

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 853 OF 2016**

1. Shri Dilip N. Gaunkar, aged 48 years, Indian National, 'Sorter', Directorate of Archives & Archaeology, having office at Ourem Road, Mala, Panaji-Goa.
2. Shri Bhupesh B. Gaude, aged 33 years, Indian National, 'Sorter', Directorate of Archives & Archaeology, having office at Ourem Road, Mala, Panaji-Goa. ... PETITIONERS

Versus

1. The Director of Archives & Archaeology, Government of Goa, having office at Directorate of Archives & Archaeology, Ourem Road, Mala, Panaji-Goa – 403 001.
2. State of Goa, though its Chief Secretary, having office at Secretariat, Porvorim, Bardez-Goa.
3. Shri Mahesh R. Kalangutkar, of major age, Indian National, Directorate of Archives & Archaeology, Ourem Road, Mala, Panaji-Goa – 403 001. ... RESPONDENTS

Mr. Parikshit Sawant, Advocate for the Petitioners.

Mr. Deep D. Shirodkar, Additional Government Advocate for Respondent Nos. 1 and 2.

Ms. Annelise Fernandes, Advocate for Respondent No. 3.

**CORAM: BHARATI DANGRE &
NIVEDITA P. MEHTA, JJ.**

DATED: 9th JUNE 2025

ORAL JUDGMENT: (per BHARATI DANGRE, J.)

1. The Petitioners working as 'SORTERS' in the Directorate of Archives and Archaeology have approached this Court, being aggrieved by the publication of the seniority list dated 15.07.2016 by the Directorate of Archives and Archaeology, Government of Goa, issued in continuation of the final seniority list of Sorters, Group 'C' dated 01.01.2016, declaring the candidates eligible for the post of Assistant Archivist, Grade-II. In the said office order, Respondent No. 3, Mr. Mahesh Kalangutkar is shown to be placed at serial no. 1 whereas the Petitioners are shown below him.

The aforesaid office order has constrained the Petitioners to approach this Court, praying for its quashing and requesting for stay of execution and operation of the said order.

The Petitioners also raised a challenge to the orders dated 25.10.2011 and 17.10.2012 [Annexure 'E' and 'F' respectively], but the learned Counsel for the Petitioners during the course of the hearing did not press for the said reliefs and therefore, prayer clause (B) of the Petition does not deserve any consideration.

2. On 02.08.2019, 'Rule' was issued in the Petition and on completion of the pleadings, the Petition is taken up for final hearing.

We have heard Advocate Parikshit Sawant for the Petitioners, learned Additional Government Advocate Deep Shiroadkar for Respondent Nos. 1 and 2 and Advocate Annelise Fernandes for Respondent No. 3.

3. The brief facts placed before us through the Petition and also through the arguments advanced by the respective Counsel for the parties, would reveal that the Petitioners, upon undergoing the selection process duly conducted, were appointed to the post of 'Sorter', Class 'C', non-gazetted post vide order dated 03.10.2006 on an initial pay of Rs.3,050/- per month in pay scale of Rs.3050-75-3950-80-4592 plus allowances admissible from time to time. The appointment order categorically stated that the incumbent would be placed on probation for two years.

Consequent upon the expiry of the probation period in consultation with the DPC, the services of the Petitioners were regularized w.e.f. 03.10.2008 i.e. on completion of the probation period of two years.

Thus, the Petitioners continued to work on the post of 'Sorters' w.e.f. 03.10.2006 and their services were regularized w.e.f. 03.10.2008.

4. Coming to Respondent No. 3, Mr. Mahesh Kalangutkar, he came to be promoted to the post of Sorter by order dated 07.12.2001 and this order was subject to challenge by one Mr.

Naguesh Narulkar in Writ Petition No. 56 of 2002, who sought promotion from the post of Group 'D' to the post of Sorter w.e.f. 07.12.2001 by setting aside the promotion order issued in favour of Mr. Mahesh Kalangutkar as the post of Sorter was a selection post and promotion to that post could be made from Group 'D', employees of the Department, with 5 years regular service, possessing SSC with some knowledge of reading and writing Portuguese.

Mr. Naguesh Narulkar, the Petitioner therein claimed that he possess the necessary qualification to be promoted to the post of Sorter and in fact, he was promoted to the said post from 20.07.2005 since he was appointed on 18.11.1987 and was promoted as Library Attendant in 1990. He claimed that Respondent No. 3, who had been promoted to the post of Sorter when the vacancies arose in the year 2001, does not possess the requisite qualification as he was working on daily wages as a clerk cum typist.

5. The contention raised on behalf of Petitioner found favour with the Court, as it recorded that Respondent No. 3, Mr. Mahesh Kalangutkar could have been promoted as a Sorter, only if he was holding a regular post in Group 'D' for five years, but since he was working on daily wages, it was impermissible for him to be qualified for being promoted.

In the given circumstances, while striking down his promotion the order dated 07.12.2001 appointing him to the post of Sorter, was set aside. The Respondents were directed to hold a DPC to consider the Petitioner's eligibility to the post of Sorter and if found to be eligible, he was directed to be promoted with all consequential benefits.

6. No sooner than the aforesaid decision was delivered by the High Court of Bombay at Goa in Writ Petition No. 56 of 2002 on 07.07.2008, on 28.07.2008, the Directorate of Archives and Archaeology withdrew the order dated 07.12.2001 with immediate effect.

After the aforesaid development occurred, on 25.10.2011, Mr. Mahesh Kalangutkar was given a temporary appointment to the post of Sorter in the pay scale of PB-1 Rs.5200-20200 + Rs.1900 on a probation period of two years. However, before he could complete the period of probation, he was regularised in the post of Sorter with immediate effect.

The order dated 17.10.2012 superseded the order passed on 25.10.2011 as the Review Departmental Selection Committee had recommended regularisation of Mr. Mahesh Kalangutkar to the post of Sorter.

Not only this, vide order dated 18.10.2013, the Government accorded its sanction to protect the pay of Respondent No. 3 and fixed his pay in the pay scale of Rs.3050-75-3950-80-4590 as per

the fifth pay commission w.e.f. 07.12.2001 as his appointment on the post of Sorter came to be regularised.

7. It is worth to note that the Directorate of Archives and Archaeology prepared and published the tentative list of Sorters on 19.07.2010, who were eligible for promotion to the post of Assistant Archivist, Grade-II and invited objections for its consideration. The Petitioners, Dilip Gaunkar and Bhupesh Gaude were shown at serial nos. 4 and 6 respectively in the said seniority list, their date of appointment being reflected as 03.10.2006.

Admittedly the name of Respondent No. 3 does not appear in the said seniority list.

8. The Directorate of Archives and Archaeology once again issued an office order on 01.01.2016 in continuation of the tentative seniority list of Sorters, which was finalized and the Petitioners with their date of appointment as 03.10.2006 were shown at serial nos. 1 and 2. The office order dated 01.01.2016 included the name of Respondent No. 3 at serial no. 8, reflecting his date of appointment as 25.10.2011 with the following remark:

“Representation before the Government. Seniority may change as per the directives of the Government”.

9. Thereafter on 15.07.2016, the impugned office order was issued, showing Respondent No. 3 at serial no. 1 in the post of Sorter with his date of appointment being mentioned as 15.07.2005 with the following remarks:

“As per the directives of the Government issued vide letter No. 2/1/2001-Per/2121 dated 01.07.2016 seniority of Shri Mahesh Kalangutkar shall be counted from 15.07.2005”.

As far as the Petitioners are concerned, their names were shown at serial nos. 2 and 3.

It is this order which is impugned in the Writ Petition.

10. On its issuance, the Petitioners preferred a representation to the Directorate of Archives and Archaeology, stating that the name of Mr. Mahesh Kalangutkar has been erroneously shown at serial no. 1 as he is shown to be appointed as a Sorter on 15.07.2005, whereas his appointment order clearly states that he was appointed on ad-hoc basis, however, an erroneous remark is placed in the ‘Remarks Column’ and his seniority is directed to be computed from 15.07.2005.

It was pointed out to the Directorate of Archives and Archaeology that Mr. Mahesh Kalangutkar was promoted as ‘Sorter’ on 07.12.2001 in violation of the Recruitment Rules and on this ground, the High Court had quashed and set aside the

order by judgment and order dated 07.07.2008 and Mr. Narulkar was appointed in place of Mr. Mahesh Kalangutkar and continued to hold the post from 2001 to 2005. In the wake of the observations of the High Court that Mr. Mahesh Kalangutkar could not be appointed on regular basis as he was not in that category, the grievance raised was that by placing him at serial no. 1, it has caused injustice to persons working as Sorters placed at serial nos. 2 to 12. It is also stated that the name of Mr. Mahesh Kalangutkar did not feature in the earlier list of seniority dated 01.01.2016, 19.11.2015, 19.03.2012 and 19.07.2010 and suddenly, his name is found in the seniority list in view of the directions of the Government dated 01.07.2016, is highly objectionable and must stand scrutiny of law.

11. This received a reply from the Directorate of Archives and Archaeology wherein it was stated that Mr. Mahesh Kalangutkar had filed a Petition before the Ombudsman praying for seniority w.e.f. 15.07.2005 and regularisation of his services from 07.12.2001 and the Ombudsman recommended that since there was no departmental candidate eligible for promotion for a vacancy that occurred on 15.07.2005 and since Mr. Nagesh Narulkar had succeeded in his Petition to get his appointment w.e.f. 07.12.2001, the vacancy of 15.07.2005 naturally was filled in by direct recruitment and the Applicant deserves to be appointed on regular basis against the vacancy effective on 15.07.2005. The

Ombudsman also directed that the Department should modify the orders issued by it on 23.06.2010, 25.10.2011 and 17.10.2012 and deleted the words “on purely ad-hoc basis” so as to appoint him as a Sorter on regular basis w.e.f. 15.07.2005 with all service benefits. It was also directed that he is entitled to his seniority from 15.07.2005 and this direction issued by the Ombudsman was complied and the seniority list was freshly drawn on 15.07.2016.

Being unsatisfied with this response, the Petitioners filed this Petition in the year 2016 and the parties were directed to complete the pleadings and we have taken up the Petition for final hearing.

12. The Government Advocate Mr. Shirodkar would rely upon the affidavit filed on behalf of the Directorate of Archives and Archaeology, which has narrated the factual position and the sequence of events leading to the order dated 14.07.2016 appointing Respondent No. 3 as Sorter w.e.f. 15.07.2005 as well as the subsequent order dated 15.07.2016 issuing a revised seniority list wherein Respondent No. 3 is ranked at serial no. 1.

He would submit that Respondent No. 3 was appointed by the Department as clerk cum typist on daily wages vide appointment order dated 27.08.1991 and he continued to work so, till 07.12.2001. The Government of Goa had taken a policy decision to regularise the services of daily wagers who had completed five years of service and the Under Secretary

(Personnel) by letter dated 07.11.2001 conveyed to Respondent No. 1 that two posts of Sorter may be filled in by regularising the services of daily wage workers working in the Department. It was made clear that there should be no further recruitment in the Department on daily wages in future, against vacancies caused due to regularisation of staff. This letter is placed on record as Annexure R1-A, with respect to the subject of “Filling of Group ‘C’ posts” and by which the Government conveyed its approval to fill in the post of Assistant Archivist by promotion, by regularising the services of daily wage workers in the Department.

Pursuant to this, according to him, on 23.06.2010, Mr. Mahesh Kalangutkar was appointed to the post of Sorter in the regular pay scale purely on an ad-hoc basis.

The order dated 23.06.2010 however clarify that the ad-hoc services rendered by the incumbent shall not be counted for seniority, promotion etc.

13. Mr. Shirodkar would vehemently justify the appointment of Respondent No. 3 by submitting that Respondent No. 3 was wrongly shown to be appointed on 25.10.2011 on probation for two years as he was actually regularised on a superannuated post which was created from 07.12.2001 to 14.07.2005 and he continued to work as a Sorter.

According to him, since the Government took a decision to regularise the services of daily wagger to fill the post of Sorter, the

appointment order on 25.10.2011 was misplaced and on retirement of Mr. Narulkar when the vacancy arose w.e.f. 15.07.2005, Respondent No. 3 made a representation, raising various issues seeking seniority from 15.07.2005. The Ombudsman issued certain directions and in the wake of the directions, Respondent No. 3 came to be appointed on regular basis against the vacancy w.e.f. 15.07.2005. It is also urged before us that in terms of Section 12 of the Goa Government Employees (Redressal of Grievances Forum) Scheme, 2001, the recommendations of the Ombudsman shall ordinarily bind the Government unless otherwise directed by the Chief Minister on the advise tendered by the Council of Ministers, supported by reasons for not giving effect to such recommendations.

It is therefore the stand adopted by Respondent No. 1 that it issued the order on 14.07.2016 in supersession of the order of 23.06.2010, thereby appointing Respondent No. 3 to the post of Sorter on regular basis w.e.f. 15.07.2005 and this resulted in revising the seniority list issued on 01.01.2016 by placing him at serial no. 1.

14. Respondent No. 3 has also filed an affidavit, relying upon the policy decision taken by the State Government to regularise his services as daily wager and it is urged on behalf of him that the Under Secretary (Personnel) vide its letter bearing No. 9/6/2001-Per dated 07.11.2001 addressed to Respondent No. 2 was pleased

to convey its approval to fill two posts of Sorter by regularising the services of daily wager working in the Department and this resulted in a benefit being conferred on the Petitioners. It is urged before us that in view of the promotion of Mr. Naguesh Narulkar as Sorter w.e.f. 07.12.2001, a vacancy arose for the post of Sorter as on 20.07.2005 and the Government considering the fact that he had efficiently rendered services as Sorter w.e.f. 07.12.2001 till 2008 i.e. for nearly 7 years, the Government was pleased to decide not to recover the pay and allowances paid to him and a supernumerary post was allowed to be created w.e.f. 07.12.2001 to 14.07.2005 and his services were regularised as Sorter w.e.f. 15.07.2005 on account of the vacancy created on the promotion of Mr. Naguesh Narulkar.

15. The Petitioners have responded to the two affidavits by filing rejoinder and have strongly deprecated the approach adopted by the State Authorities in submitting that the Ombudsman did not take into consideration the Recruitment Rules while considering the case of Respondent No. 3 for promotion and the recommendations of the Ombudsman do not bind the State Government, which is expected to act in terms of the Recruitment Rules, which govern the appointment to a Government post. In addition, the order of this Court dated 07.07.2008 is strongly pressed into service by the Counsel for the Petitioners by submitting that the promotion of Respondent No. 3

was set aside on the ground that he did not fulfill the minimum criteria for the post of Sorter and the appointment order dated 07.12.2001 was set aside and therefore, no benefit of the appointment order could be allowed to be drawn by Respondent No. 3.

16. We have perused the pleadings in the Petition as well as the affidavits in reply and the rejoinder filed by the Petitioners. It is not in dispute that the Petitioners who were appointed on the post of Sorter, Class-III, were put on probation for two years and their services were regularised on the expiry of the probation period in consultation with the DPC and on 19.03.2012, they were conferred with regularisation w.e.f. 03.10.2008 on completion of a satisfactory probation period of two years. In the tentative seniority list of Sorters published on 19.07.2010, Mr. Naguesh Narulkar, who was appointed as Sorter on 07.12.2001 was shown at serial no. 3 whereas the Petitioners are shown at serial nos. 4 and 6 with their date of appointment being shown as 03.10.2006.

17. It is worth to note that in this seniority list, the name of Respondent No. 3 does not feature at all, as on that date he was not working as a Sorter as his promotion order dated 07.12.2001 promoting him to the post of Sorter was set aside by the Bombay High Court on 07.07.2008 with a specific observation that he could not have been promoted/appointed to the post of Sorter and

the order dated 07.12.2001, was therefore withdrawn by the Department on 28.07.2008. Therefore, as on 19.07.2010 when the tentative seniority list for Sorters was published by the Directorate of Archives and Archaeology, for consideration of the eligibility for promotion to the post of Assistant Archivist, Grade-II, the name of Respondent No. 3 is conspicuously absent.

18. In the wake of the decision of the Government dated 07.11.2001, communicating that the two posts of Sorters may be filled in by regularising the services of daily wage workers in the Department, was subject matter of challenge in Writ Petition No. 56 of 2002 when Mr. Naguesh Narulkar raised an objection to the order dated 07.12.2001 promoting Respondent No. 3 to the post of Sorter as he did not complete five years of regular service in Group 'D' and therefore, the High Court on a conclusion that Respondent No. 3 do not have the requisite qualification as he was working on a daily basis as clerk cum typist, struck down the order of promotion in favour of Respondent No. 3 dated 07.12.2001.

The Department abided the order of the High Court and by order dated 28.07.2008, it withdrew the order dated 07.12.2001. Thereafter, Respondent No. 3 was appointed on 25.10.2011 clearly stating that he was given temporary appointment to the post of Sorter with immediate effect, but he shall be on probation for a period of two years.

19. Without waiting for the probation period to be completed, his services were regularised, as recommended by the Review Departmental Selection Committee w.e.f. 17.10.2012. The said order superseded the order dated 25.10.2011 and when sought justification from the learned Government Advocate in that regard, he who would submit that the Government of Goa had taken a policy decision to regularise the services of daily wage workers who had completed five years of service and therefore, the Under Secretary of the Department conveyed to Respondent No. 1 that the two posts of Sorters may be filled in by regularising the services of daily wage workers. This resulted in Respondent No. 3 being appointed as Sorter, but this appointment order was set aside by the High Court on 07.07.2008 wiping out its effect from its very inception. The Government implemented the directions of the High Court and withdrew the order dated 07.12.2001 by issuing a fresh order on 28.07.2008.

20. Now once again, Respondent No. 3 was appointed on 25.10.2011 for the post of Sorter. Between this, along with the affidavit, the State has placed on record the order passed by the Director dated 23.06.2010 appointing him to the post of Sorter w.e.f. 20.07.2005, purely on an ad-hoc basis with a clear understanding that the ad-hoc services rendered by the incumbent shall not be counted for seniority, promotion etc.

21. Here steps in the arbitrary approach adopted by the Department as we find that upon the promotion order dated 07.12.2001 being withdrawn on 28.07.2008, on 23.06.2010 an appointment order was issued in favour of Mr. Mahesh Kalangutkar on ad-hoc basis with a clear understanding that it shall not be counted for seniority, promotion etc. Realizing the legal lacuna and considering that the appointment was purely on an ad-hoc basis, on 25.10.2011, once again, an appointment order was issued to Mr. Mahesh Kalangutkar for the post of Sorter, but on probation for two years. Without waiting for satisfactory completion of the probation period from the date of issue of the order, his services are regularised on 17.10.2012, but surprisingly his pay on the post of Sorter is protected from 2001 despite the fact that his promotion was set aside.

22. In the final seniority list of Sorters, the name of Respondent No. 3 is transposed at serial no. 1 i.e. above that of the Petitioners, by counting his seniority w.e.f. 15.07.2005 and we are surprised to note the justification for this.

The affidavit of Respondent Nos. 1 and 2 as well as the arguments of Mr. Shirodkar on behalf of Respondent Nos. 1 and 2 offer feeble justification being that pursuant to the vacancy created on account of the promotion of Mr. Naguesh Narulkar w.e.f. 07.12.2001 with a direction that the daily wagers could be

regularised and as no other candidate was eligible in the year 2005, Respondent No. 3 was regularised w.e.f. 15.07.2005.

We fail to appreciate this approach of the Respondents.

23. The Recruitment Rules for the post of Sorter contemplates appointment either by selection or by promotion and the Recruitment Rules for the post of Sorter, Group 'C', non-ministerial, non-gazetted with regards to selection, require qualification of SCC with some knowledge of reading and writing Portuguese, but when it comes to promotion, failing which a candidate could be appointed by direct recruitment, the Rules prescribe Group 'D' employees of the Department with five years of regular service in the Grade, possessing SCC with some knowledge to read and write Portuguese to be eligible to fill up the post.

Upon the promotion order being issued on 07.12.2001 to Respondent No. 3 to fill up the post of Sorter, the same was set aside by the High Court on 07.07.2008 with an observation that he was not in regular service, but he was merely appointed as daily wage worker.

24. It is surprising that despite the clear observations of the High Court and particularly when the order of 07.12.2001 was recalled on 28.07.2008, the benefit of regularisation is conferred on Respondent No. 3 with retrospective effect i.e. 15.07.2005 on the

premise that the post of Sorter had fallen vacant upon promotion of Mr. Narulkar. There are two appointment orders issued to Respondent No. 3, the first being issued on a temporary basis whereas the second order dated 25.10.2011 appointing him as a Sorter on a probation of two years.

25. What the Department then followed was to regularise the services of Respondent No. 3 as Sorter when in fact he was never holding the post of Sorter as on 07.12.2001 as his promotion was set aside since it was found not to be in consonance with the Recruitment Rules which permitted promotion of Class 'D' employee only, who had completed five years of regular service.

It is not the case of the Department that Respondent No. 3 was appointed on regular basis as the office memorandum dated 29.10.1990 issued by the Finance (Revenue and Control) Department, had issued clear instructions that the employees who completed five years of continuous service, would qualify for being considered for regularisation in the post which he was appointed. Admittedly, Respondent No. 3 was appointed by the Department as clerk cum typist on daily wages by appointment order dated 27.08.1991 and he continued to work on daily wages until 07.12.2001 when he was promoted as a Sorter and the order was set aside. There was no question of he rendering services as Sorter, once his promotion order was set aside and that is the reason why the Department deemed it appropriate to issue a fresh

appointment order first in the year 2010, purely on an ad-hoc basis without conferring upon him any right of promotion, benefit of seniority etc. Once again, a fresh appointment order was issued in his favour on 25.10.2011, this time appointing him on probation, but surprisingly without allowing the probation period to be completed, abruptly on 17.10.2012, his services were confirmed as 'Sorter'.

26. From the entire approach adopted by the Department, it is evident that for reasons best known to them, Respondent No. 3 was favoured as against the Petitioners, who were duly appointed on 03.10.2006 and their services were regularised from 03.10.2008. In the tentative seniority lists published in the year 2010, the names of the Petitioners appear at serial nos. 1 and 2 in *absentia* of Respondent No. 3, who suddenly surfaced in the seniority list of the Sorters published in year 2015 on the pretext that the Ombudsman had directed the State Government to confer on him the benefits of the post of Sorter unmindful of the fact that on 07.07.2008 the High Court had set aside his promotion to the post of Sorter on the ground that he was not appointed in regular cadre and therefore, there was no question of the benefit of regularisation being conferred on him.

27. This exercise is once again repeated by the Department in utter violation of the observations of this Court in its judgment

dated 07.07.2008 and with a lot of vehemence, the Department is placing a stand before us that they had complied with the direction of the Ombudsman, which we find to be completely illogical as no directions can be issued contrary to the Recruitment Rules and this was the precise ground on which the High Court found fault with the order dated 07.12.2001 promoting Respondent No. 3 to the post of Sorter.

28. Finding no justification in the entire approach adopted by the Department, in favouring Respondent No. 3, we deem it appropriate to set aside the office order dated 15.07.2016, which has placed Respondent No. 3 at serial no. 1 by showing his appointment w.e.f. 15.07.2005, relying upon the Government directives dated 01.07.2016, thereby conferring his seniority from 15.07.2005 when in fact, he had never worked on the post of Sorter as his promotion to that post w.e.f. 07.12.2001 was nullified by the decision of the High Court on 07.07.2008 and the order dated 07.12.2001 was also withdrawn on 28.07.2008 by the Department itself.

29. In the wake of the above, we direct the Respondent, Authority to rectify the seniority list of Sorters published on 01.01.2016, which shall place the Petitioners above Respondent No. 3, who is entitled to have his appointment to the post of Sorter being counted at the most w.e.f. 25.10.2011 and he shall be

accordingly shown in the seniority list. We direct that the Department shall operate the said seniority list by considering the date of appointment of the Petitioners to be 03.10.2006 and that of Mr. Mahesh Kalangutkar to be 25.10.2011 and the future promotions to the post of Assistant Archivist, Grade-II shall be effective in accordance with the said seniority list.

30. In the wake of the above, we quash and set aside the order dated 15.07.2016 with directions as aforesaid.

The Writ Petition is made absolute in the aforesaid terms.

NIVEDITA P. MEHTA, J. BHARATI DANGRE, J.