

GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No. 137/2018

Shri Suryakant B. Naik,
Headmaster,
KeertiVidyalaya High School,
Siolim, Bardez-Goa.
R/o H. No. 25W/1, Cuchelim,
Mapusa, Bardez, Goa-40350.

... Complainant

V/s

1. The Chairman/Manager,
School Managing Committee,
KeertiVidyalaya High School,
Siolim, Bardez-Goa.

2. The Director,
Directorate of Education,
Porvorim-Goa.

... Respondents

INQUIRY REPORT/ORDER
(04th February, 2021)

The complaint dated 29/06/2018 was received in the Commission on the same day.

2. By Order dated 16/07/2018, on perusing the complaint, the Commission called for the Report from both the Respondents, on or before 21/08/2018.

3. The complaint is in respect of non-payment of the salary since February 2018 of Shri Suryakant B. Naik, who was working as Headmaster of the school run by Respondent No. 1 and for reasonable compensation.

4. The brief facts of the case are that the Complainant was working as the Headmaster at KeertiVidyalaya High School, Siolim-Goa and he was placed under suspension since 24/02/2014. After inquiry, the Complainant was found guilty. When the matter went to the Director of Education for its approval, under Rule 97 of the Goa, Daman and Diu School Education Rules, 1986, the Director did not approve of the major penalty of dismissal of service and ordered the punishment to be reduced to compulsory retirement.

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5. The said Order of reducing the penalty to compulsory retirement was challenged before the Hon'ble High Court by virtue of a Writ Petition. While disposing the Writ Petition No. 26/2019, filed by the Managing Committee, KeertiVidyalaya High School, i.e. the Respondent No. 1 herein, the matter was remanded for further proceedings in the inquiry, with the observation that in case the Respondent No 1 owes any dues, particularly consisting of subsistence allowance, payable to the Complainant, the Management will have to clear the same within three weeks from passing of the Order dated 20/06/2019.

6. The Complainant herein, by his application dated 29/06/2018, stated that Respondent No. 1 did not pay the salary of the Complainant since February 2018 onwards without any justification, resulting in misuse of powers by the Respondent No. 1 and also that the Respondent No. 2 failed to discharge its lawful duties contemplated under the Goa School Education Act, 1984. According to the Complainant, due to non-payment of salary since February 2018, great harassment, mental agony and mental torture has been caused to him and his family. He prayed to direct the Respondent No. 1 to disburse and release his salary since February 2018, with interest @ 12% per annum till the date of disbursement of salary and reasonable compensation.

7. The Respondent No. 1 in its reply dated 06/07/2020, contended that as per the Order of the Hon'ble High Court, they have already submitted the subsistence allowance claim to the GIA Section, Directorate of Education by letter dated 27/06/2019 and in pursuance to the same, the Complainant was paid full salary from 21/08/2014 to January 2018 and as the Complainant was paid excess of Rs. 4,99,288/- (Rupees Four Lakhs Ninety Nine Thousand Two Hundred Eighty Eight only) in full salary by unintentional mistake, the said amount needs to be recovered or adjusted while paying subsistence allowance and the same issue is pending before the Director of Education.

8. The further case of the Respondent No. 1 is that as the Respondent No. 1 is a Grant-in-aid institute, the bills of subsistence allowance were immediately processed by the school and sent to GIA Section on 27/06/2019 for claim and however, the GIA Section did not clear the claim and in reply claimed that "pending the release of grants by the

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Education Department, the management shall be duty bound to meet the expenditure from its own funds” and the Respondent No. 2 failed to provide any justified reason, as per the Goa School Education Act and Rules 1986. According to the Respondent No. 1, they have paid the subsistence allowance for the months of July 2019, August 2019, September 2019, October 2019, February 2020, March 2020, totalling to Rs.4,32,022/- (Rupees Four Lakhs Thirty Two Thousand Twenty Two only) and in respect of subsistence allowance to be paid for the month of November 2019, December 2019 and January 2020, they were directed to clear dues from February 2018 to June 2019.

9. In sum and substance, the Respondent No. 1 paid the Complainant Rs. 7,54,003/- (Rupees Seven Lakhs Fifty Four Thousand Three only) on 15/06/2020 in addition to the previous payment of Rs.4,32,022/- (Rupees Four Lakhs Thirty Two Thousand Twenty Two only), totalling to Rs.11,86,025/- (Rupees Eleven Lakhs Eighty Six Thousand Twenty Five only).

10. The Respondent No. 2 filed their Reply dated 16/10/2018, that they had sought the explanation from the school authority, i.e. Respondent No. 1 and annexed the reply of Respondent No. 1 thereto.

In the Rejoinder, the case of the Complainant is that he is entitled during the period of suspension, to subsistence allowance and other allowances under statutory/obligatory provisions of FR 53 and as per the Goa Education Act & Rules, 1984 and that the subsistence allowance for the month of February 2018 due in March 2018, was paid only on 15/06/2020, nearly after two years and three months. So also, the subsistence allowance for the period from March 2018 to June 2019 was delayed and the same was released only on 15/06/2020.

11. By letter dated 02/09/2020, the Complainant was informed that a sum of Rs.5,92,248/- (Rupees Five Lakhs Ninety Two Thousand Two Hundred Forty Eight only) was credited to SB A/C as subsistence allowance for the period from July 2019 to February 2020, which was also delayed. The Complainant disputed that he was paid any excess amount of Rs.4,99,288/- (Rupees Four Lakhs Ninety Nine Thousand Two Hundred Eighty Eight only) and as such, there was no question of

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recovering or adjusting the same, while effecting the subsistence allowance payment and the total amount of subsistence allowance from February 2018 to February 2020, amounting to Rs.17,76,273/- (Rupees Seventeen Lakhs Seventy Six Thousand Two Hundred Seventy Three only) is paid and that the subsistence allowance for the period from March 2020 to July 2020 is not paid by the Respondent No. 1. Similarly, subsistence allowance for the month of September 2020 is not paid despite completing the necessary formalities by the Complainant.

12. It is further the case of the Complainant that as per the laid down procedure for aided institutions, the claim for the salary/subsistence allowance should be made by the concerned aided school to the Directorate of Education before the given stipulated period of time for every month and as such, the claim of subsistence allowance for the month of February 2018 should have been made in the month of February 2018 itself. However, the same was made on 27/06/2019. The claim of the Respondent No. 1 that they have submitted the claim in respect of subsistence allowance in time to the Directorate of Education is incorrect and delay in payment for the period from February 2018 to July 2019 is on account of considerable delay by Respondent No. 2.

13. We have heard the Complainant in person, Shri Parmanand Mandrekar, Manager of Respondent No. 1 and Shri D. Chawdikar, OSD, Legal Cell, on behalf of Respondent No. 2. We have duly considered arguments advanced by the Parties hereto and perused the entire records.

14. The Hon'ble High Court of Bombay at Goa by its Order dated 20/06/2019, in Writ Petition No. 25/2019 filed by the Respondent No. 1 while remanding the matter at the stage of inquiry pertaining to the issue of approval of the major penalty of dismissal from service of the Complainant, also held that in the event the Respondent No. 1 herein owes any dues, particularly consisting of the subsistence allowance payable to the Complainant, the Respondent No. 1 will have to clear the same within three weeks from passing the order. In that context, it is the grievance of the Complainant that Respondent No. 1 failed to abide by the Order of the Hon'ble High Court until 15/06/2020, when Respondent No. 1 partly complied with the Order and paid an amount of Rs.7,54,003/- as dues from 01/02/2018 to 30/06/2019 and failed to

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pay to him the entire dues for the period between 01/02/2018 to 30/06/2019 and further the claim of Respondent No. 1 that the Complainant was paid excess amount of Rs.4,99,288/- or any part thereof is without any basis as there was no order passed by any authority or any court of law reducing amount of subsistence allowance of the Complainant and that any controversy in that regard will be decided by the concerned authority on merits. The Respondent No. 1 however failed to place on record any material establishing excess amount being paid to the Complainant due to unintentional mistake by paying full salary instead of subsistence allowance for the period from 22/09/2015 to January 2018 in the sum of Rs.4,99,288/-. Even otherwise that controversy is to be sorted out in the inquiry.

15. The records show that subsistence allowance of the Complainant for the month of February 2018 was due in March 2018 and however, the same was paid by the Respondent No. 1 only on 15/06/2020, after more than two years. Similar is the situation in respect of subsistence allowance for the period from March 2018 to June 2019, which was released only on 15/06/2020. There is also a delay in payment of subsistence allowance for the period from July 2019 to February 2020. As stated earlier, that the Complainant was paid excess amount of Rs.4,99,288/-, is without any basis and as stated, the same is to be dealt with by the Respondent No. 2, i.e. Director of Education, in the inquiry. The subsistence allowance paid from February 2018 to February 2020 amounting to Rs.17,76,273/- shows that the same is in conformity with his entitlement. Thus, the records indicate that despite the Order of the Hon'ble High Court dated 20/06/2019, the subsistence allowance is not paid to the Complainant during the stipulated period of three weeks from the passing of the said Order.

16. The claim of the Respondent No. 1 that they have submitted the claim in respect of the subsistence allowance of the Complainant in time to the Director of Education does not hold, as Respondent No. 2, Director of Education already intimated to the Respondent No. 1 that as per the laid down procedure for aided institutes, the claim for the salary/subsistence allowance should be made by the concerned aided school to the Director of Education before the given stipulated period of time for every month and therefore, the subsistence allowance for the month of February 2018 and subsequent months should have been paid every month.

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17. The records also indicate that the Respondent No. 1 has not timely claimed the subsistence allowance of the Complainant before the Respondent No. 2, which resulted in considerable delay in payment of the subsistence allowance.

18. The Complainant is entitled for subsistence allowance as per the very stand of Respondent No. 1. The letter dated 19/08/2019 of Chairman, Managing Committee of Respondent No. 1, extending the Order for the period of suspension speaks for itself. It is not in dispute that the Respondent No. 1 has not paid the subsistence allowance to the Complainant for the months of November 2019, December 2019, January 2020, April 2020, May 2020, June 2020 and July 2020 and of the remaining period till date.

19. The Respondent No. 1 did not make out any case of the Complainant not fulfilling the required formalities in pursuance to their own letter dated 19/08/2019. Non-payment of subsistence allowance above mentioned is illegal, unjustified and smacks of malafides, thereby jeopardizing the rights of the Complainant.

20. We are of the considered opinion that pending the Inquiry, the Complainant is entitled to subsistence allowance from the date and during the period of suspension under provisions of FR53.

21. That being the position, in terms of Section 18(a)(i) of the Protection of Human Rights Act, 1993, we recommend the following:-

1) We recommend that the Respondent No. 2, ensure that the Respondent No. 1 pays the subsistence allowance of the Complainant from the month of November 2019 and till date within one month from today.

2) We also recommend that on account of unjustified delay, the Respondent No. 2 ensure that the Respondent No. 1 pays the costs of Rs. 10,000/- (Rupees Ten Thousand only) to the Complainant within one month from today, for causing agony and unnecessary hardship to the Complainant.

Date : 04/02/2021

Place :Panaji-Goa.

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