

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.1026 OF 2017***

Mrs. Shabana Bi Sayyed,
major of age, r/o 'S.M.Manzil',
Behind Britannia House Building,
Haliwada Road, Porvorim,
Bardez, Goa, presently working as
'Store Keeper' (Medical Store Depot)
Directorate of Health Services,
Government of Goa,
Campal, Panaji, Goa.

... Petitioner

Versus

1. State of Goa
through the Chief Secretary,
having office at Secretariat,
Porvorim, Goa.
2. The Director,
Directorate of Health Services
Government of Goa, with office at
Campal, Panaji, Goa.
3. The Director,
Directorate of Food &
Drugs Administration,
Government of Goa,
with office at Bambolim,
Ilhas, Goa.

.. Respondents

Mr.Shivan Desai, Advocate for the Petitioner.

Mr.Pravin N. Faldessai, Additional Government Advocate for Respondent Nos.1 to 3.

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

Date : 26 July 2018.

Oral Judgment (Per N.M. Jamdar, J.) :

Rule. Rule made returnable forthwith. Taken up for final disposal. The Respondents waive service.

2. The Petitioner has challenged the action of the Respondent nos.1 and 2 to give effect to promotion of the Petitioner from 19 September 2017 which according to the Petitioner, should have been given from 22 February 2012. It is for this limited extent, the Petitioner has approached this Court.

3. The Petitioner was appointed to the post of Store Keeper (Medical Store Depot) on 3 March 2006 in the Directorate of Health Services, Government of Goa. The Petitioner was appointed pursuant to the selection by a Selection Committee. According to the Petitioner, when the Petitioner joined services of the State, the post of the Senior Store Keeper was occupied by one Ms. Shamlata Dangui.

On 27 March 2003 Ms. Shamlata Dangui, who was the Junior Store Keeper was promoted to the post of the Senior Store Keeper. On 27 February 2012 that Ms. Shamlata Dangui was promoted to the post of the Assistant Pharmaceutical Chemist Group B. Prior to the promotion of Ms. Shamlata Dangui to the post of Senior Store Keeper, the post of the Senior Store Keeper was occupied by Mrs. Ingrid Sales. On 11 October 2013, the Petitioner made a representation for her promotion to the post of the Senior Store Keeper, in terms of the Recruitment Rules of 1991. Since there was no response to this representation, the Petitioner filed a Writ Petition No.676 of 2014 in this Court.

4. The Division Bench allowed the Writ Petition by the judgment and order dated 12 June 2017. The Respondent-State was directed to consider the Petitioner for promotion within three months in the light of the observations made in the judgment.

5. After this decision was rendered, the Director of Health Services passed the impugned order on 19 September 2017 promoting the Petitioner to the post of Senior Store Keeper with immediate effect. The order dated 19 September 2017, therefore, gave effect to the promotion of the Petitioner from that date. Being aggrieved, the

Petitioner has approached this Court by way of this Writ Petition.

6. It is the contention of the learned counsel for the Petitioner that when earlier Writ Petition was disposed of by the judgment and order dated 12 June 2017, the Division Bench had observed that the Petitioner was not considered for promotion after the promotion of the earlier incumbent and this action of the Respondent-State was held to be arbitrary and unsustainable in law. According to the learned counsel for the Petitioner, the date of promotion to the Petitioner should have been from the date the post fell vacant as non-filling of the post by granting promotion to the Petitioner was considered, as an arbitrary action. The learned Additional Government Advocate sought to defend the impugned order passed on the ground that the post was not available at that time.

7. The impugned order dated 19 September 2017 granted promotion to the Petitioner with immediate effect. The order passed on 19 September 2017 is not a routine order but it will have to be examined in the backdrop of the judgment of this Court. Therefore, while granting the date of promotion, it was incumbent upon the Director of Health Services to apply his mind to the decision of this

Court. This exercise has not been carried out by the Director.

8. We, therefore, dispose of this Writ Petition, by directing the Director of Health Services to take a decision after examining the judgment passed by this Court in the earlier Petition. We make it clear that we have not expressed any opinion on the rival contentions. We also make it clear that this order is not to be construed as a liberty to the Director to reopen the issues which stand concluded by the judgment of this Court. A decision be taken on this limited aspect within a period of eight weeks from today.

9. Rule is made absolute in the above terms with no order as to costs.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.