

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 632 of 2008**

Shri Krishna B. Naik,
Grade D Employee of
Smt. Chandrabhaga Tukoba Naik
High School, Curchorem- Goa
44 years old, married,
Residing at Falnem Mirabag,
Taluka Sanguem - Goa .. Petitioner

Versus

1. State of Goa
Through its Chief Secretary,
With his office at Secretariat,
Porvorim, Bardez, Goa.
2. The Director,
Directorate of Education,
Government of Goa,
With his office at
18th June Road near Pharmacy
College, Panaji, Goa.
3. Jan Utkarsh Shikshan Saunstha,
A society registered under
Societies Registration Act, 1860
Through its Chairman with his
office at Smt. Chandrabhaga
Tukoba Naik High School,
Khandewada, Curchorem, Goa
4. Smt. Chandrabhaga Tukoba Naik
High School, a School recognized
and aided by Government of Goa,
Through its Head Master, with his
Office at Khandewada, Curchorem,
Goa
5. Shri Eshwar Shiva Naik,
Dewtewada,
Near Mahadev Temple,
Curchorem- Goa. .. Respondents.

Mr. V. P. Thali, Advocate for the petitioner.

Ms. Priyanka Kamat, Additional Government Advocate for respondents no. 1 and 2.

Mr. H. D. Naik, Advocate for the respondent nos. 3 and 4.

Mr. D. J. Pangam, Advocate for the respondent no. 5.

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

DATE : 9th March, 2015

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

Heard Shri Thali, learned Counsel appearing for the petitioner, Ms. P. Kamat, learned Additional Government Advocate appearing for respondent nos. 1 and 2, Shri H. D. Naik, learned Counsel appearing for the respondent nos. 3 and 4 and Mr. D. J. Pangam, learned Counsel appearing for the respondent no. 5.

2. The above writ petition, inter alia, seeks for the writ of Mandamus directing the respondent no. 4, School to withdraw with immediate effect and forthwith the advertisement published in the local newspaper 'Navhind Times' on 08/10/2008. A further relief sought is to direct the respondents to consider the case of the petitioner to be appointed by promotion to the post of L.D.C. cum Librarian in terms of the Circular dated 15/06/1987 read with

Rule 79 of the Education Rules, 1986. The petitioner has also prayed for a further relief to quash and set aside the letter of appointment dated 15/11/2008 of the respondent no. 5 and a letter of approval dated 04/06/2009 granted by the Directorate of Education.

3. Briefly, the facts of the case as contended by the petitioner are as under :

On 15/06/1987, Circular No. 120 is issued by the Directorate of Education thereby laying out Recruitment Rules for non-teaching staff, including the post of L.D.C. cum Librarian in terms of the Goa School Education Rules, 1986 (the Rules). It is the contention of the petitioner that on 19/09/1988, the petitioner was issued a letter of appointment to the post of Peon in the respondent no. 4 School and thereafter, in October, 1990, the petitioner passed his Secondary School Certificate Examination. It is also his case that the petitioner was also issued a Typing Certificate of Speed of 30 Words Per Minute (w.p.m.) by the Board of Government Commercial Certificate Examination. A vacancy arose somewhere in December, 2007 in the respondent No. 4 School to the post of L.D.C. cum Librarian, due to the death of the incumbent of such post. The Director of Education, in the meanwhile, issued a N.O.C. dated 24/12/2007 to fill up the said

post of L.D.C. cum Librarian by direct recruitment, although according to the petitioner, the same had to be filled up by promotion. But however, by letter dated 04/03/2008, the Deputy Director of Education withdrew the said N.O.C. granted on 24/12/2007 and instead, granted N.O.C. to fill up the said post by promotion as per the Rules. The respondent no. 4 sent thereafter a letter dated 28/06/2008 to the petitioner informing him to make himself available on 30/06/2008 on which date, the D.P.C. was scheduled to meet for filling up the post of L.D.C. cum Librarian. Thereafter, the petitioner appeared before the D.P.C. and on 09/09/2008, sent a letter to the respondent no. 4 School to inform him the outcome of the proceedings before the D.P.C. On 08/10/2008, an Advertisement came to be published on behalf of the respondent no. 4 School in the local newspaper "Navhind Times" for filling up the said post of L.D.C. cum Librarian which forced the petitioner to file the above writ petition to *inter alia* claim the reliefs referred to hereinabove.

4. The respondent no. 4 School filed reply disputing the claim of the petitioner, *inter alia*, pointing out that the petitioner did not have the requisite qualification to be promoted and further that the petitioner had failed the Typing Test conducted by the D.P.C. The report of the D.P.C. as well as the results of the Typing Test

were also produced by the respondent no. 4 School and it was further pointed out that in the meanwhile, in terms of Rule 79 of the Rules, the qualification for the appointment as L.D.C. cum Librarian was modified and the requisite qualification for such post was besides Typing of 30 w.p.m., Higher Secondary School Certificate.

5. Shri Thali, learned Counsel appearing for the petitioner has taken us through the Recruitment Rules and pointed out that in cases of promotion as far as the qualification is concerned, the candidate must possess Higher Secondary School Certificate as well as Typing Speed of 30 w.p.m. and according to him, the candidate can be given relaxation to attain such speed within a period of two years. Learned Counsel has, thereafter, taken us through the Minutes of D.P.C. report to point out that only because the petitioner did not have the requisite speed, the petitioner was disqualified for appointment. Learned Counsel further submits that as the petitioner was holding all the requisite qualification, the act of the respondent no. 4 to refuse the appointment to the petitioner is arbitrary and has no sanction in law. Learned Counsel further points out that in terms of Rule 79 of the Rules, the qualification for appointment of L.D.C. cum Librarian would be the qualification as provided for similar post in

Government service. The learned Counsel has, thereafter, taken us through the recruitment rules to point out that the rules themselves contemplate that the said candidate should possess Higher Secondary School Certificate and Typing certificate of 30 w.p.m. The learned Counsel further points out that the petitioner was holding both the qualifications and as such, the impugned order directing direct recruitment of the respondent no. 5 cannot be sustained and deserves to be quashed and set aside. Learned Counsel, thereafter, points out that the petition be allowed and the appointment of the respondent no. 5 be quashed and set aside.

6. On the other hand, the Additional Government Advocate has pointed out that as per the circular of November, 2007, the Recruitment Rules of 2006 were made applicable to the Teachers in Government School and as such, according to her, the qualification for being appointed as L.D.C. cum Librarian in terms of the said Rules is that he should possess the Higher Secondary School Certificate as well as Computer Certificate. Learned Counsel further points out that the petitioner did not hold the said qualification and as such, the question of appointing the petitioner to the post of L.D.C. cum Librarian is not at all justified.

7. Shri Pangam, learned Counsel for the respondent no. 5 has pointed out that the respondent no. 5 has been duly appointed in terms of the Recruitment Rules after satisfying all the qualification and as such, the question of interfering with the appointment of the respondent no. 5 is totally unjustified. Learned Counsel has, thereafter, taken us through the Recruitment Rules as well as Rule 79 to point out that the petitioner did not have the requisite qualification to be appointed as L.D.C. cum Librarian. Learned Counsel has, thereafter, taken us through the affidavit filed by the School to point out that the duties which the L.D.C. cum Librarian has to perform, are mentioned in the Sur-rejoinder of the respondent no. 4 School. Learned Counsel further points out that the responsibilities of the L.D.C. cum Librarian are clearly defined therein which, *inter alia*, includes typing examination papers as well as being Assistant to the examination, result analysis and management correspondence and also to write minutes of the interview which, according to him, could not be performed by the petitioner considering the disqualification. The learned Counsel pointed out that on reading the provisions of Rule 79 of the Rules, it appears that the L.D.C. cum Librarian is not a promotional post from a Peon and as such, according to him, the contention of the petitioner that it is a promotional post is not justified. The

learned Counsel has also pointed out that once the petitioner submitted himself to the interview before the D.P.C., it is not open to him thereafter to challenge the same, merely because he was not appointed. The learned Counsel has relied upon the judgment of the Division Bench of this Court in Writ Petition No. 59/2014 dated 10/04/2014. The learned Counsel has also brought to our notice the observations of the judgment dated 21/09/2010 in Writ Petition No. 187/2003 to, *inter alia*, point out that the post of Peon is not a promotional post. The learned Counsel as such submits that the petition be rejected.

8. Mr. Naik, learned Counsel appearing for the respondents No. 3 and 4 has pointed out that the petitioner has been duly considered for the said post and as such, the question of now contending that the D.P.C. has not performed its duties in accordance with the Recruitment Rules is totally unjustified.

9. We have given a thoughtful consideration to the rival contentions. With the assistance of the learned Counsel for the parties, we have also gone through the record. Without going minutely into all the rival contentions raised by the learned Counsel appearing for the petitioner and the respondents, the main grievance of the petitioner appears to be that the petitioner had the requisite qualification to be promoted as L.D.C. cum

Librarian as according to him, the requisite qualification for the post was a Higher Secondary School Certificate and a Typing Certificate of more than 30 w.p.m. The grievance of the petitioner is that even though he might not have had the speed of 30 w.p.m. when the test was conducted, the relaxation as provided in the Recruitment Rules of 1987 to attain such speed within two years, was not given to the petitioner. In this background, we shall now examine the qualification for the post of L.D.C. cum Librarian as provided in the Recruitment Rules, 1987. The Recruitment Rules of 1987, *inter alia*, provide that L.D.C. cum Librarian has an upper age limit of 30 years, besides, he should have the qualification of Higher Secondary School Certificate and Typing speed of 30 w.p.m. which he may acquire within two years of the appointment, if not already acquired at the time of his appointment. The fact that the petitioner had qualification of Higher Secondary School Certificate is not in dispute. The only contention raised by Shri Thali, learned Counsel for the petitioner is that the relaxation to attain the speed of 30 w.p.m. within a period of two years was not given to the petitioner. On perusal of the minutes of D.P.C. held on 30/06/2008, we find remark no. 2, which reads thus :

"2. After having a Typing speed test of Krishna B. Naik, candidate for promotion by the expert in the

field at present his typing speed is found less than 10 w.p.m. He committed over 14 mistakes. (Report of the expert enclosed)".

10. The above remarks disclose that the D.P.C. found that besides the petitioner not having the requisite speed of 30 w.p.m., he had committed 14 mistakes in the typing examination. On perusal of the Typing test papers attached to the said minutes, we find that in a passage of about 17 lines, the petitioner had committed 14 mistakes. The relaxation as provided in the said Recruitment Rules is only to attain the speed of 30 w.p.m. Though it is stated that the speed of the petitioner was hardly less than 10 w.p.m., there was no relaxation to be given to the petitioner in terms of the Rules to improve upon his typing abilities. In the present case, the petitioner was found not to be suitable for the post of L.D.C. cum Librarian, besides not having the said speed of 30 w.p.m. at the relevant time. He had committed 14 mistakes in a passage of hardly 17 lines. Taking note of the duties, liable to be assigned to the post as enumerated by the respondent no. 4 School and not disputed by the petitioner, we find that as the petitioner also had to type examination papers as well as the minutes of the interviews, etc. which naturally involve typing work, it would not be appropriate to exercise our jurisdiction under Article 226 of the Constitution of

India in favour of the petitioner as he is not suitable for such post. Apart from that as rightly pointed out by the learned Counsel for the respondents the selection of the respondent no. 5 in the present case was in the year 2008 and in the meanwhile, the Recruitment Rules of 2006 were already in place. Taking note of the said Rules of the year 2007, the qualification for such post in the Recruitment Rules of 2007 are not at all satisfied by the petitioner.

11. In such circumstances, considering the functions expected of a L.D.C. cum Librarian, the petitioner is not suitable for such post and as such, we find that there is no case made out by the petitioner for an interference with the orders impugned in the present Writ Petition. As such, the question of going into the contention whether the post of L.D.C. cum Librarian is promotional or not, is not at all necessary in the facts and circumstances of the case.

12. For the aforesaid reasons, we find that no case is made out for interference. As a result, the petition stands rejected, with no order as to costs. Rule stands discharged.

K. L. WADANE, J.

F. M. REIS, J.

SMA