

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1089 OF 2016

Shri Gopal A. Parsekar,
son of late Anant Parsekar,
aged 51 years, Indian
National, resident of
House No.D-1-D,
Government Quarters,
St. Ines, Panjim, Goa.

... Petitioner.

Versus

- 1) State of Goa, through
its Chief Secretary,
having Office at
Secretariat, Porvorim,
Bardez- Goa.
- 2) Goa Public Service
Commission, through its
Member Secretary, having
Office at EDC House,
Panaji – Goa.

... Respondents

Mr. D. Pangam, Advocate for the petitioner.

Mr. D. Lawande, Advocate General with Mr. A. Jamadar, Additional
Government Advocate for the respondents.

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

Date:- **12th April, 2017.**

ORAL JUDGMENT: (PER **F. M. REIS, J**)

Heard Mr. D. Pangam, learned Advocate appearing for
the petitioner and Mr. D. Lawande, learned Advocate General for the

respondents.

2. Rule. Heard forthwith with the consent of both the parties. Learned counsel waives service on behalf of the respondents.

3. Upon hearing the learned Counsel appearing for the respective parties the short grievance raised by the petitioner is that while making the recommendation for a reserved vacancy the respondent no.2 though found the petitioner eligible for the post of Junior Scale Officer reserved for a Schedule Caste for the posts of the year 1998, merely because the seniority list of Junior Scale Officer reserved for Schedule Caste was prepared in the year 1999, the recommendation mentioned that the petitioner should be given seniority from the year 1999. Mr. Pangam, learned Advocate for the petitioner submits that the respondent no.2 is only bound to prepare the select list in the Review DPC and has no jurisdiction to decide the seniority which falls within the domain of the respondent no.1. The learned Counsel further points out that in the year 1999 though the petitioner was otherwise eligible to be considered for the promotion, but however on account of an error by the respondent no.1, the name of the petitioner was not submitted for consideration. The learned advocate further points out that in view of the representation by the petitioner with that regard, the respondent no.1 accepted the mistake and directed that a fresh Review DPC be conducted by the respondent no.2. The learned

Counsel further submits that, as such vacant post has available in the year 1998 and as the post filled up was for the year 1998, the recommendation in the review DPC by the respondent no.2 to grant seniority from the year 1999 is erroneous and required to be quashed and set aside.

4. On the other hand, Shri D. Lawande, learned Advocate General submits that in view of the representation by the petitioner a review DPC was called for by the respondent no.2 and the State Government proceeded to accept such recommendation of the review DPC held on 28/03/2012. The learned Advocate General further accepted the position that in the year 1998 a Junior Scale Officer post reserved for Schedule Caste was available and the post to be filled up was for the year 1998.

5. Upon the hearing of the learned Counsel and on perusal of the records, it cannot be disputed that the recommendation of the respondent no.2 are only to examine the suitability and prepare the select list. The respondent no.1 has to thereafter place the seniority of the concerned officials. In the present case, the post filled up is for the year 1998 and in fact the vacancy was available then and as such the petitioner was entitled to get the seniority as from the year 1998. Merely because such seniority list was prepared in the year 1999 it cannot dis-entitle the petitioner from getting such seniority as from the year 1998 when he was found eligible for such post.

6. In view of the above, the following

Order

- i) The impugned recommendation of the respondent no.2 to the extent of the seniority of the petitioner from the year 1999 is quashed and set aside.
- ii) The petitioner shall be given the promotion based on the seniority of the year 1998, in accordance with the law.
- iii) Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

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