

**BEFORE THE GOA HUMAN RIGHTS COMMISSION**  
**PANAJI – GOA**

**Proceeding No.76/2023**

Shri Edwin Vaz,  
Ex-Vocational Instructor (P),  
R/o. House No.84, No Bairo,  
Amboi, P.O. Piedade,  
Tiswadi-Goa.

... Complainant

V/s

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

... Respondent

**INQUIRY REPORT**

(18<sup>th</sup> January, 2024)

The complaint was received from the Complainant on 16/03/2023, stating that he had retired as a Vocational Instructor from the Directorate of Skill Development & Entrepreneurship, Panaji, on 30/06/2016. He found that an amount of Rs.1,30,556/- was recovered from his Gratuity towards overpayment made to him from January 2006 to 30/06/2016, by corrigendum dated 05/07/2016, after his retirement. He stated that he had made representations to the Respondent but the same was not considered by the Government. Accordingly, he filed the present complaint for refund of his dues of Rs.1,30,556/-

2. On perusing the complaint, the Commission by Order dated 06/12/2023, called for the report from the Respondent.

3. The Respondent filed their report dated 08/01/2024 conceding that the amount of Rs.1,30,556 was recovered from his retirement gratuity.

4. The Commission heard the Complainant and heard Ms. Siya Parsekar, Office Superintendent, on behalf of the Respondent.

5. In their reply, the Respondent stated that they had moved a proposal to give the benefits to the Complainant to the Finance (R & C) Department but the same was not considered.

6. Before the Division Bench of 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.

7. 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.”

8. The respondent in their reply dated 08/01/2024 have stated that two other Ex- Group Instructors, Shri Stephen Coutinho and Shri Sudhir S. Kubde had earlier approached this Commission and based on the Inquiry reports dated 08/11/2022, the amounts deducted of these two have been now refunded. But as the present complainant was not before this Commission earlier, his request was not considered by the Finance Department.

**9. As held by the Supreme Court in (2015) 4 SCC 334 (Supra), recoveries from the retired employees or the employees who are due to retire within one year of the order of recovery, are impermissible. So also recoveries from Group 'C and D government employees was barred.**

10. The respondent, in their reply, in para 6, had in fact stated that the Central government had issued the office memorandum dated 02/03/2016, regarding waving of recovery of wrongful/ excess payments made to Group 'C' Government servants, which was adopted by the Government of Goa and circulated vide office Memorandum dated 07/03/2017.

11. The Commission finds that the complainant herein, who was a Group C employee, had retired on superannuation on 30/06/2016. Thereafter by corrigendums dated 05/07/2016, the excess amounts paid of Rs. 1,30,556, were ordered to be recovered from his Gratuity amount, which was impermissible.

12. In the facts of the present case, the Commission accordingly recommends to the Respondent that in view of the law laid down by the Supreme Court as outlined above, the Respondent pursues the matter afresh with the Finance Department for refund of the said amount of Rs.1,30,556/- (Rupees one lakh, thirty thousand, five hundred fifty six only), to the Complainant.

13. 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.

14. 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 19/03/2024, in terms of Section 18(e) of the Protection of Human Rights Act, 1993.

Date : 18/01/2024

Place : Panaji-Goa.

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

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