

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 183 OF 2018

1. Mrs. Pooja Mahesh Parab, Wife  
of Mahesh Parab, Age 35 Years,  
Indian National, Resident of  
H.No.139, Askawada,  
Mandrem, Pernem, Goa,  
403527.
  2. Shri Nanu Bhikaji Chari  
Son of Bhikaji Chari,  
Age 25 years, Indian National,  
Resident of H. No.730,  
Varchawda Morjim, Pernem,  
Goa, 403 512.
  3. Ms. Siddhi Shrikrishna Naik,  
Daughter of Shrikrishna Naik,  
Aged 25 years, Indian National,  
Resident of H. No.102,  
Bawakhanwada, Paliem, Post  
Arambol, Pernem, Goa. 403  
524.
  4. Ms. Ankita Anand Bandekar,  
Daughter of Age 22 years,  
Indian National resident of  
H.No.176, Bandeau Waddo,  
Morjum, Pernem, Goa 403 512.
- .... Petitioners

*V e r s u s*

1. State of Goa,  
Through Chief Secretary,  
Secretariat, Alto-Porvorim,  
Bardez, Goa.
2. The Director  
Directorate of Higher  
Education, Government of Goa,  
DTE Complex, Alto-Porvorim,  
Goa. .... Respondents

Mr. J. Supekar, Advocate for the Petitioners.

Mr. Pravin Faldessai, Additional Government Advocate for the Respondents.

**Coram :-** **M. S. SONAK &**  
**M. S. JAWALKAR, JJ.**

**Date :** **16<sup>th</sup> December, 2019.**

**ORAL JUDGMENT** (*Per M. S. Sonak, J.*)

**1.** Heard Mr. J. Supekar, the learned Counsel for the petitioners and Mr. Pravin Faldessai, the learned Additional Government Advocate for the respondents.

**2.** Rule. Rule is made returnable forthwith with the consent and at the request of the learned Counsel for the parties.

3. The challenge in this petition is to the decision reflected in the notings dated 21.06.2017 made by the Hon'ble Education Minister who scrapped the entire selection process which commenced in pursuance of advertisement dated 19.02.2015 for filling up the posts of LDCs in the Directorate of Higher Education.

4. In pursuance of the advertisement dated 19.02.2015 for filling up 11 posts of LDCs, the petitioners herein as well as several other candidates made their applications. They were called upon to attend the written examination which was held on 23.08.2016. On 23.08.2016, the results of the written examinations were declared in terms of which the petitioners and several other candidates were held eligible to be considered in the next stage of selection process i.e. the computer literacy test. This computer literacy test was held on 23.10.2016 and the results were also declared on the same day. In terms of the results, the petitioners and several other candidates were held eligible to be

called upon to attend the oral interview which were ultimately held between 14.11.2016 and 16.11.2016.

**5.** For a long time, the results of the oral interview were never declared. Then, one Aakar Bhiovanand Dabale, through the medium of Right to Information Act, 2005 applied for information regards the status of recruitment in pursuance of the advertisement dated 19.02.2015 some time on 27.10.2017. In response, the respondent no.2 disclosed that a decision has been taken to re-advertise the posts. The petitioners on 25.01.2018, being aggrieved by such decision which was not even communicated to them, instituted the present petition.

**6.** For a long time, the respondents chose not to file affidavit in response to this petition. Ultimately, affidavits were filed in which reliance was placed on the following noting of the Education Minister :

*“Hon. C.M/EM. The marking system though approved is not in tune with Supreme Court order of 15% maximum marks to interview. As such we may readvertise after Per. Dept clarifies on the matter expected before 30/6.*

*sd/-*

*21/06”*

7. On behalf of the respondents, it was contended that the aforesaid notings constitutes on decision to scrap the entire selection process which commenced in the proceedings of the advertisement dated 19.02.2015 and to proceed to re-advertise the posts in question.

8. Since the affidavit as filed was not at all clear, opportunity was granted to file fresh affidavits. Even the fresh affidavits do not indicate any other reasons then the one referred to in the first affidavit and the noting dated 21.06.2017 prescribed above.

9. Mr. Faldessai, the learned Additional Government Advocate submits that in the present case, though only 15 marks out of 100

were apparently reserved for oral interview, the selection criteria included award of 40 marks for Higher Secondary School Certificate or All India Council for Technical Education approved Diploma awarded by a recognised State Board of Technical Education or equivalent qualification from a recognised institution. He pointed out that since these were the basic qualifications prescribed, all eligible candidates obviously had to be awarded within 40 marks out of 100. As a result, there remained only 60 marks to be awarded in the further selection process. From out of these 60 marks, 15 marks were for oral interview which means that 25% of the marks were reserved for oral interviews.

**10.** Mr. Faldessai, learned Additional Government Advocate pointed out that reservation of over 15% marks for oral interview would be considered by the decision of the Hon'ble Supreme Court on this issue. Mr. Faldessai, also made reference to Office Memorandum (OM) dated 08.01.2016 issued by the

Department of Personnel, Government of Goa, in which it is clearly provided that oral interview will be dispensed with for all group 'C' and 'D' posts. The interview was also required to be discontinued of the non-gazetted post of Group 'D' category. Mr. Faldessai, the learned Additional Government Advocate, pointed out that the post of LDC is a Group 'C' post and, therefore, no interviews should have been held for recruitment to the posts of LDCs.

**11.** Mr. Faldessai, the learned Additional Government Advocate, submits that on account of the aforesaid irregularities of the selection process, the entire selection process had to be quashed and the posts had to be re-advertised.

**12.** On the other hand, Mr. Supekar, the learned Counsel for the petitioner, pointed out that there was really no basis for concluding that the marks for interview were in excess of 15%. Learned Counsel pointed out that in the present case, the recruitment process commenced with the issuance of

advertisement dated 19.02.20015. He, therefore, submits that the OM dated 08.01.2016 will not apply. He refers to clause (v) of the OM dated 08.01.2016 to submit that for advertisement already issued, the ongoing process may be completed particularly where there is urgency. He pointed out that there is material on record in the form of notings of the Director of Higher Education that there was urgency in filling up the posts of LDCs. He refers to the decision of this Court in the case of *Miss Dilsha Datta Mashelkar* in *WP No.408 of 2017* decided on 10.04.2019. On basis of this, Mr. Supekar, the learned Counsel, submits that the decision for cancellation or scrapping of the entire selection process is unsustainable and appropriate directions be issued to the respondents to proceed to complete the selection process, atleast on the basis of written and computer literacy test.

**13.** We have considered the rival contentions in the context of the material placed on record. According to us, there is merit in the contention of Mr. Supekar, the learned Counsel appearing for

the petitioners, that the recruitment process in the present case has not been cancelled or scrapped for any relevant considerations. Assuming that the interview marks were indeed in excess of 15%, it was always open to the respondents to restrict the same to 15%. Further, it was always open to the respondents to totally do away with the interview marks, as was directed by this Court in the case of *Miss Dilsha Mashelkar* (supra).

**14.** The OM dated 08.01.2016 was issued after the recruitment process in the present case commenced with the issuance of advertisement dated 19.02.2015. In such situation, clause (v) of the OM dated 08.01.2016 was, prima facie, attracted. Clause (v) of the OM dated 08.01.2016 reads as follows :

*“(v) For advertisements already done for selection with interview as component, the posts could either be re-advertised, or if urgency or any other reason requires so, the ongoing process may be completed.”*

**15.** No doubt, the aforesaid clause gives an option to the respondents to either re-advertise the posts or to continue with the on going process, if there is urgency or other reasons required so.

**16.** In matters of such nature, the petitioners, by merely applying be considered for direct recruitment do not acquire any indefeasible right to be appointed. That does not mean that the petitioners cannot insist that their candidatures be considered fairly and in accordance with law. Ultimately, Article 16 of the Constitution requires that the State atleast considers the case of the eligible candidates for recruitment in pursuance of advertisement issued by the State itself. This is the law laid down by the Hon'ble Supreme Court in the case of *East Coast Railway & anr. vs. Mahadev Appa Rao & Ors.* reported in *(2010) 7 SCC 678*.

**17.** In paragraphs 13, 14, 15, 16 and 17 of *East Coast Railway* (supra) this is what the Hon'ble Apex Court has held :

*“13. A Constitution Bench of this Court in Shankarsan Dash v. Union of India (1991) 3 SCC 47 had an occasion to examine whether a candidate seeking appointment to a civil post can be regarded to have acquired an indefeasible right to appointment again such post merely because his name appeared in the merit list of candidates for such post. Answering the question in the negative this Court observed:*

*"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any*

*discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha 1974 (3) SCC 220; Neelima Shangla (Miss) v. State of Haryana 1986(4) SCC 268 or Jitender Kumar v. State of Punjab 1985 (1) SCC 122."*

14. *It is evident from the above that while no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of the selection process. The validity of the State's decision not to make an appointment is thus a matter which is not beyond judicial review before a competent Writ court. If any such decision is indeed found to be arbitrary, appropriate directions can be issued in the matter.*

15. *To the same effect is the decision of this Court in Union Territory of Chandigarh v. Dilbagh Singh and Ors. (1993) 1 SCC 154, where again this Court reiterated that while a candidate who finds a place in the select list may have no vested right to be appointed to any post, in the absence of any specific rules*

*entitling him to the same, he may still be aggrieved of his non-appointment if the authority concerned acts arbitrarily or in a malafide manner. That was also a case where selection process had been cancelled by the Chandigarh Administration upon receipt of complaints about the unfair and injudicious manner in which the select list of candidates for appointment as conductors in CTU was prepared by the Selection Board. An inquiry got conducted into the said complaint proved the allegations made in the complaint to be true. It was in that backdrop that action taken by the Chandigarh Administration was held to be neither discriminatory nor unjustified as the same was duly supported by valid reasons for cancelling what was described by this Court to be as a "dubious selection".*

*16. Applying these principles to the case at hand there is no gainsaying that while the candidates who appeared in the typewriting test had no indefeasible or absolute right to seek an appointment, yet the same did not give a licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had*

*appeared in the examination that constituted a step in aid of a possible appointment in their favour, were entitled to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner.*

*17. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an antithesis of the guarantee contained in Articles 14 and 16 of the Constitution. Whether or not the cancellation of the typing test was arbitrary is a question which the Court shall have to examine once a challenge is mounted to any such action, no matter the candidates do not have an indefeasible right to claim an appointment against the advertised posts.”*

**18.** Based on the aforesaid, we find considerable merit in the submission of Mr. Supekar, the learned Counsel for the petitioners, that this is a fit case where directions ought to have been issued to the respondents to continue with the selection process by excluding all together the marks obtained by the

candidates at the oral interview consistent with its OM dated 08.01.2016.

**19.** However, in the peculiar facts of the present case, to which where we shall advert to, it is really not possible to issue the aforesaid directions or to grant any relief to the petitioners on the aforesaid basis. This is because the respondents by filing an additional affidavit on 13.12.2019 have pointed out that from out of the 11 posts of LDCs which came to be advertised, 5 posts were allotted to the general category and 3 posts were reserved for the OBC category. The remaining 3 posts were reserved for ST, physically challenged and ex-servicemen categories. Two of the petitioners i.e. Siddhi Naik and Pooja Parab had applied to be considered under the general category and the balance two petitioners i.e. Nanu Chari and Ankita Bandekar, had applied to be considered against the posts under OBC. The affidavit dated 13.12.2019 further states that after excluding the oral interview marks, there are atleast 26 candidates figuring in merit above the

petitioner Siddhi Naik and 57 candidates above the petitioner Pooja Parab in the general category. Similarly, there are 19 candidates figuring in the merit list above the petitioners in the OBC category even after the total exclusion of the oral interview marks.

**20.** Mr. Supekar, the learned Counsel for the petitioners, on the earlier occasion had pointed out that candidates who obtained below 5 marks of the computer test are not even eligible to even to be called for oral interview and such candidates ought not to be considered in the merit list. The respondents while contesting this position, have nevertheless pointed out that even if this position was to be accepted, there are atleast 26 candidates above the petitioner Siddhi Naik and 36 candidates above the petitioner Pooja Parab under the general category. So also there are six candidates above the OBC category. The aforesaid statement records the number of candidates who stand higher in the merit list as compared to the petitioners who are backed by records

which are annexed from pages 177 to 184. From the perusal of the affidavit as well as the annexures accompanying the same, it is apparent that even if we were to accept Mr. Supekar's contention in their entirety, no relief as such can be granted to the petitioners.

**21.** At one stage, Mr. Supekar, the learned Counsel, did urge that general directions could be issued to the respondents to complete the selection process which the respondents have discontinued without any reason. Upon due consideration of this submission, in the peculiar facts of the case, we feel that such direction will not be appropriate. The candidates who might have got the benefit of such a direction have not bothered to challenge the scrapping of the recruitment of the entire selection process. At this stage, it would be too late to even consider the challenge on behalf of such candidates. That apart, fresh advertisements have already been issued and even the present petitioners without prejudice to their rights and contentions have

applied in pursuance of such fresh selection process. In these circumstances, no useful purpose will be served by acceding to the request of Mr. Supekar, the learned Counsel for the petitioners, even though we have found merit in the contention of Mr. Supekar on other issues.

**22.** For the aforesaid reasons, we dispose off this petition without granting the relief as prayed for in the petition. However, we direct the respondents to complete the recruitment process which has commenced in pursuance of fresh advertisement dated 15.01.2019 as expeditiously as possible and in any case within a period of four months from today.

**23.** Rule is disposed off in the aforesaid terms.

**24.** There shall be no order as to costs.

**M. S. JAWALKAR**  
arp/\*

**M. S. SONAK, J.**