

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.645 OF 2017

Shirish Avinash Naik Desai
son of late Avinash Naik Desai,
58 years old, married, Indian
National, Resident of A-RH7,
Kalash Lifestyles, Jairamnagar,
Alto-Dabolim, Mormugao, Goa
403 801.

..... Petitioner.

Versus.

1. The Board of Trustees of the
Port of Mormugao,
a body corporate constituted under
the Major Port Trusts Act, 1963
having Office at Headland Sada,
Mormugao, Goa 403 804,
through its Chairman I Jeyakumar,
IRTS, major, married, Indian National,
Resident of Headland Sada,
Mormugao, Goa 403 804.

2. Union of India,
through the Secretary,
Government of India,
Ministry of Shipping (Ports Wing),
Parivahan Bhavan-1,
Parliament Street, New Delhi.

3. Departmental Promotion Committee
A promotion committee constituted

by the Respondent No. 1 to recommend promotions to the Post of Assistant Director (EDP) of the Mormugao Port Trust, through its Chairman I Jeyakumar, IRTS, major, married, Indian National, Resident of Headland Sada, Mormugao, Goa 403 804.

4. J.B. Dhawle,
major married, Indian National,
Secretary, General Administrative
Department, Mormugao Port Trust,
Headland Sada, 403 804.

5. Vinayaka Rao,
major, married,
Indian National, Financial Advisor &
Chief Accounts Officer,
Finance Department,
Mormugao Port Trust,
Headland Sada, 403 804.

6. Prasad Narayan Nayak,
54 years old, married,
Indian National, Assistant Director (EDP),
Finance Department,
Mormugao Port Trust,
Headland Sada, 403 804.

..... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. Virendra Parsekar,
Advocate for the Petitioner.

Mr. Y.V. Nadkarni, with Ms. D. Shirgam, Advocate for Respondents
No.1, 3, 4 & 5.

Mr. Gaurish Agni, with Mr. Raunaq Kanatak, Advocate for Respondent No.6.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Reserved on : 4 July 2018.

Pronounced on : 13 July 2018.

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

This Petition concerns the post of Assistant Director, Electronic Data Processing, in the establishment of Mormugao Port Trust, Goa.

2. The Respondent No.1 is the Port of Mormugao. It is governed under the Major Ports Trusts Act, 1963. The administration of the Port is vested in the Board of Trustees. The Mormugao Port Trust is under the supervision and control of the Respondent No.2-Union of India. Respondent No.3 is the Departmental Promotion Committee, constituted by the Mormugao Port Trust (Port Trust). Respondents No.4 and 5 are the Authorities of the Port Trust, who are involved in the process of promotion to the post of Assistant Director (EDP). Respondent No. 6 was promoted to the post of Assistant Director (EDP) by the impugned order dated

4 July 2017.

3. The Petitioner and Respondent No.6 have been working for the Port Trust for a considerable period of time. The Petitioner is five years older than Respondent No.6. The Petitioner was appointed in the Port Trust as a Clerk (Ad hoc) on 4 September 1978. Respondent No.6 was appointed as a Clerk (Outdoor) seven years later, on 29 October 1985. The Petitioner was appointed on regular basis on 6 January 1979. Thereafter, the Petitioner was promoted as Senior Clerk on ad hoc basis on 30 April 1985 and was promoted as Senior Clerk on regular basis on 8 February 1986. On 16 October 1987, the Petitioner and Respondent No.6 were appointed as Data Entry Operators. Thereafter, on 12 August 1992, the Petitioner and Respondent No.6 were promoted as Junior Programmer on Regular basis. Thereafter both, the Petitioner and Respondent No.6 were appointed and reverted for the administrative purposes for a short span. Later on, on 2 February 2001, the Petitioner and Respondent No.6 were appointed as Programmer on regular basis. By an order dated 5 August 2011, the Petitioner and Respondent No.6 were appointed as Senior Manager-IT/Asst. Director-IT on ad hoc basis. On 4 August 2012, the Petitioner and Respondent No.6 were reverted from their original post of Assistant Manager – IT

(Regular). The Assistant Manager-IT is a feeder post for the post of Assistant Director (EDP) which is in question.

4. On 4 July 2017, a meeting of the Departmental Promotion Committee was held for selection of the candidates for promotion to the post of Assistant Director (EDP) in the Finance Department. The Departmental Promotion Committee was headed by the Deputy Chairman of the Port Trust, with the Secretary and the Finance Advisor, as Members and a representative from the Scheduled Caste and Scheduled Tribe. The Departmental Promotion Committee noted that consequent to upgradation of the vacant post of the Assistant Manager (EDP) to its original status as Assistant Director (EDP), one vacancy has arisen in the category of Assistant Director (EDP) on 4 July 2017. The Departmental Promotion Committee noted that the Petitioner was the senior-most candidate in the seniority list, however, did not fulfill the requirement in respect of essential qualifications. Thereafter, the Departmental Promotion Committee considered the second senior candidate i.e. Respondent No.6 and his educational qualifications. As regards his qualification from Periyar University of M. Sc. in Information Technology, the Departmental Promotion Committee noted that derecognition of the degrees of Periyar University was stayed by

the Madras High Court. The Departmental Promotion Committee also noted that a clarification was sought from the Goa Engineering College whether the educational qualification of M. Sc. in Information Technology acquired by Respondent No.6 could be considered as equivalent qualification to Degree in Computer Engineering/Computer Sciences as stipulated in the Recruitment Rules. Opinion was received from the Goa Engineering College that the qualification of the Respondent No.6 may not be necessarily equated to having Graduate Degree under the Recruitment Rules. The Departmental Promotional Committee noted that the Post Graduate qualification is one of the desirable qualifications under the Recruitment Rules and on that basis, considered the Respondent No.6 as eligible for promotion. Thereafter, the Departmental Promotion Committee ascertained whether there is any adverse remark against Respondent No.6 in his confidential reports and having found that in order, recommended that Respondent No.6 to be promoted on regular basis on a condition, to be reverted to his vacant post if the University Grant Commission or Court determines that M. Sc. (IT) course offered by Periyar University is not recognized.

5. Pursuant to the recommendation by the Departmental

Promotion Committee, Respondent No.6 was promoted on regular basis by the impugned Order dated 4 July 2017. This order has been challenged by the Petitioner in this Petition. By an order dated 3 October 2017, the Division Bench issued Rule and directed that the appointment of Respondent No.6 would be subject to the outcome of the Petition.

6. We have heard Mr. S.G. Dessai, learned Senior Advocate for the Petitioner, Mr. Y.V. Nadkarni, learned Counsel for Respondents Post Trust authorities and Mr. Gaurish Agni, learned Counsel for Respondent No.6.

7. The Petitioner has sought twofold relief in this Petition. Firstly that the impugned order dated 4 July 2017 be set aside and the Petitioner be promoted to the post of Assistant Director (EDP), with retrospective effect from 4 July 2017.

8. Hierarchy in the Department is that the feeder post for promotion to the Assistant Director (EDP) is Senior Manager-IT. After the post of Assistant Director (EDP), the next post is that of Deputy Director (EDP) and then of Senior Deputy Director (EDP). In exercise of the powers conferred under the Major Port Trusts Act,

the Central Government has framed the Mormugao Port Trust Employees' (Recruitment, Seniority and Promotion) Regulation, 2010. Regulation 4 deals with the manner of appointments to various posts. The Departmental Promotion Committee is contemplated under Regulation 26. Promotion through selection is dealt with under Regulation 27, which reads thus :

“Where one or more posts in a grade are required to be filled by promotion through selection method from employees holding posts in the feeder grade in accordance with the prescribed recruitment rules employees holding the eligible posts and having the prescribed qualifications and experience for promotion shall be considered for promotion if they fail within the zone of consideration.

(2) The following procedure shall be observed while recommending employees for promotion through selection method:

- a) The Departmental Promotion Committee (DPC) shall determine the merit of those being assessed for promotion with reference to the prescribed benchmark and accordingly grade the officers as 'fit' or 'unfit'. Only those who are graded 'fit' by the DPC shall be included and arranged in the select list in order of their inter se seniority in the feeder grade. Those Officers who are graded as 'unfit' by the DPC shall not be included in the select list.*
- b) The Departmental Promotion Committees shall also consider the cases of eligible employees who are on*

foreign service or on study leave.

- c) *The instructions issued by the Govt. from time to time on procedure to be followed in DPC proceedings in respect of Govt. Servants shall mutatis mutandis apply.*

Note: *For absorption to the post carrying pay scale of Rs. 16000-400-20800 and above and for which composite method of recruitment is adopted, the benchmark in the overall grading shall be 'Very Good'. In all other cases, the benchmark shall be "Good".*

(3) For promotion to non-selection posts, where no bench mark is specified, the criteria for selection shall be seniority-cum-fitness."

Adhoc appointments are contemplated under Regulation 28, which reads thus :

"28. Adhoc Appointments

In case of immediate necessity when a panel recommended by the Departmental Promotion Committee has been used up, the appointing authority may make a purely ad hoc appointment to a post, a purely temporary post, a leave vacancy, by appointing the senior most eligible and suitable employee in the feeder grade or post up to a period of six months at a time and not exceeding one year or till a new panel is recommended by the Departmental Promotion Committee whichever is earlier. The ad-hoc appointment, where unavoidable, should be made only strictly subject to fulfilling the qualifications, experience

provided in the RRs”.

As regards Rules for appointment to the Post of Assistant Director (EDP), the Rules read thus :

RECRUITMENT RULES FOR CLASS-I POSTS OF EDP WING IN PLANNING AND RESEARCH DIVISION UNDER FINANCE DEPARTMENT/MoPT.

1.	<i>Serial number</i>	1.
2.	<i>Name of post</i>	<i>Assistant Director (EDP)</i>
3.	<i>Number of posts</i>	2
4.	<i>Classification</i>	<i>Class-I</i>
5.	<i>Scale of Pay</i>	9100-250-15100
6.	<i>Whether Selection or non selection.</i>	<i>Selection.</i>
7.	<i>Upper age limit for direct recruitment (in years).</i>	30
8.	<i>Educational and other qualifications prescribed for direct recruitment.</i>	<u><i>Essential:</i></u> <i>Degree in Computer Engineer/ Computer Sciences from a recognised university/institution OR Degree in Maths/Statistics/Operational Research/Economics with Post Graduate Diploma in Computer Application/Computer Science/Information Technology from a recognized university/ institution OR Degree in</i>

		<i>Engineering with Post Graduate Diploma in Computer Application/Computer Science/Information Technology from a recognized university/institution.</i> <u><i>Desirable :</i></u> <i>(i) Post Graduate Degree in Maths/Statistics/Operational Research/Economic or Post Graduate Degree in Computer Science or Computer Engineering or Systems or Information System or MIS or Information Technology or Computer Application or Business Administration (PG degree/diploma) with Specialization in Systems or Information Systems or MIS or Information Technology and allied subjects from a recognised University/Institution.</i> <i>(ii) Two years experience in Programming/Electronic data Processing/System Analysis, etc.</i>
9.	<i>Whether (a) age (b) Educational qualification (c) Experience for direct recruits will apply in the case of promotion/absorption/deputation.</i>	<i>(a) No.</i> <i>(b) Yes.</i> <i>(c) No.</i>

10.	<i>Period of probation (in years).</i>	2.
11.	<i>Method of recruitment, (whether by direct recruitment or by promotion/absorption/deputation).</i>	<u>Upto 21st Aug.2012.</u> By direct recruitment – 33.1/3%. By promotion – 66.2/3% <u>After 21st Aug. 2012.</u> By direct recruitment - 66.2/3%. By promotion - 33.1/3%
12.	<i>In case of promotion/Absorption/deputation, grades from which it should be made.</i>	Promotion from Assistant Manager (EDP) in the scale of pay of Rs.8600-14600 with 3 years regular service in the grade OR Promotion from Class III employees in the scale of pay of Rs.6170-11975 in the respective discipline of P & R Div. with 5 years regular service in the grade where there are no Class II posts in the pay scale of Rs.8600-14600 in that discipline.
13.	<i>Remarks</i>	

9. Conjoint reading of the Rules and Regulations indicates that the Departmental Promotion Committee will be constituted to recommend the appointments to various posts in the Port Trust. As regards the posts required to be filled in by promotion through

selection, the Departmental Promotion Committee shall determine the merit of those being assessed for promotion with reference to the prescribed benchmark and those who are declared fit shall be arranged in the merit list in order of their *inter se* seniority. It has been asserted on behalf of the Petitioner that there are no benchmarks fixed by the Departmental Promotion Committee, which assertion has gone uncontroverted. In case of administrative necessity, the Port Trust can appoint a senior-most eligible employee from the feeder grade for a period of six months at a time and not exceeding one year on ad hoc basis. Qualification for the post of Assistant Director (EDP) is split into two parts, first is essential qualification which requires degree or some degrees with Post Graduate Diploma as essential qualification. Thereafter, certain desirable qualifications have been specified, one of which is the Post Graduate Degree in Information Technology or Computer Application, etc.

10. It is an admitted position that the Petitioner does not possess the essential qualifications. As far as Respondent No.6 is concerned, reliance by Respondent No.6 is on the certificate which Respondent No.6 has obtained from Periyar University of Post Graduate Degree in M. Sc. (IT). According to Respondent No.6,

this fulfills the criteria of essential qualification.

11. It was contended by Mr. Dessai, learned Senior Advocate for the Petitioner that both, the Petitioner and Respondent No.6 are not qualified, as the Respondent No.6 also does not have the essential qualification. He submitted that in such circumstances, regular promotion could not have been given to Respondent No.6. He submitted that in that scenario, the benefit of higher post could not have been given to Respondent No.6 only on the basis of desirable qualification, even assuming it is so obtained. He submitted that the Post Graduate Degree in M. Sc. (IT) from Periyar University is by way of distance learning programme which was stated to have been obtained in the year 2015. He submitted that this course is of two years and Respondent No.6 completed first year in the year 2003 by correspondence and it is after a gap of 12 years that he has completed the second year. Mr. Dessai submitted that the manner in which this Degree has been obtained, is highly suspicious. He also submitted that the University Grant Commission has issued an order directing all the Universities not to carry out their activities beyond their territorial limits, because of which a degree issued by Periyar University would be void, as the University Grant Commission Act is enacted pursuant to the exclusive powers vested in the Parliament

to regulate and maintain the standard in higher education and research. He submitted that when the information under the Right to Information Act was sought for to find out the basis on which the Departmental Promotion Committee decided to take into consideration the desirable qualification as criteria for regular promotion, reply was that such information is not available. Mr. Dessai submitted that the Petitioner, in fact, had worked on the same post on ad hoc basis. He submitted that the Petitioner would be completing almost entire service and would retire on 30 November 2018. Mr. Dessai submitted that the Departmental Promotion Committee has proceeded in a completely illegal manner and has promoted Respondent No.6, who is seven years junior to the Petitioner, on regular basis, bypassing the claim of the Petitioner. He submitted that even though the provision which contemplates the senior-most person to be given the ad hoc post, the Port Trust has chosen to promote Respondent No.6 on regular basis only on the ground that he has desirable qualification. He submitted that such a course adopted by Respondent No.1 is completely illegal, arbitrary and violative of Article 14 of the Constitution of India.

12. Mr. Nadkarni, learned Counsel for the Port Trust submitted that the Port Trust is not taking side either of the

Petitioner or Respondent No.6, nor any *mala fides* have been alleged. He submitted that the Petitioner is admittedly not qualified and that there is no question of promoting the Petitioner in the post. He submitted that the Respondent No.6 had the Post Graduate Degree from Periyar University in M. Sc. (IT) and since the Degree in Computer Sciences is mentioned as essential qualification, the Post Graduate Degree in M. Sc.(IT) could be stated to be included in it. He also submitted that at the relevant time out of the two posts of the Assistant Director, one post was vacant and even the two posts above were that posts were also vacant, as there was no qualified person to be promoted. Because the post was also falling vacant on 4 July 2017, immediate decision on priority basis had to be taken and since Respondent No.6 had desirable qualification of the Post Graduate Degree, he was given the promotion. He submitted that this action of the Port Trust is in public interest and there are no *mala fides* and this Court should not interfere in the writ jurisdiction.

13. Mr. Gaurish Agni, learned Counsel appearing for the Respondent No.6 submitted that the Respondent No.6 has better qualifications than the Petitioner and there is no substance in the contention that the Post Graduate Degree from Periyar University has to be discarded. He submitted that the Madras High Court has

stayed the order passed against Periyar University and, therefore, the Degree will have to be held to be valid. The learned Counsel submitted that the Post Graduate Degree in M. Sc.(IT) from Periyar University would fall within the definition of '*Degree in Computer Sciences*' which is an essential requirement. He submitted that, therefore, Respondent No.6 is fully qualified and has been rightly promoted.

14. We have considered the rival contentions and the Recruitment Rules which we have reproduced above. The Recruitment Rules clearly provide for the essential qualifications. The essential qualification which is relevant for the present controversy is Degree in Computer Sciences from a recognized University. It is the claim of Respondent No.6 that the Degree obtained by him in Post Graduate Degree from Periyar University would fall within the ambit of '*Degree in Computer Sciences*'.

15. As far as the Petitioner is concerned, it is not even disputed by the Petitioner that he does not hold requisite qualification, but the Petition cannot be dismissed summarily only on this ground. The Petitioner is admittedly senior to the Respondent No.6 by seven years in service. It is not that the

Respondent No.6 has been given officiating charge of the post of Assistant Director (EDP). Respondent No.6 has been promoted on regular basis. If Respondent No.6 is not qualified to be promoted on regular basis, then the question that would arise is how to fill up the post of Assistant Director (EDP), whether by direct recruitment or on ad hoc basis or officiating charge can be given. If the promotion is to be made on ad hoc basis or by giving officiating charge, which contingency is provided in the Recruitment Rules, question of seniority cannot be said to be irrelevant. Therefore, the Petitioner is entitled to question the promotion of Respondent No.6 on regular basis to the post of Assistant Director (EDP).

16. Now to consider the argument that the Degree in Information Technology obtained by the Respondent No.6 could be considered as covered under the 'Degree in Computer Sciences' Respondent No.6 had made a request that since he was possessing Degree in Commerce having Economics subject with diploma, it may be considered as one qualification. An opinion was sought from the Goa University by the Port Trust and it was informed that merely because one of the subjects was Economics, it cannot be considered as a Degree in Economics and, therefore, the qualification of Degree in Economics with Post Graduate Diploma in Information

Technology is not available with Respondents No.6.

17. It was then contended on behalf of Respondent No.6 that Respondent No.6 has a Post Graduate Diploma in Information Technology, which includes a degree as well. This submission has no merit. The Post Graduate Degree contemplated under the Recruitment Rules as a desirable qualification is part of a scheme. Scheme of the Rules postulates two levels of qualifications. First the essential qualifications, where certain Degrees are prescribed. Second the step above, that is a Post Graduate Degree, which is a desirable qualification. What Respondent No.6 has, is a certificate from Periyar University which states that the Petitioner is given 'Degree of M. Sc.' in Information Technology. It is pointed out to us that this Post Graduate Degree was given in two years, without there being any Degree at the first instance, but a Diploma through correspondence course and 'Post Graduate Degree' is also by correspondence course. Even though the Certificate possessed by Respondent No.6 contains the phrase 'Post Graduate Degree', it is not a Post Graduate Degree as contemplated under the Recruitment Rules. The Recruitment Rules will have to be read in a purposeful manner as it will apply uniformly to all the applicants in future and cannot be interpreted merely because it suits a particular candidate at

a given time. The Recruitment Rules will have to be read so as to ensure that a suitable talent is available and appointed to perform the public duties. In the case of *Prof. Yashpal and anr. vs. State of Chhattisgarh and ors.*¹ the Apex Court had an occasion to analyse the meaning of Degree and what it connotes. The Supreme Court observed that a degree conferred by an university is a proof of the fact that a person has studied a course of a particular higher level and has successfully passed the examination certifying his proficiency in the said subject of study to such level. An university degree confers a kind of status upon a person like a graduate or a postgraduate. The interest of society also requires that the holder of an academic degree must possess the requisite proficiency and expertise in the subject which the degree certifies. Therefore, the interpretation placed by Respondent No.6 on the term 'Degree in Computer Sciences' occurring in the essential qualification to the post of Assistant Director (EDP) cannot be accepted. The educational and other qualifications prescribed for the selection to the post of Assistant Director (EDP) show that certain qualifications are treated as essential. If the candidates are equally placed, then desirable qualification would be taken into consideration. It cannot be possibly argued that a candidate who does not possess the essential

¹ (2005) 5 SCC 420

qualification, can be considered as qualified because he possesses desirable qualification. Respondent No. 6 thus does not have qualification to be promoted to the post of Assistant Director (EDP).

18. Though Mr. Nadkarni initially sought to urge that the Degree held by Respondent No.6 could be considered as an essential qualification, upon pointing out that it was not the stand taken on affidavit by the Port Trust, nor taken by the Departmental Promotion Committee, Mr. Nadkarni did not pursue that angle further. The Departmental Promotion Committee itself did not consider the case of Respondent No.6 as having the essential qualifications. The Minutes of the Departmental Promotion Committee are on record. The DPC, in fact, held that Respondent No.6 did not possess the essential qualifications. The relevant paragraph of the minutes, reads thus :

“ vi. The senior most candidate in the seniority list Viz. Shri Shirish A. N. Desai, Asst. Manager (EDP) does not fulfill the requirement of RRs in respect of Educational qualification. The second senior most candidate in the seniority list viz. Shri Prasad Nayak, Asst. Manager (EDP) has acquired the educational qualification of M.Sc (Information Technology) from Periyar University Salem, Tamil Nadu, which is actually a two years PG Degree course by appearing for only one examination of Second Year as he was granted lateral

entry to Second year M.Sc. (Information Technology) having passed First Year M.Sc. (Information Technology)/PGDIT from Sikkim Manipal University in the year 2003. The further correspondence with the Periyar University also reveals that the recognition for the year 2015-16 and 2016-17 was denied to the said University by UGC against which PRIDE of Periyar University has obtained Stay Order from the High Court of Madras, Chennai (W.P. No.34428 of 2015 and W.P. No. 37992 of 2016). Since the Stay Order continues, the DPC conclude that the recognition of the University also continues.

vii. DPC further noted that since there has been representation on the alleged deviation in the educational qualification possessed by Shri Nayak vis-a-vis RRs, clarification was sought from the Goa Engineering College Farmagudi to ascertain whether the educational qualification of M.Sc. in Information Technology acquired by Shri Nayak can be considered as equivalent qualification to Degree in Computer Engineering/Computer Sciences as stipulated under RRs. In response, the Principal, Goa College of Engineering, Farmagudi, has submitted the clarification dtd 19.2.2017 given in this regard by Dr. Vijay Borges Asst. Professor, Goa College of Engineering, wherein it has been clarified as Sl. No. 'c' of his opinion that "the incumbent's educational Post Graduate qualification of M.Sc. in Information Technology may not be necessarily equated to having Graduate Degree as specified under the said RRs." Since Shri Prasad Nayak posses post graduate in M.Sc. (IT) which is one on the desirable qualification, the DPC decided to consider him as eligible."

Therefore, the Departmental Promotion Committee had decided to recommend Respondent No.6 for promotion only on the ground that he possessed desirable qualification, without essential qualification which is not permissible.

19. This brings us to the situation where both, the Petitioner and Respondent No.6 are not qualified to be promoted to the post of Assistant Director (EDP). It was argued by Mr. Nadkarni that the Court should not interfere in the Certiorari jurisdiction as the quashing of the order would result in greater harm to the society. It was contended that only due to administrative exigencies that Respondent No.6 came to be promoted. As far as angle of administrative exigency is concerned, we fail to understand as to how that can justify promoting a totally unqualified candidate on regular basis. The Recruitment Rules themselves provide for ad hoc promotions and in the past they have been so given. Had Respondent No.6 been given ad hoc promotion or officiating charge, the argument of administrative exigency and desirable qualification could have been viewed in a different context. Blatant breach of the Recruitment Rules cannot be excused as an administrative exigency, especially when alternative modes to resolve such administrative

exigencies are provided under the Recruitment Rules. Nothing is shown to us as to why the post in question cannot be filled in by way of direct recruitment or by way of ad hoc arrangement or by giving officiating charge. If there is really a serious administrative exigency, no answer to this is forthcoming.

20. If both, the claim of the Petitioner and Respondent No.6 is to be considered for selection on adhoc basis, even in the cases of both merit-cum-seniority and seniority-cum-merit, seniority is not entirely irrelevant. The minutes of the Departmental Promotion Committee show that, having acknowledged the position that Respondent No.6 did not have essential qualification, the Committee did not consider the aspect of *inter se* seniority between the Petitioner and Respondent No.6, nor their competitive merit. We have not been shown anything adverse against the Petitioner, nor it is the case of the Respondent-Port Trust. The Departmental Promotion Committee, therefore, either should have rejected the candidature of Respondent No.6 or if it had to recommend ad hoc promotion or giving officiating charge, it should have considered the seniority and competitive merit of both the candidates. The Departmental Promotion Committee did neither and in complete violation of the Recruitment Rules, recommended the promotion of the Respondent

No.6 on regular basis. This exercise by the Departmental Promotion Committee is, therefore, entirely illegal and cannot be sustained and consequently, the impugned order promoting Respondent No.6, being based on the recommendation of the Departmental Promotion Committee, also cannot be sustained.

21. As far as the post of the Assistant Director (EDP) that will now become vacant is concerned, it is open to the Respondent-Port Trust to fill up the same by direct recruitment or if the administrative exigencies are so grave that it cannot wait till the direct recruitment, to exercise the option of ad hoc arrangement. If the ad hoc arrangement is to be considered, as per Regulation 28 of Regulations of 2010, parameters therein are provided. Since it is the contention of the Respondent-Port Trust that promotion of Respondent No.6 had to be made in view of the administrative exigencies, if the promotion is set aside, the administrative exigencies as projected would continue. That being the position, the Respondent-Port Trust should immediately initiate the process for direct recruitment or ad hoc promotion. Till the recruitment process is completed, Regulation 28 does contemplate this course of action upto a period of one year. It is, however, for the Respondent-Port Trust to do so. We have referred to this position only because it is the

argument of the Respondent-Port Trust that Respondent No.6 was regularly promoted, apparently in breach of the Recruitment Rules, because the post could not be kept vacant, being an important post.

22. In view of this position, we have not referred to the wider issues raised by Mr. Dessai regarding powers of Periyar University to issue degrees in education and the interpretation placed on the powers of the State Legislature and the Parliament. We have found that even assuming the Post Graduate Degree in favour of Respondent No.6 is considered as valid, it cannot fall within the ambit of the essential qualification. We have also not gone into the factual aspect raised by Mr. Dessai as to the leave record of the Respondent No.6 for the contention as to how he could manage to get the degree without leaving the Office.

23. As a result of the discussion, the Petition succeeds. The Impugned order dated 4 July 2017 is quashed and set aside. In view of the administrative exigency expressed by the Respondent-Port Trust of its inability to keep the post of Assistant Director (EDP) vacant, we direct that the Respondent-Port Trust will take necessary steps of either initiating appointment by direct recruitment or ad hoc appointment, within a period of one month from today.

24. Rule is made absolute in the above terms. No order as to costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.