

Jose

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.612 OF 2015

1. Mrs. Payal Baadkar,
Major, resident of House No. 168/3,
Sushma Niwas, (Ward No. 2),
Nagwaddo, Betalbatim,
Salcete – Goa.

2. Mrs. Fransquinha Fernandes,
Age 30 years,
Resident of House no. 105,
Anuz, Nuvem,
Salcete – Goa.

3. Mrs. Luiza Ferrao e Gracias,
Major, resident of House no. 789/B,
Monte, Loutolim,
Salcete – Goa.

4. Miss. Soneya Jaycee Borges,
Major, resident of House no. 97/B,
Karbhat, Nuvem, Salcete – Goa.

5. Mrs. Clemy Belinda Rodrigues e Quadros
Major, resident of H No. 39/E,
Belloy, Nuvem, Salcete-Goa.

6. Mrs. Rowena Cyntnia Fernandes,
Major, resident of T-5, Mai-mollem,
Mongor, Vasco-da-gama – Goa.

... Petitioners.

Versus

1. State of Goa,
Through Chief Secretary,
With his office at the Secretariat Complex,
Porvorim, Bardez – Goa.

2. Goa State Pollution Control Board,
With its office at EDC Complex,
Patto Plaza, Panaji-Goa.
Represented by its Member-Secretary.

3. The Chairman,
Goa State Pollution Control Board,
Having office at EDC Complex,
Patto Plaza, Panaji-Goa.

... Respondents.

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

**Mr Pravin Faldessai, Additional Government Advocate for
Respondent No.1.**

Mr Joaquim Godinho, Advocate for Respondent Nos.2 and 3.

CORAM:

**PRAKASH D. NAIK &
BHARAT P. DESHPANDE, JJ.**

RESERVED ON:

08 September, 2023

PRONOUNCED ON:

29 September, 2023

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

1. In all, six Petitioners preferred present petition, aggrieved by their orders of termination from service dated 27.11.2014 claiming that such orders are bad in law, illegal and without following the due process of law. Similarly, the Petitioners are also challenging the decision of Respondent No.2, dated 19.08.2014 to abolish the posts against which Petitioners were employed, on the ground that such abolition is with mala fide intention only to prevent the Petitioners from reinstatement in case the petition is allowed.

2. Heard learned Senior Advocate Mr S.D. Lotlikar appearing with Ms Sailee Kenny for the Petitioners, Mr Pravin Faldessai, learned Additional Government Advocate for Respondent No.1 and learned Advocate Mr Joaquim Godinho for Respondent Nos.2 and 3.

Factual Matrix

3. In nutshell, it is the contention of Petitioners that Respondent No.2 i.e. Goa State Pollution Control Board (GSPCB) issued advertisement dated 30.08.2011 inviting applications for direct recruitment to various posts. Names of the Petitioners were sponsored to the posts of Scientific Assistant, Senior Laboratory Assistant and Junior Laboratory Assistant in GSPCB through local Employment Exchange. The Petitioners were summoned for oral interview in the month of October, 2011. During the oral interview, Petitioners produced copies of all their educational documents, certificates, experience certificates and documents regarding extracurricular activities.

4. The Departmental Selection Committee of GSPCB after considering the documents of the Petitioners and holding oral interviews found suitable and accordingly selected the Petitioners for their respective posts. Different selection committees were constituted for different posts. The selection committee for the post of Scientific Assistant (Chemistry) consists of 6 members, the selection committee for the post of Senior Laboratory Assistant consists of 4 members and the selection committee for Junior Laboratory Assistant consists of 4 members. Petitioners were selected for the posts by the Departmental Selection Committee of GSPCB as follows:-

Petitioner No. and Name		Post
Petitioner No.1	Payal Baadkar	Scientific Assistant
Petitioner No.2	Fransquinha Fernandes	Senior Laboratory Assistant
Petitioner No.3	Luisa Ferrao e Gracias	Senior Laboratory Assistant
Petitioner No.4	Soneya Jaycee Borges	Senior Laboratory Assistant
Petitioner No.5	Clemy Belinda Rodrigues e Quadros	Junior Laboratory Assistant
Petitioner No.6	Rowena Cynthia Fernandes	Junior Laboratory Assistant

5. A memorandum dated 13.12.2011 shows that Petitioners were given an offer of appointment to the posts for which they were selected. All the Petitioners accepted the offer of appointment and accordingly,

GSPCB issued appointment order. All the Petitioners joined their duties on or about 23.03.2011.

6. One of the candidates who applied for various posts and was not selected by GSPCB, filed writ petition before this Court bearing Writ Petition No.707/2012 thereby challenging appointment of various candidates including that of Petitioner No.1. The Petitioner Nos. 2 to 6 were not made parties to the said petition and their appointments to the respective posts were not challenged in the said writ petition. Writ Petition No.707/2012 came up for hearing before this Court on 09.10.2012 wherein notices were issued to all the Respondents. On the returnable date i.e. 30.10.2012, when the said matter came up before this Court, learned Advocate General appearing for the State of Goa and GSPCB made a statement that the State and the Board decided to investigate the complaint received by the said Petitioner about the irregularities or illegalities in the appointments. Accordingly, the said matter was adjourned. When the matter was further taken up on 04.03.2023, again the statement made on behalf of the learned Advocate General that the Vigilance Committee submitted its report and accordingly, show-cause notices have been issued to all the selected candidates. In view of such submission on behalf of the learned Advocate General, the said Writ Petition No.707/2012 filed by Ms Sahyadri S. Sinari was disposed of reserving the right to the Petitioner to approach the Court, if found necessary.

7. It so happened that GSPCB appointed Mr D.M. Borkar, Retired Joint Secretary (Personnel), Government of Goa as the Inquiry Officer to

inquire into the allegations made by Ms Sahyadri S. Sinari regarding illegalities, irregularities and manipulations in the appointments made by GSPCB in the year 2012 to the post of Scientific Assistant, Senior Laboratory Assistant and Junior Laboratory Assistant. An order was passed by GSPCB on 19.11.2012 appointing Mr D.M. Borkar, Retired Joint Secretary as Inquiry Officer. In the said appointment order, the terms of reference were mentioned regarding scope of inquiry. Similarly, one Professor Jamie Afonso was appointed as an expert in the field vide order dated 25.01.2013 for assessing documents and certificates produced by the candidates. The Inquiry Officer after conducting the so-called inquiry and more particularly without giving opportunity to the Petitioners and other selected candidates, found that there were some irregularities in the process conducted by Departmental Selection Committee who granted extra marks to the Petitioners though they were not entitled to. The inquiry officer after deducting the so-called extra marks given by Departmental Selection Committee, found that the Petitioners were not eligible to be placed in the select list and accordingly observed that the placement of the Petitioners in the merit list was erroneous.

8. The Petitioners were working on their respective posts with GSPCB, however, on the basis of so-called inquiry report submitted by Mr D.M Borkar, show-cause notices were issued to the Petitioners directing them to appear before the Member Secretary of GSPCB on 09.03.2013 and to submit their say as to why their services to the respective posts should not be terminated. The show-cause notices

disclosed that Mr D.M. Borkar, the inquiry officer inquired into the allegations and found irregularities in giving specific marks and that such report has been accepted by the Board and accordingly, the entire process of the selection stands vitiated.

9. The Petitioners filed individual replies to the show-cause notices. All the Petitioners objected to such report which was submitted without giving any opportunity to the Petitioners. However, the GSPCB vide notice of termination dated 03.07.2013, terminated the services of the Petitioners by rejecting their replies. Being aggrieved by such termination of services, that too after a period of about six months from the date of their appointments, each of the Petitioners filed writ petitions before this Court thereby challenging such termination orders. The GSPCB appeared and filed affidavit in reply. In all, nine petitions were filed including the Petitioner's. All such petitions were disposed of by this Court by common Judgment dated 17.09.2013. The said petitions were allowed partly thereby quashing and setting aside termination order dated 03.07.2013. Though termination orders were quashed and set aside, this Court did not direct reinstatement of the Petitioners since the State Government came up with a specific case that the posts on which Petitioners were appointed, are already abolished and thus, it was not possible for this Court to direct reinstatement. However, directions were given to GSPCB to give an opportunity to the Petitioners and hear them within a period of six weeks and thereafter to take suitable decision.

10. Pursuant to the said order passed by this Court dated 17.09.2013, Chairman of GSPCB issued letter dated 08.10.2014 asking the Petitioners

to remain present before him on 18.10.2014 and to submit their say. Accordingly, all the Petitioners submitted their written submissions raising various contentions against the show-cause notices.

11. The Chairman of GSPCB vide separate orders having same date i.e. 27.11.2014, terminated services of each of the Petitioners with retrospective effect i.e. from 03.07.2013 holding thereby that the replies filed by the Petitioners are not having any merit. Thus, the Petitioners aggrieved by their termination dated 27.11.2014 with retrospective effect from 03.07.2013 and abolishment of the said posts by the Board, preferred present petition praying to quash and set aside the termination orders dated 27.11.2014 and also the order dated 19.08.2014 thereby abolishing all the said posts. The consequential prayer is to reinstate the Petitioners to their respective posts with all consequential benefits including arrears of salary from 03.07.2013 till the actual date of reinstatement.

12. A detailed reply has been filed on behalf of the Board through the Member Secretary opposing the petition on various grounds.

Submissions of Petitioners

13. The learned Senior Counsel Mr Lotlikar raised various aspects thereby challenging the decision-making process, the conduct of the GSPCB and the illegalities with regard to termination of services and abolition of posts. First of all, Mr Lotlikar would submit that all the Petitioners were appointed on the basis of recommendations made by the Departmental Selection Committee of GSPCB. There is no challenge

raised to the procedure adopted by the Departmental Selection Committee of GSPCB. He would further submit that the complaint filed by Ms Sinari coupled with Writ Petition No.707/2012 would not affect the appointments made by GSPCB by following all the procedural aspects. He submits that except Petitioner No.1, the other Petitioners were not even parties to the petition filed by Ms Sinari. He then submitted that the statement made by the learned Advocate General in that petition was accepted stating that Government and GSPCB decided to conduct an inquiry into the irregularities in the selection process. However, Mr Lotlikar strongly contended that the report of the Inquiry Officer who was an ex-Government employee could not have been accepted by the Board without giving any opportunity to the Petitioners. The said Inquiry Officer did not call the Petitioners at the time of inquiry and no opportunity was given to them to respond to the allegation of irregularities. Such inquiry was conducted behind the back of the Petitioners.

14. Mr Lotlikar would then submit that there is no document placed on record by GSPCB to show that the report of Mr D.M. Borkar, the Inquiry Officer, was accepted by the Board either in toto or in part. Since there is no such document or minutes of the meeting of the Board thereby accepting the report of the Inquiry Officer, entire action on the part of the Board based upon such inquiry report stands vitiated.

15. Mr Lotlikar would submit that earlier petitions filed by the Petitioners challenging their termination were partly allowed wherein this Court found that the action on the part of GSPCB was totally illegal,

arbitrary and without following the principles of natural justice. Once such termination orders were quashed and set aside, the Petitioners were considered to be the employees of GSPCB. Though a statement was made in those petitions on behalf of GSPCB and the Government that the posts on which Petitioners were working, were abolished, this Court instead of reinstating the Petitioners, directed the GSPCB to grant opportunity to the Petitioners and thereafter to take decision.

16. Mr Lotlikar then would attack the show-cause notices issued by GSPCB separately on the ground that the contents of such notice would clearly go to show that it was only a farce as such show-cause notices disclose about the Board accepting the report of the Inquiry Officer. Hence, according to Mr. Lotlikar, nothing remains to be explained by the Petitioners to the show-cause notices. He, therefore, submits that second show-cause notices were in fact vitiated for non-compliance of principles of natural justice. He then claimed that such show-cause notices were even not issued by the Member Secretary.

17. Mr Lotlikar would then submit that termination of the services of the Petitioners with retrospective effect is again wholly illegal. The action on the part of Board is, therefore, arbitrary and needs to be quashed and set aside.

18. Mr Lotlikar would then submit that the reasonings of Mr Borkar the Inquiry Officer in deducting some marks given by the selection committee is also arbitrary and unacceptable. In this respect, he pointed out that the criteria for eligibility is clearly shown in the advertisement itself wherein the minimum qualification for the post of Scientific

Assistant is specifically recorded and accordingly, the Departmental Selection Committee rightly granted relevant marks. He would submit that the Inquiry Officer cannot question the process adopted by the Departmental Selection Committee and that too, by his own assessment. He further submitted that the Inquiry Officer did not record the statement of the Departmental Selection Committee thereby giving opportunity to them to explain about the marking pattern adopted by them for the purpose of experience, extracurricular activities, etc.

19. Mr Lotlikar would then submit that the report of the Inquiry Officer would clearly reveal that the entire process of selection was vitiated. The Inquiry Officer suggested for re-advertisement by scrapping the entire process. However, the GSPCB without discussing about the said report or accepting it either in toto or in part, decided to terminate the services of the Petitioners only and thereafter, to abolish the said posts which is colourful exercise with mala fides and hence, even the abolition of such posts needs to be interfered. Finally, he claimed that there is inconsistency in the stand of GSPCB thereby terminating the services of only the Petitioners and allowing others to continue to work though they were selected by the same process.

20. Mr Lotlikar placed reliance on the following decisions:-

- i. *Oryx Fisheries Private Limited; (2010) 13 SCC 427*, and
- ii. *Union of India and Anr vs. Malti Sharma; (2006) 9 SCC 262*.

Submissions of Respondents

21. Per contra, learned Counsel Mr Joaquim Godinho appearing for Respondent Nos.2 and 3 strongly contended that the Petitioners were not eligible to be selected in the respective posts. He claimed that extra marks without any justification or documents were given to the Petitioners by the Departmental Selection Committee though they were not entitled to such extra marks. Due to such extra marks, the Petitioners were placed in the select list. According to him, the Petitioners were not otherwise entitled to be included in the select list.

22. Mr Godinho would then submit that in view of complaint by Ms Sinari and the statement made by the learned Advocate General in Writ Petition No.707/2012, it was decided to appoint an Inquiry Officer to look into the allegations made by Ms Sinari and the irregularities, if any, committed by the Departmental Selection Committee in preparing the select list. Accordingly, Mr D.M. Borkar, Retired Government Officer was appointed by GSPCB who after conducting a detailed inquiry, submitted his report. Mr Godinho would submit that the report of Mr Borkar clearly goes to show that extra marks were given to the Petitioners and if those extra marks are removed, they will not find a place in the select list. Accordingly, the Board accepted the report of Mr Borkar and granted power to the Chairman to take decision. Accordingly, Chairman issued show-cause notices to the Petitioners and after giving them opportunity, the orders of termination were issued.

23. Mr Godinho would then submit that the Board took a decision to abolish various posts including the post on which Petitioners were working. Such decision was taken on observing that such posts were

excess posts and that there was no such work available. He submits that there is no mala fide attempt or colourful exercise on the part of GSPCB while abolishing such posts. The decision was taken to save funds of the exchequer from being wasted. He then submitted that the orders of termination clearly go to show that opportunities were given to the Petitioners who worked only for six months and that too on probation and therefore, no interference is necessary.

24. Learned Additional Government Advocate Mr Faldessai supported the contention raised by the learned Counsel for the Board. Mr Godinho placed reliance on the following decisions:-

- i. *Sachin Kumar and Ors vs. Delhi Subordinate Service Selection Board*; (2021) 4 SCC 631,
- ii. *Zahoor Ahmad Rather and Ors vs. Sheikh Imtiyaz Ahmad and Ors*; (2019) 2 SCC 404, and
- iii. *State of Haryana and Ors. vs. Navneet Verma*; (2008) 2 SCC 65.

Contentions to be decided

25. Rival contentions fall for our consideration.

26. First of all, we have to deal with the termination orders issued by the Board giving them retrospective effect and whether such termination could be considered as valid or legal. Similarly, we have to consider whether proper opportunity was given to the Petitioners to show cause against the proposed action of the Board.

27. The second aspect which we have to consider is whether the action of the Board in abolishing the posts on which the Petitioners were appointed is mala fide and in colourful exercise of the powers.

Whether termination of the Petitioners could be considered as legal:-

28. While giving the history, it has been already pointed out that the Petitioners were referred by the Employment Exchange in response to advertisement dated 30.08.2011 issued by GSPCB. The Respondent in their affidavit admitted about issuance of such advertisement. Similarly, it is admitted that the Petitioners along with others responded to such advertisement vide their application dated 31.08.2011. The Departmental Selection Committee (DSC) then called the candidates for the purpose of interview and assessment of documents.

29. The reply affidavit filed by Member Secretary of GSPCB discloses in para 6 that the DSC assessed the candidates based on documents and during interview on the following criteria:-

- i. Essential educational qualifications (45/50 marks)
- ii. Higher educational qualifications (10/05 marks)
- iii. Computer proficiency (5 marks max)
- iv. Relevant experience (15 marks based on the length of experience)
- v. Extra curricular activity, State/ National level participation (10 marks max)
- vi. Oral interview (15 marks max).

30. On the basis of above evaluation, the DSC prepared a select list wherein all the Petitioners appeared as successful candidates for the respective posts. Accordingly, appointment letters were issued for the posts of Scientific Assistant, Senior Laboratory Assistant and Junior Laboratory Assistant.

31. It is also not disputed that the Petitioners were appointed on temporary basis and on probation for a period of two years vide orders dated 23.12.2011.

32. The reply affidavit of Respondent/Board shows that somewhere in the month of August, 2012 i.e. after a period of eight months from the date of appointment of the Petitioners, one Ms Sinari lodged her complaint claiming that there were illegalities, irregularities and manipulations in the selection process. Since the Board did not consider her complaint, Ms Sinari filed a Writ Petition No.707/2012 before this Court thereby challenging the selection process. The Board then took decision to investigate into the complaints of Ms Sinari and accordingly informed this Court in the Writ Petition No.707/2012. The reply affidavit further shows that on 19.11.2012, Mr D.M. Borkar, Retired Joint Secretary was appointed as Inquiry Officer to look into the allegations made by Ms Sinari. The terms of reference for the said inquiry are as under:-

- i. To inquire into veracity of allegations of Ms Sahyadri S. Sinari, regarding illegalities, irregularities and manipulations in the appointments made by the Board in the year 2011, to the post of Scientific Assistants, Senior Laboratory Assistants and Junior

Laboratory Assistants particularly as contained in her complaints dated 01.08.2012 and 11.08.2012.

- ii. To submit a factual and point wise assessment regarding the process of selection, recruitment and appointment made by the Board in the year 2011, to the posts of Scientific Assistants, Senior Laboratory Assistants and Junior Laboratory Assistants.
- iii. To submit detailed and reasoned recommendations as to the further course of action to be adopted by the Board, in the light of findings of the commission at point no.2.

33. Inquiry Officer Mr D.M. Borkar submitted his detailed report dated 14.02.2013 wherein he observed with regard to the terms of reference No.1 that some candidates were bestowed marks without production of requisite documents, without verification whether they possessed required relevant experience in the line/field for the post, whether the course prescribed is of requisite duration, whether they are entitled for due marks based on the length of experience fixed by the DSC. He found that 12 candidates listed under para 11 would have not got placement in the select list if there was no manipulation of marks. Accordingly, he found that allegations of Ms Sinari were found to be correct. He, therefore, opined that it appears that the process of appointment of posts of Scientific Assistant (Chemistry) and Scientific Assistant (Stack Monitoring) was completed hurriedly within two days just to avoid likely imposition of ban on appointments consequent on

enforcement of Model Code of Conduct. Finally, he opined regarding reference point No.1 that the process of selection is vitiated.

34. The Inquiry Officer Mr Borkar observed with regard to the terms of reference No.2 that he cannot step into the shoes of DSC, however, what could have been factual assessment of candidates in the process of selection has been worked out and indicated by him in Annexure VIII and XII which gives indication of merit of candidates according to which out of 35 candidates recommended for selection and appointed to respective posts by the Board, 12 candidates are not getting placement in the select list. He referred names of those appointees in para 11. According to him, the manipulation of marks in the selection process gave colour to irregularity and illegality and accordingly, injustice was caused to other candidates.

35. The Inquiry Officer Mr D.M. Borkar then answered the terms of reference No.3 by clearly observing that the selection process in respect of the posts is vitiated as observed by him in para 10 of his report and while giving findings with regard to the terms of reference Nos.1 and 2. He further observed that meritorious candidates could not get selected as DSC has not followed its own yardstick and arbitrarily awarded marks to the candidates thereby making gross injustice to other candidates. He advised the GSPCB to consider to re-advertise the posts and the selection could be based on written tests together with computer proficiency and interview.

36. We will deal with these findings later on in order to consider whether the Inquiry Officer correctly formed opinion with regard to grant

of marks since Mr Godinho, learned Counsel for the Board heavily relied upon such observations and claimed that the Petitioners were not entitled for the extra marks which the Inquiry Officer has observed.

37. First of all, we have to consider whether the termination of the Petitioners could be considered as legal. In this respect, and as already observed earlier, that the report of the Inquiry Officer was submitted by him to the GSPCB which is a Board. The record shows and more specifically the minutes of 106th meeting of GSPCB held on 11.02.2013 refers to Agenda Item No.6 wherein it has been pointed out that the Inquiry Officer Mr D.M. Borkar would be submitting his report to the Chairman shortly. Accordingly, the Board resolved that a special meeting of the Board be called to discuss the report prepared and submitted by D.M. Borkar for an appropriate decision in the matter.

38. Accordingly, Board called a special meeting on 15.02.2013. The minutes of the 107th meeting (special meeting) show that the Chairman informed the Board that subsequent to their decision in 106th meeting, the report from the Inquiry Officer Mr D.M. Borkar was received and accordingly the special meeting was called to discuss the issues regarding selection of appointments to the posts of Scientific Assistant, Senior Laboratory Assistant and Junior Laboratory Assistant. The report of the Inquiry Officer was placed before the Board. The Board then resolved as under:-

“The Chairman placed before the members, the said Report of Inquiry Officer which he said was a detailed and exhaustive assessment of the process of selection and appointment carried out by the Board in respect of aforesaid posts. He also stated that the

Inquiry Officer had submitted his findings and conclusions in this regard.”

39. The members deliberated at length the issue of appointments made in the Board as reported by the Inquiry Officer and resolved that, *“The Chairman discuss the report of the Inquiry Officer in detail with the Counsel of the Board, Ld. Advocate A.N.S. Nadkarni. Further, resolved that Chairman is authorized to decide on the present matter taking into account the views and advice given by the Counsel of the Board, Ld. Advocate A.N.S. Nadkarni”.*

40. Thus, in the special meeting of the Board, the decision was only that the Chairman shall discuss the report of the Inquiry Officer with the Advocate of the Board and then the Chairman is authorized to decide on the matter considering the views and advice of the Advocate.

41. Admittedly, the Board did not consider either to accept or reject the report of the Inquiry Officer partly or wholly as the case may be. The only resolution passed is directing the Chairman to discuss about the report with the Counsel of the Board and then the Chairman was authorized to decide.

42. We asked learned Counsel Mr Godinho appearing for the Board repeatedly to produce any documents to show what decision was taken by the Chairman after consultation with the learned Advocate of the Board. The special meeting resolved to give powers to the Chairman to take decision after consulting with their Advocate. Therefore, the Chairman was supposed to take decision whether to accept the entire report or any para or to reject it as the case may be. No document was placed before us

in connection with any decision taken by the Chairman on the basis of powers given to him by the Board in its special meeting.

43. The Board in its next meeting titled as 108th meeting held on 10.06.2013 and while confirming the resolutions passed in the special meeting dated 15.02.2013, observed in Agenda Item No.3 as under:-

“Agenda Item No.3

Follow up action on the decision taken at the 107th meeting (Special meeting) of the Board.

Chairman informed the members that as decided in the 107th meeting (Special meeting), opinion of the Ld. Advocate of the Board was obtained on the Report submitted by the Inquiry Officer appointed by Board. Accordingly, show cause notices were issued to the Scientific Assistants, Senior Laboratory Assistant and Junior Laboratory Assistants appointed by the Board, as referred to in the report. The replies to the show cause notices were received from the officials.

Chairman informed the members that the Member Secretary had put up his comments on the report of the Inquiry Officer, Shri D.M. Borkar, and after studying the replies to the show cause notice submitted by the employees, he arrived at a decision that eleven employees out of the twelve pointed out by Shri D.M. Borkar were allotted marks which were not consistent with the scheme of marking laid down by the Departmental Selection Committee. It was further informed that Chairman recommended that since these eleven staff members were not appointed in accordance with laid down procedure, their appointments be terminated.

Chairman further informed that necessary orders to this effect would be issued shortly.”

44. Plain reading of the above resolution in 108th meeting would go to show that the Chairman only referred that opinion of the Counsel of the

Board was received and accordingly, show-cause notices were issued to the appointed candidates. Even their replies were received and since the Chairman found that the said candidates were given more marks which were inconsistent with the scheme laid down by DPC, their services need to be terminated.

45. It is surprising to observe that the Board nowhere accepted the report of the Inquiry Officer either in toto or in part, in their 107th meeting (Special meeting) but the Chairman was asked to consult the learned Advocate of the Board and thereafter to decide on the said matter. Therefore, in the next meeting i.e. 108th meeting, it was incumbent upon the Chairman to first of all inform the Board about his own decision after consulting the learned Advocate of the Board in connection with report of Mr D.M. Borkar i.e. whether the Chairman accepted or rejected such report. The minutes of 108th meeting nowhere show any decision taken by the Chairman after consulting the learned Advocate of the Board. However, it only refers that upon consultation with the learned Advocate of the Board, he decided to issue show-cause notices to the Petitioners or the persons appointed on the posts of Scientific Assistant, Senior Laboratory Assistant and Junior Laboratory Assistant, as referred in the report of Mr Borkar. The remaining contents of the said resolution nowhere shows as to what decision was taken by the Chairman with regard to acceptance or rejection of the said report.

46. Thus, one thing is clear that first of all, the Inquiry Officer was appointed by the Board with a specific reference. He was supposed to handover the report to the Board itself. A per the procedure of the Board,

any decision needs to be approved by the Board. No doubt the Board may delegate such power to its Chairman, which is found in the special meeting held on 15.02.2013. However, the Chairman though empowered by the Board to take such decision, must report back to the Board in its next meeting which the Board has to approve.

47. Learned Counsel Mr Godinho candidly submitted that apart from the decisions taken in 106th, 107th and 108th meetings, there is no other document or record to show that either the Board or the Chairman accepted the findings of the Inquiry Officer Mr D.M. Borkar as found mentioned in his report. Thus, the action of the Board in issuing show-cause notices to the Petitioner itself stands vitiated.

48. It is admitted fact that these show-cause notices dated 01.03.2013 issued by the Petitioners directing them to appear before the Member Secretary of GSPCB on 09.03.2013 is produced at Exhibit "I colly". The contents of this notice are again having relevance since the copy of report of Inquiry Officer was enclosed with such show-cause notice. However, these show-cause notices dated 01.03.2013 itself refer to the acceptance of the report of Inquiry Officer by the Board in its 106th meeting dated 11.02.2013 and at its 107th special meeting held on 15.02.2013.

49. We have already observed in detail that the resolution passed by the Board in its 106th meeting nowhere refers to the Board accepting the report. The Board only empowered the Chairman to discuss with the learned Advocate of the Board and then to take decision as advised. The minutes of 107th (Special meeting) again nowhere discloses about any decision taken by the Chairman on the advice of the learned Advocate of

the Board, specifically with regard to acceptance of the report of Mr Borkar.

50. Mr Lotlikar was justified in submitting that the show-cause notice dated 01.03.2013 clearly shows that the Member Secretary issued such show-cause notices wherein it was clearly observed that the report of the Inquiry Officer indicates that the selection process for the post of Scientific Assistant, Senior Laboratory Assistant and Junior Laboratory Assistant are vitiated.

51. In this respect, the Supreme Court in *Oryx Fisheries Private Limited* (supra), observed that when the show-cause notice shows that the Board has completely made up its mind and reached at a definite conclusion about the alleged irregularities/ illegalities, it renders subsequent proceedings as empty ritual and an idle formality. It was further observed that the authorities in exercise of its statutory powers must act fairly and must act with an open mind while initiating show-cause proceedings. A show-cause proceedings is made to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. A reasonable opportunity is to deny the allegations and establish his innocence, which he or she can only do if he is told what the charges levelled against him are and the allegations on which such charges are based. It is obvious that at such stage, the authority issuing show-cause cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If this is done, the entire proceedings initiated by show-cause notice gets vitiated by unfairness and bias and subsequent proceedings become

an idle ceremony. While reading the show-cause notice, the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show-cause notice and prove his innocence. If on a reasonable reading of the show-cause notice, the person of ordinary prudence gets the feeling that his reply to show-cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudiced opinion, such show-cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceedings under statutory regulations which promises to give the person proceeded against a reasonable opportunity of defence. The authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specifically when he has the power to take a punitive step against the person after giving him the show-cause notice. The principle that justice must not only be done but it must imminently appear to be done as well is equally applicable so that the proceedings must inspire confidence in the mind and those who are subject to it. The above observations of the Supreme Court are squarely applicable to the show-cause notice dated 01.03.2013 issued to the Petitioners in the present matter.

52. We are referring to these show-cause notices dated 01.03.2013 even though the same resulted in issuing termination notices to the Petitioners dated 03.07.2013.

53. All the Petitioners challenged their termination separately before this Court. In all, nine petitions were filed bearing Writ Petition Nos.583,

595, 596, 597, 598, 599, 600, 610 and 618 of 2013. All the above petitions were decided by common order dated 17.09.2013. The observations of this Court from para Nos.7 to 13 are quoted for ready reference:-

“7. After hearing the respective Senior Counsel, we find that the finding of facts in the present matter leading to a conclusion that the recruitment process is vitiated because the Petitioners have been given marks under the heads to which they were not entitled to, has been reached by Inquiry Officer and at that stage, Petitioners were not extended any opportunity. His report was accepted by the employer Board and even at that stage, the Petitioners were not given any opportunity. After acceptance of report, Board has found that as selection of Petitioners is vitiated, further action is necessary and authorised the Chairman to look into it. Accordingly, show cause notices came to be issued on 01.03.2013.

8. In the show cause notice, the Member Secretary who has signed it on behalf of Board has mentioned that the Board has decided to issue to the Petitioners show cause notice as to why his/her services with the Board should not be terminated in the light of the fact that process of selection is vitiated.

9. Petitioners have thereafter taken various defences. One of the defence raised by the Petitioner in Writ Petition no. 583 of 2013 is mentioned by us supra. That defence does not find any evaluation in the impugned Order dated 03.07.2013. The impugned Order also does not show that it is approved by either Board or Chairman. The Resolution of Board specifically authorises the Chairman to take suitable action. Thus, if decision and action was to be taken by the Chairman, the Chairman should have heard the Petitioners.

10. In this situation, when the Petitioners are getting opportunity only after receipt of show cause notice, we find that it was obligatory for the Chairman in the light of obligations cast upon him by the Board to extend an opportunity of hearing to the Petitioners and

then to reach the necessary decision. That obviously has not been done in the present matter.

11. The Petitioners have also attempted to show that the marks under disputed heads are disapproved only in their case. Shri Lotlikar, learned Senior Counsel submits that the Inquiry Officer during the inquiry, has practically sat in appeal over the selecting authority and exercise undertaken by it. We do not wish to go into this controversy at this stage. We find that the authority authorized to take final decision and pass consequential Order has not extended opportunity of hearing to the Petitioners. Hence, only on said ground, we set aside the Order dated 03.07.2013.

12. However, here, as State Government has come up with specific case that posts are already abolished, it is not possible to this Court, in this matter to grant reinstatement. We direct the Respondent no. 2 to proceed to hear the respective Petitioners within a period of six weeks from today and take suitable decision on their grievance within further four weeks.

13. With these directions and keeping all the contentions open, we dispose of the Writ Petitions. No costs.”

54. The above observations clearly goes to show that this Court allowed the petitions by setting aside the termination order dated 03.07.2013 on the ground that the impugned order nowhere shows that it was approved either by the Board or the Chairman. Similarly, it was further observed by this Court in para 9 that the resolution of Board specifically authorises the Chairman to take suitable action. If the decision and action was to be taken by the Chairman, the Chairman should have heard the Petitioners. It then refers that the Court found that there is no need to go into other aspects since it was found that before

passing termination orders, opportunity of hearing was not extended to the Petitioners.

55. Though this Court in the earlier petitions quashed and set aside the termination orders dated 03.07.2013, no reinstatement was ordered since, at this stage, the Government informed that the posts on which the Petitioners were working, were already abolished. Accordingly, this Court directed the Respondent/Board to proceed to hear the Petitioners within a period of six weeks and take suitable decision on their grievances.

56. In view of the above specific observation of this Court in the earlier petitions and directions to hear the Petitioners and take suitable decisions on their grievances, the Board issued notices to the Petitioners on 08.10.2014 requiring the Petitioners to remain present before the Chairman of GSPCB on 18.10.2014 for personal hearing in order to submit their say in terms of the directions of this Court vide order dated 17.09.2013. The Petitioners were also directed to submit their written submissions, if so desired, in the matter on or before 16.10.2014.

57. Accordingly, the Petitioners appeared before the Board and also submitted their written submissions on 16.10.2014 thereby raising all defences with regard to the report of the Inquiry Officer, the action of the Board and reply to the show-cause notices.

58. The written submissions filed by the Petitioners also challenges the decision of the Board and the Government to abolish the posts as mala fide attempt to keep the Petitioners away from the employment.

59. It appears that after hearing the Petitioners and considering their written submissions, the Chairman of GSPCB vide its order dated 27.11.2014 found that the appointment of the Petitioners in GSPCB is found to be illegal and accordingly, the selection of the Petitioners stand annulled and their services were terminated with effect from 03.07.2013. This shows that though earlier order of termination dated 03.07.2013 was quashed and set aside by this Court with directions to hear the Petitioners and consider their grievances, the Chairman found it fit to terminate the services with retrospective effect by the impugned order dated 27.11.2014.

60. In the said order dated 27.11.2014, and at issue No.1, the Chairman also tried to justify abolishing of the said posts.

61. Show-cause notices issued to the Petitioners dated 01.03.2013 are the same on which the Chairman considered reply and decided to terminate their services. Therefore, the show-cause notice dated 01.03.2013 and which we have referred earlier clearly goes to show that the Board or the Chairman considered it as proper show-cause notice and accordingly, no fresh show-cause notice was issued to the Petitioners after the order of this Court in the bunch of Writ Petitions filed by the Petitioners and decided vide order dated 17.09.2013. In this respect, the contents of the show-cause notice dated 01.03.2013 which was admittedly issued by the Member Secretary clearly observe that the Board on receipt of inquiry report from D.M. Borkar, accepted it and observed that the selection process for the appointments to the posts of Scientific

Assistant, Senior Laboratory Assistant and Junior Laboratory Assistant stands vitiated.

62. As we have already observed earlier that the Board nowhere in its 106th, 107th and 108th meeting resolved to accept the report of the Inquiry Officer dated 14.02.2013 but only resolved to instruct its Chairman to take legal opinion from the learned Advocate of the Board and then take appropriate decision. No document is placed on record to show that Chairman in view of such resolution, and on the advice of the learned Advocate of the Board, took any decision. Such a decision taken by the Chairman was even not placed before the Board for approval. Hence, the contents of the show-cause notice dated 01.03.2013 are not supported by the decisions of the Board.

63. The show cause notice dated 01.03.2013, which is the base for issuing the termination orders dated 27.11.2014 thereby terminating the services of the Petitioners with retrospective effect, itself stands vitiated as observed by the Supreme Court in the case of *Oryx Fisheries Private Limited* (supra). The said show-cause notice clearly indicates the mind of the employer who decided to accept the inquiry report and concluded that the entire process of selection stands vitiated. Thus, it makes it clear that the show-cause notice was only a farce and that the decision was already taken to terminate the services. It is also apparent from the record that the impugned order of termination was issued with retrospective effect keeping in mind the fact that the posts were already abolished.

64. The reasons mentioned in the termination orders dated 27.11.2014 clearly shows that the Petitioners raised the aspect of the show-cause

notice dated 01.03.2013 as illegal and vitiated which is found in para 3. Various other grounds have been raised including non-acceptance of the inquiry report by the Board and accordingly, the show-cause notice stands vitiated and issued on wrong premise. The Petitioners also raised the aspect of abolishing the posts with a mala fide intention and to prevent the Petitioners from occupying such posts.

65. The impugned order dated 27.11.2014 shows para-wise/issue-wise reasons. The issue No.1 is regarding entertaining of complaint by Ms Sinari, which is not relevant for the decision of present petition. Issue No.2 is the ground raised by the Petitioners that the report of the Inquiry Officer stands vitiated on the ground that no opportunity was given to the Petitioners before recording such findings by the Inquiry Officer. Issue No.3 is regarding the contention about illegality in issuing show-cause notice by the Member Secretary without giving opportunity to the Petitioners. Issue No.4 is regarding the show-cause notice being vitiated on the ground that the Board has issued notices to 24 candidates but termination orders were issued only to the 11 employees.

66. The Issue No.8 in the impugned order is regarding the objections raised by the Petitioners of the show-cause notice being issued on wrong premise as the report was not accepted by the Board. While answering this issue, the Chairman has observed that the show-cause notice dated 01.03.2013 was issued primarily directing the Petitioners to submit their say on the findings contended in the inquiry report. This finding of the Chairman is perverse on the face of record. The show-cause notice dated 01.03.2013 clearly shows that the Board has accepted the report of the

Inquiry Officer wherein he found that the selection process stands vitiated. Thus, the reason of issuing show-cause notices calling upon Petitioners to submit their say on the finding of the inquiry report is only a farce.

67. Similarly, further observations of the Chairman in connection with the Issue No.8 in the impugned order shows that 106th meeting of the Board, it was decided to call a special meeting to discuss the inquiry report. In 107th meeting, the Board decided to authorise Chairman to decide the matter and in the subsequent meeting of the Board, decision of the Chairman was ratified by the Board.

68. This observation of the Chairman is again found to be clearly perverse for the simple reason that the minutes of all the three meetings nowhere says or dictates any decision taken either by the Board or by its Chairman to accept the findings in the report of the Inquiry Officer either in toto or in part.

69. The Chairman in the impugned order further observed while answering Issue No.8 in the impugned order as under:-

“In the light of this, the Board has not resolved to accept the findings of the Inquiry Officer/report rather it had decided to authorise the Chairman to decide the issue. The Chairman has proceeded to initiate the present show-cause notice in order to arrive at a decision.”

70. This itself shows that neither the Chairman nor the Board accepted the report of the Inquiry Officer and, therefore, the question of issuing show-cause notice mentioning that the Board has accepted such

report stands vitiated. Admittedly, even after issuing show-cause notices, receiving replies from the Petitioners and granting them opportunity to hear, no decision is forthcoming either from the Board or from the Chairman accepting the report of the Inquiry Officer either in part or in toto.

71. Mr Godinho, learned Counsel for the Board, strongly urged that the Petitioners were not qualified to get additional marks and, therefore, the report of the Inquiry Officer suggests that the Departmental Selection Committee granted additional marks to the Petitioners even though they were not entitled to do so. Only because such additional marks were given, the Petitioners were found themselves in the select list. In this respect, he tried to justify the reasons given by the Inquiry Officer in its report. However, when we observed that such report of the Inquiry Officer is neither accepted by the Board nor by its Chairman, the question of going into observations of the Inquiry Officer would be futile exercise.

72. Nevertheless, we find that the advertisement issued for the posts of Scientific Assistant (Chemistry) dated 30.08.2011 by GSPCB shows the educational and other qualifications as under:-

“Essential - Bachelor’s Degree in Chemistry with at least 60% marks from recognized University/Institution OR at least 55% marks with atleast 2 years experience in pollution control or related field in a Government institution/ undertaking or organization of repute/ recognized laboratory.”

73. Minutes of the Departmental Selection Committee held on 10.12.2011 for the post of Scientific Assistant (Chemistry) are placed at page No.170 (Annexure VII). In all, six members constitute the selection committee which include the Chairman of GSPCB, Director, Department of Science, Technology & Environment, Member of GSPCB, Environment Engineer, Member Secretary of GSPCB and Joint Secretary, General Administration Department. In para 5 of the minutes, assessment made by the Departmental Selection Committee in respect of total 98 candidates who appeared for the interview is indicated in Annexure 'A'. Accordingly, the Departmental Selection Committee recommended the names of 6 candidates in which category, 2 candidates were OBC and 1 candidate from ST category for the post of Scientific Assistant (Chemistry). 2 candidates were kept on wait list which includes Petitioner No.1 Payal Baadkar. The marking scheme vide Annexure 'A' shows the name of candidate, the educational qualifications and marks, higher relevant qualifications, computer proficiency, relevant years' experience, extra-curricular/sports activities at State level participation and National level participation and then the viva voce marks. The Departmental Selection Committee decided to grant maximum 40 marks for educational qualifications i.e. the candidate having B.Sc. in Chemistry with either at least 60% marks or at least 55 marks with two years' experience in pollution control or related field in a Government institute. The Departmental Selection Committee also decided that a candidate with distinction in B.Sc. would be granted 45 marks. Therefore, the criteria evolved by the Departmental Selection Committee is to grant minimum 40 marks to a candidate who secured at least 60 marks or a

candidate who secured 55% marks with two years' experience in pollution control or related field. We find that this procedure adopted by the Departmental Selection Committee is the correct procedure for giving marks to the minimum qualifications i.e. the person who is eligible for applying the post of Scientific Assistant as per the advertisement.

74. The claim with regard to relevant years of experience which the Departmental Selection Committee decided to grant 5 marks for 1 to 3 years' experience, 8 marks for 4 to 6 years' experience, 10 marks for 7 to 9 years' experience and 15 marks for 10 and above years of experience.

75. The Inquiry Officer Mr D.M. Borkar observed that this relevant years' experience claim in the marking scheme adopted by Departmental Selection Committee with regard to at least 2 years' experience must be in pollution control or related field in a Government institution. Such observations of Mr D.M. Borkar are prima facie incorrect. Firstly, Mr Borkar did not summon the members of the Departmental Selection Committee to find out what criteria they adopted in giving marks for relevant years of experience as found in the marking scheme Annexure 'A'. The findings of Mr Borkar that relevant years' experience in the said scheme relates to the essentials found in the advertisement about at least 2 years' experience in pollution control or related field is erroneous. This is the main controversy or confusion created by the Inquiry Officer and to our opinion, was totally arbitrary and perverse. The minimum marks of 40 evolved by the Departmental Selection Committee for the candidate possessing at least 60 marks in Bachelor's Degree in Chemistry or at least 55 marks with minimum 2 years' experience in pollution control or

related field, was the proper and just procedure. It was the essential criteria for the purpose of considering the candidature of the candidate. There was no question of allotting extra marks for having 2 years' experience in pollution control or related field of the candidates who got at least 55% marks but less than 60%.

76. The Departmental Selection Committee rightly observed that extra 5 marks are required to be given to a candidate who secured distinction in obtaining degree in Chemistry. Therefore, the claim with regard to relevant years of experience and 5 marks for 1 to 3 years' experience and so on, clearly shows that this experience which the selection committee considered is separate and distinct from the minimum 2 years' experience in pollution control by a candidate securing at least 55% marks but below 60% while obtaining Bachelor's Degree in Chemistry. Therefore, on this count alone, the observation of the Inquiry Officer Mr D.M. Borkar that his report was not accepted by the Board, appears to be arbitrary, perverse and unwarranted. We are also convinced that the submission advanced by Mr Lotlikar that observation of the Departmental Selection Committee cannot be overridden by the report of an Inquiry Officer specifically when the members of the Board were not examined by the Inquiry Officer and when his report has not been accepted at all by the Board.

77. In the case of *Sachin Kumar and Ors.* (supra), Mr Godinho tried to point out that the report of the Inquiry Officer was considered and on that basis, the orders were issued. On perusal of the observations of the Apex Court in the case of *Sachin Kumar* (supra), we found that the report

of the Inquiry Officer was not only accepted by the Secretary (Vigilance) but even by the Government which is found in para No.17. The matter in hand would clearly go to show that neither the Board nor the Chairman accepted the report of Mr D.M. Borkar and, therefore, such decision will not help the Respondents.

78. We, therefore, observe that the show-cause notice dated 01.03.2013 as well as the order of termination dated 27.11.2014 are bad in law and thus, required to be quashed and set aside. We accordingly quash the show cause notice as well as the impugned order dated 27.11.2014, issued to the Petitioners.

Whether abolition of posts was in good faith

79. Now the question remains as to whether the decision of the Board to abolish the posts is a mala fide attempt or such decision was taken in good faith.

80. In Union of India and Ors. vs. Malti Sharma (supra), the Supreme Court while dealing with the aspect of abolition of post, observed in para 16 as under:-

“16. In any event, out of five posts only one post was sanctioned by the Government of India. It is neither denied nor disputed that the post of Inspector is an essential one so as to enable the Council to carry out its statutory function. The learned Single Judge has clearly indicated that the Inspector plays an important role in the Council. He inspects the colleges only for the purpose of grant of recognition and on the basis of the report of the Inspector alone, the Executive Council considers the proposal for grant of recognition of such institutions. The main purpose of the Council, therefore, cannot be performed in absence of an Inspector or a

person authorised to perform the said duties. In any event, the aforementioned office memorandum dated 3-5-1993 will have no application in the instant case as the post was not held in abeyance. It was filled but the services of the Respondent were terminated which was questioned by her by filing a writ petition before the High Court. The said writ petition was admittedly pending. In fact, the judgment was reserved. Despite the fact that the writ petition was pending for a period of three years, as to why the Government of India was approached for the purpose of obtaining a direction that the post stood abolished is not known. Even in view of the findings of fact recorded by the High Court, the concerned authority took recourse to suppressio veri and suggestio falsi. It had not been disclosed that a writ petition was pending.”

81. Admittedly, in the petitions filed by all the Petitioners challenging their earlier termination order dated 03.07.2013, were quashed and set aside by this Court vide its order dated 17.09.2013 in bunch of Writ Petitions Nos.583, 595, 596, 597, 598, 599, 600, 610 and 618 of 2013. Thus, it is very clear from the record that the Petitioners challenged their termination order dated 03.07.2013 and the matter was pending before this Court in the above Writ Petitions. Therefore, it cannot be said that the posts which the Petitioners were occupying/appointed were vacant posts.

82. It is also clear from the record that when the petitions were filed challenging their earlier termination order dated 03.07.2013, the matter was subjudice before this Court in connection with the legality of the termination order or otherwise. The decision of this Court dated 17.09.2013 further shows that termination orders issued to the Petitioners

dated 03.07.2013 were bad in law and therefore, such orders were quashed and set aside.

83. The order of this Court dated 17.09.2013 further shows that when this Court considered that orders of termination dated 03.07.2013 needs to be quashed and set aside, a statement was made on behalf of the learned Counsel for the Respondent/Government that the posts which the Petitioners were holding prior to their termination, were already abolished. In such scenario, this Court found that it was not possible to grant reinstatement. However, the Respondents were directed to proceed to hear the Petitioners within a period of six weeks and take a suitable decision on their grievances within further four weeks.

84. The import of the said order clearly goes to show that the grievances of the Petitioners with regard to their reinstatement and/or abolition of the posts were kept open together with the question regarding termination of their services, by giving an opportunity to the Petitioners to put forth their defence.

85. It thus shows that when the challenge to the termination orders dated 03.07.2013 was pending before this Court, decision to abolish the posts was taken by the Board and that too without hearing or giving any opportunity to the Petitioners.

86. Subsequently, the Petitioners were called by the Board to put forth their defence in connection with the report of the Inquiry Officer, show-cause notice regarding termination of their services as well as abolition of the posts. Admittedly, the Petitioners filed detailed written arguments

and they were even heard personally. Thereafter, the present impugned order was passed to terminate the services of the Petitioners from a retrospective date i.e. from 03.07.2013. We have already discussed in detail as to how the termination orders dated 27.11.2014 are bad in law, and thus, the question with regard to the relief of reinstatement by quashing the decision of the Board, taken in its meeting dated 19.08.2014 to abolish the post, needs to be considered.

87. The sequence of events needs to be taken into account for deciding whether abolition of such posts was with a mala fide intention or not.

88. GSPCB issued advertisement on 30.08.2011 for recruitment to various posts on regular basis. We are concerned with the posts advertised for Scientific Assistant (Chemistry), Senior Laboratory Assistant and Junior Laboratory Assistant. The advertisement clearly shows that all these posts were sanctioned regular posts. The Departmental Selection Committee after conducting the due process, selected the candidates including the Petitioners on the basis of the merit list and thereafter, issued appointment orders dated 23.12.2011. All the Petitioners joined and worked on the respective posts for around six to eight months.

89. Mr Godinho, learned Counsel for the Board would submit that the Board is competent enough to create and abolish posts as per its requirement and that a decision was taken in the 114th meeting of the Board to abolish the posts which were vacant at the relevant time. He would submit that such decision of the Board cannot be considered as mala fide or colourful exercise for the simple reason that at the relevant

time, the posts were vacant and the Board considered that the employees working at the relevant time were sufficient enough to conduct the work allotted to them under different acts.

90. In the case of *State of Haryana vs. Navneet Verma* (supra), the Supreme Court summarised the powers of Government in abolishing the posts, in para No.17 as under:-

“17. We summarize the power of Government in abolishing a post and role of the court for interference:

a) the power to create or abolish a post rests with the Government;

b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

c) creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration;

d) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

e) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.”

91. Thus, it is clear that as long as decision to abolish the post is taken in good faith, the interference of Court is not warranted.

92. First of all, it is admitted fact that earlier writ petitions filed by the present Petitioners challenging their termination orders dated

03.07.2013, were decided by common Judgment on 17.09.2013. This Court found that termination orders issued by the Board needs to be quashed and set aside and accordingly, the same were quashed and set aside. However, when the question came up for reinstatement, a statement was made by the Government i.e. on 17.09.2013 itself and as quoted in para 12 that the Government has already abolished the said posts and therefore, it is not possible to grant reinstatement.

93. Thus, by making such positive statement on 17.09.2013 on behalf of the Government including the Board that the posts are already abolished, this Court did not consider grant of reinstatement to the Petitioners.

94. It now appears that when such statement was made in the earlier petitions on 17.09.2013, the said posts were not abolished. In fact, the Board in its 114th meeting held on 19.08.2014 had decided to abolish the said posts. This fact is clear from the reply affidavit filed on behalf of the Member Secretary and more specifically from para No.64 onwards.

95. The minutes of 114th meeting of the Board is also placed on record at Exhibit 'I' which shows Agenda Item No.13 regarding re-assessment of staff requirement of the GSPCB. In the said meeting, Chairman informed the members that after the interim exercise for assessing the staff requirement, it was noted that many posts were vacant. After detailed analysis, it was concluded that these posts were not required to be filled by the Board since the present staff complement was sufficient to carry out existing work requirement both at the technical and scientific level. The Chairman then tabled the report prepared by the Board and after

detailed discussion, it was decided to abolish the posts which were presently vacant in the Board from the date the posts were lying vacant.

96. Reply affidavit at para 64 reads thus:-

“I state that the complete assessment of the staff requirement indicates that in the interest of proper management of financial resources and manpower of the Board, it was necessary that the following immediate steps were taken, namely;

- (i) All vacant surplus posts presently existing in the Board including those in the Scientific Section are required to be abolished.*
- (ii) In lieu of abolished posts as aforesaid, fresh posts primarily in technical section of the Board require to be created and subsequently filled.”*

97. In para 66 of the affidavit in reply, a chart is placed showing the posts lying vacant and which were decided to be abolished. In the said chart, 5 posts of Scientific Assistant (Chemistry), 6 posts of Senior Laboratory Assistant and 1 post of Junior Laboratory Assistant were shown as vacant and accordingly abolished.

98. The record clearly indicates that the decision to abolish vacant posts was taken only on 19.08.2014 i.e. during the Board's 114th meeting and not earlier to it. Thus, the statement made before this Court in earlier petitions and as on 17.09.2013 of abolishing such posts is totally incorrect. No such decision was placed before this Court at the relevant time. However, believing the statement made on behalf of Government, the question of reinstatement was not considered.

99. Even otherwise, when the earlier termination orders dated 03.07.2013 were quashed and set aside on 17.09.2013, the Petitioners were in service with the Board on their respective posts, even though the State disclosed that the posts were already abolished. The question of reinstatement was not considered but the consequence of setting aside termination order dated 03.07.2013 is to place the Petitioners back in service. This further shows that even as on 19.08.2014, the posts on which Petitioners were appointed, were not vacant posts with the Board.

100. The decision to abolish such posts was taken only on 19.08.2014 and on the premise that such posts were vacant when in fact, the posts were not vacant as the termination orders of the Petitioners dated 03.07.2013 were already quashed and set aside by this Court in its order dated 17.09.2013. It is no doubt true that this Court in its order dated 17.09.2013 granted opportunity to the Respondent/State to proceed to hear the Petitioners and then take suitable decision, was only on the fact that principles of natural justice were found violated before issuing termination orders dated 03.07.2013. It was also observed in para 9 that the inquiry report was not accepted by the Board.

101. In the light of above observations, one thing is clear that by making statement that the posts were already abolished, the Board/State prevented this Court from issuing order of reinstatement of the Petitioners in the earlier petitions, when in fact no such decision was taken at the relevant time.

102. Subsequent decision on 19.08.2014 in 114th meeting of the Board is again clearly coming within the ambit of colourful exercise and with mala

fide intention to prevent the Petitioners from reinstatement by making a bald statement that the posts on which Petitioners were working were vacant. When the earlier termination order dated 03.07.2013 was quashed and set aside by this Court, the consequence is that the Petitioners were considered to be the employees of the Board on the respective posts. It is another thing that the Board could have terminated their services on the ground of abolition of such posts, however, when the posts were not vacant as on 19.08.2014, the same could not have been abolished on that reason.

103. There is no other reason which was discussed in 114th meeting of the Board for abolishing the posts though an attempt is made in the reply affidavit to that effect. The decision of the Board is final and therefore, if such decision itself is on the wrong premise, it has to be considered as decision effected by colourful exercise. In other words, it could be termed as a decision not in good faith and in absence of relevant material, or by misleading the facts.

104. It is therefore evident that by making statement before this Court in earlier petitions, the Board/State tried to overreach the Court and prevented from ordering/directing reinstatement of the Petitioners. Such action on the part of State/Board was plainly mala fide both on facts and law. The posts were not vacant when the order of termination dated 03.07.2013 was considered as bad in law and was quashed and set aside. Therefore, the Board in its subsequent 114th meeting dated 19.08.2014 could not have deliberated that the posts were vacant and not required to be filled in. Even otherwise, the reasons disclosed in para No.64 of the

affidavit quoted earlier and more specifically the reason in No.(ii) shows contrary statements. The affidavit claimed that in lieu of the abolished posts, fresh posts primarily in the technical section of the Board are required to be created and subsequently filled in. This itself shows that the earlier posts on which Petitioners were appointed, were not surplus posts as tried to be projected. No material has been placed on record to show that there were surplus posts in the year 2011 itself when advertisements were issued for various posts.

105. In sum and substance, the reasons for abolishing the posts on which Petitioners were appointed, appear to be colourful exercise of powers and with a mala fide intention to prevent the Petitioners from joining such posts. The statement made before this Court in earlier petitions that as on 17.09.2013, the posts were already abolished, whereas the fact remains and proved by the minutes of 114th meeting dated 19.08.2014, that the posts were abolished only on that date and not prior to 17.09.2013. This itself appears to be a mala fide attempt on the part of Respondents to prevent this Court from ordering reinstatement in the earlier petitions itself.

106. Clause (f) of para 17 of *State of Haryana* (supra) as laid down by the Supreme Court is, therefore, applicable to this case as the decision to abolish the posts is not taken in good faith and clearly appears to be a mala fide attempt as well as colourful exercise on the part of Board to prevent the Petitioners from being reinstated.

107. Accordingly, the petition must succeed as per prayer clauses (a), (b) and (c) which reads thus:-

“(a) For a writ of certiorari or any other writ, direction or order in the nature of certiorari, calling for the records and proceedings of the case and quashing and setting aside the impugned Order of termination of the petitioner, bearing reference No.1/25/14-PCB/5932 dated 27/11/2014; No.1/25/14-PCB/5933 dated 27/11/2014; No.1/25/14-PCB/5936 dated 27/11/2014; No.1/25/14-PCB/5935 dated 27/11/2014; No.1/25/14-PCB5938 dated 27/11/2014; No.1/25/14-PCB/5931 dated 27/11/2014,

(b) For a writ of mandamus, or any other writ, direction order in the nature of mandamus, commanding the respondents, to reinstate the petitioners in the post of ‘Scientific Assistant (Chemical)’, Senior Laboratory Assistant and Junior Laboratory Assistant, with all consequential benefits including arrears of salary from 3/07/2013 till actual reinstatement in service,

(c) For a writ of mandamus, or any other writ, direction order in the nature of mandamus, for quashing and setting aside the decision of the 2nd Respondent taken in its 114th meeting held on 19/08/2014 to abolish the post against which they were occupying until their arbitrary termination vide Order 03/07/2013 which was set aside.”

108. Rule is made absolute in above terms.

BHARAT P. DESHPANDE, J.

PRAKASH D. NAIK, J.

Judgment Continued

109. At this stage, Mr Godinho requested for grant of stay of the Judgment and Order on the ground that he wants to challenge the same before the higher Court. The learned Counsel for the Petitioner has objected on the ground that the reasons for quashing of the impugned orders as well as abolition of the posts is found to be totally illegal.

110. For the reasons stated in the present Judgment and Order and the earlier observations in the petition filed by the present Petitioners in the year 2013, we are not inclined to stay the effect and operation of the present Judgment and Order since the Petitioners have been kept away from the posts for a period of more than 10 years. Accordingly, we reject the request for grant of stay.

BHARAT P. DESHPANDE, J.

PRAKASH D. NAIK, J.

JOSE
FRANCISCO
DSOUZA

Digitally signed by JOSE
FRANCISCO DSOUZA
Date: 2023.09.29
16:05:02 +05'30'