

IN THE HIGH COURT OF BOMBAY AT GOA
CONTEMPT PETITION NO.42 OF 2018
IN
WRIT PETITION NO.645 OF 2017
WITH
CIVIL APPLICATION (REVIEW) NO.24 OF 2018
IN
WRIT PETITION NO.645 OF 2017
WITH
STAMP NUMBER (APPLN.) NO.2739 OF 2018
IN
WRIT PETITION NO.645 OF 2017

The Board of Trustees of the Port of
Mormugao and others. Applicants.

Versus

Shirish Avinash Naik Desai and ors. Respondents.

Mr. S. G. Desai, Senior Advocate with Mr. Pavithran A. V. for the
Petitioner in Contempt Petition No. 42/2018.

Mr. Y.V. Nadkarni, Advocate with Mr. Sanket Kamat, Advocate for
Respondent No. 1, 3 and 4 in Contempt Petition No. 42/2018.

Mr. Dattaprasad Lawande, Advocate General with Mr. Ashish
Krishnath Kunkoliencar, Advocate for Applicant CAREV No.
24/2018 and for Respondents in Stamp Number (Appln.) No.
2739/2018.

Mr. Gaurish N. Agni, Advocate for the Applicant in Stamp Number
(Appln.) No.2739/2018 and for original Respondent No.6.

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

Date : 31 October 2018.

P.C.:

These Review Petitions and Contempt Petition arise from the Judgment and Order passed in Writ Petition No. 647 of 2017 on 13 July 2018. By this decision we had disposed of the Writ Petition by the following directions:

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.

2. The Contempt Petition is filed by the Petitioner on the ground that the Order is not complied. The reply affidavit is filed that the Order has been complied with. For further hearing the Contempt Petition is adjourned to 27 November 2018.

3. The Review No. 24 of 2018 is filed by the Port Trust-th employer. The review is sought on the ground that the Court has not considered the fact that higher qualification includes the lower qualification as laid down in the decision of *Jyoti K. K & Ors. v. Kerala Public Service Commission And Ors.*¹ No other ground was urged.

4. The qualifications and all the material was part of the Petition record. We had considered in detail as to what were the qualifications required. We had come to certain conclusion as to what is the essential qualification and what is a desirable qualification. Having considered the qualifications and considering the Recruitment Rules, we had recorded our findings. Substantial arguments were advanced before us on this point. Had the same Advocate who had represented the Port Trust in the present Petition filed the Review Petition, we would have pointed out the same to him. However, this Review is filed by changing the Advocate. To make the matters worse, the Advocate who appeared for the Port Trust in the main Petition still continues to represent the Port Trust in the Contempt Petition today, but not in the Review. The Court expects the same Advocate to file the Review so that such attempt to seek rehearing are curbed. We disapprove such

1 (2010) 15 Supreme Court Cases 596

conduct, more so from a statutory authority. The review sought is on the ground akin to appellate powers, which we do not possess. The Review Application cannot be considered and is rejected.

5. As far as the Review in Stamp (Number) Application no. 3729 of 2018 is concerned, it is filed by Respondent No. 6 in the original Petition. The learned Counsel states that the Review Application is necessary in view of the observations that the original Respondent no. 6-applicant had completed the course by way of correspondence which he did not but it was a Distance Education programme and he has appeared for examination. No other contention was raised. This is hardly a ground for Review. What was mentioned by 'correspondence course' was to distinguish it from regular course by attending classes. Therefore, the words 'correspondence' or 'distance education' would not make a difference to the ultimate conclusion. No review on this ground is necessary. This Review Application also stands rejected.

7. Stand over to 27 November 2018 in the Contempt Petition.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.