

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 30 OF 2012**

Shri Anand V. Usgaonkar,
major, married, Indian National,
Supervision in Sub-Div.III, WD XIX,
P.W.D., Govt. of Goa, Bambolim,
Goa, residing at Surla, Deulwado,
P. O. Sanquelim Goa.

... Petitioner

Versus

1. Govt. of Goa,
through Chief Secretary,
Secretariat, Porvorim Goa.

2. The Principal Chief Engineer,
P.W.D., Govt. of Goa,
Altinho, Panaji Goa.

... Respondents

Mr. V. Shirodkar, Advocate for the Petitioner.

Ms. Priyanka Kamat, Addl. Government Advocate for the Respondents.

**Coram:- M. S. SONAK &
C. V. BHADANG, JJ.**

Date:- 5th December, 2019

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

Heard Mr. V. Shirodkar, learned counsel for the Petitioner and

Ms. P. Kamat, learned Addl. Government Advocate for the Respondents.

2. The Petitioner claims to have been appointed as Mistry on Nominal Muster Register (NMR) basis in the Public Works Department (PWD), Government of Goa, some time in the year 1979. However, the Petitioner has not produced any documentary evidence in this regard. The Respondents also do not admit this position. However, the Respondents admit that the Petitioner was appointed as Mistry on NMR basis w.e.f. 31st January, 1981. This position is even otherwise evident by Certificate dated 31st May, 2001 issued by the Executive Engineer, WDI which is placed on record as Exhibit P-7 (page 39).

3. The services of the Petitioner were thereafter regularised by the Respondents vide order dated 31st December, 1985. This regularisation order however stated that the Petitioner was being appointed on temporary basis as Supervisor on Workcharged Establishment with immediate effect. Later on by order dated 15th January, 1986, there was Corrigendum issued clarifying that the Petitioner was appointed on ad-hoc basis as Supervisor and upto a period 28th February, 1986. Notwithstanding the nomenclature of the two orders, it is an agreed position that the services of the Petitioner came to be regularised in the post of Supervisor with effect from 31st December, 1985. This position is also made implicitly clear from the Certificate dated 31st May, 2001 issued by the Executive Engineer, WDI,

referred to earlier.

4. It is the case of the Petitioner that some time in the year 2011, he discovered that the employees who had similarly been employed as Mistries on NMR basis and regularised in the lower post of Supervisor etc., on the basis of the representations made by them, were restored to the post of Mistries or Work Assistant as the case may be. Accordingly, the Petitioner instituted Writ Petition No.42 of 2011 before this Court seeking for the similar relief of regularisation in the post of Mistry instead of lower post of Supervisor.

5. Writ Petition No.42 of 2011 was however withdrawn by the Petitioner with liberty to make a representation to the appropriate Authority in respect of the grievances of the Petitioner. This order is to be found at Exhibit P-10 (page 45) of the paper book of this petition.

6. In pursuance of the aforesaid liberty, the Petitioner addressed a representation dated 28th June, 2011 to the Respondents, in which, the Petitioner, cited instances of several persons who placed in similar circumstances, were granted the relief. The Petitioner, also made reference to the decision of this Court in the case of *Antonio Peixoto Vs Chief Engineer¹*, in support of his cause.

¹ WP No.379/1995 dated 17th November, 1998

7. It is the case of the Petitioner that the representation dated 28th June, 2011 was not even considered by the Respondents. The Petitioner, has however placed on record the Circular dated 28th July, 2011, in which there is a reference to the receipt of similar representation from several employees. He pointed out that the Circular dated 28th July, 2011, speaks of grievances of similarly placed employees being considered favourably.

8. The Petitioner, made yet another representation on 2nd August, 2011 to the Respondents and since the same was never considered by the Respondents, the Petitioner instituted this petition on 7th December, 2011 seeking *inter alia* a relief of regularisation in the post of Mistry with effect from 31st December, 1985 or at least with effect from the year 1991 when the services of similarly placed employees came to be regularised.

9. Mr. Shirodkar, learned counsel for the Petitioner submits that there is no difference between the case of the Petitioner and several instances referred to by the Petitioner in his representation as well as in this petition. In particular, he pointed out that there is no significant difference in the case of the Petitioner and the case of *Antonio Peixoto*, the Petitioner in Writ Petition No.379 of 1995. He therefore submits that the Respondents were not justified in denying the Petitioner the reliefs prayed for in this petition. Mr. Shirodkar also pointed out that the only reason set out in the affidavit filed on behalf of the Respondents in denial of the relief

to the Petitioner is that the Petitioner did not allegedly possess the qualification of matriculation, which the Respondents regard as an essential qualification for appointment to the post of Mistry. Mr. Shirodkar submits that the said qualification was prescribed only on 29th June, 1987 when in fact, the Petitioner, was appointed as Mistry at least in the year 1981 and even regularised in the year 1985. He submits that the Rules referred to by the Respondents have not been given any retrospective effect and therefore, the Respondents have no right to treat the said Rules as having retrospective effect.

10. Ms. Kamat, learned Addl. Government Advocate appearing for the Respondents points out that in terms of the Recruitment Rules, the matriculation is an essential qualification for the appointment to the post of Mistry. She submits that the Petitioner admittedly does not possess such qualification though the Petitioner made an attempt to state that he does. She submits that the qualification prescribed for the post of Supervisor is that of middle school which is the qualification which the Petitioner possesses and was consequently regularised as Supervisor. She submits that the Petitioner accepted the regularisation in the post of Supervisor without any demur or protest. She submits that the instances referred to by the Petitioner have been explained in the affidavit filed on behalf of the Respondents and it cannot be said that they are similar instances. For all these reasons, Ms. Kamat submits that this petition may be dismissed.

11. The rival contentions now fall for our determination.

12. At the outset, we see no significant difference between the case of the Petitioner and the several instances referred to by the Petitioner, both in his representation as well as in the present petition. That apart, we see no difference whatsoever in the case of the Petitioner and *Antonio Peixoto*, the Petitioner in Writ Petition No.379 of 1995. Accordingly, on the basis of the parity the Petitioner, is entitled to the relief in this petition, though not in terms prayed for by the Petitioner.

13. In the case of *Antonio Peixoto* (*supra*), this Court has referred to the factual position, which *inter alia* indicates that the said Antonio was appointed as Mistry in PWD, WDI on NMR basis on 12th October, 1981. However, by order dated 3rd August, 1987, the said Antonio was appointed on ad-hoc basis as Supervisor on work charged Establishment in the pay scale of Rs.800-1150. Mr. Antonio later on pointed out that the employees who were virtually identically placed junior to him were granted regularisation as Mistries at a later point of time. Ultimately, even Antonio was granted this benefit but from much later date. Accordingly, it was the grievance of the said Antonio that he was discriminated against. This grievance was redressed by this Court and directions were issued to regularise the services of the said Antonio in the post of Mistry. The relief was moulded by taking into consideration the fact

that Antonio had made his representation only on 5th July, 1991. Accordingly, the directions were issued to regularise the services of Antonio as Mistry with effect from 5th July, 1991 and therefore, he was awarded all consequential benefits on the said basis.

14. According to us, there is no significant difference in the case of the Petitioner and the case of said Antonio Peixoto. In the case of *Antonio Peixoto* (supra) there was no grievance raised on behalf of the Respondents as regards the qualification. This issue was quite rightly not raised by the Respondents because on the date of appointment of the said Antonio on NMR basis with effect from 12th October, 1981, the recruitment rules dated 29th June, 1987 had never entered into force.

15. In the present case when the Petitioner was appointed as Mistry on NMR basis on 31st January, 1981 or for that matter when the services of the Petitioner were purported to be regularised on 31st December, 1985, the recruitment rules dated 29th June, 1987 had never entered into force. From clause/Rule (6) of the order dated 29th June, 1987, it is quite clear that the rules came into force from the date of the order and will relate to the appointment to various posts made on or after the said date and the appointments made prior to the issue of said order, by duly constituted DSC/DPC shall be deemed to be regular appointments.

16. Taking into consideration the categorical provisions of Rule 6 of the recruitment rules which state the aforesaid, it is obvious that the Respondents were not justified in raising the issue of qualification or rather lack of qualification of the Petitioner at this belated stage. At the stage of initial appointment or even at the stage of regularisation of the Petitioner, there were no recruitment rules in force prescribing the qualification for the post of Mistry. The Petitioner was appointed as Mistry and the Petitioner even discharged duties as Mistry. As stated earlier, in quite similar circumstances, the Respondents have themselves granted the benefits to such employees and regularised them in the higher post which they held.

17. Ms. Kamat submitted that since the recruitment rules came into force only with effect from 29th June, 1987, the State relied upon the recruitment rules published in the Official Gazette on 16th November, 1978 which are to be found at page 100 of the paper book. Upon perusal of the said recruitment rules, we find that they relate to the Institute of Public Assistance Recruitment Rules, 1978. These rules make no reference whatsoever to the post of Mistry. Ms. Kamat however points out that these rules make reference to the post of Supervisor at Column No.11. Upon perusal of Column No.11, it is clear that the post referred to as that of the Supervisor (Printing and allied work). The 1978 Rules have absolutely nothing to do with the appointment to the post of Mistry or Supervisor under the Public Works Department. The contention, in our opinion is

quite misconceived and deserves rejection.

18. For the aforesaid reasons, we are satisfied that this is a fit case where the Petitioner is entitled to the relief, though, not in precise terms as claimed by him.

19. In terms of our decision in *Antonio Peixoto* (supra) the relief was granted to the Petitioner therein from the date the Petitioner made his representation i.e. on 5th July, 1991. In the present case, the Petitioner made his representation only on 28th June, 2011. Mr. Shirodkar has however pointed out that the employees who were identically placed have been granted relief from the year 1991 i.e. 5th July, 1991 in the case of *Antonio Peixoto* (supra). He submits that if this is the position, then, there is no reason as to why the Petitioner should not be granted such relief from at least 5th July, 1991.

20. According to us, the fact that the Petitioner made representation only on 28th June, 2011 is quite relevant consideration when it comes to moulding of relief. Even the Petitioner was required to be vigilant in order to pursue his rights. At the same time, we cannot lose sight of the fact that the State as a model employer should have itself, granted the relief to the Petitioner, similar to the relief which was extended to the other similarly appointed employees. Upon balancing these two positions, we

feel that the interest of justice would be met if the Petitioner is directed to be regularised as Mistry with effect from 1st July, 1991. However, in so far as the actual financial benefits are concerned, it would be appropriate if the Respondents are directed to pay the same with effect from 1st July, 2011, considering that the Petitioner's first representation was dated 28th June, 2011. This means that the Petitioner will be deemed to have been regularised in the post of Mistry with effect from 1st July, 1991. This benefit of regularisation will count for determination of all notional benefits including the pay scale, pay revision, pension etc. However, the actual financial benefits i.e. consequential benefits like difference in pay etc., will have to be paid by the Respondents to the Petitioner with effect from 1st July, 2011.

21. We therefore dispose of this petition by making the following order :

- (a) We direct the Respondents to regularise the Petitioner to the post of Mistry, notionally with effect from 1st July, 1991;
- (b) We direct the Respondents to determine the financial benefits payable to the Petitioner on the aforesaid basis, but to pay to the Petitioner the financial benefits with effect from 1st July, 2011;
- (c) The above exercise will have to be completed within three months from today. If the financial benefits with effect from 1st July, 2011 are not paid within three months from today, the

same will carry interest at the rate of 7% per annum, from the date of this order till the date of effective payment. This will be without prejudice to the right of the Petitioner to secure compliance of this order, in accordance with law.

22. Rule in this petition is made absolute in the aforesaid terms.

There shall be no order as to costs.

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

C. V. BHADANG, J.

M. S. SONAK, J.

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