

WRIT PETITION NO.324/1997

Managing Committee of the  
New English High School, Warkhand,  
Pernem, Goa, through its Chairman,  
Shri R.D. Khalap, having office  
at Pernem, Goa.

.... Petitioner.

V/s.

1. The Administrative Tribunal,  
Goa, Panaji, Goa.

2. Shri D.N. Prabhu, resident of  
Khalchawada, Warkhand,  
Pernem, Goa (since deceased)  
represented by :

2(a) Smt. Priyadarshani D. Prabhu,  
2(b) Miss Sonia D. Prabhu,  
2(c) Miss Sneha D. Prabhu,  
All resident of Warkhand,  
Pernem, Goa.

3. The Director of Education,  
Directorate of Education,  
Government of Goa, 18th  
June Road, Panaji, Goa.

4. Shri Govind Balkrishna Mone,  
New English High School,  
Warkhand, Pernem, Goa.

... Respondents.

Mr. M.S. Sonak, with Mr. D. Pangam, Advocates for the  
petitioner.

Mr. P.A. Kholkar, Advocate for respondents No.2(a) to  
2(c).

Mr. H.R. Bharne, Govt. Advocate for respondent No.3.

Mr. S.D. Lotlikar, Sr.Advocate with Mr. A.D. Bhobe,  
Advocate 1 for respondent No.4.

CORAM : S.J. VAZIFDAR &  
P.V. HARDAS, JJ.

DATE : APRIL 22, 2003.

ORAL JUDGMENT : (Per HARDAS, J.)

This petition impugns the order passed by the Administrative Tribunal, Goa, Panaji-Goa dated 30.6.1997, by which the Administrative Tribunal, Goa, set aside the order dated 1.1.1996, dismissing respondent No.2 herein as the Headmaster of the New English High School, managed by the petitioner. As a consequence of the quashing and setting aside of the order dated 1.1.1996 by the Administrative Tribunal, Goa, Panaji-Goa, the reinstatement of respondent No.2 with full back wages follows. The Administrative Tribunal also set aside the appointment of respondent No.4 as Headmaster.

2. This Court, by its Order, dated 11.11.1997 granted Rule and granted interim stay to the Order of the Administrative Tribunal dated 30.6.1997. Meanwhile, during the pendency of the petition respondent No.2 expired and legal heirs of respondent No.2 were brought on record as respondents No.2(a) to 2(c).

3. The facts, in brief, as are necessary for the decision of this petition, are set out hereunder :

The original respondent No.2 was appointed as an under-Graduate Teacher in the New English High School, managed by the petitioner, with effect from 6.6.1978. Subsequently, the original respondent No.2 was appointed as the Headmaster with effect from

1.7.1986. Thereafter, original respondent No.2 was served with a memo dated 27.3.1995 along with the articles of charges, incorporating 28 charges against the original respondent No.2. It appears that original respondent No.2 addressed a letter dated 5.4.1995, requesting the Chairman of the petitioner to furnish him a copy of the list of the Members of the Managing Committee, constituted as per Rule 46. It appears that the said request was declined by the letter of the Chairman dated 13.4.1995. Meanwhile, an Enquiry Officer was appointed to inquire into the charges levelled against the original respondent No.2 and the Enquiry Officer proceeded with an ex-parte inquiry against the original respondent No.2 and submitted a report dated 11.9.1995. On the basis of the said report, the petitioner proposed to impose on the original respondent No.2 a penalty of dismissal from service. Respondent No.3 herein, the Director of Education, by his order dated 14.12.1995, granted his approval for imposing on the original respondent No.2 a major penalty of dismissal from service. Accordingly, the petitioner, by Order dated 1.1.1996, dismissed the original respondent No.2 from service with immediate effect. This order dated 1.1.1996, dismissing the original respondent No.2 from service, was challenged, in an appeal being Education Appeal No.2/1996, carried by the original respondent No.2 to the Administrative

Tribunal, Goa, Panaji-Goa. The Tribunal by its Judgment dated 30.6.1997 allowed the appeal filed by respondent No.2 and set aside the appointment of respondent No.4 who, in the meanwhile, had been appointed as the Headmaster. As a consequence of the order of the Tribunal, the respondent No.2 to this petition, was ordered to be reinstated with full back wages. This order of the Administrative Tribunal is impugned in the present petition.

4. We have heard Mr. M.S. Sonak, learned Counsel appearing on behalf of the petitioner, who has urged that the ground on which the Administrative Tribunal has quashed and set aside the order dated 1.1.1996, was allowed to be raised by the Administrative Tribunal without the ground having been so pleaded in the Memorandum of Appeal. According to the learned Counsel for the petitioner, this has prejudiced the petitioner inasmuch as the petitioner could not adequately meet the said ground which had been raised by the original respondent No.2.

5. A perusal of the Judgment of the Administrative Tribunal reveals that the original respondent No.2 to this petition had canvassed a ground that the Managing Committee had not been properly constituted as per the Rules and, therefore, the

disciplinary action taken against the appellant therein was not taken by the properly constituted Managing Committee. The Tribunal referred to Rule 46 of the Goa School Education Rules, 1986, which provides that every Managing Committee shall consist of the following :

- (i) The head of the school;
- (ii) One parent, who is a member of the Parent Teachers' Association of the school, constituted in accordance with such instructions as may be issued by the Director of Education, and is elected by that Association;
- (iii) One teacher of that school to be elected by the teachers of that school from amongst themselves;
- (iv) One person (a woman if possible), who is, or has been a teacher of any other school or of any college to be nominated by the society by which the school is run;
- (v) One member to be nominated by the Director of Education who shall be an Educationist or an Officer of the Directorate of Education not below the rank of the A.D.E.I. ["in schools other than minority Schools"]
- (vi) The remaining members to be nominated or elected, as the case may be, in accordance with the rules and regulations of the society, by which the school is run.

In respect of the election of a teacher of that school by the teachers from amongst themselves to be a member of the Managing Committee, admittedly, the original respondent No.2 was the Returning Officer. Thus, it is urged before us by the learned Counsel for the petitioner that the original respondent No.2 cannot

derive any benefit from the fact that he had failed as Returning Officer in holding the election of a teacher from amongst the other teachers for being appointed as a Member of the Managing Committee. It appears also that the Administrative Tribunal proceeded on the footing that as the petitioner herein had failed to explain and disclose the names of the persons on the Managing Committee and thus the Administrative Tribunal came to the conclusion that there was no Managing Committee constituted as per Rule 46. The Administrative Tribunal, therefore, concluded that the disciplinary action had been taken by a committee which was not duly constituted as per Rule 46.

6. We have given our anxious consideration to the submissions advanced by the learned Counsel for the petitioner which, according to us, merit consideration. Normally we would have been persuaded to remit the matter to the learned Administrative Tribunal for decision afresh, after giving the petitioner an opportunity of placing adequate material before the Tribunal to fortify its contention that a Committee as per Rule 46 had been validly constituted. However, during the pendency of the present petition, the original respondent No.2 expired and his legal heirs have been brought on record. An interim stay was operating regarding the reinstatement of the original

respondent No.2. In view of this fact, we are not inclined to remit the matter to the Administrative Tribunal for a decision afresh. However, we see no reason to sustain the order passed by the Administrative Tribunal regarding the full back wages which the Tribunal holds the original respondent No.2 was entitled to. We have examined all the articles of charges levelled against original respondent No.2 and after examining the said articles of charges, we are of the considered opinion that looking to the gravity and seriousness of the charges, respondent No.2 is not entitled to reinstatement with full back wages. According to us, the ends of justice would be met by directing the payment of back wages to the extent of only 65 %, the liability of paying the same being undisputedly of respondent No.3. The order of reinstatement passed by the Administrative Tribunal has been rendered infructuous in view of the death of original respondent No.2.

7. During the course of hearing, the legal heirs of deceased original respondent No.2 have filed an affidavit in this Court. The affidavit is sworn by one Priyadarshani D. Prabhu, widow of the original respondent No.2 and this affidavit is sworn on behalf of the other two legal heirs, who are minors. The affidavit states that Smt. Priyadarshani D. Prabhu on

her and on behalf of the two minor daughters "... agree to accept the compensation to be fixed by this Hon'ble Court towards full and final settlement of monetary benefits and other dues of my late husband D.N. Prabhu including arrears of salary, pension and family pension, and gratuity". Mr. P.A. Kholkar, learned Counsel appearing on behalf of the legal heirs of deceased respondent No.2 has stated before us that the legal heirs of respondent No.2 will not claim any pension or any other dues, apart from the back wages which would be awarded by this Court. The said statement is accepted as an undertaking to this Court.

8. In the affidavit filed by the legal heirs, referred to above, it is also stated in para (3) that since the total lumpsum of the arrears of the salary is being paid, the payment be distributed evenly over the income tax accounting year starting from 1.4.1994 to 31.3.1995 onwards till the current accounting year for the purposes of distribution of the income tax liability.

9. Learned Counsel appearing on behalf of the legal heirs of deceased respondent No.2 has invited our attention to the Judgment of the Supreme Court in the case of **K.C. Joshi v. Union of India and others**, (1985) 3 Supreme Court Cases 153. Reliance is placed



on para (17) of the Judgment, which reads as under :

" Now that the amount is being paid in one lump sum, it is likely that the employer may take recourse to Section 192 of the Income Tax Act, 1961 which provides that any person responsible for paying any income chargeable under the head 'Salaries' shall, at the time of payment, deduct income tax on the amount payable at the average rate of income tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If therefore the employer proceeds to deduct the income tax as provided by Section 192, we would like to make it abundantly clear that each appellant would be entitled to the relief under Section 89 of the Income Tax Act which provides that where, by reason of any portion of assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that it would otherwise have been assessed, the Income Tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21-A of the Income Tax Rules. The appellant is entitled to relief under Section 89 because compensation herein awarded includes salary which has been in arrears for 18 years as also the compensation in lieu of reinstatement and the relief should be given as provided by Section 89 of the Income Tax Act read with Rule 21-A of the Income Tax Rules. The appellant indisputably is entitled to the same. If any application is necessary to be made, the appellant may submit the same to the competent authority and the Commission shall assist the appellant for obtaining the relief."

10. The legal heirs of original respondent No.2 are being paid 65 % of the total back wages to

which the original respondent No.2 would have been entitled from 1.1.1996. We, accordingly, hold that the legal heirs of original respondent No.2 would be entitled to claim the relief as is set out in Rule 21-A of the Income Tax Rules. According to us, the legal heirs of original respondent No.2 would be entitled to the relief under Section 89 of the Income Tax Act, because the compensation which is awarded by this Judgment includes salary which has been in arrears for more than 6 years. The legal heirs of the deceased respondent No.2 may make a necessary application to the competent authority and the competent authority shall assist the respondents 2(a) to 2(c) for obtaining the relief.

11. Since the order of reinstatement has been rendered infructuous, the order of the Tribunal quashing and setting aside the appointment of respondent No.4, who had been appointed as a Headmaster in place of deceased original respondent No.2, is unsustainable. Even, otherwise, during the pendency of this petition, in view of the interim order of this Court, respondent No.4 has been working as the Headmaster.

12. In the result, therefore, this Writ Petition is partly allowed. The order of the

Administrative Tribunal, regarding reinstatement of the original respondent No.2 consequently with full back wages is, hereby, modified and it is ordered that the original respondent No.2/his legal heirs, shall be entitled to 65 % of the back wages. The order of the Administrative Tribunal, quashing and setting aside the appointment of the fourth respondent is, hereby, quashed and set aside. We hasten to add that in the peculiar facts and circumstances of the case, instead of remitting the matter to the Administrative Tribunal for decision afresh, we have passed the above order and, therefore, the Judgment of the Administrative Tribunal on the question of the constitution of the Managing Committee, should not be read as a precedent by respondent No.3.

13. Rule made absolute on the above terms, with no order as to costs.

S.J. VAZIFDAR, J.

P.V. HARDAS, J.

ssm.