

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 465 OF 2010

1. ***Shri Jairam Uttam Gaonkar Dessai,***
aged 43 years, occupation service, residing at
Amrutnagar, 1st Main, Gogol,
Margao, Goa.
2. ***Shri Shivanand Naik Gaonkar,***
aged 41 years, occupation service, residing ...Petitioners
at H. No.B-15, I.D. Complex, Bicholim,
Goa.

V e r s u s

1. ***State of Goa,***
by its Chief Secretary, Secretariat,
Porvorim, Goa.
2. ***Chief Engineer,***
Water Resources Department, Government
of Goa, 2nd floor, June House Annex
Panaji, Goa. ...Respondents

Mr A F Diniz, Advocate, for the Petitioners.

Mr P Dangui, Government Advocate for the Respondents.

***CORAM: N M Jamdar &
Nutan D Sardesai, JJ***

DATED: 20 November 2017

ORAL JUDGMENT (per N.M. Jamdar J):

The Petitioners are working as Foreman in the Water Resources Department of the State of Goa. They are working on the same post for more than two decades with no promotional avenue. They have filed this petition making a grievance that the service rules which create such a situation are in breach of Article 14 and 16 of the Constitution of India.

2. The Petitioners were appointed as Supervisor (Agricultural Works) sometime in the year 1992. They were appointed to the post of Foreman (Agriculture) thereafter in the same year. The Petitioners worked as Foreman (Agriculture) for some time. They filed a Writ Petition No.187 of 2004 seeking direction to the Respondents to regularise the services and grant them salary and consequently benefits on par with Assistant Agricultural Officer in Directorate of Agriculture. The Writ Petition was disposed of on 30 June 2004 wherein the State informed the Court that the Petitioners services will be regularised as and when vacancies arise. On 18 July 2006, the Chief Engineer issued an order in respect of the Petitioners working on work charge establishment as a regular employee on the post of Foremen (Agriculture). The Petitioners thereafter filed a Writ Petition bearing No.782 of 2008 seeking a direction

to the Respondent-State to frame Recruitment Rules in connection with the appointment to the post of Foreman (Agriculture) (Input and Extension Incharge), Soil Survey Incharge and Water Management Specialist. The Petitioners sought a direction that after the Recruitment Rules so framed, they should be granted promotion to the higher post. The Writ Petition was disposed of on 6 January 2009 wherein the State made a statement that Recruitment Rules will be finalised within four months and the claim of the Petitioners will be considered in accordance with the Recruitment Rules so framed.

3. Thereafter, in exercise of powers conferred by proviso 309 of the Constitution of India, the State framed Rules to regulate recruitment to the Group 'B' Gazetted, Non-Ministerial posts in the Water Resources Department. The Rules were titled "*Government of Goa, Water Resources Department, Group 'B' Gazetted, Non-Ministerial posts, Recruitment Rules, 2010*". The post to which the Rules apply was specified to the Schedule to the Rules. The Rules were framed on 22 March 2010 and brought into force from 25 March 2010. These Recruitment Rules governed appointments to Water Management Specialist, Soil Survey Incharge and Credit Incharge. For the Group 'C', in which the post of Foreman (Agriculture) is included, the State framed Rules under proviso to Article 309 of the Constitution of

India titled "*Government of Goa Water Resources Department Group 'C' Non-Ministerial and Non-Gazetted post Recruitment Rules of 2009*". These Rules govern the post of Foreman (Agriculture).

4. As per Group 'B' Recruitment Rules, for the post of Water Management Specialist, the appointment is by way of transfer on deputation from Directorate of Agriculture of State of Goa from Agricultural Officer or Assistant Agricultural Officer with three years regular service in the Grade and possessing degree in Agriculture or a total eight years inclusive of service as Assistant Agricultural Officer, Grade-II Extension Officer, Agricultural Composed Inspector, Grade Assistant Demonstrator (Male), Soil Survey and possessing degree in Agriculture from a recognised University. For Soil Survey Incharge, identical terms as the Water Management Specialist are specified.

5. As regard to the Group 'C' Recruitment Rules, they govern Foreman (Agriculture). Number of posts are specified. Pay scale was Rs.4000-100-6000 and the age limit for direct recruits is not exceeding 40 years, relaxable in certain conditions is specified, the educational is Bachelor of Science (Agriculture) from a recognised University, three years experience in the field of Agriculture work and knowledge of Konkani.

6. After Rules were so framed, the Petitioners approached the Respondent-State with a request for promotion and higher pay. On 18 May 2010, a Memorandum was issued by the Office of Chief Engineer, Water Resources Department, stating that the post held by the Petitioners i.e. Foreman (Agriculture) does not have a promotional avenue as the post of Foreman (Agriculture) is an isolated post. Further the post of Water Management Specialist and Soil Survey Incharge are to be filled in on transfer on deputation from Agricultural Department under CADA Wing of Water Resources Department. The Chief Engineer noted in the Memorandum that the pay scale of ₹6500-200-10500 applicable to the post of Water Management Specialist and Soil Survey Incharge cannot be made applicable to the Petitioners. By issuing this Memorandum on 18 May 2010, the request of the Petitioners for granting them promotional scale and promotion, was rejected.

7. The Petitioners thereafter have filed the present Writ Petition seeking a direction for quashing and setting aside the Recruitment Rules dated 14 October 2009 for the post of Soil Survey Incharge and Water Management Specialist to the extent that they provide appointment by deputation. A writ is also sought to direct the Respondent-Authorities to provide for the appointment on the post of Soil Survey Incharge and Water

Management Specialist from the post of Foreman (Agriculture) and provide promotional avenue to the post of Foreman (Agriculture). Revocation of the Memorandum dated 18th May 2010, is prayed for. It is the case of the Petitioners that the various other Departments under the Respondent-State have benefit of promotion, however the post of Foreman (Agriculture) does not have any promotional avenue and next higher post is filled in by deputation. It is contended that as per the law laid down and basic human resource management, a promotional avenues needed to be provided which ultimately enhances the efficiency of the work force. It is averred in the Petition that the Recruitment Rules, to the extent that they deprive the Petitioners of promotion of higher post, are in violation of Article 14 and 16 of the Constitution of India. The Petitioners have sought promotion to the post of Soil Survey Incharge and Water Management Specialist or any suitable higher posts..

8. Reply is filed by the Director (Administration), Water Resources Department. It is the contention of the Respondent-State that the post on which the Petitioners are working is an isolated post, which the Petitioners have accepted and cannot now seek to challenge the Rules. It is stated that the post of Soil Survey Incharge and Water Management Specialist are posts wherein the incumbent is expected to advise farmers on

issues relating to increasing of soil fertility etc. Therefore, persons with specialised knowledge and experience in the field of Agriculture are required and therefore are brought in on deputation. It is stated that the Petitioners cannot be granted scale of ₹6500-200-10500 under the Assured Career Progression Scheme since the post of Foreman (Agriculture) is an isolated post. The financial up-gradation is available after the completion of 12 years ,which has been duly granted.

9. The Petitioners have filed an affidavit in rejoinder and have contended that there is no difference between qualification, experience, knowledge and expertise of the Petitioners and other Agricultural Officers who are deputed to the post of Soil Survey Incharge and Water Management Specialist and that both the Foreman (Agriculture) and the Agricultural Officers who were sent on deputation have similar duties and functions and there is no need to bring any officer on deputation, when same knowledge and expertise is available within the Department. It is stated that the Rules were framed in 2009 and therefore no question of the Petitioners is being estopped to challenge the Rules.

10. We have heard Mr. A. F. Diniz, learned Counsel for the Petitioners and Mr. P. Dangui, learned Government Advocate for the Respondents.

11. Mr Diniz, the learned Counsel for the Petitioners contended : the Recruitment Rules which deprive the Petitioners to promotion to higher post are arbitrary and violate Article 14 and 16 of the Constitution of India. A promotion being normal incident of service it will have to be provided and the Court can direct to create promotional avenues, as laid down by the Apex Court in *Food Corporation of India & Ors vs Parashotam Das Bansal & Ors.*¹, *Raghunath Prasad Singh vs Secretary, Home (Police) Department, government of Bihar & Ors.*² *Dr Ms. O.Z.Hussain vs Union of India*³ *State of U.P. & Anr vs U.P. Rajya Vidhit Adhikari Karyalaya Karamchari Sangh*⁴ and by the Division Benches of this Court in *Dashrath Keshavji Pande & Ors. Vs High Court of Judicature at Bombay, Nagpur & Ors.*⁵, *Shri Mohan Mahadev Kambli & Ors vs Government of Goa (Writ Petition No.201/1988)* and *Shri Gokuldas Harischandra Kauthankar (Writ Petition No.297/1994)*. The Petitioners are

1 (2008) 5 SCC 100

2 AIR 1988 SCC 1033

3 1990 (Supp) SCC 688

4 1994 SCC (L&S) 847

5 2016 (6) Mh LJ 74

entitled to promotion to the next higher post of Soil Survey Incharge and Water Management Specialist as these are admittedly higher posts in the same department, that is Water Resources Management. The Petitioners possess the qualification that is BSc (Agriculture), required for the posts of Soil Survey Incharge and Water Management Specialist. The deputation being the last resort. not taking the benefit of the expertise available with the Foreman (Agriculture) and instead bringing persons who are identically qualified from outside, is entirely arbitrary and in violation of Article 14 of the Constitution of India. The Petitioners have been working under the Soil Survey Incharge and Water Management Specialist and also time to time performed their duties when the incumbents of these two posts proceeded on leave. The Petitioners have also gone for training along with the Agriculture Officers and have received the same training and also have done the same administrative work. Nothing is shown by the Respondent-State as to how the post of Foreman(Agriculture) can be termed as isolated post. In all other Departments also in the Agriculture Department ,as regards similar post of Assistant Agriculture Officers and Agriculture Assistant, promotional avenues have been provided. The Petitioners were appointed in the year 1992 and it is upon their consistent follow up that the Recruitment Rules had to be framed. The Petitioners had to file a Contempt Petition to get

the Recruitment Rules framed and therefore when the Respondent-State framed Recruitment Rules, the Petitioners appear to have been penalised by not giving them any promotional avenues. Treating the post of Foreman (Agriculture) isolated post is completely artificial. When the Recruitment Rules were framed and the Respondent-State issued a Memorandum rejecting the request of the Petitioners for promotional avenues, the Petitioners had to challenge the Recruitment Rules. Since the law is laid down by the Apex Court and in various decisions the Courts have directed the Government to provide promotional avenues, the Court should issue necessary directions .

12. Mr Dangui, the learned Government Advocate submitted : the Petitioners, had accepted the post of Foreman(Agriculture) which had no promotional avenue and the Petitioners cannot now challenge the Recruitment Rules and they are estopped from challenging the same. It was open to the Petitioners to seek employment on the posts which have promotional avenues, yet the Petitioners knowingly accepted the post of Foreman(Agriculture). The Petitioners have challenged the Rules governing the post of Water Management Specialist and Soil Survey Incharge without joining any of the officer would be affected by the relief sought. The Petitioners cannot claim

promotion to the posts which do not exist. As per the Rules, the post of Soil Survey Incharge and Water Management Specialist are to be filled in from qualified and experienced Officers from the Agriculture Department. The Petitioners therefore cannot seek a promotion to the posts of Soil Survey Incharge and Water Management Specialist as these posts need a particular expertise. Merely because the Petitioners have the same qualification, they cannot demand that they be promoted to the post of Soil Survey Incharge and Water Management Specialist. There is no question of grant of promotion to the Petitioners, as the post of Foreman(Agriculture) is an isolated post. The 'duties of Foreman(Agriculture), and Soil Survey Incharge and Water Management Specialist are completely different. The Court cannot direct the State to create any post, which is exactly the relief claimed by the Petitioners. The position that the Court cannot direct the State Government to create posts has been laid down by the Apex Court in *Union of India & Ors. Vs Syed Mohd. Raza Kazmi & Ors*⁶ Govt. of T. N. & anr. vs *S. Arumugham & Ors.*⁷. The Court cannot direct amendment, alteration of Rules, constitution, classification or abolition of posts, cadres or categories of service as laid down by the Apex Court in *P. U. Joshi & Ors. vs Accountant General*⁸. The issue of

6 1992 Supp (2) SCC 534

7 (1998) 2 SCC 198

8 (2003) 2 SCC 632

non-promotion could arise if there was a regular cadre of post and no promotional avenue was provided, as held by the Division Bench of this Court in the decision in *B. K. Bhosale & Ors. Vs Union of India & Ors.*⁹. It is not that only pay scales are to be looked at to consider whether the post is equivalent or higher or lower and what needs to be considered is what are the duties and responsibilities, as laid down in *Union of India & anr. vs S. S. Ranade*¹⁰. Since the post of Foreman(Agriculture) is an isolated post in the absence of any promotional post, no direction can be issued by the Court as sought for by the Petitioners.

13. The pay scale which would be given under the scheme by passage of time is specified in the table therein. The initial pay scale of the Petitioner was ₹4000-100-6000 that is at serial No.7. The Petitioners who had been appointed in the year 1992, have claimed the pay scale of ₹6500-2000-10500 after two periodical progression of 12 years. The Respondent-State has granted them pay scale of ₹4500-125-7000. The Petitioners have sought to take exception to this fixation of pay scale. If the Annexure-II to the Scheme is considered, it will be seen that the Petitioners were granted first financial upgradation after completion of 12 years to ₹4500-125-7000. What is being sought by the Petitioners is ₹6500-200-10500, which as per the

9 2007 (3) Mh.LJ 528

10 (1995) 4 SCC 462

Annexure II to the Assured Career Progression Scheme could be at serial No.11. The Petitioners were entitled to two revisions having completed spans of 12 years. It is therefore the contention of Mr Dangui that if ₹6500-200-10500 is granted to the Petitioners that would be by-passing two stages, of ₹5000-150-8000 and ₹5500-175-9000. As the position stands today, this contention raised by the State Government appears to have merit. It is further the contention of the Petitioners that under the Time Bound Promotion Scheme, the employees of Group 'C' and Group 'D' are entitled to pay scales of next higher post after completion of 12 years in the post. This contention is controverted by the Respondent-State that there exists no higher promotional post for the Petitioners and therefore there is no question of Petitioners taking benefit of the Time Bound Promotional Scheme.

14. We have considered the rival contentions. The Petitioners have sought various reliefs. Firstly that the Recruitment Rules for the post of Soil Survey Incharge and Water Management Specialist to the extent they provide for appointments on deputation, be quashed. Secondly, that a writ be issued directing the Respondent-State to provide promotion from the post of Foreman(Agriculture) to Soil Survey In-charge or Water Management Specialist or to any other suitable higher

post. Thirdly, the Memorandum dated 18 May 2010 be quashed and set aside. Lastly a direction be issued to the Respondents to the pay scale of ₹6500-200-10500.

15. The prayer to direct the Respondents to give scale of ₹6500-200-10500 is based on the Assured Career Progression Scheme. The Respondent-State has introduced a Time Bound Promotional scheme with effect from 1 June 1989. The Assured Career Progression Scheme was framed by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) on 9 August 1999. The scheme covers Group 'B', 'C' and 'D' services/posts. The scheme was adopted by the Respondent-State by issuing an office Memorandum on 28 June 2001. Under this scheme, Group 'C' and Group 'D' employees are entitled to pay scale to next higher post in the respective cadre on completion of 12 years in the post subject to condition that the said employee possesses the recruitment qualification prescribed for the next higher post. The Assured Career Progression Scheme contains an Annexure laying down the conditions for grant of benefits under the Scheme. The Annexure II provides for the revised pay scales, which reads thus :

<i>S.No.</i>		<i>Revised pay-scales (₹)</i>
<i>1</i>	<i>S-1</i>	<i>2550-55-2660-60-3200</i>
<i>2</i>	<i>S-2</i>	<i>2510-60-3150-65-3540</i>
<i>3</i>	<i>S-3</i>	<i>2650-65-3300-70-4000</i>
<i>4</i>	<i>S-4</i>	<i>2750-70-3800-75-4400</i>
<i>5</i>	<i>S-5</i>	<i>3050-75-3950-80-4590</i>
<i>6</i>	<i>S-6</i>	<i>3200-85-4900</i>
<i>7</i>	<i>S-7</i>	<i>4000-100-6000</i>
<i>8</i>	<i>S-8</i>	<i>4500-125-7000</i>
<i>9</i>	<i>S-9</i>	<i>5000-150-8000</i>
<i>10</i>	<i>S-10</i>	<i>5500-175-9000</i>
<i>11</i>	<i>S-12</i>	<i>6500-200-10500</i>
<i>12</i>	<i>S-13</i>	<i>7450-225-11500</i>
<i>13</i>	<i>S-14</i>	<i>7500-250-1200</i>
<i>14</i>	<i>S-15</i>	<i>8000-275-13500</i>
<i>15</i>	<i>S-19</i>	<i>10000-325-15200</i>
<i>16</i>	<i>S-21</i>	<i>12000-375-16500</i>
<i>17</i>	<i>S-23</i>	<i>12000-375-18000</i>
<i>18</i>	<i>S-24</i>	<i>14300-400-18300</i>

16. Therefore this brings us to the central question to be addressed in this Petition as to whether, the position where there is no promotional avenue to the Petitioners, will pass the test of Article 14 and 16 of the Constitution of India. If it is held that such a position is violative of Article 14 and 16 of the Constitution of India and necessary directions are issued, then the Petitioners can always, based on such directions, make a representation to the Respondent-State to give them benefit of Assured Career Progression Scheme coupled with Time Bound Promotional Scheme if that eventuality arises.

17. On the aspect of promotion, though the Petitioners have sought various reliefs as mentioned above, we have made it clear to the Counsel appearing for the parties that we will restrict the scope of this Petition only to ascertain whether the position where no promotional avenue is provided to the post of Foreman (Agriculture) would pass the test of constitutionality. The learned Counsel have addressed us on this question. On the position of law on the subject, the learned Counsel have assisted us by referring to the relevant decisions.

18. The Apex Court in the case of *P. U. Joshi*¹¹ had an occasion to consider an order passed by the Central Administrative Tribunal, Ahmedabad wherein the Tribunal had directed the Department to grant promotion to the applicants considering their seniority if they were otherwise suitable on the date on which they are entitled to be promoted and a time limit was also specified so also the benefits arising from the promotion.. The Union of India and Department approached the Apex Court challenging orders passed by the Administrative Tribunal. Though the Apex Court was considering the limited jurisdiction of the Tribunal, the Apex Court opined that generally the questions relating to constitution, pattern, nomenclature of post, cadres, categories, their creation/abolition, prescription of

11 (2003) 2 SCC 632

qualifications and other conditions of service are pertaining to the field of policy within the exclusive discretion and jurisdiction of the Government. It is within the competency of the State to change the rules relating to a service and alter or amend and vary the qualifications, eligibility criteria and other conditions of service from time to time, as the administrative exigencies may need or necessitate. There is no right in any employee of the State to claim that the rules governing the conditions of service shall remain the same from the date of the employee enters in service. In the case of *Union of India vs Syed Mohd. Raza Kazmi*¹² the bench of three learned Judges of the Apex Court reiterated that the policies of promotion are to be decided by the government and the Courts have a limited jurisdiction in this field. It is also settled that generally the Courts cannot direct the State to create posts. This view has also been reiterated by the Division Bench of this Court in the case of *B. K. Bhosale*.¹³

19. The position of law is thus clear that as far as the matters of service conditions of Government servants, it is within the domain of the State to frame appropriate Rules. However, the Courts have placed a rider before accepting the powers of the State to frame service Rules, that is that the Rules must conform to constitutional principles and the policies should not be

12 1992 Supp (2) SCC 534

13 2007(3) Mh. LJ 528

arbitrary, discriminatory or meaningless. In the case of *Union of India & Ors. vs Syed Mohd. Raza Kazmi & Ors.*¹⁴, the Apex Court has emphasised this rider. In the decision of *P. U. Joshi* (supra) the Supreme Court has suffixed the conclusion that service conditions generally are within the domain, decision and jurisdiction of the State, by stating that it is subject to limitations and a restrictions envisaged under the Constitution of India. In the case of *State of Uttar Pradesh vs Ram Gopal Shukla*¹⁵ the legal position has been emphasised by the Apex Court that the Rules regulating conditions of service though within the domain of the government or under proviso to Article 309, the Rules have to be reasonably fair and not grossly unjust if they survive the test of Article 14 and 16 of the Constitution of India. This facet is also referred to by the Division Bench of this Court in the case of *B. K. Bhosale* observing that in the event the actions of the State in the matters of service are arbitrary or violate Article 14 and 16 and to the extent of Article 21 of the Constitution of India, the Court will intervene to redress those grievances and issue directions to the State to remove injustice and to conform the constitutional norms. Thus, it is not that the superior Courts have no say in the matters of service conditions of the employees of the State governed by statutory Rules, but can direct that rules

14 1992 Supp (2) SCC 534

15 1981 (3) SCC 1

and policies in the matters of service must conform to the requirement of Article 14 and 16 of the Constitution of India.

20. One of the constitutional principle on which Service Rules have been repeatedly questioned by the superior Courts is the lack of promotional avenue. In the case of *Raghunath Prasad Singh* (supra), an appeal came up before the Apex Court from the decision of Division Bench of Patna High Court. While confirming the decision of the Patna High Court, the Apex Court made certain observations regarding the absence of promotional prospects. The Apex Court observed that a reasonable promotional opportunity should be available in every wing of public service as it generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. Therefore, though the matter arose from consideration of an order concerning exercise of option by the employee, the Apex Court, generally taking note of the absence of promotional avenues, directed the State of Bihar to provide atleast two promotions to the Police Personnel in the Wireless Department of the Police, by appropriate amendments to the Rules.

21. In the case of *Council of Scientific and Industrial Research & anr. Vs K. G. S. Bhatt & anr.*¹⁶, the Respondent therein was a Civil Engineer with the Council of Scientific and Industrial Research . He was not considered for any kind of promotion for two decades. He approached the Administrative Tribunal making this grievance and seeking for relief. The Tribunal allowed his claim. Appeal was filed by the Council of Scientific and Industrial Research in the Apex Court. The Apex Court observed that the fact that the Respondent was left without opportunity of promotion for 20 years was sad commentary on the management of the Council. The Apex Court observed as that one does not hire a hand but engages a whole man. The person is recruited for a whole career. One must, therefore, be given an opportunity to advance. It was observed that an opportunity for advancement is a requirement for progress of any organisation and an incentive for personnel development. . The Apex court stressed that the organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both, the employees and their supervisors. The Division Bench of this Court in the case of *Mohan Mahadev Kambli* took note of an absence of promotional avenue to the

¹⁶ (1989) 4 SCC 635

Petitioners and issued necessary directions to Respondent-State to frame appropriate Recruitment Rules. An identical course of direction was also issued by the Division Bench in the case of *Gokuldas Harischandra Kauthankar* (supra). A review of the decision of the Apex Court on the subject of absence of promotional avenues, was undertaken by the Division Bench of this Court in the case of *Dashrath Keshavji Pande* (supra). The Petitioners therein were employees of Group 'D' on the establishment of the High Court of Judicature who had challenged part of a Rule of the Bombay High Court Appellate Side Service Rules which provided the upper limit for promotion which restricted the number of promotees. The Division Bench took note of the various decisions of the Apex Court and allowed the Writ Petition by quashing and setting aside the relevant part of the Rule which restricted the right of promotion.

22. In the case at hand, we are faced not with mere restrictions on a right of promotion but no promotional avenue at all. It is an admitted position that the Petitioners are working on the post of Foreman (Agriculture) since the year 1992 i.e. 25 years as on date. Therefore, it is in the context of the law discussed above and the scope of judicial review and the power of Constitutional Courts to direct the Respondent-State to adhere to

constitutional principles, we will consider the stand of the Respondent–State justifying the state of affairs.

23. The first contention of the Respondent-State is that the Petitioners are estopped from challenging the Recruitment Rules having accepted the position that post of Foreman (Agriculture) has no promotional avenue. The stand is taken on oath by the Respondents as well as pressed in service during the oral arguments. We do not find any merit in this contention. When the Petitioners were appointed in the year 1992, admittedly, there were no Recruitment Rules. The Petitioners had to approach this Court first in the year 2004 in connection with regularisation of their service. After Contempt Petition was filed, the order was passed on 30 June 2004 regarding regularisation of service was complied. Thereafter, the Petitioners filed a Writ Petition No.782 of 2008 regarding absence of Recruitment Rules which was disposed of on 6 January 2009 on a statement made by the Addl. Government Advocate that the Rules would be finalised within four months. Again after a Contempt Petition was filed, the Rules were finalised and brought into effect on 14 October 2009. Since the Rules were framed in the year 2009 and a Memorandum was issued rejecting the claim of the Petitioners on 18 May 2010, the Petitioners have filed the present Petition challenging the Rules and the action of

the Respondent-State. The Petitioners could not have challenged the Rules prior to the Rules being framed. Thus, there is no merit in the contention that the Petitioners could not have challenged the Rules framed since the Petitioners had accepted the post of Foreman (Agriculture) in the year 1992.

24. Second contention of the Respondent-State that the Petitioners cannot seek any promotion because there is no promotional post in existence. This argument does not take into account the nature of challenge raised by the Petitioners. The entire case of Petitioners is based on lack of promotional avenue and, therefore, there is no gainsaying emphasising that promotional avenue does not exist. It is because there is no promotional avenue to the post of Foreman(Agriculture) that the Petitioners are before us. Their challenge cannot be repelled on the ground that they will not be entitled to promotional avenue because there exists none.

25. The contention of the Respondent-State is that the post of Foreman (Agriculture) is an isolated post and being an isolated post, there is no question of providing any promotional avenue. The submission is that the post is isolated post because there is no promotional avenue. In substance, the stand of the State comes to this: *there is no promotional avenue because there*

is no promotional avenue. This circular argument is a logical fallacy and is *ad absurdum* . Such argument has to be rejected outright. If the claim of absence of promotion is to be decided on the touchstone of Article 14 and a contention is raised that post is an isolated post, then State is required to show some thing more than this. It is open to the State to demonstrate that the post is isolated by showing intrinsic evidence such as nature of its duties etc., Mr Diniz rightly points out that such could be a case of a Law Officer of a Department. Therefore, simply on the ground that there is no promotional avenue, we cannot treat the post as a Foreman (Agriculture) as an isolated post.

26. Turning now to the main explanation of the State why the Foreman (Agriculture) post is an isolated post. It is based on the nature of duties. The reasons are enumerated in the affidavit filed by the Director of Administration on behalf of the Respondent-State. In paragraph 7, of the reply, the only explanation is as under :

“7. I state that the post of the SSI and WMS under the Water Resources Department, Government of Goa are specialised post wherein person posted on transfer through deputation to the said post should possess specialised knowledge in the field of Agricultural. I state that the duties attached to the Post of SSI and WMS are more like consulting in nature, wherein the said

incumbent is expected to advice farmers on issues relating to increasing of soil fertility etc. I state that therefore incumbent having specialised knowledge and experience in the field of Agriculture from all over the State is required to be posted to the said post in terms of RR's. I state that therefore incumbent from the Agricultural department, which is the expertise department in the field of Agricultural within the State, has to be appointed for the said post by transfer on deputation. I state that whereas the incumbent holding the Post of Foreman (Agriculture) in the Water Resources Department would have limited knowledge and Experience of Agriculture and only to the extent of CADA areas within the state. I state that nature of duties performed by SSI & WMS is more specialised in nature as compared to the post of Foreman(Agriculture). Therefore, I respectfully submit that nature of duty will not depend on Educational Qualification of the incumbent.”

27. The reply affidavit of the State runs into 11 paragraphs. This is the only paragraph devoted to the contention that the post is an isolated post. It is contended in the reply that the duties attached to the post of Soil Survey Incharge and Water Management Specialist are different, and the post of Foreman (Agriculture) has different expertise. Rejoinder is filed by the Petitioners and various documents have been placed on record. Based on this material, we now examine the contention of the Petitioners that there is nothing unique about the post of

Foreman (Agriculture) and treating the post as isolated is only an artificial construct to deny the promotion.

28. The duties of the Agriculture Officers which are appointed to the post of Soil Survey Incharge and Water Management Specialist, have been placed on record which are as follows : To formulate Programme of Comprehensive and systematic development of Command Area of scientific and modern lines; to comprise measures for optimum use of land and water; to improve soil fertility and suggestion of cropping pattern; to suggest measures to increase Agriculture Production; to formulate Scheme and implement through Agriculture Foreman; to suggest all round development of all type of Agriculture Farmers and Allied Farms; Providing extension facilities like demonstration on Farmers field and training of farmers; to provide Technical Guidance and Assistant; to carry out Soil Survey and prepare map; to Organize Seminars and workshop; to carry out Assessment and Reclamation of Water logging Areas; to determine the payment of compensation to the affected person; to carry out Agricultural evaluation; to suggest alternative cropping pattern during shortage of water; any other work assigned by Higher Authorities from time to time; and to conduct outside state tours on beneficiaries.

29. The Duties of Foreman (Agriculture) are as follows :
To carry out extension work; to conduct motivating meetings; to implement different schemes proposed by agricultural wing; to conduct crop demonstration; to collect yield data of different crop grown in command area; to provide technical guidance to farmers; to assist in carrying out farmers Training programme; to assist in organizing Seminars and Workshop; to maintain of list of beneficiaries of Command areas; to have regular contact with Chairman of Water Distribution Societies; to inform Higher Officer regarding will full damages alters, enlarges or obstruction to any irrigation system and complaint received from beneficiaries; any other work assigned by High Authorities from time to time; and to help farmers in formation of water Distribution Societies.

30. A bare perusal of the duties of the Foreman (Agriculture) show that he has to conduct motivational meetings, implement different schemes, provide technical guidance to farmers, inform Higher officers regarding the complaints/obstructions, etc., to be in regular touch with the Chairman of Societies and to perform any other work assigned by higher authorities from time to time. The duty of Agriculture Officers are also to formulate scheme and to implement them through Foreman (Agriculture). They also provide technical

guidance and assistance and suggest measures to increase agriculture products. The contention of Mr Dangui that the duties of Foreman (Agriculture) are merely motivating and non-technical, cannot be accepted. One of the duties specially is to provide technical guidance to the farmers. In fact the Scheme, which the Agricultural Officers have to implement, is through the Foreman (Agriculture). It cannot be said that the work of Agricultural Officers and Foreman (Agriculture) are totally distinct and alien to each other.

31. Mr Diniz have drawn our attention to various documents wherein instructions have been issued from the Agricultural Department and orders have been passed. From these orders, it does not appear that the Department of Water Resources is entirely different from the Department of Agriculture. The Petitioners have placed on record the orders passed directing Foreman (Agriculture) to look after the work of Water Management Specialist for a particular period. A similar order is placed on record dated 15 December 1990 wherein the Foreman (Agriculture) has been directed to look after the correspondence of Agricultural wing. Another order dated 8 December 1995 is placed on record wherein when the Water Management Specialist was not attending the work, the Foreman (Agriculture) was directed to look after the work. Similar order

passed on 7 July 1997 is placed on record. Minutes of meetings of Agricultural wing are also part on record where the Foreman(Agriculture) has attended the said meeting. The documents also show that the Foreman (Agriculture), Soil Survey Incharge and Water Management Specialist have been together sent for a training on Hybrid Coconut Production Technology and Value Addition. The further communication of similar effect regarding Sustainable Development of Sugarcane Based Cropping Systems Areas and different agricultural activities is also part of record. From these documents, it is clear that the work of Foreman(Agriculture) and the Soil Survey Incharge and Water Management Specialist is not completely different. In fact, whenever the Soil Survey Incharge and Water Management Specialist are not available, their work is done by the Foreman (Agriculture). Officers holding these three posts have been sent for training and workshops together on the same subject.

32. Considering the material placed before us, we do not find anything distinct or special in the duties of Foreman (Agriculture) *viz-a-viz* the post of Soil Survey Incharge and Water Management Specialist to treat the post of Foreman (Agriculture) as an isolated post. In fact, the duties in the area of expertise of work is in the same field. Therefore, intrinsically, there is nothing on record to show that the post of Foreman (Agriculture)

can be considered as an isolated post. As stated earlier, it cannot be treated as an isolated post merely because the State has chosen not to provide any promotional avenue.

33. The stand of the Respondent-State in this regard, therefore, must be decided in the light of the dicta of the Apex Court in the case of *State of Uttar Pradesh* (supra) where the Apex Court has emphasised that the executive and legislative power of the State under the proviso 309 must be reasonably fair and not grossly unjust. The insistence of the Respondent-State to treat the post of Foreman (Agriculture) as without promotion, is not reasonable and fair, as there is no reason at all why the post of Foreman (Agriculture) is to be treated as an isolated post. Mr Diniz contends that treating the post of Foreman (Agriculture) as isolated is only to deprive the Petitioners of promotional avenue as a vendetta for filing Contempt Petition. Though we are not basing our decision on the arguments advanced by Mr Diniz that the Rules have been framed depriving the Petitioners of promotional avenue as a vendetta for having filed the Petition and Contempt Petition, we could not help but notice that such arguments were advanced. We find no justification whatsoever in not providing a promotional avenue to the post of Foreman(Agriculture).

34. The Apex Court in the case of *Council of Scientific and Industrial Research* (supra) has referred to opportunity for career advancement as the oldest and most important feature of free enterprise system and that it is for the benefit of the Management that the work force has an incentive to put in hard work and the avenues for career advancement are inbuilt in the working condition. Not only providing promotional avenues to the work force is part of better management, further as the State is concerned, when it frames Rules for its employees and does not provide an avenue for career advancement without just reason, then its action becomes arbitrary and unjust on the touchstone of Article 14 and also violates Article 16 of the Constitution of India. Having a motivated public servant is also in larger public interest. Not only not providing career prospects to a government servant affect his right under Article 14 and 16 of the Constitution of India, if the State insists on a situation which creates disillusioned and unmotivated public servants, such action is not in larger public interest.

35. In the present case, the Petitioners have worked on the same post for 25 years as on date with no opportunity for any promotion whatsoever. This is an unjust situation which the State will have to be called on to remedy. As laid down by the Apex Court in *Food Corporation of India* (supra) the superior

Courts have jurisdiction to issue directions to frame schemes or to provide the channel of promotion. Similar directions were issued by the Division Benches of this Court to the State to take necessary steps to provide a promotional avenue.

36. We, however, cannot accede to the request of Mr Diniz that a mandamus be issued to promote the Petitioners that too a particular post. We cannot issue a mandamus that Petitioners be promoted to the post of Soil Survey Incharge or Water Management Specialist. This is so, as to what should be the promotional post will be within the domain of the Respondent-State to decide. Having reached the conclusion that the position that the Foreman(Agriculture) in the Department of Water Resources Department under State of Goa are without any promotional channel is violative of Article 14 and 16 of the Constitution of India, we are of the opinion that the Petitioners have made out a case for a writ directing the Respondent-State to frame necessary Rules which will cure the vice as indicated above. We declare that the position where the Foreman (Agriculture) Water Resource Department in State of Goa, has no promotional avenue under the services of the Respondent-State, is violative of Article 14 and 16 of the Constitution of India. As a consequence of this declaration, we direct the Respondent-State to take necessary steps to remove the vice of unconstitutionality in the

Rules by framing necessary Rules in that regard within four months from today.

37. Since the Petitioners have filed the present Writ Petition in 2010 and that even in the year 2010 they worked on the post of Foreman (Agriculture) for a period of 18 years. We thus make it clear that when the Respondent-State frame the necessary Rules, the claim of the Petitioners for being considered for promotion would relate to the year 2010 when the Petition was filed.

38. As regards the Assured Career Progression Scheme, the Petitioners will be entitled to make a fresh representation based on the new Rules so framed and such representation will be considered as per the Scheme with reference to the new Rules.

39. Rule is made absolute in above terms. No orders as to costs.

Nutan D. Sardesai, J.

N.M. Jamdar, J.