

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 272 OF 2023

Mr Sangam Uttam Bhagat,
37 years of age,
Son of Uttam Bhagat,
Resident of House No.175,
Manaswada, Dhargal,
Pernem Goa 403513

... Petitioner

Versus

1 State of Goa,
Through its Chief Secretary,
Secretariat, Alto Porvorim Goa.

2 The Directorate of Skills, Development
and Entrepreneurship
Government of Goa,
Through its Director,
Having office at Shram Shakti Bhavan,
3rd floor, Patto Placa, Goa 403 001,
Email ID: establishment-sdct.goa@nic.in

3 Santosh B. Naik
Major of age,
Resident of Kothi wada, Kanapur,
Mayem, Bicholim Goa
Office at V.I. Plumber Trade,
Govt. I.T.I., Bicholim Goa. ...Respondents

Mr Ashwin D. Bhobe, and Ms Annelise Fernandes, Advocates for the Petitioner.

Mr Pravin Faldessai, Additional Government Advocate for Respondent Nos. 1 and 2.

Mr Deepak Gaonkar, Advocate for Respondent No.3.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & M. S. SONAK, J

DATED : 11th JANUARY 2024

ORAL ORDER (PER: CHIEF JUSTICE)

1. The facts of this case presented before us manifest as to how a legitimate claim of consideration for public employment can be defeated by a mechanical approach adopted in interpretation of the provisions of Recruitment Rules, which ultimately leads to violation of Article 16 of the Constitution of India.
2. Heard Mr A. D. Bhobe, learned counsel representing the Petitioner, Mr P. Faldessai, learned Additional Government Advocate representing the State/Respondent Nos. 1 and 2 and Mr D. Gaonkar, learned counsel representing Respondent No.3.
3. We have also perused the record available before us on this petition.
4. The challenge in this petition instituted under Article 226 of the Constitution of India is to the decision of the Respondents declaring the Petitioner to be ineligible for appointment to the post of Vocational Instructor (Practical) in the trade of Plumber in the Directorate of Skill Development & Entrepreneurship, Government of Goa (hereinafter referred to as the 'Directorate').

5. The facts which are necessary for proper adjudication of the issue which has arisen in this case are that on 05.11.2021 the Directorate had issued an advertisement inviting applications for filling up various posts including the post in question i.e. the post of Vocational Instructor (Practical) in the trade of Plumber. The essential/desirable qualification as disclosed in the advertisement dated 05.11.2021 are as follows: -

- (A) Academic: Passed 10th standard under 10+2 system of education;
- (B) Technical: Should possess National Trade Certificate/National Apprenticeship Certificate in the trade;
- (C) Experience: Practical experience of not less than 5 years in industry.

6. So far as aforesaid quoted essential qualifications (B) and (C) as extracted from the advertisement dated 05.11.2021 are concerned, there is no dispute between the parties that the Petitioner does possess these qualifications. However, the dispute/controversy is in relation to the essential qualification (A) i.e. Academic qualification.

7. The Petitioner, who belongs to the category of Other Backward Classes, made his application pursuant to the advertisement dated 05.11.2021 and was subjected to selection in which he secured 96 marks and was declared on the top on the list of successful candidates, whereas Respondent No.3 who has been

declared to be selected, secured 94 marks. The final select list which is available at page 68 of the writ petition contains the name of Respondent No.3 as a selected candidate for the post of Vocational Instructor (Practical) whereas and the said select list excludes the name of the Petitioner.

8. The Departmental Selection Committee in its meeting held on 23.03.2023 took a decision that the Petitioner was not having essential academic qualification i.e. passed 10th standard under 10+2 system of education and therefore, he was not considered as fit as per the recruitment rules. The relevant portion of the minutes of the meeting of the Departmental Selection Committee held on 23.03.2023 is extracted herein below.

As per Recruitment Rules the Essential Qualification is:

(A) Academic: Passed 10th standard under 10+2 system of education.

(B) Technical: Should possess National Trade Certificate/National Apprenticeship Certificate in the trade.

Shri Sangam Bhagat was not having essential academic qualification i.e. passed 10th standard under 10+2 system of education, so this candidate was not considered as he was not fit as per the Recruitment Rules.

2nd candidate in the merit list for the same post i.e. Vocational Instructor (Practical) in the trade Plumber namely Shri. Santosh Naik, all the required documents were verified and found that he is having essential

qualification and experience as per the requirements and he is fit for the post of Plumber trade.

Next Candidate was taken for the post of Vocational Instructor (Practical) in the trade of Sewing Technology at Sr. No.2 namely Smt. Gauri Dhuri, all the documents were verified and found fit for the post of Sewing Technology Trade.”

9. On the basis of the said decision taken by the Departmental Selection Committee in its meeting held on 23.03.2023, a communication was issued to the Petitioner dated 12.04.2023 informing him that as per the recruitment rules the essential qualification for the post of Vocational Instructor (Practical) is Academic: Passed 10th standard under 10 +2 system of education and that the Departmental Selection Committee has not considered the Petitioner as fit as per the recruitment rules for the post in question.
10. The Petitioner, being aggrieved by the said decision of the Respondents, instituted proceedings of this writ petition praying *inter alia* to quash the select list and to direct Respondent No.2 to consider the case of the Petitioner for selection to the post in question. A further prayer has been made to quash the communication dated 12.04.2023 issued by the Deputy Director (Administration), Directorate of Skill, Development and Entrepreneurship, Government of Goa. Prayer in the writ petition is also to quash the decision dated 23.03.2023 of the Departmental Selection Committee.

11. It is argued by the learned counsel for the Petitioner that the impugned decision holding the Petitioner ineligible for the post in question in terms of the provisions contained in the recruitment rules is absolutely arbitrary, illegal, and does not bear any rationale and hence is liable to be quashed. It has been submitted in this regard that the Petitioner has to his credit a certificate evidencing that he had passed the secondary school examination conducted by the National Institute of Open Schooling and as such, it cannot be said that he, in any manner, lacks the qualification as prescribed either in the advertisement dated 05.11.2021 or in the recruitment rules. The submission further is that the National Institute of Open School has been established by the Government of India primarily to give a chance to school dropouts, who for one or the other reason are not able to continue their schooling, to come into mainstream of education.

12. Mr Bhobe has further argued that in case the submission made on behalf of Respondent No.2 is accepted to exclude the qualification granted by the National Institute of Open Schooling from the qualification prescribed for recruitment to the post in question, the very purpose for which the National Institute of Open School has been established gets defeated. It has also been argued that the requirement under the recruitment rules, so far as academic qualification is concerned, is that the candidate concerned should have passed 10th standard under 10+2 system of education and the Petitioner, who has passed 10th standard examination conducted by

the National Institute of Open Schooling, cannot be said to be lacking the essential qualification in any manner. His submission, thus, is that the impugned decision holding the Petitioner to be ineligible for recruitment to the post in question is liable to be quashed.

13. Mr Faldessai, learned counsel representing Respondent Nos. 1 and 2 has vehemently opposed the prayers made in the petition and has submitted that since the Petitioner does not fulfill essential qualifications as per the recruitment rules applicable to the post, no irregularity, much less illegality, can be found in the impugned decision and hence the writ petition is liable to be dismissed at its threshold.

14. Our attention has been drawn to the recruitment rules framed under Article 309 of the Constitution of India which are applicable for recruitment to the post in question and it has been argued that the required academic qualification is not confined to a candidate having passed 10th standard; rather for a candidate to be eligible for recruitment to the post, the candidate should not only have passed 10th standard but should have passed 10th standard "*under 10+2 system of education*". His submission is that the Petitioner may have passed 10th standard examination conducted by the National Institute of Open Schooling, however, the system in which the National Institute of Open Schooling functions, cannot be said to be under 10+2 system of education for the reason that under 10+2

system of education, a student is permitted to take the examination for 10th standard only after having gone through 10 years of schooling whereas for taking an examination conducted by the National Institute of Open Schooling, the candidate may not necessarily have undergone 10 years schooling prior to taking such examination. He has, thus, argued that there is a distinction between the academic qualification of 10th standard passed under 10+2 system of education and such academic qualification granted under the system adopted by and prevalent in National Institute of Open Schooling.

15. It is further submitted by the learned counsel for Respondent No.2 that the Departmental Selection Committee and all other authorities of the State have, thus, strictly adhered to the prescription available in the recruitment rules and therefore, no fault can be found in the decision holding the Petitioner to be ineligible for recruitment to the post in question. It has been vehemently submitted on behalf of Respondent No.2 that any deviation from the recruitment rules which have been framed under Article 309 of the Constitution of India will not be permissible even at the instance of any Court and as such, the rules are to be followed strictly.

16. Mr Faldessai, learned counsel representing Respondent No.2 has also argued that the entire claim put forth by the Petitioner in this writ petition is that since the Goa Board of Secondary and Higher Secondary Education recognizes the class 10th qualification

obtained by a candidate from the National Institute of Open Schooling for the purpose of grant of admission to class 11th of the course recognized by the Goa Board, as such the Petitioner is eligible, however, the recruitment rules do not include any equivalence clause and therefore merely because class 10th passed certificate issued by National Institute of Open Schooling is equivalent to pass certificate issued by the Goa Board for the purposes of admission in higher class, the Petitioner is not eligible for the purpose of his consideration for recruitment to the post in question. It has also been argued that had this been the intention of the rule-making body that any candidate having equivalent qualification mentioned in the recruitment rules would also be eligible, then it would have been specifically provided for in the rules and the Petitioner would have qualified for being considered for appointment to the post in question. Submission, therefore, is that in absence of such an equivalence clause in the recruitment rules, any candidate though may have equivalent qualification, he/she shall still not be eligible for the purpose of recruitment to the post. On this count, the prayer is that the writ petition be dismissed.

17. Mr Gaonkar argued on behalf of Respondent No.3 and opposed the Writ Petition. While adopting the submissions made by the learned counsel representing Respondent No.2, he has also argued that in the matter of recruitment, it is the employer/selection body which is the best judge of the qualification which need be possessed by a candidate for being appointed.

Further, the submission made by the learned counsel representing Respondent No.3 is that in the matter of recruitment etc., it is for the employer to prescribe essential qualifications for appointment and that it is the employer who is best suited to decide such requirements according to the needs of the employer and the nature of work. He has further argued that it is not for the Court to lay down conditions of eligibility, neither the Courts can delve into the issue with regard to desirable qualifications being at par with essential eligibility by an interpretive re-writing of advertisement. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of ***Maharashtra Public Service Commission Vs Sandeep Shriram Warade and others***¹, the learned counsel representing Respondent No.3 has taken us through the law laid down in the said case as contained in paragraph 9 of the judgment which is extracted hereunder:

"9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If

¹ (2019) 6 SCC 362

there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."

18. The reliance by the learned counsel representing Respondent No.3 has also been placed on yet another judgment of the Hon'ble Supreme Court in the case of **Zahoor Ahmad Rather and others Vs Sheikh Imtiyaz Ahmad and others**² and it has been argued that judicial review in respect of prescription of qualification for recruitment has to be very limited for the reason that such matters fall within the domain of policy and under law, it is said that such matters are entrusted with the authority to assess the needs of public services and accordingly, prescribe the qualifications required for the post. The learned counsel representing Respondent No.3 has also urged that there being no challenge to the recruitment rules, the claim of the Petitioner gets defeated for the simple reason that the recruitment rules do not contain any equivalence clause so as to make the qualification of 10th standard passed from the National Institute of Open Schooling to be equivalent to the prescription relating to essential qualification mentioned in the recruitment rules i.e. passed 10th standard under 10+2 system of education. On the aforesaid count, the petition has been

² (2019) 2 SCC 404

vehemently opposed and it has been prayed that the writ petition be dismissed.

19. We have given our thoughtful consideration to the submissions made by the learned counsel representing the respective parties.

20. While considering the claim of the respective parties, we are conscious of the limited scope of judicial review so far as the determination, interpretation, and prescription of essential qualifications for the posts in public employment are concerned. However, having observed as above, the question which falls for our consideration in this case is not in relation to the qualification being possessed by the Petitioner to be equivalent to the qualification as prescribed in the advertisement in terms of the recruitment rules; rather the question is as to whether the Petitioner possesses requisite qualification having passed his 10th standard examination conducted by the National Institute of Open Schooling. In other words, the issue which needs determination by us is as to whether the qualification of class 10th passed on the basis of the examination conducted by the National Institute of Open Schooling is to be treated as a qualification; passed 10th standard under 10+2 system of education.

21. For determination of the said issue, it is apposite to refer to the purpose for which the National Institute of Open Schooling has been established by the Government of India. Vide resolution dated

21.11.1989 the Ministry of Human Resource Development (Department of Education) of the Government of India established “*National Open School Society*” with the objective *inter alia* for providing not only professional advice to the Government of India and to the States regarding the proper development of Distance and Open Learning System at the school level but also to develop and prescribe or offer a wide spectrum of courses of study for purposes of general and continuing education, leading to certification at the school stage and at middle, secondary or senior secondary level. The said resolution of the Government of India dated 21.11.1989 was published in the Official Gazette of the Government of India. On establishment of the said society, as per its objective, various courses of study leading to certification at school levels were started and various Boards granted recognition to the examination conducted by the National Institute of Open School. Such recognition was granted by the Central Board of Secondary Education on 30.10.1991.

22. It is also to be seen that the National Institute of Open School system does not conduct the course only for Classes Xth and XIIth certification; rather it conducts courses and examinations at the primary level as well. In the letter dated 11.12.2002 addressed to all the State Governments and Union Territories by the Director, in the Department of Elementary Education & Literacy, Ministry of Human Resource Development, Government of India, it has been stated that the National Institute of Open Schooling grants basic education programmes through Distance Education Mode at the

elementary stage and it awards Joint Certificates at three levels – (1) a level equivalent to class III or II (2) a level equivalent to class V or IV and (3) a level equivalent to class VIII or VII. The Medical Council of India, which is the apex supervisory body so far as education in modern medicine in the Country is concerned, has also decided that the students appearing under 10+2 examination conducted by the National Institute of Open Schooling shall be considered as eligible for admission to the MBBS course. The said decision is reflected, from the perusal of the letter of the Secretary, Medical Council of India dated 14.09.2012 addressed to the Director, National Institute of Open Schooling. We may also refer to another letter dated 11.12.2002 addressed to all the State Governments and Union Territories by the Director, Department of Elementary & Literacy, Ministry of Human Resource Development, Government of India, wherein it has been clearly stated that necessary instructions may be issued to all concerned to consider certificates issued by the National Institute of Open Schooling as equivalent to the concerned stage of education in matters of admissions and employment as well. The letter dated 11.12.2002 also refers to a Notification issued by the Association of Indian Universities (AIU) whereby it has granted equivalence to the course conducted by the National Institute of Open Schooling with examinations of other Education Boards for the purpose of admission to higher courses of study in Indian Universities. The letter dated 11.12.2002 is extracted herein below.

"No. f3-11/2002-EGS-I
Government of India
Ministry of Human Resource Development
Department of Elementary Education & Literacy

New Delhi 110001
11th December 2002

To
Education Secretaries
All States/Uts

Subject: According recognition to the Examinations at Primary and Middle level Courses conducted by National Institute of Open Schooling (formerly) National Open School (NOS).

Sir,

The National Institute of Open Schooling (N.I.O.S) (formerly National Open School (NOS) is an autonomous organization set up by the Ministry of Human Resource Development, Government of India, in 1989 as per the Resolution issued vide No.f6-2/89-Sch.III dated 21.11.1989 to provide education up to pre-degree level to those who for one or the other reason could not make use of the formal education system N.I.O.S. has also been vested with the authority to conduct and certify examinations for Secondary levels by the Government of India as per the resolution issued vide No. F5-24/90-Sch.III dated 14.9.1990 (copy enclosed).

The Association of Indian Universities (AIU) has also intimated the Registrars of all Indian Universities vide their Notification No.E V/11 (354)91/dated 25.7.1997 (copy enclosed) of its decision to grant equivalence to N.I.O.S, courses with those of other examinations of recognized Boards for purposes of admission to higher courses of study at Indian Universities.

As you would be aware, the National Institute of Open Schooling (NIOS) also runs Open Basic Education Programmes through Distance Education Mode (Open Learning System) at the Elementary stage and awards Joint Certificates with the partnering NGO's at three level (equivalent to class III or class II of the Southern States

where elementary stage is only till class VII), B level (equivalent to class V/VI) and C level (equivalent to class VIII/VII). This is applicable to their programme of equivalency under distance education programme where similar certificates are provided at the same level of competency and equivalency.

You may like to issue necessary instructions to all concerned to consider certificates issued by N.I.O.S. jointly with partnering NGOs for the above levels as equivalent to concerned stage of education in matters of admissions and employment etc. Formal communication/Notification regarding grant of recognition to the examinations conducted by National Institute of Open Schooling may issued and the same widely circulated to all concerned,

For further details/clarifications in the matter, the Chairman, National Institute of Open Schooling may be contacted at N.I.O.S., A 24/25, Sector 62, NOIDA, UP or visit their Website at.

Yours faithfully,

*(Amit Kaushik)
Director
Tel.No.23382604”*

23. In the light of the above facts what we find is that the very purpose for which the Government of India established the National Institute of Open School is to give a chance to the school dropouts to continue their studies up to the secondary level and later on assimilate with the mainstream of education at higher levels. It is in fulfillment of this purpose that various Education Boards throughout the country have recognized qualifications granted by the National Institute of Open School equivalent to the qualifications and certificates granted by such boards. The Education Boards across the country also recognize 10th passed students from the National Institute of Open School to be eligible

for seeking admission to the class XIth examination conducted by them. The letter dated 11.12.2002, as quoted above, from the Director of the Department of Elementary & Literacy, Ministry of Human Resource Development, Government of India, also does not leave us in any doubt that the recognition of the examination conducted by National Institute of Open Schooling is available not only for the purpose of granting admission to various higher education courses but also for the purpose of employment.

24. The Government of India came out with a solution to the problems being faced by school dropouts for their assimilation into the mainstream of the education system. Considering various disadvantageous situations in our society affecting school-going students which many times result in a large number of school dropouts, the object for which the National Institute of Open Schooling was established is laudable. If a candidate having the qualification granted by the National Institute of Open Schooling is eligible for seeking admission to higher courses of education, not treating them eligible while seeking employment, will not only amount to doing injustice to the school dropouts who take the examinations conducted by the National Institute of Open Schooling but will also be doing violence to the cause for which the Government of India took initiative and started National Institute of Open School. Such as stance on the part of any employer results in serious prejudice to such a candidate and manifestly violates his fundamental right enshrined in Article 16 of the Constitution.

25. The reasons for school-going students dropping out of their studies may be many. It is not necessarily some delinquent behaviour of school-going students, which results in their dropping out of school. Various sociological, cultural and economic reasons may also add to students being dropped out of school. If the National Institute of Open Schooling, as observed above, was an initiative of the Government of India to provide opportunities to such dropouts not only to complete their education but also to become eligible for pursuing higher education then in case candidates possessing such qualification based on examination conducted by the National Institute of Open School are not recognized, on technical grounds, to be eligible for employment, the object for which the National Institute of Open School has been established, gets defeated. At this juncture itself we may also observe that the letter dated 11/12/2002 of the Government of India, as quoted above is not confined to recognizing the certification granted by National Institute of Open School for the purpose of grant of admission to higher classes but for employment as well.

26. Coming to the facts of this case, the essential qualification prescribed under the recruitment rules is 10th standard pass under 10+2 system of education. The learned counsel representing the Respondents have attempted to submit that 10+2 system of education would necessarily mean that the candidate should have passed 10th standard after having undergone 10 years of schooling and since in the open school system a candidate passing 10th

standard does not undergo 10 years of schooling, hence, such a candidate does not fulfill the required essential qualifications as per the recruitment rules.

27. The aforesaid argument though on the first look appears to be attractive but in our opinion, merits rejection. It is true that in normal circumstances a student is permitted to appear in the 10th standard examination conducted by the Educational Boards only once he has undergone a study of 10 years, however, in the open school system, since the very purpose is to provide an opportunity and chance to school dropouts not only to pass their school examination but also to assimilate them into the mainstream of the education system for higher education, as such, there may be a situation where a student having passed 10th standard examination conducted by the National Institute of Open School system may not have been continuously engaged in the study for 10 years, however, that itself, in our opinion, will not disentitle him to claim that he has not passed 10th standard examination under 10+2 system of education.

28. Any examination conducted by Education Boards lays certain standards and yardsticks on completion of which a pass certificate is granted and in case a student fails to achieve such parameters or standards, he will not get the pass certificate. The purpose to conduct examination by Education Board is to test that the student or the candidate has achieved the minimum standard of education.

The process of achieving such a standard of education may be by continuous 10 years schooling or even otherwise. Learning cannot be confined within the four walls of a school necessarily so far as passing of examination is concerned. Such learning can take place at places other than school such as at home as well. If the phrase “10+2 system of education” is to be interpreted constructively and also keeping in view the problems relating to school dropouts, in our opinion, it would mean having spent substantial time for acquiring the requisite standard of education entitling the student to appear for examination conducted by the Education Boards including National Institute of Open School. Thus, the narrow interpretation to the phrase “10+2 system of education” as has been sought to be given by the respondents, in our considered opinion, can not be permitted.

29. Thus, for the discussions made above, we are of the opinion that a candidate possessing the 10th standard pass academic qualification from the National Institute of Open Schooling has to be treated to be possessed of academic qualification of 10th standard pass under 10+2 system of education.

30. It is not a case where we have considered equivalence or otherwise of the qualification in respect of which certificate is granted by the National Institute of Open Schooling with that of any qualification in respect of which a certificate is granted by an Education Board. We have rather held that the academic

qualification of 10th standard pass granted by the National Institute of Open Schooling is to be treated to be an academic qualification of 10th standard pass under 10+2 system of education. The provisions relating to such essential qualification in the recruitment rules are to be accordingly read and understood.

31. For the reasons aforesaid, the writ petition is allowed. The minutes of the meeting of the Departmental Selection Committee held on 23.03.2023 so far as it relates to the Petitioner are hereby quashed. The communication dated 12.04.2023 from the Deputy Director of Administration, Directorate of Skill, Development and Entrepreneurship, Government of Goa, issued to the Petitioner annexed at Annexure 'G' to the writ petition is also quashed. The final select list prepared by Respondent No.2 so far as it relates to the post of Vocational Instructor (Practical) in the trade of Plumber is also hereby quashed. Respondent No.2 is directed to consider the claim of the Petitioner for recruitment to the post in question in the light of the marks obtained during the selection treating him to be eligible. The said consideration shall be made and the decision shall be taken within six weeks from the date a copy of this order is produced before the concerned department.

32. No order as to costs.

M. S. SONAK, J

CHIEF JUSTICE