

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 649 OF 2018

Ms. Preeti Waman Lotlikar,
Major, R/o H. NO.431/C,
Devote, Loutolim, ... Petitioner
Salcete, Goa.

Versus

1. Goa Medical College
Through its Director (Admin),
Bambolim, Tiswadi, Goa.
2. The Dean,
Goa Medical College Hospital,
Bambolim, Tiswadi, Goa.
3. The State of Goa,
Through its Chief Secretary,
Secretariat, Porvorim, Goa.
4. Ms. Antonya Maria Ulorica
Lume Pereira,
Major, R/o 33/212, Senaulim,
Verna, Salcete Goa. ... Respondents

Mr Nigel Da Costa Frias *with Ms Sonadevi Nishad, Advocates
for the Petitioner.*

Mr Deep D. Shirodkar, Additional Government Advocate *for
Respondents No. 1 to 3.*

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

Reserved on : **6th FEBRUARY 2023**

**Pronounced
on:** **8th FEBRUARY 2023**

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

1. The petitioner is challenging the selection of respondent no.4 to the post of Physiotherapist.

2. The prayers in the petition are as under:

'a) For an appropriate writ, order or direction thereby quashing the selection process undertaken by respondents 1 to 3 for the post of a physiotherapist at the Goa Medical College in terms of the advertisement dated 22/12/2017.

b) For an appropriate writ, order or direction thereby quashing the appointment of respondent no.4 to the post of physiotherapist (regular post) at the Goa Medical College.

c) For a writ of mandamus or any other appropriate writ, order or direction thereby directing respondents no. 1 to 3 to consider the petitioner for appointment to the post of a physiotherapist on regular basis at the Goa Medical College.

d) Any other order this Hon'ble Court deems fit and proper under the circumstances.'

3. Heard Mr Nigel Da Costa Frias, learned counsel for the petitioner and Mr Deep D. Shirodkar, learned Additional Government Advocate for respondents no. 1 to 3.

4. Mr Nigel Da Costa Frias, submitted that the petitioner was having more than 7 years of experience as a Physiotherapist and there was no need for conducting any skill test. The panel for the selection did not have any experience or qualification in Physiotherapy to conduct a skill test. Secondly, he contended that the marking pattern

for experience was changed from the one which was followed during the earlier recruitment process, which affected the petitioner the most. Thirdly, he claimed that at the time of the alleged skill test, neither the Dean nor the Under Secretary being members of the selection committee remained present and apparently there was manipulation of marks without determining the skills of the candidates. The petitioner having the highest experience of more than 7 years, ought to have been given appropriate marks. He then submitted that without prejudice to his above submissions, there was no question of conducting any skill test. Finally, he claimed that the Recruitment Rules for the said post did not provide for any interview or skill test.

5. Mr Frias would then claim that the petitioner is a Bachelor of Physiotherapy with more than 66.30% of marks at the final degree level which is certainly more than the selected candidate at the degree level. Therefore, giving equal marks for the degree educational qualification only for the present recruitment test was unjustified as on the earlier occasions educational qualification was considered with a different marking system only based on the percentage earned by each candidate in the final examination. He would therefore submit that the petitioner who got more than 66% marks ought to have been given higher marks whereas respondent no.4 who secured 58% marks at the Bachelor's degree level ought to have been given lesser marks.

6. Mr Frias then would submit that there was no requirement for conducting a skill test and that too, by the members of the Selection Committee who were not experts in the subject which resulted in giving arbitrary marks out of 15 marks for the skill test.

7. Mr Frias then submitted that just prior to the interview, a proforma was published on the website of Goa Medical College for allotment of marks to the candidates for the said post. Though the petitioner filed a representation on 08.02.2018 regarding the proforma used for the previous recruitment, there was no response. He would then submit that the petitioner was called and only a few questions were asked to her by the Head of the Orthopaedic Department, under the guise of a skill test and in fact no such skill test was ever conducted. At that time only two members of the Selection Committee were present, who had no experience in the subject. According to Mr Frias, there was no necessity to conduct such skill test as the petitioner was having more than 7 years of experience in the field. He, therefore, would submit that the entire selection process undertaken by respondents no.1 to 3 was arbitrary, bad in law and uncalled for. Conducting of skill test was unwarranted. The selection of respondent no.4 is, therefore, vitiated and needs to be quashed and set aside and in that place, the petitioner should be appointed.

8. Mr Deep Shirodkar, learned Additional Government Advocate appearing for respondents no.1 and 2 would submit that first of all, there is no allegation of malafide or arbitrariness against the Selection

Committee and that the petitioner was aware of the selection process including giving of marks and despite that she appeared for the interview. Therefore, only because she is now considered unsuccessful in the selection process, cannot challenge the entire process. He then would submit that the skill test was required since the job of Physiotherapy is a skilled job and, therefore, in order to assess the candidate, such a test was conducted in the presence of Selection Committee members and only thereafter, respective marks were allotted. Finally, respondent no.4 was found as successful being the candidate getting the highest marks whereas the present petitioner was at serial no. 2 and was kept on the waitlist. He then would submit that Selection Committee is bound to evolve the procedure for the evaluation of the candidates and only because on the earlier occasion the marking pattern was different, the petitioner cannot claim as of right that such marking pattern should be followed in every selection process.

9. Rival contentions fall for consideration.

10. Goa Medical College issued an advertisement dated 22.12.2017 wherein one post of Physiotherapist (regular post) was advertised which reads thus:

'Applications are hereby invited in the prescribed form with self-attested certificates, in support of information furnished, for following posts on regular basis either by post or by Hand Delivery so as to reach this office latest by 04/01/2018 by 5.00 p.m. The Prescribed Application Form is available in

the office of the Dean, GMC, Bambolim Goa and also on the GMC's website www.gmc.goa.gov.in.

Sr. No.	Name of posts	No. of posts & category		Basic pay	Education Qualification
4	Physiotherapist (Regular Post)	UR	1	Level 5 Rs.29,200/-	<u>Essential:</u> 1. Intermediate/ Higher Secondary/ Senior Cambridge with Science subjects or equivalent. 2. Diploma in Physiotherapy from a recognized Institution. 3. Knowledge of Konkani. <u>Desirable:</u> 1. Experience in Physiotherapy in a Hospital. 2. Knowledge of Marathi.

Age: Not exceeding 45 years. Relax-able for Government Servants and reserved vacancies in accordance with the instructions or orders issued by the Government from time to time.

The eligible candidates possessing the required qualification/documents as on the date of advertisement may apply on or before 04.01.2018. Incomplete applications, applications not in prescribed form and application received by post or by hand after the stipulated date shall be summarily rejected.

1) The eligible candidates will be awarded marks for

Qualifying examination, additional qualification, experience in the line. If need by the appointing authority may decide to conduct practical test/written test for FINAL SELECTION.

2) The Appointing authority reserves the right to call adequate number of meritorious candidates for verification of original documents.

3) No T.A./D.A. is admissible for attending the written test or verification of the documents.

4) Candidates already in Government service should send their application Through Proper Channel.'

At Sr. No. 1 to 4 for further details or instructions or process of selection, result etc. it is advised to review constantly updates on GMC's website at www.gmc.goa.gov.in.

*DEAN
GOA MEDICAL COLLEGE
BAMBOLIM-GOA'*

11. Accordingly, respondents received 14 applications. The candidates were called for verification of original documents and skill test on 31.01.2018 at around 2:30 PM. Only 8 candidates attended. The Departmental Selection Committee comprised of Dean as Chairman, the Professor & Head of Department of Orthopaedics, the Director(Administration), Under Secretary-II(Health) and the Lecturer in Physiotherapy(Department of Orthopaedics) was invited as a subject expert to conduct the skill test. The said Committee conducted the evaluation based on the documents produced by the candidates and also conducted skill test. The respondents on 31.01.2018 itself, informed the candidates about the marking pattern for the purpose of qualification. Educational qualification carries 50 marks. Additional qualification carries 10 marks. The experience

column shows different marking pattern as per the years of experience. For one year of experience 5 marks, 2 years of experience 10 marks, upto 3 years of experience 15 marks and above 3 years 20 marks. For extracurricular activities 5 marks and the skill test carries 15 marks, making a total of 100 marks. Thus, it is clear that before attending the verification of documents, candidates were informed of the marking pattern.

12. It is the contention of the petitioner that during the previous selection process, a different marking pattern was adopted with regard to educational qualification. Mr Costa Frias specifically submitted that it was not appropriate to grant 50 marks to each candidate though the petitioner got more than 66% marks at the degree level whereas respondent no.4 got 58 marks. He would submit that during the previous selection process for the post of Physiotherapy, educational qualification marks were given on the basis of the percentage obtained by each candidate at the degree level. However, during the present selection process, the Selection Committee failed to consider the percentage secured by the petitioner at the degree level and allotted 50 marks to all candidates who completed the degree course. According to him, this criteria was bad and arbitrary which affected the petitioner the most.

13. However, the marks given to all the candidates for the educational qualification are equal as all 8 candidates who appeared

for the selection process were found to have Bachelor's degree in Physiotherapy. Though no specific criteria were adopted by the Selection Committee, it cannot be said that only because the petitioner got a higher percentage at the degree level, she would have been given higher marks than the other candidates who got less marks. The criteria for granting marks were evaluated by the Selection Committee and it was published on the website before conducting such process. The candidates cannot claim right over the procedure adopted by the previous Selection Committee and more specifically, the marking pattern. In this matter, it is seen that all 8 candidates were having a degree in Physiotherapy as the basic qualification and, therefore, were allotted 50 out of 50 marks for the educational qualification. Since equal marks were given to all the candidates who possessed a degree in Physiotherapy and not on the basis of percentage, it cannot be said that any illegality or arbitrariness appears in the selection process.

14. At the same time we are conscious of some decisions of the Coordinate Bench commenting on the award of full marks practically to all the candidates who possessed basic minimum eligibility qualifications. By adopting this procedure, extra weightage is given to marks at interview or viva voce, even though such marks are shown as not exceeding 15%. However, in the facts of the present case, we find that no interview or viva voce as such was held by the Selection Committee. What was conducted was a skill test. The selection panel comprises medical professionals including the Head of the

Department of Orthopaedics. Besides even a subject expert was invited. Therefore, the charge of arbitrariness or illegality cannot be accepted in the facts of the present case.

15. The second contention of the petitioner is that there was no need for skill test as the petitioner was having more experience than any other candidate. It was further submitted that there was no qualified person on the Selection Committee to conduct skill test.

16. In the affidavit filed by respondents no.1 and 2 which is affirmed by Shri Dattaram Sardesai, Director (Administration) GMC, it has been specifically stated on oath that he was one of the members of the Selection Committee along with the Dean, the Head of Department & Professor of Orthopaedics Shri S. M. Bandekar, Under Secretary-II(Health) Maria de Souza as members of the Selection Committee and Ms Alisha Gracias, the Lecturer in Physiotherapy (Department of Orthopaedics), was present and invited as a subject expert.

17. Mr Deep Shirodkar then pointed out the Minutes of the Departmental Selection Committee for the selection of candidates for the post of Physiotherapy held on 31.01.2018 at GMC which discloses that Ms Alisha Gracias, Lecturer in Physiotherapy (Department of Orthopaedics) was invited as a subject expert to conduct skill test for the post of Physiotherapist. It also discloses that since the interviews have been dispensed with, marks have been

allotted for essential educational qualifications, additional qualifications, experience in the line, extracurricular activities and skill test.

18. It is no doubt true that subject expert Ms Alisha Gracias did not sign the Minutes and rightly so since she was not a member of the Selection Committee. However, it is at least expected that when such an expert is called for the purpose of skill test, she should prepare her own assessment of the candidate while conducting skill test and such report is appended to the Minutes of the meeting so as to consider assessment carried out by the expert and the marks given for the skill test. The affidavit filed by respondents no.1 and 2 nowhere discloses that such subject expert evaluated the candidates and prepared any report. The Minutes though mention the presence of subject expert, did not elaborate as to how the subject expert evaluated the candidates whilst conducting skill test.

19. We do not accept the contention raised by the learned counsel for the petitioner that whilst conducting such skill test, only 2 members of the Committee were present and no subject expert was present. The affidavit filed by respondent no.1 and 2 clearly show, and that too on oath, that skill test was conducted and a subject expert was also present. However, we must record our displeasure about the non-attachment of any report of such a subject expert while conducting skill test. The purpose of calling a subject expert at the

time of skill test is to evaluate the candidates on the said subject. The expert must give their opinion on the skill test in writing so that it would remain on record. In the present matter, the Minutes of the Selection Committee certainly lack such a report of the subject expert. The signature of the subject expert was not obtained on the Minutes of the proceedings. Therefore, it is necessary for the Selection Committee which is taking the help of the subject expert to keep a record of the assessment carried out by such a subject expert. Though in the present matter, we do not find any such report of the subject expert, we are not inclined to accept the contention of the petitioner that no such skill test was ever necessary. The job of a physiotherapist is specialised and, therefore, even though the petitioner was having sufficient experience, while considering her candidature for a regular post, it was necessary for the Selection Committee to evaluate such candidates by conducting skill test.

20. We expect that in future the Selection Committee shall maintain a full record and that too, in writing, of the subject expert who is called upon at the time of skill test, to assess such selection process, if challenged.

21. The contention of the petitioner is that since she was having experience of more than 7 years, she should have been given higher marks for the experience, it is necessary to note that the department issued the criteria for giving marks and that the proforma prepared by the selection committee show that the petitioner got 20 out of 20

marks for her experience whereas respondent no.4 got 15 marks. These marks were allotted on the basis of the procedure which was adopted and declared much prior to the verification of documents and skill test. There is no illegality or arbitrariness found as claimed by the petitioner.

22. The only difference is found while giving marks out of 15 for skill test. Respondent no.4 got 12 marks during the skill test whereas the petitioner got 8 marks. Though there is no record of the subject expert, these marks have been allotted by the Selection Committee only after conducting skill test. The contention of the petitioner that only a few questions were asked to her by Dr Bandekar would not vitiate the process as asking some questions during skill test, specifically on the said subject, is not at all barred. The purpose of conducting skill test is to find out the knowledge of the candidate on the said subject. Physiotherapy is a specialised branch and it is mostly acquired in the department of Orthopaedics, therefore, it cannot be said that Dr Bandekar who was a Professor & Head of the Department of Orthopaedics had no knowledge of the said subject. Thus, it is quite difficult to accept the contention of the petitioner on all the above grounds.

23. We are not convinced with the grounds raised in the present petition challenging the selection process. The petition, therefore, deserves to be rejected.

24. The petition stands rejected.

25. Parties shall bear their own costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J

MARIA SUZANA
REBELLO

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