

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION (MAIN) NO. 4 OF 2015

1. Riyaz Shah
major of age, r/o. H. No. 65,
Naga Masjid, Curti,
Ponda, Goa.
2. Shivappa G. Hadpal,
major of age, r/o. H.No.
14/18, Near Shiv Mandir
Khadpaband, Ponda, Goa.
3. Satendra S. Saroj,
major of age, r/o. H. No.
W-9/17/53, Behind Chapel,
Khadpaband, Ponda, Goa.
4. Santosh S. Naik,
major of age, r/o. H. No.
1247/11, Near vithoba
Temple, Upper Bazar,
Ponda, Goa.
5. Govind M. Bhoi,
major of age, r/o. H. No.
C-5, Electricity Department,
Haveli, Curti, Ponda, Goa.
6. Vaibhav R. Naik,
major of age, r/o. H. No.
333, Amshewada,
Kuncoliem, Mardol, Goa.
7. Santosh P. Kakodkar
major of age, r/o. C/o
Nisha Narayan Gawas, H. No.
72/10, Tamsurli, Khandola,
New Wada, Marcel, Goa.
8. Hanumant S. Kakodkar,
major of age, r/o. C/o.
Mahendra K. Kundaikar,
H.No. C-18, Nagalli,
Taleigao, Panaji, Goa.
9. Mahalaxmi Nugula,

major of age, r/o. Near
Nugula Ankaiah,
Civil Adm. Office, 145/3,
MES Qtrs., 6TTR, 2 STC,
Ponda, Goa.

10. Sharad E. Kerkar,
major of age, r/o. H. NO.
48, Durgawadi, Taleigao,
Goa.
11. Sarvesh Sawant,
major of age,, r/o. Near
Gram Panchayat, Desai Wada,
Kundaim, Ponda, Goa.
12. Dnyaneshwary Talpi,
major of age, r/o. H. No.
51/4-A, Behind Shreeji
Darshan Bldg., Zxingdimal,
Curti, Ponda, Goa.
13. Rupesh M. Naik,
major of age, r/o. A-22,
Electricity Department,
Haveli, Curti, Ponda, Goa.
14. Ganesh R. Satarkar,
major of age, r/o. C/o
Gurudas G. Satarkar, Near
Damodar Temple, H. No.
EW-5/11, Gogal Hsg. Board,
Margao, Goa.
15. Satish V. Malshekar,
major of age, r/o c/o. Mr. C. R. Kalagutkar,
Yashodan Hsg. Society,
Neard HDFC Bank, Aquem,
Margao, Goa.
16. Rajesh D. Naik,
major of age, r/o. H. No.
W/6/188/4, Santa Cruz,
Ponda, Goa.
17. Sachin P. Naik,
major of age, r/o.
Ganapati Waddy, Khandola,
Marcel, Goa.

18. Gangadhar G. Dessai,
major of age, r/o Hanuman
Nagar, Tisk, Usgao, Goa.
19. Gopal G. Gaude,
major of age, r/o. H. No. 36,
Mauzo Wada, Kundaim,
Ponda, Goa.
20. Ulhas T. Gaude,
major of age,, r/o. C/o.
Datta R. Zalmi, H. No.
18, Bhagwada, Piligao,
Bicholim, Goa.
21. Sadanand Polji,
major of age, r/o. H. No. 9,
Bhaiwada, Korgao,
Pernem, Goa.
22. Suryakant D. Kavthankar,
major of age, r/o. H. no.
496, Varpal, Mayem,
Bicholim, Goa.
23. Ulhas P. Naik,
major of age, r/o.
Deolwada, Sancordem, Goa.
24. Bhoiru N. Zore,
major of age, r/o. H. No. 37,
Mhalshi, Curti,
Ponda, Goa,
25. Sanil R. Naik,
major of age, r/o. C/o.
Sajjan B. Naik, H. No.
503, Near Cine Vishant,
Behind Sundew Apts.,
Aquem, Malbhat, Margao,
Goa.
26. Mukund D. Naik,
major of age, r/o. H. No.
600, Dattatrey Mandap,
Durbhat, Goa.
27. Sitaram R. Naik,

major of age, r/o. C/o.
Sitabai S. Gaonkar, Near Poultry Farm,
Codar, Ponda, Goa,.

28. Manisha M. Naik,
major of age, r/o. H. No.
20/52, Behind Almeida High School,
Khadpaband,
Ponda Goa.
29. Santosh N. Naik,
major of age, r/o. H. No.
257/2, Shankre,
Khandepar, Ponda, Goa.
30. Shankar S. Naik,
major of age, r/o c/o
Savan K. Naik, H. No. 71,
Dadem, Sancordem, Goa.
31. Satyavijay M. Kavithana,
major of age, r/o. H. No.
28, Tikazan, Mayem,
Bicholim, Goa.
32. Kishor H. Harmalkar,
major of age, r/o. H. No.
42, Madhala Maaz,
Mandrem, Pernem, Goa.
33. Vishnu C. Mandrekar,
major of age, r/o. H. No.
35, Vathadev, Sarvan, Goa.
34. Arvind Y. Falkar
major of age, r/o. H. No.
266, Totiwada, Pilgaon,
Bicholim, Goa.
35. Rajesh P. Pagui,
major of age, r/o. H. No. 71A,
Palolem, Nagarcem,
Canacona, Goa.
36. Paresh M. Tari,
major of age,, r/o. H. No.
28, Bvandiwada, Bander,
Ponda, Goa.

37. Nikhil R, Naik,
major of age, r/o. H. No.
246/1, Nallakonis,
Khandepar, Ponda, Goa.
38. Bipin Naik,
major of age, r/o New
Vaddem, Vasco, Goa.
39. Deepak Y. Priolkar,
major of age, r/o H. No.
345, Kelbai, Curti,
Ponda, Goa.
40. Vishnu B. Gaude,
major of age, r/o.
Honsowada, Madkai, Ponda,
Goa.
41. Sushant K. Opkar,
major of age,
r/o c/o Sham Datta Ketkikar,
H. No. 59, Betki, Manmolem,
Marcel, Goa.
42. Pradeep H. Kurtikar,
major of age, r/o Kelbai,
Curti, Ponda, Goa,.
43. Nilesh A. Gaude,
major of age, r/o c/o
Dynaneshwar V. Zalmi, H.
No. 876, Manaswada,
Kundaim, Goa.
44. Dinesh D. Gaude,
major of age, r/o H. No. 10,
Prabhu Nagar, Malshi,
Curti, Ponda, Goa.
45. Siddesh S. Gaude,
major of age, r/o H. No.
571, Nandan Wada, Kerim,
Khandepar, Ponda, Goa.
46. Sanjay V. Kurtikar,
major of age,. R/o Kelbai,
Curti, Ponda, Goa.

47. Anand Y. Gaude,
major of age, r/o c/o
Laximan N. Gaonkar,
Modlewada, Kotlas,
Sanguem, Goa.
48. Ritesh R. Kurtikar,
major of age, r/o c/o
Kapil Tukaram Palkar, H.
No. 532, Near Government
Primary School, Near Pale
Siridao, Goa.
49. Laxmikant A. Gaude,
major of age,, r/o c/o
Vithoba Narayan Gadi, H. No.
11/2, Bholwada,
Karapur, Sanquelim, Goa.
50. Sainath D. Kavlekar,
major of age,, r/o H. No,
35, Mathawada, Pilgaon,
Bicholim, Goa.
51. Sonu Y. Gawde,
major of age, r/o H. No.
136, Deolwada, Naroa,
Bicholim, Goa.
52. Rajesh D. Bangar,
major of age, r/o. H. No.
41/15, Near Bagayatdar
Credit Society,
Panditwada, Ponda, Goa.
53. Pradeep D. Gaude,
major of age, r/o. Bhagwada, Gauthan,
Khandepar, Ponda, Goa.
54. Shreya S. Naik,
major of age,r/o c/o
Amit Chandrakant Naik, H. No.
260, Near hanuman Temple,
Agapur, Durbhat,
Ponda, Goa.
55. Somnath S. Bethodkar,
major of age, r/o. H. No. 540,

Shilwada, Savoi Verem,
Ponda, Goa.

56. Damodar V. Naik,
major of age,, r/o. H. No. 320, Gauthan,
Near Marico Industry,
Khandepar, Ponda, Goa.
57. Omkar V. Naik,
major of age, r/o Near
10, Hospital, Santa Cruz Tisk,
Ponda, Goa.
58. Santosh M. Gaonkar,
major of age, r/o c/o
Shablo Govind Gawade, H. No.
8, Tale-Pale, Cothambi,
Bicholim, Goa,.
59. Sandeep V. Gaonkar,
major of age, r/o c/o
Ganesh D. Ghadi, H. No.
624, Ghadiwada (Surla),
Bicholim, Goa.
60. Yagateela N. Rao,
major of age, r/o. H. No.
23/9, Near Mahalaxmi Steel, Zingdimol
Curti, Ponda, Goa.
61. Satish R. Gaude,
major of age, r/o H. No.
115/2, Bagwada, Gauthan,
Khandepar, Ponda, Goa.
62. Nilesh V. Parab,
major of age, r/o H. No.
790, Gaunkarwada, Mayem,
Bicholim, Goa.
63. Dina R. Gaude,
major of age, r/o c/o
Bhola Uttam Gaude, H. No.
358, Kharyebhat,
Banastarim, Goa.
64. Subhash S. Naik,
major of age, r/o H. No. 68, Nagzar, Curti,
Bicholim, Goa.

65. Mahesh A. Naik,
major of age, r/o c/o
Subhash S. Shiroadkar,
h. No. HIG-33, Housing Board,
Gogal, Margao, Goa.
66. Dashrath B. Gaude,
major of age, r/o Gothan,
Veling, Mardol, Goa.
67. Pravin S. Naik,
major of age, r/o H. No.
756, Parampal, Madkai,
Ponda, Goa.
68. Rukshali R. Naik,
major of age, r/o c/o
Pradeep V. Naik, 425,
panas, Sancordem, Tisk,
Goa.
69. Ruksha S. Naik,
major of age, r/o H. No.
135, Yeshwant Nagar,
Ponda, Goa,
70. Nishant P. Naik,
major of age, r/o Mahal
Wada, Madkaim, Ponda, Goa.
71. Harsha T. Naik,
major of age, r/o H. No.
142, Khadpaband, Ponda,
Goa.
72. Sameera G. Nadaf,
major of age, r/o
Bablyakhali, Nagzar,
Curti, Ponda, Goa.
73. Omkar Vinayak Naik,
major of age, r/o c/o
Rupam Manjrekar, H. No.
75, Near laxmi Narayan Temple,
Headland Sada,
Vasco da Gama, Goa.

..... Petitioners

Versus

1. STATE OF GOA
through the chief Secretary,
Secretariat, Porvorim, Goa.
 2. Shri Kewal K. Sharma,
major of age,
IAS, Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa.
 3. Directorate of Animal Husbandry &
Veterinary Services, through its
Director, Government of Goa,
Pashusamvarshan Bhavan,
Patto, Panaji, Goa.
 4. Dr. Benjain Braganza,
r/o 1578, B B Borkar Road,
Alto Porvorim,
Goa 403 521.
 5. Mr. Santosh V. Dessai,
Director, Directorate of
Animal Husbandry & Veterinary Services,
Pashusamvardhan Bhavan,
Patto, Panaji, Goa.
- Respondents
Contemnors

Mr. Nitin Sardessai, Senior Advocate with Mr. Deep Shirodkar, Advocate for the Petitioners.

Mr. P. Dangui, Addl. Government Advocate for the Respondents/Contemnors.

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

Date : **20th January, 2016**

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

Heard Shri Nitin Sardessai, learned Senior Advocate appearing for the Petitioners and Shri P. Dangui, learned Addl. Government Advocate appearing for

the Respondents.

2. The above Contempt Petition came to be filed by the Petitioners on the ground that despite of the directions issued by this Court in Writ Petition nos. 78 and 79 of 2013, inter alia, holding that the appointments of the Petitioners are not interfered with and shall continue, the services of the Petitioners have not been availed of by the Respondents. To clear any cloud to the said directions issued by this Court, the Petitioners preferred a Special Leave Petition before the Apex Court being Special Leave to Appeal no. 21961 of 2014, which came to be disposed of by an Order dated 24.11.2014, inter alia, clarifying that the Petitioners were included to get the benefit of the appointments which are subject matter of the said Petition. After such Orders came to be passed, despite of request of the Petitioners to the Respondents to take the Petitioners in service, nothing in that direction was initiated by the Respondents which prompted the Petitioners to file the above Contempt Petition.

3. The Respondent no. 4 who is the Director of the Respondent no. 3, filed an affidavit, inter alia, contending that there was no willful disobedience of the directions issued by this Court. In the said Judgment dated 25.03.2014. It was however alleged that in view of the Circular issued by the Finance Department, the posts which were the subject matter of the Writ Petitions, which were created on 05.08.2011 and 11.10.2011, lapsed on 04.08.2013 and 10.10.2014 respectively.

4. Shri Nitin Sardesai, learned Senior Advocate appearing for the Petitioners has pointed out that the conduct of the Respondents in taking such

mischievous and illegal stand, would itself infer that there is willful disobedience of the directions issued by this Court. Learned Senior Advocate further submits that in fact the purported lapsing of the posts was much prior to the filing of the Writ Petitions and no contention with that regard was raised by the Respondents in the said Petition. Learned Senior Advocate further submits that once this Court has taken a view that the appointments issued to the Petitioners would continue, the question of contending that the posts had lapsed on the basis of Orders of the Finance Department, is totally baseless and without any legal foundation. Learned Senior Advocate further relied upon the Judgment of the Apex Court reported in **(2000) 3 S.C.C.699** in the case of **State of UP vs. Ram Swarup Saroj**, to contend that there can be no lapsing of a post when the matter is pending before the High Court. Learned Senior Advocate further pointed out that such stand taken by the Respondents is only an excuse and a pretext to frustrate the directions issued by this Court on 25.03.2014. Learned Senior Advocate has further pointed out that taking such baseless stand would itself justify this Court to take serious view as it appears that the Respondents are not willing to comply with the directions of this Court. Learned Senior Advocate further pointed out that the Respondents have also contended in their reply that no directions can be issued to in Contempt Petition. Learned Senior Advocate has relied upon the Judgment of the Apex Court reported in **(2013) 11 S.C.C. 618**, in the case of **Kshiti Goswami & Ors. vs. Subrata Kundu & Ors.**, in support of his submissions that such directions can be issued even in a Contempt Petition. Learned Senior Advocate as such pointed out that serious view be taken to the conduct of the Respondents and appropriate directions be issued to ensure that the directions issued by this Court in the said Judgment dated 25.03.2014, are immediately complied with.

5. On the other hand, the learned Addl. Government Advocate, appearing for the Respondents, submits that the Respondent no. 4 who was then holding the post of Director of Respondent no. 3, has now retired and that the office of the Respondent no. 3 is represented by its Director who is present in Court. Learned Addl. Government Advocate further submits that this Court cannot issue directions to comply with its Orders in a Contempt Petition and in support thereof, the learned Addl. Government Advocate has relied upon the Judgment of the Apex Court reported in **AIR 2008 SC 223** in the case of **Balakrishna Behera & anr. vs. Satya Prakash Dash**. Learned Addl. Government Advocate has pointed out that as such this Court cannot issue such directions in the Contempt Petition. Learned Addl. Government Advocate however submits that the Respondents are willing to comply with the directions of this Court in the Order dated 25.03.2014 but, the impediment which comes in the way of such appointment is the Circular issued by the Finance Department dated 07.03.2008 to the effect that the subject posts have lapsed. Learned Addl. Government Advocate further submits that the Respondents are not bent on delaying in complying with such directions but, however, according to him, as there is no decision taken by the Government to revive the posts, the Respondent no. 3 is not in a position to comply with such directions. Learned Addl. Government Advocate further pointed out that unless such revival of posts is acceded to by the concerned Government Department, the question of complying with the directions issued by this Court in the Judgment dated 25.03.2014, would not arise. Learned Addl. Government Advocate further points out that as the present incumbent in the post of the Director of Respondent no. 3 was not personally responsible for any stand or delay in complying with the directions

issued by this Court, the question of taking any serious action against the present Director would not arise. Learned Addl. Government Advocate, as such, pointed out that the Petition be accordingly rejected and atleast four months time be granted to comply with such directions.

6. We have given our thoughtful consideration to the rival contentions and we have also gone through the records. This Court cannot condone any mechanism on the part of the Respondents in circumventing or delaying in complying with the directions of this Court whilst disposing of the Writ Petitions filed by the Petitioners by Judgment dated 25.03.2014. The contention of the learned Addl. Government Advocate to the effect that no directions can be issued in a Contempt Petition to comply with the Orders passed in the Writ Petitions, cannot be accepted in view of the observations of the Apex Court in a Judgment in the case of ***Kshiti Goswami & Ors. vs. Subrata Kundu & Ors.***, (supra) wherein it has been observed at paras 11 and 14 thus :

“11. It is not in dispute that the Selection Committee had recommended the names of 179 candidates including the Respondents. Shri Pijush Roy, learned Counsel for the Petitioners stated that out of 179 candidates recommended by the Selection Committee, 161 were appointed and the remaining 18 persons were not appointed despite the directions given by the Tribunal and the High Court because the merit list had become defunct. He made strenuous effort to persuade us to take the view that in exercise of contempt jurisdiction the High Court

cannot issue direction for implementation of the order, violation of which led to the initiation of the contempt proceedings, but we have not felt persuaded to agree with him. Rather, we are in complete agreement with the High Court that one of the objects of the contempt jurisdiction which is exercised by the High Court under Article 215 of the Constitution read with the Contempt of Courts Act, 1971 is to ensure faithful implementation of the direction given by it. This is precisely what the Division Bench of the High Court has done in this case. Therefore, we do not find any valid ground or justification to entertain the Petitioners' challenge to the impugned order.

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13. ...

14. . While disposing of the special leave petition, we make it clear that no one should make any attempt, direct or indirect, to frustrate implementation of this order on the ground that the merit list had been cancelled or that the Respondents have become overage. “

7. Taking note of the observations of the Apex Court therein, this Court whilst disposing of the Contempt Petition can direct the compliance of the Orders passed in the said Writ Petitions. The Judgment in the case of **Balakrushna B Vehera & anr. vs. Satya Prakash Dash**(supra), as relied upon by the learned Addl. Government Advocate appearing for the Respondents, is not applicable to the facts of the present case. The facts in the said case were that there were no specific directions issued by the Court whilst disposing of the Writ Petitions which is

not the situation in the present case as it is not disputed that the directions to continue with the appointment of the Petitioners was issued in the Judgment dated 25.03.2014.

8. With regard to the contention of the learned Addl. Government Advocate appearing for the Respondents, that the Respondents are justified in not complying with the directions issued in the Judgment dated 25.03.2014 on the basis of the Circular which, according to the Respondents, the subject post has lapsed much before the filing of the Petitions, we find that such contention is obviously raised only as a device not to comply with the directions issued by this Court in the Judgment dated 25.03.2014.

9. In any event, the Apex court in the said Judgment in the case of State of **UP vs. Ram Swarup Saroj** (supra), has taken a view at para 10 thus :

“10. Similarly, the plea that a list of selected candidates for appointment to the State services remains valid for a period of one year only is primarily a question depending on facts and yet the plea was not raised before the High Court. Secondly, we find that the select list was finalised in the month of November, 1996 and the writ petition was filed by the respondent in the month of October, 1997, i.e., before the expiry of one year from the date of the list. Merely because a period of one year has elapsed during the pendency of litigation, we cannot decline to grant the relief to which the respondent has been found entitled to by the High Court.”

10. Taking note of the observations of the Apex Court therein, such contention raised by the learned Addl. Government Advocate to justify non-compliance of the directions of this Court has no substance. Apart from that, it is an admitted position that such situation allegedly arose much before the directions were issued in the Writ Petitions and the Respondents did not even chose to raise such contention at the time of the disposal of the said Writ Petitions by Judgment dated 25.03.2014. As such, the Respondents are not entitled to raise such objections in the present Contempt Petition nor can the Respondents be exonerated on that count.

11. For the foregoing reasons, we find that the stand taken by the Respondents is totally unjustified. The very fact that erroneous contentions are raised to justify the default in complying with the directions by this Court in the Judgment dated 25.03.2014, would clearly infer that there is deliberate inaction in complying with the directions therein. There is no explanation given to justify such delay nor any material produced to show that the Respondents have taken any steps to comply with the directions issued by this Court in the Judgment dated 25.03.2014. Such conduct of the Respondents, would justify this Court to take a very serious view of the attitude of the Respondents in flagrantly not complying with the directions of this Court nor showing any tenable or legal justification for such delay. Apart from that, it is to be noted that the fact that the Petitioners are covered by the directions issued by this Court is not in dispute. The Respondents also do not dispute that the Petitioners in terms of the said directions are entitled to be in service of the Respondents. As such, the alleged difficulties raised by the Respondents cannot be said to be bonafide and for the reasons stated herein

above, they are untenable in law. In fact, the learned Additional Government Advocate has submitted that four months time would be required to comply with the directions in the judgment dated 25.03.2014. Admittedly, one year and ten months have passed since such directions have been issued and the Petitioners are being deprived of working for the Respondents despite of the directions of this Court in the said judgment. It is not disputed that the Respondent no.5 has recently taken over as the Director of the Respondent no.3 and as such, his role in delaying the implementation of the directions of this Court may be limited as against the Respondent no.4 who is stated to have now retired from the services. But however, the Respondent no.5 has been persisting with the stand taken by the Respondent no.3 and the averments in the affidavit filed by the Respondent no.4. In such circumstances, we find that the question of imposing punishment on the Respondent no.5 on account of deliberate inaction on the part of the Respondent no.4 would not be justified, though the conduct of the Respondent no.5 would show that he did not show any desire or intention in complying with the directions of this Court in the said judgment. The Contempt Proceedings against the persons who have failed to comply with the directions of this Court serves a dual purpose i.e. by punishment for contemptuous conduct and coercion to compel the contemnor to do what the law requires of him and comply with the directions in such orders. In the present case, as pointed out herein above, the Respondents have taken an unreasonable stand to avoid the compliance of the directions of this Court in the judgment dated 25.03.2014.

12. In such circumstances. we propose to dispose of the above Contempt Petition by directing the Respondents to comply with the directions issued by this

Court in the Judgment dated 25.03.2014 and further direct the payment of compensation in case such directions are not complied with within a specific period and time.

13. In view of the above, we pass the following :

ORDER

(i) The Respondent nos. 1, 3 and 5 are directed to comply with the directions issued by this Court by taking the Petitioners in service in terms of the Judgment dated 25.03.2014 passed in Writ Petition nos. 78 and 79 of 2013 and file compliance report.

(ii) In case of default in such compliance within a period of two months, the Respondent nos. 1, 3 and 5 are directed to pay a sum of Rs.10,000/- each to each of the Petitioners.

(iii) Petition stands disposed of in the above terms.

K. L. WADANE, J.

F. M. REIS, J.

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