

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 342 OF 2014.

Shri Rajendra A. Haldankar,
R/o. H. No.370, Bamonwado,
Candolim Bardez-Goa.
Presently working as Assistant
Divisional Officer, Directorate
of Fire & Emergency Services,
St. Inez, Panaji-Goa.

..... Petitioner.

Versus

1. State of Goa, through
Chief Secretary,
Secretariat, Porvorim,
Bardez -Goa.
2. The Secretary,
Department of Personnel,
Secretariat, Porvorim-
Goa.
3. The Secretary, Goa Public
Service Commission,
EDC House, Block 'C',
First Floor, Dada Vaidya
Road, Panaji-Goa.
4. The Director, Directorate
of Fire and Emergency
Services, St. Inez, Panaji-
Goa.
5. Shri Nitin V. Raikar, H.
No. 113, Talap Wada,
Kumbharjua, Tiswadi-
Goa.

..... Respondents.

Mr. S. D. Padiyar and Mr. G. Nagvekar, Advocates, for the petitioner.
Mr. A. N. Nadkarni, Advocate General with Mr.
S. S. Rebello, Additional Government Advocate for the respondent nos.
1, 2 and 4.
Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande,
Government Advocate for the respondent no.3.
Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for

the respondent no.5.

**Coram:-F. M. REIS,
K. L. WADANE, JJ.**
Date:-28th July, 2015.

JUDGMENT (Per K. L. Wadane, J)

Heard. Rule. Rule made returnable forthwith. Heard forthwith by consent. Learned Counsel for the respondents waive service.

This Writ Petition is filed by the petitioner challenging the entire selection/recruitment process and selection of the respondent no.5 to the post of Deputy Director(Fire Services).

2. On 14.6.2013, the Goa Public Service Commission had issued an advertisement for the post of Deputy Director (Fire Service). Pursuant to the said advertisement, the petitioner and the respondent no. 5 applied for the post. Petitioner's service conditions are governed by Goa General Services, Directorate of Fire and Emergency Services, Group "A" Gazetted Post Recruitment Rules, 2006.

3. On 18.12.2013 the Selection Committee/Interview Committee of the Goa Public Service Commission held the interview of the petitioner as also of the respondent no. 5 namely Nitin Raikar. From the official website of the Goa Public Service Commission, it was revealed that the respondent no. 5 has been selected. Information collected by the petitioner under the Right to Information Act, ("the RTI

Act” for short) discloses that inquiry/investigation was underway pertaining to the serious allegations of misconduct for causing loss of revenue to the Government and misappropriation of money against the respondent no.5. Even RTI information discloses that the Government has decided to go for minor penalties against the respondent no. 5 for not obtaining permission of the Competent Authority for pursuing L.L.B. Degree and U. K. Examination in terms of the Rules. One of the subject expert constituting the Selection committee/Interview Committee during the interview namely Shri Deepak Gaikwad was holding the post in the cadre of Kolhapur Municipal Corporation and thus was an officer not competent to judge the merit of the candidates, he being lower in rank, status and scale than compared to the post of Deputy Director (Fire Services).

4. The petitioner by his representation dated 27.1.2014 pointed out his grievances about arbitrary and illegal selection of respondent no. 5 and further requested the Authority not to appoint him.

5. On 28.5.2014, the Government of Goa issued an appointment letter to the respondent no. 5 on a temporary post of Deputy Director(Fire Services) on certain terms of appointment therein. So looking to the grievances raised in the Writ Petition, it appears that the petitioner has challenged the entire selection process in which he himself had participated.

6. We have heard the arguments of Mr. S. D. Padiyar, learned counsel appearing for the petitioner, Mr. A. N. S. Nadkarni, learned Advocate General appearing for the respondent nos. 1, 2, 3 and 4 and Mr. Lotlikar, learned Senior Counsel appearing for the respondent no.5.

7. The grievances of the petitioner are that the selection process of the respondent no. 5 to the post of Deputy Director(Fire and Services) is illegal and, therefore, it is to be cancelled mainly on the following grounds:-

- (i) Selection of Mr. Gaikwad one of the member of the Selection Committee did not hold requisite designation in the cadre so as to judge comparative merit of the candidates.
- (ii) He was not in the higher rank in the hierarchy. He was holding class-III post, therefore, he could not be the member of the Selection Committee.
- (iv) Post hold by Mr. Gaikad is non-gazetted.
- (iii) There was inquiry pending against the respondent no. 5 in the Vigilance Department regarding misappropriation of revenue.
- (iv) Fifthly, a minor penalty was imposed upon the respondent no. 5.

Therefore, the petitioner has prayed to direct fresh

selection process.

8. During the course of the arguments Mr. Padiyar, learned counsel appearing for the petitioner has argued that the post for which respondent no. 5 is selected is class-I post and at the time of interview Mr. Gaikwad one of the member of Selection Committee was holding class-III post. Therefore, Mr. Gaikwad is not a proper and qualified person to take the interview for the post of Deputy Director (Fire and Services).

9. As against this, Mr. A. N. S. Nakdarni, learned Advocate General has argued that Interview/Selection Committee was consisting of only two members, i.e. Chairman of the Commission and the member of the Commission. So Mr. Gaikwad was not the member of the Interview Committee. He was only called for the purpose of expert opinion.

10. From the order dated 25.7.2013, it is seen that Interview committee involved in the selection of Deputy Director (Fire and Services) consisted of (i) Chairman of the Commission/Chairman and (ii) Member of the Commission/Member.

Therefore, it is seen that the Interview Committee for direct recruitment consisting of only two members and as per the Sub-Rule 5 of Rule 5 of the Goa Public Service Commission. Mr. Gaikwad was invited by Committee, being expert in the field. So, according to

Mr. Nadkarni, the post held by Mr. Gaikwad was insignificant.

Sub Rule 5 of Rule 5 of the Goa Public Service Commission reads as follows:-

- “5. Matters to be decided by the Chairman:- The following matters shall be decided by the Chairman.
- (1) All matters pertaining to the administration of the Commission office, except those which are within the competence of the Secretary, the matters decided by the Secretary being submitted to the Chairman for information and approval.
 - (2) Constitution or reconstitution of Committees of one or more Members including the Chairman and Assigning or reassigning to each Committees specific items of work, Committees so formed to remain in operation till reconstitution by the Chairman.
 - (3) Advertisement and notifications for recruitment to the posts within the purview of the Commission specifying the prescribe application fees for rechecking, mode of payment of such fees etc. therein and the newspaper in which they are to be published.
 - (4) Matters relating to the competitive and departmental examination, except those referred to in sub-rule (3) of Rules 4.
 - (5) Experts to be invited to assist the Commission or the

Interview Committee at the time of interview of candidates;"

11. Therefore, from the records, it is seen that Mr. Gaikwad was invited as expert to provide assistance and to advise the Interview Committee and in no way said to be member of the decision making committee in the interview or selection process. Therefore, at the time of interview Mr. Gaikwad was holding class-I, II or III post shall have no bearing with the qualification for the post to which the petitioner and respondent no. 5 were to be interviewed.

12. The next ground raised by the petitioner is that there was an inquiry of the Vigilance Department regarding misappropriation of the revenue. However, from the letter dated 24.7.2013 issued by the Directorate of Vigilance Department shows that there was no departmental proceedings/vigilance case pending against the respondent no. 5. Further more, it is contended by the petitioner that the respondent no. 5 was awarded minimum penalty as he had not obtained permission from the Department to pursue the LLB Degree. Imposition of minimum penalty, is administrative action taken by the Department, however, such imposition of minimum penalty is not disqualification.

13. The respondent no. 5 was already in service in the same department, therefore, Department of the Personnel and Training vide

office memorandum dated 14.7.1993 issued certain instructions/conditions as to when the application of the Government Servant should not be considered/forwarded for appointment, whether by direct recruitment, or transfer on deputation or transfer, to any other post. The said instructions/conditions are reproduced as follows:-

- (i) He is under suspension,
- (ii) Or Disciplinary proceedings are pending against him and a charge-sheet has been issued; or
- (iii) Sanction for prosecution, where necessary has been accorded by the competent authority; or
- (iv) Where a prosecution sanction is not necessary, a charge-sheet has been filed in a Court of Law against him for criminal prosecution.

14. The above four are disqualifications for forwarding the application of the Government servant. Whereas in the present case, the petitioner failed to point out that the respondent no. 5 was disqualified on any of the ground referred herein above.

15. According to the petitioner, he knows Mr. Gaikwad even prior to the interview when both of them appeared in Divisional Officer Course at Nagpur. In such circumstances, the petitioner very well knows the qualification of Gaikwad, still he opted to give interview, therefore, now he cannot agitate the qualification and post held by Mr. Gaikwad. The petitioner has challenged the selection process and

selection of the respondent no. 5 nearly about 5 months after the interview and particularly when he was not selected. The petitioner has chose to file present petition only after five months from the date of declaration of the result. The petitioner participated in the selection process, cannot turn back and challenge the selection process after he being declared as unsuccessful candidate. At the time of interview he did not raise any objection, therefore, the petition of the petitioner seems to be not bonafide.

16. Mr. Padiyar, during the course of his arguments has relied upon the observations in the case of reported in 2014(5) ALL MR 529.

17. We have gone through the facts and observations of the above case. The facts in the above cited case is that development which were known to the candidate prior to taking part in the selection process only mentions criteria needed for making application for the post whereas controverted contentions in the petition reveals that the petitioner or that candidates were not aware as to what would be the mode of selection and what criteria would be adopted by the selection committee for making appointment to the said post. In this context the Division Bench of this Court has held that the case of the petitioner in that case cannot be rejected on the ground of their having taken part in the oral interview. The facts of the present case are totally different from the facts cited supra, therefore, these observations are inapplicable to the facts of the present case. Mr. Nadkarni, learned

Advocate General has relied upon the observation in the case reported in **(1995) 3 SCC 486** in the case of ***Madan Lal and others Vs. State of Jammu and Kashmir and others***, and in paragraph 9 it has held thus:-

“Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of [Om Prakash](#)

Shukla v. Akhilesh Kumar Shukla and Ors ,it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

18. The observation of the Apex Court in the above cited authority are perfectly applicable to the facts of the present case. In the present case also the petitioner had challenged the selection process of the respondent no. 5, in which he had participated without protest.

19. For the reasons stated above, we are of the opinion that there is no substance in the present petition, therefore, Writ Petition stands dismissed with no order as to costs.

20. Rule stands discharged.

K. L. WADANE, J.

F. M. REIS, J.

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