BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No.177/2022

Mrs. Durga C. Borkar,
R/o H. No. 2043/1, Shashtiwada,
Bordem, Bicholim-Goa.   …   Complainant

      V/s

1. The Director of Education,
   Porvorim-Goa.

2. The Zonal Officer,
   North Educational Zone,
   Mapusa, Bardez-Goa.   …   Respondents

INQUIRY REPORT
(29th November, 2023)

The complaint dated 20/09/2022, was received from the Complainant stating that after she worked for about 37 years as a Government Primary Teacher from 10/03/1984 and retired on 31/07/2021, when she received her pension and retirement benefits, she found that an amount of Rs.3,28,554/- was deducted from her dues.

2.   On perusing the complaint, the Commission issued notices to the two Respondents.

3.   The Respondent No. 1 filed their reply dated 28/11/2022. After which, the Complainant filed their Rejoinder dated 28/02/2023.

4.   At the stage of hearing, the Commission heard the Complainant and also heard Shri D. Chawdikar, Deputy Director of Education (Legal), on behalf of the Respondents.

5.   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."

6. In the present case, the Commission finds that the Complainant retired as Government Primary Teacher, on 31/07/2021 and at the time of payment of her retirement benefits, an amount of Rs. 3,28,554/- was deducted from her gratuity amount. The Commission finds that the Complainant was a Class-III employee and as per the judgment of the Supreme Court (supra), the recovery of employees belonging to Class-III is impermissible in law.

15.   In the facts of the present case, the Commission accordingly recommends that the Complainant re-applies to the Respondent No.1 for refund of said amount of Rs.3,28,554/- within seven days from today and the Respondent No.1 shall forthwith decide the application within three weeks thereafter.

16.   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.

17.   Copy of the Inquiry Report be sent to the Respondent No.1, calling for their comments, including the action taken or proposed to be taken within a period of 30 days or on or before 29/12/2023, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Date : 29/11/2023
Place : Panaji-Goa.

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