

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 408 OF 2017.

Miss. Dilsha Datta Mashelkar,
House No.527/1, Guddem,
Siolim, Bardez-Goa.

... Petitioner.

Versus

1. State of Goa,
Through the Director,
Department of Urban Development
(Municipal Administration)
Collectorate Building, Ground Floor,
Panaji-Goa.

2. Mapusa Municipal Council
(Through its Chief Officer)
Mapusa Goa.

... Respondents.

Mr. S. D. Lotlikar, Senior Advocate with Mr. J. Karn, Advocate for the petitioner.

Mr. S. Dhargalkar, Additional Government Advocate for respondent no.1.

Mr. S. D. Padiyar and Mr. P. Shirodkar, Advocates for the respondent no.2.

**Coram:- R. D. DHANUKA &
PRITHVIRAJ K. CHAVAN, JJ.
Reserved on :- 27th March, 2019.
Pronounced on:-10th April, 2019.**

JUDGMENT (Per Prithviraj K. Chavan, J.)

Petitioner has invoked writ jurisdiction of this Court by seeking a mandamus commanding respondent no.2 to issue an order of appointment in her favour to the post of "Lower Division Clerk" in

Mapusa Municipal Council subject to the Petitioner fulfilling medical test or other such requirements.

2. We have heard Mr. S. D. Lotlikar, learned Senior Counsel appearing for the petitioner and Mr. S. D. Padiyar, learned Counsel appearing for the respondent no.2.

3. Pursuant to an advertisement published in the local daily news paper "Navhind Times" dated 28.1.2016 by respondent no.2, inviting applications for filling up post of "Lower Division Clerk" having pay scale of 5200-20200 plus grade pay 1900, the petitioner had applied for the same from Other Backward Class category(OBC). Following were the requirements for the said post:-

c) Qualification

- i. HSSC or equivalent.*
- ii. Computer Literacy and Computer Typing.*
- iii. Knowledge of Konkani.*
- g. Experience*
 - i. 2 years experience in the relevant filed.*
 - ii. Knowledge of Konkani and Marathi.*

4. The advertisement, inter alia indicates at the foot that on scrutiny of applications candidate will be called for skill test and then oral interview which will be intimated separately.

5. In response to the said advertisement 56 applications were received out of which 40 were rejected for various reasons. It is the contentions of the petitioner that she has been a meritorious student who had secured a "Bachelor of Commerce" degree with distinction having secured 76 percent. She also possessed additional qualification of having completed a diploma in Computer Application and diploma in Financial Accounting. She has excelled in various sports in Taluka and state level. Besides, she has work experience of two years.

6. Petitioner appeared for computer typing test and for written test alongwith her all original documents in the office of Industrial Training Institute at Peddem, Mapusa on 6.5.2016 at 10.30 a.m. A comprehensive written test was conducted testing the general knowledge, numerical ability as well as office knowledge. Written test carried total 100 marks which was divided into two parts namely part A consisted of 75 marks for objective type of questions and Part B of 25 marks for subjective type of questions with 45 minutes duration. The computer typing test was of 50 marks and speed of typing was required to be 30 words per minutes.

7. A total 17 candidates appeared for written examination and test, amongst which the petitioner stood first. Despite appearing for the

test on 6.5.2016, nothing was heard from the respondent and, therefore, by an application dated 20.10.2016, the petitioner through a family friend applied for inspecting the records pertaining to the recruitment. Accordingly, one Mr. Shetye took inspection of the records on 28.11.2016. Pursuant to the said inspection the petitioner realised that she has secured first rank in the said examination, however, it revealed that respondent no.2 had taken a decision to re-advertise the post in terms of Office Memorandum No.1/6/83-PER(Vo.-II) Pt (a) dated 8.1.2016 from Additional Secretary (Personnel), Department of Personnel, Secretariat, Porvorim-Goa containing instructions to dispense with the process of interview for all Group "C" and "D" posts w.e.f. 1.1.2016.

8. It revealed that the respondent no.2 under the instructions of Chairman of the Mapusa Municipal Council addressed a communication seeking clarification over the aspect of conducting oral interview. The Director of Municipal Administration forwarded the Office Memorandum as referred to herein above containing instructions to dispense with the process of interview for all Group "C" and Group "D" posts w.e.f. 1.1.2016.

9. Petitioner contends that instead of doing away with the oral interview and issuing an order of appointment on the basis of the

consolidated score in the Computer and Written test in her favour, respondent no.2 by playing foul, took the decision of re-advertising the post including that of Lower Division Clerk.

10. The act of the respondent no.2, according to the petitioner, is thus malafide and falls foul on the instructions dispensing with the oral interviews for Group "C" and Group "D" posts.

11. Aggrieved by the action of the respondent no.2 to re-advertise the said posts, the petitioner had addressed a communication dated 20.2.2017 to the Director of Municipal Administration under the Ministry of urban Development seeking a review of the decision to re-advertise the said post and to issue an order of appointment in her favour.

12. The petitioner did not receive any reply, and therefore, she applied under Right to Information Act seeking information about the action taken by the respondent no.2 on her representation. Subsequently, the petitioner received a copy of the communication addressed by the Chief Officer, Mapusa Municipal Council to the Director, Department of Urban Development(Municipal Administration), which, inter alia stated that post of LDC was re-advertised since in the earlier advertisement there was a mention of an oral interview. There

was no explanation in the said communication as to why despite securing highest marks by the petitioner, Chief Officer had conveniently sidelined the issue by saying that no application under Right to Information Act was addressed by the Petitioner.

13. In its affidavit in reply, respondent no.2 has not disputed publication of an advertisement in the local daily news paper on 28.1.2016 inviting applications for the post of Lower Division Clerk in Other backward class category as well as evaluation of the candidates' through written test, however, it is contended that when results were being analysed for further process of oral interviews, attention of the office was drawn by the then Chief Officer to the instructions from the Government for dispensing with the process of oral interview for direct recruitment for Group "C" and Group "D" employees.

14. It is contented that such Government instructions were not available in writing in the municipal records. Under such circumstances, it was decided to seek guidance and clarification from the office of Urban Development and Municipal Administration. A correspondence dated 21.6.2016 was made with the Director of Urban Development and Municipal Administration for guidance and clarification. The Director of Urban Development and Municipal Administration by its communication dated 14.7.2016 forwarded

Memorandum dated 8.1.2016 issued by Department of Personnel containing instructions about dispensing with process of interview for Group "C" and Group "D" employees posts w.e.f. 1.1.2016.

15. Respondent no.2, therefore, considered to re-advertise the posts in view of the instructions contained in Office Memorandum dated 8.1.2016. Respondent no.2 then took a stand that the municipal Council and the office was not aware and had no knowledge of said instructions from the Government as regards dispensing with oral interview of Group "C" and Group "D" posts as contained in the Memorandum dated 8.1.2016.

16. Respondent no.2 has, thus, justified re-advertisement of said post stating it to be correct decision in view of Office Memorandum dated 8.1.2016. It is further contended that there was no urgency for filling up the posts or any other reason for completing the selection process. It is further contended that since the present selection process was not complete, no appointment orders were issued or offer of appointment made and there is no right in the petitioner seeking appointment to the post of Lower Division Clerk.

17. At the outset, learned Senior Counsel Shri Lotlikar, drew our attention to the Memorandum No.1/6/83-PER(Vo.-II) Pt (a) dated

8.1.2016 vis-a-vis advertisement published in the local news paper dated 28.1.2016. It is apparent from the advertisement published in news paper dated 28.1.2016 at the foot indicating that on scrutiny of application *"candidates will be called for skill test and then oral interview which will be informed separately."* Whereas, in fact Office Memorandum dated 8.1.2016 issued by the Department of Personnel, Government of Goa issued by the Additional Secretary, Personnel and copy of the same appears to have been issued to (1) all heads of Departments/Offices, (2) All Corporation/Autonomous Bodies, (3) All Secretariat Departments and (4) The Secretary, Goa Public Service Commission Panaji.

18. Despite having duly received the aforesaid Memorandum, it is apparent that respondent no.2 took a false stand that it had not received any communication in writing from the Government as regards dispensing with the process of oral interview for Group "C" and Group "D" employees. Such contention of respondent no.2 is belied from the fact that Office Memorandum dated 8.1.2016, copy of which is annexed on record at page 43 reveals that Public Information Officer, Mapusa Municipal Council had duly received Memorandum who had put his signature and seal over it. Despite having due knowledge, respondent no.2 published an advertisement in question indicating that oral interview would be conducted and candidates will be intimated

separately. The argument of the learned Counsel for respondent no.2, therefore, does not stand to reason inasmuch as ignorance of respondent no.2 as regards Office Memorandum dated 8.1.2016 is concerned. No sane man will believe it. Respondent no.2 ought not to have published an advertisement indicating component of an interview in the selection process.

19. The affidavit in reply of the respondent no.2 is quite vague in the sense that as it is stated in paragraph 8 that when the respondent no.2 was in a process of oral interview, attention of the office was drawn by the then Chief Officer to the Memorandum dated 8.1.2016, which means that the office and the Chief Officer were quite aware of the Memorandum dated 8.1.2016, however, in the next breath the Chief Officer states that there were no written instructions available from the Government which merits to be laughed at and wept over at the same time. There is presumption in law that judicial and official acts have been regularly performed. No specific date has been mentioned as to when the then Chief Officer or the Office of the respondent no.2 came to know about the Memorandum in question. The affidavit in reply is also silent as to on whose instructions the decision of re-advertisement has been taken. It is not the case of respondent no.2 that as per the instructions by Director, Department of Urban Development it was decided to re-advertise the post. It seems that the decision of re-

advertisement of the post was an ipse dixit of respondent no.2.

20. It is equally worthwhile to note from a correspondence made by the Principal of Industrial Training Institute, Peddem, Mapusa dated 13.4.2016 that no marks were earmarked for interview. The said communication indicates that the computer typing will be of 50 marks with 15 minutes duration. If no marks were earmarked for interview then there was no reason for conducting oral interviews of the candidates. The learned Senior Counsel has, therefore, rightly argued that cancellation of the first advertisement must be for valid reason and should not be arbitrary. It is also not the contention of the respondent that whatever has been done by them till the conclusion of the written and computer test was not adequate for the selection of the candidate. The petitioner could have been considered for appointment since there was no question of allocation of marks as far as component of oral interview was concerned.

21. It is quite apparent that the respondent no.2 could have done away with the process of oral interviews and, instead of re-advertising, could have issued order of appointment on the basis of consolidated score in computer and written test by the Petitioner.

22. It is quite apparent that act of respondent no.2 is contrary to

letter and spirit of the Memorandum which came to be issued by the concerned Ministry to end the process of holding interview for recruitment of Junior level posts where personality assessment is not an absolutely necessary requirement, as it will help in curbing corruption, more objective selection in transparent manner and substantially easing the problems of poor people. The ministry, inter alia, stressed that the recruitment should be made on merit basis through transparent, online processes leading to less Government and more Governance.

23. The petitioner had sought following information under Right to Information Act from the respondent no.2:-

- (i) Relevant file notings.*
- (ii) Recruitment Rules*
- (iii) Marks obtained by her in the Computer typing and written test.*
- (iv) Copy of the result of computer and written test.*
- (v) Copy of the Office Memorandum bearing no.1/6/83-PER(Vol II) Pt.(a) dated 8.1.2016.*
- (vi) Copy of her representation dated 20.2.2017.*
- (vii) Copy of the communication dated 6.3.2017 bearing No.2/34/2011-DMA(Part)/2942.*

24. Representation of the petitioner to the Director, Director of Municipal Administration Urban Development, Government of Goa

dated 20.2.2017 which is at annexure "J" reveals, amongst other thing, the decision of the respondent no.2 to re-advertise the post by cancelling the selection process inter alia stating that such act on the part of the respondent no.2 was not at all justified as it would run contrary to the very object of issuing the Memorandum dated 8.1.2016 and the declaration made by Hon'ble Prime Minister of India dispensing with oral interview. Indeed, such act on the part of the respondent no.2 would jeopardise the future of the petitioner.

25. The learned Counsel for respondent no.2 has placed reliance upon a judgment of Hon'ble Supreme Court in the case of ***Jai Singh Dalal and others Vs. State of Haryana reported in 1993 Suppl. (2) Supreme Court Cases 600.*** The ratio laid down by the Hon'ble Supreme Court is that the Government has a right, at any time before a candidate is appointed, to stop the process in which case the candidate has no vested right to compel the Government to complete the process. The relevant portion from the paragraph 7 of the said judgment is reproduced herein below for the sake of advantage which reads thus:-

"In the background of these facts this Court came to the conclusion that the mere fact that the candidates were chosen for appointment in response to the advertisement did not entitle them to appointment. To put it differently, no right had vested in the candidates on their names having been entered on the select list and it was open to the Government for

good reason not to make the appointments therefrom and fill in the vacancies. In a recent decision in Shankarsan Dash Vs. Union of India, [(1991) 3 SCC 47], the Constitution Bench of this Court reiterated that even if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates do/not acquire any indefeasible right to appointment against the existing vacancies, It was pointed out that 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. The State is under no legal duty to fill up all or any of the vacancies by appointing candidates selected for that purpose. Albeit, the State must act in good faith and must not exercise its power mala fide or in an arbitrary manner. The Constitution Bench referred with approval the earlier decision of this Court in Subash Chander's case. Therefore, the law is settled that even candidates selected for appointment have no right to appointment and it is open to the State Government at a subsequent date not to fill up the posts or to resort to fresh selection and appointment on revised criteria. In the present case the selection was yet to be made by the HPSC. Therefore, the petitioners cannot even claim that they were selected for appointment by the HPSC. The selection process had not been completed and before it could be completed the State Government reviewed its earlier decision and decided to revise the eligibility criteria for appointment. It is, therefore, clear from the settled legal position that the petitioners had no right to claim that the selection process once started must be completed and the Government cannot refuse to make appointments of candidates duly selected by the HPSC."

26. No doubt the Government or the appointing Authority, for good reason cancel the selection process but, it should be in good faith and there should not be any element of malafide or it should not be in an

arbitrary manner. In the case at hand, as already stated herein above, respondent no.2 has utterly failed to demonstrate any good reason for cancellation of selection of the petitioner who had secured first rank for the post of Lower Division Clerk, more particularly in the light of the fact that no marks were earmarked for the component of the interview and, therefore, in view of Memorandum dated 8.1.2016, the respondent ought not to have published the condition of oral interview as a part of selection process. Act of the respondent no.2, therefore, suffers from arbitrariness and malafides. The respondent no.2 cannot be permitted to thwart the legitimate right of the Petitioner. The authority can be distinguished accordingly.

27. In the case of ***K. H. Siraj Vs High Court of Kerala, (2006) 6 Supreme Court Cases 395***. The Hon'ble Supreme Court held at paragraph 57 and we quote thus:-

"The qualities which a Judicial Officer would possess are delineated by this Court in Delhi Bar Association Vs. Union of India & ors.,(2002) 10 SCC 159. A Judicial Officer must, apart from academic knowledge, have the capacity to communicate his thoughts, he must be tactful, he must be diplomatic, he must have a sense of humour, he must have the ability to defuse situations, to control the examination of witnesses and also lengthy irrelevant arguments and the like. Existence of such capacities can be brought out only in an oral interview. It is imperative that only persons with a minimum of such capacities should be selected for the judiciary as otherwise the standards would get diluted and substandard stuff

may be getting into the judiciary. Acceptance of the contention of the appellants/petitioners can even lead to a postulate that a candidate who scores high in the written examination but is totally inadequate for the job as evident from the oral interview and gets zero marks may still find it a place in the judiciary. It will spell disaster to the standards to be maintained by the subordinate judiciary. It is, therefore, the High Court has set a benchmark for the oral interview, a benchmark which is actually low as it requires 30% for a pass. The total marks for the interview are only 50 out of a total of 450. The prescription is, therefore, kept to the bare minimum and if a candidate fails to secure even this bare minimum, it cannot be postulated that he is suitable for the job of Munsif Magistrate, as assessed by five experienced Judges of the High Court."

28. We are afraid, this ratio would not be of any help to the respondent no.2 for the simple reason that it was a case of Judicial Officers which requires requisite qualities/capacities which are imperative and only such persons with prescribed minimum qualities or capabilities should be selected as Judicial Officer. The oral interview therefore, was an integral part of that post which is not the case in hand therefore, the Authority can be distinguished accordingly.

29. It would not be out of place to mention here that the petitioner has invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India wherein we are not required to look at the final decision of the Authority concerned, but the decision making process. It is manifest from the record that there is an illegality in the

decision making process and, therefore, this Court would certainly invoke its equitable, extra ordinary and discretionary jurisdiction under Article 226 of the Constitution of India.

30. The respondent no.2 is directed to issue an order of appointment in favour of the petitioner to the post of Lower Division Clerk in Mapusa Municipal Council, subject to her fulfilling medical test and other requirements as per law. Such order shall be issued within three weeks from the date of pronouncement of this Judgment.

31. It is needless to state that the aspect of "Code of Conduct" would not be an impediment in implementing the directions given by us in this Petition.

32. Rule is accordingly made absolute on the aforesaid terms. There shall be no order as to costs.

33. All concerned to act on the basis of authenticated copy of this Judgment.

34. The learned counsel for Respondent No.2 seeks stay of the operation of the judgment passed by this Court today which is vehemently opposed by the learned counsel for the Petitioner. Since the

post is lying vacant for last several years, we are not inclined to grant the stay of the operation of this judgment. Request for stay is accordingly rejected.

PRITHVIRAJ K. CHAVAN, J.

R. D. DHANUKA, J.

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