



Vinita

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 809 OF 2024

Shri. Rohan Ramesh Naik, Son of
Mr. Ramesh Naik, Indian National,
aged 34 years, Residing at H. No.
EWS 11, Gogal Housing Board, Gogol,Petitioner.
Margao-Goa.

Versus

1. State of Goa, Thr. Chief
Secretary, Secretariat, Porvorim-
Goa.
2. Directorate of Education
Through the Director, Alto-
Porvorim, Bardez Goa.
3. Mahila and Nutan English High
School, Through its
Headmistress, Keshav Anant
Naik Square, Comba, Margao -Respondents.
Goa 403601.

Mr Shivraj Gaonkar, Advocate for the petitioner.

Ms Maria Simone Correia, Addl. Govt. Advocate for respondent
nos.1 and 2.

Mr S. D. Lotlikar, Senior Advocate with Mr Sarvesh Sawant,
Advocate for respondent No.3.

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

Date: 5th August 2025.

ORAL JUDGMENT (*Per Bharati Dangre, J.*)

1. Heard Mr Gaonkar, learned Counsel for the petitioner, Ms Correia, learned Addl. Govt. Advocate for respondent nos.1 and 2 and Mr S. D. Lotlikar, learned Senior Counsel for respondent No.3.

Rule. Rule is made returnable forthwith at the request and with the consent of the learned Counsel for the parties.

2. The petitioner, appointed as a Multi-Tasking Staff (MTS) with the respondent no.3 institution was confirmed in the post w.e.f. 23.4.2022, being appointed on 23.4.2020.

Since the petitioner was of the view that he is entitled for promotion to the post of Lower Division Clerk/Librarian which fell vacant, he requested respondent no.3 for consideration of his candidature for the said post, but the application was not taken into consideration.

Instead an advertisement was published by respondent no.3 on 14.10.2024, advertising the post of Lower Division Clerk cum Librarian. The petitioner therefore approached this Court on 25.11.2024, and on a statement being made that the selection process was ongoing and the interviews were scheduled, this Court permitted to proceed with the selection process but directed

that no appointment order shall be issued in favour of the selected candidate without the leave of the Court.

Admittedly, though a candidate has been selected by the management/respondent no.3, there is no appointment order issued in his favour.

3. The grievance of the petitioner in the petition is about consideration of his candidature for the next promotional post of Lower Division Clerk cum Librarian, and Mr Gaonkar, the learned Counsel pressed into service Rule 79 read with Rule 86 of the Goa School Education Rules, 1986 and by relying upon the Recruitment Rules styled as Government of Goa, Group C, Ministerial non gazetted cadre post (Outside Secretariat) Rules, 2011, it is the contention advanced that the petitioner is entitled to be promoted to the post of Lower Division Clerk, as he belong to feeder post which deserves consideration for the next higher post.

4. Heavy reliance is placed by the learned Counsel for the petitioner on the observations of the Division Bench of this Court in the case of ***Paresh Kodbal Versus State of Goa, Through the Secretary and others(Writ Petition No.13 of 2019)***, where a similar controversy fell for consideration, as to whether post of Lower Division Clerk is the promotional post or the post to be filled by direct recruitment under the provision of

Goa School Education Act, 1984 and Goa School Education Rules, 1986.

According to the learned Counsel, the case of the petitioner is governed by the said decision and what is expected of the respondent no.3 is to abide by the same procedure, is set out in the said judgment which is based upon 2011 Recruitment Rules and also Goa School Education Rules, 1986.

5. The learned Senior Counsel Mr Lotlikar has raised strong objection to the contention raised in the petition as he would submit that there is only one post of Lower Division Clerk in the management and therefore, it cannot be filled in by promotion and it must go by rotation.

6. We have given anxious consideration to the arguments advanced before us and in our view, the contingency that has been placed before us is squarely covered by the decision of this Court delivered in Writ Petition No.13 of 2019 as the very same question fell for consideration before the Division Bench. It involved the same Recruitment Rules of 2011, which provided for 12½ percent of the post of Lower Division Clerk to be filled in by promotion from Group D employees, failing which by direct recruitment and 87½ percent by direct recruitment, fell for consideration.

7. By taking into consideration the stand adopted by Deputy Director of Education, the Division Bench by specifically referring to Rule 86, observed thus:-

“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. Agrasayak 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.”

8. Further, while recording a clear finding in paragraph 51 to the effect that the post of Lower Division Clerk was required to be

filled in by promotion from feeder cadre of Group 'D' employees or Class IV employees like peons, the Court however did not grant direct relief to the petitioner and permitted conduct of a Departmental Promotion Committee for consideration of the candidature of the petitioner and also such other employees who found themselves feeder cadre or post of Lower Division Clerk and it is only upon the consideration of the candidature and if they found to have succeeded in clearing the Departmental Promotion Committee, it was held that they are entitled for promotion. Till that time it was directed that the respondent no.4 who was appointed by mode of direct recruitment shall be kept on hold as it is only upon the post not being filled in by promotion, it was categorically held that the post should be filled in by respondent no.4, in that case who was selected pursuant to an advertisement being issued calling the application for filing of the post by direct recruitment.

9. In our considered opinion the decision of the Division Bench in case of ***Paresh Kodbal*** (supra) squarely covers the case of the petitioner and particularly since Mr Lotlikar was unable to point out any rule indicating that if there is a solitary post, then management is permitted to be filled in by rotation and in that contingency, according to us the Rule 79 along with Rule 86 shall

govern the appointment/recruitment to the post of Lower Division Clerk.

10. In these circumstances, we deem it appropriate to direct the aspirants to the post of Lower Division Clerk those who find themselves from the feeder post/MTS to be considered by the Departmental Promotion Committee to be convened within the period of four weeks from today.

The Departmental Promotion Committee shall apply the criteria prescribed in the Recruitment Rules while promoting the aspirants which shall include the Petitioner and it is only when none of the candidate emerges successful one, to be promoted to the post of Lower Division Clerk, the recruitment process which has been carried out for appointing a Lower Division Clerk by direct recruitment shall step in and the candidate who is already selected will be entitled for appointment.

11. The petition is therefore made absolute in above terms.

NIVEDITA P. MEHTA, J.
RE, J. 

BHARATI DANGRE, J.