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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.605 OF 2024

Sangeeta S. Kankonkar,
41 years of age, Indian National,
daughter of Shanu Kankonkar,
Upper Divisional Clerk,
Goa Board of Secondary and Higher
Secondary Education,
Resident of House No.348,
Aivao, Post Office NIO,
Ilhas Goa.
403 004.

... Petitioner

Versus

1. State of Goa,
Through their Chief Secretary,
Having office at Secretariat,
Porvorim, Goa.
2. Department of Personnel,
Government of Goa through
their Secretary (Personnel),
having office at Secretariat,
Porvorim, Bardez, Goa.
3. Department of Education,
Government of Goa through
their Secretary having office at
Porvorim, Bardez, Goa.
4. The Goa Board of Secondary
and Higher Secondary
Education, Through their
Secretary, having office at
Porvorim, Bardez, Goa.
5. The Staff Selection Committee
of the Goa Board of Secondary
and Higher Secondary
Education, Through their
Secretary, having office at
Porvorim, Bardez, Goa.

6. Smt Megha S. Maldar,
Accounts Clerk, major in age,
Indian National, Goa Board of
Secondary and Higher
Secondary Education,
Porvorim, Bardez, Goa.
7. Smt Mayuri S. Naik,
Upper Division Clerk, major in
age, Indian National,
Goa Board of Secondary and
Higher Secondary Education,
Porvorim, Bardez, Goa.
8. The Directorate of Tribal
Welfare, Through their
Director, 5th Floor,
Shrama Shakti Bhavan,
Patto, Panaj-Goa.
9. The Directorate of Social
Welfare, Through their
Director, 18 June Road,
Panaj-Goa.

... Respondents.

WRIT PETITION NO.682 OF 2024

Mayuri S. Naik,
D/o. Sudam Naik,
Aged 36 years, R/o. H.no.196/2, Bonbhat,
Taleigao, Ilhas,
North Goa, Goa.

... Petitioner

Versus

1. State of Goa,
Through their Chief Secretary,
Having office at Secretariat,
Porvorim, Goa.
2. Goa Board of Secondary and
Higher Secondary Education,
Through its Secretary,
Alto-Betim, Porvorim,
North Goa-Goa.

3. Goa Commission for Scheduled Caste and Scheduled Tribes, Through its Chairperson, Having Office at Sharm Shakti Bhavan, Patto-Panaji, North Goa-Goa.

4. Mrs. Sangeeta S. Kankonkar, Major of age, R/o. H.no.348, Aivao, Post Office, NIO, Ilhas, Taleigao, North Goa, Goa.

... Respondents.

Mr Jose Filipe Melo, Advocate for the Petitioner in Writ Petition No.605 of 2024 and for Respondent No.4 in Writ Petition No.682 of 2024.

Ms Sulekha Kamat, Additional Government Advocate for Respondents No.1, 2, 3, 8 and 9 in Writ Petition No.605 of 2024.

Ms Krupa Naik, Advocate for Respondents No.4 and 5 in Writ Petition No.605 of 2024 and for Respondent No.2 in Writ Petition No.682 of 2024.

Mr Parag Rao, Advocate with **Mr Prasheen Lotlikar** and **Mr Akhil Parrikar, Advocates** for Respondents No.6 and 7 in Writ Petition No.605 of 2024 and for the Petitioner in Writ Petition No.682 of 2024.

Mr Siddharth Samant, Additional Government Advocate for Respondent No.1 in Writ Petition No.682 of 2024.

Mr Gaurang D. Panandiker, Advocate for Respondent No.3 in Writ Petition No.682 of 2024.

CORAM : BHARATI DANGRE & ASHISH S. CHAVAN, JJ.

DATED : 4th SEPTEMBER, 2025.

ORAL JUDGMENT: (Per. BHARATI DANGRE, J.)

1. Rule. Rule is made returnable forthwith.

2. The two Writ Petitions, i.e. Writ Petition No.605 of 2024 and Writ Petition No.682 of 2024, are clubbed for hearing since they are *inter se* connected to one another.

As far as Writ Petition No.682 of 2024 is concerned, the same is instituted by Smt Mayuri Naik, being aggrieved by the decision taken by the Board to revise the Seniority List of Upper Division Clerk and placing Respondent No.4, Sangeeta Kankonkar above her.

The background facts would reveal that in the Seniority List of Lower Division Clerk, the Petitioner, who along with Sangeeta Kankonkar was appointed on 17.10.2011, was shown at Serial No.16 whereas Smt Sangeeta Kankonkar is shown at Serial no.15. Even in the final Seniority List, their position remained the same.

So far, so good. The issue arose, when the Petitioner was promoted to the post of Upper Division Clerk on 14.05.2018 from the Physically Handicapped category, whereas the Respondent No.4 was promoted to the post of Upper Division Clerk on 14.09.2020. As far the promotion of the Petitioner on 14.05.2018 is concerned, there was no challenge except a representation being preferred to the Respondent, which was rejected on the ground of delay. Ultimately, the final Seniority List of Upper Division Clerks was drawn on 09.06.2021 which reflected Smt Mayuri Naik at serial no.4, Smt. Sangeeta Kankonkar at serial no.5 and one Smt. Megha Maldar, the

Respondent No.6 in Writ Petition no.605 of 2024 at serial no.2 and as far as the contention qua her is concerned, we will refer to the same when we deal with the second Petition.

3. At this stage, it is relevant to note that since the Respondent No.4 was not successful in displacing the Petitioner in the list of Upper Division Clerk, she approached the Goa Commission for Scheduled Caste and Scheduled Tribe, constituted under The Goa Commission for Scheduled Caste and Scheduled Tribe Act, 2010 with the purpose of safeguarding the interests of Scheduled Castes and Scheduled Tribes in the State of Goa and for matters provided therein.

The Commission, by taking cognisance of the complaint filed by Smt. Sangeeta Kankonkar, who had requested to Goa Board of Secondary and Higher Secondary Education i.e. the employer, to consider her for promotion to the post of Head Clerk w.e.f. 14.05.2018, i.e. with retrospective date with all service benefits and fresh Seniority List to be prepared, recommended as below:

“RECOMMENDATION

In view of the above, the Commission Recommends the Respondent Goa Board of Secondary and Higher Secondary Education to rectify the Seniority List of UDC prepared on 10/09/2021 and thereafter to consider Smt. Sangeeta S. Kankonkar for promotion of Head Clerk.

The Action Taken Report of this recommendation shall be submitted to this Commission within the period of 08 weeks from the receipt of this recommendation.

Given under my hand and seal of this Commission.

(Deepak Karmalkar)

Chairperson

Dated: 26th December 2023

Goa Commission for SC/ST”

4. Based upon the aforesaid recommendations, the Goa Board of Secondary and Higher Secondary Education, i.e. Respondent No.2, revised the Seniority List placing Respondent No.4, Smt. Sangeeta Kankonkar at serial no.3 and Petitioner Smt. Mayuri Naik at serial no.4. At this juncture, we also note that Smt. Megha Maldar topped the Seniority List, her date of joining as UDC/Accounts Clerk being reflected, as 07.01.2014.

5. The above decision gave cause for Mayuri Naik to file Writ Petition No.682 of 2024, and we have heard learned Counsel Mr Parag Rao for the Petitioner, the learned Additional Government Advocate, Mr Siddharth Samant for the Board, whereas learned Counsel, Mr Jose Philip Melo is representing Respondent No.4 in the said Petition.

This Petition calls in question the decision of the Board to revise the Seniority List of 11.03.2024 based upon the recommendation of the Commission dated 26.12.2023 and it is the specific contention of Mr Rao that when the Respondent No.4 failed to secure redressal of her grievance as against the promotion of the Petitioner on the post of UDC on 14.05.2018 and her representation was rejected, she approached the Commission, and the Commission offered its

recommendation based on unsustainable grounds and these are implemented by the Board without any application of mind.

Relying upon the interim order dated 27.09.2024 in the present Petition, Mr Rao would submit that this Court, while examining the powers of the Commission to make recommendation under Section 11 has interpreted the said provision and recorded that any authority or body or Commission or Committee or any such entity created under a particular legislation can exercise its jurisdiction and perform its duties and functions within the four corners of the legislation under which it is created and not beyond that. The prima facie observations of the Bench on which Mr Rao would place reliance read to the following effect:

“6. Perusal of the provision contained under Section 11 of the Act of 2010 makes it clear that though the Commission has been entrusted with certain functions inter alia to enquire into violation of any rights under the Protection of Civil Rights Act 1955 and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Rules framed thereunder and violation of various other rights of the members belonging to Scheduled Castes and Scheduled Tribes, however, on any such inquiry, it is only a recommendation which can be made by the Commission to the competent authority. When we examine the document which is annexed at page 140 of the Writ Petition, which is dated 26.12.2023 and has been issued by the Chairperson of the Goa Commission for Scheduled Castes and Scheduled Tribes, what we find is that it is described as a judgment and it is only in the later part of the said document that the word “Recommendation” occurs. When we peruse what is stated, under “Recommendation”, we find that the Commission has not only made alleged recommendations to Goa Board of Secondary and Higher Secondary Education to rectify earlier Seniority list dated

10.9.2021 but has directed also to consider the respondent no.4 for promotion as Head Clerk. It also further recommended to Goa Board of Secondary and Higher Secondary Education to furnish an action taken report to the Commission. Such a course adopted by the Commission in the instant case, does not prima facie appears to be in conformity with the nature of the functions that the Commission is entrusted to perform under Section 11 of the Act of 2010.

7. We are thus convinced that the petitioner is able to make out a case for grant of interim relief. Accordingly, we direct that till further order of the Court, the impugned Revised Senior List of UDC dated 11.3.2024, so far as it relates to the petitioner and respondent no.4, shall not be implemented; neither will it be given an effect for any purpose.”

6. It is not in dispute that as far as the Seniority List of Lower Division Clerk is concerned, Mayuri Naik stood at serial no.16, whereas Sangeeta Kankonkar was placed at serial no.15. However, pursuant to a vacancy of Physically Handicapped category being available and since Mayuri Naik belonged to the said category, she came to be promoted to the post of Upper Division Clerk on 14.05.2018. In due course thereafter, on 14.09.2020 the Respondent No.4 came to be promoted to the post of Upper Division Clerk. The Commission while considering the grievance of Smt. Kankonkar, has recorded a finding that the 17th roster point of the seniority was reserved for Scheduled Tribe and therefore, the promotion of the Petitioner, Smt. Mayuri Naik, on the post of Upper Division Clerk on 14.05.2018 is unsustainable.

7. We specifically attempted to look for the basis of this inference being drawn by the Commission in its order and reliance placed by the

learned Counsel upon the information that is sought from the Tribal Department to find that there is no specific conclusion to that effect except what is observed by the Commission, that the roster point is not properly maintained nor separate registers are maintained. We do not find any basis or genesis on the said observation that the 17th roster point for recruitment of Upper Division Clerk was reserved for Scheduled Tribe.

8. In any case, when we have perused the provisions of the Act of 2010, which has resulted into establishment of the Goa Commission for Scheduled Caste and Scheduled Tribe, we find that the purpose of the establishment of the Commission is to safeguard the interest of the Scheduled Castes and Schedules Tribes in the State of Goa.

Chapter III of the said Act has set out the power and functions of the Commission, while performing its functions under Section 10 it is vested with the powers of a Civil Court trying a suit and in particular, the power to be exercised which find culled out therein.

Coming to Section 11, the functions of the Commission are specifically set out and what appears to be invoked is clause (g) and clause (j) of Section 11(1), which read to the following effect:

“(g) to enquire into any unfair practice, take decision thereon and recommend to the Government the action to be taken in that matter;

..

..
(j) to suggest appropriate legal and welfare measures in respect of Scheduled Castes and Scheduled Tribes to be undertaken by the Government.”

9. Perusal of Section 11 of the Act would reveal that the Commission is entrusted with various functions, so as to safeguard the interests of Scheduled Castes and Scheduled Tribes in the State of Goa but in any case when we look at the particular clauses (g) and (j), which is the power of the Commission to inquire into any unfair practice, take decision thereon and ‘recommend’ the Government the action to be taken in the matter and also to suggest appropriate legal and welfare measures in respect of Scheduled Castes and Scheduled Tribes to be undertaken by the Government. Undoubtedly, the Commission is cast with the duty to discharge such other functions in relation to welfare, development and advancement of Scheduled Castes and Scheduled Tribes but the functions of the Commission being recommendatory in nature, do not amount to a binding decision.

This particular view is found reiterated in the decision of this Court in the case of ***The Assistant Registrar (Academic) PG, Goa University, Taleigao, Goa v/s. Saprem Shirvoikar***¹, as well as the decision in the case of ***Dhempe College of Arts & Science v/s. State of Goa (WP/653/2022 (Filing))***, with

¹ 2024 DGLS (Bom) 479

reference to the decision of the Apex Court in the case of ***All India Indian Overseas Bank SC and ST Employees' Welfare Association***², where it is categorically held that the Commission has only power to make a recommendation and its recommendation would not amount to a binding direction.

This is the principle of law laid down in the aforesaid pronouncements and also on reading of the provisions of the Act of 2010 and in particular, Section 10 along with Section 11, we would derive the same inference that the Commission can only recommend measures, for the upliftment of Scheduled Castes and Scheduled Tribes as regards the welfare measures are concerned, we find that the revision of the Seniority List by the Board merely on the basis of recommendation, which is not a binding decision, is de hors the principle of seniority and the fact that the Board had earlier promoted Mayuri Naik on the post of Upper Division Clerk, on following the regular procedure for promotion, i.e, through the Staff Selection Committee and for the post belonging to Physically Handicapped category being available in the form of backlog.

We, therefore, find that the decision of the Board to revise the Seniority List merely on the recommendation of the Commission while treating it as a binding decision cannot be sustained and, therefore, is liable to be quashed and set aside.

² (1996) 6 SCC 606

10. Coming to the Petition No.605 of 2024 filed by Sangeeta Kankonkar wherein she, apart from Mayuri Naik, has also called in question the placement of Smt. Megha Maldar (Respondent No.6), Accounts Clerk, over her, as it is the specific contention advanced by the learned Counsel that her name is not reflected in the Seniority List of 2019 as well as 2021 and her name emerges at serial no.4 only in the Seniority List of 2024.

Contesting the aforesaid contention, Mr Rao who also represent Respondent No.6, would submit that Respondent No.6 was appointed as an Accounts Clerk, by direct recruitment in the office of Respondent No.3 on 10.01.2014 and thereafter she was confirmed in service vide order dated 27.01.2016 as Accounts Clerk. He would invite our attention to the decision taken by way of a resolution, thereby designating the post of Accounts Clerk in Upper Division Clerk cadre in the year 2013 and accordingly, her seniority has been computed from the date of her appointment as Accounts Clerk, i.e. 10.01.2014 and therefore, she is placed above the Petitioner, Mayuri Naik and Respondent No.4, Sangeeta Kankonkar in the Seniority List of Upper Division Clerk.

In any case, we find that no challenge was ever raised to this action and only by filing a Petition in 2024 and particularly, including a prayer (b) for quashing and setting aside the item No.5.1(3) of the

resolution adopted on 13.05.2013, issued by the Respondent No.4, we find that it is too late in the day to raise a challenge to that effect.

As far as Mayuri Naik is concerned, since we have already recorded a finding in the Petition filed by her that the recommendation by the Commission is not to be treated as a decision and the revision of the Seniority List by the Board merely on the basis of the recommendation is not sustainable, we are not inclined to grant any relief in favour of the Petitioner, thereby disturbing the position of the Petitioner Mayuri Naik in Writ Petition No.682 of 2024, as well as Respondent No.6 in Writ Petition No.605 of 2024, Smt. Megha Maldar.

Writ Petition No.682 of 2024 is made absolute by quashing and setting aside the Revised Seniority List dated 11/03/2024, bearing reference No.GBSHSE/EST/SEN-LIST/2024/626 prepared by the Goa Board of Secondary and Higher Secondary Education.

Writ Petition No.605 of 2024, being without any merit and substance, is dismissed.

ASHISH S. CHAVAN, J

BHARATI DANGRE, J.