

BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No.32/2024

Mrs. Sulbha A. Sawant Dessai,
Retired Govt. Primary Teacher,
G.P.S. Behmoddi-Kakoda, Quepem-Goa,
R/o. H.No.1131, Ghotmarad-Kakoda,
Quepem-Goa. ... Complainant

V/s

The Director of Education,
Porvorim-Goa. ... Respondent

INQUIRY REPORT

(29th April, 2024)

The complaint dated 29/01/2024, was received from the Complainant, who is a retired Government Primary Teacher.

2. On perusing the complaint, the Commission by Order dated 30/01/2024, issued Notice to the Respondent.

3. The Respondent filed their reply on 15/03/2024.

4. Thereupon, the Complainant filed their Rejoinder on 02/04/2024 and the Respondent filed their Sur-Rejoinder on 19/04/2024.

5. The Commission heard the Complainant in person and she submitted that after her retirement, the Respondent had deducted a huge amount from her gratuity dues, which is against the law. On the other hand, Shri Kiran Chaukekar, Legal Officer, submitted that the Complainant herself had misrepresented to the Department and had obtained a senior scale from 06/09/1995 instead of 31/12/1997.

6. The Commission has gone through the complaint, the reply, the Rejoinder, the Sur-Rejoinder, documents of the Parties and has considered the submission of both Parties, as well as the law on the subject.

...2/-

7. In the present case, the Complainant was working as a Government Primary Teacher from 06/09/1983 with the Respondent and had retired from Government service on 30/11/2022. She started receiving her pension after a year on 04/01/2024.

8. The Respondent had stated that there was delay on the part of the Complainant in submitting her documents.

9. In the facts of the present case, the Commission finds the letter of the Complainant dated 03/08/2022, addressed to the Deputy Director of Education, Margao, regarding delay in submitting her pension file. In the said letter, the Complainant herself has stated that the reason for delay in submitting the pension file, was on account of processing the correction in her name as per her Marriage Certificate and she will not hold the office responsible for delay in settlement of her pension case.

10. Firstly, the Commission holds delay in payment of her pensionary dues was not on account of the Respondent, but the Complainant herself had not completed the formalities in time.

11. The second question is whether the deduction of the amount of Rs.6,12,667/- from the gratuity of the Complainant after retirement was in accordance with law.

12. Before 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, held that 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.**

13. 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.”

14. The law is very clear that after the retirement of a Government servant, no deduction can be made from the amount due to her. As held in the Judgment of the Supreme Court in **(2015) 4 SCC 334 (Supra)**, recoveries would be impermissible in law from the retired employees when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. 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.

15. Shri Kiran Chaukekar, Legal Officer of the Respondent, had argued that there was a misrepresentation from the Complainant which was the reason for paying her a Senior Scale, two years prior to the due date.

16. However, the Respondent has not brought on record anything to establish that the Senior Scale was granted to the Complainant from 06/09/1995, due to any misrepresentation by the Complainant. Merely because the Complainant had requested the Department to review the date of Senior Scale, as ultimately it is the Department which decides the matter and as there was no manipulation by the Complainant, the Complainant cannot be faulted.

17. In the facts of the present case, the Commission holds that the deduction of Rs.6,12,667/- from the gratuity amount of the Complainant after her retirement on 30/11/2022, was impermissible in law.

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. Accordingly, the Commission recommends that the Respondent refund to the Complainant, the wrongly deducted amount of Rs.6,12,667/- (Rupees six lakhs twelve thousand six hundred sixty seven only) from her gratuity amount, within 60 days from today alongwith simple interest at 6% per annum from 04/01/2024, till final payment.

20. Copy of the Inquiry Report be sent to the Respondent, calling for their comments, including the action taken or proposed to be taken within a period of 60 days or on or before 28/06/2024, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Date : 29/04/2024

Place : Panaji-Goa.

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

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