



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.99/2024

ANKITA SANDEEP HADFADKAR,
aged 27 years, Indian National, R/o. Golna
Waddo, Pomburpa, Bardez Goa.

... PETITIONER

Versus

1. STATE OF GOA, through Chief
Secretary, having office at Secretariat,
Porvorim-Goa.

2. OFFICE OF THE PRINCIPAL
CHIEF ENGINEER, Public Works
Department, Altinho-Panaji, Goa.

3. THE DY. DIRECTOR
(ADMINISTRATION),
Public Works dept, Altinho,
Panaji-Goa.

4. THE DIRECTOR
(ADMINISTRATION), Public Works
Department, Altinho, Panaji-Goa.

... RESPONDENTS

Mr Prasheen Lotlikar Advocate for the Petitioner.
Ms Maria Correia, AGA for the State.

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.**

DATE: 18th SEPTEMBER 2024

ORAL JUDGMENT: (Per M. S. KARNIK)

1. Heard Mr Prasheen Lotlikar for the petitioner and Ms Maria Correia, learned Additional Government Advocate for the State.

2. Rule. The rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.

3. The petitioner prays for the following reliefs:-

“A. This Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ, order or direction in the nature of Certiorari for quashing and setting aside the merit list of Junior Engineer (Civil) prepared by Respondent no.2 at EXHIBIT G.

B. This Hon'ble Court be pleased to issue a Writ of Mandamus or any other writ, order or direction in the nature of Mandamus commanding Respondent no.2 to prepare a fresh merit list of candidates for the post of Junior Engineer (Civil) by including the name of the Petitioner in the merit list and further consider the Petitioner for the post of Junior Engineer (Civil) under the OBC category, to any one post out of the 6 posts out of 54, which have not been filled from the OBC category.

C. Pending the hearing and final disposal of the present petition this Hon'ble Court be pleased to restrain respondent no.2 from filling up the 6 vacant posts, out of the 54 posts reserved for the Junior Engineer (Civil) under the OBC category, which have not been filled.”

4. The respondent had invited applications for filling up various posts in the Public Works Department (PWD), including 162 posts of Junior Engineer (Civil) along with the essential requirements, vide advertisement

dated 27.08.2021. The following clauses of the advertisement are relevant:-

C. Only the eligible candidate fulfilling the criteria as per Recruitment Rules/advertisement shall apply online and the candidates need not furnish any document at the time of applying for the post. However, candidate shall not be considered, if he/she is found ineligible at the time of verification of the essential documents, even though has passed the examination.

D. The instructions/guidelines regarding eligibility, etc. available on the Departmental website www.pwd.goa.gov.in, www.goa.gov.in and <http://cbes.goa.gov.in> shall strictly be adhered by each and every candidate, which will be made available from 07/09/2021 onwards.

5. Clause 2 of the document 'Instructions to Candidates' which is titled as 'Documents/Certificate Required At The Time Of Verification (along with original)' at sr. no.(ii) records as follows:

'ii) Valid Employment Exchange Card'.

6. The Respondent had issued General Instructions to all the candidates regarding the Application form, Documents/Certificate required at the time of verification (along with original), uploading of candidate photograph and signature with online application, age limit, post wise selection criteria, application of in-service candidates, conditions for

examination and soliciting and canvassing. The application form contains the following declaration:-

“I son/daughter/wife of _____ hereby state that the contents of the application are true to my own knowledge and I declare that I, possess the requisite essential qualification and other mandatory requirements for the post. I understand that in the event of particulars or information given herein being found false or incorrect, my candidature for the recruitment is liable to be REJECTED OR CANCELLED EVEN AFTER SELECTION”.

7. Learned counsel for the petitioner submitted that the petitioner was registered with the Employment Exchange and merely on the ground that she did not have an Employment Exchange Card as a reason for rejecting her candidature is unfair.

8. Ms Maria Correia, learned AGA submits that the petitioner had filled the said application form and submitted the aforesaid undertaking thereby accepting that the requirement of a valid Employment exchange card is a mandatory requirement for the said post and additionally, representing to the respondents that the petitioner possesses the said mandatory requirement. Ms Correia submits that the petitioner did not challenge the mandatory requirement made known to the general public vide the document titled 'Instructions to Candidates'. It is her further submission that there is no ground in the present petition that the

requirement of a valid employment exchange card is not a mandatory requirement.

Ms Correia submits that the State Government had constituted a 3 member committee to conduct an inquiry into the complaints pertaining to the recruitment process. Therefore, the respondent reinitiated the recruitment process from the examination stage as per the directions of the Government of Goa. The written re-examination was conducted by Government Polytechnic College, Bicholim on 18.06.2023 and the results of the re-examination were declared on 07.11.2023.

It is further submitted that upon the receipt of results of the written re-examination, the Departmental Selection Committee met and shortlisted the candidates for verification of their documents. During the verification process, it was noticed that the petitioner has not produced the Caste Certificate, Residence Certificate and Labour and Employment card valid at the time of applying for the post of Junior Engineer (Civil) which was advertised in the year 2021 wherein the last date of receiving application was 27.09.2021.

9. Ms Correia submits that in light of the above, a notice was issued to the petitioner, thereby calling upon the petitioner to submit the valid Caste Certificate, Residence Certificate and Labour and Employment card by 08.12.2023. In response, the petitioner submitted her valid Caste

Certificate and Residence Certificate within the allotted date and time, however the petitioner failed to produce the valid Employment Card. After the completion of further process, the respondents declared the Merit List by rejecting the names of the candidates who did not fulfil the criteria and who had not produced valid documents required at the time of submitting the application. It is stated that there were some more candidates as well who were similarly placed like the petitioner, who also failed to produce the relevant document i.e. the valid Employment card and who were therefore not considered suitable for selection to the post of Junior Engineer (Civil). Therefore, the petitioner having failed to produce the mandatory document i.e. the valid Employment card and having given a false declaration, her candidature was rejected.

10. The rival contentions now fall for our determination.

11. We find that the petitioner otherwise possesses all the requisite documents for selection to the post of Junior Engineer (Civil). The petitioner is in fact registered with the Employment exchange since the year 2014. The card was due for renewal in June 2020. However, the petitioner did not apply for renewal and hence she was not issued the Employment card. The fact remains that the petitioner is duly registered and the registration continues in the Employment Exchange.

12. In our opinion, the rejection of the petitioner on the ground that she did not produce the employment exchange card is unreasonable and arbitrary. The petitioner is otherwise qualified to be selected to the post of Junior Engineer (Civil). 162 posts of Junior Engineer (Civil) were advertised. Out of 162, 54 were reserved for the Other Backward Class (OBC) category. The petitioner has a valid caste certificate and had applied under the OBC category. We are informed that 48 posts were filled in pursuant to the selection process.

13. Learned AGA Ms Correia submitted that as of now 9 posts in the OBC category are unfilled. In our view, in the facts and circumstances of the present case, the rejection of the petitioner's candidature on the ground that she did not possess a valid employment card is unfair and harsh. The petitioner's registration with the Employment Exchange since 2014 continues and there is no dispute on this aspect. In such circumstances the requirement of furnishing employment card cannot be regarded as mandatory so as to defeat the right of the petitioner to be appointed to the post of Junior Engineer (Civil), when she is otherwise qualified to be appointed. The petitioner's candidature was rejected only because she did not possess a valid employment card. We are not in agreement with the submission of Ms Maria Correia, learned AGA that the requirement of valid employment card be regarded as mandatory.

14. In support of his submissions, Mr Lotlikar, learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in *Union of India and Others v/s. Pritilata Nanda – (2010) 11 SCC 674*. Relevant to the present case are paragraphs 16, 17, 18 and 21 which read thus:

“16. In our opinion, there is no merit in the arguments of the learned Additional Solicitor General. In the first place, we consider it necessary to observe that the condition embodied in the advertisement that the candidate should get his/her name sponsored by any special employment exchange or any ordinary employment exchange cannot be equated with a mandatory provision incorporated in a statute, the violation of which may visit the person concerned with penal consequence.

17. The requirement of notifying the vacancies to the employment exchange is embodied in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short "the 1959 Act"), but there is nothing in the Act which obligates the employer to appoint only those who are sponsored by the employment exchange. Section 4 of the 1959 Act, which provides for notification of vacancies to employment exchanges reads as under:

"4. Notification of vacancies to employment exchanges.-(1) After the commencement of this Act in any State or area thereof, the employer in every establishment in public sector in that State or area shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed.

(2) The appropriate Government may, by notification in the Official Gazette, require that from such date as may be specified in the notification, the employer in every establishment in private sector or every establishment pertaining to any class or category of establishments in private sector shall, before filling up any vacancy in any employment in that establishment, notify that vacancy to such employment exchanges as may be prescribed, and the employer shall thereupon comply with such requisition.

(3) The manner in which the vacancies referred to in sub-section (1) or sub-section (2) shall be notified to the employment exchanges and the particulars of employments in which such vacancies have occurred or are about to occur shall be such as may be prescribed.

(4) Nothing in sub-sections (1) and (2) shall be deemed to impose any obligation upon any employer to recruit any person through the employment exchange to fill any vacancy merely because that vacancy has been notified under any of those sub-sections."

18. A reading of the plain language of Section 4 makes it clear that even though the employer is required to notify the vacancies to the employment exchanges, it is not obliged to recruit only those who are sponsored by the employment exchanges. In Union of India v. N. Hargopal⁴ this Court examined the scheme of the 1959 Act and observed: (SCC pp. 313 & 315, paras 4 & 6)

"4. It is evident that there is no provision in the Act which obliges an employer to make appointments through the agency

of the employment exchanges. Far from it, Section 4(4) of the Act, on the other hand, makes it explicitly clear that the employer is under no obligation to recruit any person through the employment exchanges to fill in a vacancy merely because that vacancy has been notified under Section 4(1) or Section 4(2). In the face of Section 4(4), we consider it utterly futile for the learned Additional Solicitor General to argue that the Act imposes any obligation on the employers apart from notifying the vacancies to the employment exchanges.

** * **

6. It is, therefore, clear that the object of the Act is not to restrict, but to enlarge the field of choice so that the employer may choose the best and the most efficient and to provide an opportunity to the worker to have his claim for appointment considered without the worker having to knock at every door for employment. We are, therefore, firmly of the view that the Act does not oblige any employer to employ those persons only who have been sponsored by the employment exchanges."

(emphasis supplied)

21. We also agree with the High Court that once the candidature of the respondent was accepted by the authorities concerned and she was allowed to participate in the process of selection i.e. the written test and viva voce, it was not open to them to turn around and question her entitlement to be considered for appointment as per her placement in the merit list on the specious ground that her name had not been sponsored by the employment exchange. In our considered view, by denying appointment to the respondent despite her

selection and placement in the merit list, the appellants violated her right to equality in the matter of employment guaranteed under Article 16 of the Constitution.”

15. We are informed that the petitioner now has a valid employment card which was renewed on 12.10.2021. As per the advertisement, the requirement to furnish the employment card was till 27.09.2021.

16. Hence, we are inclined to allow this petition.

17. The respondents are directed to include the name of the petitioner in the merit list and further consider the petitioner for the post of Junior Engineer (Civil) under the OBC category, in one of the 9 posts which have not been filled so far from the OBC category. Accordingly, the rule is made absolute and the petition is disposed of with the above direction.

18. There shall be no order for costs.

VALMIKI MENEZES, J.

M. S. KARNIK, J.