

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 99 OF 2009

Shri. U. P. Gaonkar,
Special Auditor of Co-operative Societies,
Margao, Government of Goa, Panaji - Goa,
Aged - 56 years, Resident of 171 - Dessai
Waddo, Paroda, Selcete, P.O. Quepem - Goa

...Petitioner

Versus

1. The State of Goa,
Through Its Chief Secretary,
having office at Secretariat, Porvorim
Bardez - Goa.
2. Goa Public Service Commission,
Through Its secretary having office at
EDC House, Block 'C', 1st Floor, Dada
Vaidya Road, Panji, Goa.
3. National Commission for Scheduled Tribes
having office at 6th Floor, 'B' Wing,
Lok Nayak Bhawan, Khan Market,
New Delhi 110 003.
4. Shri Chandrahas Phal Dessai,
Secretary, The Goa State Agricultural
Produce Marketing Board, Raia-Arlem,
Margao, Salcete-Goa.
5. Smt. Milan Kudalkar alias Shivani Borker
Assistant Registrar (Marketing),
"Sahakar Shakti", Near High Court,
Altinho, Panaji - Goa.
6. Shri. P. D. Halarner
Assistant Registrar of Cooperative Societies
(Central Zone), First Floor, Sahakar Bhavan,
near Municipal Market, Panaji - Goa.

7. Shri. V. B. Devidas,
Assistant Registrar of Co-operative Societies
(North Zone), Government Building Complex,
Mapusa, Bardez-Goa.
8. Shri. R.A. Pednekar Credit In-charge,
Goa Tillari Irrigation Development Corporation,
Circle II, Colvale, Bardez - Goa.
9. Shri. A.S. Mahatme
Assistant Registrar of Co-operative Societies
(Headquarters), "Sahakar Shakti",
near High Court Altinho, Panaji, Goa.
10. Shri. Ramesh Naik
Assistant Registrar of Cooperative Societies
(Audit), "Sahakar Shakti",
near High Court Altinho, Panaji, Goa. ...Respondents

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Mr. J. P. Supekar, Advocate for the Petitioner.

Ms. Amira Razaq, Advocate for the Respondents.

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

Date of Reserving the Judgment : **4th AUGUST 2023.**

Date of Pronouncing the Judgment : **12th FEBRUARY, 2024.**

JUDGMENT : (PER PRAKASH D. NAIK, J.)

1. The Petitioner was directly recruited as Junior Inspection/ Auditor in the office of Registrar of Cooperative Societies Government of Goa vide order dated 08.12.1978. The Petitioner was promoted to the post of Senior Inspector/Auditor in the office of Registrar of Cooperative Societies Government of Goa on 05.09.1996.

2. The Petitioner belongs to “Gawda Tribe” which is recognized as Scheduled Tribe for Goa. Vide notification dated 08.01.2003 Gawda Tribe came to be notified as a ‘Scheduled Tribe’ for the State of Goa. Caste certificate was issued to the Petitioner on 03.07.2003.

3. The brief facts urged by Petitioner in this Petition for claiming the reliefs sought in this Petition are as follows:

i) The promotions to the post of Special Auditor/Cooperative Officer are effected in terms of Goa Government, office of Registrar of Cooperative Societies, Group-B, Non-Gazetted Posts Recruitment Rules 1987.

ii) As per the recruitment Rules 1987, post of Special Auditor/Cooperative Officer is to be filled in by promotion, failing which by transfer on deputation and failing both, by direct recruitment. The promotion is from the feeder category of officers holding the post of Senior Auditor/Senior Inspector/Special Recovery Officer with five years regular service in the respective grades.

iii) Vide communication dated 29.04.2002 proposal was sent to fill in 10 posts of Special Auditor/Cooperative Officers by promotion on regular basis by Respondent No.1

to Respondent No.2. Deliberate misstatements were made in the said communication for the purposes of portraying regular vacancies, when in fact no such regular vacancies existed on the date when such proposal was forwarded or for that matter when promotions on regular basis came to be effected.

iv) The Note annexed to the proposal contained a chart with details of which the vacancies are said to have occurred to the posts of Special Auditor/Co-operative Officer, so that the vacancies can be filled in on regular basis.

v) The chart states that the two vacancies arose on 17.07.2000, consequent upon the promotions of Shri.A.K. Kamat and Shri.U.P. Talaulikar, five vacancies arose in the year 2001 upon promotions of Shri. S.V. Kale, Shri. M.P. Raikar, Shri.E.B. Mascarenhas, Shri. G.S. Edwade, Shri. Y.D. Parulekar and three other vacancies arose in 2002 upon promotions of Shri. Ronni Dias, Shri. D.M. Naik and Shri. D.B. Naik.

vi) The aforesaid information was wrong. Shri. A.K. Kamat was promoted as Assistant Registrar of Cooperative Societies vide order dated 17.07.2000 only on ad-hoc basis.

The regular promotion was awarded with effect from 21.06.2004. There was no regular vacancies in 2000. Shri.U.P Talaulikar was promoted to the post of Assistant Registrar of Cooperative Societies on 17.07.2000 only on ad-hoc basis and he had retired on 31.08.2001. There was no regular vacancy in 2000. Shri. M.P Raikar was promoted on 17.04.2001 on ad-hoc basis and on 21.06.2004 on regular basis. The regular vacancies arose on or after 21.06.2004. Shri.E.B. Mascarenhas was promoted on 12.10.2001 his ad-hoc basis. The regular promotion was awarded to him on 24.06.2004. Mr. G.S. Ekawade was promoted on ad-hoc basis on 12.10.2001 and he retired on 30.09.2002. Shri. Y.D. Parulekar was promoted on 12.10.2001 to the post of Assistant Registrar of Co-operative Societies on ad-hoc basis. He was promoted on regular basis on 21.06.2004. Information about Shri. D.M. Naik and Shri. D.B. Naik was not correct as they were also promoted on his ad-hoc basis and subsequently promoted on regular basis.

vii) In the year 2001 there were two regular vacancies pursuant to voluntary retirement of Shri. S.V. Kale w.e.f. 01.02.2001 and retirement of Shri. U. P. Talanlikar

w.e.f. 31.03.2001. In 2002, one vacancy arose consequent to retirement of Shri. G.S. Ekawade. In 2004 seven vacancies arose, on account of promotions of Shri. A.K. Kamat, Shri. M.P. Raikar, Shri. E.B. Mascarenhas, Shri. Ronnie Dias, Shri. D.B. Naik and retirement of Shri. D.M. Naik due to false information, the DPC recommended the names of Respondent Nos.4 to 10 for promotion on regular basis to the post of Special Auditor /Cooperative Officer in the office of the Registrar of co-operative societies. The candidature of the Petitioner was considered by DPC as a 'General Category Candidate' and not as a 'Reserved Category Candidate'. As the caste of the Petitioner was notified as Schedule Tribe on 07.01.2003 and the Certificate was issued to the Petitioner on 03.07.2003.

viii) If the correct information could have provided by Respondents, the Petitioner's candidatures would have been considered against Roster Points marked for Schedule Tribe Category. The Petitioner was deprived of his right for promotion against reserved category.

ix) The Respondent Nos.1 & 2 were duty bound to carry forward the vacancies reserved for Schedule Castes and

Scheduled Tribes for a period of three years. This exercise was not done.

x) The Petitioner addressed representation dated 28.09.2004 to Respondent No.1. The Petitioner also addressed representation dated 01.02.2007 to the Director of Social Welfare, Government of Goa. There was no Redressal from Respondent No.1. The Director of Social welfare issued order dated 07.01.2008 and recorded that the Petitioner was discriminated against and directed the Registrar of Cooperative Societies to conduct an inquiry into those officers who were responsible for non-filing of posts of Special Auditor/Co-operative Officer and initiated appropriate action.

xi) The Petitioner was promoted as Special Auditor/Cooperative Officer on 16.01.2006. If false information was not provided by Respondents, the Petitioner would have been promoted in the year 2003.

xii) Promotion to the post of Assistant Registrar of Cooperative Societies are from the feeder cadre of Cooperative Officer/Special Auditor who have three years regular service in the fitter grade.

xiii) Some of the Respondents were promoted to the post of Assistant Registrar of Cooperative Societies on regular basis.

The promotion is illegal.

xiv) Vide communication dated 29.10.2007, the Registrar of Cooperative Societies requested Goa Public service company to convey approval for relaxation of required qualifying service for falling short of three years for the post of Assistant Registrar.

xv) Vide communication dated 29.01.2008, the Respondent No.2 conveyed approval for relaxation of qualifying service in case of the Petitioner and two other officers in the feeder cadre. The condition was relaxed vide order dated 01.02.2008. However vide communication dated 03.03.2008, the Respondent No.2 withdrew approval for the relaxation on the ground that it is irregular to consider the ineligible officers by making them eligible and bringing them in zone of consideration along with those who are already possessing the required qualifying service.

xvi) Respondent Nos.9 & 10 were promoted to the post of Assistant Registrar of Cooperative Societies on regular basis vide order dated 14.05.2008. These promotions were illegal.

4. The Petition came for hearing on 31.08.2018, this Court passed the following order :

“ 1. The learned counsel for the Petitioner states that the Petitioner has superannuated and received pensionary benefits of the post which he was holding. He states that the petition however, is filed for denial of promotion and therefore the petition will primarily concern with the prayer clause(F) regarding the promotion to the post of Assistant Registrar of Cooperative Societies and consequential benefits. He seeks time to take instructions from the Petitioner. In view of this position, the clause(A) regarding the quashing and setting aside the orders issued by the Respondent No.1 does not survive. To enable the learned counsel for the Petitioner to take instructions, stand over to 8 October 2018.

2. We also note that the matter was referred to the Lok Adalat where the State Authorities had taken time to consider the monetary benefits to the Petitioner. However, thereafter it is discernible as to what was the stand of the State Authorities. The State Authorities will make their stand clear on the next date of hearing.”

5. The learned counsel for Petitioner submitted that the Petitioner has superannuated and received the pensionary benefits of the post which he was holding. However, the Petitioner was eligible for promotion to the post of Assistant Registrar of Co-operative Societies and consequential benefits. The proposal was sent to fill up 10 posts of Special Auditor of Co-operative Societies by promotion on regular basis on 29.04.2002 by Respondent No.1 to Respondent No.2. The proposal contained deliberate misstatement for portraying regular vacancies although it did not exists on that date. The promotions of the Respondents were

illegal. In 2001 there were two regular vacancies. In 2002 there was one vacancy and in 2004 there were seven vacancies. As a result of fraud practiced as aforesaid, the DPC recommended names of Respondent Nos. 4 to 10 on 15.07.2002 for promotions on regular basis to the post of Special Auditor Co-operative Societies. The Petitioner's candidature was considered in General Category as his caste was notified as Scheduled Tribe which notified came into force subsequently. The Petitioner's candidature would have been considered vide Roster Points. The Petitioner was deprived of promotion. The Petitioner produced his Caste Certificate on 07.04.2003. The Respondent Nos.1 & 2 should have carried forward the vacancies reserved for Scheduled Caste and Scheduled Tribe for a period of three years. The Petitioner's candidature would have been considered against the reserved category of the Scheduled Tribe if the Petitioner's appointment could have been effected as Special Auditor. At the relevant time, the Petitioner would have qualified after completing the requisite period for the post of Assistant Registrar within stipulated time. The Petitioner made representations to various Authorities. The Director of Social Welfare before whom the representation was addressed by the Petitioner had called for the report/comments from the office of Registrar of Co-operative Societies and passed the

order dated 07.01.2008 wherein it is observed that the Petitioner was discriminated against them and the Registrar of Co-operative Societies had conducted an inquiry against officers. In the said order it was observed that due to non-filling up of the post of Special Auditor/Co-operative Officer under reserved category of Scheduled Tribe within the reasonable time immediately after producing the Schedule Tribe certificate by Petitioner, he could not have availed the benefit of same post for about two and half years as a result, the Petitioner could not be eligible for next promotion of Assistant Registrar of Co-operative Societies. The Petitioner is entitled for promotion to the post of Assistant Registrar retrospectively and since the Petitioner has superannuated, directions to be issued to Respondent Nos.1 & 2 to consider the Petitioner for promotion to the post of Assistant Registrar of Co-operative Societies to promote him for the said post retrospectively and make all consequential benefits. The Respondents be directed to carry forward the vacancies for the year 2003-04 as Scheduled Tribe candidate and to promote the Petitioner with retrospective effect with all consequential benefits as Co-operative Officer/Special Auditor and further as Assistant Registrar of Co-operative Societies.

6. Learned Government Advocate Ms. Amira Razaq for Respondent No.1 submitted that the Petition is based on disputed questions of fact. The relief sought in this Petition cannot be granted. There is no illegality in the promotions of the Respondents as contended by the Petitioner. The Petitioner was promoted to the post of Special Auditor. He has superannuated. The Petitioner's candidature was considered by DPC as a candidate from General Category. The Petitioner was not eligible for promotion on the basis of reserved category as the Petitioner's caste was notified as Scheduled Caste subsequently. The certificate was produced by him on 04.07.2003. Thereafter, he was promoted for the post of Special Auditor in 2006.

7. The promotions of Respondents were effected on 10.10.2002. The said Respondents were further promoted to the post of Assistant Registrar on 14.05.2008. The Petitioner was considered for promotion to this post on regular basis along with others but he was not selected by DPC. The Affidavit in reply filed by the Respondents by Registrar of Co-operative Societies states that as per the Recruitment Rules, the post of Special Auditor is required to be filled by promotion failing which by transfer on deputation and failing both by direct recruitment. The officers

holding the post of Special Auditors were promoted on ad-hoc basis to the post of Assistant Registrar. In 2002 there were 10 posts of Special Auditors vacant, 9 on account of promotion and 1 on account of retirement under the VRS of an officer holding post of Special Auditor. There were no regular Special Auditor, who could be promoted if the posts of Assistant Registrar had to fall vacant. However, there were Senior Auditors who was eligible for being promoted to the post of Special Auditor. The decision was taken by the Government to promote the Special Auditors on a regular basis in 10 existing vacancies. In the year 2000 there was two posts, in 2001 there were five posts and in the year 2002 there were three posts. DPC was constituted for selecting the candidates to the said posts. The DPC was held on 15.07.2002. The DPC selected two candidates for the year 2000, 5 candidates for the year 2001 and three candidates for the year 2002. The Petitioner was considered for promotion in five vacancies of 2001 and three vacancies of 2002. However, the DPC did not recommend the Petitioner for any of those vacancies.

8. Assuming that the vacancies of Assistant Registrar were filled on a regular basis in 2004, the said fact does not give any right to the Petitioner to challenge promotion effected in 2003. Even if the

promotion of Special Auditors on 10.10.2002 had the effect of wiping out or cancelling the lien of those Special Auditors promoted on ad-hoc basis, it would be only those Special Auditors who could be arrived with the filling up of the posts of Special Auditors on a regular basis and the Petitioner who infact was one of the candidates considered for promotion as Special Auditor on a regular basis cannot have any grievance on making such promotion. In view of the approval from the GPSC dated 15.07.2002, the Registrar of Co-operative Societies and Ex-officio Joint Secretary, Government of Goa vide order dated 10.10.2002 was pleased to appoint 10 candidates as Co-operative Officers/ Special Auditors on regular basis.

9. The Petition is based on disputed questions of fact. One of the contention of the Petitioner is that the Respondent Nos.1 & 2 are duty bound to carry forward the vacancies is reserved for Schedule Caste and Schedule Tribe for a period of three years. It is also contended that in the event the Petitioner was promoted immediately on submitting his caste certificate in the year 2003, he would have entitle for further promotion to Assistant Registrar after completing the stipulated period two and half years. The statement is apparently based on the observations made by Director of Social

Welfare in order dated 07.01.2008. However there is no legal basis for such contention. The Petitioner's candidature was considered for promotion in General Category in the absence of caste certificate it cannot be said that the post under reserved category of Scheduled Tribe for the promotion of Special Auditor was available in 2003. Vide communication dated 03.03.2008, the Respondent No.2 withdrew the approval for relaxation as conveyed vide communication dated 29.01.2008 on the ground that it is highly irregular to consider the ineligible officers by making them eligible and bringing them in the zone of consideration along with those, who are already possessing the required qualifying service. We do not find any infirmity in the said communication withdrawing the approval for relaxation.

10. Considering these circumstances we are of the view that the relief sought in this Petition cannot be granted to the Petitioner.

ORDER

- i) Writ Petition No.99 of 2009 is dismissed.

(BHARAT P. DESHPANDE, J.)

(PRAKASH D. NAIK, J.)