

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO.676 OF 2014.

Kum Shabana Bi Sayyed, Major of age, Resident of 'S. M. Manzil", Behind Britania House Building Haliwada Road, Porvorim, Bardez-Goa, Presently working as 'Store Keeper(Medical Store Depot)" Directorate of Health Services, Government of Goa, Campal, Panaji-Goa.

..... Petitioner.

Versus

- 1 State of Goa, through the Chief Secretary, with his Office at the Secretariat Complex, Porvorim, Bardez-Goa.
- 2 Director, Directorate of Health Services, Government of Goa, with his office at Campal, Panaji-Goa.
3. Director, Directorate of Food and Drugs Administration, Government of Goa, With his Office at Bambolim, Ilhas-Goa.

..... Respondents.

Mr. Shivan Desai, Advocate for the petitioner.

Mr.Pradosh Dangui,Government Advocate for the respondents.

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

Date:-12th June, 2017.

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

Heard Mr. Shivan Desai, learned Counsel for the petitioner and Mr. Pradosh Dangu, learned Government Advocate for the respondents.

2. The above petition inter alia prays for a Writ and direction to the respondent nos.1 and 2 to consider the case of the petitioner for promotion to the post of Senior Store Keeper in the Directorate of Health Services in terms of Government of Goa, Directorate of Food and Drugs Administration, Group "C", Non-Ministerial, Non-Gazetted post Recruitment Rules, published in the Official Gazette dated 18.4.1991.

3. Briefly, it is the case of the petitioner that the petitioner was appointed to the post of Store Keeper (Medical Store Depot) somewhere on 3.3.2006 against a clear vacancy in the Directorate of Health Services. It is further her case that the essential qualification for such post was Diploma in Pharmacy and registered or eligible for registration under the Pharmacy Act, 1948. The petitioner fulfilled the requirement and as such, came to be appointed. It

was further contended that when the petitioner joined the Directorate of Health Services, the post of Senior Store Keeper was occupied by Ms. Shamlata Dangui. It was further contended that earlier said Ms. Shamlata Dangui was a Store Keeper in the same department where the petitioner came to be appointed in the Directorate of Health Services as she was promoted to the post of Senior Store Keeper from 27.3.2003. Thereafter somewhere on 27.2.2012 said Shamlata Dangui was promoted to the post of Assistant Pharmaceutical Chemist, Group "B" Non-Gazetted post in the Directorate of Health Services and consequently, the post for the Senior Store Keeper (Medical Store Depot) in the Directorate of Health Services, fell vacant. It is further case of the petitioner that the Drugs department in the Directorate of Health Services, was always managed by two employees namely one Store Keeper and a Senior Store Keeper who were attached to Medical Store Depot. It is further her case that as the work of both the posts were substantial/the same both the petitioners as well as the said Shamalata Dangui were sharing work in the Department of Health as they were working in a capacity of a Senior Store Keeper and a Store Keeper in such department. It is further pointed out that the Office of Drugs

Controller was part of the Directorate of Health Services, but the Respondents/Government felt that with the rapid social-economic development of the State during the two decades after liberation of the State of Goa the department is to be bifurcated into Directorate of Health Services and Directorate of Food and Drugs Administration and the same was bifurcated by issuing a notification dated 29.11.1990. It is further pointed out that the Recruitment Rules described as Government of Goa, Directorate of Food and Drugs Administration, Group 'C', non-ministerial, non-gazetted posts Recruitment Rules, 1991 came to be enacted wherein there was a patent mistake to the effect that post of Senior Store Keeper was to be filled up in terms of the Recruitment Rules, 1991 by promotion, failing which by direct recruitment. It is also contended that the feeder category for the promotion to the post of Senior Store Keeper was a Store Keeper with five years regular services in the grade and registration as a Pharmacist, under the Pharmacy Act, 1948. It is also submitted that there is no post of Store Keeper in the Directorate of Food and Drugs Administration, and that no such post was ever created or existed in the said Directorate of Food and Drugs Administration. The petitioner contends

that on 11.10.2013 she made a representation to be considered for promotion to the post of Senior Store Keeper in terms of the Recruitment Rules, 1991. She further contends that as no favourable action was taken in that regard, the petitioner filed the above petition seeking for the aforesaid relief.

4. The respondents have filed their reply inter alia contended that Directorate of Food and Drugs Administration, is independent of the Directorate of Health Services and that promotion to the post of Senior Store Keeper is only from Feeder category who is a Store Keeper attached to the Directorate of Food and Drugs Administration. It is further pointed out that the Recruitment Rules, 1991 clearly provides that the promotion of the Senior Store Keeper is only from the post of Store Keepers who are working in the department of Food and Drugs Administration. The respondents also pointed out that the promotion of Ms. Shamlata Dangui was a mistake committed by the Department which deserves to be rectified as according to them, she was also not entitled to the promotion to the post of Senior Store Keeper from the post of Store Keeper which she was occupying. It is also pointed out

that another candidate Ms. Ingrid Sales who was promoted prior to Ms. Shamlata Dangui to the same post of Senior Store Keeper after the Recruitment Rules, 1991 came in place was also an error committed by the department which deserves to be rectified.

5. Mr. Shivan Desai, learned Counsel for the petitioner pointed out that there was a common cadre of the Directorate of Health Services which also included the Food and Drugs Administration, which came to be bifurcated in the year 1990. It is further pointed out that thereafter there were two departments one dealing with the Food and Drugs Administration and the other Directorate of Health Services though there was no post of either Senior Store Keeper or Store Keeper created in the Directorate of Food and Drugs Administration. The learned Counsel further submitted that the post of Store keeper was in existence even at the time of bifurcation in the year 1990 under the Directorate of health Services and after the bifurcation there was no transfer of any of the employees from the Directorate of Health Services to the Directorate of Food and Drugs Administration. The learned Counsel further submits that though it contemplates that there

would be a separate cadre for the employees of the Food and Drugs Administration and in expectation thereof made the Rules of 1991 creating the post of Senior Store Keeper under the Food and Drugs Administration, nevertheless no such transfer of employee or post created in terms thereof was carried out. The learned Counsel as such further submits that the employee worked in the post of Store Keeper in the Directorate of Health Services were in fact promoted to the post of Senior Store Keeper even after Rules, 1991 came into place as according to him, there was no other employees in the Feeder post as provided in the Recruitment Rules, 1991. The learned Counsel further submits that the very fact that the said Ms. Ingrid Sales and Ms. Shamlata Dangui were working in the Feeder post as Store Keepers and thereafter promoted to the post of Senior Store Keeper would clearly disclosed that the feeder post for such promotion were from the Store keeper who were working in the Directorate of health Services. The learned Counsel has thereafter taken us through the Recruitment Rules, 1991 to point out that the essential requirements to be promoted to the post of Senior Store Keeper in terms thereof are employees/ candidates who are working as Store Keeper for five years, who were employed in

terms of Rules of 1986. The learned Counsel further points out that as such the petitioner is entitled to be considered for the promotion of Senior Store Keeper and as such the relief sought by the petitioner be accordingly be granted.

6. On the other hand, Mr. P. Dangui, learned Government Advocate has submitted that there is no premium for any illegalities committed by the State Government in erroneously promoting Ms. Shamlata Dangui to the post of Senior Store Keeper in the manner pointed out by the learned Counsel for the petitioner, as according to him, said Ms. Shamlata Dangui was not entitled to be promoted as Rules of 1991 do not support such promotion in her favour. The learned Government Advocate further submits that there are no Recruitment Rules which contemplates that any person working as a Store Keeper in the Department of Health Services can be promoted to the post of a Senior Store Keeper under the Directorate of Food and Drugs Administration. The learned Counsel further submits that even though, there is no post of Senior Store Keeper under the Directorate of Food and Drugs Administration, nevertheless, this would not give a right to the petitioner to be considered for the post of Senior Store

Keeper as claimed by the petitioner. The learned Counsel further submits that in fact Government is in the process of re-organising the cadre by up grading the post of Senior Store Keeper to the post of Pharmacist and as such, the mistake which has been created would automatically be corrected. The petitioner are relying upon the inadvertent error committed by the respondents in promoting said Ms. Shamlata Dangui, which according to him is totally misplaced and without any justification. The learned Counsel as such submits that there is no merits in the above petition which accordingly be rejected. It is further pointed out that this Court cannot direct promotion of the petitioner but only to be considered for promotion. In support thereof, the learned Government Advocate relied upon the judgment of the Apex Court reported in **(1987) 4 SCC 486** in the case of ***State Bank of India and others Vs Mohd. Mynuddin.***

7. We have duly considered the rival contentions of the parties and with their assistance, we have also gone through the records.

8. Undisputed facts of the case are that the petitioner

as well as the said Ms. Shamlata Dangui and Ms. Ingrid Sales were recruited as Store Keeper in terms of the Rules of 1986. it is also not in dispute that there was a common cadre of Store Keeper under the Directorate of Health Services which also included the Food and Drugs Administration, when the Directorate came to be bifurcated, the Food and Drugs Administration, admittedly did not have any incumbent to the post of Store Keeper/Senior Store Keeper. The learned Government Advocate does not dispute that there was no post created as a Store Keeper in the Food and Drugs Administration. In the background of these admitted facts we shall now examine the Recruitment Rules, 1991 which came to be enacted by the State Government. The Recruitment Rules of 1991 clearly provides that the Feeder post to the post of Senior Store Keeper in terms thereof for promotion to the post of Senior Store Keeper would be drawn from the employees who are working as Store Keeper/Medical Store with five years regular in the grade. As pointed out herein above there were no post in the Food and Drugs Administration, of Store Keeper and in such circumstances, the employees who met such criteria in the Directorate of Health Services were duly promoted by the respondents to the post of Senior Store

Keeper. Records also reveals that two incumbent namely Ms. Ingrid Sales and Ms. Shamlata Dangui similarly placed as the petitioner were duly promoted as Senior Store keeper in terms of said Rules. The fact that said Ms. Shamlata Dangui was Senior to the petitioner was not in dispute and as such she was duly promoted to the post of Senior Store Keeper in the year 2003. In the year 2012 said Ms. Shamlata Dangui was promoted to the post of Assistant Pharmaceutical Chemist which is the next higher post to the Senior Store Keeper under the Directorate of Food and Drugs Administration. Similarly it is also not in dispute that similar is the position of said Ms. Ingrid Sales. In such circumstances, admittedly as there was no post created nor any person having such qualification within the Directorate of Food and Drugs Administration, the respondents were justified to treat the incumbent in the post of Store Keeper as was existing before the bifurcation of the Directorate of Health Services as the Feeder cadre to be promoted to the post of Senior Store Keeper. The contention of the learned Government Advocate that the petitioner cannot take advantage of the wrong committed by the department in the year 2006 cannot be accepted. In spite of claiming that there was a mistake, the respondents choose not to take any

remedial measure since the time the petitioner became eligible to be considered for such promotion in line with that of Ms. Shamlata Dangui. The proposition advanced by the learned Government Advocate relying in the case of **State Bank of India** (supra) cannot be disputed as even looking at the prayer in the petition, the Court cannot direct any promotion to the petitioner to a particular post but only to examine whether the petitioner is entitled to be considered for the said promotion. In such circumstances, we find that as the petitioner was not considered after the promotion of said Ms. Shamlata Dangui from the post of Senior Store Keeper, the action of the respondents with that regard is arbitrary and unsustainable in law and deserves to be quashed and set aside. The respondent nos.1 and 2, as such, would have to consider the petitioner for promotion to the post of Senior Store Keeper, if she is otherwise entitled in accordance with law. In view of the above, we pass the following:-

ORDER

The respondent nos.1 and 2 are directed to consider the petitioner whether she is otherwise entitled for promotion in terms of Rules 1991 to the post of Senior Store Keeper within three months in the light of the observations made

herein above and in accordance with law.

9. Rule is made absolute in the above terms.

PRITHVIRAJ K. CHAVAN,J.

F. M. REIS, J.

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