

BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No. 140/2019

Mrs. Vidya P. Pai Kane,
C/o. Adv. Rakesh S. Karmali,
H. No. 342, Opp. Nita Industries,
Nispabhat, Sao Jose de Areal,
Salcete-Goa.

.... Complainant

V/s

1. The Manager,
Cuncolim United High School,
Cuncolim Educational Society,
Cuncolim, Salcete-Goa.

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

.... Respondents

INQUIRY REPORT/ORDER

(21st September, 2021)

The Complaint dated 04/06/2019, was received in the Commission in respect of non-payment of the Complainant's balance G.P.F. amount along with interest by the Respondent No. 1.

2. On perusing the Complaint, the Commission by Order dated 07/06/2019, called for the report from the above named two Respondents.

3. The Respondent No. 1 filed their report dated 08/07/2019. The Respondent No. 1 has not denied that an amount of Rs. 2,50,610/- is balance to be paid to the Complainant, towards her G.P.F.. The Respondent No. 1 says that some records were not traceable and that vide letter, reference no. CUHS/2016-17/548 dated 13/01/2017, they wrote to the Dy. Director of Education, South Education Zone, Margao that the records of MPS High School were available in the office of the Dy. Director of Education, South Education Zone, Margao, and that the same were required for resolving the G.P.F. case of the Complainant.

....2/-

The Respondent No. 2, however, has not filed any reply, denying the above statement of the Respondent No. 1 or denying the case of the Complainant.

4. The Complainant has filed a detail rejoinder to the reply of the Respondent No. 1, thereby denying the averments which are not consistent to her case and reiterating the facts stated in the Complaint.

5. At the stage of arguments, the Complainant and her representative, Shri Motiram Pai Angle, were heard. None were present for the Respondents.

6. The Commission has perused the Complaint and her documents as well as the Reply of Respondent No. 1 and their documents and the Rejoinder filed by the Complainant on 19/03/2020.

7. The Complainant states that though the balance of her G.P.F. account on the date of her retirement as a teacher in the school of Respondent No. 1 in August 2016, was Rs.16,01,208/-, she has been paid only Rs. 13,50,598/- on 17/10/2019 and the amount of Rs. 2,50,610/- is still due to her.

8. The Complainant has reiterated in her Rejoinder that she has made efforts to get the remaining amount of G.P.F., but the same was not paid to her.

9. It is seen that in the copy of the page from the General Provident Fund Register, for the year 2016-17, produced by the Complainant, the balance of G.P.F. as on 31/12/2016 in respect of the Complainant was indicated as Rs.16,01,208/-. But this was subsequently cancelled by putting cross lines. There is no signature of any authority or stamp of the school under this cancellation. There is also no explanation about this document in the reply filed by the Respondent No. 1.

10. The Commission finds, from the letter dated 17/10/2017, of the Directorate of Education which is annexed to the Complaint, that the Joint Director of Accounts of the Directorate of Education had granted sanction of the Director of Education, Porvorim to the Assistant Accounts Officer, South Education Zone, Margao-Goa, in respect of the final payment of G.P.F. balance of the Complainant. As per the said letter, the sanction was conveyed for drawing of a sum of Rs.13,50,597/- (Rupees Thirteen lakhs fifty thousand five hundred ninety seven only), representing the entire G.P.F. deposit benefit residuary balance with interest calculated up to 12/2016, the maximum admissible as per rules. The school authorities were directed to disburse the said amount in terms of Rule 34 of the G.P.F. (C. S.) Rules.

11. A perusal of the letter dated 16/05/2017 of Respondent No.1 addressed to the Complainant reveals that it was intimated to her that it has been decided to revise G.P.F. sheet available by deducting an amount of Rs.12,239/- of which ledger sheet are not available and further that it has been decided to make final payment of only the amount for which ledger record was available and her consent was sought. The Complainant, vide letter dated 17/05/2017, had informed the Respondent No. 1 that if her final G.P.F. payment was made less than shown in her G.P.F. account maintained by the school authority along with South Zone, then she will accept the amount "under protest" so that the remaining G.P.F. amount which was deducted would be released at the earliest under consideration by using the concerned authority's discretionary powers. By letter dated 09/06/2018, the Complainant thanked the Respondent No. 1 for making efforts to get the part of G.P.F. amount and informed that she was expecting the same co-operation to get the balance G.P.F. amount. She has specifically stated in this letter that she received the said amount of Rs. 13,50,598/- after recasting the ledger

folios for the years from 92-93 till the date of her voluntary retirement by taking her consent which was given under protest. The Complainant requested the Respondent No. 1 to submit the recasted two years i.e. 90-91 and 91-92 along with previous years ledger folios and along with interest. The Respondent No. 1 did not bother to do anything to resolve the issue.

12. By letter dated 23/07/2012 of Director of Education, Porvorim-Goa, the Respondent No. 2 directed Jt. Director of Accounts, Margao, conveying sanction under Rule 15(1)(A)(b) r/w Section 16(1) of G.P.F.(C.S.) Rules 1960, to withdrawal by the Complainant a sum of Rs.12,00,000/- in connection with marriage ceremony of her daughter and further certifying that the Complainant having completed 33 years of her service as on 2011, her balance as on 04/12/2012 is Rs.16,65,933/- thereby giving details of her entitlement. The copy of the said letter was forwarded to the Respondent No.1 as well as the Complainant and the Asstt. Accounts Officer, South Educational Zone, Margao. The Respondent No. 1, in paragraph 4 of their reply, have specifically stated that while sanctioning the amount of Rs. 12,00,000/-, Education Department certified that as on April 2012, the balance G.P.F. at the credit of the Complainant was Rs. 16,65,933/-.

13. The Respondent No.1 did not either join issue with the said certification of Respondent No.2 nor any clarification appeared to have been sought by the Respondent No.1. The said letter dated 23/07/2012 is accompanied by certificate issued by the M.R.G. D'Souza, Dy. Director of Education, South Education Zone, Margao certifying that the Complainant Smt. Vidhya P. Pai Kane, Asstt. Teacher has opted for new benefits under Section 13 of the Goa Education Act, 1984 and that her option form for new benefits under Section 13 of the Goa Education Act, 1984 is not

....5/-

traceable in the light of M.P.S. High School being closed and her personal file is not found in the old records. In the said certificate, it is also made clear that the Management share of her CPF amounting to Rs.5,498.01 has been credited to the Government Treasury and the individual share of her CPF amounting to Rs.6,929/- has been credited to her G.P.F. account.

14. The undisputed fact remains that the Respondent No. 2, way back on 23/07/2012, based on the records, arrived at a conclusion that as on 04/12/2012, the Complainant had the balance amount of Rs.16,65,933/- towards her G.P.F.. As per the records, an amount of Rs.13,50,598/- admittedly was paid to the Complainant, which has been accepted by her under protest. It is strange that the custodian of records (documents) are seeking records (documents) from the employee. In fact, the order dated 04/12/1997, of the Respondent No. 2, regarding the absorption of the Complainant from M.P.S. High School, Murida, Cuncolim, Goa to the Respondent No. 1-school, reveals that on receipt of intimation from the absorbed school, the Management of the relieving school, had to, within outer time limit of 10 days, forward the service book and leave account duly complied in all respects and the last pay certificate of the employee to his/her school of absorption and also had to forward any other records as may be called for by the absorbed school. It has been specifically mentioned in the above order that any lapses in compliance to the above instructions will attract serious action against the erring school.

15. We are of the opinion that the G.P.F. of the Complainant cannot be withheld on the ground that G.P.F. ledger maintained by the Respondents are not available due to the closure of MPS High School. More so, it was compulsory for all the Teachers to submit the option form as per the Act and as per the instructions given by the Department of Education at the time of surplus transfer dated 04/12/1997 and for which, infact the

Respondent No.1 is liable being in custody of the documents. The non-availability of original past records of Mrs. Vidhya P. Pai Kane from the MPS High School is not a ground to deny the legitimate dues of the Complainant when it is the duty and obligation of the Respondent No. 1 to maintain records. It is also not the case of Respondent No. 1 that the Complainant is not entitled for the said balance amount of Rs.2,50,610/- or any part thereof. There are no justifiable reasons advanced by Respondent No. 1 to deny the Complainant's justifiable dues with interest. That being the position, we are of the opinion that the Respondent No.1 is liable to pay the amount of Rs.2,50,610/- due to her with interest accrued on the said sum @ six percent simple interest per annum.

16. In view of all the correspondence on record coupled with the silence of the Respondents, we opine that the Complainant in all was entitled for an amount of Rs.16,01,208/- as on the date of her retirement and hence the amount of Rs.2,50,610/- is due to her, with interest.

17. The Commission, therefore, recommends that the Respondent No.1 should effect the payment of Rs.2,50,610/- due to her along with simple interest @ 6% per annum as from 18-10-2017 till the date of final payment.

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 Respondents and the Respondents shall within a period of one month from today or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon to the Commission.

Date : 21/09/2021

Place : Panaji-Goa.

Sd/-
(Justice U.V. Bakre)
Chairperson
Goa Human Rights Commission

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

