponda – Goa. During the course of hearing, it was brought to the notice of the Commission that the Ponda Police Station falls within the jurisdiction of Superintendent of Police, North Goa. Accordingly, by order dated 23/01/2013 (recorded in Rojnama), the name of the Superintendent of Police, South - Goa) was substituted as Superintendent of Police, North Goa.

3. In pursuance to the notices, the Respondent No.4/ShriSagarEkoskar filed a detailed reply. The Respondent No.1, 2 and 3 adopted the reply filed by the Respondent No.4. Respondent No.4 has stated all the facts giving rise to the present complaint. Respondent No.4 has produced a copy of the letter dated 07/11/2012 from M/s A. K. Constructions Builders & Contractors, Vasco – Goa addressed to Ponda Police Station, a copy of Station Diary Entry dated 09/11/2012 at Sr. No.44 and a copy of the Inquiry Report submitted by Police Inspector to Sub-Divisional Officer, Ponda – Goa.

3. This Commission conducted an inquiry during the course of which the Complainant examined himself as CW1 and also examined one witness ShriVijeshPrakashNaik as CW2 in support of his case. The Respondents examined ShriSagarEkoskar/Respondent No.4 as RW1 and one more witness ShriVassudevNaik as RW2 in support of their case.

4. We have heard Adv. YatishNaik for the Complainant and Adv. K. L. Bhagat for the Respondents. We have also gone through the records of this case.

5. The Complainant (CW1) in his Affidavit-in-Evidence has stated that he went to Police Station to meet Police Inspector to hand over a written complaint against illegal work and demanded action as per law. He has further stated that the Police Inspector ShriEkoskar refused to take action and said (Na action ghenā). He has further stated that he reminded Police Inspector that he is a public servant and that entertaining any complaint was his duty. He has also stated that Police Inspector got furious and asked him (CW1) to get out of the cabin. He has further stated that Police Inspector again shouted at him and physically pushed him outside the cabin. This

witness (CW1) was cross-examined by Adv. V. Sardessai on behalf of Respondents. The cross-examination of this witness has not revealed any results in favour of Respondent No.4 (ShriSagarEkoskar). In fact, the Respondents in cross-examination of CW1 has not even denied the contents of para-7 of the Affidavit-in-Evidence of the Complainant (CW1) which states that Respondent No.4 had asked the Complainant to get out of the cabin and also states that the Complainant was physically pushed outside the cabin. There are no grounds to disbelieve the evidence of the Complainant (CW1) which does not suffer from any material infirmity. The conduct of ShriSagarEkoskar/Respondent No.4 is unbecoming of Government Servant and is clear infringement of fundamental right of the Complainant as guaranteed under Article-21 of the Constitution of India and also amounts to violation of human rights of the Complainant.

6. The other witness examined by the Complainant ShriVijeshNaik (CW2) has corroborated the evidence of the Complainant (CW1) on all material aspects of the case. It has come on record through the evidence of ShriVijeshNaik (CW2) that Police Inspector got furious and asked the Complainant to get out of the cabin. It is also in the evidence of CW2 that Police Inspector shouted at ShriGovindGaude and physically pushed him outside the cabin. This witness was also cross-examined by the Respondents. However, the evidence of this witness (CW2) has remained unshaken. We also do not find any reason to discard the evidence of CW2.

7. ShriSagarEkoskar (RW1) has stated that he requested ShriGovindGaude to sit outside saying "Tumatsobhair bas" till his man could bring the copy of NOC as he was attending one Mr.VasudevNaik, whereupon ShriGovindGaude started arguing with him alleging that he (RW1) had insulted him (CW1) by saying "Tumatsobhair vas" to which he (RW1) told him (CW1) that he had only said "Tumatsobhair bas" and not "bhair vas". This witness was cross-examined by Adv. YatishNaik for the Complainant. It was suggested to this witness that the complaint filed by Mr.Gaude before the Police Station was not inquired into by him (RW1) in as much as he (RW1) behaved rudely with Mr.Gaude at the instance and at the behest of his political superiors as Mr.Gaude had unsuccessfully contested the elections against Mr. Deepak Dhavlikar in Priol constituency which suggestion has been denied by this witness. The Affidavit-in-Evidence of the other witness ShriVasudevNaik (RW2) examined by the Respondents is more or less similar in nature as that of the Respondent No.4 (RW1). This witness (RW2) in his cross-examination has admitted that the complaint filed by ShriGovindGaude against Police Inspector is not false.

8. The witness (CW2) was asked the following question:

Q: I put it to you that ShriGovindGaude started arguing with Police Inspector insisting that he should take immediate action for seizing the machinery on site?

Ans: It is true.

8. The material on record indicate that there was verbal alteractions between the Complainant and the Police Inspector ShriSagarEkoskar/Respondent No.4 on account of digging of road by M/s A. K. Constructions, Builders and Contractors in the property under Survey No.157 of Bandora Village. The records also indicate that ShriAbhayArondekar of M/s A. K. Constructions, Builders and Contractors had filed a complaint before Ponda Police complaining that ShriGovindGaude and ShriLaduNaik were instigating local villagers and are trying to dig up the road at various places by taking law into their hands. On the basis of the evidence brought on record by the Complainant we are satisfied that the Respondent No.4/ShriSagarEkoskar has behaved arrogantly with the Complainant. The records further indicate that the Complainant was also arrogant and had arguments with Police Inspector ShriSagarEkoskar. The behaviour of the Complainant with Police Inspector ShriSagar was also not proper which led to the present uncalled for incident. The Complainant also should not have behaved in arrogant manner with Police Inspector ShriSagarEkoskar who was a public servant while discharging his official duties. Likewise, the Police Inspector ShriSagarEkoskar should have exercised restraint and should have been cautious while dealing with members of the public.

In view of above, we make the following recommendation:

The Director General of Police, Panaji - Goa shall issue a warning to the Police Inspector ShriSagarEkoskar to be careful in future while dealing with members of the public.

Proceeding No. 155/2013:

This case has been disposed off on 10/08/2016. The Inquiry Reportand the recommendations made therein are indicated below:-

The Complainant had approached this Commission alleging violation of his human rights. The Complainant had projected three grievances. The first grievance of the Complainant is that he was being transferred from one station to another station ostensibly to harass him and to pressurize him to withdraw all the criminal cases filed

by him against the then Chief Minister ShriManoharParrikar which are pending before the Hon'ble High Court. The second grievance of the Complainant is that, the Executive Engineer, Shri B. M. Dessai on pressure and advice of Mr. Lyndon Monteiro so also the Power Minister ShriMilindNaik had arbitrarily withheld his Earned Leave for 61 days to pressurize the Complainant to withdraw Writ Petition No.34/2013 whereby the Complainant has sought to register First Information Report on the Legislator's colleague of Power Minister and also sought to register First Information Report against Mr. Lyndon Monteiro. The third grievance of the Complainant is that he was not paid salary for five months.

2. Taking cognizance of the complaint, this Commission issued notices to 1) State of Goa through the Chief Secretary, Secretariat, Porvorim – Goa, 2) The Secretary (Power), Govt. of Goa, Secretariat, Porvorim – Goa, 3) The Chief Electrical Engineer, Electricity Department, Panaji – Goa, 4) The Executive Engineer, Division XV (Civil), Electricity Department, EDC Building, Patto, Panaji – Goa and 5) The Assistant Engineer, Sub.Div.III, Div.XV (Civil, Electricity Department, Xeldem, Quepem – Goa. In pursuance to the notices, the Respondent No.4 and 5 filed their detailed reply. The Respondent No.1, 2 and 3 adopted the reply filed by Respondent No.4 and 5.

3. We had heard the Complainant. It is pointed out that when this matter came up for hearing on 07/06/2016, the Respondents prayed for time which was granted as last opportunity by making it clear that no further time shall be granted and the matter shall proceed in case the Respondents do not argue the matter and the matter was posted for hearing on 05/07/2016. On that date of hearing, i.e. on 05/07/2016, Advocate for Respondents did not remain present. Mrs.SaraswatiShirodkar, Head Clerk was present on behalf of Respondent No.4. ShriNagoVelip, Assistant Engineer was present on behalf of Respondent No.5. Both the representatives of Respondent No.4 and 5 stated before us that they are not able to argue the matter. It was noted by this Commission that the matter was very old and was being adjourned from time to time. It was further noted that last opportunity was granted to the Respondents when the matter came up for hearing on 07/06/2016. In spite of the above position, the Respondents were not diligent to pursue the matter. This Commission therefore proceeded with the matter and heard the Complainant. We had also perused the entire records of this case.

4. As far as first two grievances of the Complainant were concerned, we were of the view that the said grievances purely relate to service matter and as such this Commission is not inclined to deal with the said grievances in view of Regulation (9(d) of Goa Human Rights (Procedure) Regulation 2011.

5. The third grievance of the Complainant was that he was not paid salary for five months from March, 2013 to July, 2013 when he had substantial leave of 300 days to his credit. The Complainant has stated that his salary for the month of March, 2013, April, 2013 and May, 2013 was paid on 02/06/2014. Again, his salary for June and July, 2013 was paid on 06/06/2014 i.e. after about 15 months. There is no dispute that the Complainant was paid his salary after a delay of about 15 months.

6. The short question for our determination is whether the Respondents were justified in withholding the salary of the Complainant for 15 months for the aforesaid period. In our considered opinion this inordinate delay in paying the salary to the Complainant is not all justified. According to the Respondent No.4, non-payment of salary for three months was on genuine grounds as the Leave of the Complainant was only recommended and was not sanctioned. We are not persuaded to accept this explanation given by Respondent No.4. The records indicate that the Earned Leave which was applied for by the Complainant was duly recommended by his next Superior Officer i.e. the Assistant Engineer and the same was forwarded to the Leave Sanctioning Authority. It may be noted that the Leave Applications which were duly recommended by the Assistant Engineer were neither sanctioned nor rejected by the Leave Sanctioning Authority. It was the duty of the Leave Sanctioning Authority either to sanction the leave or reject the same within a reasonable period of time. In any event, it was not open to the Respondents to withhold the salary of the Complainant for 15 months which is totally unreasonable and uncalled for.

7. Needless to say that every employee is entitled to receive his salary in time. Non-payment of salary to the Complainant in time is a clear infringement of Article 21 of the Constitution of India which guarantees right to life which includes right to live with human dignity and decency and it also amounts to violation of basic human rights of the Complainant and it also amounts violation of basic human rights.

In the case of **KapilaHingorani V/s State of Bihar** reported in **AIR 2005 S.C 980 Supreme Court** hasheld "*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*".

In the case of **Prof. Devendra Mishra v/s University of Delhi &Ors.the Delhi High Court in W.P. (C.) No.5075/2207** delivered on **16/02/2010** has observed as follows:

“A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, it will affect his life and liberty? This, in the opinion of this Court amounts to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution of India.”

In view of above discussion, we are satisfied that non-payment of salary in time to the Complainant has grossly violated human right of the Complainant. In the facts and the circumstances of this case, we are of the view that the Complainant is entitled for reasonable compensation on account of mental torture and sufferings.

The Commission therefore makes the following recommendation:

The State of Goa through the Chief Secretary shall pay a sum of Rs.5,000/- (Rupees five thousand only) as compensation to the Complainant. The compensation shall be paid within a period of one month from the date of receipt of the recommendation. It is made clear that it would be open to the Chief Secretary, Government of Goa, to recover the said amount from the defaulting officials of the Electricity Department, Government of Goa.

Proceeding No. 196/2015:

This case has been disposed off on 11/08/2016. The Inquiry Report and the recommendations made therein are indicated below:-

We have heard the Complainant in person and Learned Advocate A. Rodrigues for the Respondent No.1 and 2. We have also perused the records of this case.

2. The only grievance of the Complainant is that he was not been paid his salary for the months from July to September, 2015 without any justification. Admittedly, the salary of the Complainant from July to September was not paid in time. Records indicate that the salary was paid on 21/10/2015. The question for determination by this Commission is whether the Respondent No.1 and 2 were justified for non-payment of salary of the Complainant in time.

3. The Respondent No.1 and 2 in their reply have stated that the salary and LPC of the Complainant was held in abeyance to expedite the pending matters. The records indicate that the Respondent No.2 had issued Office Memo bearing No.ESG/15-16/Sal.of Ex-CEO/901 dated 04/09/2015. By the

said Office Memo the Complainant was informed that his salary for the period from 01/07/2015 to 17/08/2015 has been kept on hold due to some administrative reasons. By the said Office Memo the Complainant was called upon to meet the Respondent No.2 with prior appointment by 10th September, 2015 on threats of not releasing the salary and LPC in case the Complainant does not appear before the Respondent No.2 to settle the issues. From the tenor of the said Office Memo it is apparent that the Respondent No.2 was adamant in not releasing the salary and LPC of the Complainant on the grounds which are totally uncalled for and unwarranted. The reasons set out in the said Office Memo dated 04/09/2015 cannot be a justification to keep the salary of the Complainant in abeyance. The said Office Memo smacks malafides and as such withholding the salary of the Complainant for the period of 3 months is totally illegal and unjustified. The stand taken by the Respondent No.1 and 2 for withholding the salary of the Complainant is not acceptable to us. In case the Complainant had committed administrative lapses, it was open to the Respondents No.1 and 2 to initiate appropriate disciplinary action against the Complainant. But then, it was not certainly open to the Respondent No.1 and 2 to stop the monthly salary of the Complainant on the grounds specified in the said Office Memo dated 04/09/2015. The action of the Respondent No.2 is arbitrary. Needless to say that non-payment of salary to the Complainant 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.

In the case of **KapilaHingorani V/s State of Bihar** reported in **AIR 2005 S.C 980 Supreme Court** has 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”***.

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“A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, it will affect his life and liberty? This, in the opinion of this Court amounts to denial of basic human rights of a citizen and would also amount to deprivation of his

life and liberty guaranteed to every citizen under Article 21 of the Constitution of India.”

4. In view of the above discussions, we are satisfied that non-payment of salary in time to the Complainant has grossly violated human rights of the Complainant.

The Commission therefore makes the following recommendation:

The Respondent No.1 and 2 shall pay a sum of Rs.5,000/- (Rupees five thousand only) as compensation to the Complainant . The compensation shall be paid within a period of one month from the date of receipt of the recommendation by the Respondent No.1 and 2.

Proceeding No. 251/2013:

This case has been disposed off on 17/08/2016. The Inquiry Report and the recommendations made therein are indicated below:-

The present complaint has been filed by the Complainant alleging that he was illegally arrested by Porvorim Police Station and thereby violating his basic human rights.

2. The Complainant is RTI Activist. On 01/04/2013, the Complainant filed an application under Right to Information Act before State Public Information Officer Miss Vasanti Parvatkar who was functioning as Under Secretary (Law) at the relevant time. The said Public Information Officer was avoiding to give information to the Complainant on one or the other pretext. It is the case of the Complainant that in order to cover up her failure to provide information in time and to take revenge on the Complainant who had complained to the Chief Secretary against her (Miss Vasanti Parvatkar), she filed a false complaint to the Police. The Complainant has further stated that in pursuance to the said complaint filed by Miss Vasanti Parvatkar notice was issued to the Complainant on 26/10/2013 by invoking provisions of Section 41(A) of Criminal Procedure Code by Police Inspector Shri Shivram Vaigankar requiring him to remain present at Porvorim Police Station on 28/10/2013 in respect of crime registered under No.150/2013 for offences u/s 509, 323, 586 and 380 of IPC. The said notice was forcibly handed over to the wife of the Complainant on 27/10/2013 at 16.25 hrs. when the Complainant was out of station at New Delhi. On 28/10/2013 at about 11.00 a.m., the wife of the Complainant approached Police Inspector Shri Shivram Vaigankar and inwards a letter stating that the Complainant was out of station and would present himself before the Police on 30/10/2013. Accordingly, on

30/10/2013, the Complainant appeared before the Porvorim Police and presented himself before the Police Inspector ShriShivramVaigankar and also inwards a letter dated 30/10/2013 which was received by Police Inspector himself and was signed and endorsed by the Police Inspector. It is further stated that on 30/10/2013, the Complainant was not interrogated and as such the Complainant returned home for lunch. It is further stated that around 4.30 p.m. a Police Team was sent to the house of the Complainant by the Police inspector of Porvorim Police Station and the Complainant was arrested without any warrant or order from the Magistrate which was mandatory as per Section 41A of Cr.PC.

3. Taking cognizance of the complaint filed by the Complainant, this Commission issued notices to ShriVileshDurbhatkar, Police Sub-Inspector, Porvorim Police Station, Porvorim - Goa, 2) ShriShivramVaigankar, Police Inspector, Porvorim Police Station, Porvorim - Goa 3) Smt. PriyankaKashyap, Superintendent of Police (North), Porvorim Police Station, Porvorim - Goa 4) Miss VasantiParvatkar, Under Secretary (Law), Secretariat, Porvorim - Goa and 5) the Secretary (Law), Secretariat, Porvorim - Goa. In pursuance to the notices, the Respondent No.1, 2, 4 and 5 have filed separate replies. The Respondent No. 3 has adopted the reply filed by Respondent No.2. The Complainant has filed his Affidavit-in-Evidence. The Respondent No.1 and 2 also have filed their Counter Affidavits.

4. The Respondents have denied the allegations made against them by the Complainant. The Respondent No.1 in his reply has stated that on account of non-cooperation of the Complainant, the Incharge of the Police Station directed the Respondent No.1 to proceed to the house of the Complainant and arrest him (Complainant). It is the case of the Respondent No.2 that one Miss VasantiParvatkar filed a complaint on 25/10/2013 alleging that Mr.SudipTamankar has committed offences punishable u/s 509, 353, 186 and 380 of IPC. Accordingly, offences vide Crime No.150/2013 u/s 509, 353, 186 and 380 of IPC were registered and further investigation was taken up by Respondent No.1. During the course of investigation, the Respondent No.1 went to the residence of SudipTamankar at Ribandar in search of him but he was not found at his residence. This Respondent has admitted that on 28/10/2013, the wife of the Complainant came at Porvorim Police Station and gave a letter to the Police Inspector, Porvorim Police Station stating that her husband went out of station and was unable to remain present at Porvorim Police Station and that he will remain present on 30/10/2013. This Respondent has denied that the Complainant had visited the Police Station along with his three friends on 30/10/2013. It is stated

that by this Respondent that on account of seriousness of the allegations, etc. and on account of non-cooperation of the Complainant, the Respondent No.1 left the Police Station to arrest the Complainant on 30/10/2013 at 3.30 p.m. and on the same day at 5.30 p.m. the Respondent No.1 returned to the Police Station along with the Complainant/Mr.SudipTamankar and the Complainant was arrested on the ground that recovery of the stolen Government papers was essential.

5. We have heard the Learned Advocate ShriYatishNaik for the Complainant and the Learned Advocate Shri V. Sardesai for the Respondents. We have also perused the records of this case. Learned Advocate ShriYatishNaik invited our attention to Section 41A of Cr.P.C. and contended that the arrest of the Complainant was not justified and the same is illegal. In support of this contention, ShriYatishNaik has placed a reliance on the decision of the Supreme Court in the case of Dr.RiniJohar&Anr., Petitioners v/s State of M.P. &Ors., Respondents, in Writ Petition (Criminal) No.30 of 2015. On the contrary, the Learned Advocate Shri V. Sardesai contended that the notice was issued to the Complainant to produce documents. This contention is not borne out of records. The notice u/s 41A does not make any reference to the documents. The said notice indicates that the Complainant was directed to appear at the Police Station in connection with P.S. Crime No.150/2013 u/s 509, 353, 186 and 380 of IPC.

6. Admittedly, the Police Inspector, Porvorim Police Station had issued a notice dated 26/10/2013 u/s 41A of Cr.P.C. directing the Complainant/ShriSudipTamankar to remain present at Porvorim Police Station on 28/10/2013 at 11.00 a.m. Records indicate that the wife of the Complainant Smt. ShradhaTamankar by letter dated 28/10/2013 informed the Police Inspector, Porvorim Police Station that her husband was out of station and also informed the Police that her husband will be available on 30/10/2013. The records further indicate that the Complainant had addressed a letter dated 30/10/2013 to the Police Inspector, Porvorim Police Station stating therein among other things that he will present himself before the Police as and when required. It is the case of the Respondent No.2/Police Inspector, Porvorim Police Station that the Complainant did not appear before the Police on 30/10/2013 and in view of seriousness of the allegations and on account of non-cooperation, the Complainant was arrested by Respondent No.1.

7. The crucial question for our determination is whether the Respondent No.1 and 2 were justified in arresting the Complainant in the facts and the circumstances of this case.

At this stage it would be convenient to refer to **Section 41A of Cr.P.C.** which reads as follows:

41-A Notice of appearance before police officer.-(1) *The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

(2) Where such notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officers is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, a police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

8. According to the Respondent No.1 and 2 the Complainant did not comply with the terms of notice u/s 41A of Cr.P.C. in as much as the Complainant did not remain present before the Police on 30/10/2013. We are not inclined to accept this contention of the Respondent No.1 and 2. The records indicate that the Complainant expressed his willingness to appear before the Police as and when required by communication dated 30/10/2013. The Complainant also assured his full cooperation in the matter of investigation. In spite of this position, the Respondent No.1 and 2 arrested the Complainant without following the mandate of the provisions of Section 41A, 41A(3). Admittedly, the Respondent No.1 who has arrested the Complainant has not recorded any reasons for arresting the Complainant as required u/s 41A(3) of Cr.P.C. The Respondent No.1 and 2 have thus committed procedural lapses. They should have been more careful in arresting the Complainant as Section 41A was invoked by the Police. The aforesaid act of Respondent No.1 and 2 amounts to violation of human rights of the Complainant.

In the facts and the circumstances of this case, we make the following recommendations:

- (i) *The Director General of Police shall censure the conduct of the Respondent No.1 and 2 and shall issue warning in writing to the Respondent No.1 and 2 to be careful in future and to follow the provisions of Section 41A of Cr.P.C. meticulously.*
- (ii) *The Director General of Police, Panaji – Goa shall issue instructions to all the Police Stations in the State of Goa to comply with the provisions of Section 41 and Section 41A of Cr.P.C. in letter and spirit.*

A copy of this Inquiry Report shall be forwarded to the Director General of Police, Panaji – Goa for strict compliance.

Proceeding No. 23/2012:

This case has been disposed off on 23/08/2016. The Inquiry Report and the recommendations made therein are indicated below:-

The Complainant had approached this Commission alleging that the Police Sub- Inspector ShriDattaguruSawant attached to Valpoi Station illegally detained and assaulted him at Valpoi Police Station on 26/06/2012.

2. It is the case of the Complainant that on 26/06/2012 at about 20.00 hrs. the Complainant was coming from Mauxi, Dabem road in his car and when he reached three roads junction he saw a group of people gathered at the junction. The Complainant inquired with the people about the incident and he learnt that an vehicular accident had taken place between Omni Car and a Scooter in which one Mr.SantanGonsalves who is a friend of the Complainant and a Muslim person were involved. The Complainant requested his friends who had gathered on the spot to settle the matter amicably. Thereafter, the Complainant proceeded towards his residence. The Complainant has further stated that on reaching at his residence, he received a call from the said Mr.SantanGonsalves calling the Complainant at the Valpoi Police Station for releasing him on bail in case of arrest. Accordingly, the Complainant went to the Police Station to help Mr.SantanGonsalves.

3. The Complainant has specifically stated that the Police Sub-Inspector ShriDattaguruSawant asked the Complainant to get out of the Police Station. It is further stated by the Complainant that when he was in the varendah of the Police Station, Police Sub Inspector ShriDattaguruSawant came near the Complainant and

slapped over and over on his face and also caught hold of his collar, dragged him and put him inside the Police Lock-Up.

4. Taking cognizance of the complaint, this Commission issued notices to 1) the Chief Secretary, Government of Goa, Secretariat, Porvorim, 2) the Secretary (Home), Government of Goa, Secretariat, Porvorim – Goa, 3) Superintendent of Police (North), Porvorim – Goa and 4) ShriDattaguruSawant, PSI, Valpoi Police Station, Valpoi – Goa. In pursuance to the notices, the Respondent No.4 filed reply denying the allegations made by the Complainant against him. The Learned Advocate Shri G. D. Kirtani appearing on behalf of the Respondents filed a Memo stating therein that the Respondents No.1, 2 and 3 do not wish to file any reply in view of detailed reply of the Respondent No.4. In his reply, the Respondent No.4 amongst other things has stated that Head Constable bearing batch No.4063 was instructed to visit the spot for verification and further necessary action. It is further stated that on reaching the spot the said Head Constable noticed that a group of around 50-60 people had gathered on the spot and the Complainant was shouting and/or using foul language against the Police Department. It is also stated that the Complainant was trying to provoke the general public against the Police and that the Complainant was not in proper state of mind and was using abusive language against the Police Department and the Police Officials present at the site. It is further stated that the said Head Constable noticed that the Complainant was smelling of liquor and was intoxicated and was under the influence of alcohol. It is further stated that the Complainant was under the influence of alcohol and this fact was confirmed by the Medical Officer of the Community Health Centre, Valpoi.

5. The Complainant examined himself before this Commission as CW1 and also examined two more witnesses namely ShriSantan J. Gonsalves (CW2) and ShriPradeepChandrakantNarvekar (CW3) in support of his case. The Respondents did not examine any witness in support of their case.

6. We have heard the Complainant and Learned Advocate Shri G. D. Kirtani for the Respondents. We have also gone through the records of this case.

7. The question for our determination is whether the Complainant was illegally detained and was assaulted by ShriDattaguruSawant/Respondent No.4 at the Police Station thereby violating the basic human rights of the Complainant.

8. The Complainant in his Affidavit-in-Evidence has stated in clear terms that Police Sub-Inspector ShriDattaguruSawant asked him to get out of the Police Station. He has further stated that when the Complainant was in the varendah of the Police

Station, PSI ShriDattaguruSawant came near him and slapped over and over on his face, caught hold of his collar dragged him and put him inside the police Lock-Up. The other two witnesses namely ShriSantanGonsalves (CW2) and ShriPradeepNarvekar (CW2) who were present at the place of the incident have corroborated the evidence of the Complainant (CW1) on all the material aspects of the case. The Complainant (CW1) as well as CW2 and CW3 were cross-examined by the Respondents. However, nothing has been brought on record to discard or to disbelieve the evidence of CW1, CW2 and CW3. We do not find any material infirmity in the evidence of CW1, CW2 and CW3 which to our mind appears to be convincing and trustworthy.

9. The Complainant who argued in person submitted before us that he was arrested without any reason. He contended that his arrest is illegal. He also submitted that the Medical Certificate regarding alcohol produced by the Respondents is a false and manipulated certificate.

10. The Learned Advocate Shri G. D. Kirtani contended that the Complainant was not assaulted by the Respondent No.4/ShriDattaguruSawant. He submitted that the Complainant was examined by the Medical Officer at Community Health Centre, Valpoi but the Complainant did not make any complaint to the Medical Officer on duty. In fact, the Complainant has admitted in his cross-examination that he did not make any complaint about the assault by ShriDattaguruSawant/Respondent No.4. But then, the mere fact that the Complainant did not make any complaint before the Medical Officer is not at all sufficient to draw an inference that the Complainant was not assaulted by the Respondent No.4. It is not the requirement of law that any person brought for medical examination before the Medical Officer in assault cases by the Police, should inform the Medical Officer about such assault, if any. We therefore do not find any merit in this contention of the Respondents.

11. The Learned Advocate Shri G. D. Kirtani next contended that there is no medical evidence to prove that the Complainant was assaulted by the Respondent No.4. This contention is devoid of any substance. It is pertinent to note that the Complainant has alleged that he was assaulted by slaps only. In such a situation, it would be ridiculous to expect corroboration to the evidence of the Complainant by medical evidence.

12. The Learned Advocate Shri G. D. Kirtani next submitted that the Complainant was under the influence of liquor at the time of the incident. It is his contention that the Medical Officer has certified that the Complainant was under the influence of liquor at the time of examination. We also do not find any force in this contention of

the Respondents. At this stage it would be convenient to look into the Medical Certificate issued by the Medical Officer, Community Health Centre, Valpoi. By letter dated 26/06/2012, the Complainant was referred for medical examination by Valpoi Police. The said letter dated 26/06/2012 is reproduced below for the sake of convenience.

Valpoi Police Station
Dtd. 26.06.2012

To,
The Medical Officer,
CHC Valpoi
ValpoiSattari
Goa

Sub: Request for medical examination
Ref: Arrest u/s.151 Cr.PC on 26.06.2012
Respected Doctor

I am sending herewith one person namely Vincent s/o Manuel Fernandes age 45 yrs R/o H.No.362, Massordem, Valpoi, Sattari Goa for medical examination since he has been arrested u/s.151 Cr.P.C.

Kindly medically examine the above mentioned person and opine whether he is fit to be placed in police custody.

Thanking You,
Yours faithfully,

Sd/-
Police Inspector
Valpoi P.S. Goa.

The opinion of Medical Officer is reproduced below:

-Patient unfit for custody as BP-180/110mmHg c/o accelerated hypertensive pt kept under observation and discharged after treatment.

From the opinion given by the Medical Officer, it is abundantly clear that the Medical Officer did not express any opinion that the Complainant was under the influence of alcohol. It is also pertinent to note that the Police also did not ask the Medical Officer to examine the Complainant to ascertain whether the Complainant was under the influence of alcohol.

13. The Respondents have also produced a copy of Medical Certificate which was received by Valpoi Police Station on 30/06/2012. This Medical Certificate is reproduced below:

To whom-so-ever it may Concern.

This is to inform you that Mr. Vincent Fernandes, 45 yrs r/o of MassordemSattari was brought to our CHC on 6/06/12 @ 11.10pm for medical fitness for custody. Mr. Vincent was examined, he was under influence of alcohol.

On examination his Blood pressure was found to be high i.e. BP=180/110mmHg
He was given Tab Depin 5mg S/L + Tab Alprax 0.5mg stat and was kept for observation overnight.

Morning patient was discharged & put on
Anhhypertensive medicine.

Morning BP-140/100mmHg.

Patient was discharged on medicine Tab Amlodipine 5mg
½ - 0 – 0 x 10 days
Tab Alprax 0.5mg

Fu after 10 days.

Thank You

Sd/-

MO CHC Valpoi.

The above Medical Certificate is not free from reasonable doubts. First of all it is not known as to under what circumstances the above Medical Certificate was issued by the Medical Officer, particularly when the Medical Officer had earlier issued the Medical Certificate/opinion when the Complainant was taken for medical examination on 26/06/2012. Admittedly, there is nothing on record to indicate that the Valpoi Police had requested the Medical Officer to issue second Medical Certificate/opinion. In this so called second Medical Certificate, it is stated by the Medical Officer in a casual manner that the Complainant was under the influence of alcohol which is conspicuously missing in the first Medical Certificate. It is not known as to on what basis the Medical Officer has stated that the Complainant was under the influence of alcohol. Admittedly, the Medical Officer did not subject the Complainant for blood test to ascertain the contents of alcohol in his blood. The Medical Officer has also not stated that the Complainant was aggressive and was not cooperative. A mere observation that the Complainant was under the influence of alcohol is not sufficient to come to positive conclusion that the Complainant was under the influence of alcohol. It appears to our mind that this so called second Medical Certificate has been introduced by the Respondents as a clear case of afterthought to cover up the illegalities committed by the ShriDattaguruSawant/Respondent No.4.

14. The next and last contention of the Learned Advocate Shri G. D. Kirtani is that the Complainant tried to create law and order situation and hence, the Complainant

was arrested to prevent any untoward incident giving rise to cognizable offences. This contention also has no legs to stand. Admittedly, the Police invoked Section 151 of Criminal Procedure Code to place the Complainant under arrest. The Respondent No.4 in his reply at para-4 has stated that the Complainant was trying to provoke general public peace. In para-5 of the reply the Respondent No.4 has stated that in order to avoid any commission of cognizable offence and to avoid any breach of law and other situation, the Complainant was taken into custody u/s 151 of Cr.P.C. The question for determination is whether in the facts and circumstances of this case, the Police were justified in arresting the Complainant by taking shelter u/s 151 of Criminal Procedure Code. We are unable to digest the contention that the Police had no option but to invoke the provisions of Section 151 of Cr.P.C. to prevent commission of cognizable offences. The reasons spelt out for arresting the Complainant by invoking Section 151 of Cr.P.C. are against the mandate of law. Admittedly, the incident had taken place at the Police Station. There is nothing on record even to suggest that the Complainant was capable of committing any cognizable offences or was in a position to create law and order problem. It is settled law that if it is possible to prevent commission of cognizable offence by any other method without arresting the proposed offender, any such arrest has to be construed as illegal arrest. It is also settled law that Police cannot arrest any person on the ground that such person is likely to commit breach of peace or disturb public tranquillity.

15. Chapter XI of the Criminal Procedure Code deals with Preventive Action by the Police.

Section 149 of Cr.P.C. provides that every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

Section 150 of Cr.P.C. lays down that every police officer receiving information of a design to commit any cognizable offence shall communicate such information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Section 151 (1) provides that police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing if it appears to such officer that commission of the offence cannot be otherwise prevented.

Section 151(2)

16. It is apparent from the records of this case that the Police have not fulfilled the requirement of Section 149 and 150 of Cr.P.C. There is nothing on record to show that the Police have received any information relating to cognizable offence by the Complainant. Now, even assuming that the Respondent No.4 had received such information, no such information or design to commit any cognizable offence was communicated by the Respondent No.4 to his superiors. Thus it is apparent that the

Valpoi Police have arbitrarily invoked the provisions of Section 151 of Cr.P.C. by misusing their powers. The arrest of the Complainant therefore is not at all justified.

17. On the basis of the records of this case we are satisfied that the Complainant was illegally detained and was assaulted by the Respondent No.4. The conduct of Respondent No.4/ShriDattaguruSawant is a clear infringement of the Fundamental Right of the Complainant as guaranteed under Article 21 of the Constitution of India and also amounts to violation of his basic human rights.

18. In the case of Joginder Kumar v/s State reported in (1994) 4 Supreme Court Cases 260, the Apex Court considered the dynamics of misuse of police power of arrest and opined as follows:

“No arrest can be made because it is lawful for the Police Officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafides of a complaint and a reasonable belief both as to person’s complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter”

19. In the case of D. K. Basu v/s State of Bengal reported in AIR 1997 Supreme Court 610, the Apex Court has observed as follows:

“Fundamental rights occupy a place of pride in the Indian Constitution. Article-21 provides “No person shall be deprived of his life or personal liberty except according to procedure established by law” Personal liberty, thus, is a secret and cherished right under the Constitution. The expression “life or personal liberty” has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.

20. **Section 18. Steps during and after inquiry.-** *The Commission may take any of the following steps during or upon the completion of an inquiry held under this act, namely:-*

- (a) *where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or Authority –*

- (i) *to make payment of compensation or damages to the Complainant or to the victim or the members of his family as the Commission may consider necessary.*

21. The facts of this case reveal that the Complainant had to suffer mental torture as well as physical discomfort on account of high handedness of the Police who have apparently misused their powers by curtailing the liberty of the Complainant without any justification. We are therefore satisfied that this is a fit case to award appropriate monetary compensation to the Complainant by the State Government.

22. In the case of D. K. Basu v/s State of Bengal (Supra), it has been observed as follows:

“it is well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by a public servant and the State is vicariously liable for their acts

In the facts and the circumstances of this case, we make the following recommendation:

- (i) *The State of Goa through its Chief Secretary shall pay an amount of Rs.5,000/- (Rupees five thousand only) to the Complainant as compensation within a period of 30 days. It shall be open to the State Government to recover the amount of compensation from the erring Police Officials.*

Proceeding No.191/2016:

This case has been disposed off on 03/11/2016. The Inquiry Report and the recommendations made therein are indicated below:-

Unfortunately, this Commission is constrained to intervene in the matter of non-payment of monthly salaries to the husband of the Complainant and the staff members of the Comunidade of Margao on account of casual and lethargic attitude of the Concerned Authorities to resolve the problem of non-payment of monthly salaries to the staff members on time. The recommendations made by this Commission in earlier proceedings from time to time have fallen on the deaf ears of the Concerned Authorities. We seriously condemn this conduct of the Concerned Authorities for their casual and callous approach in sorting out the grievances of the staff members of the Comunidade of Margao.

2. Way back in the year 2012, this Commission took suomotu cognizance on the basis of news-paper report which appeared in the local newspaper Herald dated 17th July, 2012 under the caption "Non-payment of salaries: Employees gherao Comunidade Administrator" and issued notices to (1) Secretary (Revenue), State of Goa, Secretariat, Porvorim – Goa , (2) The Collector (South), Margao – Goa and (3) The Administrator, Comunidades of South Goa, Margao. In that case there was a delay of payment of salaries for a period of five months. The Administrator, Comunidades of South Goa, Margao gave explanation for delay in payment of salary. The explanation was accepted by this Commission with reluctance. However, the Commission observed that such incidents of delay in payment of salaries to the employees should not be repeated.

3. In proceeding No.210/2014 the present Complainant approached this Commission alleging that the Comunidade of South Goa, Margao did not pay salary to her husband from the month of April, 2014 to August, 2014. The proceeding No.15/2015 relates to non-payment of salary of the staff members in the Office of Administrator of Comunidades of South Goa, Margao for four months from September, 2014. In that case, complaint was received from the staff of Office of Administrator, Comunidades of South Goa, Margao without bearing the names and designations of the concerned employees. Since the grievance of the staff members was regarding non-payment of salaries for four months which was serious in nature affecting the life and liberty of the employees of the Comunidade of Margao, this Commission took suomotu cognizance and issued notices to (1) the Administrator of Comunidades, SouthGoa, Margao (2) the Collector (South), Margao – Goa and the (3) the Secretary (Revenue), Secretariat, Porvorim – Goa. Both these proceedings were disposed off by this Commission by common order. In those cases, the Administrator of Comunidades took a stand that the delay was on account of non-availability of funds. This Commission observed that the explanation given by the Administrator of Comunidades was not acceptable as it was the responsibility of the Comunidade of Margao to pay the salaries to the staff members in time by making appropriate budgetary provisions. This Commission directed the Respondents to make appropriate budgetary provision well in advance for payment of salary to the staff members so as to avoid a repeated delay in paying salaries to the concerned employees.

4. In yet another proceeding No.251/2015, the present Complainant approached this Commission by making similar grievance that the Comunidade of Margao has not paid salary to her husband inspite of orders of this Commission. In that case it was brought to the notice of this Commission that all pending arrears of salary including the salary of March, 2016 was paid to the husband of the Complainant. In

view of such statement, the proceeding was disposed off. However, this Commission observed that it has become a regular feature with the Administrator of Comunidades, South Goa, Margao to delay the monthly salary of the staff members. This Commission also directed the Administrator of Comunidades, South Goa, Margao to ensure that in future the salaries of the Staff Members shall be paid in time.

5. The present complaint relates to non-payment of salary to the husband of the Complainant for the months of May and June, 2016. Taking cognizance of this complaint, this Commission issued notices to 1) the Administrator of Comunidades, South Zone, Margao – Goa, 2) the Collector, South Goa, Margao and 3) The Secretary (Revenue), Secretariat, Porvorim – Goa. In pursuance to the notice, the Respondent No.1 has filed a detailed reply explaining the circumstances of non-payment of salary to the husband of the Complainant.

6. It is the case of the Respondent No.1 that as per the provisions of Code of Comunidades (Legislative Diploma No.2070 dated 15-04-1961) which is in force in the State of Goa, the Administration of Comunidades of South Goa, Margao used to run the office from Derrama collected from all the Comunidades. The Budget of office of Administrator of Comunidades used to be prepared and the total projected expenditure used to be divided amongst all Comunidades (Article 125(3) of the Code). According to the Respondent No.1, the Office of Administrator of Comunidades is a self-financed institution. It is stated that after implementation of the Goa, Daman & Diu Agricultural Tenancy Act, 1964, many tenants have purchased the paddy fields for a meagre rate of 0.40 paise per sq.mtrs. and since then, income of all the Comunidades has been subsidized, as a result the derrama collected from the South Goa Comunidades was not sufficient to effect payment of salaries of the staff of the Office of Administrator of Comunidades of South Zone, Margao. The problem of insufficient funds exists since last about 8-10 years and as a special case, the Government sanctions special grants for effecting payment of salaries to the administrative staff. It is further stated that the proposal requesting to sanction special grants was moved to the Government and the Revenue Department of the Government of Goa vide letter No.18/1/2012-RD(Part) dated 11/11/2015 addressed to the Collector, South Goa has informed that the Government has approved the proposal to provide Rs.1,14,98,398/- with a rider that in the forthcoming financial year the South Goa Comunidades should make their own arrangement of self-funding and no such funds shall be given in the year 2016-2017. It is further stated that the delay in payment of salary is not wilful or with any malafide intention but it is due to the cause beyond the control of Respondent No.1. It is specifically stated that the Respondent No.1 is unable to make self-funding arrangement as directed by the

Revenue Department. It is stated that the Respondent No.1 is unable to make payment of the salaries to the Complainant without Government grants.

7. We have heard the Parties. We have also gone through the records of this case.

8. Admittedly, the Administrator of Comunidades, South Zone, Margao/Respondent No.1 has not paid salaries and allowances to the husband of the Complainant for the period from May, 2016 onwards. As per the reply of the Respondent No.1, it is apparent that the salaries to the employees of Comunidade of Margao were being paid from time to time from special grants sanctioned by the Government. However, it appears that suddenly the Government of Goa has decided not to sanction any special grants for payment of salary of the employees of Comunidade of Margao on a spurious plea that the Comunidades should make their own arrangements for self-funding to pay the salaries of the staff members. The Administrator of Comunidades/Respondent No.1 has stated that the Respondent No.1 is not able to make self-funding arrangement. This has given rise to a unique situation whereby the employees of the Comunidade of Margao are made to undergo mental torture for no fault on their part. They are deprived of decent living. It shall not be inappropriate to say that they are on the verge of starvation for which the State of Goa is wholly responsible. Admittedly, the Comunidade of Margao has availed the services of its employees and they are working in the Comunidades of South Goa as regular employees on full time basis. It is a cardinal principle of law that an employee who has rendered services to its Employer is bound to get remuneration for the services rendered by him. Likewise, it is also the duty of the Employer to pay remuneration to its employees after availing the services of the employees. The Administrator of Comunidades of Margao as well as the Government of Goa cannot run away from the obligation of paying salary to the employees of the Comunidade of Margao after availing their services. Non-payment of salary to the husband of the Complainant and other employees for which they are legitimately entitled to, is a clear infringement of the fundamental rights of the employees, as guaranteed under Article 21 of the Constitution of India. Consequently, it also amounts to violation of their basic human rights.

9. In the case of **KapilaHingorani V/s State of Bihar** reported in **AIR 2005 S.C 980 Supreme Court** has 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”***.

10. In the case of **Prof. Devendra Mishra v/s University of Delhi & Ors. the Delhi High Court in W.P. (C.) No.5075/2207** delivered on **16/02/2010** has observed as follows:

“A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, it will affect his life and liberty? This, in the opinion of this Court amounts to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution of India.”

11. The justification given by the Administrator of Comunidades, Margao for non-payment of salary to the husband of the Complainant does not appeal to our mind at all. The Institutes of Comunidades in the State of Goa are functioning under the direct control of State of Goa and as such it does not lie in the mouth of the State of Goa to say that the Comunidade of Margao should make their own arrangements for self-funding and that no such funds shall be given henceforth. We are satisfied that the non-payment of salary to the husband of the Complainant and other employees of the Comunidade of Margao for the months of May, 2016 till date has grossly violated the human rights of the husband of the Complainant and other employees of the Comunidade of Margao. Looking into the past conduct of the Respondents, we are satisfied that this is a fit case to award reasonable compensation to the employees who have not been paid the salary from May, 2016 onwards.

In view of the above, we make the following recommendations.

- (i) *The Respondents shall pay the salaries to the husband of the Complainant and to other employees from May, 2016 till date within a period of 15 days.*
- (ii) *The State of Goa through its Chief Secretary shall pay a compensation of Rs.3,000/- (Rupees three thousand only) to each of the employees of the Comunidade of Margao including the husband of the Complainant within a period of 30 days.*

Proceeding No. 41/2015:

This case has been disposed off on 09/02/2017. The Inquiry Report and the recommendations made therein are indicated below:-

By Order No. DA/Admn/45-2/2013-2014/TR-2694/68 dated 30/12/2013 issued by the Director of Accounts, Panaji – Goa, the Complainant/Smt. Aruna M. Phadte was posted as Dy. Director of Accounts on deputation with Entertainment Society of Goa, Panaji – Goa. The Complainant resumed her duties on 01/01/2014 as Dy. Director of Accounts/Manager Accounts of Entertainment Society of Goa. The Complainant applied for Child Care Leave w.e.f. 04/03/2014 to 22/08/2014 which was sanctioned by the Chief Executive Officer, Entertainment Society of Goa.

2. The grievance of the Complainant is that the Chief Executive Officer and the General Manager, Entertainment Society of Goa withheld her salary for the period of her Child Care Leave from April, 2014 till August, 2014 without her fault.

3. Taking cognizance of the complaint, this Commission issued notices to (1) General Manager, Entertainment Society of Goa and (2) the Director of Accounts, Panaji – Goa. In pursuance of the notice, the Respondent No.1/General Manager, Entertainment Society of Goa filed reply dated 06/01/2016. It is stated by Respondent No.1 that the Complainant applied for Child Care Leave from 04/03/2014 to 22/08/2014. Her leave was sanctioned by Entertainment Society of Goa. The Entertainment Society of Goa requested the Director of Accounts to post a substitute during the leave period of the Complainant. However, no substitute was sent to the Entertainment Society of Goa. Thereafter, the Chief Executive Officer issued Relieving Order to the Complainant by letter dated 28/03/2014 and by Order dated 08/04/2014, the Complainant was relieved from Entertainment Society of Goa.

4. It is further the case of the Respondent No.1 that the Director of Accounts sought for clarification from Entertainment Society of Goa as to how the Complainant was relieved without Government approval and how Child Care Leave was sanctioned to the Complainant when it was strictly prohibited due to ensuing Lok Sabha Elections. The Respondent No.1 has also stated that the matter was placed before Executive Council as the matter was involving administrative difficulties in releasing salary of the Complainant. It is also stated that there was no sitting of the Executive Council for about nine months and as such the matter was kept on hold. After the decision of the Chairman, Executive Council salary which was kept on hold was released.

5. This matter came up for final hearing on 11/01/2017 on which date the Respondents did not remain present. It was noted that the Respondents did not remain present on several occasions and opportunities were given to the Respondents including final opportunities by making it clear that the matter shall proceed in their absence in case the Respondents do not remain present on the next date of hearing i.e. on 09/02/2017. It is regretted to note that inspite of giving several opportunities the Respondents did not remain present on 09/02/2017.

6. We have heard the Learned Advocate Shri G. Sambhari for the Complainant. We have also perused the records of this case.

7. There is no dispute that the salary of the Complainant for the period from 04/03/2014 to 22/08/2014 was kept on hold by the Respondent No.1 and the same was released on 29/10/2015. Thus it is apparent that there was a delay of about 20 months in making payment of the salary of the Complainant. Therefore, the only question for our determination is whether this inordinate delay has been satisfactorily explained by Respondent No.1. A feeble attempt has been made by Respondent No.1 to justify the delay on a spacious plea that there was administrative difficulty in releasing the salary. It is also pleaded that there was no Executive Council Meeting for almost 9 months and hence due to non-sitting of Executive Council the matter was kept on hold. We are unable to persuade ourselves about the explanation sought to be given by Respondent No.1 which has no legs to stand. The justification given by Respondent No.1 to justify the inordinate delay cannot be accepted. The Respondent No.1 has acted in a very irresponsible manner. There was nothing to prevent Respondent No.1 from holding emergency or extraordinary meeting of the Executive Council to discuss the important issue of releasing the salary of the Complainant which has not been done for reasons best known to Respondent No.1. This inordinate delay in releasing the salary of the Complainant undoubtedly amounts to infringement of fundamental rights of the Complainant as guaranteed under Article 21 of the Constitution of India and also amounts to violation of basic human rights of the Complainant.

8. In the case of KapilaHingorani 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***".

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"A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, it will affect his life and liberty? This, in the opinion of this Court amounts to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution of India."

10. The justification given by the Respondent No.1 for delay in payment of salary to the Complainant does not appeal to our mind at all. It appears that the delay in payment of salary was intentional and smacks malafide. The Complainant has to undergo mental agony and also has suffered heavy financial losses on account of delay in payment of her salary. We therefore feel that this is an appropriate case to recommend reasonable compensation to the Complainant on account of hardships she has to suffer due to inordinate delay in payment of her salaries. We therefore make the following recommendation:

The General Manager, Entertainment Society of Goa, Panaji - Goa shall pay compensation of Rs.10,000/- (Rupees ten thousand only) to the Complainant, Smt. ArunaPhadte within a period of 30 days. The Respondent No.1 shall be at liberty to recover the said amount from the erring Officials after fixing the responsibilities.

This Annual Report for the year 2016-2017 is presented to the State Government as per Section 28 (1) of The Protection of Human Rights Act, 1993.

Sd/-
(A. D. Salkar)
Member

Sd/-
(J. A. Keny)
Member

Dated: 29/03/2018
Place: Panaji – Goa

