

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 507 OF 2016**

1. Shri Chandrakant R. Gawande
House No.69/2, Thorli Chandai,
Pirna, Bardez Goa.

2. Vallabh H. Salgaonkar,
Vagalim, Oxel, Siolim,
Bardez Goa.

.... Petitioners

V e r s u s

1. State of Goa,
Through the Secretary Tourism,
with his Office at Secretariat,
Porvorim, Bardez Goa.

2. Director,
Department of Tourism
Panjim Goa.

..... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. C. Padgaonkar, Advocate
for the petitioners.

Mr. Sagar Dhargalkar, Addl. Government Advocate for the respondents.

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

Date:- 28th September, 2016

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

Heard Mr. S. S. Kantak, learned Senior Counsel along with

Mr. C. Padgaonkar, learned counsel appearing for the petitioners and Mr. S. Dhargalkar, learned Addl. Government Advocate appearing for the respondents.

2. Leave to amend the misdescription of the respondent no.1 at the request of the learned counsel appearing for the petitioners. Amendment to be carried out forthwith.

3. The above petition inter alia seeks a direction to the respondents to permit the petitioners to resume to the post of Lower Division Clerk in the Department of Tourism, Panaji thereby giving effect to the orders of appointment dated 28.12.2011.

4. Briefly, it is the case of the petitioners that on 27.07.2011 an advertisement was issued in the local newspaper inviting applications for filling up the post of the Lower Division Clerk in the Department of Tourism. Pursuant to the said advertisement, on 04.08.2011, the petitioners had applied for such post. Subsequently, the petitioners received a Memorandum dated 14.09.2011 from the Director of Tourism directing the petitioners to report for computer literacy test.

Thereafter, the petitioners received another Memorandum dated 04.11.2011 directing them to report for the oral interview. Ultimately on 23.12.2011 the petitioners received the offers of appointment to the temporary post of Lower Division Clerk in the Department of Tourism. The said offer of appointment was conveyed to the petitioners vide Memorandum dated 23.12.2011 and upon receipt of such offer, the petitioner no.1 addressed a letter on 27.12.2011 accepting the said offer of appointment. It appears that as far as the second petitioner is concerned such letter was also addressed on 23.12.2011. It is further contended that the petitioners were issued orders of appointment dated 28.12.2011 after complying with all the formalities including the medical examination. The petitioners assumed their duties as Lower Division Clerk with the Directorate of Tourism on 28.12.2011. But however, on 06.01.2012 the orders of appointment of the petitioners were kept in abeyance. Thereafter, the petitioners and others approached the Chief Minister of the State with a representation in the month of April, 2012 with regard to such appointment. It appears that in the meanwhile, there were petitions on similar facts which were filed before this Court and ultimately, one of the petitions was disposed of in the year 2013 inter alia directing the appointment of the petitioner

therein. Another petition bearing Writ Petition No.7 of 2014 came to be disposed of by judgment dated 07.05.2014 whereby the respondents were directed to issue order of appointment in favour of the petitioner therein for the post of “Labourer”, Group “D” Non-Gazetted posts.

5. The respondents filed their reply inter alia claiming that the petition is barred by laches as according to the respondents though the orders of appointment as claimed by the petitioners have been issued on 28.12.2011, the petition was filed only in the year 2016. It is pointed out that in the year 2015, the respondents had initiated a fresh recruitment process for the subject post wherein one of the petitioners in the above petition has applied for such post. It is further pointed out that the petition deserves to be dismissed for suppressing such material facts. The respondents however, fairly accepts that in fact the letters of appointment were issued to the petitioners on 28.12.2011, but contend that it was during the Model Code of Conduct. It is further pointed out that there is a vigilance inquiry ordered in respect of the subject recruitment process and consequently, the petitioners are not entitled for any relief.

6. Mr. S. S. Kantak, learned Senior Counsel appearing for the petitioners has submitted that the facts in the above petition are very similar to the facts in the Writ Petition No. 7 of 2014 disposed of by judgment dated 07.05.2014 and as such, there is no reason to take a different view with regard to the appointment of the petitioners. The learned Senior Counsel further pointed out that the petitioners stand in a strong footing as according to him the appointment letters were already issued to the petitioners which was not the case in the said petition. It is further submitted that the petitioners have satisfactorily explained the delay as according to him whenever the petitioners visited the concerned Department, the petitioners were informed that the decision with that regard was pending before the higher authorities. The learned Senior Counsel further pointed out that the allegations of the respondents of suppression of material fact is totally erroneous as according to him the selection process initiated was thereafter withdrawn. It is further pointed out that in any event, merely because the petitioners have applied in the fresh recruitment process cannot disentitle the right of the petitioners which was already created in favour of the petitioners after they had received the letters of appointment and in fact, had worked in the Department for a period of seven days. The learned Senior Counsel

further submits that the respondents had kept the appointment of the petitioners in abeyance and the petitioners were awaiting the necessary directions from the concerned Department to resume the duties. The learned Senior Counsel further pointed out that in another two petitions, similarly placed persons were given the letter of appointment even in the year 2016 in respect of the recruitment process which had taken place in the year 2011. The learned Senior Counsel further pointed out that there is no reason to discriminate the petitioners with the other similarly placed persons.

7. On the other hand, Mr. S. Dhargalkar, learned Addl. Government Advocate appearing for the respondents has tried to persuade and impress upon us that the petitioners are not entitled for any relief though the learned Addl. Government Advocate has not disputed the validity of the recruitment process which culminate to issue the appointment letters in favour of the petitioners nevertheless, according to the learned Addl. Government Advocate as the petitioners were only the fence sitter and did not get their rights agitated with immediate effect, the petitioners are not entitled for any discretionary relief in exercise of jurisdiction under Article 226 of the Constitution of India.

The learned Addl. Government Advocate further points out that one of the petitioners had in fact applied in the fresh recruitment process which itself shows that the petitioners acquiesced with the decision taken by the respondents to cancel the earlier recruitment process. The learned Addl. Government Advocate further pointed out that the very fact that there is no material on record to substantiate the contention of the petitioners that they had visited the office of the concerned Department would itself suggest that the petition is hopelessly barred by laches. The learned Addl. Government Advocate has brought to our notice a letter dated 06.01.2012 keeping the appointments of the petitioners in abeyance which clearly shows that the appointments would revive only after the Model Code of Conduct was lifted. The learned Addl. Government Advocate further pointed out that after such period, the petitioners have not reported to the concerned Department which itself discloses that the petitioners have accepted the decision of the respondents. It is further pointed out by the learned Addl. Government Advocate that after filing of the above petition, the new recruitment process was initiated by the respondents but however, this Court had passed an interim order on 27.05.2016 that any further steps in pursuance to the advertisement dated 27.07.2011 in so far as the posts of

Lower Division Clerks are concerned, shall be subject to further orders in the above petition. The learned Addl. Government Advocate as such points out that the petition be rejected.

8. We have considered the submissions of the learned counsel and we have also gone through the records. As pointed out herein above, the validity of the recruitment process is not under challenge in the present case. The fact that the petitioners were given appointment letters on 28.12.2011 and in fact they have worked for the respondents for a period of seven days is not disputed. The records also reveal that by the said letter dated 06.01.2012 the appointments of the petitioners were kept in abeyance to be revived after the Model Code of Conduct was lifted. Admittedly, after such period the respondents did not send any intimation to the petitioners to resume duties in terms of the said letter dated 06.01.2012. In such circumstance, the only aspect to be examined would be whether the petitioners are entitled for any relief on the ground of laches and suppression of material fact in the present case. The Writ Petition No.7 of 2014 came to be allowed in May, 2014 which clearly shows that in similar circumstance this Court has issued directions to the respondents to issue a letter of appointment to the

concerned petitioner therein. In the present case, as already stated herein above, the petitioners have already been issued letters of appointment. It is not disputed that no third party right has been created during the interregnum period. In such circumstances, when admittedly the petitioners were given letters of appointment and in fact joined the services of the respondents on 28.12.2011, the question of holding that the petition is barred by laches when admittedly the respondents did not take any steps to terminate such persons or withdraw such letters of appointment would not at all be justified. The recruitment process was started only in the year 2015 and as such, filing of the present petition in the year 2016 when even such process was not withdrawn cannot be said to be grossly barred by laches.

9. The Apex Court in the judgment reported in **(2015) 1 SCC 347** in the case of ***State of Uttar Pradesh and others V/s Arvind Kumar Srivastava and others***, has observed at para 22 thus :

22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents,

can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees

cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition

does not suffer from either laches and delays or acquiescence.”

The records reveal that the petitioners have not acquiesced with the wrong committed by the respondents but on the contrary were assured by the concerned Officer that the matter is under consideration by the concerned Department. For all these while, the posts also admittedly have not been filled up and as such the contention of the respondents that the petition is barred by laches cannot be accepted. As already pointed out herein above, the respondents have based on the earlier judgment appointed the other employees who were similarly placed.

10. Apart from that, in Writ Petition No. 686 of 2013, the respondents had accepted in similar circumstance that the petitioner therein be directed to be reinstated in the service of the State Government. The respondents have not brought any different circumstance to persuade this Court to refuse the relief otherwise granted to similarly placed petitioners. This Court in the judgment dated 07.05.2014 passed in ***Writ Petition No. 7 of 2014*** in the case of

Anil Barmu Patil V/s State of Goa and Anr., has observed at para 12 thus :

12. The petitioner has been selected after following the due procedure and the petitioner having being given the appointment order, it cannot be said that the petitioner has no right to seek indulgence of this Court in the extraordinary writ jurisdiction for enforcing his legal right pursuant to the memorandum dated 4/11/2011 which admittedly stands and has not been cancelled or revoked.”

11. Considering the said observations, the action of the respondents in not allowing the petitioners to resume duties in the concerned Department stands vitiated and deserves to be quashed and set aside.

12. The contention of the learned Addl. Government Advocate that there is suppression of material fact cannot be accepted in the peculiar facts and circumstances of the case. Admittedly, in the present case, the petitioners had applied for the post which came to be thereafter withdrawn. The present petition was filed immediately thereafter before the respondents initiated a fresh recruitment process for the concerned

post. As such, when the services of the petitioners were not terminated nor withdrawn in due process of law, we find that merely on such ground it would not be justified to refuse a relief to the petitioners. In such circumstances, we find that the petitioners would be entitled to be reinstated to the concerned posts in the terms as directed in the said judgment dated 20.07.2016 passed in Writ Petition No.686 of 2016. In such circumstances, the respondents would have to comply with the directions issued in the present petition. As such, the petitioners would be entitled for the concerned posts in the General Category which is the subject matter of the said advertisement. It is however clarified that the petitioners will not be entitled for any back salary or allowances before the date of reinstatement.

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

O R D E R

- (i) The respondents are directed to reinstate the services of the petitioners from 01.11.2016 in the light of the observations made herein above.

- (ii) The petition stands disposed off accordingly.
- (iii) There shall be no orders as to costs.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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