

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.913 OF 2017

Vithal S.Velgekar ... Petitioner

Versus

The State of Goa & Anr. ... Respondents

Mr. Ryan Da Piedade Menezes and Mr. Nigel Fernandes, Advocates
for the Petitioner.

Mr. A. Prabhudessai, Addl. Government Advocate for Respondent
Nos.1 and 2.

WRIT PETITION NO.914 OF 2017

Damodar T. Shetkar ... Petitioner

Versus

The State of Goa & Anr. ... Respondents

Mr. Ryan Da Piedade Menezes and Mr. Nigel Fernandes, Advocates
for the Petitioner.

Mr. R. Shivolkar, Addl. Government Advocate for Respondent Nos.1
& 2.

WRIT PETITION NO.915 OF 2017

Ramesh S. Pawar ... Petitioner

Versus

The State of Goa & Anr. ... Respondents

Mr. Ryan Da Piedade Menezes and Mr. Nigel Fernandes, Advocates
for the Petitioner.

WRIT PETITION NO.916 OF 2017

Surendra T. Lindugkar ... Petitioner

Versus

The State of Goa & Anr. ... Respondents

Mr. Ryan Da Piedade Menezes and Mr. Nigel Fernandes, Advocates
for the Petitioner.

Mr. P. Faldessai, Addl. Government Advocate for Respondent Nos.1
and 2.

WRIT PETITION NO.926 OF 2017

Umesh Damu Naik ... Petitioner

Versus

The State of Goa & Anr. ... Respondents

Mr. Ryan Da Piedade Menezes and Mr. Nigel Fernandes, Advocates for the Petitioner.

Mr. A. Jamadar, Addl. Government Advocate for Respondent Nos.1 to 2.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 16th January, 2019

Oral Order (Per M. S. Sonak, J)

Heard Mr. R. Menezes, learned counsel for the Petitioners in all these petitions and the learned Additional Government Advocates for the respective Respondents.

2. Since, the issue raised in the present petitions are common, the same are being disposed of by a common order.

3. In all these petitions, the Petitioners basically seek a writ of mandamus directing the Respondents to complete the selection process for appointments to the post of Laboratory Attendant and Supervisor in the Water Resources Department of Government of Goa, in pursuance of the recruitment process which commenced with

issuance of advertisement dated 12th September, 2011 (2011 recruitment process).

4. It is the case of the Petitioners that they were in fact selected in 2011 recruitment process and were also issued offers of appointment some time in December, 2011. It is the case of one of the Petitioners that he was even sent for medical examination, in pursuance of the offer of appointment.

5. It is further the case of the Petitioners that despite they indicating their acceptance to the offers of appointment, no appointment orders were issued to them. It is the case of the Petitioners that they were informed that the appointment orders would be issued after the conclusion of general elections and revocation of code of conduct applicable during the election process. It is the case of the Petitioners that they made oral inquiries after the conclusion of election process and were informed that shortly the appointment orders would be issued to them. The record indicates that in the year 2014, a fresh advertisement was issued inviting the applications to fill up the very same posts of Laboratory Attendant and Supervisor in the Water Resources Department of Government of

Goa. The issuance of fresh advertisement in the year 2014, obviously indicates that the Respondents were unwilling to proceed any further with 2011 recruitment process. In fact, the Respondents, have filed an affidavit to state that the conscious decision was taken to scrap 2011 recruitment process and to commence 2014 recruitment process.

6. The Petitioners, if aggrieved by scrapping of 2011 recruitment process, ought to have challenged such scrapping in the year 2014 itself. The contention of the Petitioners that they were unaware of the scrapping of 2011 recruitment process deserves no acceptance. This is because fresh advertisement was issued in the year 2014 in order to fill up the very same posts of Laboratory Attendant and Supervisor at Water Resources Department of Government of Goa. The Petitioners, not only did not challenge 2014 recruitment process, but rather the Petitioners applied for selection to the very same posts in pursuance of 2014 advertisement.

7. In the petitions, the only explanation furnished by the Petitioners is that since they were under bonafide belief that the participation in this fresh recruitment process was the best avenue open to them, the Petitioners applied for selection in pursuance of

2014 advertisement.

8. The relevant averments in para 2(m) in Writ Petition No.913 of 2017, in the aforesaid regard read thus :

“In or about the year 2014, the Respondents purported to embark on a fresh recruitment to fill vacancy to which the Petitioner consequent upon his selection was to be appointed. **Being under the belief that participation therein, was his best avenue, the Petitioner put in his papers to be considered in therein.** However, nothing materialized from this selection process, which the Petitioner has now learnt was kept on hold and/or scrapped. The post of Supervisor to which the Petitioner was upon his selection to be appointed to, remains vacant to this day. Copies of papers in respect of this recruitment process are not available with the Petitioner at this time, and he shall produce copies thereof if he is able to obtain copies thereof.”

(emphasis supplied)

9. Affidavit filed by the Respondents states that ultimately even 2014 recruitment process was scrapped. Admittedly, in 2014 recruitment process, the Petitioners were neither selected nor given any offers of appointment.

10. The present petitions have been instituted in August, 2017 seeking a writ of mandamus for completion of 2011 recruitment process. Obviously such a petition is barred by unexplained delay and laches. The Petitioners' contention that they were unaware that 2011 recruitment process was scrapped, deserves no acceptance. No sooner 2014 advertisement appeared, it was obvious that the Respondents had scrapped the 2011 recruitment process because it is inconceivable that fresh advertisement is issued to fill up the very same posts which were subject matter of 2011 recruitment process.

11. Apart from the delay and laches, this is also a case of waiver and/or acquiescence. The Petitioners, expressly took part in 2014 recruitment process, meaning thereby that the Petitioners waived their rights to challenge the scrapping of 2011 recruitment process. In fact, the conduct of the Petitioners in applying for selection in pursuance of 2014 recruitment process clearly indicates that they acquiesced with the scrapping of 2011 recruitment process. It is not even the case of the Petitioners that their participation in 2014 recruitment process was under protest or without prejudice. This is an additional ground, which persuaded us not to entertain the present petitions. In the present petitions, it is only on 4th September, 2018

the amendment was carried out to challenge the decision for scrapping of 2011 recruitment process. This means that challenge to the scrapping of 2011 recruitment process was raised almost seven years after the decision of scrapping and that too after the Petitioners participated in 2014 recruitment process. Such circumstances are sufficient for not exercising the discretion in favour of the Petitioners. The remedy under Article 226 of the Constitution of India is discretionary and unexplained delay and laches is one of the grounds against the exercise of such discretion. Similarly, the conduct of the Petitioners in participating in 2014 recruitment process and taking their chance is also a relevant circumstance which militates against the exercise of discretion in their favour.

12. For all the aforesaid reasons, we see no ground to entertain the present petitions. Accordingly, the present petitions are dismissed. There shall be no order as to costs.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

*at**