

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 232 OF 2022

Dr. Liberia Dsouza,
aged 28 years, H.No.E/23,
Ward No.9, Ansabhat, Mapusa, Goa. Petitioner.

Versus

1. State of Goa,
through the Chief Secretary
Government of Goa, Secretariat,
Porvorim, Goa

2. Goa Dental College and
Hospital, Through its Dean,
Bambolim, Goa

3. Department of Public Health,
Through Under Secretary (Health)
Government of Goa, Secretariat,
Porvorim, Goa.

4. Dr. Anosca Lira Menezes [H.No.](#)
678-A, Saleri, Goa Velha ... Respondents

**Mr. S.D. Lotlikar, Senior Advocate with Ms. Sailee Kenny,
Advocate for the Petitioner.**

**Mr. D.J. Pangam, Advocate General with Mr. S. Parab,
Additional Government Advocate for Respondent Nos. 1, 2
and 3.**

Mr. S.S. Kantak, Senior Advocate with Mr. Preetam Talaulikar, Ms. Neha Kholkar, Ms. Saicha Desai and Ms. Linette Esmeralada Da Costa Rodrigues, Advocates for Respondent No.4

WRIT PETITION NO. 254 OF 2022

Dr. Prithika E,
aged 30 years,
"Uthradam' Palace Nagar-17,
Thevally PO, Kollam, Kerala.

... Petitioner.

Versus

1. State of Goa,
Through the Chief Secretary,
Government of Goa, Secretariat,
Porvorim, Goa.

2. Goa Dental College and
Hospital Through its Dean,
Bambolim, Goa

3. Department of Public Health,
Through Under Secretary (Health)
Government of Goa,
Secretariat, Porvorim, Goa.

4. Dr. Cora Abigail Coutinho,
G-5, Ashad Co-Operative
Housing Society Madel,
Margao, Salcete, Goa

**Mr. S.D. Lotlikar, Senior Advocate with Ms. Sailee Kenny,
Advocate for the Petitioner.**

Mr. D.J. Pangam, Advocate General *with Ms. Maria Correia, Additional Government Advocate for Respondent Nos. 1, 2 and 3.*

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

Reserved on : 16 November 2022

Pronounced on : 18 November 2022

JUDGMENT : (Per M.S. SONAK J.)

- 1.** Heard the learned Counsel for the parties.
- 2.** Rule. The Rule is made returnable immediately with the consent of and at the request of the learned Counsel for the parties.
- 3.** The learned Counsel agree that substantially common issues of law and facts arise in both these petitions and, therefore, both these Petitions can be disposed of by a common judgment and Order. However, Writ Petition No.254/2022 is taken as the lead petition.
- 4.** The Petitioners challenge the selection and appointment of Respondent No.4 to the post of Senior Resident in the Goa Dental College and Hospital against the vacancies advertised on

4/4/2022.

5. The Petitioners' main contentions are as follows :

(A) The applicable rules provide precedence and not merely a preference to the candidates who have studied and have acquired a postgraduate degree through the Goa Dental College and Hospital. Therefore, since the Petitioners have studied and acquired the postgraduate degree through the Goa Dental College and Hospital, they ought to have been selected and appointed as the Senior Residents in precedence of the Respondents who have, admittedly, acquired the postgraduate degree of some other Dental College and Hospital from outside the State of Goa;

(B) In any case, and without prejudice, the selection in preference to the Petitioners was arbitrary and unreasonable. The Petitioners contend that there was no transparency in the selection process and, in any case, the declared selection process was deviated from for no good or valid reasons.

(C) In W.P. 254/2022, Petitioner contended that a defective advertisement was published and selection procedures were manipulated only to favour Respondent 4, daughter of the H.O.D in the concerned Department. Therefore malafides were involved in the selection process.

6. Mr Lotlikar, the learned Senior Advocate for the Petitioners, elaborating upon the above contentions, submitted that the applicable rules have always been interpreted as rules providing precedence and not merely preference. He submitted that since last year, the rules have been misinterpreted as providing only a preference, provided all other parameters are equal. He presents that from the context, it is apparent that the rules provide for precedence and not merely a preference. He submits that a candidate who has studied and passed the postgraduate degree from the Goa Dental College and Hospital is best suited for Senior Residency.

7. Mr Lotlikar presents that the Authorities have also had an opportunity to appraise the performance of such candidates over 4 to 7 academic years. He submits that the rules refer to a particular order for preference. He presents that from this, it is clear that the candidates included in the first category must be considered before the candidates in the second category can be considered and so on.

8. For all the above reasons, Mr Lotlikar submits that the selection and appointments are a product of misinterpretation of the applicable rules are liable to be struck down. Therefore, he offers that the Petitioners must be selected and appointed on a

correct interpretation of the rules. He relies on Government of *Andhra Pradesh vs. P. Dilip Kumar and another*¹; *Yatinkumar Jasubhai Patel and ors. vs. State of Gujarat and ors.*² and *Secretary, A.P. Public Service Commission vs. Y.V.V.R. Srinivasulu and ors.*³ in support of his contentions.

9. Mr Lotlikar, without prejudice to the above contentions, submits that at least until the last year, in terms of the information furnished under the R.T.I., the selections were based on 30 marks towards B.D.S. qualification, 30 marks towards M.D.S. qualification, 15 marks towards speciality related activities, like publications, presentation and others, 5 marks towards experience and 20 marks towards oral interview involving presentation and knowledge of the subject.

10. Mr Lotlikar submits that there was a departure from this procedure for this year without any tangible reasons other than to favour the selected candidates. He submits that such a departure focussed entirely on 20 marks in the oral interview, where manipulations were easily possible and practised. He submits that Respondent No.4 is a daughter of a Professor in the same Department and these procedures were only to favour her. He

1. (1993) 2 SCC 310;

2. Civil Appeal No.7939 of 2019 decided on 4/10/2019

3. (2003) 5 SCC 341

presents that the advertisement was at variance with the rules and was also only to favour her. He submits that all this points to the arbitrariness in the selection process.

11. Mr Lotlikar submits that the criteria for selection were never disclosed by the Respondents earlier. However, after selection, the Petitioner was furnished an extract of the marks obtained by the Petitioner at the oral interview. Even this chart refers to teaching/clinical experience and publications. However, marks were allotted only for the oral interview, which was a farce. He points out that the affidavit of the Dean, who was a member of the Selection Committee, clarifies that the aspects of experience and publications were not considered or rather, all postgraduate candidates were treated on an equal footing when it comes to experience or publications, and the selections were purely based on evaluation of the marks at the oral interview.

12. Mr Lotlikar submits that this opaque procedure by which the selection committee vested unfettered and unguided discretionary power resulting in Petitioners being awarded one and two marks lesser than the selected candidates. Accordingly, Mr Lotlikar submits that the selection and appointment of Respondent No.4 in both Petitions is a product of arbitrariness. Opacity and unreasonableness.

13. Apart from the above two main contentions, Mr Lotlikar submitted that the selection is vitiated because there was a variance between the advertisement and the rules. He submitted that the advertisement referred to obtaining BDS/MDS from the Goa Dental College and Hospital as a "desirable qualification". He offers that such a variance vitiates the entire selection process.

14. For all the above reasons, Mr Lotlikar submitted that the Petitions are liable to be allowed, and the selections and appointments of Respondent No.4 in each of these Petitions are liable to be quashed and set aside. Instead, the Petitioners must be directed to be appointed as Senior residents.

15. Mr D.J. Pangam, the learned Advocate General, submitted that the applicable rules, in terms, provide for a "preference" and not a "precedence". He offered that this is clear from the rules themselves, as also the context. He submits that if the Rule is interpreted as one of precedence or providing almost 100 % reservation for the candidates who have acquired postgraduate degrees from the Goa Dental College and Hospital, then the Rule would be violative of Articles 14 and 16 of the Constitution of India. He submitted with Mr Kantak that even if two interpretations were possible (though in this case, they were not), the interpretation that saves the Rule from unconstitutionality

must be adopted. They relied on *Secretary (Health), Department of Health and F.W. and another vs. Dr. Anita Puri and ors.*⁴; *Bibhudatta Mohanty vs. Union of India and ors.*⁵; *State of U.P. and anr. vs. Om Prakash and ors.*⁶; *Maharashtra Public Service Commission, through its Secretary vs. Sandeep Shriram Warade and ors.*⁷ and *Y.V.V.R. Srinivasulu* (supra) in support of their contentions.

16. The learned Advocate General pointed out that in *Y.V.V.R. Srinivasulu* (supra), the decision in *P. Dilip Kumar* (supra) was distinguished and limited. He pointed out that in *Parmar Alpaben Sanabhai* (supra), the Division Bench of the Gujarat High Court held that a rule providing for virtual precedence or reservation to candidates from a university in Gujarat would be violative of Articles 14 and 16 of the Constitution of India.

17. The learned Advocate General submitted that there was no arbitrariness or unreasonableness involved in the selection process. He offered that the post of Senior Resident was only a tenure post for three years. The Selection Committee considered experience,

4. (1996) 6 SCC 282

5. (2002) 4 SCC 16

6. (2006) 6 SCC 474

7. (2019) 6 SCC 362

publications and performance at the oral interview. He submitted that there was no requirement to award separate marks under each heading. He relied on *Keshav Ram Pal (dr), Reader and Head of Sanskrit Department vs. U.P. Higher Education Services Commission, Allahabad and ors.*⁸ and *Kiran Gupta and ors. vs. State of U.P. and ors.*⁹ in support of these contentions.

18. Mr. S.S. Kantak, learned Senior Advocate appearing for the Respondents in Writ Petition No. 232/2022, supplemented the contentions of the learned Advocate General. He submitted that the publications and experience are implicit during postgraduate study. He, therefore, offers that there was no infirmity in treating all P.G. candidates on an equal footing and basing the selection on the performance during the oral interview. He relies on *Governing Body Asom Jyoti Junior College vs. Indira Devi and ors.*¹⁰ and *The Chairman Tangedco and anr. vs. Priyadaarshini*¹¹ in addition to the decisions relied upon by the learned Advocate General.

19. In rejoinder, Mr Lotlikar mainly reiterated his original

8. (1986) 1 SCC 671

9. (2000) 7 SCC 719

10. 2016 SCC OnLine Gau 165

11. Civil Appeal No.6470/2021 decided on 27/10/2021

submissions and dealt with the authorities cited on behalf of the Respondents. He submitted that the State was not justified in misinterpreting the Rules or urging that a rule of institutional precedence for employment was unconstitutional. He offered that a classification based upon such a premise would not fall foul of Articles 14 and 16 as urged by the Advocate General.

20. The rival contentions now fall for our determination.

21. The selections and the appointments to the post of Senior Resident at the Goa Dental College and Hospital are governed by the Goa (Appointment to the post Residents in the Goa Medical College) Rules, 1998. Though these rules pertain to the posts of Residents in the Goa Medical College, by an order dated 18/12/1989, the Government has provided that the Goa (Appointment to the posts of Senior Residents in Goa Medical College) Rules, 1989 shall also apply *mutatis mutandis* to the Goa Dental College and Hospital. Though this Order refers to the 1989 rules that the 1998 Rules supersede, by resorting to the General Clauses Act, the Order would have to be construed as referring to the 1998 Rules. There was no dispute on this score. In fact, the Petitioners relied upon the 1998 Rules to support their Petitions.

22. Rule 4 of the 1998 Rules referred to eligibility for the post of Senior Residents, and the same is transcribed below for the convenience of reference :

"4. Eligibility for the post of Senior Residents :- Every candidate applying for the post of Senior Resident (except the super speciality of Cardiology, Nephrology, and Neuro-Surgery) shall possess the following qualification, namely :-

(a) A recognized 'Medical qualification included in the First or Second Schedule of Part II of the Third Schedule (other than licentiate qualifications), to the Indian Medical Council Act, 1956 (Central Act 102 of 1956). Holders of qualification included in Part II of the Third Schedule should also fulfil the conditions stipulated in section 13 (3) of the said Indian Medical Council Act, 1956.

(b) A postgraduate degree qualification in the concerned speciality.

Provided that if no such candidate with postgraduate Degree qualification in the concerned speciality is available then candidates with three years experience as Junior Residents in the concerned speciality may be considered for a period of six months.

Explanation: — If the Senior Resident, with three years experience as a Junior Resident in the speciality concerned is selected for a short tenure of six months. obtains his/her post graduate degree in

the concerned speciality then he/she may be considered for extension for Senior Residency for the stipulated period; however, the total period of Senior Residency shall not extend three years duration."

23. The Petitioners' entire case is based upon Rule 6 of the 1998 Rules, entitled "***Preferences***". The Petitioners contend that though the Rule may be entitled "Preferences", the same, in fact, provides for precedence and not merely preference. To appreciate and evaluate this star contention, Rule 6 of the 1998 Rules is transcribed below for the convenience of reference:-

"6. Preferences :- (1) While selecting candidates for appointment to the post of Senior Residents, except for the post of Senior Resident in Cardiology/Nephrology/Neuro-Surgery, preference Shall be in the following Order:-

a) Candidates who have studied and have acquired postgraduate degree through the Goa Medical College:

b) Candidates who have worked in the Goa Medical College as Junior Residents in the concerned speciality for a period of three years.

(c) Candidates with postgraduate degree acquired through colleges other than the Goa Medical

(2) In case of appointments to the post of Senior Residents in Cardiology/Nephrology/Neuro-Surgery, where a candidate with postgraduate degree in the

concerned speciality i.e D. M. (Cardiology)/D. M. (Nephrology)/M. Ch. (Neuro-Surgery), is not available, then preference shall be given in the following Order, while selecting candidates for the said post:

(a) M. D. in General Medicine (for the posts in Cardiology/Nephrology) or M. S. in General Surgery (for the posts in Neuro-Surgery) acquired through the Goa Medical College;

(b) 3 years Junior Residency in Medicine (for the posts in Cardiology/Nephrology) or 3 years Junior Residency in Surgery (for the posts in Neuro-Surgery) done in the Goa Medical College:

(c) M. D. in General Medicine (for the posts in Cardiology/Nephrology) or M.S. in General Surgery (for the posts in Neuro-Surgery) acquired through Colleges other than the Goa Medical College:"

24. The 1998 Rules do not provide any specific selection process guidelines. However, Rule 3 provides that the Departmental Selection Committee shall comprise the Dean, Goa Medical College, the Head of the Department in the concerned speciality and the Director of Administration. Further, Rule 8 provides that the eligible candidates will be called for an oral interview and shall not be entitled to any TA/DA for appearing for the interview.

25. Initially, the Petitioners had raised a challenge to the composition of the Departmental Selection Committee. However, this challenge was specifically given up and not pressed during arguments.

26. Regarding the ground that Rule 6 provides for precedence and not a preference, we must say at the outset that a plain reading of Rule 6 does not support such a contention. The Rule is entitled "Preferences". The expression "*in the following order*," upon which much stress was laid by Mr Lotlikar, only means that when it comes to giving preference, the candidates who have studied and acquired postgraduate degrees through the Goa Dental College and Hospital would be preferred over the candidates who have worked in the Goa Dental College and Hospital as Junior Residents in the concerned speciality and, further, these candidates would have a preference over the candidates with a postgraduate degree acquired through the colleges other than the Goa Dental College and Hospital.

27. Therefore, the expression "*in the following order*" in Rule 6, does not lead to the construction that as long as the candidates who have studied and acquired postgraduate degrees through the Goa Dental College and Hospital are available, there is no question of even considering other candidates like the candidates

who may have obtained postgraduate degrees through the colleges other than Goa Dental College and Hospital. Hence, this expression does not convert a rule providing for preference into a rule providing for precedence or, even further, a rule providing for cent per cent reservation in favour of the candidates who have studied and acquired postgraduate degrees through the Goa Dental College and Hospital. If this was the intention, surely the Rules should have been more precise and differently worded.

28. Mr Lotlikar's contention that Rule 6, until the last year, was interpreted or construed as a rule providing for precedence and not merely a preference is not supported by any material placed on record. Firstly, there are no pleadings on this aspect. Secondly, the State has denied this position. Finally, the learned Advocate General submitted that at no stage was Rule 6 construed or interpreted as a rule providing precedence and not just a preference. The learned Advocate General went to the extent of submitting that construing Rule 6 as one of precedence or providing cent per cent reservation for the candidates who have studied and acquired postgraduate degrees through the Goa Dental College and Hospital would expose the Rule to the vice of unconstitutionality under Articles 14 and 16 of the Constitution of India. In these Petitions, we need not go into the issue of

Constitutionality, but suffice to record the stand of the State of Goa on this subject.

29. Even the context in which Rule 6(1) is placed does not support the contention advanced on behalf of the Petitioners. For instance, Rule 4 of the same 1998 Rules, which concerns the *eligibility* for the post of Senior Resident, inter alia, provides that a minimum qualification shall be a postgraduate degree in the concerned speciality. However, the proviso to this Rule provides that if no such candidate with a postgraduate degree qualification in the concerned speciality is available, then candidates with three years of experience as Junior Residents in the concerned speciality may be considered for a period of six months.

30. The language in Rule 4 clearly indicates that as long as a candidate with a postgraduate degree qualification in the concerned speciality is available, there is no question of considering a candidate without a postgraduate degree qualification but having three years of experience as a Junior Resident in the concerned speciality. This is clearly a Rule of precedence where one class of candidates elbow out or secure en block precedence over the other. Thus, the rules are pretty clear about where they intend to provide precedence. Such precedence is, however, neither provided in Rule 6 nor the scheme of the

1998 Rules. Therefore, neither the text of Rule 6 nor the context in which it is placed supports the construction proposed by Mr Lotlikar.

31. *P. Dilip Kumar* (supra), the mainstay of Mr Lotlikar's contention, is not of much assistance to the Petitioners because, in that case, though the Rule was not very clear, the executive instructions or the Memo dated 13/10/1978 issued to supplement the Rule, had clarified that for any particular year the list of eligible candidates with postgraduate qualification shall be *first* considered in Order of their seniority and *only after* such a list was considered, cases of ordinary graduates shall be considered.

32. The Memo further clarified that the expression "*preference shall be given*" occurring in the said Rule, was meant that everything, such as the passing of prescribed tests, maintaining merit, suitability, fitness, etc., being equal, preference shall be given at every selection or preparation of panel for appointment as Assistant Engineers to the holders of postgraduate qualifications. After providing the said preference, the claims of less qualified candidates who are also eligible for appointment would be considered. Therefore the combined or conjoint reading of the Rule supplemented by the Memo made the Rule of

precedence, and not simple preference, evident.

33. The Hon'ble Supreme Court, on an interpretation of the Rule, read with the Memo dated 13/10/1978, concluded that the postgraduates were to be treated as a class entitled to en block precedence over candidates lacking the postgraduate qualification, admittedly a higher qualification. Accordingly, they were to be given precedential treatment over others who might have secured more marks in the open category. The Hon'ble Supreme Court also noted that the High Court, in Writ Petition No.2568/1982, had already issued directions to this effect that bound the parties.

34. In the present case, Rule 6(1) is not ambiguous, nor are there any executive instructions like the Memo dated 13/10/1978. Instead, the State's stance is clear that Rule 6 provides only a rule of preference, not a precedence. Thus, *P. Dilip Kumar* (supra) is clearly distinguishable.

35. In *Y.V.V.R. Srinivasulu* (supra), the Hon'ble Supreme Court considered the decision in *P. Dilip Kumar* (supra). It held that the same not only turned on the peculiar scheme and context of the service rules under consideration but also that the said decision did not proclaim to lay down any general rule of universal application for all cases. As a matter of fact, even the said decision admitted the possibility of more than one

interpretation too, and, therefore, was wholly inapplicable in the context and requirement of the provisions involved in the case of *Y.V.V.R. Srinivasulu* (supra).

36. In *Y.V.V.R. Srinivasulu* (supra), the Hon'ble Supreme Court held that the meaning of "preference" when selection is made based on merit assessed through the competitive examination and interview, would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective of inter se merit and suitability. Therefore, it cannot work as a reservation or complete precedence.

37. In *Dr Anita Puri* (supra), the Hon'ble Supreme Court held that when an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference would be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher candidates with higher qualification. Therefore, it cannot be construed as a person with a higher qualification is automatically entitled to be selected and appointed. In adjudging a person's suitability for the post, the expert body like Public Service Commission, in the absence of any statutory criteria, has the discretion of evolving its mode of

evaluation of merit and selection of the candidate. Hence, the High Court was wholly in error in holding that a person possessing an M.D.S. degree was entitled to be selected and appointed even though Respondent No.1 did not possess an M.D.S. degree (preferential qualifications) and had secured higher marks in the selection process.

38. In *Bibhudatta Mohanty* (supra), a preference was provided for an S.S.C. passed candidate. However, the Hon'ble Supreme Court held that the preference clause for higher qualification does not mean that irrespective of the fulfilment of other norms, S.S.C. passed has to be preferred. Where any rule or guideline provides preference in respect of some higher qualification, it only means that all other requirements being equal, a person possessing higher educational qualification will be preferred. Therefore, it cannot be considered the sole criterion for preference in selection and appointment.

39. Thus, even the precedents on the subject do not assist the construction proposed by Mr Lotlikar on behalf of the Petitioners. Moreover, even a plain reading of Rule 6(1) of the 1998 Rules does not support the Petitioners' contention that the Rule provides for a "precedence" even though it refers to "preferences".

40. For all the above reasons, the Petitioners' first contention about Rule 6(1), providing for precedence and not merely a preference, will have to be rejected.

41. Regarding arbitrariness and unreasonableness, we note that the rules alone do not provide any statutory criteria for selections and appointments. The rules only provide for the constitution of the Departmental Selection Committee (Rule 3), and Rule 8 provides that the eligible candidates will be called for an oral interview.

42. Without any prescribed statutory criteria, the Departmental Selection Committee will, undoubtedly, have the power to adopt some selection criteria. But this is not a charter to adopt unfair, opaque or arbitrary criteria. The criteria to be adopted must be fair and transparent, having some reasonable nexus with the assessments of the candidates for the job requirements. As far as possible, the criteria must be determined in advance and declared so that the candidates have a fair idea of what is expected of them. In addition, there must be some consistency in following the adopted criteria rather than applying random criteria for each position or selection. However, as long as the criteria adopted are not arbitrary or unreasonable, typically, a power of a judicial review would not be exercised by a writ Court.

43. The material on record does prima facie suggest that for some selections in 2021, the Departmental Selection Committee adopted the following criteria for selection to the post of Senior Residents :

SR. NO.	NAME	BDS (30)	M.D. S. (30)	SPECIALTY RELATED ACTIVITIES (15)			E.X.P.E.-R.I.E.N.C.E (05)	ORAL INTERVIEW (20)		TOTAL	REMARKS
1	2	3	4	5			6	7		8	9
				Publica- tion (a)	Presenta- tion (b)	Other (c)		Presentation (a)	Subject (b)		

44. However, the affidavit filed by the Dean of the Goa Dental College and Hospital explains that the above criteria were not followed for selecting the post of Senior Residents in 2022. There was no clarity, however, on the criteria followed. The selections for 2021 were also challenged, but before the Petitions could be finally decided, the Petitioners in said Petitions were granted Senior residency. Therefore the Petitions were not pressed.

45. Instead, for the selection in 2022, with which we are presently concerned in these Petitions, the tabular chart that gives some inkling of the criteria adopted by the selection committee reads as follows :

Sr. No.	Name	Documents Verified	Interview 20 Marks	Experience		Publications	
				Teaching	Clinical	Published	Non Published

46. From the returns filed before us and the consolidated mark list produced before us, it is evident that the Petitioner in Writ Petition No. 254/2022 secured 16 marks out of 20 in the interview and Respondent No.4 (selected candidate) secured 18 marks out of 20 marks. Similarly, the Petitioner in Writ Petition No.232/2022 secured 15 marks out of 20 and Respondent No.4 (selected candidate) secured 16 marks out of 20.

47. Mr Lotlikar did submit that there was no reason pointed out in the affidavit for deviation from the selection criteria in the year 2021, which amounts to arbitrariness and unreasonableness. He also submitted that failure to award separate marks for experience and publications suggests arbitrariness and unreasonableness.

48. Finally, Mr Lotlikar presents that the affidavit filed by the Dean makes it clear that the experience or publications were not even considered, and the entire selection was based on oral interviews. He submits that the oral interviews were a farce because no questions were posed to the Petitioners about their ability to discharge functions related to the post of Senior Resident. He submitted that even otherwise, cent per cent emphasis on oral interviews is arbitrary and unreasonable, mainly

because Senior Residents are usually fresh graduates and instances of manipulation are rampant. He presented that the circumstance of one of the selected Respondents being a daughter of the H.O.D. also cannot be ignored from the context of the opaque selection process.

49. Mr Lotlikar emphasized upon paragraph 20 of the Dean's affidavit, which reads as follows :

"20.1 say that it is pertinent note that all postgraduate doctors stand on equal footing when it comes to the criteria of publication and presentation since most of them have done publications and presentations during their post-graduation courses. I further say that the Departmental Selection Committee therefore has decided to conduct an evaluation based only on Oral interviews. I say that Oral interviews plays an important role in ascertaining/judging the candidate's personality, perception, ability, capacity and suitability. It is denied that the Oral interview was solely aimed at collecting information relating to the Petitioners testimonials and other related matters alone."

50. Mr Lotlikar submits that from the above, it is evident that the entire evaluation was based only on oral interviews and nothing else. He presents that based on such subjective criteria fraught with all kinds of illegalities, the fact that Petitioners had studied and obtained their postgraduate degrees from the Goa Dental College and Hospital could not have been brushed aside.

Additionally, he submits that the Petitioners' proficiency, by way of experience and publications, could not also have been brushed aside in the manner in which the same has been brushed aside.

51. Although the statement in paragraph 20 of the Dean's affidavit is slightly disturbing, the same will have to be considered in the context of other statements in the affidavit and the pleadings in the Petition. For example, the Petitioners have admitted that the Selection Committee evaluated their certificates and testimonials. The Dean's affidavit also says so. In addition, the Petitioners have also admitted that they were questioned about their testimonials and certifications during the oral interviews.

52. Therefore, though the statement in paragraph 20 of the Dean's affidavit appears to be a rather widely worded generalization, from the context, we accept the learned Advocate General's submission that the marks awarded for the interviews were based upon holistic consideration of not only performance of the candidates during the interviews, but also in the context of their experience and publications on which the candidates were interviewed.

53. Besides, the learned Advocate General has made a statement before this Court that until some statutory criteria are

prescribed for the selection of senior residents, the Departmental Selection Committees, in the course of oral interviews, will give full consideration to aspects like experience and publications so that there is no scope for allegations, even though the allegations in the present case were improper. He maintains that even in the present case, due credence was given to aspects like experience and publications when evaluating the certificates and testimonials of the candidates. He, therefore, submits that the statement in paragraph 20 of the affidavit of the Dean may be construed in its context and other statements in the affidavit and the pleadings in the Petitions.

54. The tabular chart produced before us indicates that the Petitioner had two years of teaching experience but no clinical experience. Further, the Petitioner had seven publications (published) and three publications (non-published ?). Similarly, Respondent No. 4 had no teaching experience but two years of clinical experience. Besides, she had eight publications (published). Thus, though it is not for us to go into the comparative merits of the eligible candidates, it is not as if there was any wide disparity between the experience/publication qualifications of the two candidates. The position is somewhat similar in the connected Petition, as well. Therefore, the

statements in the Dean's affidavit appear to be in the context of these particular circumstances rather than some generalization of the status of all postgraduate candidates who may have quantitatively and qualitatively diverse sets of publications or experience.

55. In these peculiar facts, even though we must record that we were somewhat disturbed by the statement in paragraph 20 of the Dean's affidavit and the lack of clarity on the precise criteria adopted, we think that no case is made out not to defer to the evaluation of the selection committee or infer any arbitrariness or unreasonableness in the selection process, warranting exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India and quashing the selection process. This is more so because though allegations of malafide have been made, they are not made out as discussed later.

56. The contention about the award of separate marks for each of the three heads cannot be accepted without any statutory criteria to this effect. In *Keshav Ram Pal* (supra), the Hon'ble Supreme Court has held that there cannot be any rule of thumb regarding the precise weight to be given to the various parameters. It must vary from service to service according to the requirements of the service, the minimum qualifications prescribed, the age

group from which the section is to be made, the body to which the task of holding the interview test is proposed to be entrusted and a host of other factors. It is a matter of determination by experts. It is a matter for research. It is not for Court to pronounce upon it unless exaggerated weight has been given with proven or obvious oblique motives. The contention about the obligation of the Interviewing Board to subdivide the marks under various sub-heads was, thus, rejected by the Hon'ble Supreme Court.

57. Similarly, in *Kiran Gupta* (supra), the Supreme Court refused to set aside the selection process because separate marks were not awarded for factors like personality, knowledge of the subject, knowledge of current ideas and problems of the educational work, diagnostic attitude towards them; general knowledge, administrative ability regarding school management, self-expressive and impressive views, achievement in curricular activities of the regional and State levels. The Supreme Court, on careful consideration of such factors, concluded that overall evaluation, rather than awarding of marks for each item, will lead to proper and correct results. The Court also held that the selection process could not be held to be arbitrary for adopting the procedure of overall evaluation of the candidate without

fixing marks for each of the items noted above.

58. Therefore, while we think the selection committee must strive to adopt more transparent and pre-declared criteria for such selections, based on the pleadings and the material placed before us in the present matters, we do not think that a case of arbitrariness or unreasonableness warranting judicial review is made out simply because the process could have been much better. Besides, in such selections, some element of subjectivity is inevitable, but to the extent reasonably possible, the same should be based upon some reasonably ascertainable objective criteria.

59. In these cases, based on pleadings and the material placed before us, we accept the learned Advocate General's statement that necessary clarification would be issued about invariably taking into account the experience and publications for awarding marks at the oral interviews for selection to the post of Senior Resident until some statutory criteria are provided for such selections and appointments. Consistent with the statement of the Advocate General, the concerned Authorities must issue this clarification before any other posts of Senior Residents are filled up so that there is no ambiguity when the Departmental Selection Committee is convened for the selection of Senior Residents. The Committees or the Authorities must also consider pre-disclosure

of the proposed criteria and strive to maintain consistency.

60. The contention about malafides is not well established. However, just as no candidate must be favoured because she is the daughter of the H.O.D., such a daughter must also not be unduly punished or prejudiced on this count. Therefore, this fortuitous circumstance of birth and parentage must be irrelevant in selections for a public post. No material suggests that the H.O.D. has played any role in the selection process. There are no pleadings about his alleged role. The allegation is vague and is denied. There was no case to allege malafides in W.P. no. 232/2022 because the selected candidate's father was not H.O.D. Based upon vague allegations without anything to back the same, no malafides can be inferred. The candidate's father was not even impleaded as a party. No finding of malafides can be recorded behind his back. Therefore the case based upon malafides is not made out.

61. There is some problem with the advertisement issued. But it would not be correct to say that this mistake has any nexus with the allegation of malafides. The advertisement incorrectly refers to the preference requirement as a desirable qualification. Besides, it includes a reference to passing B.D.S from Goa College. Though these are mistakes, neither the Petitioners nor the selected

respondents suffered or gained anything from them. This is also not a case where some other candidates could have been misled into not applying due to such mistakes. The mistakes, though they should be avoided in future, do not appear to have had any significant bearing on the selection process this year. Therefore based on such mistakes, the selection process does not need to be upset.

62. Thus, for all the above reasons, we dismiss these Petitions by accepting the statement of the Advocate General and directing the Authorities to act accordingly before making any further selections for posts of senior residents. Accordingly, the Rule in both Petitions is disposed of in the above terms. Consequently, in the facts of the present cases, there shall be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.