

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 379 OF 2012

Mrs. Kunda Santosh Kerkar alias Kunda Narayan Kerkar,
presently holding the post of Assistant,
in the Goa Legislature Secretariat,
Assembly Complex,
Porvorim,
Bardez, Taluka, Goa.

... Petitioner

V e r s u s

1. The Hon'ble Speaker,
Goa Legislative Assembly
Assembly Complex,
Porvorim,
Bardez Taluka Goa.
2. The Secretary,
Goa Legislative Secretariat,
Assembly Complex,
Porvorim,
Bardez Taluka Goa.
3. Shri Ramchandra Palekar,
presently holding the post of Assistant,
in the Goa Legislative Secretariat,
Assembly Complex,
Porvorim,
Bardez Taluka Goa.
4. Smt. Anita Naik,
Presently holding the post of Senior Assistant,
in the Goa Legislative Secretariat,
Assembly Complex,
Porvorim,
Bardez Taluka Goa.
5. State of Goa,
Through Chief Secretary,
Porvorim, Goa.

... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for the
Petitioner.

Mr. A. N. S. Nadkarni, Advocate General with Mr. D. Lawande, Government
Advocate for the Respondent nos. 1 and 2.

Mr. R. G. Ramani, Advocate for the Respondent no. 4.

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

Reserved for Judgment on Date : **22nd March, 2016**
Pronouncement of Judgment on Date : **22nd July, 2016**

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

Heard Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioner, Mr. A. N. S. Nadkarni, learned Advocate General appearing for the Respondent nos. 1 and 2 and Mr. Ramani, learned Counsel appearing for the Respondent no. 4.

2. The above Petition, inter alia, prays for setting aside the Order passed by the Goa Legislative Secretariat dated 19.07.2011 promoting the Respondent no. 3 to the post of Assistant and further quashing and setting aside the demotion of the Petitioner from the post of Assistant by Order dated 19.07.2011.

3. Briefly, the case of the Petitioner is that the Petitioner offered her candidature for the post of Junior Assistant specifically reserved for Scheduled Caste only which was published in the local news paper. Thereafter, the Petitioner was appointed to the post on 28.08.2000 as Junior Assistant along with several other Officers. The Petitioner was subsequently confirmed to the post of Junior Assistant on 22.08.2003 and subsequently promoted in September, 2007 to the post of Assistant on Adhoc basis against the vacancy reserved for Scheduled Caste pursuant to the recommendations of the DPC. Another Junior Assistant was also

promoted to such post on 18.09.2007. Vide Order dated 12.05.2008, the petitioner was confirmed to the post of Assistant and was declared that the promotion was regular promotion. The Respondent no. 3 was appointed to the post of Junior Assistant on 15.04.2002 against the vacancy caused due to promotion of Farida Muzawar as Assistant. There was no mention in the advertisement that such post was advertised to fill up a reserved category. It is further the contention of the Petitioner that on 19.07.2011, the Respondent no. 2 passed an Order observing that the DPC which met on 12.09.2007, while approving the recommendation of the DPC dated 28.06.2007 had not considered the Respondent no. 3 for promotion to the post of Assistant against the vacancy reserved for Scheduled Tribes despite the fact that the Respondent no. 3 submitted a valid Scheduled Tribe Certificate. It was further stated that the name of the Petitioner was wrongly recommended who belonged to Schedule Caste for promotion to the post of vacancy against a reserved seat for Scheduled Tribes. Vide Order dated 19.07.2011, the Respondent no. 2 ordered that the Petitioner be reverted to the original post of junior Assistant with immediate effect and by Order dated 28.10.2011, the Petitioner has once again been promoted to the post of Assistant on regular basis with effect from 28.10.2011, reverting her from the post of Assistant to the post of Junior Assistant and by another Order dated 19.07.2011 promoting the Respondent no. 3 to the post of Assistant and by Order dated 28.10.2011 promoting the Respondent no. 4 to the post of Senior Assistant.

4. Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioner, has pointed out that the whole exercise indulged by the Respondents is to revert the Petitioner and illegally promote the Respondent nos. 3 and 4. Learned

Senior Advocate further pointed out that the post for which the Petitioner was appointed was a vacancy of Scheduled Caste and, as such, the whole exercise conducted by the Respondent no. 2-DPC on 19.07.2007 to review its earlier decision is illegal and erroneous also being in breach of the principles of natural justice. Learned Senior Advocate further pointed out that the subject reversion itself is bad as the Petitioner was not given an opportunity of being heard and, as such, the impugned Order deserves to be quashed and set aside. Learned Senior Advocate further submits that the subsequent promotion of the Petitioner was only to benefit the Respondent no. 4 thereby availing a promotion which the Petitioner would otherwise be entitled. Learned Senior Advocate has taken us through the provisions of law to point out that the reversion itself is illegal. In support of his submission, the learned Senior Advocate has relied upon the Judgment of the Apex Court reported in **(2008) 2 SCC 750** in the case of ***Union of India and anr. vs. Narendra Singh***.

5. On the other hand, Shri A. N. S. Nadkarni, learned Advocate General appearing for the Respondent nos. 1 and 2, has submitted that the mistake committed in promoting the Petitioner was duly rectified by the decision taken by the Respondent no. 2 on 19.07.2011. Learned Advocate General further pointed out that the post was reserved for Scheduled Tribe and, as such, in view of the directions issued by the minority commission, the Respondent no. 2 was entitled to correct such mistake. The learned Advocate General has taken us through the roster point of the said posts to point out that it was reserved for Scheduled Tribes and not for Scheduled Caste and, as such, according to him as the candidate was available, the Respondent no. 2 was entitled to correct the mistake. Learned

Advocate General therefore points out that the Petition be rejected.

6. Upon hearing the learned Counsel appearing for the respective parties, there were arguable grounds raised by the Respondents to submit that the post occupied by the Petitioner was in fact reserved for Scheduled Tribe. This was seriously disputed by Shri S. D. Lotlikar, learned Senior Advocate appearing for the Petitioner as, according to him, considering the roster point and the back log which were existing, the post was in fact reserved for Scheduled Tribe. Both the learned Counsel relied on several documents in support of the rival contentions. Learned Senior Advocate appearing for the Petitioner has also brought to our notice the newspaper advertisement and the Order of promotion of the Petitioner to point out that the Petitioner was promoted for a vacant post of Scheduled Caste. These aspects were seriously disputed by the learned Advocate General appearing for the Respondent nos. 1 and 2, based on the roster point.

7. Be that as it may, the fact remains that it is undisputed that the impugned order dated 19.07.2011 was passed without giving an opportunity to the Petitioner of being heard. Admittedly, no show cause notice was issued to the Petitioner nor an opportunity given of personal hearing. Apart from that, the Petitioner has been raising arguable contentions to point out that the post was in fact reserved for Scheduled Caste.

8. In this connection, the Apex Court in the said Judgment in the case of ***Union of India and anr. vs. Narendra Singh*** (supra) has observed at para 34 thus :

“34. True it is that before such an action is taken and a person is actually reverted, he must be given an opportunity to show cause why the proposed action should not be taken. He may be able to satisfy the authorities that there was no such mistake. But even otherwise, principles of natural justice and fair play require giving of such opportunity to him.”

9. Admittedly, the promotion to the Petitioner was in place for many years and, as such, the Petitioner could not be deprived of being heard before passing the impugned Order. Admittedly, no show cause was given to the Petitioner as she might have been able to satisfy the authorities of her stand. In such circumstances, without going into the merits of the rival contentions, the impugned reversion of the Petitioner dated 19.07.2011 stands vitiated and deserves to be quashed and set aside.

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

ORDER

(i) The impugned Order dated 19.07.2011 is hereby quashed and set aside.

(ii) The Respondent no. 2 is directed to issue a show cause notice in the light of the observations made herein above and pass a fresh Order after giving an opportunity to the Petitioner of being heard in accordance with law.

(iii) All subsequent impugned Orders shall be subject to such decision.

(iv) Rule is made absolute with no Orders as to costs.

K. L. WADANE, J.

F. M. REIS, J.

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