

GOA STATE INFORMATION COMMISSION
'Kamat Towers', Seventh Floor, Patto, Panaji –Goa

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Complaint No. 10/2021/SCIC

Shri. Anil A. Gad,
Lab Assistant,
Peter Alvares Memorial High School,
Morjim, Pernem-Goa. 403512.

-----Complainant

v/s

1. The Public Information Officer,
Headmaster Shree Durga English High School Parsem,
Pernem-Goa.

2. Shri. Santosh Amonkar,
The Ex-Director of Education,
Directorate of Education,
Porvorim-Goa.

-----Opponent

Shri Vishwas R. Satarkar - State Chief Information Commissioner

Filed on:-22/07/2021

Decided on: 11/01/2022

ORDER

1. This complaint proceeding is initiated by the Complainant, Shri. Anil A. Gad, Lab Assistant, Peter Alvares Memorial High School, Morjim, Pernem-Goa, under sec 18(1)(b) and (e) of the Act, challenging the order passed by Inquiry Officer dated 19/03/2021, Director of Education, Directorate of Education, Alto, Porvorim-Goa.
2. Brief facts herein are, that by common order dated 24/07/2018 passed in second Appeal No. 277/2018/CIC and Appeal No. 15/0219/CIC, this Commission directed the Director of Education, Government of Goa to conduct a thorough inquiry into the non-availability/ loss/ misplacement of the earned leave records of the Complainant,

Shri. Anil Gad from Durga English School, Parsem, Pernem Goa and Peter Alvares Memorial School, Morjim, Pernem Goa and also directed that the inquiry shall be completed within a period of six weeks from the date of receipt of the order and on conclusion of inquiry the copies of the report be submitted to the Complainant and to the Commission.

3. According to Complainant, the Director of Education conducted the inquiry in a casual manner and there was inordinate delay in completing the inquiry and instead of completing the inquiry within a period of six weeks, the inquiry was completed and finally order was passed on 19/03/2021 i.e after almost twenty months, from the date of order.
4. Being aggrieved with the order of the Inquiry Officer/ Director of Education dated 19/03/2021, he preferred present complaint with the following prayers:-
 - 1) That the present complaint be allowed.
 - 2) The order dated 19-03-2021 of the Respondent No. 2 be quashed and set aside for usurping the power of this Hon'ble Authority in disposing the appeal and also not adhering the directions of this Hon'ble Authority. Records of proceedings be called from the office of the Director of Education.
 - 3) Appropriate order be passed as per the records produced before this Hon'ble Authority directing P.I.O to furnish the information sought by the complainant free of cost.
 - 4) The Director of Education be directed to initiate action against the school for misleading and misguiding the authorities by filing false affidavits.
 - 5) Any other relief in facts and circumstances of the case.

5. Notice was issued to the parties, Adv. Abhijit Gosavi appeared on behalf of Respondent No. 1 and filed his reply on 08/10/2021. The Respondent No. 2 duly served opted not to appear and file his say in the matter.
6. I have perused the pleadings, reply of the Respondent No. 1, scrutinized the documents on record and heard the arguments advanced by the learned counsel and the judgments referred in support of their submissions.
7. Adv. A.V. Nasnodkar, the learned counsel appearing on behalf of Complainant submitted that, order of the Inquiry Officer, Director of Education dated 19/03/2021 is bad in law as the same is not in conformity with the direction issued by the Commission. The Director of Education ought to have submitted a detailed inquiry report to this forum but instead, the Director of Education usurped the power of the Commission and disposed off both the appeals under impression that these matters were remanded back to FAA. According to him, the Commission has already decided the matter and directed to conduct inquiry on loss or misplacement of file/record.

He also argued that the Director of Education erred to consider the fact that when an employee is transferred as per rules, only last pay certificate and service book is transferred to the transferee office and not the personal file of transferee.

He also argued that the Director of Education erred in conducting the inquiry and did not consider the clinching evidence produced by Ex-Headmaster, Shr. S.R. Patil, and therefore the order dated 19/03/2021 passed by Director of Education be quashed and set-aside.

8. On the other hand, Mr. Abhijit Gosavi learned counsel appearing on behalf of Respondent No. 1 argued that the present complaint is

not maintainable in the eye of law as reliefs sought are not tenable by law and secondly the order dated 19/03/2021 passed by the Director of Education, is after proper inquiry and after taking into consideration the material evidence placed on record by both the parties. Hence Commission has no jurisdiction to interfere in the inquiry report as the inquiry was conducted as per the order of Commission dated 24/07/2021.

9. The reliefs that have been sought in the present complaint as reproduced at para No. 4 hereinabove and particularly at prayer No. 2 appears that, Complainant wants this Commission to set aside the alleged inquiry report/order passed by Director of Education dated 19/03/2021, allegedly conducted in casual manner not considering the clinching evidence produced by him and being faulty.
10. A close look at the content of the Inquiry Report / Order of Director of Education dated 19/03/2021, conducted by Santosh S. Amonkar, Director of Education in respect of non-availability/loss/misplacement of Earned leave records of Complainant gives us detailed insight. The report concludes as under:-

"I have gone through the documents placed before me and the Order of the Goa State Commission dated 24/07/2019 as per the direction of the State Chief Information Commission and the oral arguments and the affidavit sworn by the witnesses and thorough inquiry conducted, opportunity has been given to all the parties involve. And come to the conclusion that the appellant failed to provide the concrete proof of having custody of the personal file with the PIO's of both the schools. I have relied on the affidavit filed by the PIO of the Durga High School stating that the service records of the Appellant have been transferred to the Peter Alvares School in the year 2003 and it is acknowledged by Peter

*Alvares Memorial High School. If there is any problem of settlement of earned leave then it shall be sort out by the school authority of Peter Alvares Memorial High School and the Appellant. **The earned leave records to be duly entered in the service book of the staff and the service book were duly signed by the employee in aided schools at the time of granting annual increment to him/her every year.***

After inquiry nothing has been found regarding the custody of personal file. In view of the above both the appeal has been disposed off. In the light of the direction given by the State Chief Information Commission, Goa Information Commission, Panaji-Goa."

It is a matter of fact that the Commission directed the Directorate of Education to conduct detail inquiry to look into matter rather deeply and verify whether such information was readily available in the records of public authority only to curtail tendency of willful suppression of the information by vested interest. Attempts were made to locate the information by the Commission under its powers.

In the present case, the Director of Education after detailed investigation and inquiry, has categorically stated that nothing has been found regarding the custody of the personal file which includes the earned leave records of the Complainant. As far as RTI Act is concerned, it can only facilitate in providing information to the citizens in case it is available with the public authority.

However since all attempts to locate information have been failed, the Commission cannot act as a Appellate authority and examine the merits of the inquiry proceeding. If the party is aggrieved with the order of Inquiry Officer he can approach the

proper forum for redressal of his grievance. The Commission has no authority to look in to the competence of the Inquiry Report therefore it is unreasonable to interfere with the same.

11. Insofar as prayer No.3 of the complaint is concerned, a preliminary objection has been taken by the Respondent No. 1 with respect to maintainability of the complaint on the ground that, the Commission has got no power under sec 18 of the Act to provide access to the information which has been sought for and to support his contention he has placed reliance on the judgment of Hon'ble Supreme Court in case of **Chief Information Commissioner & Anrs v/s State of Manipur & Anrs [(2011) 15 SCC 1]**, para No. 30 and 31 of the said judgment reads as under:-

"30. It has been contended before us by the respondent that under [Section 18](#) of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under [Section 18](#) is an order of penalty provided under [Section 20](#). However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under [Section 18](#) of the said

Act has no jurisdiction to pass an order providing for access to the information."

From the above ratio laid down by the apex court, it is clear that, in complaint proceeding filed under sec 18, the Commission cannot grant relief for providing access to information.

12. As regards to prayer 4 of the complaint, the Complainant sought that the direction be issued to the Directorate of Education to initiate action against the school for misleading and misguiding the authorities by filing false affidavit, this prayer also cannot be granted.

The Commission has to function within the provision of the RTI Act. This Commission is constituted under the said Act with powers, more particularly under sec 18,19 and 20 of the Act. Such powers consist of providing existing information held in any form or in case of non compliance of said mandate without reasonable cause then to penalize PIO. No powers are granted to the Commission to deal with any grievance beyond the said Act, this view is fortified by Hon'ble High Court of Gujarat in case of **State of Gujarat & Anrs v/s Pandya Vipulkumar Dineshchandra (AIR 2009 Guj. 12)** by following observation:-

"5..... The power of the Chief Information Commissioner is a creation of the statute, and his power is restricted to the provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the information are not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst the parties based

on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provision of the Act.”

In the light of the above legal position, it is indicated that, additional prayer like direction to initiate action against school for filing false affidavit before Inquiry Officer, cannot be granted by the Commission.

In the above circumstances, I hold that complaint suffers from jurisdictional error and other anomalies, therefore stands dismissed.

- Proceeding closed.
- Pronounced in open court.
- Notify the parties.

Sd/-

(Vishwas R. Satarkar)

State Chief Information Commissioner