

BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No.253/2021

Shri Sudhir S. Kubde,
Ex-Group Instructor,
Sattari Government Industrial
Training Institute,
Honda, Sattari-Goa.
R/o H. No.5/62, Adarshnagar,
Pernem, Goa-403512.

... Complainant

V/s

1. The Director,
Directorate of Skill Development &
Entrepreneurship,
3rd Floor, Shrama Shakti Bhavan,
Patto, Panaji-Goa.

2. The Principal,
Sattari Government Industrial
Training Institute,
Honda, Sattari-Goa.

3. The Director,
Directorate of Accounts (Pension Section),
Panaji-Goa.

... Respondents

INQUIRY REPORT

(08th November, 2022)

The complaint dated 22/12/2021, was received from the Complainant, praying for refund of the amount of Rs.2,11,169/- recovered from his Gratuity Fund, after his retirement as a Ex-Group Instructor on 31/10/2017.

2. On perusing the complaint, the Commission by Order dated 06/01/2022, issued notices to the three Respondents.

3. The Respondent No. 1 filed their report dated 22/02/2022. The Respondent No. 2 filed their report dated 10/02/2022. The Respondent No. 3 filed their reply on 08/02/2022.

4. Thereafter, the Complainant filed his Rejoinder on 12/04/2022.

...2/-

5. At the stage of hearing, on 14/10/2022, the Commission heard the Complainant in person and also heard Shri Sharad Gawde, Head Clerk of the Respondent No.1 and Shri Naresh Kankonkar, Assistant Accounts Officer, on behalf of the Respondent No. 3. The Respondent No. 2 was absent at the time of arguments.

6. Under Section 12(a) of The Protection of Human Rights Act, 1993, the Commission shall (a) inquire, suo-motu or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of-

- (i) violation of human rights or abetment thereof; or
- (ii) negligence in the prevention of such violation, by a public servant.

7. The question in the present case is whether the Complainant has made out any violation of his human rights by the Respondents.

8. There is no dispute that the Complainant was working as an Instructor with the Respondent No. 2 and he had retired on superannuation on 31/10/2017. When his pension was fixed, the amount of Rs.2,11,169/- was recovered from his gratuity by Order dated 06/02/2018.

9. The Respondents No. 1 and 2 have stated that the pension case of the Complainant had been submitted to the Pension Section of the Respondent No. 3 by letter dated 05/05/2017 and it was returned by the Respondent No. 3 with certain observations and accordingly the pay fixation statement in the VIth and VIIth Pay Commission were revised and it was found that he had been overpaid to the extent of Rs.2,11,169/-. Accordingly, the Respondent No. 1 authorized the Respondent No. 3 to recover the said amount from the Death-Cum-Retirement gratuity and accordingly, the pension case of the Complainant was settled and passed for payment on 02/02/2018.

10. Thereafter, the Complainant had submitted his representation dated 30/07/2020, for refund of the amount recovered and the same was placed before the Government for its approval and concurrence of Finance (R&C) Department on 19/11/2020. The Finance (R&C) Department returned the proposal to the Respondent No. 1 to indicate the reasons for the errors, which resulted in overpayment. The file was thereafter re-submitted to the Finance Department with due clarification of the cases. However, the Finance Department had instructed to fix responsibility on the officials responsible for the overpayment and recover the amount from them.

11. The Respondent No. 1 also stated that upon instructions of Finance (R&C) Department, efforts were made to locate the file wherein the cases of the Complainant and two others namely, Shri Edwin Vaz and Shri Stephen Coutinho, were processed in order to fix responsibility on the officials concerned. But, the same is not traceable, due to which the department is in a process of filing F.I.R. regarding missing of file.

12. The Respondent No. 1 stated that they had obtained the comments from the then Principal of the Respondent No. 2 and from the Ex-Maintenance Supervisor. The Ex-Principal had stated that due to lengthy passage of time from the year 2012, he is unable to recollect the exact facts as to whether Shri Nagvekar who had actually prepared/put up the bills, on his own or under the supervision of the then UDC. The Respondent No. 1 also stated that the officers and officials responsible for over payment have already voluntarily retired/retired on superannuation except Shri Joao Caldeira and the matter will be re-submitted to the Finance (R&C) Department for reconsideration.

13. The Division Bench of the Supreme Court of India, in ***Civil Appeal No. 7115 OF 2010, Thomas Daniel Versus State of Kerala & Ors.***, 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, the Commission accordingly recommends to the Respondent No. 1 that in view of the law laid down by the Supreme Court as outlined above, the Respondent No. 1 pursues the matter with the Finance Department for refund of the said amount of Rs.2,11,169/- (Rupees two lakhs eleven thousand one hundred sixty nine only), to the Complainant.

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 60 days or on or before 09/01/2023, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Date : 08/11/2022

Place : Panaji-Goa.

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

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