

IN THE HIGH COURT OF BOMBAY AT GOA.***WRIT PETITION NO.627 OF 2010.***

Shri Ganesh Guna Chodankar,
Regional Employment Exchange,
Shram Shakti Bhavan,
4th Floor, Patto-Panaji-Goa.

.... Petitioner.

Versus

State of Goa
Through its Chief Secretary
Having its office at Secretariat,
Porvorim, Bardez Goa.

.... Respondent.

Mr. D. Pangam and Mr. P. Sawant, Advocates for the Petitioner.

Mr. S. Dhargalkar, Government Advocate for the Respondent.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.
Date : 24 August 2018.***

ORAL JUDGMENT (Per N. M. Jamdar, J.)

The Petitioner has challenged the communication dated 10 August 2010 addressed to the Labour Commissioner. The Petitioner has further sought a writ to recall the impugned order and to furnish senior list of Lower Division Clerk, Upper Division Clerk and Assistant Employment

Officer.

2. The Petitioner had joined the services of the Government as a Lower Division Clerk on 24 January 1981 in the Regional Employment Exchange, Panaji. When he joined the services, he was an under graduate. According to the Petitioner, he completed his graduation in March 1983 and became eligible for promotion for the direct recruitment to the post of Assistant Employment Officer. It is his case that even after post of Assistant Employment Officer was available, the Petitioner was not considered. The Petitioner was transferred in May, 1984 to the Industrial Training Institute. In March 1985, a combined senior list of Lower Division Clerks working in Labour Department, Regional Employment Exchange and State Department for Craftsman, Training, was prepared. The Petitioner was shown at Serial No.57. The Petitioner made a representation to the State Government for repatriation to parent department i.e. Regional Employment Exchange. He also sought promotion on the basis that fresh seniority list for Regional Employment Exchange be prepared. The Petitioner filed a Writ Petition bearing No. 506 of 1996 challenging his transfer and loss of consequential promotion. The Petition was withdrawn as the representation was to be considered. The Petitioner made further representations and thereafter filed the present petition. The Petitioner has amended the Petition. The Petitioner, by amendment, has sought a

direction to create a supernumerary post of Assistant Employment Officer.

3. Heard Mr. Pangam, learned Counsel for the Petitioner and Mr. S. Dhargalkar, learned Addl. Government Advocate for the Respondent.

4. The learned Counsel for the Petitioner submitted that when the Petitioner had made a representation to the Chief Minister, the department had prepared a detailed note which clearly indicates that grievance made by the Petitioner was justified. He submitted that the noting on the official files would show that suggestion of creation of supernumerary post was also contemplated. The learned Counsel for the Petitioner submitted that State Government has relied upon notification dated 9 May 1991 to justify its contentions, however, a common seniority list was prepared in the year 1994 in contravention of their own notification. The learned Counsel submitted that notification dated 26 November 2001 and the notification dated 25 February 1991 and the back ground given in the official communication dated 23 December 2003 conjointly justify the Petitioner's claim. He submitted that a separate seniority list in respect of Employment Exchange Department should have been prepared and by not doing so the Petitioner has suffered loss of seniority and consequential chances of promotion.

5. The learned Additional Government Advocate pointed out that the Petitioner has now since retired in the year 2013. The learned Additional Government Advocate submitted that list of 1994 is not a common seniority list but a list prepared for Employment Exchange and even assuming that was to be implemented, the Petitioner could not have been promoted, being at Serial No.57.

6. We have considered the rival contentions. We are informed that by order passed in Writ Petition 506 of 1996, the Petitioner was brought back to the Employment Exchange Department and has now superannuated. List prepared for Employment Exchange would show that the Petitioner was at Serial No.57. It is not a common list. Further, at this stage, if the Petitioner's claim is to be accepted, it would mean setting aside promotion of various other officers who are already been promoted and many who have superannuated. None is joined as party Respondents. Even if the question of law is decided in favour of the Petitioner, whether the Petitioner could have been promoted is a matter for the Departmental Promotion Committee to consider. The promotion of the Petitioner is completely uncertain. Even the claim of creation of supernumerary post is not justifiable as it is settled law that the Court does not ordinarily direct creation of post, if at all. The noting relied upon is a mere recommendation. The State has opposed the prayer for creation of supernumerary post only for the Petitioner.

It is not possible to grant any relief to the Petitioner.

8. The Writ Petition is dismissed. Rule is discharged. No costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.