

BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No.18/2024

Mr. Jagannath U. Kundaikar,
H.No.67/1, Chinchwada,
Chimbel, Tiswadi-Goa.

... Complainant

V/s

1) The Director of Accounts,
Porvorim-Goa.

2) The Principal,
Deepvihar Higher Secondary School,
Headland Sada,
Vasco-Da-Gama, Goa.

3) The Deputy Director,
South Educational Zone,
Margao-Goa.

... Respondents

INQUIRY REPORT

(25th June, 2024)

The complaint dated 15/01/2024, was received from the Complainant, Mr. Jagannath U. Kundaikar, in respect of the recovery from his gratuity without any prior notice.

2. On perusing the complaint, the Commission by Order dated 25/01/2024, issued notice to the Respondent No. 1, i.e. the Director of Accounts, Porvorim-Goa.

3. On the appearance of the Respondent No.1 and hearing arguments partly, the Respondent No.2, i.e. the Principal, Deepvihar Higher Secondary School, Headland Sada, Vasco-Da-Gama, Goa and the Deputy Director, South Educational Zone, Margao-Goa, were added as Respondents No. 2 and 3.

4. Thereafter, the Respondents No. 2 and 3 filed their replies. Counter reply was also filed by the Complainant.

5. Arguments were heard of Adv. Shri A. Nasnodkar for the Complainant and Shri Naresh Kankonkar, Assistant Accounts Officer on behalf of the Respondent No. 1 and Smt. Mrunal Korgaonkar, Principal, on behalf of the Respondent No.2. Respondent No. 3 was absent.

6. The Complainant has relied on the judgment of the High Court of Bombay at Goa in the case of **Jotiba Ishwar Mali vs the State of Goa and others, Writ Petition No.285 of 2024**, decided by the oral judgment dated 03/04/2024.

7. The above case was a case where an excess payment of Rs.4,18,633/- was recovered from the Petitioner after his retirement on the ground that this amount was wrongly paid to him. The High Court held that the excess payment was not due to any misrepresentation by the Petitioner and it was because of an error on the Respondents' part and further held as under:-

*“6. Before such recovery, the principles of natural justice and fair play were not complied with. Besides, such recovery was contrary to the principles the Hon'ble Supreme Court laid down in the cases of the **State of Punjab vs Rafiq Masih, A.I.R. 2015 SC 696** and **Thomas Daniel vs State of Kerala and others, 2022 SCC Online SC 536**.*

7. Both the above-referred decisions hold that where monetary benefits were given to the employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities in determining the emoluments payable to them and the employees were not guilty of furnishing any incorrect information/misrepresentation/fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees, no recoveries must be ordered or enforced after the retirement of such employees. In fact, the direction was not to recover from the retired employees or the employees who were due to retire within one year of the order of recovery.

8. Mr. Naik pointed out that the Central Government has issued an Office Memorandum dated 02.03.2016 following the law laid down in Rafiq Masih (supra). By the Office Memorandum dated 07.03.2017, the Government of Goa has also adopted the Central Government's OM dated 02.03.2016.”

8. The Commission has gone through the present complaint, the replies of the Respondents No. 2 and 3, the Rejoinders of the Complainant and has considered the submissions on behalf of the Parties. There is no dispute that the Complainant was working as a Teacher Grade-I from 01/07/1996 and retired on superannuation on completing the age of 60 years on 31/08/2022, after 26 years of service. After his retirement, he received the payments of his pensionary benefits by commutation letter dated 12/09/2023.

9. At this stage, the Complainant found that his authorities had deducted from his gratuity an amount of Rs.53,320/-, without any prior notice to him. Accordingly, he approached this Commission.

10. The Respondent No.2 in their reply stated that the amount was adjusted from the retirement gratuity, as it was found there was an error during his Sixth Pay fixation, resulting in excess payment of salary of Rs.53,320/-. They relied on the Central Civil Service (Pension) Rules, 2021, under which Rule 67(2) provides that the Government dues shall be adjusted against the amount of retirement gratuity.

11. So also, the Respondent No.3 had stated that the overpayment made to the Complainant was recovered from his retirement gratuity which is the standard procedure.

12. Guided by the Judgment of the High Court of Bombay at Goa (supra), in the facts of the present case, the Commission finds that the Respondents No. 2 and 3 could not have recovered the said overpayment of Rs.53,320/- from the gratuity amount of the Complainant after his retirement and without notice to him and it is not the case of the Respondents that the excess payment was due to any misrepresentation by the Complainant. The Central Civil Service (Pension) Rules, 2021, cannot over-ride the law laid down by the Supreme Court.

13. Accordingly, the Commission recommends that the Respondents No. 2 and 3 shall refund the recovered amount of Rs.53,320/- (Rupees Fifty Three Thousand Three Hundred Twenty only) to the Complainant as expeditiously as possible and, in any case, not later than 60 days from today. If this amount is not paid to the Complainant within 60 days from today, it will carry interest at the rate of 8% per annum beginning from the date of this order until the date of payment.

14. 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.

15. Copy of the Inquiry Report be sent to the Respondents No. 2 and 3, calling for their comments, including the action taken or proposed to be taken within a period of 60 days or on or before 26/08/2024, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Date : 25/06/2024

Place : Panaji-Goa.

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

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