

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 616 OF 2009

Shri Ashok B. Shetye,
Technical Assistant,
Power Loom Production
cum Training Centre,
Ponda, Shiroda Goa.

... Petitioner

Versus

1. State of Goa,
Through the Chief Secretary,
having office at Secretariat,
Porvorim Goa.

2. Secretary of Handicrafts,
Textile and Coir,
Government of Goa,
Secretariat,
Porvorim Goa.

3. The Director,
Department of Handicrafts,
Textile & Coir Crafts Complex Neuginagar,
Panaji.

... Respondents

Mr. V. A. Lawande and Ms. A. Kamat, Advocates for the Petitioner.

Ms. Susan Linhares, Additional Government Advocate for the Respondents.

***Coram : R. D. Dhanuka &
Prithviraj K. Chavan, JJ.***

Date : 19th March, 2019.

ORAL JUDGMENT (Per R. D. DHANUKA,J)

In this petition filed under Article 226 of the Constitution of India, the Petitioner seeks regularization of services w.e.f. 24.06.1984 with all the financial and other benefits applicable to the post of Instructors Grade II and also seeks an order and direction against the Respondent No.1 to pay to the Petitioner an amount of Rs.5,00,000/- by considering the pay scales of Rs.1400-40-1800-EB-50-2300 w.e.f. 24.06.1984 as provided vide order dated 06.03.1992 in view of the recommendations of the Departmental Selection Committee for regularisation.

2. Though the Petitioner has prayed for regularisation of services w.e.f. 24.06.1984 and for pay scales w.e.f. 24.06.1984, in terms of the recommendations made by the Departmental Selection Committee, during the course of the arguments, the learned counsel for the Petitioner restricted the prayer for regularisation of the services of the Petitioner with effect from the date of recommendations made by the

Departmental Selection Committee on 01.07.1991 being the date of approval granted by the Departmental Selection Committee.

3. Some of the relevant facts required for deciding this petition are as under :

On 21.10.1980, in terms of the order of sanction, the Master Craftsmen and Technical Assistant Design was having a pay scale of 425-700 as per the III Pay Commission. On 27.06.1981, Respondent No.4 informed the Petitioner to undergo training for three years diploma course in Handloom Technology. The Petitioner submitted a certificate showing that he had completed and passed in distinction in the said course of Handloom Technology in various subjects on 03.01.1985. On 24.06.1984, the Petitioner was appointed to the post of Technical Assistant (Handloom) as casual worker on the consolidated salary of Rs.25/- per day.

4. On 23.06.1984, the Petitioner was absorbed to the post of Technical Assistant in Handloom as a casual worker from the date of joining to the said post. It is the case of the Petitioner that the Government of India directed the State to recognize three years Diploma course in Handloom Technology awarded by the Indian

Institute of Handloom Technology Salem/Varanasi/Guwahati, in the month of November, 1987. The Government accordingly recognized three years diploma course in Handloom Technology as awarded by Indian Institute of Handloom Technology at Salem/Varanasi/Guwahati for the purpose of employment and services under the State Government by Notification dated 27.06.1989.

5. On 01.07.1991, the Petitioner was appointed on Ad-hoc basis to the post of Instructor, Grade II (Handloom) w.e.f. 01.07.1991 in the pay scale of Rs.1400-40-1800-EB-50-2300. On 29.10.1990, the Government decided to consider regularization of the employees who had completed more than five years of continuous service subject to conditions set out therein.

6. On 10.12.2003, Respondent No.1 through Respondent No.3 in WP No.70/1990 admitted that the said posts were created in 1980. On 11.08.1994, the Government Memorandum was issued to the Respondents to regularize all Ad-hoc appointments. On 17.02.2000, the Government published the recruitment rules in the Official Gazette. The Petitioner however continued to make representations to the Respondents for regularization of the Petitioner to the said post prior to the date of publication of the recruitment rules and even thereafter. The

representations of the Petitioner were however rejected from time to time. On 21.01.2008, this Court disposed of the Writ Petition No.638/2007 filed by the Petitioner directing the Government to decide the representation made by the Petitioner. The said representation was however rejected by the Respondents.

7. The learned counsel invited our attention to some of the annexures to the petition and submitted that though there was a clear vacancy, the Petitioner was illegally appointed on Ad-hoc basis and not on regular basis. He invited our attention to the decision of the Departmental Selection Committee for regularising the daily wage employees of Group 'C' in the Directorate of Industries & Mines. He submits that insofar as Handloom Trade is concerned, in the said recommendations dated 25.06.1991, it was clearly recorded that the DPC had decided to regularise Shri Pandurang Shet, Shri Soma S. Gawas and the Petitioner in order of merit as Instructors Grade II in the scale of Rs.1400-2200. He submits that inspite of the said decision taken by the DPC, the Petitioner's services were not regularized. He submits that the said Pandurang Shet had filed a writ petition before this Court (W.P. No.11/2010) against the Respondents *inter alia* praying for a writ of mandamus or quashing the impugned orders and for direction to the Respondent No.1 to grant regularization with effect from the initial date

of appointment and for other consequential benefits.

8. It is submitted that the facts in the said case of Pandurang Shet (Writ Petition No.11 of 2010) are identical to the facts in this writ petition. He submits that on the basis of the said decision taken by the Departmental Selection Committee on 25.06.1991 and in view of the fact that there was a clear vacancy, this Court allowed the said writ petition filed by Pandurang Shet and quashed and set aside the decision taken by the Respondents. This Court by the said judgment and order directed the Respondents to regularize the services of the said Pandurang Shet w.e.f. 10.04.1991 i.e. the date on which there was a clear vacancy.

9. The learned counsel for the Petitioner also invited our attention to the various objections raised by the Respondents in the affidavit in reply filed in this petition dated 03.02.2010. It is submitted that merely because the rules were framed in the year 2000, that could not be the basis for granting the regularization of the Petitioner from the date of framing such rules since the Petitioner was already approved for regularization by the Departmental Selection Committee on 25.06.1991 itself. He submits that the Petitioner was duly qualified and had obtained requisite diploma in Handloom Technology as directed by the Respondents. He submits that though the Petitioner was eligible to be

regularized w.e.f. 1984, his client has no objection if the Petitioner is regularized w.e.f. 25.06.1991 i.e. the date of the Departmental Selection Committee deciding to regularize the post of the Petitioner. In support of this submission, the learned counsel for the Petitioner has relied upon a judgment dated 06.08.2003 in the case of *Shri Mangirish Maharudra Laad Vs State of Goa and another* in WP No. 379 of 2003 and more particularly, paragraphs 3 to 6 thereof.

10. The learned counsel for the Respondents on the other hand invited our attention to the stand taken by the Respondents in the affidavit in reply filed before this Court and submits that if the Petitioner does not press for regularization from 1984 and he is willing to make a statement before this Court that he can be regularized from the date of the decision taken by the Departmental Selection Committee i.e. 25.06.1991, the judgment of this Court in the case of *Pandurang Shet* (supra) would apply to the facts of this case. The statement made by the learned counsel is accepted.

11. In view of the statement made by the learned counsel for the Petitioner that his client would restrict the relief of regularization and other benefits w.e.f. 25.06.1991, we are not required to decide whether the Petitioner would be eligible for regularization w.e.f. 1984.

12. It is not in dispute that the Petitioner was duly qualified for the post in question and had obtained requisite diploma as directed by the Respondents. A perusal of the minutes of the Departmental Selection Committee dated 25.06.1991 clearly indicates that the Departmental Selection Committee had noted that there were eight workers on daily wages against Group 'C' posts. There were no recruitment rules for Instructors Grade II. The draft rules which were submitted were not notified. The Departmental Selection Committee decided to regularize Pandurang Shet, Soma S. Gawas and Ashok B. Shetye (the Petitioner) in order of merit as Instructors Grade II in the scale of Rs.1400-2200. The learned counsel for the Respondents does not dispute that such decision was taken by the Departmental Selection Committee as referred to in the minutes of the meeting of the Departmental Selection Committee. The Petitioner was requested to contact the Statistical Officer vide letter dated 22.11.2006 in connection with his appeal dated 01.11.2006.

13. The learned counsel for the Respondents does not dispute that the said Shri Pandurang Shet, whose name was also approved by the Departmental Selection Committee has been subsequently regularized w.e.f. 10.04.1991. In our view, the Respondents were bound to regularize the services of the Petitioner at least with effect from the date

of the decision taken by the Departmental Selection Committee as on 25.06.1991. In our view, the judgment of this Court in the case of *Pandurang Shet* (supra) clearly applies to the facts of this case. We are respectfully bound by this judgment.

14. The Division Bench of this Court in the case of *Mangirish Maharudra Laad* (supra) had considered the issue whether in absence of any recruitment rules framed under Article 309 of the Constitution of India, even if the candidate had fulfilled the eligibility requirement for appointment to the post could be deprived of regularization even though such appointment would be based on the administrative instructions in force. The Division Bench of this Court in the said judgment held that the recruitment rules gazetted in the year 2000 would apply to the future appointments. The previous appointments will be governed by the administrative instructions which were in force. The Division Bench also held that it was not the case of the Respondents that the committee which was constituted was not a duly constituted Departmental Selection Committee. It was accordingly held that the appointment of the Petitioner in the said petition will have to be held as legal and considering the long period of appointment though styled as Ad-hoc, when in fact, it was on a regular basis.

15. In the facts of this case also, it is not the case of the Respondents that the constitution of the Departmental Selection Committee was not proper or that the said decision taken by the Departmental Selection Committee was not binding on the Respondents. In our view, the Respondents thus ought to have regularized the appointment of the Petitioner at least with effect from 25.06.1991. The principles laid down by the Division Bench of this Court in the case of *Mangirish Maharudra Laad* (supra) are applicable to the facts of this case. We are bound by the said judgment. In our view, the decision of the Respondents to appoint the Petitioner w.e.f 01.07.1991 on Ad-hoc basis is illegal. In our view, the Petitioner has made out a case for the relief of regularization w.e.f. 25.06.1991. Since the Petitioner was appointed on Ad-hoc basis w.e.f. 01.07.1991, we make it clear that the Petitioner's services would stand regularized w.e.f. 01.07.1991 with consequential benefits. The Petitioner is also entitled to all the consequential benefits including the T.B.P.S., M.C.P.S., if any, in accordance with law.

16. For the reasons recorded aforesaid, we also quash all the impugned orders passed by the Respondents rejecting the claim of the Petitioner for regularization w.e.f. 01.07.1991. It is made clear that all the consequential benefits shall be granted to the Petitioner within 12

weeks from today without fail. Rule is made absolute in the aforesaid terms.

17. The Respondents to act on the basis of the authenticated copy of this judgment.

Prithviraj K. Chavan, J.

R. D. Dhanuka, J.

*at**