

BEFORE THE GOA HUMAN RIGHTS COMMISSION

PANAJI – GOA

Proceeding No.175/2021

Shri Suryakant D. Kavlekar,
Behind Taleigao Church,
Eden Woods Apartment,
Santissimo Waddo,
Taleigao, Goa.

... Complainant

V/s

1. The Chief Town Planner,
Town and Country Planning Department,
Patto, Panaji-Goa.

2. The Director of Accounts,
Directorate of Accounts,
Panaji-Goa.

... Respondents

INQUIRY REPORT

(18th December, 2023)

The complaint dated 25/08/2021, was received in this Commission for release of pension of the Complainant.

2. On perusing the complaint, by Order dated 03/09/2021, the Commission called for the reports from the two Respondents.

3. The Respondent No.1 filed their reply on 30/09/2021 and the Respondent No.2 filed their reply on 07/10/2021.

4. Thereafter, the Complainant filed his Rejoinder on 06/12/2021.

5. Subsequently, the Respondent No. 1 filed their further reply on 27/02/2023.

6. The Commission heard the Complainant and Adv. Ms. Harsha Naik for the Respondent No.1.

7. The complaint had been filed in respect of non-release of the pension of the Complainant who had retired from Government service on superannuation on 30/04/2021 and as his pension case was not settled till 25/08/2021.

...2/-

8. Earlier, the Respondent No. 1 had filed their reply dated 29/09/2021, that they had forwarded the pension papers to the Respondent No.2 on 09/11/2021, but they were returned by the Respondent No. 2.

9. The Respondent No.2 had stated that they had received the pension papers of the Complainant and the same were returned for compliance of the observations raised.

10. As per the further reply dated 27/02/2023, it has come on record that the entire pensionary benefits have been paid to the Complainant between 14/10/2021 and 03/03/2022. This is accepted by the Complainant at the time of arguments.

11. The Respondent No.1 also stated that the question of releasing the excess amount paid to the Complainant came to the notice of the Chief Town Planner and the Respondent No.1 had issued a letter to the Respondent No.2 on 12/10/2022, for recovery of the amount of Rs.2,53,789/- from the gratuity of the Complainant. However, the Respondent No.2 had stated that since the matter is sub-judice before this Commission, decision of the recovery pending in the present case may be taken accordingly.

12. The question before this Commission is whether the Respondents can recover the amount of Rs.2,58,789/- from the Complainant on the grounds that the excess amount was paid to him many years back, as conceded by the Respondent No.1 in their additional reply of 27/02/2023.

13. The Supreme Court of India, in ***Civil Appeal No. 7115 OF 2010, Thomas Daniel Versus State of Kerala & Ors.***, decided by Judgment dated 2nd May 2022, the issue was as to whether increments granted to the appellant, while he was in service, can be recovered from him almost 10 years after his retirement on the ground that the said increments were granted on account of an error. In para (9) , the Supreme Court noted that the Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation

or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. In para 28, it held that such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented.

14. In ***State of Punjab and Others v. Rafiq Masih (White Washer) and Others, (2015) 4 SCC 334***, in Para 18, it held as under: 18. “It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

15. In the facts of the present case based on the judgments of the Supreme Court which has been accepted by the State of Goa, the recovery from the employees belonging to Group C and D are impermissible. So also, the recovery is impermissible from the retired employees or from the employees who are due to retire within one year, of the order of the recovery.

16. The Complainant had retired as a Group C employee on 30/04/2021. Only after his retirement, the Respondents cannot recover the so called excess amount paid to him many years back of Rs. 2,58,789/-

17. Accordingly, the Commission recommends that the Respondents No. 1 and 2, do not recover the excess amount paid many years back of Rs. 2,58,789/- from the Complainant, who has already retired on 30/04/2021, being a Group 'C' employee.

18. Under Section 18(e) of the Protection of Human Rights Act, 1993, the Commission shall send a copy of the Inquiry Report together with its recommendations to the concerned Government or authority and they shall, within a period of one month or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken, to the Commission.

19. Copy of the Inquiry Report be sent to the Respondents, calling for their comments, including the action taken or proposed to be taken within a period of 60 days or on or before 19/02/2024, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Date : 18/12/2023

Place : Panaji-Goa.

Sd/-
(Desmond D'Costa)
Acting Chairperson/Member
Goa Human Rights Commission

Sd/-
(Pramod V. Kamat)
Member
Goa Human Rights Commission