



Niti

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.356 OF 2023
AND
CIVIL APPLICATION No.108 of 2023**

1. Dinesh M. Gadkari
Age 41, H.No.11, Col. No.1,
Vaddem, Sanguem, Goa 403704.
2. Harsha Dileshkumar Sambari
Age 42, H.No.53, Bamonsai,
Sanguem, Goa 403704.
3. Ratnakar Punu Velip,
Age 43, H.No.356/2, Soliem
Cola, Canacona, Goa 403702.
4. Shilpa Sagun Patil,
Age 35, H.No.307, Talewada,
Sirvoi, Quepem, Goa 403705.
5. Princey William Fernandes,
Age 26, H.No.278,
Copelabhat Deao, Quepem,
Goa 403705.
6. Sunita Jaya Zore,
Age 31, H.No.170/1,
Gawliwada Betul, Quepem,
Goa 403703.
7. Dinesh Salgaokar,
Age 43, H.No.55/3, Cotto-Balli,
Concolim, Goa 403703.

8. Suresh Narayan Velip
Age 40, H.No.582,
Velipwada, Barcem, Quepem via
Concolim, Goa - 403703.

9. Michelle Piedade Pereira
Age 35, H.No.4, Cusman,
Quepem, Goa 403705.

10. Sanjay Cardozo
Age 48, H.No.332, Assangall,
Ambaulim, Quepem,
Goa 403705.

11. Swapnil Khorjuvekar,
Age 36, H.No.113/6, Tarwada,
Colvale, Bardez, Goa 403513.

12. Ganesh Rohidas Naik
Age 34, H.No.1127, Pontemol,
Curchorem, Goa 403706.

13. Pranita Srikrishna Kharde
Age 40, H.No.23,
Near Govt. High School,
Headland Sada, Mormugao Goa
403804.

... PETITIONERS

Versus

1. The State of Goa,
Through Chief Secretary,
Secretariat Porvorim,
Bardez Goa.

2. Town & Country Planning Department, Through the Chief Town Planner, Dempo Tower, 2nd floor, Patto-Plaza, Panjim Goa.
3. Department of Personnel Through its Secretary, Secretariat, Porvorim, Goa. RESPONDENTS

Mr Terence Sequeira with Ms Sailee R. Kenny, Advocates for the Petitioners.

Mr Pravin Faldessai, Additional Government Advocate for Respondents.

**CORAM: M. S. KARNIK &
NIVEDITA P. MEHTA, JJ.**

DATE : 18th DECEMBER 2024

JUDGMENT : (*Per M.S. Karnik, J.*)

1. Heard Mr Terence Sequeira, learned counsel for the petitioners and Mr Pravin Faldessai, learned Additional Government Advocate for the respondents.
2. The challenge in this petition under Article 226 of the Constitution of India is to the cancellation of the recruitment process to the post of Lower Division Clerk ('LDC' for short)

as advertised by advertisement dated 27.02.2019 of the State of Goa.

3. The facts of the case in brief are as under:

By an advertisement dated 27.02.2019 published by the Town and Country Planning Department ('TCP' for short), applications were invited for filling up the vacant posts of Planning Assistants, Overseer, D'man Grade II, Jr. Stenographer, Lower Division Clerk and Multi-Tasking Staff in the TCP department. By the said advertisement apart from other posts, 22 posts of LDCs were sought to be filled up.

4. The petitioners applied pursuant to the advertisement for appointment to the post of LDC. Written test comprising of 100 marks was conducted by the TCP Department on 09.02.2020. The petitioners passed the written test and the result of the same was uploaded on the Department's website. On the basis of their performance in the written test the successful candidates including the petitioners herein were called for computer typing test which was conducted by the Department on 05.01.2022 and 06.01.2022. The petitioners along with some others duly qualified the typing test. The

petitioners thereafter were called for verification of documents in original on 07.01.2022. According to the petitioners, their documents were verified and eligibility of the petitioners for the post of LDC was confirmed. According to the petitioners they have reason to believe that only the offer of appointment remained to be issued.

5. The Model Code of Conduct came into effect on 08.01.2022 in the State of Goa in view of the general elections to the Goa State Legislative Assembly 2022. The process of publishing the select list of the candidates and issuance of offer of appointment was kept on hold. The Model of Code of Conduct ended on 15.03.2022. The Department failed to publish the select list of candidates and issue offer of appointment to the said successful candidates. The repeated inquiries by the petitioners revealed that the matter was under process.

6. The Department, in the meantime, filled up the vacancies of all other posts, i.e. Planning Assistants, Overseer, Jr. Stenographer, etc. advertised in the same advertisement dated 27.02.2019 by issuing appropriate appointment orders.

7. The petitioners through their advocate issued a legal notice dated 10.12.2022 to the TCP Department. The petitioners therefore filed Writ Petition No.2801 of 2022(F) praying for direction to the respondents to take steps to take the selection process to its logical conclusion.

8. During the pendency of the Writ Petition 2801 of 2022(F), an affidavit was filed by respondent no.2 stating that the State of Goa has taken a decision to scrap the recruitment to the post of LDC which was advertised by the advertisement dated 27.02.2019. By order dated 15.03.2023, this Court disposed of the Writ Petition granting liberty to the petitioners to file an appropriate petition challenging the Government decision to scrap its election process.

9. As the petitioners were not in receipt of any Government decision to scrap the selection process, an application was made under the Right to Information Act for necessary details regarding such decision. The petitioners received the copies of the file notings. The present Writ Petition came to be filed.

10. Learned counsel for the petitioners submitted that the decision to scrap the selection process is illegal and arbitrary.

It is submitted that the action on the part of the respondents in scrapping the process of recruitment of LDCs is discriminatory as under the same advertisement in respect of all other posts the respondents have gone ahead with the recruitment and issued appointment orders. Learned counsel submitted that there is no justification provided by the respondents as to why the selection process is scrapped only qua the posts of LDCs.

11. Learned counsel relied on the following decisions of the Hon'ble Supreme Court and this Court to support the petitioners' case:

- (i) *East Coast Railways V/s. Mahadev Appa Rao*¹,
- (ii) *Kumari Anamica Mishra V/s. U.P. Public Service Commission, Allahabad & Ors.*²,
- (iii) *Daulatrao V. Rane Sardessai V/s. State of Goa and Ors.*³

12. Mr Faldessai, learned Additional Government Advocate for the respondents invited our attention to the affidavit in reply filed by the respondents in support of the decision taken

¹ AIR 2010 SC 2794

² AIR 1990 SC 461

³ 2013 (2) ABR 208

to scrap the recruitment process. It is submitted by the learned Additional Government Advocate that the petitioners do not have a vested right of appointment and mere participation in the selection process does not confer any right on the petitioners to claim appointment in the said posts.

13. Learned counsel for the respondents relied on the following decisions in support of his submissions:

- (i) *Jatinder Kumar & Ors.*⁴
- (ii) *Shankarsan Dash Vs. Union of India*⁵
- (iii) *S.S. Balu and Anr. V/s. State of Kerala & Ors.*⁶

14. We have heard learned counsel for the parties.

15. The decisions relied upon by Mr Faldessai, learned counsel for the respondents makes the legal position clear that a person does not acquire a legal right to be appointed only because his name appears in the select list. The State as an employer has a right to fill up all the posts or not to fill them up. Unless a discrimination is made in regard to the filling up of the vacancies or an arbitrariness is committed, the candidate

⁴ (1985) 1 SCC 122

⁵ (1991) 3 SCC 47

⁶ (2009) 2 SCC 479

concerned will have no legal right for obtaining a writ of or in the nature of mandamus. A candidate does not have any legal right to be appointed. A candidate in terms of Article 16 of the Constitution of India has only a right to be considered therefor.

16. The Hon'ble Supreme Court in *S.S. Balu* (supra) held that ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.

17. In the present case, in respect of the very same advertisement for different posts, the recruitment process is taking to its logical conclusion which excluded only the LDCs.

Thus, in respect of all other posts except LDCs, the recruitment process proceeded and appointments were effected.

18. Let us see from the affidavit in reply, which is affirmed by Mr Rajesh J. Naik, Chief Town Planner (Administration), the stand of the State Government for scrapping the selection process only so far as LDCs are concerned. Paras 6 to 9 of the said affidavit in reply are relevant and are reproduced herein below:

“6. With regards to the contents of paragraph No.10 to 15 Petition, it is respectfully submitted that, the recruitment process of 22 posts of LDCs advertised vide Advertisement dated 27/02/2019 were never placed before Departmental Selection Committee for generating the Selection List, in view of Government decision to keep the matter in abeyance vide noting no.1/8/2016/TCP/pt/2017-18/1177 dated 21/04/2022.

7. With regards to the contents of paragraph No. 16 to 35 of the Petition, it is respectfully submitted that, the Government vide noting dated 08/02/2023 decided the recruitment of LDC's to be cancelled and the process of recruitment of LDC's to be started afresh. This will not hamper the working of the Government in anyway as there are LDC's working on contract basis for the last 8-10 years.

8. I say that the allegations made in the Petition are misconceived and untenable. I say that pursuant to afore mentioned decision of the Government the Recruitment process in the present matter was kept in abeyance as regards to post of LDC and subsequently the process has been cancelled. It is respectfully submitted that even though the Petitioners had answered the test the process of recruitment was not complete and as such there was no concluded contract between the petitioners and the state by which the Petitioners are entitled to claim to be in service or issuance of appointment letters in their favor. The present Petition is therefore frivolous and deserves to be dismissed.

9. It is respectfully submitted that the State Government was completely justified for the cancelling the process of recruitment and not issuing appoints to the Petitioners to the Post of LDCs. As stated herein above the process of recruitment of the said 22 posts of LDC was never placed before Departmental Selection Committee there is no right of any nature created in favor of Petitioners. The Entire process pertaining to LDCs was kept in abeyance and subsequently cancelled by the Government before even the select list were generated by the DSC. The Petitioners cannot presume that they would have secured places in the select list. The Petition is therefore bases on surmises and the presumption of the Petitioners. As stated in the Paragraph no. 10 of the Petition, the Present Petition is based on Petitioners reason to believe that they have been selected for the appointment of said

posts of the LDCs. In fact, there is nothing on record to substantiate that there is any such reason why petitioners presumed that they are selected to the said post in fact the records indicate contrary to the submission and it is respectfully submitted that the process was not even placed before the DSC for generating the select list. The Petitioners have erroneously stated that the process was complete and only offer of appointment to be issued. Whereas in reality the posts have been terminated much prior to the stage of appointment, there was no DSC meeting held, the process was not placed before such committee. The Petitioner therefore erroneously assumed that they have a lien over this post of the LDCs and that they are entitle to an officer of appointment or that they have a right to be appointment in Government service on the bases that they applied for the post and they have answered test in the process of recruitment. The Government has such administrative powers to terminate such process.”

- 19.** In the context of the affidavit in reply, let us also glance at the file notings. It appears that after obtaining all the necessary sanctions and approvals, the Department advertised the posts on 27.02.2019. The file noting shows that the exam was supposed to be held in the month of November 2019 and the cost for conducting the said examination alone was Rs.9,04,900/- . It appears that since there was delay in

obtaining the sanction of the Finance Department, the examination was proposed to be rescheduled. When the examination was rescheduled to February 2020, the cost of examination increased from Rs.9,04,900/- to Rs.14,65,600/-. The cost of examination for LDC candidates was itself Rs.8,10,300/-. Soon thereafter, the computer typing test was conducted. As the Code of Conduct in connection with the election to the Goa Legislative Assembly had commenced from 08.01.2022, the further recruitment process was kept on hold. At this juncture, it is necessary to note that out of the total 60 vacancies which were advertised through advertisement dated 27.02.2019, the recruitment process for 14 number of posts (11 MTS and 03 Planning Assistants) were completed prior to the said Code of Conduct. Only for 46 number of posts (including 22 number of LDC posts), the recruitment process could not be completed due to the Code of Conduct.

20. When the Code of Conduct ended on 15.03.2022, the noting of the new Minister for TCP Department stated that '*recruitment process may be kept in abeyance*'. Somewhere in the month of June 2022, the TCP Department through its Chief Town Planner/Senior Town Planner made a note in the

noting sheet that ‘*the department is presently facing an acute shortage of manpower as the Department is having only 119 against total sanctioned strength of 200. Therefore, it is becoming extremely difficult to manage the day to day affairs of the office*’. The notings further stated that ‘*also there are many retirements which are due to take place as such the strength of the active personnel shall further reduce and it will be more difficult to function. However, the Hon’ble Minister for TCP has directed this office as said the above mentioned recruitment shall be kept in abeyance. In view of the above facts and circumstances the file is resubmitted to the Government for necessary decisions in the matter*’.

21. After the file was resubmitted for direction and necessary action, the Hon’ble Minister for TCP in his noting dated 02.06.2022 stated that ‘*46 posts whose results are out - Orders may be issued*’. However, soon thereafter the Code of Conduct for Village Panchayat came in force from 16.07.2022 and the Department in its notings proposed to obtain NOC/Relaxation from State Election Commission to complete the recruitment process. However, the Chief Secretary noted that ‘*Put up after Panchayat elections*’. The

Deputy Director vide his noting dated 19.07.2022 stated that after the directions of the Minister for TCP to issue appointment orders, there was a request from the contractual staff working at TCP for considering them for the post of LDC on regular basis, as such the file was placed for further directions on the future course of action.

22. Thereafter, the Chief Town Planner in his noting dated 19.07.2022 stated that '*Hon'ble Minister has directed to keep recruitment of LDCs on hold, while going ahead with the recruitment of other posts*'. Consequently, the Department was directed to continue with the process of recruitment to the post of Jr. Stenographers, D'man Grade II and Overseers. The noting further said that '*Recruitment of LDCs may be kept on hold as per the directives of Hon'ble Minister for Town Planning*'.

23. The Hon'ble Minister for TCP vide his notings dated 08.02.2023 stated that '*Recruitment of LDCs to be cancelled and the process of recruitment of LDCs to be started afresh. This will not hamper the working of the Government in any way as there are LDCs working on contract basis for the last 8-10 years*'.

24. It could thus be seen that except for posts of LDCs, the respondents have completed the recruitment process with regard to all other posts, i.e. of Planning Assistants, Overseer, D'man Grade II, Jr. Stenographer and Multi-Tasking Staff by issuing appointment letters. The recruitment for all these posts including that of LDCs was initiated by the same advertisement. The selection process was kept on hold as a result of the Model Code of Conduct in view of the State Assembly elections. It is after the elections were held that the decision was taken to keep the selection process to the post of LDCs in abeyance while proceeding ahead with the completion of recruitment process and appointing candidates in all other posts. No doubt the petitioners do not have a right to be appointed to the post or insist that the recruitment process must be completed only because they have passed in the written test, however the decision to cancel the process must be free from arbitrariness and discrimination. But for saying that the petitioners have no vested right to seek appointment in the post of LDC, there is absolutely no justification in the affidavit or the file notings as to why only 22 posts of LDCs from the very same advertisement are excluded when in respect of other posts advertised the

respondents have gone ahead with the selection process and even issued appointment orders. Such approach in our opinion is arbitrary.

25. Consequently, we have no hesitation in holding the decision of the respondents to cancel the recruitment process of LDCs, which is subject matter of the present petition, as arbitrary, illegal and bad in law.

26. The Writ Petition is accordingly allowed. The respondents - State is directed to take recruitment and selection process initiated pursuant to the advertisement dated 27.02.2019 in the vacant posts of LDCs as well to its logical conclusion in accordance with the rules from the stage the decision of its cancellation was made expeditiously and in any case within six months from today.

27. The civil application does not survive and stands disposed of. No order as to costs.

NIVEDITA P. MEHTA, J.

M. S. KARNIK, J.