

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.34 OF 2019**

Mrs. Azia Piedade D'Silva

H.No.178/104

Tisk Honda, Sattari Goa.

..... Petitioner.

V/s.

1 State of Goa
Through the Secretary (Education),
Having office at the Secretariat,
Porvorim, Goa.

2 Through the Director,
Directorate of Education
Porvorim-Goa.

3 The Headmaster
Our Lady of Lourdes High School,
Valpoi, Sattari, Goa.

4 Diocesan Society of Education
Through its Secretary
Instituto Nossa Senhora de Piedade,
D.B. Marg, Panaji Goa.

5 Marcelia Pinto
Computer Teacher
Our Lady of Lourdes High School
Valpoi, Sattari, Goa.

..... Respondents

Mr. S.D. Lotlikar, Senior Advocate with Mr. N. Amonkar, Advocate for

the petitioner.

Mr. Sagar Dhargalkar, Additional Government Advocate for Respondent Nos.1 and 2.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. B. Fernandes, Advocate for the Respondent Nos.3 and 4.

Mr. S. Karpe and Mr. Abhishek Sawant, Advocates for the Respondent No.5.

Coram:- M. S. SONAK &

SMT. M. S. JAWALKAR, JJ.

Reserved on :- 30th March, 2021.

Pronounced on :- 5th April, 2021

JUDGMENT (Per Smt. M. S. Jawalkar, J)

Heard Mr. S.D. Lotlikar, learned Senior Advocate with Mr. N. Amonkar, learned Advocate for the petitioner, Mr. Sagar Dhargalkar, learned Additional Government Advocate for the respondent Nos.1 and 2, Mr. Coelho Pereira, Senior Advocate with Mr. B. Fernandes, learned Advocate for the respondent Nos.3 and 4 and Mr. S. Karpe and Mr. Abhishek Sawant, learned Advocates for the respondent No.5.

2. Contention of the petitioner in the petition is that an advertisement came to be published in the local daily O'Herald dated 31/10/2015 stating requirement of Art (BFA), Physical Education and Computer Teachers by the Diocesan Society of Education (DSE), Panaji-

Goa. The petitioner applied for the same and submitted her application alongwith her resume and certificates on 03/11/2015 after noticing the said advertisement and after confirming from the office of DSE that the post advertised was a permanent post to be filled up on regular basis.

3. The petitioner appeared for a written test and oral interview on 12/01/2016, held in the presence of Asst. Secretary of DSE, ADEI, Headmaster of Santa Cruz High School and subject expert, Santa Cruz High School. Upon undergoing the selection process and on the recommendation of the selection committee, the petitioner was appointed to the post of Computer Teacher by the Secretary, DSE, vide order bearing No.DSE/4206/Prov.Appt./2016-17 dated 16/02/2016 stated as “Order of Provisional Appointment 'On Probation'” for a period of two years w.e.f. 17/02/2016. The petitioner joined duty at Our Lady of Lourdes High School, Valpoi on 17/02/2016 and sent a copy of the joining letter, acceptance letter and Medical Certificate to the Secretary, DSE.

4. Despite the petitioner joining work in terms of her appointment, no salary was being paid to her for over a year during which she tried several times to inquire with the school authorities and DSE about the approval for her appointment from Directorate of Education and she was informed that her appointment Order stated that her “Salaries will be claimed and paid only after the approval is obtained

from the Government” and that she would be paid her salary accordingly. After a period of Fourteen months of relentless following on the matter, on 17/04/2017, the petitioner was given a copy of a letter dated 01/03/2016 (Ref. No.: DSE/4390/Dir.Ed./2015-16), purportedly addressed by the Secretary, DSE to the Directorate of Education seeking approval for the appointment of the petitioners as Computer Teacher at Our Lady of Lourdes High School, Valpoi and a copy was apparently marked to the Manager and Headmaster of Our Lady of Lourdes High School, Valpoi.

5. In the month of September,2017 the petitioner was called to the office of the Diocesan Society and told that she would have to accept the appointment only on contract basis from the day the petitioner joined the school till November,2017. The petitioner was further informed that the post would be re-advertised as special advertisement in October, 2017 and she was promised to be rehired on permanent basis. On 17/10/2017, the Director of Education issued a letter to the school giving approval for appointment of Ms. Azia D'Silva for the post of Computer Teacher on contract basis. On 06/03/2013, the then Director of Education had issued a “Blanket NOC” for recruitment of Teachers in general. The blanket NOC dispensed with the requirement of seeking a prior NOC from Directorate of Education to fill up vacancies to the post of teachers arising out of resignation, superannuation etc. for certain defined categories of schools including

the schools run by DSE. The appointment of the post of Computer Teacher is not different from any other teacher and therefore the provisions of the Blanket NOC apply in equal measures to the appointment of the petitioner as the school fits into category II as defined therein.

6. On 06/11/2017 the petitioner was compelled to accept two letters dated 24/10/2017 bearing Re.No.DSE/2368/Temp.Appt./2017-2018 titled “Order of Temporary Appointment as Computer Teacher” and Ref. No. DSE/2368(R)/Temp.Appt./2017-2018, titled “Order of Appointment as Computer Teacher on contract basis” issued by Secretary, Diocesan Society of Education. The petitioner was compelled to submit back dated joining Letter and Acceptance Letter in view of the two orders issued. In the month of February,2018, the petitioner met the Dy. Director of Education, who conveyed to her that an NOC for the permanent post of a Computer Teacher had been issued by the Directorate of Education to the DSE for the academic year 2018-19. The DSE published advertisement in the local daily O’Herald on 25/04/2018 for applications *inter alia*, for Computer Teachers for DSE High Schools mentioning that applications were to be made in online mode only. The same vacancy was published by the Diocesan Society of Education, mentioning to reapply, by writing to “The Secretary DSE” on 03/05/2018. The petitioner applied for the post in response to the said advertisement on 04/05/2018. On 24/05/2018, the petitioner's

interview was conducted by DSE. The management of Diocesan Society of Education appointed another teacher on the permanent post of Computer Teacher at Our Lady of Lourdes High School, Valpoi on 23/06/2018. It is also contention of petitioner that as there was no order passed by the Education Officer within a prescribed period provided in an Act the approval is deemed to be granted to the appointment of the petitioner.

7. In the present petition petitioner claims relief that directing the respondent No.2 to grant approval to the appointment of the petitioner to the post of Computer Teacher on permanent basis pursuant to her appointment order dated 16/03/2016 issued by the respondent No.4. It is also prayed that set aside two orders dated 24/10/2017 issued by the respondent No.4 appointing petitioner as a Computer Teacher on contract basis and also to set aside the approval order dated 17/10/2017 of the Directorate of Education granting approval to such appointment. It is further prayed that to set aside the re-advisement to the post of Computer Teacher vide advertisement dated 25/04/2018 and 03/05/2018 and the selection and appointment of the respondent No.5. The notices were issued to the respondents and the matter was then admitted.

8. The respondent Nos. 3 and 4 filed their affidavit in reply. The petition is strongly opposed as the petitioner has an alternative

remedy of appeal under Goa School Education Acts and Rules. It is opposed on the ground that the petitioner in the facts of the case is tainted with delay and laches. The petitioner seized to be a teacher on 30/04/2018 as contract was up to that date. Fresh advertisement was published on 25/04/2018. The petitioner applied for the said post on 04/05/2018. He participated in interview which was held on 24/05/2018. Thereafter the respondent No.5 was selected and appointed on 25/06/2018 and he assumed charge on 26/06/2018 whereas the petition was filed in the Month of December, 2018. The petitioner raises disputed question of facts which cannot be adjudicated by this Court under Article 226 of the Constitution of India. The petition is based on false and truncated facts and also material facts were suppressed. The learned Senior Counsel, Shri Pereira explained how the vacancy arose in the school. It is pointed out that in response to the advertisement dated 31/10/2015 the petitioner was appointed but that appointment was subject to the approval by the Director of Education. The appointment was provisional and on probation for two years. She was not holding requisite qualification as per provisions of Goa Education Rules, therefore provisional order of appointment was given to her subject to approval of Director of Education. It is also further submitted that the application for approval was sent on 17/04/2017 and that actually there was an irregularity in the matter of the filling up of the said vacancy. The Department of Education therefore, granted approval on 17/10/2017 on contract basis. Accordingly, order of

appointment issued on 24/02/2017. The said appointment order was accepted by the petitioner. She has also wrote a letter dated 17/02/2016 confirming that she has joined the services from the inception as a Computer Teacher on contract basis. Therefore there is no question of obtaining any letter under duress. It was issued by freewill in order to secure the withdrawal of her salary. It is admitted fact that the petitioner in response to the second advertisement dated 04/05/2018 participated in the selection process without any reservation. The respondent No.5 was selected and issued the order of provisional appointment on probation w.e.f. 26/06/2018. Now she is estopped from challenging and /or making a claim as set out in the petition. She chose to remain silent all the while and approached this Court in the month of December,2018.

9. The respondent No.5 filed his affidavit in reply and raised the same ground for opposing the petition. It is specific contention that the petitioner was not holding requisite qualification as prescribed in Rule 78 of Goa, Daman and Diu School Education Act and Rules, 1984. Clause 12 of Table under Rule 78 refers to the minimum qualification for appointment of Computer Teacher. It is contended that the petitioner was not holding three years experience in the field of imparting computer training and education. Moreover, she has accepted her appointment on contract basis and by efflux of time her contract came to an end. She did not protested at any point of time and

participated in the selection process even allowed to resume respondent No.5 as a Computer Teacher and after six months she has filed this present petition. The learned Counsel Mr. Karpe relied on **Suneeta Aggarwal v/s. State of Haryana and ors** [(2000) 2 SCC 615], **Jaimini Oza and Ors v/s. Parkar Kaiser Shamsuddin and ors.** [[MANU/MH/1300/2008] and **Anjali C. Dhamangaonkar v/s. Municipal Corporation of Greater Mumbai and ors.** [MANU/MH/1389/2009].

10. So far as the preliminary objection of maintainability of Writ Petition is concerned there is no alternate remedy is available to the petitioner. In our considered opinion there is no substance in the contention as the petitioner is claiming issuance of directions and also claiming relief of setting aside the orders passed by the Director of Education granting approval on contract basis there is no efficacious remedy other than a Writ Petition. The appeal is provided only on dismissal, removal from service or otherwise terminating services.

11. It appears there was an advertisement issued by the respondent No.4 i.e. Secretary, Diocesan Society of Education on 31/10/2015 inviting applications for the post of Computer Teacher. The said advertisement nowhere mentioned whether it was permanent post or on contract basis. The petitioner applied on 03/11/2015 alongwith application she also submitted her resume. In view of Rule 78 of Goa,

Daman and Diu School Education Act and Rules, 1984 Clause 12 minimum qualification prescribed as under :

- 1) Graduate in any Discipline / Degree or Diploma in Electrical or Computer Engineering from recognized University/ Institution.
- 2) At least three (03) years experience in the field of imparting computer training / education

Note: In case of candidates having qualifications other than BCA, MCA. Diploma or Degree in Computer Engineering from a recognized University/ Institution such candidates shall have to complete Post Graduate Diploma in Computer Education and Training (PGDCET) within 05 years of their appointment / engagement.

- 3) Knowledge of Konkani.

Desirable : Knowledge of Marathi.

In the resume of the petitioner she has given under the heading professional experience details as under :

- 1 Rosary College of Commerce and Arts, June 2014 – Feb 2016
Navelim- Goa.
Asst. Professor in Dept. of BCA
- 2 Dhempe College of Arts and Science July 2013 - Apr 2014
Mirama – Goa
Asst. Professor in the Dept. Of Computer Science.
- 3 Cybage Software Pvt. Ltd. Pune – Jan 2011 – June 2013
Maharashtra
Software Engineer.
- 4 Benchmark IT Solutions, Pune – Mar 2010 – Jan 2011
Maharashtra

Software Engineer.

- 5 Nilson Technology, Pune – Maharashtra Dec 2007 – Mar 2010
Software Engineer.

Thus she has experience in the field of imparting computer training and education of two years and seven months and so far as her service as a software Engineer in Cybage Software Pvt. Ltd., Benchmark IT Solutions and Nilson Technology, cannot be termed as experience in imparting computer training /education. At least certificate issued by these establishments doesn't disclose anywhere that there was any such experience she has gained. Her experience in the field of imparting computer training/ education appears to be short of Five months. It appears that the respondent No.4 while issuing appointment order issued as provisional one. It is mentioned in the appointment order that appointment will be on probation for two years w.e.f. 17/02/2016. It was also made clear that her salaries will be claimed and cleared only after the approval was obtained from the Government. Accordingly, after accepting the said order she joined her duties.

12. It appears that letter for approval for the appointment of Computer Teacher issued by the respondent no.4 to the Director of Education on 17/04/2017 i.e. a year after joining the duties by the petitioner. The reason for not sending approval within seven days as prescribed under Rule 76 sub clause 3 is given in reply that one staff replaced by another. However the said staff left without handing over

charge and only after Principal of the school brought to the notice of this fact her letter of approval was sent to the Director of Education. It is contention of the petitioner that she acquired deemed approval in view of Section 76 sub-clause 4 as Director of Education had not intimated within three weeks, on receipt of particulars of appointment, about his disapproval of the appointment. However this deeming provision is subject to the provision of Rules 75 and 78. There cannot be any relaxation to the essential qualifications unless such recommendation has been previously approved by the Director of Education and on the face of record it appears that the petitioner was having short of essential experience.

13. Vide note dated 15/05/2017 Deputy Director of Education pointed out the flaws in the appointment and therefor difficulty is granting approval. It appears that vide letter dated 17/10/2017 the Director of Education informed to the respondent No.4 that approval was granted on contract basis from her date of joining till the end of academic year 2017-18 without any further claim for extension, regularization and confirmation. In view of this letter fresh order of temporary appointment issued 24/10/2017 on temporary basis which appears the petitioner accepted under protest. Another order issued on the same date appointing her on contract basis by referring the approval of Director of Education. It appears that the said order she has accepted and there is no any word of protest. She also gave a back dated letter

that she has jointed the duties as Computer Teacher on contract basis. She has also issued a letter of acceptance whereby she accepted the post of Computer Teacher on contract basis w.e.f. 17/02/2016. Thus, from these documents it is clear that the petitioner has accepted her appointment on contract basis from 17/02/2016 in the end of academic year 2017-18.

14. It appears that again fresh advertisements on 25/04/2018 as well as 03/05/2018 were published and in response to that advertisements the petitioner has applied afresh. After interview the respondent No.5 was selected and came to be appointed on provisional basis on probation as a Computer Teacher. She joined duties on 26/06/2018. The petition came to be filed in the month of December, 2018 after 6 months of respondent No.5 joining duties.

15. The petitioner accepted her service on contract basis she did not challenged the order of Director of Education granting approval to her appointment on contract basis. Not only this on re-advertisement of post without any kind of protest she appeared before the selection committee, participated in the selection process, however, when she was not selected she subsequently challenged her earlier termination of the service. Moreover, even after the appointing the respondent No.5 she came after a period six month with the present Writ Petition. Her contention that she was legitimately expecting that she will be selected

on permanent post. The petitioner is a Computer Engineer and not a lay woman. She was well aware that she was not holding requisite experience and perhaps she has accepted her appointment on contract basis. When services is on contract basis there is no need to issue any separate order of termination, as by efflux of time it comes to an end. She voluntarily appeared for the interview when the post was again advertised there is no question of any force or duress. Now she is estopped from contending that her initial appointment must be treated as regular one.

16. In view of the principle laid down in **Suneeta Aggarwal** and **Jaimini Oza** (supra) that once the candidate applied for post and attends interview but not selected he cannot subsequently challenge termination of his services.

17. In the present case, the appointment order of the petitioner after approval by the Deputy Director on contract basis was accepted and acted upon by the petitioner. Her initial appointment also made it clear that it will be as per the Goa, Daman and Diu School Education Act and Rules, 1984 and subject to approval of Director of Education. On receipt of letter of approval it was communicated to the petitioner and she accepted the same. Not only this she voluntarily appeared for the interview but was not selected. She has not challenged approval to her appointment on contract basis and accepted the same and the petitioner

took a chance to get selected in re-advertised post. Even after respondent no.5 resuming duty she approached to this Court after six months as such the petitioner was estopped by her conduct from challenging the earlier order of approval of Director of Education on contract basis.

18. In **Anjali Dhamangaonkar**(supra) Principle Bench of this Court referred to Amrit Lal Beri's case wherein the Hon'ble Apex Court held that *“merely by filing repeated or delayed representations, the petitioner cannot get over the obstacles which delay in approaching the court creates because equitable rights of others have arisen. The Hon'ble Apex Court observed that although it may not be possible for the State or its agents to plead an estoppel against a claim to the fundamental right to equal treatment yet, if a petitioner has been so remiss or negligent as to approach the court for relief after an inordinate and unexplained delay, he certainly jeopardizes his claims as it may become inequitable, with circumstances altered by lapse of time and other facts, to enforce a fundamental right to the detriment of others.”*

19. It is not the case that after accepting appointment on contract basis the petitioner was not aware of the nature of her employment she accepted the employment on contract basis fully knowing its consequences. Her services cannot be regularized or made permanent bypassing the scheme of appointment or provisions of law. As such there is no substance in the petition, it is liable to be dismissed.

Accordingly, the petition is dismissed no order as to costs.

SMT. M. S. JAWALKAR, J.

M. S. SONAK, J.

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by MEENA VISHAL
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