

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.28 OF 2015**

Shri Yamanappa Ramachandrappa Belagal,
S/o. Ramachandrappa Belagal,
major of age, r/o. G.I. 'A' Block,
Calaso Arcade, Desterro,
Vasco-da-Gama, Goa – 403802.

.... Petitioner

V/s

1. Union of India,
Through Secretary, Ministry of Shipping,
Transport Bhavan, 1, Parliament Street,
New Delhi-110001.
2. Mormugao Port Trust,
Through its Chairman,
having its office at Headland-Sada,
Mormugao, Vasco-da-Gama,
Goa – 403804.
3. Shri Vipin R. Menoth,
major of age, Traffic Manager,
Mormugao Port Trust, Headland Sada,
Mormugao, Vasco-da-Gama,
Goa – 403 804.

.... Respondents

Mr. E.O. Mendes and Ms. Gina Almeida, Advocates for the Petitioner.
Mr. A. Amonkar, Assistant Solicitor General for Respondent No.1.
Mr. Y.V. Nadkarn and Ms. D. Shirgam, Advocates for Respondent No.2.

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

DATE : 20th JANUARY, 2016

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

Heard Mr. E. O. Mendes, the learned Counsel appearing for the

petitioner, Mr. A. Amonkar, the learned Assistant Solicitor General appearing for respondent no.1 and Mr. Y.V. Nadkanri, the learned Counsel appearing for respondent no.2.

2. The above Writ Petition, inter alia, seeks for a writ or direction to quash and set aside the appointment letter dated 18/12/2014 issued by the respondent no.1 and, thereafter, direct the respondents no.1 & 2 to remove candidate no.1 Dr. Kondaveeti Satyanarayana Rao and candidate no.3 Mr. Vipin R. Menoth as being ineligible for the post. Further direction has been sought to direct respondent no.1 & 2 to appoint petitioner as a Traffic Manager.

3. Briefly, the facts of the case are that the petitioner is appointed to the post of Senior Traffic Manager in Mormugao Port Trust in the year 2011 and in December, 2013 a vacancy arose to the post of Traffic Manager (HOD) at the Mormugao Port Trust. The Secretary, Government of India by letter dated 21/05/2014 invited applications from all eligible Officers of the Port Trust to fill up such vacancy. The respondent no.2 received three applications to the post of Traffic Manager at the Mormugao Port Trust. The three names were forwarded by the respondent no.2 on 20/06/2014 to the respondent no.1 for

consideration to the post of Traffic Manager. A letter of appointment came to be issued on 18/12/2014 to the respondent no.3 on the basis of which the respondent no.3 is functioning as Traffic Manager of the Mormugao Port Trust.

4. Being aggrieved by the said order of appointment, the petitioners filed the above petition for the reliefs as stated herein above.

5. The respondents filed the relevant compilation of the documents in respect of the subject selection process. Thereafter, the petitioner filed a rejoinder and contended that the minutes of the Selection Committee indicate that the respondent no.3 has been shown to have experience in the feeder grade as three years four months and, that itself is the first error, as he did not have the requisite experience in the grade as required. It is further contended that the respondent no.3 was credited with grading for a period outside the required period and that itself would show that the respondent no.3 did not have the requisite experience as he was not in the feeder category for the period from 1/04/2007 to 30/09/2007 or 1/10/2007 to 31/03/2008 and, therefore, the grading of the said respondent could not have been taken for consideration.

6. Mr. E. O. Mendes, the learned Counsel appearing for the petitioner has pointed out that the applications were invited for the post of Traffic Manager on 21/05/2014 from all eligible Officers of the Port Trust to fill up such vacancy. The learned Counsel further pointed out that the selection of such post had to be carried out in terms of the Recruitment Rules framed by the respondents no.1 & 2 and that the petitioner was eligible to the said post by absorption through composite method. The learned Counsel has thereafter taken us through the Recruitment Rules to point out that the eligible candidate had to have an experience of three years regular service in the grade in the Traffic Department of the Major Port Trust as officers holding the posts in the scale of pay of Rs.16000-20800 (revised 32900-58000). The learned Counsel further pointed out that candidate no.1 Dr. Kondaveeti Satyanarayan Rao was not eligible to be considered for the post as he did not have the requisite eligibility criteria. The learned Counsel further pointed out that the respondent no.3 also does not have the required number of years of service, i.e. three years of service in the said grade in the Traffic Department of the Major Port Trust. It is further submitted that respondent no.3 was on special leave from Cochin Port Trust from 12/04/2010 to 31/01/2012 and was at the said time working at the private Port and he joined back only in February, 2012 in the

grade of Rs.22900-58000 and, therefore, his total number of years of service in the said grade is only 2 years 4 months, which disqualifies him from being appointed. The learned Counsel further submits that the eligibility criteria is that such candidates have to have a minimum of three years experience in the grade to be eligible for the appointment of such post. The learned Counsel further pointed out that the period when the respondent no.3 was on special leave cannot be treated as regular service and, as such, the respondents were not justified to appoint the respondent no.3. The learned Counsel, however, does not dispute the gradings of the candidates by the selection process and the only grievance is that the respondent no.3 was not eligible to be considered for the said post as he did not have the requisite eligibility criteria of having three years experience in the feeder post. The learned Counsel, as such, pointed out that the appointment of the respondent no.3 be accordingly quashed and set aside.

7. On the other hand, Mr. Y.V. Nadkarni, the learned Counsel appearing for the respondent no.2 has submitted that it is now well settled that when a person is on special leave such period cannot in any way affect the right of the candidate for their promotional avenues. The learned Counsel further pointed out that the rules contemplate that the

candidate has to have *three years of regular service* in the grade in Traffic Department of the Major Port Trust and not *experience* as contended by the petitioner. The learned Counsel further pointed out that the respondent no.3 met the eligibility criteria as he was working in such department for a period of more than three years and, as such, the respondents no.1 & 2 were justified to appoint the respondent no.3 to such post. The learned Counsel further points out that this has clearly been noted in the minutes of the respondents. The learned Counsel has thereafter taken us through the material on record to point that the contention of the petitioner that the respondent no.3 is not eligible deserves to be rejected. In support of his submissions, the learned Counsel has relied upon the judgment of the Apex Court reported in *(2000) 3 SCC 562* in the case of *Union of India & Ors. V/s. K.B. Rajoria*.

8. We have considered the submissions of the learned Counsel and we have also gone through the records. On perusal of the statement addressed by the Chairman to the Secretary of the Government of India dated 20/06/2014 indicating the relevant details relating to the qualifications and experience as furnished by the three applicants, it can inter alia, be observed that as far as the petitioner is concerned, it reads

thus:

(ii) Shri Y.R. Balagali, Sr. Dy. Traffic Manager, Mormugao Port Trust is having three years and four months regular service in the scale of pay of Rs.16000-20800 (Pre-revised) (Revised Rs.32900-58000). The veracity of the University Certificates & the recognition of the degree obtained by Shri Belagal has been verified.

and as far as the respondent no.3 is concerned it reads thus:

(iii) Shri Vipin R. Menoth, Sr. Dy. Traffic Manager, Cochin Port Trust is having three years and three months regular service in the scale of pay of Rs.16000-20800 (Pre-revised) (Revised Rs.32900-58000). Cochin Port trust was requested vide our letter No.GAD/PC-A/151/2014/622 dt. 13.06.2014 and by fax on 13.06.2014 to forward the original application alongwith other documents and also to verify the veracity of the University Certificates and recognition of the degree obtained by Shri Menoth. Till date Cochin Port Trust has not forwarded the same.

On perusal of the chart produced on record with regard to the experience of the respondent no.3, it reads thus:

- 1) Worked as Superintendent in National Cooperative Dairy Federation of India from 18.06.1990 to 08.05.1994 in the scale of pay of Rs.2200 onwards.
- 2) Worked as Inspector in Central Excise & Customs, Ministry of Finance, Govt. of India from 09.05.1994 to 19.07.1996 in the scale of pay of Rs.5500 onwards.
- 3) Worked as Senior Deputy Chief Accountant-I in Cochin Port Trust from 26.07.1996 to 15.04.1999 in the scale of pay of Rs.4350-7500.
- 4) Worked as Estate Manager in Cochin Port

Trust from 16.04.1999 to 31.07.2001 in the scale of pay of Rs.4350-7500.

5) Worked as Dy. Secretary in Cochin Port Trust from 01.08.2001 to 15.10.2006 in the scale of pay of Rs.10750-16750.

6) Worked as Additional Traffic Manager in Cochin Port Trust from 16.10.2006 to 15.02.2011 in the scale of pay of Rs.13000-18250.

7) Worked as Vice President-Business Development in Essar Ports Ltd. (On Special Leave from Cochin Port Trust) from 12.04.2010 to 31.01.2012.

8) Presently working as Sr. Dy. Traffic Manager in Cochin Port Trust from 16.02.2011 to till date in the scale of pay of Rs.32900-58000.

9. The main contention of the petitioner is that the petitioner is stated to have worked as a Senior Deputy Traffic Manager from 4/02/2011 till date in the pay scale of Rs.32900-58000 and, as such, has completed three years, four months and 6 days, whereas, the respondent no.3 is stated to be working at Cochin Port Trust as a Senior Deputy Traffic Manager from 16/02/2011 till date in the pay scale of Rs.32900-58000 and has completed three years, three months and 2 days, and further he was on special leave from 12/04/2010 to 31/01/2012. The learned Counsel further pointed out that the period when he was on special leave cannot be counted as regular service in the said grade and, as such, he was not eligible to the subject post.

10. Mr. E. O. Mendes, the learned Counsel appearing for the

petitioner relies upon clause 22 of the Cochin Port Employees (Leave) Regulations, 1978 to point out that an employee who is on leave shall not return to duty before the expiry of the period of leave granted to him unless he is permitted to do so by the authority which granted him the leave. The learned Counsel further pointed out that no such authority is produced and, as such, such period cannot be considered as regular service. But, however, it is not disputed that the respondent no.3 was on special leave. The respondent no.3 in fact became eligible for such leave in view of the Cochin Port Employees (Leave) Amendment Regulations, 2010. Clause 28(A) introduced by such amendment reads thus:

28(A) – Twenty-four months of special leave without pay where the employee who has completed 5 years continuous service for taking outside employment abroad or with non-competing organisations within the country in one spell or different spells subject to the following terms and conditions and any other conditions laid down in other service regulations:

(1) Assignment will be permitted for a maximum period of two years in one or different spells in entire service. If he/she fails to return to duty at the end of the period of assignment, he/she will be deemed to have resigned from service and the post will be filled up on a regular basis.

(2) The employee must have minimum 3 years of service left on his return for assignment period of 1 year and 5 years left after return of assignment period of 2 years.

(3) An employee may apply for and negotiate assignment but acceptance of assignment should be made with permission of the Chairman and it would be considered at that point whether the employee could be spared or not,

(4) The period of assignment would be treated as special leave on loss of pay.

(5) Pension contribution and leave salary contribution during the period of outside employment will have to be remitted by the outside employer or employee himself.

(6) Taking up of such employment by the employee outside the ports should not result in 'conflict of interest' not only with Cochin Port Trust but also with other major Port Trusts.

(7) The employee may avail medical facilities for his/her spouse and dependent family members during the period of foreign assignment provided he/she fulfills his obligations such as monthly remittance of contribution towards pensionary benefits, minimum subscription to Provident Fund, repayment of advances, rent for occupied quarters, including water charges, electricity charges, full liability for residential telephones, etc. However, the liability of providing medical treatment and insurance cover to the employee during the period of assignment will rest with the foreign employer.

(8) The employee may be allowed to retain port quarters during the period of foreign assignment on payment of rent at 30% of basic pay in Cochin Port Trust.

(9) Work will have to be managed by local arrangements and the Chairman may be empowered to permit, employees of Cochin Port

Trust to take up assignments on the above terms and conditions.

(10) Employee will be allowed to retain lien and seniority.

The said clauses clearly reveal that the person who has availed of such special leave would retain a lien and seniority. The minutes of the Selection Committee for the subject post have found that the applicants at serial nos.1 to 3 fulfill all the eligibility criteria for the post. The Committee was also of the view that the period of Special Leave can be counted to be regular service for meeting the eligibility criteria by the respondent no.3 and on the basis of the gradings. the respondent no.3 came to be selected. The only aspect as such to be examined is whether the period of special leave can be considered to be regular service. In this connection, the Apex Court in the said judgment in the case of **K.B. Rajoria** (supra) has observed at para 9,11,12,20 & 21 thus:

9. Third, the High Court erred in construing the words “regular service in the grade” as actual physical service. If that were so, then an ad hoc appointee who actually serves in the post could also claim to be qualified to be considered for the post of Director General. The High Court itself held that “ad hoc service rendered by any of the parties would not count towards eligibility”.

11. The word “regular” therefore does not mean “actual” and the first question the High Court should have considered was whether the appointment of Krishnamoorti was regular and in accordance with the

Rules or was it irregular in the sense that it was contrary to any principle of law.

12. The decision which is somewhat apposite is the case of K. Madhavan V. Union of India 1987 (4) SCC 566 where the eligibility requirement was eight years in the grade “on a regular basis”. In that case it was held :

“In our view, therefore, the expression 'on a regular basis' would mean the appointment to the post on a regular basis in contradistinction to appointment on ad hoc or stopgap or purely temporary basis.”

20. In the context of this case, the High Court erred in equating the words “regular service” with “actual experience” relying on the decision in Union of India and others V. M. Bhaskar and Others 1996 (4) SCC 416. In that case the eligibility criteria expressly was of “completion of 2 years' *experience* in Grade II”. The case is therefore entirely distinguishable.

21. The notional promotion was given to Krishnamoorti to right the wrong that had been done to him by his supersession on 22nd February, 1995. If Krishnamoorti is denied the right to be considered for promotion to the post of Director General on the basis of such notional promotion, particularly when the relevant provisions so provide, it would result in perpetuating the wrong done to him. That is exactly what the High Court has done.

11. Taking note of the said observations and the words used in the subject recruitment rules as "*regular service*", the view taken by the Selection Committee to accept the application of the respondent no.3 cannot be faulted. Therefore, the contention of Mr. Meneses, the learned Counsel appearing for the petitioner that the respondent no.3

was not eligible to the subject post cannot be accepted.

12. Hence, we find no merit in the above petition which stands accordingly rejected.

K.L. WADANE, J.

F.M. REIS, J.

NH/-