

Meena

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.155 OF 2022

- 1 The Village Panchayat of Quellossim ...Petitioner
Through its Sarpanch
Smt. Maria Rita Souza
Aged 45 years, Indian National,
R/o. H. No.193,
Raidor, Quellossim,
Cortalim, South- Goa.

Versus

- 1 The State of Goa,
Through its Chief Secretary,
Secretariat Porvorim,
Porvorim- Goa.
- 2 Mr. Narayan Azgaonkar
The Secretary of Village Panchayat of Quelossim,
Mormugao P.O. Cortalim- Goa.
- 3 The Block Development Officer,
Mormugao Block, 2nd floor Our Lady of Guia
Building, Vasco Da Gama, Goa.
- 4 The Chief Officer,
Zilla Panchayat Office, 3rd floor, Old Collectorate
Building Margao South- Goa.
- 5 The Director of Panchayats
Directorate of Panchayats, Government of Goa,
Junta House, Panjim- Goa.
- 6 Miss. Valencia Barbosa,
Aged about, India National, Resident of
H.No.773, Zamboll, Cortalim, Mormugao- Goa.

Mr. Nigel Da Costa Frias with Mr. Vishal Sawant and Ms. Barbara Andrade, Advocates for the Petitioner.

Mr. Manish Salkar, Government Advocate for Respondent Nos.1, 3 and 5.

Mr. Dharmanand R. Vernekar, Advocate for Respondent No.6.

**CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.**

Reserved on: 19th September, 2022

Pronounced on: 22nd September, 2022

JUDGMENT: (Per Bharat P. Deshpande, J.)

Rule. Rule returnable forthwith. Heard parties with consent for final disposal.

2. Notices were issued to the respondents on 19/04/2022 and by way of interim order respondent No.6 was restrained from taking charge of the post of 'Peon' till further orders.

3. In a nutshell, the Petitioner contends that respondent No.2 acted in an arbitrary and illegal manner in issuing an appointment letter dated 06/01/2022 in favour of respondent No.6 thereby appointing her to the post of 'Peon' in the office of Village Panchayat Quellossim without there being any recommendation from the Departmental Selection Committee.

4. Heard Mr. Nigel Da Costa Frias, learned Counsel for the Petitioner, Mr. Manish Salkar, learned Government Advocate for respondent Nos.1, 3 and 5 and Mr. Dharmanad Vernekar, learned Counsel for respondent No.6.

5. Learned Counsel Mr. Costa Frias, appearing for the petitioner/Panchayat, submitted that post of 'Peon' and 'Clerk' had fallen vacant in Village Panchayat Quellossim. Accordingly, the Memorandum dated 02/03/2021 issued by respondent No.5 and in accordance with paragraph 14 of Goa Panchayat (Staffing Pattern, Scales of Pay and Mode of Recruitment of Staff of Panchayats) Order 2003 (hereinafter called as 'Order 2003'), granted no objection to the Block Development Officer / Respondent No.3 herein for the appointment of one Village Panchayat Clerk and one Village Panchayat Peon on regular basis in the office of the Petitioner as per the said order 2003. An advertisement was issued in the newspaper calling eligible candidates, vide dated 02/08/2021, which is at page 31 of the petition.

6. Pursuant to a such advertisement, the Petitioner received 8 applications for the post of 'Peon' and 11 applications for the post of 'Clerk' after scrutinizing all the applications, the same were found valid and eligible for the purpose of an interview. The date of the interview was fixed on 13/12/2021. The members of the Departmental Selection Committee i.e. the Petitioner himself being the Sarpanch of the Village Panchayat, together with respondent No.3 /Block Development Officer and respondent No.4 i.e. the Chief Officer, being a Selection Committee member were intimated. All the candidates were called on 13/12/2021 for the purpose of assessment by the Departmental Selection Committee. The said Committee after a brief discussion prepared individual mark sheets and short listed one candidate for the post of 'Clerk' and one candidate for the post of 'Peon'.

7. It is the contention of the Petitioner that the candidate by name Mr. Clinton D'Silva performed well during the interview and stood first being the resident of Curpavaddo Quelossim, Mormugao Goa and was selected for the post of 'Clerk' based on the recommendation of the Departmental Selection Committee.

8. For the post of 'Peon', Mr. Cavin De Souza, resident of Quelossim, stood third however being a resident of the village Quelossim he was selected on the basis of the recommendation of the Departmental Selection Committee. Ms. Valencia Barbosa/respondent No.6 herein though stood first in the merit list, was not shortlisted being the resident of Zamboll, Cortalim, Mormugao, Goa. Candidate No.2 Mr. Clinton D'Silva who stood second in the list was also not selected as he was already selected for the post of 'Clerk'. The entire exercise was conducted in consultation with Departmental Selection Committee and accordingly an appointment order was issued to Mr. Clinton D'Silva for the post of 'Clerk' by respondent No.2 which is at Annexure H.

9. It is further claimed by the learned Counsel for the Petitioner that with respect to the appointment of the post of 'Peon', it was specifically discussed during the meeting that respondent No.6 though stood first, is not resident within the jurisdiction of Village Panchayat and therefore preference has to be given to the candidate at Sr.No.3 and to issue appointment to Mr. Cavin De Souza for the post of 'Peon'. In spite of this fact respondent No.2 in an arbitrary and illegal manner issued an appointment letter dated 06/01/2022 in favour of Ms. Valencia Barbosa/respondent No.6 without

there being any recommendation from the Departmental Selection Committee and by ignoring the eligibility criteria of the candidate residing within the local jurisdiction of the Village Panchayat. The said impugned appointment order is at Annexure J.

10. The learned Counsel then submitted that immediately the Petitioner issued a letter dated 06/01/2022 informing respondent No.2 about the decision taken by the Selection Committee and not to serve the appointment letter to respondent No.6. However, respondent No.2 in defiance of all the recommendations, served an appointment letter to respondent No.6 and offered her the job of 'Peon' who immediately submitted her acceptance letter on 07/01/2022 (Annexure L).

11. The Petitioner therefore on 07/01/2022 forwarded a letter to respondent No.2 asking him to call a special body meeting on 13/01/2022 to discuss with respect to the appointment order dated 06/01/2022 issued in favour of respondent No.6. There was no response from respondent No.2 to the above letter. Another letter dated 10/01/2022 was forwarded to the Secretary of Village Panchayat Quellossim asking for cancellation/withdrawal of the appointment order dated 06/01/2022 issued in favour of respondent No.6, with a request to issue a fresh appointment letter thereby appointing Mr. Cavin De Souza as 'Peon'.

12. The Petitioner then wrote a letter dated 11/01/2022 to the Block Development Officer/ respondent No.3 pointing out to him about facts and also informing him that the minutes of the Departmental Selection Committee were not minuted and there was some confusion in the

appointment order issued for the post of 'Peon'. A request was made to convene a fresh meeting of the Departmental Selection Committee. Since the appointment order dated 06/01/2022 is not withdrawn by respondent No.2, the Petitioner approached this Court with the prayers as under :

“a) For an appropriate writ, order or direction thereby quashing and setting aside the appointment order dated 06/01/2022 bearing reference no.VPQ/10/appt.letter/2021-22/886 for the post of peon issued by the Respondent no.2 to the respondent no. 6.

b) For an appropriate writ, order or direction thereby quashing and setting aside the Memorandum bearing no. 2/BDO-MOR/seletn-staff-VP/2021-22/1523 dated 03/03/2022 issued by the respondent no.3.

c) For a writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing the respondent no.3. to convene a meeting of the Departmental Selection Committee to consider the candidates for the post of peon in the Village Panchayat of Quelossim and decide on the matter of the appointment of the peon afresh.

d) For interim relief thereby staying the operation of the appointment letter/order bearing no.VPQ/10/Appt.letter/2021-22/886 dated 06/01/2022 issued by the Respondent no.2 until the disposal of this present petition.

e) For interim relief thereby staying the operation of the Memorandum No.VPQ/10/Appt.letter/2021-22/886 dated 03/03/2022 issued by the Respondent no. 3 until the disposal of this present petition.”

13. The learned Counsel for the Petitioner then submitted that Government of Goa vide Notification dated 06/03/2003 and in exercise of powers conferred under Section 114 of the Goa Panchayat Raj Act,1994 published the Goa Panchayat (Staffing Pattern, Scales of Pay and Mode of

Recruitment of Staff of Panchayats) Order 2003. He then invited our attention to Rule 9 which deals with the mode of recruitment of Panchayat employees. Rule 9 is quoted below for ready reference:

“9. Mode of recruitment of Panchayat Employees:-

There shall be a Departmental Selection Committee/Departmental Promotion Committee for considering cases relating to selection/promotion, consisting of the following persons:-

- (1) Sarpanch of the respective Panchayat ... Chairperson*
- (2) Block Development Officer ... Member*
- (3) Representative of the Chief Executive
Officer of the concerned Zilla Panchayat ... Member*

No appointment or promotion shall be made unless it is duly recommended by the Departmental Selection Committee or Departmental Promotion Committee as the case may be.”

14. The learned Counsel for the Petitioner then invited our attention to the Government Gazette Notification dated 25/01/2007 by which the amendment to the order 2003 was affected thereby inserting Rule 7A to the existing Rules which reads as under :

“7A. Any person who seeks employment in a Panchayat shall,-

- (i) be a resident of the State of Goa and residing preferably within the Panchayat area or nearby Panchayat area for more than fifteen years;*
- (ii) not be of unsound mind;*
- (iii) not be involved in any criminal or political activities; and*
- (iv) bear good moral character”.*

15. On the basis of above order 2003, amended in 2007, the learned Counsel for the Petitioner submits that preference is required to be given to the person residing in the local jurisdiction of the Village Panchayat, for appointment. He therefore submitted that the post of 'Peon' ought to have been offered to Mr. Cavin De Souza as per the discussion in the committee's meeting.

16. At the outset, we observe and note that the challenge in the present petition is not with regard to appointment for the post of 'Clerk'. This petition is only restricted to the appointment to the post of 'Peon'. Therefore, we restrict our discussion only with regard to appointment to the post of 'Peon'. We say so as while hearing the matter we observed many irregularities and inconsistencies committed by the Village Panchayat itself as well as by respondent Nos.1 and 2 with regard to the advertisement, selection process, oral interview and more importantly minuting the observations of the Departmental Selection Committee and recommendations of such committee. Though all these aspects are equally applicable to the post of 'Clerk', since there is no challenge raised to the appointment of the post of 'Clerk' either by the Petitioner or by any other person and since the person who has been already appointed on the post of 'Clerk' is not a party to the present proceedings, we refrain ourselves from observing anything as far as appointment of 'Clerk' is concerned, in this petition.

17. The learned Government Advocate Mr. Salkar fairly conceded about the irregularities found while conducting Departmental Selection Committee

proceedings, minuting the discussion and issuing the appointment order to the post of 'Peon' which are not as per the Rules and Regulations/order. However, there are guidelines issued by the Central Government, followed by the State Government wherein holding of oral interviews is clearly done away with for recruitment up to Class C posts. In this respect he invited our attention to the office memorandum dated 14/01/2019 issued by the Department of Personnel, Government of Goa wherein guidelines of recruitment procedure for filling up of group "C" posts were laid down. He then invited the attention of this Court to the office memorandum dated 08/01/2016 issued by the Department of Personnel, Government of Goa vide O.M.No.1/6/83-PER(Vol.II)Pt.(a) dated 05/03/2007 wherein certain recommendations were made which are as under:

“(i) Interview will be dispensed with for all Group ‘C’ and Group ‘D’ (which are now reclassified as Group ‘C’) posts. Interview should also be discontinued for non-gazetted posts of Group ‘B’ category.

(ii) The process of doing away with interview for these posts will be completed by 31.12.2015.

(ii) Specific and isolated Group “B” non-gazetted posts for which any particular departments considers interview absolutely essential, clearance of Department of Personnel & Training would need to be obtained. It has been clarified that since the skill test and physical test are different from interview such tests may continue.

(iv) In those cases pertaining to non-gazetted Group ‘B’ posts and Group ‘C’ & ‘D’ posts, where Recruitment Rules specify the process of selection which includes conduct of interview, the Ministries/authorities concerned will take necessary steps to carry out the requisite amendment to the Recruitment Rules immediately.

(v) For advertisements already done for selection with interview as a component, the posts could either be re-advertised, or if urgency or any other reason requires so, the ongoing process may be completed.

(vi) It was also suggested that a periodic review of the progress made in the implementation of 'No Interview Requirement for junior level posts by the authorities/Secretaries concerned. DOPT will monitor the overall progress and bring up status report by the first fortnight of January, 2016.

Now, with the approval of the Competent Authority all HODs/Heads of Offices/Corporations/Autonomous Bodies are hereby directed to dispense with the process of interview for all Group 'C', and Group 'D' posts w.e.f. 01/01/2016."

18. The learned Counsel Mr. Vernekar for respondent No.6 submitted that the Petitioner is filing this petition selectively by challenging the appointment for the post of 'Peon' whereas there is no challenge raised to the post of 'Clerk' as the same process has been conducted for the purpose of both the posts. Only one Departmental Selection Committee was constituted for selection of candidates for both posts and were interviewed and selected. He, therefore, submitted that the Petitioner cannot be allowed to challenge only the selection of 'Peon'. He then submitted that the petition is not filed in any bonafide manner and therefore the same be rejected.

19. Since we have observed that there are many irregularities carried out by the Village Panchayat itself along with respondent Nos.2 and 3 who are the responsible officers and the members of the Selection Committee we propose to discuss such aspects in detail.

20. First of all the advertisement issued for calling the applications to the

post of 'Clerk' and 'Peon' is found to be in defiance of the Rule/order 2003 as far as qualification and age, is concerned. Advertisement is at page No.31 which reads thus:

Office of Village Panchayat Quellossim, P.O. Curtalim- Goa 403 710. No.VPQ/11/NOTICE/V.P.Clerk & Poen/2021-22/265 Date:02/08/2021					
<u>APPOINTMENT NOTICE FOR THE POST OF V.P.CLERK & V.P. PEON</u>					
Application stating full name, Address, Age with date of Birth, Educational Qualifications, Experience, Employment Exchange Registration No., Residence certificate for 15 years in Goa along with attested copies of all certificates are invited for the following V.P.Clerk & V.P. Peon Post.					
Sr. No.	Name of the Post	Age	No. of Post	Pay Scale	Educational Qualification
1	V.P. Clerk Lower Division Clerk	Not exceeding 45 years	1 General Category	5200-20200+1900	*XIIth pass from a Recognised Institute *Typing Speed 40w.p.m. *Basic Computer Knowledge
2	V.P. Peon	Not exceeding 45 years	1 General Category	5200-20200+1800	* Xth from a Recognized Institute.
* Candidate should have knowledge of English, Hindi, Marathi & Konkani. * Candidate working in any Govt Department, Autonomous body, Govt. aided institutions should apply THROUGH PROPER CHANNEL * Preference will be given to the Candidate within V.P. Jurisdiction. Application should reach to this office within 10 days i.e upto 13/08/2021 before 1.00 p.m. from the date of publication of this advertisement. Incomplete applications in any manner and applications received beyond the prescribed date are liable to be rejected summarily by the authority. Panchayat reserves right to cancel the recruitment process at any time without giving any further notice and without assigning any reason thereof. The applicant should submit the application to the office in a prescribed format available in VP. Office. List of valid eligible candidate for interview will be published on the Notice Board of V.P. Quellossim on 18/08/2021. Notices for interview will be served to all Concerned. Sd/- (Dy. Sarpanch), V. P. Quellossim					

21. Order 2003 and more specifically Rule 7 reads thus :

“7. Educational and other Qualifications for the direct Recruitment of following staff of the Panchayat. -

1. Clerk:

(i) Essential: Qualification: (a) S.S.C.E. or equivalent from the recognized Board and typewriting in English with minimum speed of 30 words per minute.

(b) Knowledge of Konkani.

(ii) Desirable: Knowledge of Marathi.

2. Peon:

(i) Essential Qualification.-(a) VIIth Standard from the recognized School.

(b) Knowledge of Konkani.

(ii) Desirable:

Knowledge of Marathi.”

22. A perusal of this order shows that qualification for the post of 'Peon' is VIIth Standard from the recognized School. There is no amendment with regard to Rule 7 of order 2003. However, in the year 2006 Rule 7A was added which is already quoted earlier. Thus, it is clear that the educational qualification of the Village Panchayat 'Peon' as published in the advertisement is claimed as Xth Standard from a recognized institution whereas Rule 7 of Order 2003 refers to educational qualification of VIIth Standard from a recognized school. The learned Counsel appearing for the parties failed to point out whether there is any amendment carried out to Rule 7 of Order 2003 thereby modifying the educational qualification for

the post of 'Peon'. Thus for this purpose, it is clear that the advertisement issued for the post of peon is in defiance of Rule 7 of Order 2003.

23. In the case of *Rekha Chaturvedi (Smt) v/s. University of Rajasthan and others*¹, certain guidelines were laid down for the future selection processes. One of the guidelines was that there should be no variance between the requirements set out in the advertisement and those prescribed in the Recruitment rules.

In the case of *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v/s. M. Tripura Sundari Devi*², the Apex Court has observed in paragraph 6 as under:

“6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact.”

24. The same principle will apply to the fact of the present matter as Order 2003 prescribed a particular qualification and age limit for the appointment for the post of 'Peon' whereas the advertisement was at variance

¹ [1993 Supp(3) Supreme Court Cases 168]

² [(1990) 3 SCC 655]

with the Order 2003. This, according to the Supreme Court, amounts to fraud on the public and no Court should be a party to such perpetuation of fraudulent practice.

25. Second aspect which was pointed out is regarding the manner in which a Departmental Selection Committee conducted its proceedings. First of all such proceedings were conducted by giving 100 percent weightage only to oral interview or viva voce. This is clearly in defiance with the order and directions issued by the Government of Goa from the year 2016 itself and as quoted in the above Government Gazette. Assuming that these orders or directions do not apply, the principles therein apply. Because the principles are based on Supreme Court precedents that have frowned upon 100 % emphasis on oral interviews in recruitments to Class C posts.

26. Admittedly, there are no minutes of the departmental Selection Committee approving the procedure adopted while conducting its proceedings for the purpose of selection of the candidates. What is placed before this Court in the petition is only so called minutes of the Departmental Selection Committee dated 13/12/2021 and signed only by respondent No.2-Village Panchayat Secretary. In the said minutes itself mentioned that as per the letter dated 06/12/2021 issued by Sarpanch Village Panchayat Quelossim, Members of the Departmental Selection Committee attended the office of Village Panchayat Quelossim to take interview on 13/12/2021 from 10.00 a.m. onward. It further refers that the Departmental Selection Committee presided and conducted interviews of the candidates for the post of 'Peon' and in turn evaluated on merit as per

the required procedure in Order 2003 by separately filing of mark sheet of each candidate which was individually and independently prepared by the members of the Committee and were handed over to Village Panchayat Secretary for further process. At this stage, it is necessary to note that the Departmental Selection Committee consists of the Sarpanch/petitioner, Block Development Officer/respondent No.3 and the representative of the Chief Executive Officer of ZP office. Respondent No.2, Secretary of Village Panchayat Quelossim was not a member of the Departmental Selection Committee.

27. Minutes produced at pages 77 and 78 further show that each member prepared separate mark sheets of the candidates interviewed and then handed over such mark sheets to respondent No.2 for further process. The minutes thereafter show at page 78 and quotes for ready reference as under:

“Based on the marks scored by the candidates, the comparative statements was prepared by the undersigned and below candidates were recommended by the Departmental selection committee for scoring/securing highest marks. The 1st highest scorers were to be considered as per merit which was evaluated by the DPC at the interview.”

28. After the names of the candidate who stood first in the comparative chart, it is further recorded thus :

“The minutes along with marks sheets of Chairman/members of Departmental selection committee will be placed before the next fortnightly meeting of Panchayat body for further process.

Sd/-

V.P. Secretary

V.P. Quelosim Mormugao Goa.”

29. It is thus clear from the said minutes that the same were not prepared by the DPC for the purpose of approval/recommendation of the candidates for the respective posts. The main purpose of the Departmental Selection Committee is to carry out the entire process in accordance with the Rules and Regulations and only thereafter to recommend the names of the candidates against the post which fall vacant. Only on the recommendations of the Departments Selection Committee, appointing authorities are authorised to issue offer letters and not otherwise.

30. The final marks for the post of Peon of the Village Panchayat in the form of a consolidated chart are at page No.100 of the petition. Admittedly this chart is prepared by Secretary/respondent No.2 who was not a member of the Departmental Selection Committee. Total 8 candidates appeared for the interview. The total marks for the interview only and as referred by the Departmental Selection Committee, are not found mentioned anywhere. Page No.101 of the petition which is a mark sheet shows separate marks given for the purpose of qualification, additional qualification, experience in field, general knowledge, current affairs and Panchayat knowledge. Though the last column shows total marks out of 100, there is scribbling/correction and figure 50 is found mentioned therein. The chart at page No.102 and 103 are similar to the chart at page No.101. At the bottom of these three pages, the signature of individual member of the Selection Committee appears. This shows that the charts at pages Nos.101, 102 and 103 were individually prepared by the Departmental Selection Committee. The total marks given by each committee member are out of 50. However, the final marks for the post of 'Peon'/consolidated mark sheet prepared by the

Secretary/respondent No.2 shows the total marks given by, of all the three Selection Committee members which is again incorrect procedure as it was necessary to calculate the average of the marks given by three committee members since total marks which were allotted for the purpose of the interview was out of 50. Therefore, the last column of total marks found at page No.100 is incorrect as it does not show the percentage of marks out of the total 50 marks.

31. The final mark sheet prepared by the Secretary Village Panchayat/ respondent No.2 is not having any column for the purpose of showing the merit list and recommendation of the Selection Committee in accordance with the merit list. These aspects must be decided by the Selection Committee itself and it cannot be left to the clerical staff. This was not a case of mere addition of marks or their tabulation. Recommendation of the Selection Committee is must for the purpose of accepting the proposal for the appointment of a candidate who succeeds in the merit list. The decision is of the employer on the recommendation of the Selection Committee, then to offer such posts to the candidate who topped the list prepared by the Selection Committee. Since in the present matter there is no such exercise carried out and irregularities discussed above go to the root of the matter. The selection committees must adopt a fair, transparent, and non-arbitrary procedure. Where the Rules or executive instructions prescribe a procedure, the committees are obliged to follow the same. Where liberty is given to the committees to adopt its own procedure, such procedure must be above board, transparent, fair and not arbitrary.

32. Rule 9 quoted above regarding the mode of recruitment of Panchayat employees clearly points out as under :

“No appointment or promotion shall be made unless it is duly recommended by the Departmental Selection Committee or Departmental Promotion Committee as the case may be.”

33. Respondent No.3/Block Development Officer, Marmugao, Goa who was one of the members of the Selection Committee filed his affidavit which is starting from page No.54. Perusal of this affidavit shows that respondent No.3 admits that the procedure adopted for recruitment is as per the Government Gazette published on 06/03/2003 wherein it has been categorically stated that no appointment/promotion shall be made unless it is duly recommended by the Selection Committee.

34. Respondent No.3 in his affidavit further submitted in paragraph 14 that all candidates for the post of 'Peon' were interviewed and marks were allotted categorically for qualifications, additional qualifications, experience in field and also for oral interview, general knowledge, current affairs and Panchayat knowledge. He further disclosed that the interview panel comprising three members including himself interviewed all the candidates and handed over the mark sheets to the Village Panchayat Secretary to minute and prepare a comparative statement so that candidates who have secured the highest marks are considered recommended for the post of 'Clerk' and 'Peon'.

35. Records nowhere show that the Departmental Selection Committee, comprising of three members, prepared the consolidated statement,

deliberated on it, prepared the merit list and recommended the names of the candidates who stood first in the merit list. There is no waitlist prepared even in the contingency of a candidate appearing in the merit list refusing to join on some reason or otherwise. Therefore, the affidavit of respondent No.3 though speaks about the procedure, clearly shows that such procedure was blatantly violated by the concerned authority. The Selection Committee is not empowered to delegate its core to a third person who prepared the consolidated chart and also to prepare and sign the so called minutes.

36. The members of the Selection Committee are duty bound to prepare the consolidated chart, notify the candidates who stood first in the merit list and then recommend the name of such candidate for the vacant post. All these aspects need to be minuted in the minutes prepared by the Selection Committee itself and duly signed by all the members. Only then such minutes along with the chart could be considered as a proper recommendation of the Selection Committee for the purpose of taking appropriate steps and by giving offer letters to the selected candidates. Since concerned Departmental Selection Committee members clearly flouted the Rules and Regulations though they were aware about the procedure to be adopted, the entire selection process carried out with regard to the post of 'Peon' needs to be quashed and set aside on this ground alone.

37. It is also observed that only on the basis of an interview, marks were allotted to the candidates as per the whims and fancies of the Selection Committee members. The mark sheets prepared by the individual Selection Committee members produced at page Nos.101, 102 and 103 show that 20

marks were allotted for the interview whereas 10 marks each were allotted on the aspect of qualification, additional qualification and experience in the field. Thus 20 marks out of 50 allotted for the purpose of the interview is again against the Rules and Regulations wherein the Government of Goa on the recommendations of the Central Government decided to discontinue the process of conducting oral interviews so far as Group 'C' employees are concerned. Admittedly, the post of 'Peon' in the office of Village Panchayat falls in the category of Group 'C' employees.

38. In the case of *Ashok Kumar Yadav and others v/s. State of Haryana and others*³, the Bench of Hon'ble Four judges of the Apex Court extensively considered the appointments carried out on the basis of viva voce test and arbitrariness, malafides and bias attributed to such process. It was further observed that allocating 12.2% marks in the case of general candidates and 25% in the case of ex-servicemen for the viva voce test is considered arbitrary and giving scope for showing bias against particular candidates.

39. In the case of *Dr. J.P. Kulshrestha and others v/s. Chancellor, Allahabad University and others*⁴, the Apex Court discussed the process of appointment/selection by interview but it nowhere ruled that the interview should be the only method of assessment of merits of the candidate. Though the interview undoubtedly is a significant factor in the matter of appointment which plays a strategic role but it also allows creeping in of a lacuna rendering the appointment illegitimate. Obviously, it is an important

³ [(1985)4 SCC 417]

⁴ [(1980) 3 SCC 418]

factor but ought not to be the sole guiding factor since reliance thereon only may lead to sabotage of the purity of the proceedings.

40. In the case of *Rekha Chaturvedi (Smt) v/s. University of Rajasthan and others*⁵, certain guidelines were laid down for the purpose of the future selection process when it was found that there was no reliable record to show whether and in what manner the merits of the candidates were weighed and minimum qualifications were relaxed.

41. In the case of *Praveen Singh v/s. State of Punjab and others*⁶, the Apex Court observed that there is always a room for suspicion for the common appointments if the oral interview is taken up as the only criteria. It also observed that there are posts and posts, where interviews can be a safe method of appointment but to the post of a Block Development Officer or a Panchayat Officer wherein about 4500 people applied for 40 posts, the interview cannot be said to be a satisfactory method of selection though however it may be a part thereof.

42. In the case of *Kisan, Son of Sukhdeo Lokhande v/s. Collector, Akola and another*⁷, the Division Bench of this Hon'ble Court at Nagpur Bench observed in paragraph 9 that the selection process was based solely on the basis of viva voce examination and the posts for which selection was made were of Class III cadre. The question, therefore, that arises for consideration in the writ petition is as to whether it was permissible for

5 [1993 Supp(3) Supreme Court Cases 168]

6 [(2000)8 SCC 633]

7 [2004(3) L.L.N. 927]

respondent No.1 to fill in the said post by adopting a selection process, which involved assessment of the candidates on hundred percent viva voce test. Further, in paragraph 19 it was observed as under :

“19. From the record and proceedings of the present selection process, it is clear that the selection process, was of such a nature, that it gave unfettered discretion in the members of the Selection Committee, to choose, any candidate of their choice. There were no guidelines, so as to guide the members of the Committee in the manner in which the candidates were to be assessed in the oral test. In any way, we do not feel that the nature of the posts, for which the selection was made, were not such as could be selected only on the basis of assessment on viva voce test. Since the posts sought to be filled in were Class III posts, it was necessary to have assessed the candidates on the basis of written test and only after the candidates cleared the written test, the final selection process could have been done in the basis of assessment on written and oral examination, in the proportion permitted by the Apex Court in its various pronouncements.”

43. In the case of *Mohinder Sain Garg v/s. State of Punjab and others*⁸, the Apex Court observed in paragraph 33 as under :

“33. In our view Ashok Kumar Yadav case clinches the issues raised before us and being a decision given by four Judges is also binding on us. That was a case relating to public employment and a direction was given to all the Public Service Commissions to follow the marks allocated for viva voce test as done by the UPSC which was 12.2 percent of the total marks. Ashok Kumar Yadav case was decided in 1985 and we fail to understand as to why the State of Punjab did not follow the same for making selections in 1989 for the posts of Excise and Taxation Inspectors. It is no doubt correct that the selection of Taxation and Excise Inspectors is done by a subordinate selection body and not by Public Service Commission

⁸ [(1991) 1 SCC 662]

yet no valid reason has been given before us by learned counsel for the respondents as to why the principle enunciated in Ashok Kumar Yadav case should not be applied in these cases as well. Even if Ashok Kumar Yadav case may not in terms apply in the cases before us to the extent of laying down 12.2 per cent of the total marks for viva voce test which was made applicable for selections to be made by UPSC, we deem it proper to lay down after taking in view the dictum of all the authorities decided so far that the percentage of viva voce test in the present cases at 25 percent of the total marks is arbitrary and excessive. There could be no gainsaying that viva voce test cannot be totally dispensed with, but taking note of the situation and conditions prevailing in our country, it would not be reasonable to have the percentage of viva voce marks more than 15 percent of the total marks in the selection of candidates fresh from college/school for public employment by direct recruitment where the rules provided for a composite process of selection namely written examination and interview.”

44. In the case of *Ashok alias Somanna Gowda and another v/s. State of Karnataka by its Chief Secretary and others*⁹ wherein the Apex Court has further held that allotment of 33.3% of the total marks for viva voce test would be excessive and arbitrary. A similar view was taken in *Vikram Singh and another v/s. Subordinate Services Selection Board, Haryana and others*¹⁰. In the case of *Director General, Indian Council for Agricultural Research and others v/s. D. Sundara Raju*¹¹, the Apex Court struck down the allocation of marks for interviews considering it as highly excessive and totally unjustified.

45. In the case of *Mrs. Jenipha Elma Francis Pinto v/s. State of Goa*

9 [(1992) 1 SCC 28]

10 [(1991) 1 SCC 686]

11 [(2011) 6 SCC 605]

*and others*¹², this Hon'ble Court in its decision dated 02/02/2022 of which one of us is a member (M.S. Sonak,J.) wherein selection to the post of Assistant Data Entry Operator (ADEO) were challenged wherein office memorandum dated 05/03/2007 issued by Department of Personnel has been referred to and discussed extensively. In the said Office Memorandum necessary directions were given to all the concerned while making direct recruitment of various posts in respective Departments. This Office Memorandum of 05/03/2007 is quoted in the judgment itself in paragraph No.27. The said Office Memorandum is also applicable to all the respective Departments and the procedure mentioned therein for the purpose of selection needs to be followed by the concerned Departments.

46. Having considered all the above aspects extensively, we are of the considered opinion that the procedure adopted by the Selection Committee in the present matter is clearly contrary to the Rules and Regulations and therefore violative of Article 14 as far as allocating marks and conducting the oral interview in spite of the fact that such practice has been done away that by the Government of Goa in the year 2016 itself. The Petitioner is admittedly one of the members of the Selection Committee along with respondent Nos.3 and 4. It was the duty of the Petitioner herself to adhere to the Rules and Regulations from the beginning itself i.e. from the time of issuing the advertisement.

47. While arguing the matter, neither on behalf of the Government nor on behalf of the Petitioner, it was pointed out as to which specific Rule and

¹² [Writ Petition No. 638 and 664 of 2016]

procedure is required to be followed by the Departmental Selection Committee and how the marks are required to be allocated for different categories. Rules and Office Memorandum issued by the Government from time to time are silent on this aspect which gives room for arbitrariness. Therefore, it is high time for the Government to establish the procedure to be followed by the Departmental Selection Committee in respect of different posts so that there is some uniformity and transparency in recruitments to class C posts.

48. Since respondent No.6, though accepted the offer, did not join the post of 'Peon', we deem it proper to quash and set aside the appointment order dated 06/01/2022 issued by respondent No.2 which is clearly without any recommendation made by the Selection Committee and therefore needs to be considered as illegal. Consequently, the Memorandum issued by respondent No.3 dated 03/03/2022 needs to be quashed and set aside as contrary to the Rules and Regulations in terms of prayer clauses 'a' and 'b'.

49. Having said so, we direct respondent No.1 to formulate a procedure to be adopted by the Selection Committee which could be formulated on the basis of settled prepositions of law discussed above and also by considering the necessary Rules, Regulations and Office Memorandums issued by the Government from time to time in order to avoid any arbitrariness in the selection process to various posts in the Panchayats in the State of Goa. These posts are ultimately paid out the public exchequer. The appointees, we understand are paid the scales prescribed by the Government. They are clearly species of public employment. Therefore, the principles that apply to

public employment given the Constitutional provisions in Articles 14 and 16 would equally apply to such recruitments and employment. We expect that such exercise shall be carried out by the Government after consulting all concerned and as early as possible.

50. Copy of this Judgment shall be forwarded to respondent No.1 to take appropriate steps.

51. Rule made absolute in terms of prayer clauses (a) and (b).

52. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J

M. S. SONAK, J

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