

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 229 OF 2014

Dr Parul Dubey
Major of age, 22, UG2,
Kamat Kinara,
Caranzalem,
Panaji, Goa.

... Petitioner

V e r s u s

1. State of Goa,
Through the Chief Secretary
Having office at Secretariat Complex,
Porvorim, Panaji, Goa.

2. The secretary (Health)
Department of Health Services,
Government of Goa,
Having office at Secretariat Complex,
Porvorim, Panaji, Goa.

3. The Under Secretary (Health)
Public Health Department
Secretariat,
Porvorim, Goa.

4. Director,
Public Health Department,
Secretariat,
Porvorim, Goa.

5. Goa Public Service Commission,
EDC House
Dada Vaidhya Road,
Panaji, Goa.

... Respondents

Mr. P. Talaulikar and Ms. Aleesha Reis Falcao, Advocate for the Petitioner.

Mr. Pravin Faldessai and Mr. S. S. Rebello, Additional Government
Advocates for the Respondent nos. 1 to 4.

Coram :- F. M. REIS,
PRITHVIRAJ K. CHAVAN, JJ.

Date : 16th June, 2017

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

Heard Shri P. Talaulikar, learned Counsel appearing for the Petitioner and Shri Faldessai, learned Addl. Government Advocate appearing for the Respondent nos. 1 to 4.

2. The above Petition, inter alia, prays to set aside the decision of the Respondent-State Government rejecting the recommendation dated 24.10.2013 made by the GPSC in filling of the post of an Assistant Neurology in the Goa Medical College.

3. Briefly, it is the case of the Petitioner that the Respondent no. 5 issued an advertisement for the appointment of one post of an Asst. Professor in Neurology in the Goa Medical College somewhere on 14.06.2013 and the Petitioner applied for such post and thereafter the Respondent no. 5 called the Petitioner for an interview on 21.10.2013. It is further contended that on 24.10.2013, the Respondent no. 5 informed the Petitioner that her name has been recommended for the appointment of such post. The result of the candidate also disclosed on the official website and thereafter the Petitioner addressed a letter to the Health Minister inquiring

about the status of the recommendation on 29.11.2013. A letter was received by the Petitioner on 28.01.2014 from the Health Department, inter alia, informing that the Government has rejected the recommendation of Respondent no. 5 as the Petitioner does not have the knowledge of Konkanni. The information was thereafter sought by the Petitioner from the Goa Public Service Commission and the Health Department which was furnished by the Respondent no. 5 on 13.03.2014. Being aggrieved by the said decision, the Petitioner filed the above Petition.

4. During the course of the proceedings, another candidate was appointed to the said post as an Assistant Professor of Neurology at the Goa Medical College.

5. Mr. P. Talaulikar, learned Counsel appearing for the Petitioner submits that the Petitioner is not from Goa and in fact has been refused appointment to the post of Assistant Professor on the ground that she did not belong to the State of Goa which, according to him, is contrary to the well settled principles and rights guaranteed under the Constitution of India which, inter alia, provide that there can be no discrimination on the basis of the residence of a citizen. Learned Counsel further pointed out that the Petitioner was highly qualified and had met the eligibility criteria and, as such, according to him, the Respondents-State Government were not justified to reject the recommendations of the GPSC. The learned Counsel

further pointed out that on perusal of the noting of the Health Minister, it clearly discloses that the ground for refusal to select the Petitioner was because she was not a resident of the State of Goa. The learned Counsel further pointed out that the State Government had sought inquiries from the GPSC as to the manner in which the Petitioner was tested for the knowledge of Konkanni and in fact there is a communication in the official record which show that the Petitioner was tested for Konkanni language at the time of the interviews conducted by the Respondent no. 5. The learned Counsel further submits that the candidate who has been selected had secured much lesser marks in the interview then the Petitioner and, as such, the impugned decision of the State Government in rejecting the recommendation of the Respondent no. 5 are unjustifiable in law and deserves to be quashed and set aside. Learned Counsel further pointed out that though the Petitioner and the candidate appointed to such post are similarly qualified nevertheless as the Petitioner had secured more marks at the interview, there is no justification to refuse the appointment to the Petitioner to the concerned post. The learned Counsel further pointed out that the decision of the Respondents in refusing to appoint the Petitioner is malafide without any justification and, as such, deserves to be quashed and set aside. The learned Counsel as such pointed out that the Petitioner be granted the reliefs as prayed for.

6. On the other hand, Shri Faldessai, learned Additional

Government Advocate appearing for the Respondents has pointed out that mere notings in the official records cannot be a ground to examine the validity of the ultimate decision taken by the Government to reject the recommendation of the Respondent no. 5. The learned Addl. Government Advocate pointed out that the decision of the Government to reject the recommendations of the GPSC was essential on the ground that the essential condition that a candidate required the knowledge of Konkanni had not been satisfied. The learned Counsel has thereafter taken us through the advertisement for the concerned post to point out that there was a clear eligibility specified therein on essential condition that the candidates had to have the knowledge of Konkanni. The learned Addl. Government Advocate further pointed out that as such Doctors are also appointed at the Goa Medical College where they come in contact with the local population, the knowledge of Konkanni becomes very essential for the proper administration of health services at the Goa Medical College. The learned Addl. Government Advocate further pointed out that the Petition also deserves to be rejected for non-joinder of necessary parties, as according to him, the candidate appointed to such post and is working since the year 2014 has not been made a party to the above Petition. Learned Addl. Government Advocate pointed out that grave injustice would occasion to the said candidate as in case any Orders are passed in the above Petition as, according to him, such candidate would be directly affected by any such Order. Learned Addl. Government Advocate as such pointed out that the

Petition be accordingly rejected.

7. Shri Talaulikar,, learned Counsel; appearing for the Petitioner, in reply submits that the Petition was filed much before the filling of the post and submits that there are specific orders of this Court that any further action taken would be subject to further orders in the above Petition.

8. We have considered the submission of the learned Counsel and we have also gone through the records. It is now well settled that a candidate who applies for a post in Government service is entitled to be considered for such post and has no right to be selected. Merely because the name of the candidate figures in the select list prepared by the Respondent no. 5 by itself does not mean that she is entitled to be appointed to such post. In the present case, it is not disputed that the candidate intended to be filled up is to the post of an Assistant Professor of Neurology at the Goa Medical College which is premier Government Hospital which is attached to the major Government Hospital in the State of Goa which is visited by different citizens of all walks of life of the State of Goa. The Petitioner has not challenged the imposition of the condition in the advertisement that knowledge of Konkani is essential. In the present case, on perusal of the colleges and institutions where the Petitioner completed her academic curriculum, we find that the Petitioner has mostly studied in the State of Madhya Pradesh. In fact, the Petitioner completed her course in the

year 2013 and applied for the concerned post immediately thereafter. The learned Counsel appearing for the Petitioner fairly accepts that the Petitioner has not brought any material on record along with the above Petition to disclose that she was familiar and had knowledge of Konkani language. Mr. Talaulikar, learned Counsel appearing for the Petitioner has also fairly accepted that along with the application, no certificate was produced by the Petitioner to show that she was conversant with the Konkani language. On perusal of the decision by the State Government refusing to accept the recommendation of the GPSC, such decision was taken essentially on the ground that the Petitioner was not conversant with Konkani language. It is also not in dispute that the Petitioner and the candidate appointed to the concerned post were otherwise equally qualified though the successful candidate was a student who had completed her graduation in medicine at Goa Medical College and had thereafter completed her post graduate course at the institution at Chandigarh, Punjab. The fact that the successful candidate was conversant with Konkani language is not in dispute. Looking into the nature of the work, which was expected to be performed by the successful candidate for the concerned post, we find that the decision of the State Government in rejecting the recommendation of the Respondent no. 5 cannot be said to be arbitrary or unconstitutional as claimed by the Petitioner. It is the contention of Mr. Talaulikar, learned Counsel appearing for the Petitioner that the records would reveal that the Respondent no. 5 had thereafter informed the Respondents-State Government that the Petitioner

was tested for Konkanni language during the course of the interview. But, however, on perusal of the recommendations of the Respondent no. 5 which are placed on record by the Petitioner herself, it clearly shows that there is no mention to that effect therein. The Petitioner claimed that there was some communication from the GPSC. With that regard, we find that though the Petitioner sought information under the Right to Information Act and was satisfied with the information supplied, no such grievance was placed on record to substantiate such contention. In such circumstances, we find that the impugned decision of the State Government is not unreasonable or arbitrary which would call for interference of this Court in the present Writ Petition under Article 226 of the Constitution of India.

9. It is well settled that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment but at the same time the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. There have to be justifiable reasons to decline to appoint a person who is on the select panel. In the present case, as pointed out herein above, the records reveal that the Petitioner had not produced any material to show that he knew Konkani language or was conversant therewith. The Petitioner has also not produced any document even in the present petition to show that the Petitioner was familiar with the language of Konkani. Considering the nature of the duties of the subject post as they would be

coming in contact with the local population, the reasons disclosed by the Respondents are justifiable to proceed not to accept the recommendations of the GPSC.

10. Apart from that, as rightly pointed out by Mr. Faldessai, learned Addl. Government Advocate, though the Petitioner was given an opportunity if they so desired to implead the successful candidate, no steps were taken by the Petitioner up to this date. The successful candidate may not be a necessary party, in the circumstances of the present case, nevertheless, she was a proper party as she would be directly affected with the relief sought by the Petitioner in the above Petition. On this count also, the Petition does not also require any consideration.

11. The learned Counsel appearing for the Petitioner has relied upon the Judgment of the Apex Court reported in **(1993) 2 SCC 573** in the case of **Asha Kaul vs. State of Jammu & Kashmir & Ors.** and **2001(4) BCR 490** in the case of **R. V. Gaitonde (Dr.) vs. State of Goa & Ors.**, which are not applicable to the facts and circumstances of the present case.

12. For the aforesaid reasons, we find that there is no merit in the above Petition which stands accordingly rejected. Rule stands discharged.

PRITHVIRAJ K. CHAVAN, J.

F. M. REIS, J.

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