

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO. 992 OF 2018***

1. Satyavan B. Gavas,
Son of late Babu Ladu Gavas
Aged 49 years, married,
Indian National,
Resident of Ward No.1,
Souzamol,
Post Collem, 403 410
2. Dharma K. Gaonkar
Son of Krishna A. Gaonkar
Aged 38 years, married,
Indian National,
R/o H.No.24/c Shelop Khurd,
Valpoi-Sattari Goa 403 506
3. Jose A. Carvalho
S/o Joao Xavier Carvalho,
Aged 43 years, married,
Indian National,
R/o H.No.277, Maina Wado,
Korgao -Pernem Goa 403 512
4. Sulesh Naik,
S/o Subhash Naik
Aged 34 years, married,
Indian National,
R/o F-6 Satyawati Plaza,
Gogol, Margao Goa 403 601,
5. Mangesh Kauthankar,

S/o Harichandra Kauthankar
Aged 38 years, married,
Indian National,
R/o Tikhajen, Mayem,
Bicholim Goa 403 504

6. Satish Gawas,
S/o Madhu Gawas
Aged 33 years, unmarried,
Indian National,
R/o H.No.271, Massordem,
Valpoi Sattari Goa 403 506
7. Rashika Naik,
W/o Sulesh Naik,
Aged 34 years, married,
Indian National,
R/o F-6 Satyawati Plaza,
Gogol, Margao Goa 403 601
8. Trushant Verekar,
S/o Anand Verekar
Aged 36 years, unmarried,
Indian National,
R/o Ward No.9 Next to Cinema Theatre
Pazwada Bicholim Goa 403 504
9. Nilesh Tari
S/o Dattaram Tari
Aged 34 years, married,
Indian National,
R/o H.No.687 Sinqerim,
Mayem, Bicholim Goa 403 504.

10. Devidas Kharpalkar
S/o Laximan Kharpalkar,
Aged 46 years, married,
Indian National,
R/o Ranewada Paryem
Sattari Goa 403 505
11. Prashant Mote
S/o Babi Mote,
Aged 30 years, married,
Indian National,
R/o Dowbwada, Bhuipal
Honda, Sattari Goa 403 530
12. Tulsidas Gawas,
S/o Madso Gawas,
Aged 41 years, married,
Indian National,
R/o H.No.14/1 Zarme,
Sattari Goa 403 506
13. Darshana Kudalkar,
D/o Atmaram Kudalkar
Aged 35 years, Indian National,
R/o Guleli Valpoi,
Sattari Goa 403 506
14. Taki Davane,
W/o Jairam Doifode,
Aged 34 years, married,
Indian National,
R/o H.No.50, Near Check Post
Bhipal, Sattari Goa 403 530

15. Pandurang Raut,
S/o Jairam Raut,
Aged 37 years, Indian National,
R/o Gaonkarwada, Mulgao,
Bicholim Goa 403 503
16. Arjun Gawas,
S/o Atma Gawas,
Aged 33 years, unmarried,
Indian National,
R/o H.No.138, New Colony,
Gullem, Sattari Goa 403 505
17. Pankaj Parwar
S/o Ramchandra Parwar
Aged 30 years, married,
Indian National,
R/o H.No.134, Kopardem,
Valpoi, Sattari Goa 403 506
18. Sharmila Majik
W/o Abhijit Verekar
Aged 32 years, married,
Indian National,
R/o H.No.40, Bhailipeth,
Bicholim Goa 403 506
19. Sushant Malik,
S/o Dasharath Malik
Aged 41 years, married,
Indian National,
R/o Gaonkarwada, Kudnem,
Sankhali Goa 403 505

20. Gaurish Gaonkar,
S/o Dharma Gaonkar
Aged 31 years,
Indian National,
R/o H.No.337, Munnang Wada,
Assagao Bardez Goa 403 507
 21. Kirtimala Gaonkar
W/o Paresh Melekar,
Aged 35 years, married,
Indian National,
R/o Gaonkarwada, Bhuipal,
Honda, Sattari Goa 403 530
 22. Vishwanath Gaonkar,
S/o Govind Gaonkar,
Aged 39 years,
Indian National,
R/o H.No.110, Mauxi
Valpoi Sattari Goa 403 506
- ... Petitioners

Versus

1. State of Goa,
Through the Chief Secretary,
having office at Secretariat,
Porvorim Goa.
 2. The Principal Chief Conservator of Forests,
Office of the Chief Conservator of Forests,
Government of Goa,
having office at Gomantak Maratha Samaj
Dayanand Smruti Bldg.,
Panaji Goa.
- ... Respondents

Mr. Shivan Desai, Advocate for the Petitioners.

Mr. Pravin N. Faldessai, Addl. Government Advocate for the Respondents.

***Coram:- S. C. GUPTE &
NUTAN D. SARDESSAI, JJ.***

Date:- 21st June 2019

Oral Judgment (Per S. C. Gupta, J)

Heard learned counsel for the Petitioners and learned Additional Government Advocate for the Respondents.

2. Rule. Taken up for hearing forthwith by consent of learned counsel.

3. This writ petition challenges a seniority list prepared by the Respondent State of Forest Guards recruited by Respondent No.2. It is the grievance of the Petitioners that the *inter se* seniority amongst the appointees determined by Respondent No.2 is contrary to law and the authority of this Court in the case of ***Vishwanath Shiva Bugde Vs State of Goa*** (Writ Petition No.104 of 2002 decided on 26th March, 2010).

4. We are concerned with about 90 Forest Guards in this

petition. These were recruited by Respondent No.2 by issuing advertisement and calling for applications. The Forest Guards appointees, who met with eligibility criteria and were selected for the post, were duly appointed by Respondent No.2. The appointees had to undergo a six months' rigorous training course prescribed for Forest Guards at the Forest Training School at Valpoi. It is not in dispute that all 22 Petitioners successfully completed the training programme along with the others. The training for the 90 appointees was held in three batches (Batch Nos. 27, 28 and 29). The Petitioners were in batch No.27. They were confirmed as Forest Guards w.e.f. 30.03.2009. The grievance of the Petitioners is that the seniority of the Petitioners was determined by Respondent No.2 on the basis of their relative merit in the training programme organized by the Forest Training School at Valpoi and appointees who cleared the training programme in later batches and who were, accordingly confirmed later were given seniority over them. The Petitioners object to the relative merit in the training being considered as a criteria for determining seniority. It is submitted that the merit in this case was determined and seniority assigned on the basis of what are known as Forest Training Rules, which are framed by the Forest Training School at Valpoi. It is submitted that determination of seniority on the basis of such Rules has been held to be illegal by a Division Bench of our Court in the case of

Vishwanath Bugde (supra). It is submitted that the Goa Government (Seniority) Rules, 1967, which are framed in pursuance of powers conferred by Article 309 of the Constitution of India on the State and which have statutory force, require that relative seniority of all direct recruits shall be determined by the order of merit in which they were selected for appointment. Forest Training Rules, which were held to have no statutory force, could not override or obliterate the effect of statutory rules of seniority framed under Article 309 as held by our Division Bench in the case of ***Vishwanath Bugde*** (supra).

5. The other grievance of the Petitioners is that the appointees were trained in batches and cleared the training batch-wise. It is submitted that seniority must be determined on the basis of batch-wise completion of training. It is submitted that the confirmation of the appointees was on that basis. It is submitted that the Petitioners having completed training in the first batch (Batch No.27), must be placed higher in the seniority list than those who completed the training in the later batches, namely, batch nos.28 and 29.

6. It is the case of the Respondent State that the seniority was fixed as per merit obtained by the Forest Guards in their

compulsory induction training conducted by the Department at Forest Training School at Valpoi under regulations which had the approval of the State Government and that these criteria have been uniformly applied by the State for determining the seniority of Forest Guards.

7. It is not disputed that Forest Guards appointed by Respondent No.2 are officers of the Government of Goa of class IV. All officers of Government of Goa of Class I, II, III and IV are covered by rules of seniority contained in the Goa Government (Seniority) Rules, 1967. Rules 1 and 5 thereof provide as follows :

“1. Short title, commencement and application.-

(1) These Rules may be called the Goa Government (Seniority) Rules, 1967.

(2) They will come into effect from the date of the Notification.

(3) They shall apply to all Class I, Class II, Class III and Class IV Officers of the Government of Goa, Daman and Diu, except -

(a) Officers in respect of whom special provision is made by or under any law for the time being in force, in regard to the matters covered by these rules; and

(b) Officers who are on deputation from the Central Government or from any State Government/Union Territory.

5. Direct recruits.- Notwithstanding the provisions of rule 4, the relative seniority of all direct recruits shall be

determined by the order of merit in which they are selected for such appointment, on the recommendation of the Union Public Service Commission or other selection authority, persons appointed as a result of earlier selection being senior to those appointed as a result of a subsequent selection.

Provided that where persons recruited initially on a temporary basis are confirmed subsequently in an order different from the order of merit indicated at the time of their appointment, seniority shall follow the order of confirmation and not the original order of merit.”

These rules make it very clear that seniority of all direct recruits ought to be determined by the order of merit in which they were selected for such appointment, so that the persons appointed as a result of earlier selection shall be senior to those appointed in a subsequent selection. The proviso to Rule 5 requires that this rule can be altered only when persons recruited initially on a temporary basis are confirmed subsequently in a different order. In that case, seniority shall follow the order of confirmation and not the original order of appointment. This applies across the board to all officers of the Government of Goa unless any special provision is made on any matter covered under these rules in case of particular type of officers by or under any law for the time being in force.

8. The relative merit of recruits found in their initial

training has no role to play in this scheme of things. Seniority has to be assessed always by the order of merit in which the candidates were selected. This order of merit cannot be altered or tampered with on the basis of the merit of candidates displayed during their initial induction training.

9. A similar contention was taken up before the Division Bench of this Court in the case of ***Vishwanath Bugde*** (*supra*). It was submitted that ranks obtained in the final results of Forest Training School at Valpoi should be considered for the purposes of determining *inter se* seniority between recruits. It was submitted that the Government had issued instructions making the relative merit in training obtained in Forest Training School under the Forest Training Rules as the basis of seniority and this being a special provision made in respect of the particular officers, namely, Forest guards, has precedence over Rule 5 by virtue of Rule 1(3) of Goa Government (Seniority) Rules, 1967. This argument was, in terms, rejected by the Division Bench of our Court. The Court held that any such instructions, even if they could validly be made under Article 162 of the Constitution of India, would be of no assistance to the Petitioners before the Court. It was observed that such instructions under Article 162 could not be a matter of conjecture; their existence must be clearly established. The Court was of the

view that there was nothing on record which could even remotely establish the existence of such instructions and that, accordingly, seniority could not be determined on the basis of relative merit in the training programme of Forest Training School at Valpoi. The Petitioners' reliance on the so called constitution of the forest training school, which was said to have an approval of the Government of India, was not countenanced by our Court. The Court held that it did not have any statutory force.

10. On the basis of the Rules noted above and the law stated by our Division Bench in the case of ***Vishwanath Bugade*** (*supra*), it is not possible to accept the Respondents' case that *inter se* seniority of new recruits could be determined as per ranks obtained by them in the final results of induction training held at Forest Training School.

11. So far as the second grievance of the Petitioners is concerned, no doubt it is true that the induction programme was completed by the recruits batch-wise and that the Petitioners completed the training before the others. Even if the Petitioners' confirmations were on the basis of this batch-wise training and preceded those of the others, that was merely coincidental. As the learned Government Advocate points out, this was due to a

fortuitous circumstance that there being about 90 recruits and the Government not having adequate machinery to complete their induction training in one batch, the training was organized in batches. It was given in three different batches. Successful completion of such batch-wise training is not, accordingly, determinative of seniority based on completion of induction programme and confirmation in service. There is merit in the contention of the State that it ought to be permitted to treat the seniority of the appointees on the basis that they were all appointed on one day and confirmed by the same process. The second grievance of the Petitioners, accordingly, has no merit.

12. Rule is accordingly made absolute and the petition is disposed of by quashing and setting aside the impugned seniority list issued by Respondent No.2. Respondent Nos.1 and 2 are directed to finalize the seniority list in respect of Forest Guards appointed in 2007 on the basis of the order of merit in which the candidates were originally appointed and without reference to batch- wise completion of training.

NUTAN D. SARDESSAI, J.

S. C. GUPTE, J.

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