

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 659 OF 2014

MR SAVIO BRITTO.

... Petitioner

Versus

THE STATE OF GOA THR. THE CHIEF
SECRETARY AND 3 ORS.,

... Respondents

Mr. Ryan Da Piedade Menezes, Advocate for the petitioner.

Mr. P. Dangui, Addl. Government Advocate for the respondent nos. 1 to 3.

Mr. D. Pangam, Advocate for the respondent no.4.

Coram:- F. M. REIS &
C. V. BHADANG, JJ.

Date:- 8th December, 2015

P.C.

Heard Mr. R. Menezes, learned counsel appearing for the petitioner, Mr. D. Pangam, learned counsel appearing for the respondent no.4 and Mr. P. Dangui, learned Addl. Government Advocate appearing for the respondent nos. 1 to 3.

2. The above petition essentially takes exception to the decision of the State Cabinet whereby the recruitment process initiated pursuant to an advertisement dated 11.11.2011 was partly cancelled on the ground that the post wise reservation was not disclosed to the GPSC.

3. Mr. R. Menezes, learned counsel appearing for the petitioner has submitted that as per the said advertisement, eight posts of teachers were to be filled up by the Education Department for the Government Higher Secondary Schools wherein six posts were reserved in different categories but however, the post wise reservation was not disclosed either in the advertisement nor to the GPSC when such selection process was conducted. The learned counsel further submits that the main grievance of the petitioner is that though the State Cabinet has taken such a decision, the respondents have proceeded to recruit the respondent no.4 who had also applied in the same recruitment process. The learned counsel further submits that this itself discloses bias and discrimination as according to him considering the reason on which such recruitment process was cancelled, the whole process including the selection of the respondent no.4 had to be cancelled. The learned counsel further points out that the respondent no.4 has been unjustly benefited by arbitrary action on the part of the respondents and as such, according to him the selection of the respondent no.4 deserves to be quashed and set aside. The learned counsel has also taken us through the decision taken by the State Cabinet and submitted that on plain reading thereof, it was incumbent upon the respondents to cancel the whole selection recruitment process. The learned counsel as such submits that the petition deserves consideration and the selection of the respondent no.4 be accordingly quashed and set aside.

4. On the other hand, Mr. D. Pangam, learned counsel appearing for the respondent no.4 has submitted that the Director of Education Department has filed an affidavit inter-alia disclosing that there was no application received from the petitioner. The learned counsel has also taken us through the information received from the GPSC under the Right to Information Act wherein the GPSC has disclosed to the respondent no.4 that no application on behalf of the petitioner was received by such authority. The learned counsel as such submits that the petitioner has no locus standi to challenge the selection of the respondent no.4. The learned counsel also points out that the recruitment process was initiated in the year 2011 and the respondent no.4 was duly appointed by an order dated 13.04.2012 whereas the petition itself was filed in the year 2014 which is hopelessly barred by laches. The learned counsel further points out that examining the validity of the decision of the cabinet at the instance of the petitioner who has not established by any evidence that he had in fact applied for any of the posts is totally unjustified in the facts and the circumstances of the case. The learned counsel further points out that as far as the respondent no.4 is concerned, she was appointed in the general category and as such the contention of the petitioner that the post wise reservation was not disclosed to the GPSC at the time of such process would not vitiate the selection of the respondent no.4. The learned counsel as such submits that the petition be summarily rejected.

5. Mr. R. Menezes, learned counsel appearing for the petitioner in reply has submitted that the contention of the respondent no.4 that the petitioner has not applied for such post has been seriously disputed by the petitioner in the rejoinder as according to him, it is clearly averred by the petitioner that he has submitted his application to the GPSC and the GPSC had given an endorsement of the receipt of such application which was misplaced by the petitioner. The learned counsel further points out that only in the year 2013, the petitioner came to know about the irregularities in the appointment of the respondent no.4 which forced the petitioner to file the above petition. The learned counsel further pointed out that according to him the petitioner had applied for the post in the general category and as such, he has locus standi to challenge the selection of the respondent no.4.

6. We have considered the submissions of the learned counsel and with their assistance we have also gone through the records. Without going into the merits of the rival contentions raised in the above petition, we find that there are serious disputed questions of fact with regard to the locus standi of the petitioner to file the above petition on the ground that the petitioner had not even applied for any of the posts advertised in the said advertisement dated 11.11.2011. Though the petitioner seeks to contend that the acknowledgement receipt has been misplaced, there is no material on record to substantiate such allegation. The records reveal that the interviews for such posts were

conducted in the year 2011. There is no reaction shown by the petitioner which would show that the petitioner has made any attempt to find out the fate of his application, if at all filed before the GPSC. Apart from that, the information received by the respondent no.4 under the Right to Information Act, categorically suggest that there was no application of the petitioner received by the GPSC. In such circumstances, we find that there is no material on record prima facie, for this Court to accept the contention of Mr. Menezes, learned counsel appearing for the petitioner that the petitioner had applied for the subject post. There is no contemporaneous material produced on record by the petitioner to substantiate his allegation that the acknowledgement receipt had been misplaced by the petitioner.

7. Apart from that, it is an admitted position that the respondent no.4 was appointed in the year 2012 and the petitioner has filed the above petition only in the year 2014. There is no cogent reason to explain any such delay. In such circumstances, we find that the petition also barred by laches. Considering the above, we find that there is no need to examine the correctness of the contentions by the petitioner on merits.

8. Be that as it may, it may be noted that the respondent no.4 was appointed in the general category. The advertisement also discloses that there were posts reserved in the general category. In such circumstances, we find that the question of proceeding to examine the

validity of the impugned decision based on the aforesaid contention of the petitioner would not at all be required in the facts of the above case.

9. For the aforesaid reasons, we find no merits in the above petition which stands accordingly rejected.

C. V. BHADANG, J.

F. M. REIS, J.

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