

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 613 OF 2011

Mahesh Laxman Kankonkar,
son of Laxman Kankonkar,
aged 30 years, Indian National,
Resident of House No.166,
Pether, Carambolim, Tiswadi, Goa.

..... Petitioner.

Versus

1. State of Goa,
through the Secretary,
Government of Goa,
Alto, Porvorim, Goa.

2. Director of Agriculture,
Office of the Directorate of Agriculture,
Krishi Bhawan,
Tonca, Caranzalem, Goa.

3. Distance Education Council,
Maidan Garhi,
New Delhi - 110068.

4. The Registrar,
Yashwantrao Chavan Maharashtra
Open University, Dnyanagangatri,
Near Gangapur Dam,
Nashik - 422222,
Maharashtra, India.

..... Respondents.

Mr. S.G. Desai, Senior Advocate with Mr. Pavithran A.V., Advocate
for the Petitioner.

Mr. Deep Shirodkar, Additional Govt. Government Advocate for Respondents No.1 and 2.

***Coram : M.S. Sonak &
Nutan D. Sardesai, JJ.***

Date : 24-25th September, 2019.

ORAL JUDGMENT: (Per M.S. SONAK, J.)

Heard Mr. S.G. Desai, learned Senior Advocate with Mr. Pavithran for the Petitioner. Mr. Deep Shirodkar, learned Additional Govt. Advocate appears on behalf of Respondents No.1 and 2. Respondents No.3 and 4, though served neither represented by some authorised representative, nor by an Advocate.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner seeks an appropriate writ, order or direction to Respondents No.1 and 2 not to insist upon production of a letter of recognition of the Degree of Horticulture from the Distance Education Council issued to the Petitioner in the year 2006 by Yashwantrao Chavan Maharashtra Open University, Nashik, Maharashtra (YCMOU) within 60 days from the date of issuance of Memorandum dated 28/07/2011, which is nothing but an offer of appointment issued to the Petitioner for the post of Assistant Agricultural Officer, reserved against the vacancy for Scheduled Tribe category, to which the Petitioner belongs.

3. The recruitment to the post of Assistant Agricultural Officer in the Directorate of Agriculture, State of Goa, is governed by the Government of Goa, Directorate of Agriculture, Goa General Service, Group 'B', Non-Ministerial, Gazetted Post, Recruitment Rules, 2004 (said Rules). The said Rules provide that the post of Assistant Agricultural Officer should be filled in by promotion to the extent of 25%, failing which by direct recruitment, and 75% by direct recruitment. In the present Petition, we are concerned with the issue of filling up of the post of Assistant Agricultural Officer by direct recruitment.

4. The said Rules provide for the following essential and desirable qualifications for direct recruitment to the post of Assistant Agriculture Officer,:

<i>Essential</i>	<i>Desirable</i>
<i>1) Bachelor's Degree in Agriculture/Horticulture from a recognized University.</i>	<i>(i) 3 years experience in Agriculture/Horticulture;</i>
<i>2) Knowledge of Konkani.</i>	<i>(ii) Knowledge of Marathi.</i>

5. Accordingly, the Goa Public Service Commission (GPSC), vide advertisement No. 11/2009 dated 11.12.2009, published in the Navhind Times dated 11.12.2009, invited applications for 12 posts

of Assistant Agricultural Officer, out of which two posts were reserved for Scheduled Tribes. The advertisement also indicates that the essential qualification is Bachelor's Degree in Agriculture/ Horticulture *"from a recognized University"* and knowledge of Konkani.

6. There is no dispute that the Petitioner belongs to the Scheduled Tribe category. There is also no dispute that the Petitioner possesses Bachelor's Degree in Horticulture, issued by the Yashwantrao Chavan Maharashtra Open University, Nashik (YCMOU), which was issued in the year 2006. The Petitioner has, in fact pleaded that he secured First Class in final year examination of B.Sc. (Horticulture) held by the YCMOU. Above all, there is no dispute that YCMOU is an University which is recognized by the University Grants Commission (UGC), in terms of The University Grants Commission Act, 1956. There is also no dispute that the Petitioner has knowledge of Konkani and that from November, 2004 at least, the Petitioner has been working as Field Assistant in the Directorate of Agriculture.

7. The GPSC, by its communication dated 30th July, 2010, informed the Petitioner that he has been selected for the post Assistant Agricultural Officer in the Directorate of Agriculture and, his name has been recommended to the Government for

appointment to the said post.

8. Since most of the candidates selected and recommended for appointment by the GPSC, were issued offers of appointment, and eventually appointed to the post of Assistant Agricultural Officer, the Petitioner addressed a representation dated 28th June, 2011 to the Director of Agriculture, seeking appointment to the post of Assistant Agricultural Officer, in pursuance of the recommendation made by the GPSC.

9. In pursuance of the aforesaid representation, Directorate of Agriculture, Government of Goa, issued Memorandum dated 28th July, 2011 to the Petitioner, conditionally offering the Petitioner appointment to the post of Assistant Agricultural Officer reserved against the vacancy of Scheduled Tribe category in the Directorate of Agriculture. The condition imposed in the Memorandum dated 28th July, 2011, which is impugned by the Petitioner in the present Petition, reads as follows :

" The offer is further subject to production of letter of recognition of the Degree in Horticulture from the Distance Education Council, issued to Shri Mahesh L. Kankonkar in the year 2006 by the Yashwantrao Chavan Maharashtra Open University, Nashik, Maharashtra, within 60 days from the date hereto. The acceptance of this offer from Shri Kankonkar would be considered only on production of the above letter of recognition within the

stipulated period, failing which, the offer shall stand terminated."

10. The Petitioner contending that Respondents No.1 and 2 have no authority in law in insisting that the Petitioner produces a letter of recognition from the Distance Education Council, has instituted the present Petition and questioned introduction of such a condition in the Memorandum dated 28th July, 2011.

11. Mr. Desai, learned Senior Advocate for the Petitioner contends that the impugned condition sought to be introduced in the Memorandum dated 28th July, 2011 has no statutory backing. He points out that the Recruitment Rules or the advertisement issued by the GPSC only refers to a degree from a recognized University and is specifically recognized by the UGC. He points out that the YCMOU is a recognized University, particularly since the same was established under the State Legislation. He submits that the Notification dated 1st March, 1995, on which Respondents No.1 and 2 rely, is not at all appreciable to any posts under the State Government. He, therefore, submits that the impugned condition is required to be struck down and an appointment order be issued in favour of the Petitioner.

12. Mr. Shirodkar, learned Additional Govt. Advocate to

begin with, points out to the pleadings in the Petition, to submit that the ground now sought to be raised by Mr. Dessai, learned Senior Advocate for the Petitioner is nowhere pleaded in the Petition. In fact, the Petitioner has admitted that the Degree obtained by the Petitioner is not recognized by the Distance Education Council and for this purpose, the Petitioner has prayed for appropriate writ to command the Distance Education Council to give *ex post facto* recognition to the YCMOU for the year 2006. He submits that from this it is amply clear that even the Petitioner is aware of the requirement of recognition from the Distance Education Council and further aware that the Degree obtained by the Petitioner in the year 2006 is not a recognized degree or degree from a recognized institution.

13. Mr. Shirodkar then points out to the provisions of The Indira Gandhi National Open University Act, 1985 and submits that the Distance Education Council, which is established under the same, is an Apex Body for the purpose of co-ordination and determination of standards of teaching, evaluation and research in open universities. He, therefore, submits that in absence of any recognition by the Distance Education Council, neither can the YCMOU be regarded as a recognized university, nor can the qualifications issued by the YCMOU be regarded as recognized

qualifications. He, therefore, submits that introduction of the condition in the Memorandum dated 28th July, 2011 was justified and in accordance with law.

14. Mr. Shirodkar further places reliance on the Notification dated 1st March, 1995, issued by the Ministry of Human Resource Development, New Delhi to point out that the Degree in Horticulture, obtained by the Petitioner in the year 2006, unless approved by the Distance Education Council, can never be taken into consideration for appointment to the post of Assistant Agricultural Officer in the Directorate of Agriculture, Government of Goa.

15. For the aforesaid reasons, Mr. Shirodkar submits that this Petition may be dismissed.

16. Rival contentions now fall for our determination.

17. At the outset, it is necessary to note that the Petitioner has impleaded to this Petition both, the Distance Education Council, as well as the Registrar of YCMOU as Respondents No.3 and 4 respectively. Mr. Desai, learned Senior Advocate for the Petitioner pointed out that both these Respondents have been duly served. However, we note that both these Respondents have not bothered to file any response to the issues raised in this Petition.

18. Further, it is necessary to note that the recruitment to the post of Assistant Agricultural Officer in the Directorate of Agriculture, Government of Goa is governed by the said Rules. The said Rules, as noted earlier, speak only about the Bachelor's Degree in Agriculture/Horticulture "*from a recognized University*". The said Rules or for that matter, the advertisement issued by the GPSC in pursuance of the same, do not speak about any approval by the Distance Education Council either to the University or to the qualifications like degrees issued by the University. Admittedly, the YCMOU is an university which is recognized by the UGC. This is specifically admitted by Mr. P. Tufani, Director of Agriculture in his affidavit filed on 4th December, 2013.

19. The GPSC, at the time of selection of the Petitioner did not raise any issue about the Degree in Horticulture obtained by the Petitioner from the YCMOU. The Distance Education Council, or for that matter, the YCMOU, who are parties to this Petition, have also not raised any dispute as regards the qualification. In particular, the Distance Education Council has nowhere urged that the YCMOU is not a recognized University, or that the qualification issued by the YCMOU to the Petitioner is not any recognized qualification.

20. In the aforesaid circumstances, we do not think that Respondents No.1 and 2 were justified in introducing the impugned condition in the Memorandum dated 28th July, 2011 and on the basis of the alleged non-fulfillment of such condition denying the Petitioner appointment to the post of Assistant Agricultural Officer, despite the recommendation of the GPSC in that behalf.

21. The issue as to whether the approval of the Distance Education Council is indeed required for recognition of an university which is established under a State legislation and which imparts education by distance learning, is an issue which does not seriously arise in this Petition, taking into consideration the provisions under the said Rules and the advertisement which was issued in pursuance of the said Rules. If Respondents No.1 and 2 were indeed serious about the condition now belatedly introduced, nothing prevented Respondents No.1 and 2 in clarifying these aspects in the recruitment rules, or at least in the advertisement. Belatedly, and perhaps on the basis of the objections raised by the Agriculture Officers Association Goa, Respondents No.1 and 2 by solely relying upon the Notification dated 1st March, 1995, issued by the Ministry of Human Resource, Union of India, have introduced the impugned condition in the Memorandum dated 28th July, 2011 and on such basis, denied the Petitioner appointment to the post of Assistant Agricultural Officer.

22. The Notification dated 1st March, 1995, reads as follows :

" *Ministry of Human Resource Development
(Department of Education)*

New Delhi

Dated the 1st March, 1995

NOTIFICATION (44)

*On the recommendation of the Board of Assessment for Educational Qualifications, the Government of India has decided that all the qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the UGC Act, 1956 and Institutions of National Importance declared under an Act of Parliament stand automatically recognized **for the purpose of employment to posts and services under the Central Government** provided it has been approved by Distance Education Council, Indira Gandhi National Open University, J 76, Hauz Khas, New Delhi - 110016 and wherever necessary by All India Council for Technical Education, I.G. Sports Complex, I.P. Estate, New Delhi 110 002.*

No.F.18-15/93-TD.V/TS.IV

sd/-

(VIJAY BHARAT)

DEPUTY EDUCATIONAL ADVISER(T) &

SECRETARY

BOARD OF ASSESSMENT

FOR EDUCATIONAL QUALIFICATIONS".

[emphasis supplied]

23. The Notification dated 1st March, 1995 very clearly states

that all qualifications awarded through Distance Education by the Universities established by an Act of Parliament or State Legislature, Institutions Deemed to be Universities under Section 3 of the UGC Act, 1956 and Institutions of National Importance declared under an Act of Parliament stand automatically recognized *"for the purpose of employment to posts and services under the Central Government"* provided it has been approved by Distance Education Council, Indira Gandhi National Open University, and wherever necessary by All India Council for Technical Education, New Delhi.

24. According to us, the crucial expression in the aforesaid Notification dated 1st March, 1995 is *"for the purpose of employment to posts and services under the Central Government"*. In the present case, admittedly, we are not concerned with the employment to the posts and services under the Central Government. Accordingly, we are unable to appreciate the contention that the Notification dated 1st March, 1995 is applicable for appointment to the post of Assistant Agricultural Officer in the Directorate of Agriculture, Government of Goa.

25. From the return filed by the Director, it appears that the Agriculture Officers Association of Goa objected to the degree

qualification of the Petitioner, by relying upon the Notification dated 1st March, 1995. The return, in paragraph 20, in fact, refers to the copy of the letter dated 3rd May, 2010 addressed by the Agriculture Officers Association of Goa as being annexed to the affidavit. However, perusal of the affidavit indicates that no such letter is in fact annexed to the affidavit. Be that as it may, Respondents No.1 and 2 were not justified in blindly accepting the objections raised by the Agriculture Officers Association, based upon the Notification dated 1st March, 1995. Respondents No.1 and 2 were duty bound to examine the matter in further details and even to find out whether Notification dated 1st March, 1995 was at all applicable for appointments to the posts of Directorate of Agriculture, Government of Goa. This is because, the Notification dated 1st March, 1995, very clearly refers to the "*employment to posts and services under the Central Government*". According to us, Respondents No.1 and 2, without proper application of mind, have sought to impose the same condition in the offer of appointment issued to the Petitioner, which condition, is neither relatable to the qualification in the said Rules, nor in the advertisement issued in pursuance thereof.

26. Mr. Shirodkar refers to some provision of The Indira Gandhi National Open University Act, 1985. However, none of those provisions support the condition that even for employment to

posts and services under the State Government, qualifications awarded by the State Universities under the Distance Education Programme require approval from the Distance Education Council. As we have noted earlier, the said Rules, as well as the advertisement issued, only refer to Bachelor's Degree in Agriculture/Horticulture from a recognized University as one of the essential qualifications for appointment to the post of Assistant Agricultural Officer. Further, as noted earlier, there is no dispute that the University from which the Petitioner has obtained his Bachelor's Degree in Horticulture, is an University recognized by the UGC.

27. The circumstance that the Petitioner by way of abundant caution has applied for a writ to the Respondent No.3 to give *ex post facto* recognition to Yashwantrao Chavan Maharashtra Open University for the year 2006, is certainly not a circumstance which can be held against the Petitioner. This relief was claimed as a matter of abundant caution. In fact, from the material placed on record by the Petitioner, it, at least *prima facie*, appears that most of the universities/institutions were approved by the Distance Education Council/Joint Committee provisionally from 2007-08. Regular recognition was issued from the year 2008 i.e. on 8.4.2008. In case of YCMOU, provisional recognition was issued in 2007-08 and regular recognition between between 8.4.2008 and 07.04.2013.

Thereafter, it appears that the provision for Distance Education Council was not continued and the issue of recognition was reverted to the UGC. It is in this context that some relief was applied for in terms of prayer clause (C) of the Petition. However, that, by itself, does not suggest that the Petitioner has admitted that approval from the Distance Education Council was, indeed, a precondition for securing appointment to the post of Assistant Agriculture Officer in the Directorate of Agriculture, Government of Goa.

28. In any case, in the peculiar facts of the present case, there is no good reason to deny the Petitioner the relief, based upon the impugned condition in the Memorandum dated 28th July, 2011. This is because the recruitment rules in the present case had made no reference to any such requirement. The recruitment rules merely referred to Bachelor's Degree in Agriculture/Horticulture from a recognized University. Even the Respondents, in their return, have specifically admitted that YCMOU, from where the Petitioner has obtained his Bachelor's Degree, is an University recognized by the UGC. The advertisement also makes no reference to the impugned condition. The GPSC, which is a constitutional body having requisite expertise when it comes to recruitment of State posts, quite correctly did not insist upon any such requirement at the stage of selection of the Petitioner. The impugned condition seems to have

surfaced only after the Agriculture Officers Association made a representation relying exclusively upon the Notification dated 1st March, 1995 issued by and on behalf of the Central Government.

29. The record indicates that the Respondents blindly relied upon the Notification dated 1st March, 1995 issued by the Central Government, introducing the impugned condition in the Memorandum dated 28th July, 2011, thereby effectively placing onus upon the Petitioner, which, the Respondents knew that the Petitioner was in no position to discharge. As noted earlier, the Central Government Notification dated 1st March, 1995 applies only for the purpose of employment to posts and services under the Central Government. The post of Assistant Agricultural Officer, with which we are concerned, is neither a post, nor a service under the Central Government. Therefore, the Respondents were not at all justified in relying upon the Central Government Notification dated 1st March 1995 and on the said basis, introducing the impugned condition in the Memorandum dated 28th July, 2011.

30. Besides, in the peculiar facts of the present case, it is necessary to note that the YCMOU, from where the Petitioner obtained his Bachelor's Degree in Horticulture by securing First Class, is an University which is established under the State Legislation. The Respondents, in their return filed to this Petition,

have specifically admitted that YCMOU, is an University which is recognized by the UGC. The requirement in the recruitment rules and in the advertisement issued in pursuance of the recruitment rules, is a Degree in Agriculture/Horticulture, which must be from a recognized University. There was no requirement in the recruitment rules or in the advertisement that the degree issued by a recognized University must further have approval of the Distance Education Council, at the stage of issuance of the officer of appointment. Therefore, the Respondents were not justified in introducing such a condition, relying exclusively upon the Central Government Notification dated 1st March, 1995, which, as noted earlier, applies only for the purpose of employment to posts and services under the Central Government. In such circumstances, denying appointment to the Petitioner, who already has experience as Field Assistant in the Directorate of Agriculture since 2004, to the post of Assistant Accounts Officer, reserved for the post of Scheduled Tribe category, to which the Petitioner belongs, cannot be said to be justified. The Respondents should have taken into consideration the provisions in the recruitment rules, as also in the advertisement issued in pursuance thereof. The Respondents also should have taken into consideration the fact that the Petitioner has secured a Bachelor's Degree in Horticulture in First Class, from an University which is, admittedly, recognized by the UGC. All such relevant considerations have been

ignored by the Respondents and appointment is sought to be denied to the Petitioner, almost entirely on the basis of the Notification dated 1st March, 1995 which applied exclusively for the purpose of employment to the posts and services under the Central Government. For all these reasons, we are satisfied that the impugned condition in the Memorandum dated 28th July, 2011, which has been transcribed by us in paragraph 9 of this Judgment and Order, is required to be struck down.

31. Mr. Desai submits that it is only proper that the Petitioner be ordered to be appointed with effect from 28th July, 2011, since, for unjustifiable reasons the Petitioner has been deprived of such appointment by the Respondents. Mr. Desai, on basis of the instructions from the Petitioner who is present in the Court, however, states that the Petitioner is willing to forego the differential salary between 28th July, 2011 and the date on which he is actually appointed, but submits that the Petitioner's deemed service be taken into account for all other purposes, like seniority for promotion, increments, pay fixation, etc. He points out that the Petitioner who is a member of Scheduled Tribe category, has been working as Field Assistant in the Directorate of Agriculture itself since 2004. He submits that from this it is apparent that the Petitioner has been adjudged as fit to serve in the Directorate of Agriculture.

32. According to us, there is some merit in the submission made by Mr. Desai on behalf of the Petitioner. For non-justifiable reasons, the Petitioner has been denied appointment to the post of Assistant Agricultural Officer. Therefore, the Petitioner is required to be placed, as nearly as possible in the same position, in which he would have been, had he not been denied such post, in the first instance. We also agree with the contention of Mr. Desai that the Petitioner has been quite unfairly treated by the Respondents, who deprived the Petitioner of appointment for all these years, entirely on the basis of the representation of the Association, which, in turn, relied upon the Central Government Notification dated 1st March, 1995, which was not at all applicable to the case of the Petitioner. The Petitioner, in this case, was adjudged as suitable by the GPSC which has, in fact, recommended his appointment to the post of Assistant Agricultural Officer. The Petitioner protested against his non-appointment at the earliest instance and, even, this Petition was instituted at the earliest instance. The Petitioner, on his own, has given up the claim for differential salary. Taking into consideration all these circumstances, we feel that the Petitioner should be given a deemed date of 1st October, 2011, which corresponds to approximately period of 60 days, within which the Petitioner was required to communicate his acceptance to the offer of appointment

contained in Memorandum dated 28th July, 2011. Such deemed date can apply for all purposes, except the claim of differential salary.

33. For all the aforesaid reasons, we dispose of this Petition by making the following order :

(A) The impugned condition in in the Memorandum dated 28th July, 2011, as transcribed in paragraph 9 of this Judgment and Order is struck down;

(B) Upon the Petitioner, within 60 days from today, communicating his acceptance to the offer of appointment in Memorandum dated 28th July, 2011, *sans* the impugned condition which we have now struck down, Respondents No.1 and 2 to appoint the Petitioner to the post of Assistant Agricultural Officer effective from 1st October, 2011, within a period of 6 weeks from the date of communication of acceptance by the Petitioner, which appointment shall be, no doubt, subject to other compliances with usual and routine formalities which go with such appointments.

(C) The deemed date of 1st October, 2011 shall be effective for all purposes, except for the claim of differential salary which has been specifically given up by the Petitioner.

34. Rule is made absolute in the aforesaid terms. However,

there shall be no order as to costs.

36. All concerned to act on the basis of an authenticated copy of this order.

Nutan D. Sardesai, J.

M.S. Sonak, J.