

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 95/2015**

Shri Premanand G. Phadte,
aged 54 years, residing at
House No.46-E, Arlem, Raia,
Salcete-Goa 403 720.

..... Petitioner.

Versus

1. State of Goa,
through the Secretary (Education),
Government of Goa,
with his office at Secretariat Complex,
Porvorim, Bardez, Goa.

2. The Director,
Directorate of Education,
Government of Goa,
Porvorim, Bardez, (Goa),

3. Chairman,
School Managing Committee of
Mathagramastha Hindu Sabha's
'Shree Damodar Higher Secondary
School of Science',
with his office at
'Tirtharoopa', A.N. Naik Road,
Aquem-Alto, Margao-403 602 (Goa),

4. Manager,
School Managing Committee of
Mathagramastha Hindu Sabha's
'Shree Damodar Higher Secondary
School of Science',
with his office at
'Tirtharoopa', A.N. Naik Road,
Aquem-Alto, Margao-403 602 (Goa),

5. Shri Rajiv K. Dessai,
presently occupying the post of Principal of
'Shree Damodar Higher Secondary
School of Science',
P.B. No.53,
Comba, Margao-403 601, (Goa). Respondents.

Shri S. D. Lotlikar, Senior Advocate with Ms. Marushka Furtado,
Advocate for the petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. S. S. Rebello,
Additional Govt. Advocate for the respondents No.1 and 2.

Mr. M.S. Bandodkar and Mr. P. Bandodkar, Advocates for the
respondents No.3 and 4.

Mr. D. Pangam, Advocate for the respondent No.5.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 27 JULY 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. S. D. Lotlikar, learned Senior Counsel
appearing for the petitioner, Mr. A.N.S. Nadkarni, learned Advocate
General appearing for the respondents No.1 and 2, Mr. M.S.
Bandodkar, learned Counsel appearing for the respondents No.3 and 4
and Mr. D. Pangam, learned Counsel appearing for the respondent
No.5.

2. Rule. Heard forthwith, with the consent of the learned Counsel. Learned Counsel appearing for the respondents waive service.

3. The above petition, *inter alia*, takes exception to the approval granted by the respondent No.2/Director of Education dated 25th June, 2014 whereby the petitioner was deprived of his claim to be appointed as the Principal of the concerned Higher Secondary School.

4. During the course of the hearing of the above writ petition, the respondent No.2/Director of Education has filed an affidavit dated 27th July, 2015, *inter alia*, stating at paras 5, 6, 7, 8 and 9 thus :

" 5. I state that the DPC considered facts and material presented before the committee and recommended the second senior most teacher in grade I as fit for promotion to the post of Principal of Shree Damodar Higher Secondary School of Sciences. I state that the decision arrived at in the DPC was submitted for approval of this Respondent vide letter No. DHSS/ADM/App/2014-15/119 dated 23/06/2014.

6. I state that in view of the recommendations of the DPC, Approval was granted by this Respondent for the promotion of the Respondent No.5 to the post of Principal of Shree Damodar Higher Secondary School of Sciences, vide letter of Approval dated 25/06/2014.

7. I state that on going through the facts mentioned the present Petition, it shows that the Petitioner was the Senior most teacher Grade-I. I state that if there was nothing adverse against him such as Disciplinary Proceedings wherein Memorandum of Charge has been issued and Charge is framed or otherwise the Petitioner is ineligible or non-meritorious then only could the senior most teacher in Grade I be held back from promotion.

8. I state that after perusal of the record it shows that the management of the School at the relevant time has not made out any such case nor had the DPC found any such matter therein.

9. I state that in view of the approval granted by the Director of Education as regards the DPC wherein the Respondent No.5 was promoted to the post of Principal of Shree Damodar Higher Secondary School of Sciences would require reconsideration and re-examination of the matter. I state that as such the approval dated 25/06/2014

would be reconsidered again."

6. Mr. Bandodkar and Pangam, learned Counsel appearing for the respondents No.3 and 4 and respondent No.5 respectively, have disputed the correctness of the averments of the said affidavit. But, however, on perusal of the DPC records dated 13th June, 2014, we find no reasons recorded therein to come to the conclusions arrived at in such report.

7. Be that as it may, Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioner has, however, pointed out that in case the respondent No.2/Director of Education desires to re-examine the approval granted to appoint the respondent No.5 as the Principal, the question of supplementing the reasons already submitted by the respondent No.3, would not arise at all.

8. In the peculiar facts and circumstances of the case, considering that the respondent No.2 intends to reconsider the impugned approval granted to the respondent No.3, we find it appropriate to direct the respondent No.2 to re-examine the approval in terms of the averments made in the said affidavit, on the basis of the

reasons already submitted by the respondent No.3, in accordance with law and the relevant Rules. The respondent No.2 shall carry out such an exercise within six weeks from today. Needless to say that the contentions of respondents No.3 and 4 with regard to the correctness of the averments made in the affidavit of the respondent No.2, are left open.

9. With the aforesaid directions, Rule stands disposed of accordingly. The petition is disposed of with no order as to costs.

K.L. WADANE, J.

F.M. REIS, J.

ssm.