

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.234 OF 2019

Mr. Ishwar D. Parwar,
S/o Dattaram Parwar,
Age 28 years, R/o H. No. 5,
Harijanwada, Bordrem,
Bicholim, Goa.

... Petitioner

Versus

1. State of Goa,
Through Chief Secretary,
Having Office at Secretariat,
Alto, Porvorim, Bardez-Goa.

2. Secretary (Health)
Public Health Department,
Having Office at Secretariat,
Alto, Porvorim, Bardez-Goa.

3. The Director,
Directorate of Health Services,
Government of Goa,
Having Office at Campal,
Panaji-Goa.

4. Shri. Satyevan Khushali Naik,
S/o Khushali Naik,
Major in age,
R/o H. No. 293, Vdi Wada,
Usgao, Goa.

5. Shri. Laxmikant Arjun Gawas,
S/o Arjun Gawas, Major in age,
H. No. 29, Zarme,
Valpoi, Sattari, Goa.

... Respondents

Mr. L. Raghunandan, Advocate *for the petitioner.*

Ms. Susan Linhares, Additional Government Advocate *for respondents Nos. 1 to 3.*

Mr. G. Teles with Mr. A. Dalvi, Advocates *for respondent No.4.*

Mr. A. D. Bhohe, Advocate *for respondent No.5.*

**CORAM: DIPANKAR DATTA,CJ &
M. S. SONAK, J**

DATE: 30th March 2022

JUDGMENT: (Per M. S. Sonak, J.)

1. Heard the learned counsel for the parties.
2. The petitioner challenges the selection and appointment of respondents no.4 and 5 and his consequent non-selection to the post of Insect Collector in pursuance of an advertisement published in July 2017 by the Directorate of Health Services, Government of Goa. The last date for filing of applications was prescribed as 31.07.2017 and late or incomplete applications were liable for summary rejection.
3. The advertisement referred not only to the two posts of Insect Collectors but to several other posts having in all 18 designations. There is no serious dispute that the essential and desirable qualifications referred to in the advertisement aligned with the recruitment rules framed under the proviso to Article 309 of the Constitution of India. Therefore, where the recruitment rules prescribed the requirement of '*experience*', such requirement was duly reflected in the advertisement. The nature and extent of the experience

prescribed in the recruitment rules were also duly reflected in the advertisement. The experience so prescribed, in each case, had a clear nexus with the job profile.

4. The above is quite clear from the reference to posts of Extension Educator where five years experience of fieldwork in rural/urban areas preferably in family planning or social educator or health education or department of Information and Public Relations was prescribed as a desirable qualification. Similarly, for the post of Steward, experience in storage, catering, distribution of diet, etc. was prescribed as an essential qualification. For the post of Laboratory Technician, experience in a laboratory of repute was prescribed as an essential qualification. For the post of Telephone Operator, two years of experience as a telephone operator capable of handling a PBX system with twenty lines was prescribed as an essential qualification. For the post of Assistant Cooks, practical experience in the line preferably in a hotel of repute was prescribed as an essential qualification. For the post of Barber, the experience of having worked in a reputed salon was prescribed as an essential qualification. For the post of ECG Technician, experience in handling electrocardiography and other medical electronic equipment in a recognized institution/hospital was prescribed as an essential qualification. For the post of Physiotherapist, experience in physiotherapy in a hospital was prescribed as desirable qualification. Thus, where the recruitment rules prescribed the requirement of experience, either as essential or

desirable, the nature and extent of such experience, were duly reflected in the consolidated advertisement for 18 types of posts.

5. However, when it came to the posts of Insect Collectors since the recruitment rules did not provide for any requirement of experience, the advertisement quite correctly did not refer to this requirement. Consistent with the recruitment rules, the advertisement merely provided that the essential qualification for these posts was Matriculation or equivalent.

6. Note 3 appended to the advertisement and referred to above, reads as follows:

“Note 3 - Applications received after the prescribed date and time and not in the format/incomplete and or without relevant documents as mentioned above, shall be summarily rejected.”

7. The format in which the applications were invited was also appended to the advertisement. Clause 9 of this format requires the applicants to state '*experience if any*'.

8. Now from the plain as well as contextual reading of Note 3 or Clause 9, it is apparent that documents supporting the experience possessed were required to be submitted by applicants to posts for which experience was prescribed as either an essential or desirable qualification. There was no requirement for furnishing such documents for posts like Insect Collector where the requirement of

experience was neither prescribed in the recruitment rules nor the advertisement.

9. The applicants for the posts of Insect Collector were made to answer a written test and the results declared indicated that the petitioner topped the merit list securing 80 marks out of the maximum of 100. Similarly, respondent no.4 secured 73, and respondent no.5 secured 75 marks out of the maximum of 100. Since despite topping the merit list in the written test, the petitioner was not selected and appointed as an Insect Collector, the petitioner applied for and was furnished the information about the criteria adopted by the Departmental Selection Committee (DSC) for selecting respondents nos.4 and 5 as Insect Collectors.

10. The minutes of the DSC which met on 01.10.2018 were furnished to the petitioner and have been placed on record at pages 21 to 23 of the paper book. These minutes indicate that the final selection was based on the following criteria:

<i>“1. Written test</i>	<i>.... 50 marks</i>
<i>2. Educational qualification</i>	<i>.... 20 marks</i>
<i>3. Additional qualification</i>	<i>.... 10 marks</i>
<i>4. Experience</i>	<i>.... 10 marks</i>
<i>5. Extra Cur. Activities</i>	<i>.... 10 marks</i>

The candidates who has experience for 1-5 years are given 2 marks, 5-10 years experience are given 5 marks and 10 years and more are given 10 marks.”

11. The petitioner also applied for and was furnished the tabular chart indicating the marks obtained by the applicants for the post of Insect Collector. This chart is also placed on record at pages 19 and 20 of the paper book. The relevant extract concerning the petitioner and respondent nos.4 and 5 who are indicated at sr.nos.1, 2, and 3 in the said chart is transcribed below for the convenience of reference:

Marks for Insect Collector*										
	Sr. No.	Name & Address	Date of Birth	Educational Qualification	Marks for written test (50 mks)	Marks for edu. Qual. (20 mks)	Add. Qual (10 mks)	Exp. If any (10 mks)	Extra cur. (10 mks)	Total (100 mks)
1	102	Ishwar Dattaram Parwar, H.No.5, Harijan wada, Bordem, Bicholim Goa 403 504	10.03.1990	SSC / ITI	40	20	5	2	0	67
2	17	Laxmikant Arjun Gawas, H.No.29, Zarme, Valpoi	19.04.1980	SSC	37.5	20		10	0	68

		Sattari Goa 403 506								
3	94	Satyevan Khushali Naik, H.No.29 3, Udi Wada, Usgao Goa 403 406	10.04.1974	HSSC	36.5	20	5	10	0	72

12. From the aforesaid, it is apparent that respondents nos.4 and 5 have secured a march over the petitioner only based on the marks awarded for “*experience*”. These two respondents have been awarded the maximum 10 marks as indicated and the petitioner was awarded only 2 marks.

13. In this case, it is necessary to set out at the very outset that the final selection criteria adopted by the DSC were reflected neither in the recruitment rules nor was any indication given about the same in the advertisement. There is nothing on record to indicate that the final selection criteria adopted by the DSC were made known to the applicants at any stage before the completion of the selection process. The information about these criteria was obtained by the petitioner through the RTI only after the selection process was complete and appointments were issued to respondents nos.4 and 5. In terms of this

final selection criteria, marks were awarded towards experience and additional qualifications when such parameters were not reflected in the recruitment rules nor indicated in the advertisement. As we have noted earlier, even the requirement of furnishing documents about experience or indicating the extent of experience in the advertisement applied only to the posts where the requirement of experience was prescribed as an essential or desirable qualification in the recruitment rules but not for posts like Insect Collector where no such requirement was prescribed in the recruitment rules or the advertisement.

14. The learned counsel for the respondents did contend that since the petitioner participated in the selection process by answering the written test and also indicating his experience in the prescribed form, the petitioner should be held as estopped from challenging the selection process and the consequent appointments of respondent nos.4 and 5.

15. According to us, the aforesaid principle will not apply in the facts of the present case firstly because there is nothing on record to even remotely indicate that the petitioner was aware of the final selection criteria that were adopted by the DSC in making the selections. This criterion finds disclosure neither in the recruitment rules nor in the advertisement issued. It is not even the case of respondents nos.1 to 3 that such criteria were made known to any of the applicants before the commencement of the selection process. This is a case where changed selection criteria were applied by the

DSC after the commencement of the selection process. In a sense, therefore, this is a case where the rules of the game have been changed after the conduct of the written test.

16. In *Bishnu Biswas vs. Union of India (2014) 5 SCC 774*, the Hon'ble Supreme Court, clearly held that the rules of the game cannot be changed after the conduct of the written test. The Hon'ble Apex Court also noted that how marks were awarded in the interview to the candidates indicated a lack of transparency. Taking cognizance of all these circumstances, the Hon'ble Apex Court summarised the law on the issue and upheld the directions of the High Court to continue with the selection process from the point it stood vitiated. The Hon'ble Apex Court held that where the statutory rules prescribed to a particular mode of selection it has to be given strict adherence.

17. Similarly, in *Ramjit Singh Kardam & Others vs. Sanjiv Kumar & Ors. - 2020 (0) AIR (SC) 2060*, the Hon'ble Supreme Court rejected a similar contention by holding that when the commission had not published any criteria based on which the candidates were going to be assessed in the selection process and the candidates participated in the selection without knowing the criteria of selection, they cannot be shut down from challenging the selection where ultimately they came to know that the commission, step by step, had diluted the merit in the selection process. The Court also held that where glaring irregularities are committed in the procedure, the principle of estoppel or acquiescence has no application.

18. In *M.D. Zakir Hossain & Ors. vs. State of West Bengal & Ors. - WPST 99 of 2018* delivered by the Division Bench of the Calcutta High Court of which one of us i.e. Hon'ble Chief Justice Dipankar Datta was a party has also held that if the candidate does not have knowledge of the selection criteria adopted and the process suffers from glaring illegality, such candidate cannot be shut out by invoking the rule of estoppel or acquiescence.

19. Therefore, in the facts of the present case, the petitioner cannot be denied relief simply because he answered the written test and in that sense participated in the selection process. The petitioner has no grievance about the written test. The petitioner on the contrary contends that the marks obtained in the written test should have determined the merit position and not the marks awarded towards the so-called experience criteria which were introduced only after the conclusion of the written test and despite such requirements finding no reference in the recruitment rules or the advertisement.

20. The petitioner has also contended that experience certificates were accepted from respondent no.5 after the last date clearly set out in the advertisement for receipt of complete applications and documents. The petitioner has also contended that the so-called experience for which the respondent nos.4 and 5 have been awarded the full marks i.e. 10 out of 10 marks has not the slightest nexus with the job of an Insect Collector. Having regard to all these facts, which have been ultimately made good by the petitioner, no case is made out

to non-suit the petitioner on the ground urged by the learned counsel for the respondents.

21. The first infirmity in the selection process is the award of 10 marks towards experience when such a requirement finds no place either in the recruitment rules or the advertisement. In the absence of such requirement and consequent disclosure, several applicants or even potential applicants were possibly denied the opportunity of placing before the selecting authorities the details of their experience. Secondly, the record indicates that respondent no.5 in his application in the prescribed format submitted presumably on or before the last date indicated in the advertisement i.e. 31.07.2017, against Clause no.9 had indicated only the following:-

“9. Experience if any: Apprenticeship in HUL, 1 year Exp. Electrix & Mechanic.”

22. In the information supplied to the petitioner and placed by the petitioner on record, however, there is an experience certificate issued by Hindustan Unilever Ltd. (HUL) which is dated 18.06.2018. There are also two other certificates dated 16.05.2000 and 09.08.2000 issued by MERCK and NESTLE that also appear to have been considered by the DSC.

23. The HUL certificate mentioned in the application made by respondent no.5 is dated 18.06.2018 and consequently the same has

been furnished much after the last date for receipt of applications and documents indicated in the advertisement. Even the other two certificates of the year 2000 that find not even the slightest reference in the application have been furnished much after the last date. This allegation is not even denied and the only contention is that there can be no bar to consideration of such experience certificates. According to us, the DSC could not have considered these experience certificates and based thereon, awarded the maximum 10 marks to respondent no.5.

24. In *Ashok Kumar Sharma & Ors. vs. Chander Shekhar – (1997) 4 SCC 18*, the Hon'ble Supreme Court has held that the proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such a prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of the interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied

notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself.

25. Mr. Bhobe however, relied on a decision of the co-ordinate bench in *Dr. (Mrs.) Alexandrina Witty D'Souza vs. State of Goa in Writ Petition No.352 of 2012* delivered on 05.02.2013, to contend that there was no absolute bar to the acceptance of documents like experience certificate after the last date prescribed in the advertisement. This decision turns on its own facts where the Court found that it was an admitted position that the respondent nos.3 and 4 were residents of Goa for more than 15 years and this fact could be seen from the application forms tendered by them which had clearly indicated that they had passed their SSC examination from Goa and were residing in Goa continuously. In these circumstances, the Court held that merely because they may have tendered their residence certificate subsequently, they could not have been disqualified. The position in the present case is not quite the same. Besides, the award of marks towards experience is vitiated not simply because of the delayed submission of experience certificates but on account of other infirmities as well.

26. In *Sushila Dilip Mestry vs. State of Maharashtra in Writ Petition No.9213 of 2019* delivered on 23.03.2022, the co-ordinate bench of this Court of which one of us i.e. Hon'ble Chief Justice

Dipankar Datta, was a party has held that any aspirant seeking appointment in a reserved vacancy, be it vertical or horizontal, can only be considered if he/she possesses the relevant certificate; and if the advertisement requires that such certificate must accompany the application, there can be no two opinions that the certificate must be available at least on the last date for receipt of applications so that it can accompany the application for appointment. In the absence of the certificate, the application is liable to be rejected treating it as incomplete.

27. Apart from the above two infirmities, there is yet another serious infirmity involved. If the experience certificates produced by respondent no.5 are seen, then it is clear that his experience in the production department or as a machine operator or packer has no nexus whatsoever with the job profile of an Insect Collector. The experience in an unconnected field or having no nexus with the job profile cannot tip the scale in favor of respondent no. 5, particularly when neither the recruitment rules nor the advertisement prescribed any requirement of experience in the first place. Based upon this type of experience the DSC was clearly not justified in doling out 10 marks to respondent no.5.

28. Now when it comes to respondent no.4, he too has been awarded the maximum 10 marks towards experience. The first and third infirmities that apply to the award of such marks to respondent no.5 apply also to the case of respondent no.4. Besides, if the

application of respondent no.4 dated 28.07.2017 is perused, then against the clause concerning experience, this is what respondent no.4 had stated:-

“8) Exps. :- DIPLOMA IN OFFICE MANAGEMENT”

29. Thus, respondent no.4, in his application did not even claim that he had any experience. A Diploma in Office Management is not equivalent to experience. Even in the bio-data submitted by respondent no.4, there is no reference to any experience. In the details of enclosures, there is reference only to the computer certificate. The petitioner has however placed on record a certificate dated 03.10.2013 issued to respondent no.4 by MARICO. This certifies that respondent no.4 was working as an operator-02 from November 3, 1997, till October 3, 2013. There is no clarity about when this certificate was produced before the DSC. Again, the nexus between the work as an operator and the job profile of an Insect Collector is also absent. Based on such a certificate, therefore, respondent no.4 could not have been awarded the maximum 10 marks towards experience.

30. Since the first infirmity pointed out in the case of both the respondents applies to the case of the petitioner as well, even the petitioner could not have been awarded 2 marks towards experience. Similarly, both the petitioner and respondent no.4 could not have been awarded 5 marks towards “*additional qualifications*”. There is no

clarity about what was meant by additional qualifications. The qualifications prescribed in the recruitment rules and as reflected in the advertisement were fulfilled by the petitioner as well as respondents nos.4 and 5. For this, though it was not necessary, the DSC has awarded each of these applicants a maximum of 20 marks. Therefore even these 5 marks awarded to the petitioner and respondent no.4 towards '*additional qualifications*' will have to be deleted. Fortunately, no marks have been awarded to any candidates for extra-curricular activities even though this was one of the criteria adopted by the DSC in this matter.

31. Upon deletion of the marks awarded towards experience and additional qualifications, the merit position will be as follows:-

Marks for Insect Collector*										
	Sr. No.	Name & Address	Date of Birth	Educational Qualification	Marks for written test (50 mks)	Marks for edu. Qual. (20 mks)	Add. Qual (10 mks)	Exp. If any (10 mks)	Extra cur. (10 mks)	Total (100 mks)
1	102	Ishwar Dattaram Parwar, H.No.5, Harijan wada, Bordem, Bicholim Goa 403	10.03.1990	SSC / ITI	40	20	5	2	0	60

		504								
2	17	Laxmikant Arjun Gawas, H.No.29, Zarme, Valpoi Sattari Goa 403 506	19.04.1980	SSC	37.5	20		10	0	57.5
3	94	Satyevan Khushali Naik, H.No.29 3, Udi Wada, Usgao Goa 403 406	10.04.1974	HSSC	36.5	20	5	10	0	56.5

32. For all the aforesaid reasons we are satisfied that the decision-making process leading to the selection of the respondent nos.4 and 5 and the consequent non-selection of the petitioner is vitiated by material illegalities, thereby warranting interference. Since two posts were advertised, the selection and appointment of respondent no.5 will not call for interference because even after applying the criteria in the recruitment rules and the advertisement, respondent no.5 ranks higher than respondent no.4 in the merit list. However, the selection and appointment of respondent no.4 will have to be set aside. By our order dated 05.03.2019, while issuing Rule, we had made it clear that

the appointments of respondents nos.4 and 5 would be subject to the final outcome in this petition.

33. Mr. Raghunandan submitted that the petitioner should be appointed as Insect Collector with retrospective effect i.e. from 01.10.2018 when respondents nos.4 and 5 were appointed as Insect Collectors and granted all consequential financial benefits. There is no material before us about the petitioner's employment status between 2018 and this date. Besides, respondent no.4 has worked in this post and it would not be equitable to either require him to refund the benefits drawn or to require the State to once again pay the petitioner even though the petitioner has not worked on this post. Therefore, this prayer cannot be accepted. However, we propose to direct that the petitioner be granted notional benefits w.e.f. 01.10.2018 to benefit him only for aspects like pension and retiral benefits.

34. Accordingly, we dispose of this petition by making the following order:-

a) The appointment of respondent no.4 dated 01.10.2018 to the post of Insect Collector is hereby set aside. However, respondents no.1, 2, and 3 shall not recover any amounts paid to respondent no.4 by way of salary or other usual financial benefits;

b) The respondent nos.1, 2, and 3 are directed to appoint the petitioner as Insect Collector as expeditiously as possible and not later than four weeks from today;

c) The respondent Nos.1, 2, and 3 are directed to grant the petitioner notional benefits w.e.f. 01.10.2018 to benefit him only for aspects like pension and retiral benefits;

35. Miscellaneous civil applications, if any, do not survive and the same are also disposed of.

36. In the facts and circumstances of this case, there shall be no order for costs.

M. S. SONAK, J

CHIEF JUSTICE

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