

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 421 OF 2014**

Smt. Sushma D. Pinge  
major of age,  
Indian National,  
Deployed as Surplus as Clinical Instructor,  
Institute of Nursing Education  
Bambolim, Bambolim, Goa. .... Petitioner

**V e r s u s**

1. State of Goa  
Through its Chief Secretary  
having office at Secretariat,  
Porvorim,  
Bardez, Goa.
2. The Director,  
Directorate of Health Services,  
Government of Goa,  
Campal, Panaji- Goa.
3. The Joint Secretary, (Health),  
Public Health Department,  
Secretariat,  
Porvorim,  
Bardez- Goa. .... Respondents

Mr. Jitendra P. Supekar, Advocate for the petitioner.

Mr. Pravin N. Faldessai, Addl. Government Advocate for the respondents.

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

**Date:- 22nd June, 2016**

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

Heard Mr. J. Supekar, learned counsel appearing for the petitioner and Mr. P. Faldessai, learned Addl. Government Advocate appearing for the respondents.

2. This is the fifth occasion which forced the petitioner to approach this Court in connection with her claim to be promoted as a Sister Tutor in the Health Department. The records reveal that in view of the directions issued by this Court in the earlier occasion the matter was taken up by the Ombudsman for consideration and after examining all the aspects of the matter, a report came to be submitted in case No. OMBD/2-93/2011-12 dated 04.11.2011 concluding at para 83 thus :

“83. As stated in detail in para 56 to 77 of this Report, R-2 has mishandled the issue of promotions to the posts of Sister Tutors. Based on the facts and circumstances discussed in this Report, there are reasons to apprehend that R-2 may further mishandle the matter which may give grounds for avoidable litigations. Due to adverse effects that may cause embarrassment and

humiliation to the employees already promoted one of whom is already retired as stated in para 82 above, I am not inclined to recommend setting aside the DPCs held on 28.07.2009 and 18.08.2010. I, therefore, recommend as follows :-

(a) R-2 ( Viz. the Director of Health Services ) should convene a Review DPC after following appropriate procedure and accommodate the petitioner Smt. Sushma Pinge with appropriate seniority in the post of Sister Tutor fallen vacant due retirement of R-4 Smt. Manda Nigalie.

(b) R-2 should take appropriate steps to cure the lacunas pointed out in this Report in paras from 56 to 77 by ex-post facto approvals from competent authorities.

(c) R-2 should take precautions in future in the matters of promotions of the employees under the Directorate of Health Services where she is the Appointing Authority so that similar situations may not arise in other cases.”

3. The recommendation of the Ombudsman appears to have been accepted by the State Government on 05.01.2012. It is not disputed that though the said recommendation was in fact accepted by the State Government no action thereon could be taken as it was pointed out that there was an interim order passed by this Court in the companion Writ Petition No.359 of 2012. Presently, the said petition has been dismissed as withdrawn by order dated 16.06.2016. In such circumstances, the impediment in implementing the directions of the Ombudsman would no longer survive.

4. Mr. Faldessai, learned Addl. Government Advocate appearing for the respondents upon instructions of Mr. Raju V. Gawas, the Director ( Administration ) of the Health Department who is present in Court has pointed out that the claim of the petitioner for promotion to the post of Sister Tutor shall be referred to the DPC in terms of the said recommendation of the Ombudsman.

5. Mr. Supekar, learned counsel appearing for the petitioner has raised an apprehension that the DPC may hold that the petitioner would not be eligible to be considered for the promotion as she does

not belong to the feeder post in terms of 2005 Recruitment Rules. This apprehension can have no basis taking note of the recommendation of the Ombudsman which has clearly dealt with all such aspects. Considering that the State Government has accepted the recommendation of the Ombudsman, the apprehension of the petitioner on that count is not justified. In such circumstances, we dispose of the above petition by accepting the said statement of the Director ( Administration ) of Health Department. The recommendation by the Ombudsman shall accordingly be dealt with by the concerned authorities within three months from today. Rule is made absolute in the above terms. The petition stands disposed of accordingly.

**NUTAN D. SARDESSAI, J.**

**F. M. REIS, J.**

**at\***