

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 139 OF 2016**

Terence Savio Pango,
House No.105, Anuz,
Nuvem, Salcete Goa.

.... Petitioner

V e r s u s

1. State of Goa,
through the Chief Secretary,
having office at Secretariat,
Porvorim Goa.

2. Department of Printing and Stationery,
Government Printing Press,
Through its Director,
having office at Panaji Goa.

3. Raghoba Raj. R. Shetye,
Government Printing Press,
Machineman,
Panaji Goa.

4. Tiago Andrew D'Mello,
Government Printing Press,
Machineman,
Panaji Goa.

5. Shri Antonio J. Pereira,
Government Printing Press,
Machineman,
Panaji Goa.

.... Respondents

Mr. Chaitanya Prakash Padgaonkar, Advocate for the petitioner.

Mr. P. Faldessai, Addl. Government Advocate for the respondent nos.
1 and 2.

**Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.**

Date:- 14th July, 2016

ORAL JUDGMENT (Per F. M. Reis, J)

Heard Mr. C. Padgaonkar, learned counsel appearing for the petitioner and Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent nos. 1 and 2.

2. At the request of Mr. C. Padgaonkar, learned counsel appearing for the petitioner leave to amend to correct the typographical error in prayer clause (a) to read the respondent no.3 at page 17 as respondent no.5. Amendment to be carried out forthwith.

3. The above petition takes an exception to the order of promotion issued in favour of the respondent no.3 as well as to the respondent nos. 4 and 5 dated 11.09.2015 to the post of Machineman on Ad-hoc basis in the Department of Printing and Stationery. It is the case of the petitioner that pursuant to the Advertisement in the year 2011, the petitioner applied for the post of Helper in the Department of Printing and Stationery. A tentative seniority list was

prepared on 16.02.2012 and ultimately, the final seniority list of the Helpers was drawn on 05.03.2012. It is further the contention of the petitioner that his name was figured at serial no.8 above the respondent no.3 who was at serial no.12. The period of probation was completed satisfactory on 23.06.2014 and as such, the petitioner was regularised into the service. It is further the contention of the petitioner that the post occupied by the petitioner was a feeder post for promotion as to the post of Binder and Machineman. The petitioner was promoted on 28.08.2015 to the post of Binder on regular basis but however, the order according to the petitioner was served on 07.09.2015 and thereafter on 09.09.2015, the petitioner immediately communicated and declined the offer of promotion to the post of Binder. It is further the contention of the petitioner that on 12.11.2015 the petitioner was thereafter informed that on refusal of the promotion to the post of Binder, he will not be considered for promotion for a period of one year or till the vacancy arises as per Rule in force. It is further the contention of the petitioner that as on 31.08.2015, the four posts of Machineman were lying vacant in the printing section due to which the work remained pending and consequently, as there was no response for such post on direct

recruitment, it was proposed that to avoid lapsing of the three posts of the Machineman, the same could be filled up by promoting the Helpers on Ad-hoc basis. According to the petitioner, the Department Promotion Committee was convened on 04.09.2015 to consider the Helpers for promotion on Ad-hoc basis to the post of Machineman. The seniority list of the Helpers which was prepared by the concerned Department was relied upon by the DPC for consideration for such Ad-hoc promotion but however, the name of the petitioner did not appear in the list of Helpers to be considered for promotion. Consequently, according to the petitioner by order dated 11.09.2015, the three persons i.e. respondent nos. 3, 4 and 5 were promoted on Ad hoc basis though the petitioner was otherwise entitled being senior to the respondent no.3 was not considered as his name was not submitted to the DPC. It is further the contention of the petitioner that he learnt that his name was not submitted as he has declined promotion as abandoned on 09.09.2015. Being aggrieved by the said decision and the Ad-hoc promotion of the respondent nos. 3, 4 and 5, the petitioner has filed the above petition for the aforesaid reasons.

4. The learned counsel appearing for the petitioner has

pointed out that merely because the petitioner has declined the promotion to the post of Binder, it would not by itself deprive the petitioner of his promotion as a Machineman. The learned counsel has brought to our notice the notings in the file at the time when the petitioner has refused to accept the promotion to the post of Binder by the concerned Department which records that “if any post is fallen vacant in the post of Machineman, we can promote him in his other line of upliftment and when such vacancy arises.” But however, the petitioner could not be considered for promotion for a period of one year for the post of Binder. The learned counsel further pointed out that this itself suggest that the petitioner had to be considered for promotion as a Machineman and as such, non consideration by itself would be a discrimination in terms of Article 14 of the Constitution of India. The learned counsel further submits that as such the impugned recommendation of the DPC be quashed and set aside.

5. On the other hand, Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondent nos. 1 and 2 has pointed out that the whole exercise of the petitioner is fictitious as according to him the petitioner was served with a notice of his

promotion on 31.08.2015 though the Department records that he has received such notice on 07.09.2015. The learned Addl. Government Advocate has further pointed out that the petitioner was very well aware that the DPC was likely to promote the Helpers on Ad-hoc basis to the post of Machineman and as he has accepted the promotion on 31.08.2015, the question of considering the petitioner for the post of Machineman would not arise. The learned counsel further pointed out that as the petitioner was already promoted on regular basis as a Binder there was no question of considering the petitioner for the post of Machineman by the subject DPC. The learned counsel as such points out that on this ground alone the petition deserves to be rejected.

6. The learned counsel appearing for the petitioner in reply to the said contention has pointed out that the petitioner was on leave from 31.08.2015 to 06.09.2015 as can be reflected from the leave application which has been granted and found in the file. The learned counsel further pointed out that the petitioner was absent for duty from 31.08.2015, and as such the question of accepting the promotion on such date would not at all arise.

7. We have considered the submissions of the learned counsel and we have also gone through the records. Rule 4(i) of the Relevant Rules reads thus :

“4. Conditions for making ad hoc appointments.- In such exceptional circumstances, ad hoc appointments may be resorted to subject to the following conditions :-

(i) The total period for which the appointment/promotion may be made on an ad hoc basis, will be limited to one year only. The practice of giving a break periodically and appointing the same person on ad hoc basis may not be permitted. In case there are compulsions for extending any ad hoc appointment/promotion beyond one year, the approval of the Department of Personnel and Training may be sought for at least two months in advance before the expiry of the one year period. If the approval of the Department of Personnel and Training to the continuance of the ad hoc arrangements beyond one year is not received before the expiry of the one year period, the ad hoc appointment/promotion shall automatically cease on the expiry of the one -year term.”

8. It is not disputed as such that even for promotion on Ad-hoc basis, the names have to be submitted for consideration by the DPC on the basis of seniority. In the present case, considering the petitioner was senior to the respondent no.3 the name of the petitioner had to be considered by the DPC while making such recommendation. The contention of the learned Addl. Government Advocate that the petitioner was intimated about his promotion on 31.08.2015 cannot be accepted as the records brought for our inspection clearly reveal that the petitioner was on leave from 31.08.2015 to 06.09.2015. This aspect has not been disputed by the respondents. In such circumstances, the contention of the petitioner that he received the order of promotion on 07.09.2015 would have to be accepted and immediately thereafter on 09.09.2015 the petitioner declined to accept such promotion. Merely because the petitioner had declined the promotion to the post of Binder would not by itself disentitle the petitioner to be considered for promotion as a Machineman. On bare perusal of the Rule, it recognizes that not considering for promotion for a period of one year would be applicable only to the post of Binder and cannot be extended to the post of Machineman. Even the concerned Department in the notings

had clearly stated that the petitioner had to be considered for promotion to the post of Machineman. Considering that the name of the petitioner had to be considered by the DPC while promoting the Helpers to the post of Machineman on Ad-hoc basis, we find that the failure to do so would be a discrimination to the petitioner in terms of Article 14 of the Constitution of the India. In such circumstances, the decision based on the subject recommendation of DPC stands vitiated and as such, a fresh DPC would have to be constituted to examine the subject promotion afresh in accordance with law.

9. At this stage, while examining what relief could be granted in the above petition, considering that the respondent nos. 3, 4 and 5 are working on Ad-hoc basis on the promotional post, the learned counsel appearing for the petitioner has pointed out that the petitioner become eligible for regular promotion in the month of August, 2016 as he meets the minimum requirements of five years on the post of Helper which is a feeder post. As the petitioner become eligible in the month of August, 2016, we find it appropriate instead of displacing the respondent nos. 3, 4 and 5 who are working on Ad-hoc basis to direct the respondents to consider the petitioner for the

regular promotion along with other eligible candidates in accordance with law. In any case, the seniority of the petitioner would not be affected in such exercise. The respondents are directed to constitute a DPC and carry out the exercise of promotion as expeditiously as possible in any event within three months from the date the petitioner becomes eligible for promotion to the regular post. Rule is made absolute in the above terms. The petition stands disposed of accordingly.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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