

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 534 OF 2017**

Yeshwant Chandrakant Shetgaonkar ... Petitioner

V e r s u s

The State of Goa, Thr. Its Chief Secretary, ... Respondents
Govt. of Goa & 12 Ors.

Mr. D. D. Zaveri, Advocate with *Mr. Nehal Govenkar,*
Advocate for the Petitioners.

Mr. Pravin Faldessai, Additional Government Advocate
for the Respondents.

Mr. Nikhil Pai, Advocate with *Mr. N. Verenkar, Advocate for*
the Respondent no.3.

Mr. Vibhav Amonkar, Advocate *for the Respondent nos. 4,*
7, 8, 13 and 15.

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

DATED: 30th March 2022

ORAL ORDER

1. The Department of Personnel, Government of Goa, had sent a requisition to the Secretary, Goa Public Service Commission (GPSC), vide letter dated 29.08.2012, seeking recommendation for filling up the post of Junior Scale Officer. The process of selection that followed resulted in the petitioner being successful in the written examination; however, certain technical glitches were noticed which had the effect of vitiating the result of the written examination. As such, the Government of Goa decided not to

proceed further with the selection process. The requisition sent earlier on 29.08.2012 stood withdrawn by a letter dated 10.11.2014 of the Under Secretary (Personnel-1), Department of Personnel, Government of Goa. Consequent upon such withdrawal of requisition dated 29.08.2012, the Department of Personnel through the self-same incumbent Under Secretary (Personnel-1), had forwarded a further requisition dated 13.03.2015 to the Secretary, GPSC for filling up 22 posts of Junior Scale Officers of Goa Civil Services. In pursuance of such a requisition, the GPSC conducted a further examination in which the petitioner duly participated without raising any demur and was ultimately declared not successful. It was after the petitioner's unsuccessful attempt in the second round of selection process, which was initiated pursuant to the requisition dated 13.03.2015, that the petitioner instituted a writ petition (WP No. 866 of 2015) challenging the cancellation of the first round of selection process. A co-ordinate Bench of this Court, while disposing of the writ petition by its order dated 27.01.2017, categorically observed that since the petitioner had participated in the second round of selection process without challenging cancellation of the first round of selection process, the writ petition did not call for any relief being granted to the petitioner. However, an observation was made that there were certain advices contained in the second paragraph of the letter of withdrawal dated 10.11.2014 and if such advices had not been followed, all contentions were being left open. In view of such observations of the co-ordinate Bench, the petitioner instituted this writ petition seeking, *inter alia*, the following relief :

“(A) Issue a declaration that the Second Selection process is unconstitutional and illegal

and Issue writ in the nature of Mandamus or any order, commanding the Respondents to quash and set aside the selection process (undertaken pursuant to Advertisement dated 12/6/2015 to the posts of Junior Scale Officer in Goa Civil Service.

(B) Issue writ of Mandamus or in the nature of Mandamus or any such order, commanding the Respondents to proceed on the basis of select list prepared under Said Selection process undertaken pursuant to Advertisement dated 11/10/2013.

(C) Issue writ of Certiorari or in the nature of Certiorari or any such order, quashing and setting aside communication dated 10.11.2014 addressed by Department of Personnel to Respondent no.3.”

2. We have heard Mr. Zaveri, learned advocate appearing in support of the writ petition.

3. Insofar as prayer (C) is concerned, we are of the clear opinion that the same is hit by the principles of res judicata, having regard to the order dated 27.01.2017 of the co-ordinate Bench referred to above. While considering prayers (A) and (B), we had called upon Mr. Zaveri to demonstrate before us contravention of any binding rule by the GPSC while it embarked upon the second round of selection process, or any illegality or patent material irregularity vitiating the selection process.

4. Our attention is drawn by Mr. Zaveri to the second paragraph of the letter dated 10.11.2014. He contends that the Under Secretary had required the GPSC to proceed on the basis of the advice tendered by the Under Secretary and such advice not having been acted upon, the same constitutes violation of the instructions issued by the Government for which we ought to interdict the process of selection undertaken by the GPSC pursuant to the second requisition dated 13.03.2015.

5. We have considered the contention of Mr. Zaveri bearing in mind not only the contents of the second paragraph of the letter dated 10.11.2014 but the other paragraphs as well of the requisition dated 13.03.2015. For better appreciation of Mr. Zaveri's contention, we consider it proper to quote below the letter dated 10.11.2014 in its entirety. It reads as follows:

“

Dated : 10/11/2014

To,

*The Secretary,
Goa Public Service Commission,
Panaji-Goa.*

*Sub : Complaints regarding conduct of
written examination for the post of
Junior Scale Officer by Goa Public
Service Commission.*

*REF: 1) Letter No. COM /1/ 5/42
(3)/2012/(Part File 1)/2336 dated
29/08/2012.*

2) Letter No. COM/1/5/42(3)/2012/
(Part File I)/2336 dated 10/03/2014.

Sir,

I am directed to invite your attention to above referred letter dated 10/03/2014 of the Hon'ble Chairman of the Goa Public Service Commission addressed to the Hon'ble Chief Minister in reply to this department's letter of even number dated 19/02/2014 and to inform you that Government has perused the submissions made by the Goa Public Service Commission. It is seen that the GPSC has categorically admitted that the secrecy of the examination has been compromised even it it's on account of technical glitch by the organization engaged by them. Therefore, continuing with the process of recruitment would put the credibility of a constitutional body like GPSC and the Government at stake and might invite litigations. It is therefore imperative that the GPSC cancels the entire selection process that has been carried out so far for filling up the vacancies of Junior Scale of Goa Civil Service.

Also there is a need to reconsider the rota quota system of appointment into Goa Civil Service in order to fix the direct recruitment/promotional quota at rational/objective levels. There is need to appoint

experts by way of lateral recruitment in certain departments and to abolish certain posts which have become redundant over a period of time. The process of selection including the system of written examination, allocation of marks for written examination and interview, the cut out level of marks above which the candidate will be called for interview etc. needs to be re-examined and fine tuned.

It is also significant to streamline the procedures and processes involved in recruitment/ appointment to public offices by putting objective and transparent mechanisms in place, in order to restore public confidence. The above exercise is in pipeline.

In view of above, Government is of the opinion that the proposal for filling up the post of Junior Scale of Goa Civil Service by direct recruitment referred to your Commission vide letter of even number dated 29/08/2012 be withdrawn and resubmitted after completing the above exercise.

The requisition forwarded by letter dated 29/08/2012 therefore stands withdrawn.

Yours faithfully,

*Sd/-
(Umeshchandra L. Joshi)
Under Secretary (Personnel-I)”*

6. A bare perusal of the first paragraph of the aforesaid letter of withdrawal of requisition would reveal the reason for which the first round of selection process was aborted. The second and the third paragraphs would reveal the opinion of the Under Secretary as to the procedure that ought to be adopted for concluding the process of selection. However, the penultimate and the ultimate paragraphs reveal the Government's intention of having the selection process cancelled resulting in withdrawal of the requisition. If indeed the Government was serious enough and intended to insist upon the GPSC to follow the opinion contained in the second and the third paragraphs of the letter dated 10.11.2014, it defies logic as to why in the subsequent requisition letter dated 13.03.2015, such a requirement or insistence was not spelt out. Once the requisition dated 13.03.2015 was issued without any advice and the same having been received by the GPSC, it was free to conduct the process of selection in a manner known to law meaning thereby the relevant procedural regulations framed by the GPSC as well as any other binding provision of a recruitment rule framed under Article 309 of the Constitution of India in relation to filling up of the post of Junior Scale Officers. In the absence of any such requirement or insistence in the subsequent requisition dated 13.03.2015, we are of the clear opinion that the GPSC was not required to conduct the process of selection bearing in mind contents of the second and the third paragraphs of the letter dated 10.11.2014.

7. We place on record that Mr. Zaveri has placed for our consideration a Bench decision of the Calcutta High Court in ***Md.***

Zakir Hossain & Ors. vs. The State of West Bengal & ors.¹.

Paragraph 20 of the decision reads as follows:

*“20. Let us now take a look at two decisions of the Supreme Court which had not been placed before the relevant Benches while deciding the aforesaid cases. The first decision is reported in AIR 1965 SC 491 (**University of Mysore v. C. D. Govind Rao**) and the other decision is reported in AIR 1990 SC 434 (**Dalpat Abasaheb Solunke v. Dr. B. S. Mahajan**). These decisions are authorities for the proposition that selection process can be challenged on limited grounds, i.e., if a binding rule has been contravened while making selection, or if the selection is tainted by illegality, or patent material irregularity in the constitution of the committee or its procedure vitiating the selection or proved mala fide affecting the selection, etc.”*

8. Having regard to the law laid down by the Supreme Court in **C. D. Govind Rao** (supra) and **Dalpat Abasaheb Solunke** (supra), we are of the further considered opinion that Mr. Zaveri ought to have demonstrated before us contravention of any binding rule or that the process of selection was vitiated by any gross illegality or irregularity. We record that no such contravention or gross illegality, far less any illegality, has been demonstrated. This is a speculative writ petition, which the petitioner has instituted trying to assail the

¹ WPST 99 of 2018

process of selection by which he was left out of the zone of consideration but primarily to agitate cancellation of the first round of selection process rendering this writ petition as liable to dismissal.

9. We, accordingly, dismiss this writ petition. We would have been justified in imposing costs on the petitioner but refrain from doing so bearing in mind his disappointment at not being able to obtain a public employment that triggered this writ petition.

M. S. SONAK, J.

DIPANKAR DATTA, CJ.

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA
Date: 2022.04.01 18:33:28 +05'30'