

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.77 OF 2014

Dr. Vaishali Naik,
major, Indian National,
resident of Siya Residency,
2TM4 Floor, Near Shantiniketan
Building, Annapurna Nagar,
Alto, Porvorim, Bardez, Goa.

Versus

1.The State Of Goa
through its Chief Secretary,
Secretariat, Porvorim, Goa,

2. Goa Public Service Commission,
Through the Secretary,
EDC House, Block 'C', 1* Floor,
Dada Vaidya Road, Panaji, Goa.

3.The Goa University
through its Registrar,
Taleigao Plateau, Bambolim, Goa.

4. The Principal,
Government College of Arts &
Commerce, Pernem, Goa

5. The Directorate of Higher Education,
Through the Director,
Officer of the Directorate of
Higher Education,
Porvorim, Bardez, Goa.

6. Dr. Kiran Nawnath Popkar

Of major age, Resident of Anjuna,
Bardez, Goa.

7. Mr. Santosh Bhimrao Pawar,
Of major age,
c/o Goa Public Service Commission,
EDC House, Block 'C', 1st Floor,
Dada Vaidya Road, Panaji, Goa.

8. University Grants Commission,
through the Chairman, Bahadur Shah
Marg, New Delhi 110 002.

Mr. Virendra Parsekar, Advocate for the Petitioner.

Mr. S. P. Munj, Additional Government Advocate for Respondents No.1
and 5.

Ms. A.A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate for
Respondent No.3.

***Coram: M.S. Sonak &
Smt. Bharati H. Dangre, JJ.***

Date: 9th March 2021.

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

Heard learned Counsel for the parties

2. The Petitioner, by instituting the present Petition, seeks the
following substantive reliefs :

*“(A) For a Writ of Certiorari or a Writ direction order in
the nature of Certiorari or any appropriate writ, direction
Order under Article 226 of the Constitution of India*

setting and quashing aside the impugned selection and impugned appointment of Respondents No. 6 to the post of Assistant Professor in Hindi by Respondent No.1, 2 and Respondent No 4 after calling for the records of the case and examining them for legality, propriety and correctness.

(B) For a Writ of Mandamus or a Writ direction order in the nature of Mandamus or any appropriate Writ, Direction Order under Article 226 of the Constitution of India directing {hie Respondents Nos.1, 2, 3, 4 and 5 to appoint the Petitioner to the impugned post of Assistant Professor in Hindi in the Government College of Arts & Commerce, Pernem, Goa.”

3. The Goa Public Service Commission (GPSC), issued an advertisement No.3/2013 inviting applications, *inter alia*, for the post of Assistant Professor in Hindi in Government College. The advertisement set out the essential and desirable qualifications and the same read as follows :

“Essential : (i) Good Academic record with at least 55% of marks or equivalent grade at Master's Degree level in the relevant subject from an Indian University or an equivalent degree from a foreign University. (ii) National Eligibility Test (NET)/State Level Eligibility Test (SET) shall remain the compulsory requirement for appointment as Assistant Professor, provided, however, that candidates, who are or have been awarded Ph.D. degree I compliance of the “University Grants Commission (minimum standards and procedure for award of Ph.D. Degree), Regulation 2009, shall be exempted from the requirement of the minimum

eligibility condition of NET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Colleges”. (iii) Knowledge of Konkani. Desirable: (i) Ph.D. or M.Phil in the relevant subject. (ii) Knowledge of Marathi.”

4. There is no dispute that the advertisement is in terms of the Recruitment Rules. However, the challenge of the Petitioner, as articulated by Mr. Parsekar, the learned Counsel appearing for the Petitioner, is that Respondent No.6, whose appointment is now questioned, did not possess the National Eligibility Test (NET)/State Level Eligibility Test (SET) qualifications and, therefore, was ineligible to be considered and appointed as the Assistant Professor in Hindi at the College.

5. Mr. Parsekar conceded that Respondent No.6 possessed a Ph.D. Degree, which she obtained in the year 2008 or thereabouts. However, he submitted that such a Ph.D. degree was obtained by Respondent No.6 before the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree), Regulation, 2009 (2009 Regulations) entered into force. Therefore, he submitted that such a Ph.D. degree could not have been considered for exempting Respondent No.6 from having NET/SET qualifications, which are mandatory.

6. Mr. Parsekar submitted that the 2009 Regulations contemplated a selection process for admission before any candidate can be enrolled for obtaining a Ph.D. Degree. He points out that this selection procedure comprised, *inter alia*, an interview. Evaluation and assessment methods are also prescribed in the 2009 Regulations. He submits that since Respondent No.6 obtained her Ph.D. Degree in the year 2008 or thereabouts, Respondent No.6 did not comply with the procedure prescribed in 2009 Regulations. He submits that the Ph.D. Degree obtained by Respondent No.6 without such compliance, can never be regarded as a substitute for NET/SET qualifications which are mandatory.

7. Mr. Parsekar, on the aforesaid grounds, submits that the appointment of Respondent No.6 made almost 6 to 7 years ago, be quashed and the Petitioner be appointed in her place because, the Petitioner possessed NET/SET qualification, in addition to Ph.D.

8. Ms. Agni, learned Senior Advocate appearing on behalf of the Goa University, and Mr. Munj, the learned Additional Government Advocate oppose the grant of any relief in this Petition. They point out that there was no challenge to Ph.D. Degree obtained by Respondent No.6. They point out that there was no challenge to the equivalence declaration issued by the Goa University on 7/12/2012. They point out that there was no challenge to the

decision of the Academic Council of the Goa University which had resolved the issue of equivalency. They submit that in the absence of all these challenges, the Petitioner could not have claimed that Respondent No.6 was ineligible for being appointed as an Assistant Professor in Hindi at the Government College.

9. Ms. Agni, the learned Senior Advocate for the Goa University also referred to the detailed affidavit filed by the Registrar of Goa University in this matter and pointed out the basis for equivalence. She submitted that merely because there may not have been some formal interview before the enrollment of Respondent No.6 as a Ph.D. Student, the same neither renders the Ph.D. Degree awarded to Respondent No.6 invalid, nor did this affect declaration of equivalence by the Academic Council of the Goa University. She submitted that ultimately, in such matters of equivalence, the Courts should normally not interfere with the decisions of the academic bodies, like the Academic Council of the Goa University. She, therefore, urged for dismissal of this Petition.

10. We have considered the rival contentions and, according to us, in the facts and circumstances of the present matter, no case is made out for exercise of our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India to set aside the appointment of Respondent No.6, or to direct appointment of the

Petitioner in her place.

11. There is no dispute whatsoever that Respondent No.6 possesses a good academic record at the Master's Degree level in the relevant subject from an Indian University. Although Respondent No.6 did not possess NET/SET qualification, at the time when she applied for selection, there is no dispute that she possessed a Ph.D. Degree issued by the Goa University. There is also no dispute about Respondent No.6 possessing knowledge of Konkani and knowledge of Marathi. Thus, at least *prima facie*, Respondent No.6 possessed both, the essential, as well as desirable qualifications for appointment to the post of Assistant Professor in Hindi.

12. The record indicates that Respondent No.6 was appointed sometime in 2013-14 and is continuing in the said post to date. Upon our query, Mr. Parsekar submitted that even the Petitioner is employed as an Assistant Professor in a College affiliated with the Goa University for the last several years. Prayer clauses of the Petition disclose that there is no challenge to the Ph.D. qualification obtained by Respondent No.6 way back in the year 2008. Further, the Goa University has issued a Ph.D. declaration certificate on 7/12/2012 and even the same has not been challenged by the Petitioner in the present Petition. There are no prayers in the Petition to set aside the Ph.D. Degree obtained by Respondent No.6 or for that matter, the

Ph.D. declaration certificate issued by the Goa University, declaring that Ph.D. degree was issued in compliance with the provisions of 2009 Regulations.

13. The Ph.D. declaration Certificate dated 7/12/2012, which has not even been challenged by the Petitioner by seeking any specific relief, reads as follows :

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Goa University,
Taleigao Plateau, Goa 403 206

No.: GU/Acad-PG/Ph.D./Equiv./2012/3817 Dated : 07/12/2012

PH.D. DECLARATION CERTIFICATE

It is hereby declared that the thesis entitled “MAITRAYEE PUSHPA KE KATHA — SAHITYA “MEIN STRI VIMARSH” submitted by Dr. Popkar Kiran Nawnath in the subject of Hindi under the Faculty of Language & Literature is accepted by the University authorities for the award of the Doctor of Philosophy in Hindi under the Faculty of Language & Literature on 20" September, 2008.

It is hereby also certified that the Ph.D. awarded to Dr. Popkar Kiran Nawnath is in compliance of the provision of the UGC (Minimum standard & procedure for the award of the Ph.D. degree Regulation).

This certificate is issued in the light of UGC directive [F.No.1/1/2002/\(PS\)](#) Pt. file III dated 28th August, 2009 and as per the decision of the Academic Council held on 9" August, 2011.

*Sd/-
(REGISTRAR”*

14. In the absence of any challenge to the Ph.D. degree certificate obtained by Respondent No.6 or the Ph.D. Declaration Certificate dated 7/12/2012, we are afraid the Petitioner cannot succeed in securing the reliefs in terms of prayer clauses (A) and (B) of this Petition. The Petitioner has virtually presumed that the Ph.D. Degree Certificate obtained by Respondent No.6, or the Ph.D. Declaration Certificate issued by the Goa University is in some manner legally infirm and based on such presumption, the Petitioner has applied for the reliefs in terms of prayer clauses (A) and (B). In the absence of any challenge as aforesaid, no relief can, therefore, be granted to the Petitioner in terms of prayer clauses (A) and (B).

15. That apart, if the detailed affidavit-in-reply on behalf of the Goa University is perused, then, we find that there is no legal infirmity in the decision of the Academic Council in the matter of equivalence. Such equivalence is not unique to the case of Respondent No.6 since such equivalence is extended to several similarly situated cases. The Academic Council has taken into account several relevant considerations and only thereafter, decided on the issue of equivalence. Normally, it is not for this Court to interfere with the decisions of the academic bodies unless it is pointed out that such decisions conflict with any statutory or constitutional

provisions. In the absence of any challenge to the decision of the Academic Council and, further, in the absence of making out a case to interfere with this decision, we do not feel that the extraordinary jurisdiction could be exercised to upset the appointment of Respondent No.6 made almost 6 to 7 years ago and to further direct appointment of the Petitioner, who is also stated to be employed as an Assistant Professor in some other College for the last few years.

16. Upon our repeated queries, Mr. Parsekar was only able to faintly urge that there is some infirmity in the award of the Ph.D. degree to Respondent No.6 because there was no formal interview held before Respondent No.6 was enrolled as a Ph.D. student. Apart from this, no further infirmity was pointed out in the context of the Ph.D. degree obtained by Respondent No.6.

17. Now, admittedly, in the year 2008, there was no requirement of holding interviews before enrollment of a candidate for Ph.D. Degree course. Based, therefore, on this aspect, it is too much to say that the Ph.D. degree of Respondent No.6 was either legally infirm or that the same was not sufficient to exempt Respondent No.6 from having NET/SET qualifications. The advertisement and the Recruitment Rules are quite clear and the exemption was provided for the candidates possessing Ph.D. Degree from a recognized University. In the absence of any challenge to this

Ph.D. degree or challenge to the equivalence certificate issued by the Goa University, no case is made out to interfere with the appointment of Respondent No.6 as an Assistant Professor in Hindi in the Government College.

18. The decision in *P. Suseela & Ors. Etc. Etc. vs Univesity Grants Commission & Ors. Etc. Etc* arising out of Special Leave Petition (Civil) Nos. 36023-36032 of 2010, is not of any assistance to the Petitioner in the peculiar facts and circumstances of the present case. In the said case, there, there was no issue of any declaration of equivalence by the Academic Council of the University, involved. The Court was considering the issue of the constitutional validity of the University Grants Commission Regulations (Minimum Qualifications Required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) (the third Amendment) Regulation 2009.

19. Besides, in the present case, Respondent No.6 was already appointed based on her Ph.D. Degree qualification and the Petition was thereafter instituted to question such appointment. The Court has also held that the candidates awarded Ph.D. Degrees in the year 2009 or 2003 were also eligible even if they were not NET/SET qualified if they were awarded the Ph.D. Degrees with any 6 out of

11 conditions recommended by the UGC. No case has been made out by the Petitioner that such conditions were not fulfilled by Respondent No.6 in this matter. Rather, in this matter, the Academic Council of the Goa University has considered the matter and issued the declaration of equivalence, which has not even been challenged by the Petitioner, in this Petition.

20. For all the aforesaid reasons, we are satisfied that this is not a fit case for exercise of our extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India and interfere with the appointment of Respondent No.6 as Assistant Professor in Hindi in Government College.

20. This Petition is, therefore, dismissed. The rule is discharged. There shall be no order as to costs.

Smt. Bharati H. Dangre, J.

M.S. Sonak, J.