

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 271/2013

SHRI RAMESH SHANU GAONKAR,
Son of Shanu Gaonkar, Aged 34
Years, Indian National,
Resident of H.NO.271
Wadda Gokuldem Paddi, Quepem,
Goa.

Petitioner

Versus

(1) DIRECTOR OF SPORTS AND
YOUTH AFFAIRS
Government of Goa,
Directorate of Sports & Youth Affairs,
Campal
Panaji, Goa – 403 206.

(2) STATE OF GOA, through its
Chief Secretary, having
office at Secretariat,
Porvorim, Bardez-Goa.

Respondents.

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Mr. D.Pangam, Advocate for the petitioner.
Mr. P. Dangui, AGA for the respondents.

**CORAM : F.M.REIS & K.L.WADANE, JJ
RESERVED ON 17/02/2016
PRONOUNCED ON :04/03/2016**

Judgment (Per K.L.Wadane, J):

1] Heard Mr. Pangam, learned counsel appearing for the petitioner and Mr. P. Dangui, learned Additional Government Advocate appearing for the respondents.

2] Rule. Rule returnable forthwith. Heard with the consent of the learned counsel appearing for the parties. Mr. P. Dangui, the learned Additional Government Advocate waives notice on behalf of the respondents.

3] The present petition is filed by the petitioner seeking directions to the respondents to issue appointment order as a Physical Education Teacher.

4] The brief facts of the case may be stated as follows:-

On 14.10.2011 the respondent no.2 advertised two posts of Physical Education Teachers, one is reserved for Scheduled Tribe. The petitioner is belonging to scheduled tribe. He applied for the said post in the reserved category. The petitioner was directed to appear for an interview on 21.07.2011 with necessary documents. The petitioner successfully faced an interview and is placed on the Waiting List.

5] On 26.09.2012 an offer of appointment letter was issued to the petitioner. Accordingly, the petitioner accepted the offer of an appointment. Subsequently, the petitioner was sent for medical examination at Hospicio Hospital, Margao-Goa. The concerned Authority has certified that the petitioner is medically

fit for the post of Physical Education Teacher. On 03/10/2012 the petitioner submitted a Medical Certificate to the respondent no.1 and as such, a binding contractual agreement is concluded. The petitioner on legitimate expectations of being posted as Physical Education Teacher by the respondents, resigned from his prior post of Coach with the Gujarathi Samaj Education Trust For The Handicapped. The petitioner not being issued an appointment order, made a formal representation with the respondent no.1. He further sought an information under the Right to Information Act. Through reply, the petitioner is informed that four posts for Physical Education Teachers are reserved for scheduled tribes are remained vacant in four Government High Schools.

6] On 28/01/2013 the petitioner is informed that the Waiting List is treated as cancelled and fresh process will be issued for the vacancies arisen/arising. On 02/02/2013 the respondents issued fresh advertisement for ten posts of which five posts are reserved for scheduled tribes. On 11/02/2013 the petitioner has submitted an application for fresh recruitment process under protest.

7] According to the petitioner, the respondents have issued an offer of an appointment which he has accepted. In-spite of an offer of the appointment, the respondents failed to

issue appointment order due to which, the petitioner is suffering economically as he has resigned from earlier appointment. The petitioner made representation to the respondents, however, there was no response. Subsequently, by issuing a Circular 16th November, 2012 stating that the Waiting List is meaningless and cannot be pressed into service. According to the petitioner, such Circular giving retrospective effect is illegal. Such select list will be valid for one year. According to the petitioner, the respondents are estopped from Doctrine of Estoppel and they are estopped from denying the appointment. On these background, it is prayed that the respondents be directed to issue the appointment order.

8] On behalf of the respondent no.1, affidavit-in-reply is produced on record by Mr. Desai, the Director of the respondent no.1. On perusal of the contents of the reply, it appears that it is contended by the respondent no.1 that the petitioner was listed at Sr. No.2 in the Waiting List. Considering the fact that only two posts of Physical Education Teachers were advertised, one reserved for S.T. Category and other for O.B.C. Category. The petitioner being eligible for S.T. Post had applied for the same, but the said post however had already been filled up by Mr. Rupesh P. Gaonkar on the basis of merit. The Waiting List prepared initially by the Department was only for the purpose of

filling up vacancy that would possibly arise in future if the selected candidate does not accept the post or he was terminated from the said post. It is further contended that merely because a candidate has been selected and kept in the Waiting List, he does not acquire any absolute right for an appointment to a particular post and it is for the Government to make the appointment or not. The respondent no.1 issued a Memorandum dated 26th September, 2012 as an offer of temporary appointment in favour of the petitioner herein, stating the requirements, duties and obligations for appointment to the said post. The aforesaid memorandum does not enjoin a particular right in favour of the candidate for an appointment to a particular post. Thus, in view of the above, the petitioner cannot claim any contractual agreement between the respondent no.1 and the petitioner. The respondents have denied that any binding Contractual Agreement has been concluded between the respondent no.1 and the petitioner herein.

9] It is further contended that although the petitioner had been selected and kept on the Waiting List by having followed the aforementioned procedure, he had never been appointed to the said post. Therefore, he has not acquired any right for being appointed on the aforesaid post. The petitioner being kept on the Waiting List was only and solely for the purpose

of to fill up the vacancy due to non-acceptance of offence by the selected candidate or termination of service of the selected candidates. This being the position, till the date advertised post was not vacant in the said department either due to refusal of appointment or termination of the selected candidates. Therefore, there was no opportunity for the petitioner to be appointed from the Waiting List.

10] On 16th November, 2012 the respondent no.2 issued Circular stating that the appointments made beyond the number of vacancies advertised for is without jurisdiction and in violation of Articles 14 and 16(1) of the Constitution of India and therefore, a nullity unenforceable in law. The petitioner was kept in the Waiting List as per the advertisement dated 14th October, 2011. During the said selection process fresh five vacancies of Physical Education Teacher in S.T. Category arose. However, these vacancies are not available because once the vacancies as notified in the advertisement are filled up, the process of selection came to an end. The Waiting List cannot be used as as reservoir to fill up vacancy which comes into existence after issuance of an advertisement. With these averments, the respondents have prayed for dismissal of the petition.

11] We have heard the arguments of Mr. D. Pangam,

learned Advocate appearing for the petitioner and Mr. P. Dangui, learned AGA appearing for the respondents.

12] During the course of the arguments, Mr. Pangam, learned counsel appearing for the petitioner, has argued that the respondents have issued an offer of an appointment. Accordingly, the petitioner has accepted the said offer. Therefore, now, the respondents are estopped from denying the appointment because of the promissory estoppel. He further argued that the petitioner has resigned from his earlier job with an expectation of the appointment to be made to the post of Physical Education Teacher. On these background, the refusal of the appointment of the petitioner to the said post is gross injustice and gross violation of principle of natural justice.

13] As against this, Mr. Dangui, learned Additional Government Advocate appearing for the respondents, has argued that the offer of appointment letter issued to the petitioner was merely an offer and it is not an appointment. Therefore, the petitioner has not acquired any right on the basis of letter to claim appointment. According to Mr. Dangui, the petitioner was offered an appointment and he was kept on the Waiting List and such post was to be filled in case selected person is refused the appointment or the selected person is terminated from the

service. In the present case, a person selected has not been refused to accept the appointment nor the selected person has been terminated. Therefore, due to lack of vacancy, it is difficult to appoint the petitioner.

14] Considering the rival contentions of both sides and the arguments advanced by their respective Advocates, it is material to note that it is an admitted fact that the respondent no.1 has issued a letter of appointment dated 26th September, 2012. On perusal of the contents of the letter, it appears that it is as good as in the form of appointment letter mentioning pay scale and other service conditions. However, it is not mentioned in the letter that such appointment offer is given, subject to the vacancy on account of the selected candidate either has not accepted or a selected candidate has been terminated from the service. So relying upon the contents of the offer of the appointment and with the legitimate expectation of being posted as Physical Education Teacher, the petitioner has resigned from the post of Coach with Gujarati Samaj Education Trust and the same is clear from resignation letter and the concerned educational institute had accepted it. Therefore, on the basis of the offer of the appointment, the petitioner has resigned his earlier post. The terms and conditions of the Memorandum dated 26/09/2012 has been specifically accepted by the petitioner by its letter dated

26.09.2012. So looking to the contents of these documents i.e. Memorandum and its acceptance, it appears that the respondents have in principle agreed to appoint the petitioner on the said post. Till issuance of memorandum, there was no such two conditions namely : (i) in case selected candidate has not accepted the appointment; and (ii) selected candidate, if terminated from the service. Such conditions seems to be imposed subsequently and Circular issued by the respondents to that effect shall not have a retrospective effect. It is the say of the respondents that after completion of the selection process, as per advertisement dated 14th October, 2011, and the vacancy has notified and filled up then the process of selection came to an end. If this was so, then there was no necessity for the respondents to prepare the Wait List. Not only they have prepared Wait List but they have issued a letter of appointment to the petitioner, which according to our opinion is an promise by the respondents to the petitioner.

15] Cancellation of offer of the appointment by the respondents at a subsequent stage that too when the petitioner resigned from his earlier job. This amounts to a violation of the principles of natural justice and arbitrariness in the action of the respondents.

16] It is say of the respondent no.1 that on 14th October, 2011 there were five vacancies of Physical Education Teacher created and out of that four vacancies, were reserved for S.T. Category in four Government High Schools in the State of Goa. Therefore, it cannot be said that there is no vacancy to appoint the petitioner on the said post.

17] Mr. Pangam, learned Advocate appearing for the petitioner, submitted that the cancellation of offer of the appointment order or the Wait List with retrospective effect is improper and in support of this contention Mr. Pangam has relied upon the observations in the case of **The Income Tax Officer, Alleppy Vs. M.C. Ponnose and other etc.** reported in (1969)2 SCC 352 , it reads thus:-

5. *"Now it is open to a sovereign Legislature to enact laws which have retrospective operation. Even when the Parliament enacts retrospective laws such laws are – in the words of Willes, J., in Phillips v. Eyre- "no doubt prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law." The courts will not,*

therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the Legislature. The Parliament can delete its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the Legislature it may or may not be possible to make same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the persons or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect; (see Subha Rao, J., in Dr. Indramani Pyarelal Gupta V. W.R. Nathu and others, the majority not having expressed any different opinion on the point; Modi Food Products Ltd. V. Commissioner of Sales Tax U.P.; India Sugar Refineries Ltd. v. State of Mysore and General S. Shivdev Singh and Another v. The State of Punjab and others”.

18] Mr. Pangam, the learned counsel, has further relied upon the case of **Union of India and another Vs. Kartick Chandra**

Mondal and another reported in (2010) 2 SCC 422. It observed in paragraph 16 read thus:-

"16. As has been noted earlier, the said office memorandum stated that the same would apply only to those persons who might have been continuing as casual workers for a number of years and who were not eligible for regular appointment and whose services might be terminated at any time. Therefore, it envisaged and could be made applicable to only those persons who were in service on the date when the aforesaid office memorandum was issued. Unless and until there is a clear intention expressed in the notification that it would also apply retrospectively, the same cannot be given a retrospective effect and would always operate prospectively".

19] During the course of the arguments Mr. Dangui, learned Additional Government Advocate, has argued that since the respondents have not issued a letter of appointment, the petitioner has not acquired any right to claim the appointment. We do not agree with the submissions made by Mr. Dangui, learned Additional Government Advocate appearing for the respondents. Because the respondents have selected the petitioner, he was kept on Wait List and offer of the appointment was issued. Hence, in principle the respondents were agreed to appoint the petitioner but due to subsequent conditions, such letter of offer of an appointment was cancelled, by issuing another

Circular, which according to us, is improper.

20] Hence, the writ petition deserves to be allowed and it is allowed.

21] Rule is made absolute in terms of prayer clause "A" of the petition, provided that the petitioner shall satisfy the conditions mentioned in the Memorandum dated 26.09.2012.

22] The petition is disposed of accordingly. There shall be no order as to costs.

K.L.WADANE, J

F.M. REIS, J

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