

Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.872/2017

DR. BHUSHAN BHAVE, Associate Professor, Department of Konkani, P.E.S. College of Arts & Science, Farmagudi, Ponda-Goa, son of Vithal Dattatray Bhave, aged 48 years, married, service, Indian National, resident of H.No.1263/7, Pisgal, Mardol-Goa.

... Petitioner

Versus

1. THE STATE OF GOA, through the Chief Secretary, having office at Secretariat, Porvorim, Goa.

2. DIRECTOR OF HIGHER EDUCATION, Directorate of Higher Education, Government of Goa, Having office at Junta House, Panaji, Goa-403001.

3. GOA PUBLIC SERVICE COMMISSION, Through its Chairman, Having office at Old Education Building, Panaji, Goa - 403 001.

4. GOA UNIVERSITY OF GOA, Through its Registrar, Having office at University Campus, Bambolim - Goa.

5. MR. GERVASIO S. F. L. MENDES, Major of age, married, service, Indian National, Resident of/Official address Officiating Principal, Government

College of Arts and Commerce, Virnoda,
Pernem, Goa, Goa.

6. MR. JOYDEEP BHATTACHARJEE,
Major of age, married, service, Indian
National, resident of D-2, Raj Heritage,
Shantinagar, Ponda, Goa, 403 401.

7. MR. FILIPE NERI LEONARD
RODRIGUES E MELO, Major of age,
Married, service, Indian National,
resident of Near Corporation Bank.
Opposite Devashree Garden, Alto
Porvorim, Bardez, Goa.

8. MRS. PURNKALA VASANT
SAMANT, Major of age, Married,
service, Indian National, resident of H.
No. 214/6, Verla Canca, Saterinagaar,
Mapusa, Goa.

9. MR. GAJANAN VENKATESH
MADIWAL, Major of age, married,
service, Indian National, resident of K-
19, Alcon Appartments, Feira Alta,
Mapusa, Goa.

10. UNIVERSTTY GRANTS
COMMISSION, Bahadur Shah Jafar
Marg, New Delhi – 110 002.

... Respondents

Mr. Shivan Desai, Advocate *for the Petitioner*.

Mr. Deep Shirodkar, Additional Government Advocate for
Respondent Nos.1 and 2.

Mr. Dattaprasad Lawande with Mr. P. Dangui, Advocates for
Respondent No.3.

Ms. A.A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate
for Respondent No.4.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. Vilas

Pavithran and Mr. V. Braganza, Advocates for Respondent No.5.
Mr. Deepak Gaonkar, Advocate for Respondent No.8.
Mr. C.A. Ferreira with Mr. N. Govekar, Mr. A. Bhamaikar and
Mr. P. Vaigankar, Advocates for Respondent No.10.

**CORAM: M. S. SONAK &
R.N. LADDHA, JJ.**

DATED: 27th JULY 2022

ORAL ORDER:

1. Heard learned counsel for the parties.
2. The Petitioner challenges the appointments of respondents nos.5 to 9 as principals of government colleges on the ground that they are contrary to the Government of Goa, Government College of Arts, Science, and Commerce, Goa College of Home Science, and Goa College of Music, Group 'A,' Gazetted Post, Recruitment Rules, 2016 (said Rules).
3. Mr. Shivan Desai, the learned counsel for the Petitioner, submits that the respondent nos.5 to 9 do not fulfill essential qualifications prescribed in Clause 4 of Column 7 of the Schedule to the said Rules. Clause 4 reads as follows:-

"(4) A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in Tables I to IX of Appendix III to the University Grants Commission

(minimum qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of standards in Higher Education) Regulations, 2010."

4. Mr. Desai submits that the above-referred Clause 4 has to be read and construed in the Goa University Statutes that elaborate upon the point system adopted for Category III: Research and Academic Contribution. He submits that respondents nos.5 to 9 have not scored the minimum 400 points under Category III and, therefore, did not possess the essential qualifications for the appointment to the post of Principal of the Government colleges.

5. Mr. Desai submits that the only defense raised by the respondents is based on the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) (4th Amendment) Regulations, 2016. He submits that this 4th Amendment provides for less stringent standards than those provided in the University Statutes. He points out that the 4th Amendment contemplates a minimum API score of 400 points by considering Category III and Category II, which concern co-curricular, extension, and professional development activities.

Mr. Desai submits that Goa University did not adopt the 4th Amendment in its statutes until 27.06.2017. He points out that the direct recruitment process, in this case, commenced with the issue of an advertisement on 14.10.2016. He, therefore, submits that the Rules and Regulations as prevalent on the date of issue of the advertisement are relevant and not any subsequent amendments or adoptions.

6. Mr. Desai submits that the issue raised in this petition is answered in favor of the Petitioner by the Hon'ble Supreme Court of India in *Kalyani Mathivanan vs. K. V. Jeyaraj & Ors.* - (2015) 6 SCC 363.

7. Mr. Dattaprasad Lawande, the learned counsel for the Goa Public Service Commission (GPSC), Mr. Pereira, learned Senior Advocate for respondent no.5, Mr. Deepak Gaonkar, for respondent no.8, in unison, submitted that the Petitioner's case is not covered by the decision in *Kalyani (supra)*. They offered that the Petitioner is misconstruing the said decision, which, in any case, is distinguishable on facts.

8. The learned counsel point out that in any case, the Hon'ble Supreme Court of India, in a later decision in *Gambhirdan K.*

Gadhvi vs. State of Gujarat & Ors. - 2022 S.C.C. OnLine (SC) 256 has taken a divergent view.

9. Mr. Desai, however, contended that the decision in *Gadhvi (supra)* is by a Bench of two judges, and it does not discuss *Kalyani (supra)*. Therefore, the view in *Kalyani (supra)* should prevail. He also submitted that *Kalyani (supra)* fully covers the issue raised in this petition, and therefore, the reliefs as prayed for by the Petitioner should be granted. He also placed on record an order made by yet another Division Bench of the Hon'ble Supreme Court of India, in *Professor (Dr.) Sreejith P.S. vs. Dr. Rajasree M. S. & Ors. - Special Leave to Appeal (C) Nos.21108 – 21109/2021* decided on *14.03.2022*, in which the conflict between *Kalyani (supra)* and *Gadhvi (supra)* was considered and notices issued.

10. The learned counsel for the respondents also pointed out that the appointments of respondents nos.5 to 9 were against tenure posts, the tenure being five years. Moreover, the record indicates that most appointments were made in October 2017; therefore, the appointees' term would end by October 2022.

11. Learned counsel for the respondents submitted that even the Petitioner, on 04.05.2021, secured a tenure appointment, and

his tenure is yet to conclude. Learned counsel, therefore, submitted that the reliefs in this petition are more or less infructuous and this Court may not decide the issues now raised because such issues are now only academic.

12. From the records, we find that the Petitioner has pursued this matter. Various Benches heard the matter but, for some reason or the other, was not disposed of by any earlier Bench.

13. The record shows that the tenure of the posts to which respondents nos.5 to 9 came to be appointed concludes in another two to three months, i.e. by October 2022. Therefore, even if we hold that *prima facie* the issue raised by the Petitioner finds support in *Kalyani (supra)*, we will also have to hold that the contentions of the respondents urged without prejudice to their contention that *Kalyani (supra)* is distinguishable, find support in *Gadhvi (supra)*.

14. Further, even if we were to consider upsetting the appointments of respondents nos.5 to 9, it would be harsh and perhaps impermissible to require these respondents to refund the salary and other emoluments they have earned throughout their tenure. Finally, the Petitioner also would not get any additional relief by striking down the appointments of respondents nos.5 to

9 because, meanwhile, the Petitioner also came to be appointed to the tenure post of Principal since 04.05.2021.

15. There is also no dispute that Goa University has adopted the 4th Amendment referred to above w.e.f. 27.06.2017 i.e. about a year after the date of publication of the advertisement. Therefore, the issue now raised in this petition is unlikely to recur in the future.

16. Considering the above peculiar circumstances, we agree with the learned counsel who urged that the issue has become almost academic. Accordingly, in the above peculiar facts and circumstances, we do not think it would be appropriate to decide the issue now raised in this petition.

17. Accordingly, we dispose of this petition by leaving open the contentions of the parties.

18. There shall be no order for costs.

R.N. LADDHA, J.

M. S. SONAK, J.