

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 747 AND 824 OF 2016

WRIT PETITION NO. 747 OF 2016

1. SHRI ASHISH Y. GAUDE,
s/o. Yeshwant Gaude
H. No. 705, Aged 44 years
Assoldem, Khedem, Barcem,
Quepem, Goa.
2. SHRI DEEPAK BHIKARO NAIK,
S/o Bhikaro Puni Naik
Aged 44 years, Indian National,
H. No. 323, Kadsal,
Khandepar, Ponda, Goa
3. SHRI DINESH K. NAIK
S/o Krishna Naik,
Aged 40, H. No/53,
Nr. I. D. Hospital,
St. Cruz, Ponda, Goa
4. SHRI MOHAN A. NAIK
S/o Anant Naik,
Aged 38 years.
H. No. 7/194/18,
Yeshwant Nagar,
Tisk, Ponda, Goa
5. SHRI SHANTARAM K. GAUDE,
s/o K. Gaude,
aged 48 years, Indian
National, resident
of House No. 44, Near Tamba
Road, St. Pedro- Sapendra,
Ribandar-Goa.
6. SHRI UMESH MAHESH DAHIFODE,
s/o Mahesh Dohifode,
Aged 27 years,
H. No. 1251, Dapat Loliya,
Canacona- Goa

... Petitioners

V e r s u s

1. STATE OF GOA, through
its Chief Secretary,
having Office at Secretariat,
Porvorim, Bardez – Goa.
2. THE DIRECTOR,
Animal Husbandry & Veterinary Services,
having Office at Directorate of Animal
Husbandry & Veterinary Services,
Pashusamvardhan Bhavan,
Patto, Panaji-Goa. ... Respondents

Mr. D.Pangam, Advocate for the Petitioners.

Mr. S. D. Lotlikar, Advocate General with Mr. P. Dangui, Addl. Government
Advocate for the Respondent nos. 1 to 3.

A N D

WRIT PETITION NO. 824 OF 2016

1. Shri Shanto Narayan Naik,
House No. 198/3,
Near Saraswati Temple,
Dag, Ponda-Goa
2. Avish Umakant Naik,
House No. 160, Malbhat,
Margao-Goa
3. Sagar Tulshidas Shirodkar,
House No. 343, Dhaktem-Bhat,
Dongrim Ilhas-Goa
Neura – 403 104.
4. Joaquim A. M. Fernandes,
House No. KVS 4, Dairy Colony
Curti, Ponda-Goa ... Petitioners

V e r s u s

1. STATE OF GOA,

Through the Secretary,
Public Works Department,
With his Office at Secretariat,
Porvorim, Bardez-Goa.

2. THE DIRECTOR,
Directorate of Animal Husbandry
& Veterinary Services,
Government of Goa,
Panaji-Goa.

... Respondents

Mr. C. Padgaonkar, Advocate for the Petitioners.

Mr. S. D. Lotlikar, Advocate General with Ms. P. Bhandari, Addl. Government Advocate for the Respondent nos. 1 to 3.

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

Date : **7th February, 2017**

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

Heard Mr. D. Pangam and Mr. C. Padgaonkar, learned Counsel appearing for the Petitioners and Mr. S D. Lotlikar, learned Advocate General appearing for the Respondents.

2. Both the above Petitions were taken up together in view of the Order passed by this Court dated 25.11.2016.

3. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents, waive service.

4. Facts of the case in Writ Petition no. 747 of 2016 :

Briefly, the facts of the case are that pursuant to a duly conducted selection process, the Petitioner nos. 1 to 5 were issued Appointment Orders for the post of Bull Attendants and the Petitioner no. 6 was issued appointment Order for the post of Milkman in the Directorate of Animal Husbandry and Veterinary Services on 21.12.2011. The Petitioners joined the services on 26.12.2011 and thereafter were told to wait and not join duties until the Election Code was in force. The Petitioners were informed by Shri Mahatesh Harijan that Writ Petition no. 91/2013 was disposed of in June 2016 by this Court and thereafter the Petitioners made a representation to the Respondents in July 2016 and filed the Petition, inter alia, seeking a writ or direction to the Respondents to reinstate the Petitioner nos. 1 to 5 as Bull Attendants and the Petitioner no. 6 as Milkman with the Respondents in terms of the other Appointment letter dated 21.12.2011.

5. Facts of the case in Writ Petition no. 824 of 2016 :

The Petitioners applied for the post of Bull Attendants in the aforesaid Department somewhere on 08.09.2011 and on 07.12.2011, the recommendations of the Departmental Selection Committee were accepted by the Government and the offers of appointments were conveyed to the Petitioners vide Memorandum dated 27.12.2011. Upon receipt of the said letter of appointment, the Petitioners addressed letteres dated 12.12.2011 to the Director, Directorate of Animal Husbandry and Veterinary Services,

accepting the said offers after the medical examinations were completed. On 21.12.2011, the Petitioners were issued an Order of appointment and further directing them to report to the Veterinary Office at Cuncolim. The Petitioners joined services as Bull Attendants on 21.12.2011. The Petitioners thereafter informed on 07.01.2012 that their appointment Orders were kept in abeyance. The Petitioners contacted the office from time to time and ultimately the Petitioners learnt that on 20.01.2016, this Court directed that the Judgment dated 25.03.2014 in Writ Petition nos. 78 and 79 of 2013 be complied with. The Petitioners also pointed out that on 20.07.2016, an identically placed matter of Mr. Sanjay Satarkar was also permitted to resume services as Bull Attendants. Accordingly, the above Petition came to be filed, inter alia, seeking a direction to the Respondents to permit the Petitioners to join the services to the post of Bull Attendants.

6. The Respondents filed their affidavit in reply and pointed out that in view of the complaint received by the Respondent no. 1, an inquiry was conducted by the Anti-corruption Branch in the Recruitment process. It is further pointed out that the Petition is not maintainable as it is barred by laches and delay as appointments were made in October-November 2011 and the Petition is filed in 2016. It is further pointed out that in case the Petitioners had approached this Court in time, there would have been no question of directly appointing the waiting list candidates as done pursuant to directions of this Court in Writ Petition nos. 78 and 79 of 2013. It is also

submitted that the posts of Bull Attendants and Milkman have lapsed in the year 2013 which fact was thereafter brought to the notice of this Court in Contempt Petition. It is further pointed out that subsequently vide Order dated 18.07.2016⁵, the post of Bull Attendant was revived and despite of the circumstances, the Petitioners have not approached the Court within reasonable time. It is further pointed out that the other Petitioners had diligently approached the Court within reasonable time and, as such, the Petitioners are not entitled for any reliefs in the present Petition.

7. The Petitioners have filed their affidavit in reply. It is deemed by the Petitioners that the Petition is hit by delay of laches. It is further pointed out at Para 6 that Petitioners are similarly placed with the Petitioners in the Judgment dated 25.03.2014. It is further pointed out that there is no question of lapsing of the post as the lapsing occurs if the vacancies are not filled up and the concept of lapsing of the vacancies do not arise in the present case. It is also pointed out that the Petitioners in the present case have appointment letters issued to them,

8. Upon hearing the learned Counsel appearing for the respective parties, it was not disputed that the Petitioners in the above Petitions were also similarly placed as Petitioners in Writ Petition no. 686 of 2016 disposed of by Judgment dated 20.07.2016 wherein it has been observed at Paras 3 and 4 thus :

“ 3. The above petition takes exception to the refusal of reinstatement of the petitioner as Bull Attendant with the respondents in terms of the Appointment Order dated 21st December, 2011.

4. During the course of hearing of the above petition, it is not disputed by the learned counsel appearing for the petitioner as well as learned Advocate General that in identical circumstances this Court while disposing of Writ Petition No.78 of 2013 has granted similar relief sought by the petitioner. It is also not in dispute that the facts in the present case are identical to the facts in the said Writ Petition which has been disposed of by the judgment dated 25th March, 2014. It is however clarified that the petitioner will not be entitled for any back wages, but however will be entitled for salary and all other benefits from the date he resumes services with the respondents. Hence, we pass the following order:-

Order

The respondents are directed to reinstate the petitioner in service from 1st August 2016, in the light of what has been stated hereinabove. There shall be no order as to costs.

Rule is made absolute in the above terms.

Sd/-

Sd/-

9. In another Writ Petition no. 584 of 2016, disposed of by Judgment dated 25.11.2016, persons similarly placed as the Petitioners

herein were also granted the relief at Paras no. 7 and 8 thus :

“7. We have considered the submissions of the learned Counsel and we have also gone through the records. The fact that the Petitioner is similarly placed to the Petitioners in Writ Petition nos. 78 and 79 of 2013 has not been disputed. In the same selection process, the Petitioner herein was duly selected by the Selection Committee and, as such, depriving the Petitioner of such appointment would amount to discrimination.

8. In the Judgment of the Apex Court reported in **(2015) 1 SCC 347** in the case of **State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.**, it is clearly held that the General Rule is that persons who have been selected in the same selection process should get similar benefits irrespective of whether they have approached the Court or not. In such circumstances, we find that there is no reason to refuse the relief sought by the Petitioner in the peculiar facts and circumstances of the case.”

10. Considering that similarly placed persons as the Petitioners who had also applied for the same post as Bull Attendant pursuant to the same Notification and were appointed on the same recruitment process, it would not be justified and appropriate to refuse the relief to the Petitioners in the present Petition. The Respondents have admitted that the posts of Bull

Attendants have been revived and are available in the concerned Departments.

11. In such circumstances, we find that for the reasons stated in the said Judgments as well as the Judgments in Writ Petition nos. 78 and 79 of 2013 dated 25.03.2014, the Petitioners are entitled for the reliefs to resume duty with the concerned Department.

12. In view of the above, we hereby direct the Respondents within three months to issue the joining Order in favour of the Petitioners for the post of Bull Attendants/Milkman but, however, the Petitioners will not be entitled for any backwages..

13. Rule is made absolute in the above terms.

arp/*
NUTAN D. SARDESSAI, J.

F. M. REIS, J.