

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 118 OF 2022**

1. Herculano Gil Souza, Station Fire Officer,
Fire Force Station Margao Aquem, Margao,
Goa, Residential Address : H. No. 384/1-A,
Mettar Macasana, Salcete, Goa. Age 52.
2. Francisco Mendes, Station Fire Officer,
Fire Station Vasco, Vasco de Gama, Goa, Res.
Address H. No. 112/A, Near Post Office
Chicalim, Goa – 403711. Age 46
3. Shripad G. Gawas, Station Fire Officer
Fire Station Bicholim, Bicholim, Goa, Res.
Address : H. No. 2612, Housing Board ... Petitioners
Colony, Age 48, Sankhali, Goa 403 505.

V e r s u s

1. State of Goa, through the Chief Secretary,
Government of Goa, Bardez, Goa.
2. Fire and emergency services through its
Director St. Inez Panaji, Goa.
3. Goa Public Service Commission, Through
its Chairman/Members Secretary Dr. D. V.
Road, Panaji, Goa.
4. Department of Personnel, through the
Special Secretary, Secretariat Porvorim,
Bardez, Goa.
5. The undersecretary (Home), Government
of Goa, Secretariat, Porvorim, Goa.
(Registered Addresses)
6. Shri Ajit K. Kamat, Station Fire Officer,
Fire Force Headquarters, St. Inez, Panaji,
Goa.

7. Shri Marvyn Bosco Ferrao, Station Fire Officer, Fire Station Mapusa, Mapusa, Goa.
(Registered addresses) ...Respondents

Mr. Rohit Bras De Sa, Advocate for the Petitioners.

Ms. Maria Correia, Additional Government Advocate for the Respondents.

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

DATED : 29th March 2022

ORAL JUDGMENT (*Per, Chief Justice*)

1. The three petitioners are presently employed as Station Fire Officers at the Fire Stations at Margao, Vasco and Bicholim, under the Directorate of Fire Services.
2. By instituting this writ petition dated 07.03.2022, the petitioners seek to question notification no. 1/1/2014-PER/2816 dated 27.09.2018. Such notification embodies the recruitment rules (hereafter “the new R.R.”, for short) that have been framed in exercise of the power conferred by the proviso to Article 309 of the Constitution of India in supersession of notification no.1/2/82-PER (Pt.I) dated 05.08.1997, embodying the earlier recruitment rules (hereafter “the old R.R.”, for short). In terms of the new R.R., appointment by promotion to the post of Assistant Divisional Officer can be made from amongst candidates who have a degree from a recognized University in any stream. The petitioners, who are science graduates, are aggrieved by reason of the said stipulation that now a graduate of any stream would be eligible for

promotional appointment on the post of Assistant Divisional Officer. It is the pleaded case of the petitioners that the requirements of the old R.R. for a degree in the science stream has been done away with, with the sole intent of allowing other persons in the department, who are otherwise not qualified for the post of Assistant Divisional Officer, to compete with the science graduates. It is their further case that since service in the Fire Department requires knowledge of chemicals and other substances, the requirement of being a science graduate was earlier imposed but the new R.R., insofar as it waives such requirement, violates Article 14 of the Constitution. It is also the case of the petitioners that the posts of Assistant Divisional Officer are vacant since 2015 and that the respondents ought to have initiated the process of appointment on promotion in accordance with the old R.R. notified on 21.08.1997. If the old R.R. were followed, the competition would have been confined only to science graduates and not to graduates of other streams. Since the vacant posts were not filled up in accordance with the old R.R. and with the introduction of the new R.R., the said vacant posts would now be filled up following the latter, in effect, the same would amount to giving the new R.R. retrospective effect. That is impermissible in law and being equally arbitrary and opposed to Article 14 of the Constitution, is liable to be interdicted.

3. We trace in the pleadings a case of legal *mala fide* in regard to framing of the new R.R. to have been set up without, however, impleading any officer of the Directorate of Fire Services as respondent by name.

4. Appearing in support of the writ petition, Mr. De Sa, learned advocate, has argued on pleaded lines. He has also placed reliance on a decision of a coordinate Bench of this Court in **Conceicao D' Costa**

vs. Board of Trustees for the Mormugao Port¹, in support of the contention that the recruitment rules which were prevailing at the time vacancies arose in the post of Assistant Divisional Officer, should be followed and not the recruitment rules which are now in vogue. It was pointed out to us that the co-ordinate Bench, while rendering the decision in **Conceicao D' Costa** (supra), preferred to follow the view of the Supreme Court expressed in **Y.V. Rangaiah vs. J. Sreenivasa Rao²** to the decision in **Deepak Agarwal vs. State of U.P.³** and, therefore, the same course ought to be followed in the present case too.

5. Having heard Mr. D'Sa, we see no reason to call upon the respondents to answer his contentions.

6. **Deepak Agarwal** (supra) lays down the law that there is no universal rule that promotions have to be made on the basis of the rules in existence on the date when the vacancy arises. We may quote paragraph 26 of the decision hereinbelow for appreciating the settled legal position:

“26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the ‘rule in force’ on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the

1 2020 SCC OnLine Bom 409

2 (1983) 3 SCC 284

3 (2011) 6 SCC 725

candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.”

7. However, the co-ordinate Bench while deciding **Conceicao D'Costa** (supra) preferred to follow the view in **Y. V. Rangaiah** (supra), because the facts therein closely resembled the facts before the co-ordinate Bench, namely, in the context of the recruitment rules casting a duty to prepare year-wise panel of eligible candidates.

8. We had put to Mr. De Sa as to whether the old R.R. did contain any provision casting a duty on the respondents to prepare year-wise panel of eligible candidates to which, fairly, he replied in the negative.

9. In view of such factual dissimilarity, we are of the opinion that the decision in **Y. V. Rangaiah** (supra) does not assist the case of the petitioners.

10. We hold, following the law laid down in **Deepak Agarwal** (supra) that the petitioners cannot claim a vested right to have their candidature considered for promotion to the post of Assistant Divisional Officer based on the old R.R.

11. Even otherwise, there is no curtailment of the rights of the petitioners to be considered for promotion guaranteed by Article 16 of the Constitution. The new R.R. are not such that they altogether exclude the petitioners from the zone of consideration; on the contrary, the new R.R. by permitting candidates, who are graduates in streams other than science, to compete, has the effect of enlarging the pool of consideration and if the recruiting authority has a larger pool of eligible candidates to choose from, that would be in furtherance of public interest and cannot in any manner be held to invade any Fundamental Right of the petitioners to have a consideration of their candidature for promotion to the post of Assistant Divisional Officer.

12. We feel bound by the decision in **Deepak Agarwal** (supra) on facts and in the circumstances and hold that the petitioners have no legal right to claim that any promotional exercise for appointment on the post of Assistant Divisional Officer should be made in pursuance of the old R.R.

13. Finally, what remains is the point of legal *mala fide*. The new R.R. is in the nature of a legislation permitted by Article 309 of the Constitution. No malice can be imputed to the rule making authority. A provision of a statute can be held to be invalid either on the ground of incompetence or on the ground of the same being in violation of certain Constitutional provisions. The new R.R. have not been attacked from that angle. Hence, there is no merit in the contention.

14. We, therefore, find no substance in the petitioners' claims. The writ petition, accordingly, stands dismissed.

15. There shall be no order as to costs.

M. S. SONAK, J.

CHIEF JUSTICE