

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.13 OF 2019**

Paresh Kodbal,
Behind Kamat Garden,
Near KTM Service Centre,
Mapusa-Goa.

.... Petitioner.

Versus

1. State of Goa,
Through the Secretary,
Secretariat, Porvorim-Goa.

2. Directorate of Education
Through the Director,
Alto-Provarim, Bardez Goa,

3. St. Britto High School,
Through its Principal, Mapusa Goa.

4. Tania Michelle Fernandes,
r/o Porvorim, Goa
C/o. St. Britto's High School,
Mapusa, Goa.

.... Respondents.

Mr Shivraj Gaonkar, Advocate for the Petitioner.

**Ms Sapna Mordekar, Addl. Govt. Advocate for Respondents
No.1 and 2.**

Mr J.A. Lobo, Advocate for Respondent No.3.

Mr Terence Vaz, Advocate for Respondent No.4.

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

**Reserved on : 14th JUNE 2023
Pronounced 22nd JUNE 2023
on :**

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

1. Heard the learned Counsel for the parties.
2. The Petitioner, a Peon, challenges the direct recruitment of Respondent No.4 as a Lower Division Clerk (LDC) at the St. Britto's High School, Mapusa, Goa (Respondent No.3) on the sole ground that the post of LDC should have been filled in by promotion from Class IV employees, like peons and not by direct recruitment.
3. Thus, the main question which arises for determination in this Petition is whether the post of LDC is a promotional post or a post to be filled up by direct recruitment under the provisions of the Goa School Education Act, 1984 (said Act) and the Goa School Education Rules, 1986 (said Rules).
4. The Petitioner was appointed a Peon (Class IV employee) with Respondent No.3 (an aided minority institution) on 7/6/2014 and confirmed on 14/6/2016.
5. On 20/9/2018, Respondent No.3 advertised the post of LDC in the newspaper "Tarun Bharat". On 27/9/2018, the Petitioner applied for the post of LDC, not as a direct recruit, but seeking promotion to the said post.
6. Respondent No.3 issued a call letter dated 10/10/2018, requiring the Petitioner to attend the interview by treating his application dated 27/9/2018 as an application seeking direct recruitment to the post of LDC. The Petitioner declined to participate in the interview by maintaining that the post of LDC

was a promotional post, for which he was required to be considered.

7. The selection committee, constituted by Respondent No.3, of which one of the members was a representative from the Directorate of Education, held interviews on 23/10/2018 and selected Respondent No.4 as a direct recruit LDC.

8. The Petitioner claims to have discussed the matter with Respondent No.3, and, because no heed was paid to the Petitioner, he represented to the Director of Education and ADEI on 29/10/2018.

9. The Petitioner, finally, on 20/11/2018, instituted the present Petition, seeking, *inter alia*, the following reliefs :

“(a) This Hon’ble Court be pleased to issue a writ of mandamus or any other appropriate writ directing the Respondent No.3 (St. Britto School, Mapusa) to fill the vacancy to the post of Lower Division Clerk (LDC) as advertised by the School on 20-09-2018 through promotion as mandated under Rule 86 of the Goa, Daman and Diu School Education Rules 1986; after declaring that the appointment of Respondent No.4 is in violation of the said Rule 86; and

(b) Direct the Respondent No.2 (Directorate of Education) to oversee the recruitment by promotion under Rule 86 in the Respondent No.3 School and also direct the Principal of Respondent No.3 to refrain from participating in the promotion process so as to avoid any harassment to the Petitioner; and

c) Stay the appointment of Respondent No.4 being in gross violation of Rule 86, Goa Daman and Diu School

Education Rules, 1986 till the pendency of the present petition; and

d) Ad-interim relief in terms of prayers (a), (b) and (c) above;”

10. Although, there does not appear to be any formal challenge to the appointment of Respondent No.4 as an LDC, we must record that this Petition was instituted at the stage when Respondent No.4 was yet to be appointed as an LDC. Accordingly, by our order dated 8/1/2019, we had directed that any appointment to the post of LDC, would be subject to further orders that would be made in this Petition. Rule was issued in this Petition on 4/2/2019 and hearing was expedited. In the said order it was stated that there could be no interim relief since Respondent No. 4 was already appointed, but it was made clear that such appointment would be subject to the outcome of this Petition.

11. By Misc. Civil Application No.795/2021(F), Respondent No. 4 applied for an early hearing of the Petition, *inter alia*, on the ground that she was suffering prejudice due to the challenge for her appointment as an LDC. By an order dated 25/8/2021, the Misc. Civil Application was disposed of by posting the matter for final hearing on 20/9/2021, subject to overnight part heard matters.

12. Possibly, due to COVID-19 issues, the matter could not be heard finally on the appointed date. Respondent No.4 filed yet another Misc. Civil Application No. 73/2022, seeking an early

hearing. This application was disposed of by an order dated 26/4/2022, in which it was recorded that the appointment of Respondent No.4 has been challenged in the Petition. The matter was posted for final hearing on 27/6/2022, subject to overnight part-heard matters. Meanwhile, Respondent No.3 was directed to process the salary bills of Respondent No.4, without prejudice to the rights and contentions of the parties.

13. The Petitioner then filed a Misc. Civil Application No.393/2022, seeking a peremptory date, was disposed of on 24/1/2023, placing the matter for final hearing in the week commencing from 24/4/2023, subject to overnight part-heard matters. The Petition was finally heard on 14/6/2023 and reserved for orders.

14. Mr Shivraj Gaonkar, learned Counsel for the Petitioner, submits that the post of LDC is a promotional post to be filled in by promotion from out of Group 'D' employees or Class IV employees like Peons. He submits that the post of LDC is regarded as a promotional post in Government Schools and is filled in accordingly. He referred to Rule 79 of the said Rules to submit that the rules for appointment and promotion to corresponding posts in Government Schools must be applied in case of non-teaching posts. He also referred to Rules 78 and 86 of the said Rules to submit that the post of LDC should have been filled in by promotion and not by direct recruitment. He submitted that even though Rule 79 of the said Rules may have made no express reference to the post of LDC, a reference was made to the posts of UDCs, Head Clerk, followed by "etc.,". He

relied upon the Black's Law Dictionary and Oxford Advanced Learner's Dictionary to submit that the expression "etc." is used after a list to show that other things could have been mentioned.

15. Finally, Mr Gaonkar relied upon the following decisions in support of his contentions:

(A) *Hari Sankar Das v/s. Indian Oil Corporation & ors.* - 2013 SCC OnLine Cal 3178;

(B) *Edmund Bendit and another vs. Edgar Raphael Prudhomme* – ILLR (1925) 48 Mad 538;

(C) *Ashok Shankarrao Shinde vs. Prabodhan Shikshan Sanstha, Nagpur and ors.* - 1999 (1) L.L.N. 702;

(D) *Ivy C. Da Conceicao v/s State of Goa and ors.* - (2017) 3 SCC 619; and

(D) *Pratibha A. Agranayak v/s. Director of Education, and ors.* - [2001 (1) Mh.L.J. 796.

16. Mr Gaonkar also relied upon the affidavit filed by Mr Dilip Bhagat, Director of Education, in pursuance of this Court's order dated 4/3/2020, requiring the Director to clarify the position of whether the post of LDC was a promotional post.

17. Ms Sapna Mordekar learned Additional Govt. Advocate for Respondent No.2 submitted that recruitment to the post of LDC in Governments Schools is governed by the Government of Goa, Group 'C', Ministerial, Non-Gazetted, Common Posts (Outside Secretarial), Recruitment Rules 2011 (2011 Recruitment Rules). She submitted that the post of LDC is filled in by promotion in terms of the 2011 Recruitment Rules in Government Schools in

the State of Goa. She referred to the Director's affidavit dated 27/7/2021 in pursuance of this Court's order dated 4/3/2020.

18. Mr John Lobo learned Counsel for Respondent No.3, submitted that the post of LDC was not a promotional post, but the same was a post to be filled in by direct recruitment only. Firstly, he pointed out that the advertisement and recruitment process to the post of LDC was undertaken after obtaining prior approval of the Director of Education. He submitted that the fact that such an approval was granted and further, the Director of Education even deputed his representative on the Selection Committee, shows that even the Director was satisfied that the post of LDC ought to be filled in by direct recruitment and not promotion. Mr Lobo submitted that the U-turn in the Director's affidavit must, therefore, be ignored.

19. Mr Lobo submitted that Rules 78 and 86 relied upon by Mr Gaonkar, apply only to teaching posts and not to non-teaching posts like LDCs. He offered that this is quite clear from a bare reading of the two rules; therefore, based upon these two rules, no case can be said to have been made about the LDC post being the promotional post.

20. Mr Lobo submitted that Rule 79 might apply for non-teaching posts, but the same advisably does not refer to the post of LDC. He submitted that the Dictionary meanings or the decisions relied upon by Mr Gaonkar to explain the expression "etc." would not apply in the present case because "the posts of U.D.Cs, Head Clerk, etc.," were set out in ascending order and not descending order. He submitted that the expression "etc.,"

therefore, could never include the lower post of LDC, but it could, perhaps, include some posts higher than the post of Head Clerk. He, therefore, submitted that Mr Gaonkar's interpretation concerning Rule 79 was not correct and may not be accepted.

21. Mr Lobo, without prejudice, submitted that the 2011 Recruitment Rules contemplate only 12 ½ % of the posts of LDC being filled in by promotion from Group 'D' employees, failing which by direct recruitment. He submitted that the 2011 Recruitment Rules contemplate filling in 87 ½ % of the posts of LDC through direct recruitment. Based upon this submission, which was made without prejudice, Mr Lobo contended that where there was only one post of LDC or one vacancy, the same had to be filled in by direct recruitment and not by promotion.

22. Mr Lobo finally pointed out the statement in paragraph 17 of the affidavit filed on behalf of Respondent No.3, in which a reference is made to the Petitioner working as a part-time Accounts Assistant from 1/8/2016 to 30/11/2017, even though the Petitioner was appointed as a Peon to work in Respondent No.3-School during the same period. Mr Lobo submitted that if this is proved, the same will amount to misconduct under Rule 100 of the said Rules, thereby rendering the Petitioner ineligible to be considered for the promotion to the post of LDC.

23. For all the above reasons, Mr Lobo submitted that this Petition may be dismissed.

24. Mr Terence Vaz, learned Counsel for Respondent No.4, whilst adopting Mr Lobo's submissions, pointed out that equities

and law favour the continuance of Respondent No.4 as an LDC. He submitted that the said Rules and 2011 Recruitment Rules contemplate such posts being filled in by direct recruitment. He offered that there was Director's approval for direct recruitment, and even a representative of the Directorate of Education was a part of the selection committee. He submitted that the Petitioner was granted an opportunity to attend the interview and participate in the direct recruitment process. However, the Petitioner refrained from participating for reasons known only to the Petitioner. He submitted that no employee has a fundamental right to be selected or appointed to any post. He submitted that there is only a right to be considered for appointment. He points out that this right was offered to the Petitioner, but he declined to accept the offer. He submitted that Respondent No.4 is in service for the last five years, and it would be inequitable to disturb her appointment at this stage.

25. For all these reasons, Mr Vaz joined Mr Lobo in submitting that this Petition should be dismissed.

26. Rival contentions now fall for our determination.

27. The said Act defines the expression "employee" in Section 2(g) to mean a teacher and includes every other employee working in a recognised school. Thus the expression "employee" is quite wide and would include both, teaching as well as non-teaching employees. Section 11(1) of the said Act provides that the Government may make rules regulating the recruitments, minimum qualifications for recruitment, and the conditions of service of employees of recognised private schools. There is no

dispute that Respondent No.3 is a recognised private school, receiving aid from the Government. No argument based upon minority status of Respondent No.3 was advanced in the present case. Further, it was not even the case of Respondent No.3 that Rules 78, 79 or 86 of the said Rules, would not apply to it because of its minority status.

28. Rule 78 of the said Rules provides minimum qualifications for appointing “teaching staff”. Since the post of LDC cannot be regarded as a “teaching staff”, Rule 78 of the said Rules would not apply. There was some debate about the applicability of Rule 86 of the said Rules because Mr Lobo contended that said Rule applies only to the teaching posts, which, according to him, was evident from the reference to Rule 78 in the non-obstante clause with which Rule 86(1) begins. Mr Gaonkar, however, referred to the expression “employee” in the proviso to Rule 86(1) and contended that Rule 86 would apply even to non-teaching staff. Instead of attempting to resolve the controversy about the applicability of Rule 86(1), it would be safer to base our decision on Rule 79 of the said Rules, which, admittedly, deals with recruitment to non-teaching posts in Schools.

29. Rule 79 of the said Rules read as follows:

“79. Minimum qualifications for recruitment to other posts.—In case of pre-primary and primary school teachers and the non-teaching staff such as Laboratory Asstt., Librarians, Ministerial posts, menial posts etc., the qualifications for recruitment and promotion shall be the same as are specified by the Administrator for appointment

and promotion to corresponding posts in Government schools:

Provided that the posts of U.D.Cs, Head Clerk etc., shall be filled up by promotion only, on the basis of seniority-cum-fitness as per the rules applicable to the corresponding posts in Government schools and if suitable candidates are not available for promotion, the posts can be filled up by direct recruitment after obtaining N.O.C. from the Director of Education.”

30. The first part of Rule 79 provides that in case of non-teaching staff such as Laboratory Asstt., Librarians, Ministerial posts, menial posts etc., the qualifications for recruitment and promotion shall be the same as are specified by the Administrator for appointment and promotion to corresponding posts in Government schools.

31. The expression “Administrator” means the Administrator of the Union Territory appointed by the President under Article 239 of the Constitution. Reference was made to the Administrator appointed under Article 239 of the Constitution because when the said Act was enacted in 1984, or the said Rules were enacted in 1986, Goa had not attained statehood but was still a Union Territory, comprising Goa, Daman and Diu. Accordingly, it was not disputed that the expression “Administrator” in Rule 79 must now be construed as “Government of Goa” after Goa attained statehood in 1987.

32. The first part of Rule 79, therefore, provides that the qualifications for recruitment and promotion to non-teaching posts in Schools shall be the same as are specified by the

Administrator for appointment and promotion to corresponding posts in Government schools.

33. Since there was no clarity on the position of the recruitments and promotions to the post of LDC in Government Schools, we made an order on 4th March 2020, requiring the Director of Education to confirm whether 2011 Recruitment Rules were the recruitment rules followed for making appointments to the post of LDCs in Government Schools. Further, we directed the Director of Education to file an affidavit and indicate whether the post of LDC has been filled in by promotion in any of the Government Schools in the State of Goa.

34. The order dated 4/3/2020, reads as follows :

“ *Coram:- M. S. SONAK &
SMT. M. S. JAWALKAR, JJ.*

Date:- 4th March, 2020

P.C.

We direct the Director of Education to file additional affidavit in this matter to indicate whether the Government of Goa, Group 'C', Ministerial, Non-Gazetted, Common posts (Outside Secretariat), Recruitment Rules, 2011 are the Recruitment Rules followed for making appointment to the post of LDC in Government schools. Further, the affidavit to also indicate whether the post of LDC has been filled in by promotion in any of the Government schools in the State of Goa.

2. The Director of Education is at liberty to file affidavit on other issues raised in the Petition as well.

3. Such affidavit to be filed on or before 12.03.2020 and copies of the same to be furnished to the learned Counsel appearing for all the parties. In case the Petitioner or any

of the Respondents wish to file further pleadings, liberty is given to do the same upto 18.03.2020.

4. Place this matter on 19.03.2020 under the category 'Part Heard'."

35. In compliance with our directions in our above-referred order dated 4/3/2020, Mr Dilip Bhagat, Director of Education, filed his affidavit on 27th July 2021. Although this affidavit is styled as an additional affidavit, the learned Counsel for the parties agreed that this was the only affidavit filed by the Director of Education in the present Petition and that this was not an additional affidavit.

36. The Director's affidavit comprises only three paragraphs, and the same are transcribed below for the convenience of reference :

"I, Mr. Dilip R. Bhagat, major of age, Indian National, the Director of the Respondent No. 2 herein above, having office at Directorate of Education, Alto-Porvorim-Goa, do hereby on solemn affirmation state on oath as under:

1. I have read and understood the contents of the present petition and filed a reply thereto. The present additional affidavit is filed to respond to the query raised by this Hon'ble Court vide Order dated 4th March 2020.

2. I state that I have read and understood the contents of the Order dated 04/03/2020 of the Hon'ble Court.

I say that the Government of Goa, Group 'C', Ministerial, Non-Gazetted, Common posts (Outside Secretariat), Recruitment Rules 2011 are followed for making appointment to the post of LDC in Government Schools. I further state and submit that the post of LDC has been filled by promotion as per Government of Goa, Group 'C', Ministerial, Non-Gazetted, Common posts (Outside Secretariat), Recruitment Rules 2011 in the Government Schools in the state of Goa.

3. I say that what is stated by me in paragraphs 1 and 2 of the Affidavit in Reply are true to my knowledge and based on the records maintained by my office to which I have access.

Solemnly affirmed at Panaji, Goa.

On this 27th day of July, 2021.

Sd/-

Deponent."

37. The 2011 Recruitment Rules are also on record. Regarding the posts of Lower Division Clerk/Recovery Clerk, the 2011 Recruitment Rules deal with recruitment to such posts in the following Government Departments :

(A) In the Public Works Department and Water Resources Department;

(B) In Electricity Department; and

(C) In Departments other than the Public Works Department, Water Resources Department and Electricity Department.

38. Accordingly, recruitments to the post of LDCs would be covered under the category (C) referring to Departments other than the Public Works Department, Water Resources Department and Electricity Department. The 2011 Recruitment Rules provide that 12½ % of the posts of LDC in this category of Departments would be filled in by promotion from Group 'D' employees, failing which by direct recruitment and 87½ % by direct recruitment.

39. Thus, regarding the 2011 Recruitment Rules, it is not as if the posts of LDC in Government Schools are to be filled in exclusively by direct recruitment. The 2011 Recruitment Rules contemplate filling in at least 12½ % of the posts of LDC by promotion from the feeder cadre of Group 'D' employees like Peons, etc. The affidavit of the Director of Education, in clear and categorical terms, states that the posts of LDCs in Government Schools are filled in by promotion as per the 2011 Recruitment Rules.

40. Therefore, based upon the above material and in deference to the first part of Rule 79 of the said Rules, we would have to uphold the Petitioner's contention that the post of LDC had to be filled in by promotion, failing which by direct recruitment. The proviso to Rule 79 provides that post of UDCs, Head Clerk, etc., shall be filled up by promotion only on the basis of seniority-cum-fitness as per the rules applicable to the corresponding posts in Government Schools and if suitable candidates are not available for promotion, the posts can be filled up by direct recruitment after obtaining NOC from the Director of

Education.

41. Mr Lobo’s argument about the ascending order in which the posts UDCs, Head Clerks, etc., have been described, though attractive at first blush, cannot be accepted if due regard is paid to the context. Rule 79, as pointed out earlier, is concerned with non-teaching posts, including Ministerial and menial posts. The proviso only emphasises that posts like UDCs, Head Clerks, etc., shall be filled in by promotion only, possibly to deal with a situation where recruitment rules to corresponding posts in the Government Schools provide for filling up such posts by direct recruitment. The expression “etc.,” used in the proviso to Rule 79, indicates that reference to the posts of UDCs, Head Clerks, etc., was not intended to be exhaustive but only illustrative.

42. Black’s Law Dictionary defines “et cetera” as follows :

“et cetera – [Latin “and others”] (12c) And other things. The term usu. indicates additional, unspecified items in a series. - Abbr. etc.”

43. Similarly, Oxford Advanced Learner’s Dictionary “et cetera” or “etc.” as follows :

“ “etc.” = used after a list to show that there are other things that you could have mentioned.”

44. In *Edmund Bendit and another* (supra), the English Appeal Court, in the context of the expression “et cetera” used after the expression “*force majeure*”, observed as follows :

“In the present case the matter is simplified by the fact that

the expression “force majeure” does not stand alone, but the clause in which it occurs in Exhibits A and I contains examples of what was intended to be conveyed by the term. War is one of the examples and the words et cetera at the end of the enumeration denote, that there are others.”

[emphasis supplied]

45. In *Hari Sankar Das* (supra), the learned Single Judge of the Calcutta High Court Dipankar Datta, J. (as His Lordship then was), explained that the Latin phrase et cetera, usually written as ‘etc.’ was mentioned to include rest of the places, which were of the nature preceding it. The Court held that by working in an airport and having been engaged in handling/housekeeping jobs there, respondent no. 6 satisfied the requirement of handling/housekeeping jobs at a petroleum handling/loading/unloading installation. Even though an airport does not involve a processing job, and should respondent no. 6 be regarded to be deficient on this count, it is surely covered by ‘etc.’, which has to be given some meaning in the circumstances, or else one has to treat it as surplusage.

46. In *Hari Sankar Das* (supra) is not only an authority for what the expression “etc.” means but also for the proposition that the words used by the Legislature should be given some surplusage. From the contention, we think the proviso to Rule 79 of the said Rules would apply to the post of LDC. Accordingly, the post of LDC will have to be filled in by promotion. For this, we draw sustenance not only from the words used in Rule 79 but also from the Director’s affidavit that the post of LDC is filled in by promotion in Government Schools. Rule 79, as noted earlier, provides that in case of non-teaching posts, the qualification for

recruitment and promotion shall be the same as are specified by the Government for appointment and promotion to corresponding posts in Government Schools. The proviso only emphasises that such promotion to non-teaching posts, as per the rules applicable for the corresponding posts in Government Schools, must be filled in by promotion only, rather than resorting to any other recruitment mode. However, if no suitable candidates are available for promotion, then, obviously, such posts can be filled in by direct recruitment or other modes that may have been provided.

47. Rule 86 of the said Rules, assuming that the same applies exclusively to the teaching posts, provides that every vacancy in an aided school shall be filled up by promotion, failing which by direct recruitment, by such rules as may be framed by the Director of Education in this behalf and notified/ circulated separately. Rule 86(2) of the said Rules was interpreted by a Division Bench of this Court in *Pratibha A. Agranayak and another vs. Director of Education and ors.* - 2001 Mh.L.J. 796 explaining how no resort could be had to direct recruitment without considering the cases of eligible candidates in the feeder cadre for the promotion.

48. Thus, when it comes to teaching posts, Rule 86 is quite clear. Every vacancy in aided schools must be filled in by promotion, failing which by direct recruitment. Therefore, assuming there is some ambiguity in Rule 79, the same will have to be resolved by holding that even Rule 79 requires that non-teaching posts be filled in by promotion in the Government

Schools.

49. As noted earlier, the Director of Education has filed a clear affidavit that posts of LDC in Government schools are filled in under the 2011 Recruitment Rules, and further, such posts are filled in by promotion. Upon a cumulative consideration of all these aspects, we are inclined to hold that the post of LDC is promotional, and no resort could be had to direct recruitment unless cases of eligible candidates in the feeder cadre were to be considered by a duly constituted Departmental Promotion Committee (DPC). Only if such DPC were to conclude that the candidates in the feeder cadre were not suitable or fit could the resort be had to direct recruitment and not otherwise.

50. Mr Lobo's and Mr Vaz's contention that the Petitioner should have attended the interview for which he was issued the call letter is, with respect, neither here nor there. The call letter was to participate in the interview by the Departmental Selection Committee and not the DPC. The Departmental Selection Committee would not have considered the Petitioner's case for promotion to the post of LDC based upon his confidential roll, seniority position, and other permissible inputs. This is something which a properly constituted DPC would have considered. Besides, when the recruitment rules provide for "by promotion, failing which by direct recruitment", the mandate of such recruitment rules cannot be frustrated by considering the candidature of promotees and direct recruits together, as a comparison of direct recruit candidates and promotee candidates would not be legal or proper. The candidates in the feeder cadre

would have to be considered by a duly constituted DPC before any resort was had to direct recruitment. If the candidates in the feeder cadre were found to be unsuitable or unfit, recourse could be had to oversee recruitment.

51. Thus, in the present case, we are satisfied that the post of LDC was required to be filled in by promotion from out of the feeder cadre of Group 'D' employees or Class IV employees like peons. Therefore, ordinarily, we would have to grant the Petitioner reliefs prayed for by him and, perhaps, even quash Respondent No.4's appointment. Such appointment was made subject to the outcome of this Petition. Besides, all parties have, time and again, proceeded based on the premise that Respondent No.4's appointment was the subject matter of challenge in this Petition.

52. At the same time, we cannot wholly discount Mr Lobo's and Mr Vaz's contention about Respondent No.3 obtaining prior approval of the Director of Education before advertising the post of LDC for direct recruitment. The record bears out that the Director of Education also deputed his representative to be on the Selection Committee for direct recruitment to the post of LDC. Thus, Respondents No.3 and 4 would have acted bona fide in presuming that there was nothing illegal in filling up the post of LDC through direct recruitment.

53. Therefore, interests of justice would be met if the direction is issued to Respondent No.3 to convene a DPC and consider the candidature of not only the Petitioner but also other employees in the feeder cadre for the post of LDC, which was

illegally filled in through direct recruitment in 2018. The Director of Education must also depute his representative to be a part of the DPC upon receipt of intimation of the date and time from Respondent No.3. The DPC must consider the candidature of the Petitioner and other employees in the feeder cadre *i.e.* Group 'D' employees or Class IV employees as of 1/10/2018 (because the vacancy was advertised on 20/9/2018). The DPC must make its recommendations based on seniority-cum-fitness, by adhering to the 2011 Recruitment Rules (to the extent applicable) and the provisions of the said Act and the said Rules. The DPC must not permit itself to be influenced by the fact that Respondent No.4 is appointed as an LDC by direct recruitment.

54. Suppose the DPC recommends the promotion of the Petitioner or any other employee from the feeder cadre. In that case, the Petitioner or the recommended employee must be promoted to the LDC notionally post effective from 1/10/2018. However, neither the Petitioner nor any such recommended employee would be entitled to arrears of pay or other financial benefits. The promotion on a notional basis effective from 1/10/2018 should, however, be considered for fixing pay scales and pensionary benefits.

55. If the Petitioner or any other employee from the feeder cadre is promoted, the appointment of Respondent No.4 will stand quashed from the date of such actual promotion. However, since no arrears are being awarded to the Petitioner or any other recommended employee from the feeder cadre, Respondents No.1, 2 and 3 will not make any recoveries from Respondent

No.4, who has worked as an LDC since 2018.

56. Suppose the DPC, upon due consideration of the candidature of the Petitioner or any other employee from the feeder cadre, finds that the Petitioner or any other employee from the feeder cadre are not suitable or fit. In that case, they shall record the reasons for their decision in the minutes of the DPC. Copies of the minutes of the DPC must then be furnished to the Petitioner and any other employee in the feeder cadre whose candidature the DPC was bound to consider and may have considered. Such minutes must be furnished to the Petitioner and other employees within 15 days from the date of the DPC meeting. Respondent No.4's appointment, in such an eventuality, need not be disturbed because the Rules contemplate filling up the post by promotion, failing which by direct recruitment. Therefore, Respondent No.4's appointment need not be interfered with if the Petitioner and other feeder cadre employees are not found suitable or fit for promotion by the duly constituted DPC comprising, *inter alia*, a nominee of the Director of Education.

57. Respondents No. 2 and 3 must comply with the above directions as expeditiously as possible and no later than 3 (three) months from today.

58. The rule is made absolute in the above terms. There shall, however, be no order for costs.

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

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