

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 787 OF 2016

MR. KETAN KALIDAS KHORJUVEKAR.

... Petitioner

Versus

THE BOARD OF TRUSTEES OF THE PORT
OF MORMUGAO, THR. ITS CHAIRMAN AND
3 ORS.

... Respondents

Mr. Thalman Pereira, Advocate for the Petitioner.

Mr. Y. V. Nadkarni and Ms. D. Shirgam, Advocates for the
Respondent no. 1.

Mr. D. Lawande, Asst. Solicitor General for the Respondent nos. 2
and 3.

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

Date:- 25th August, 2016

ORAL ORDER

Heard Mr. T. Pereira, learned Counsel appearing for the
Petitioner, Mr. Y. V. Nadkarni, learned Counsel appearing for the
Respondent no. 1 and Mr. D. Lawande, learned Asst. Solicitor
General appearing for the Respondent nos. 2 and 3.

2. The above Petition takes exception to the decision taken by the
Respondent no. 1 to cancel the Recruitment process initiated pursuant
to the notice inviting candidates dated 13.10.2015.

3. Shri Thalman Pereira, learned Counsel appearing for the
Petitioner submits that the Petitioner had answered the written test

where she had stood first in such written exam. It is further pointed out that the OM came to be issued on 09.10.2015 by the Central Government, inter alia, doing away with the oral interviews in respect of class 'C' and 'D' employees. It is further submitted that in view of such OM which according to the Petitioner is a direction in terms of Section 111 of the Major Port Trusts Act, the Respondent no. 1 was bound to forego the oral interview and continue the selection process based on the written exam. The learned Counsel further submits that the Respondent no. 1 on the contrary by the impugned decision dated 28.04.2016 have cancelled the recruitment process and directed a fresh recruitment be initiated in respect of the subject promotional post. Learned Counsel further pointed out that this action on the part of the Respondent no. 1 is arbitrary, unfair and as such deserves to be quashed and set aside as, according to him, the directions issued in terms of Section 111 of the Major Port Trusts Act are binding on the Respondent no. 1 and, consequently, the selection process ought to have been completed based on the written exam. The learned Counsel further submits that as the Respondent no. 1 have acted unreasonably, this Court should exercise its jurisdiction to quash and set aside the impugned decision of the Respondent no. 1.

4. On the other hand, Shri Y. V. Nadkarni, learned Counsel appearing for the Respondent no. 1, has submitted that based on the Office Memorandum dated 09.10.2015, the Board of the Respondent

no. 1 have amended the RRs in March 2016. The learned Counsel has thereafter taken us through the said OM dated 09.10.2015 to point out that the directions therein were to amend the RRs. Learned Counsel further submits that accordingly Respondent no. 1 amended the RRs and proceeded to take the impugned decision which, according to him, is fair and reasonable in the facts and circumstances of the case. The learned Counsel further pointed out that the provisions of Section 111 of the Major Port Trusts Act are not applicable to such decision and in any event on plain reading of the said decision, there is only a direction to the Respondent no. 1 to amend the RRs which have been accordingly amended. Learned Counsel further pointed out that even in the notice inviting candidates to the subject post, the terms referred to therein clearly suggest that the selection would be based on the written as well as the oral test. Learned Counsel further submits that as such changing the term midway through the selection process would not at all be justified and, consequently, the Respondent no. 2 took a conscious decision to cancel the selection process and proceed to hold a fresh selection.

5. Shri D. Lawande, learned Asst. Solicitor General, appearing for the Respondent nos. 2 and 3, has pointed out that the OM is only a direction to the Respondent no. 1 and the ultimate decision taken in connection with the selection process is a matter within the domain of the Respondent no. 1. Learned Asst. Solicitor General further pointed out that as the subject selection process was in any event

contrary to the OM, the decision of the Respondent no. 1 to ultimately cancel the selection process cannot be said to be unjustified. Learned Assistant Solicitor General further submits that the provisions of Section 111 of the Major Port Trusts Act are not applicable to the decisions as reflected in the Office Memorandum as the provision itself contemplates that before any such directions are issued, there has to be a consultation with the Respondent no. 1. The learned Counsel as such pointed out that there is no infirmity in the decision taken by the Respondent no. 1.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. On going through the notice issued inviting applications for the subject post, one of the directions clearly stated therein was that the selection would be based on the written test and oral interviews. In such circumstances, the advertisement/notice was not in consonance with the subject OM relied upon by the learned Counsel appearing for the Petitioner. As such, we find, considering the terms of the OM which, inter alia, directed the Respondent no. 1 to amend the RRs accordingly, the impugned decision taken by the Respondent no. 1 to cancel the selection process and proceed to have a fresh process cannot be said to be unreasonable or unjust.

7. The contention of Mr. Thalman Pereira, learned Counsel appearing for the Petitioner, that the OM should be considered as a

decision in terms of Section 111 of the Major Port Trusts Act cannot be accepted. On plain reading of the said provision, we find that the decisions contemplated therein are in different context and not in the context of the subject recruitment process under consideration in the present Petition.

8. Considering the above and in the facts and circumstances of the case and taking note of the contentions of the learned Counsel appearing for the Respondents, we find that the impugned decision cannot be said to be unreasonable and, consequently, there is no case made out for any interference in such decision. Hence, the Petition stands accordingly rejected.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

arp/*