

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.94 OF 2022

Mrs. Sanjyot Uday Kudalkar
Nee Miss Sanjyot Dattaram Azgaonkar
Wife of Dr. Uday N. Kudalkar,
Age 51 years, Government Service,
R/o. Plot No.14, GOMECA Housing
Co-operative Society, Bambolim, Goa - 403 202. ...Petitioner

Versus

1. The State of Goa,
Through the Chief Secretary
Government of Goa, Secretariat, Porvorim,
Bardez, Goa - 403 521.

2. The Secretary (Health)
Public Health Department,
Government of Goa, Secretariat, Porvorim,
Bardez, Goa 403 521.

3. The Director
Directorate of Food and Drugs
Administration, Government of Goa,
Dhanwantari Building,
Opposite the Shrine of Holy Cross,
Bambolim, Goa - 403 202.

4. Goa Public Service Commission,
EDC House, Block "C", First Floor,
Dada Vaidya Road, Panaji, Goa - 403 001. ...Respondents

Mr Chaitanya Padgaonkar with Ms V. Mahato, Advocates for the Petitioner.
Mr Deep Shirodkar, Additional Government Advocate for Respondent
Nos.1,2 and 3.
Mr Dattaprasad Lawande with Mr P. Dangui, Advocates for Respondent
No.4.

CORAM: **M. S. SONAK &
BHARAT P. ESHPANDE, JJ.**

Reserved on : **3rd OCTOBER 2023**
Pronounced on : **4th OCTOBER 2023**

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard Mr C. Padgaonkar with Ms V. Mahato for the petitioner, Mr Deep Shirodkar, learned Additional Government Advocate for respondent nos.1,2 and 3 and Mr D. Lawande with Mr P. Dangui for respondent no.4.
2. Rule. The rule is made returnable immediately with the consent of and at the request of the learned Counsel for the parties.
3. The petitioner, who claims to be eligible to be promoted to the post of “Designated Officer” in the Directorate of Food and Drugs Administration, Government of Goa, questions the Government’s attempt to fill up the said post by direct recruitment instead of promotion. The petitioner contends that such an attempt would be contrary to the Goa, Directorate of Food and Drugs Administration, Group A, Gazetted Post, Recruitment Rules, 2014 (the said Rules). The petitioner seeks a writ of mandamus directing the respondents to convene a DPC to fill up the vacancy for the post of “Designated Officer”, which arose on the superannuation of Mrs Iva Maxie Fernandes on 31.12.2021.
4. The recruitment to the post of “Designated Officer” is governed by the said Rules of 2014, which entered force on 17.04.2014. The relevant extract of the said Rules, so far as it concerns the post of “Designated Officer”, reads as follows:

SCHEDULE

1	2	3	4	5	6	6(a)	7	8	9	10	11	12	13
Name/ Designation of post	Number of posts	Classification	Scale of pay	Whether selection post or non-selection post	Age limit for direct recruits	Whether the benefit of added years of service is admissible under Rule 30 of CCS (Pension) Rules, 1972	Educational and other qualifications required for direct recruits	Whether age & educational qualifications prescribed for the direct recruits will apply in the case of promotees	Period of probation, if any	Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer/contract and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer is to be made	If a D.P.C. exists, what is its composition	Circumstances in which the Goa Public Service Commission is to be consulted in making recruitment
Designated Officer (2014) (Subject to variation dependent on workload)	02	Goa General Service, Group 'A', Gazetted.	PB-3 Rs. 15,600-39,100 + Grade Pay Rs. 5,400/-	Selection	Not exceeding 40 years (Relaxable for Government servants upto 5 years in accordance with the instructions or orders issued by the Government).	N. A.	Essential: (1) Degree in Food Technology or Dairy Technology or Biotechnology or Oil Technology or Agricultural Science or Veterinary Sciences or Bio-Chemistry or Microbiology or Masters Degree in Chemistry from a recognized University or any other equivalent/recognized qualification notified by the Central Government. (2) Knowledge of Konkani. <i>Desirable:</i> Knowledge of Marathi.	Age: No. Educational qualifications: Yes Provided that persons appointed as Food Inspector having qualification prescribed under the Prevention of Food Adulteration Rules, 1955 or as Local Health Authority shall be eligible for appointment as Designated Officer subject to fulfilling the conditions as specified in column	Two years	50% by promotion, falling which, by direct recruitment and 50% by direct recruitment.	Promotion: Senior Food Officer with 8 years regular services in the grade, falling which, 15 years regular service combined together as Senior Food Safety Officer, in the Directorate of Food and Drugs Administration.	Group 'A' D.P.C. consisting of: (1) Chairman/Member, Goa Public Service Commission necessary for making direct recruitment, confirmation, promotion and amending/relaxing any of the provisions of these Rules. (3) Administrative Secretary/Head of Department -Member. (For promotion and confirmation).	Consultation with the Goa Public Service Commission is necessary for making direct recruitment, confirmation, promotion and amending/relaxing any of the provisions of these Rules.

5. The petitioner was appointed as a “Food Inspector” against a post reserved for Scheduled Caste on 19.01.1994. After completing eight years of service, it is the petitioner’s case that she became eligible for promotion to the post of Assistant Local (Health) Authority effective from 19.01.2002. However, the petitioner has pleaded that she was promoted to the said post only on 29.07.2011, and her services were regularised by an order dated 05.12.2011.

6. The petitioner has pleaded that the Food Safety Standards Act, 2006 was brought into force in 2011, and by order dated 05.06.2013, the Government redesignated the post of Assistant Local (Health) Authority as “Senior Food Safety Officer”.

7. In terms of the said Rules, the cadre strength for the post of “Designated Officer” was stated as 02. There was a remark that this was subject to variation dependent on workload. The petitioner has pleaded, and there is no dispute that from 2014 till date, there are only two posts of Designated Officers. The said Rules govern the recruitment to these two posts. The said Rules provide that 50% of the vacancies for the posts of “Designated Officers” are to be filled by promotion, failing which by direct recruitment and 50% by direct recruitment.

8. After the said Rules entered into force, the first vacancy was filled by directly recruiting Mr Richard Noronha, who is presently stated to be 34 years old. The promotion of Mrs Iva Maxie Fernandes filled the second post. Thus, by 2016, the two posts of “Designated Officers”

were filled in by one direct recruit and one promotee, that is, 50% by direct recruitment and 50% by promotion.

9. On 31.12.2021, the promotee, Mrs Iva Maxie Fernandes, retired on attaining the age of superannuation. The Government made a requisition to GPSC to fill up the resultant vacancy by “Direct Recruitment”. Accordingly, the GPSC issued an advertisement dated 11.02.2022, inviting inter alia applications for direct recruitment to the post of “Designated Officer”. The advertisement refers to the upper age limit as not exceeding 45 years. At least in the said Rules furnished to us, the upper age limit for direct recruits is 40 years (relaxable for Government servants up to 5 years in accordance with the instructions or orders issued by the Government). Therefore, at least *prima facie*, there appears to be a variation between the advertisement and the Recruitment Rules. Be that as it may, the challenge to the advertisement or the attempt to fill up the post of “Designated Officer” by direct recruitment is not on the said ground.

10. The petitioner contends that since 50% of the posts are to be filled in by promotion and the balance 50% by direct recruitment, the vacancy which has arisen due to the superannuation of Mrs Iva Maxie Fernandes must be filled in by promotion and not by direct recruitment. Mr. Padgaonkar submits that any attempt to fill this latest vacancy by direct recruitment would upset the ratio prescribed in the said Rules in the context of the cadre strength of “Designated Officer”. He submits that both the “Designated Officers” would then be direct recruits,

which would be contrary to the express as well as the implied terms of the said Rules.

11. Mr. Padgaonkar submits that the interpretation suggested by the Government, apart from conflicting with the said Rules, would promote stagnation. He submitted that even assuming that different interpretations are plausible, the interpretation which promotes stagnation and disturbs the cadre strength must be eschewed. Mr Padgaonkar relied upon *Prasad Kurien and Ors. V/s. K.J. Augustin and Ors.*¹, *Srikant Roy and Ors. V/s. State of Jharkhand and Ors.*² and *Shanti Prasad Singh V/s. Joint Director of Education, Allahabad Region and Ors.*³ in support of his contentions.

12. Mr Shirodkar, learned Additional Government Advocate defended the Government's action by submitting that this was not a case of post-based reservation but the vacancies were being filled in alternatively by resorting to the mode of direct recruitment and promotion. He submitted that this mode was entirely consistent with the said Rules and there was no illegality much less any arbitrariness in the mode chosen by the Government. He relied on *State of Punjab and Ors. V/s. Dr R.N. Bhatnagar and Anr.*⁴ and *All India*

¹ (2008) 3 SCC 529

² (2017) 1 SCC 457

³ 2004 Lab IC 1764

⁴ (1999) 2 SCC 330

*Federation of Central Excise V/s. Union of India and Ors.*⁵ in support of his contentions.

13. Mr Shirodkar submitted that no employee has fundamental right to be promoted. The rights of Government servants, if any, are only that they be considered for promotion in accordance with the Recruitment Rules. He submitted that the Recruitment Rules were not challenged in this petition and the mode adopted by the Government was entirely consistent with the said Rules and the decisions that he referred to herein above. He, therefore, urged the dismissal of this petition.

14. Mr Shirodkar submitted that the issue of stagnation is addressed by providing schemes like the Modified Assured Career Progression Scheme (MACP) or Time Bound Promotion Scheme (TBPS). He submitted that if the petitioner's contention about interpretation of the said Rules were to be accepted, then, the Government would be deprived of the services of direct recruits, who invariably bring in fresh blood and enthusiasm in the department. He, therefore, urged that this petition be dismissed.

15. Mr Lawande, the learned Counsel for the GPSC submitted that equal importance is required to be given to the aspect of introducing fresh blood by resorting to direct recruitment and maintaining the morale of the departmental candidates, who wait expectantly for

⁵ (1999) 3 SCC 384

promotions in their career. He submitted that the said Rules must be harmoniously interpreted so that both these issues are suitably addressed. He submitted that the advertisement was issued by the GPSC based upon the requisition of the Government. He submitted that while GPSC may have been a necessary party for considering the issue of interim relief, the GPSC had no much role to play as regards the final reliefs prayed for in this petition.

16. Mr Padgaonkar, in rejoinder, pointed out that there are about eleven employees in the feeder cadre in the department. He pointed out that Mr Richard Noronha, who is the direct recruit Designated Officer is today only 34 years. He submitted that if the second post or the vacancy due to the superannuation of Mrs Iva Maxie Fernandes (a promotee) is now filled in by the direct recruit, whose age does not exceed 40 years or even 45 years, none of the employees in the feeder category including the petitioner could be considered for promotion. He submitted that they would stagnate until they retire in the feeder category itself. He submitted that on a correct interpretation of the said Rules, the post will have to be filled in by promotion and not by direct recruitment. Mr Padgaonkar distinguished the decisions relied upon by Mr Shirodkar by referring to the peculiar wordings of the Rules and facts that were involved in the said cases.

17. The rival contentions now fall for our determination.

18. The two posts of “Designated Officers” came to be filled up for the first time after the entry of the said Rules in 2014. The first post

was filled by directly recruiting Mr Richard Noronha, who is today aged only 34 years. The second post of “Designated Officer” was filled in by promoting Mrs Iva Maxie Fernandes from the feeder category.

19. Thus, as of 2016, the two posts of “Designated Officers” were filled in by direct recruitment and promotion, respectively. In 2016, therefore, 50% of the posts were filled in by direct recruitment and the balance 50% by promotion.

20. Mrs Iva Maxie Fernandes retired on attaining the age of superannuation on 31.10.2021. The issue which arises in this petition is whether the resultant vacancy has to be filled in by direct recruitment as proposed by the Government or promotion as urged by the petitioner.

21. If the Government’s stand is accepted, then the cadre will comprise of two directly recruited “Designated Officers”. Richard Noronha, as of date, is only 34 years old. The new direct recruit, going by the said Rules, will not be over 40 or 45 years old. The petitioner is 53 years old and due to retire on attaining the age of superannuation at 60. Thus, if the Government's stand is accepted, the petitioner cannot even aspire to be considered for promotion to the post of “Designated Officer” unless, of course, vacancies are caused for some unfortunate reasons or because any of the direct recruits resign or quit from service. Suffice it to note that ordinarily, the petitioner, who is a scheduled caste candidate, would not even be in a position to aspire to be considered

for the promotion to the post of “Designated Officer”, if the government’s stance is accepted.

22. That apart, Mr Padgaonkar submitted that there are eleven other candidates in the feeder category and considering their age, they would not be ordinarily considered for promotion to the post of “Designated Officer” because, in all probabilities, the tenure of Mr Richard Noronha and the second direct recruit would outlive the tenure of these candidates in the feeder category.

23. Thus, it is apparent that if the Government’s stand is to be accepted, stagnation of the existing employees in the feeder cadre would be the result in all probabilities and given the natural course of events. Despite this, we agree with Mr Shirodkar that if the rules are clear and they admit of only one interpretation, then even this consideration of stagnation would be irrelevant.

24. However, the said Rules throw no detailed light on the issue raised in this petition. The said Rules no doubt speak of the cadre strength being two “Designated Officers”. The said Rules also speak of the mode being filling up of 50% of the vacancies by promotion failing which by direct recruitment and the balance 50% by direct recruitment. However, the Rules do not provide for what is to be done in a situation of the kind which has arisen in the present petition. Therefore, some interpretative exercise is warranted.

25. In the case of *Council of Scientific and Industrial Research and Anr. V/s. K.G.S. Bhatt and Anr.*⁶, the Hon'ble Supreme Court was concerned with a well-qualified employee, who was left without any opportunity for promotion for about twenty years. In this context, the Hon'ble Supreme Court held that it is often said and indeed, adroitly, an organisation public or private does not 'hire a hand' but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246).

26. The Hon'ble Supreme Court observed that every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors". (See : Personnel Management by Dr. Udai Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions. The Hon'ble Supreme

⁶ (1989) 4 SCC 635

Court noted that the CSIR appeared to have overlooked this basic requirement of management so far as the said employee was concerned.

27. In the case of *Dr Ms. O.Z. Hussain V/s. Union of India*⁷, the Hon'ble Supreme Court pointed out that the provision for promotion increases the efficiency of the public service while stagnation reduces efficiency and makes the service ineffective. Promotion is thus a normal incidence of service. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers.

28. In the case of *State of Tripura V/s. K.K. Roy*⁸, the Hon'ble Supreme Court held that the appellant being a State within the meaning of Article 12 of the Constitution could have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, then, he cannot resile from it. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. The Court held that the

⁷ 1990 Supp SCC 688

⁸ (2004) 9 SCC 65

promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinabove, it was expected that the appellant should have followed such principle.

29. In *Food Corporation of India and Ors. V/s. Parashotam Das Bansal & Ors.*⁹, the Hon'ble Supreme Court reiterated its observations in *Dr. Ms. O.Z. Hussain* (supra), *Council of Scientific and Industrial Research and Anr.* (supra) and *State of Tripura V/s. K.K. Roy* (supra). The Court held that when employees are denied the opportunity of promotion for long years on the ground that they fall within a category of employees excluded from promotional prospects, the Superior Court will have the jurisdiction to issue necessary directions. The Court held that if there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of the existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior Court of the country.

30. In the present case, the said Recruitment Rules, fortunately, provide for a channel of promotion to the petitioner and similarly

⁹ (2008) 5 SCC 100

placed employees in the feeder category. It is only on account of the interpretation suggested by the Government that this promotional channel is sought to be virtually nullified at the cost of not only stagnation but also disturbing the cadre strength prescribed in the said Rules. The interpretation finds no explicit support from the text of the rules. The intent also seems to be to ensure equal opportunities, to the extent possible, to the promotees and direct recruits.

31. The argument about infusing fresh blood is understandable and in fact this has been addressed by the said Rules, which provides that not only 50% of the posts, i.e. one post out of the two posts of “Designated Officers” must be filled in by direct recruitment but further in case the second post cannot be filled in by promotion either because there are no eligible candidates in the feeder cadre or because the eligible candidates are not found to be fit by the duly constituted DPC, such post has to be filled in by direct recruitment. Said Rules, however, also address the issue of stagnation and the morale of the candidates in the feeder cadre, who invariably wait for long years to be promoted to the next higher post. Therefore, we agree with Mr Lawande that the said rules require a harmonious construction encompassing the concerns of infusing fresh blood and maintaining the morale of the departmental candidates eligible and waiting for promotions, often for long years.

32. Therefore, granting such candidates in the feeder cadre benefits of MACPS or TBPS cannot be held to be a substitute for granting them

promotion in accordance with the Rules. Considering the observations made by the Hon'ble Supreme Court, in the decisions referred to above, at least the State cannot adopt an approach that it has only hired a hand and not employed a whole person. The Hon'ble Supreme Court pointed out that a person is recruited not just for a job but for a whole career and therefore one must be given an opportunity to advance. The Government's interpretation does not seem to address all these relevant considerations.

33. Therefore, even assuming that there are two interpretations possible or plausible, then the interpretation which harmonizes the concern of infusing fresh blood with the concern of providing reasonable opportunities of promotion to the departmental candidates so that the morale of the candidates in the feeder category is not adversely affected, would have to be preferred. This is more so considering the significant observations made by the Hon'ble Supreme Court in the above decisions. An interpretation that almost ignores the Hon'ble Supreme Court's observations or which promotes stagnation in the ranks cannot be preferred over an interpretation that suitably addresses such concerns.

34. The said Rules, according to us, do not provide, at least explicitly that the vacancies have to be invariably filled in by alternating between direct recruitment and promotion as contended by Mr Shirodkar and the deponent of the affidavit on behalf of the Government. The said Rules, as noted earlier, provide that the cadre strength (at least presently)

is of only two posts. The said Rules provide that 50% of the vacancies have to be filled in by promotion failing which by direct recruitment and the balance 50% by direct recruitment. Thus, the said Rules contemplate equal opportunities to the extent possible to the direct recruits and the promotees. The said rules, therefore, address the concerns of infusing fresh blood and avoiding stagnation or adversely affecting the morale of the departmental candidates in the feeder category. Therefore, this harmony provided by the said Rules cannot be disturbed based upon the Government's interpretation, more so when such an interpretation would disturb the cadre strength and promote stagnation in the ranks.

35. In *R.N. Bhatnagar and Anr.* (supra), relied upon by Mr Shirodkar Rule 9 of the Punjab Medical College Education Service (Class I) Rules, 1978 provides that in the case of Professors, 75% of the posts were to be filled in by promotion from amongst the Additional Professors, etc. and 25% posts by direct recruitment. The Court pointed out how Rule 4 had provided for a specific methodology to fill in the posts and held that both the Rules have to be harmoniously construed. The Court also noted how the Rules itself contemplated the adoption of a rotational cycle starting from the very first vacancy. The Court also demonstrated how, given the various departments and the expanse of the feeder category, the State's interpretation had to be preferred over that of the petitioners. Neither the Rules in the present petition nor the facts are comparable to the Rules and the facts in the case of *Dr. R.N. Bhatnagar* (supra).

36. In *All India Federation of Central Excise* (supra), again the Rules provided a specific formula under which each bunch of 9 vacancies in the promotion quota for Group 'B' feeder cadres was to be apportioned in the ratio 6:1:2 consisting of Central Excise Superintendents, Customs (P) Superintendents and Customs Appraisers, respectively. Rule 6.3 specifically provided that further vacancies had to be filled up on the basis of a 'cycle' in the above order. It is in the context of clauses 4, 6.1 and 6.3 that certain observations, relied upon by Mr Shirodkar were made. However, finally, the Hon'ble Supreme Court at paragraph 18, even accepted the Union of India's defence about earlier there having been excess promotions to Group 'A' from the petitioners' category of Excise Superintendents Group 'B' and therefore, presently, more officers from the other two feeder channels have been promoted on an ad hoc basis so that there is no imbalance when the final review takes place. The Court held that even if it was assumed that for the purposes of ad hoc promotions, it would have been fair to follow the ratio of 6:2:1, the Union of India has shown adequate justification for not following the said ratio while making the ad hoc promotions. The Court held that if one of these groups in the quota has had more promotions earlier and if the Government of India wanted to offset the said advantage, such an action cannot be said to be unfair. Thus, even this decision does not entirely favour the interpretation urged by the Government of the said rules. The observations relied upon by Mr Shirodkar are in the context of peculiar wordings of the rules not comparable with the rules and the factual position in the present case.

37. In *Srikant Roy and Ors.* (supra), a three-Judge Bench of the Hon'ble Supreme Court, in the context of Rules which fell for consideration before it held that the High Court overlooked the distinction between "post" and "vacancy". The Court held that if the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in-service judicial officers by promotion through Limited Competitive Examination. The cadre strength is always measured by the number of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of a post in the given cadre. The percentage of the quota has to be worked out in relation to the number of posts which form the cadre and has no relevance to the vacancy that would occur.

38. The Hon'ble Supreme Court held that the High Court had glossed over the above aspect in the impugned judgment. Suffice it to observe that as no post for direct recruits existed as of 30.04.2008, the challenge to the selection process to fill up the vacancy by promotion through Limited Competitive Examination at the instance of aspiring candidates by direct recruitment could be countenanced. This decision, to a certain extent, supports Mr Padgaonkar's contention that where the 50% quota provided for direct recruits stands exhausted, the next vacancy must be filled in by a promotion, given the phraseology

employed in the said Rules which are subject matter of the present petition.

39. Similarly, in *Prasad Kurien and Ors.* (supra), the Hon'ble Supreme Court held that if the interpretation of the appellants is to be accepted then it is likely to disturb the ratio in the cadre strength. If every time a vacancy is to be filled up and in that fourth vacancy has to go to the direct recruit, then the proportion which is maintained, i.e. 25% and 75%, is likely to be disturbed. The Court, after referring to the rough chart of vacancies, concluded that the percentage of promotee Excise recruitment as of the date of the calculation would far exceed the ratio prescribed.

40. The Hon'ble Supreme Court observed that if the appellants' contention is to be accepted, then naturally, every time a vacancy arises, and the fourth vacancy is to be filled up by direct recruits, then the proportion is likely to be disturbed. The Court noted that this was not the intention of the Rules. When the rules say that every fourth vacancy is to be filled up by direct recruit, that means that the ratio is 25% by direct recruitment and 75% by promotion. The Court noted that it cannot ignore that the proportion of 1:4 was to be maintained, i.e. the fourth vacancy had to be filled up by direct recruit, and then that ratio could only be maintained if the entire cadre strength of the service was taken into consideration. If every fourth vacancy is to be allowed, then this proportion was likely to be disturbed, and that was not the intention of the framers of the Rules. The decision in *Prasad Kurien*

and Ors. (supra) also to some extent supports Mr Padgaonkar's contention about the interpretation of the said Rules.

41. Thus, for all the above reasons, we allow this petition and restrain the Government from filling up the post of "Designated Officer", which has become vacant due to the superannuation of Mrs Iva Maxie Fernandes by direct recruitment. Instead, we direct the State Government to send the necessary requisition to the GPSC within a month from today for filling up the post of "Designated Officer" by promotion in terms of the said rules. The GPSC must endeavour to complete the process within three months from the date of receipt of the requisition. Needless to add, the GPSC shall not proceed with recruitment in pursuance of the advertisement dated 11.02.2022 in so far as the post of "Designated Officer" is concerned.

42. The rule is made absolute in the above terms without any order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K

HALDANKAR

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