

*Vinita*

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**WRIT PETITION NO.304 OF 2022**

MR. NEEVED Y. MALIK, aged 38 years,  
Indian National, resident of House No.  
1376/17, E. K. Push P Building, near  
Kavlekar's Super Market, Gopal Nagar,  
Porvorim, Bardez-Goa .... Petitioner.

Versus

1. DIRECTOR OF PANCHAYATS, Government of Goa, having office at Junta House, Third Floor, Panaji-Goa
2. STATE OF GOA, through its Chief Secretary, having office at Secretariat, Porvorim-Goa.
3. THE DIRECTOR, Directorate of Social Welfare, Government of Goa, having Office at Panaji-Goa.
4. STATE COMMISSIONER, for a Person with Disability, Government of Goa, Panaji-Goa.
5. VAI DEHI D. SHIRODKAR, aged 51 years, Indian National, resident of H.No.2/196/A9, Chintamani Tower, Opposite Duler Football ground, Duler, Mapusa, Goa.
6. MR. SALONI A. ZARAPKAR, aged 44 years, Indian National, resident of Manas, Dangui Colony Road,

Mapusa, Bardez, Goa.

.... Respondents.

Mr Parikshit Sawant, Advocate for the petitioner.

Mr Pravin Faldesai, Addl. Govt. Advocate for the respondent nos. 1 to 3.

Mr Ajay Menon, Advocate for respondent nos. 5 and 6.

**CORAM: M. S. SONAK, J &  
BHARAT P. DESHPANDE, JJ.**

**DATE: 21<sup>st</sup> February, 2024.**

**ORAL JUDGMENT (Per M. S. Sonak, J)**

**1.** Heard Mr P. Sawant, learned counsel for the petitioner and Mr P. Faldeessai, learned Addl. Govt. Advocate for respondent nos. 1, 2 and 3. and Mr A. Menon, learned Advocate for respondent nos. 5 and 6.

**2.** *The petitioner is a person with a disability (PWD) who instituted this petition seeking the following substantive relief:*

*(A) This Hon'ble Court May be pleased to issue a Writ of mandamus or the writ in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent No. 1 to quash and set aside the Impugned Order dated 18/6/2019 passed by Directorate of Panchayat bearing Ref. No.15/2/DP/EST/AE-Promotion/2018/3153 and thereafter reserve Roster Point No. 1 for persons with Physically Disabled persons, and fill the said*

*post from the eligible candidates with  
Physically Disabled persons;*

3. The petitioner had contended that the State Commissioner for persons with disabilities considered his grievance, and an order was made on 21.11.2021 issuing some directions to the State Government to redress the petitioner's grievances, which were found to be genuine by the Commissioner.

4. Mr Sawant pointed out that despite this order, the petitioner's grievances were not redressed, and the petitioner was not promoted to the post of Assistant Engineer.

5. By order dated 11.10.2023, this petition was admitted. The rule was expedited. In the said order dated 11.10.2022, we also recorded Mr Faldessai's statement above some proposals being moved for the creation of additional posts. Mr Faldessai had stated that, if possible, the case of the petitioner would be considered in accordance with the law. We had clarified that parties would have the liberty to apply in case of such development.

6. By order dated 6.2.2024, which is placed on record by the petitioner, the petitioner has been promoted to the post of Assistant Engineer with retrospective effect from 14.5.2019.

7. The operative portion of the order dated 6.2.2024 reads as follows:-

*Now therefore, on the recommendation of the Review Departmental Promotion Committee held on 10-01-2024 as conveyed by the Goa Public Service Commission vide its letter No.COM/II/11/69(1)/16 /529 dated 12-01-2024, the Governor of Goa is pleased to promote and appoint Shri Neeved Malik, Technical Assistant (PWD) to the post of Assistant Engineer as if he was recommended in the original DPC held on 14-05-2019 by restoring his Seniority and granting him financial benefits for the said post for the past period notionally and actual financial benefits from the date of his joining to the post of Assistant Engineer, Group 'B' Gazetted on regular basis in Pay Matrix Level 7 under the Seventh Pay Commission as per the Order dated 22-11-2021 issued by Goa State Commissioner for Persons with Disabilities, in the following Order:-*

<i>Sr. No.</i>	<i>Name of the Officer</i>
1.	<i>Smt. Vaidehi D. Shirodkar</i>
2.	<i>Shri. Sandeep G. Apule</i>
3.	<i>Shri Ashish D. Patnekar</i>
4.	<i>Shri. Vasant H. Parab</i>
5.	<i>Shri. Neeved Y. Malik(PWD)</i>
6.	<i>Shri. Ajit A. Jog</i>

7.	<i>Shri. Marvando Mascarenhas</i>
8.	<i>Shri Saeesh S. Parab</i>
9.	<i>Smt. Saloni A. Zarapkar</i>

*The officer at Serial No. 5 shall be on probation for a period of 02 years with effect from 18-06-2019. The officer at Sr. no. 5 shall exercise his option for fixation of pay in promotional grade in terms of provisions of F. R. 22(1)a(1), within a period of one month from the date of issue of this order. The option once exercised shall be final.*

*The post Posting order of the officer at Sr. No. 5 will be issued separately.*

*The expenditure on pay and allowances shall be debited to the Budget Head of Account: 2515-Other Rural Development Programme; 00-; 101-Panchayati Raj; 06-strengthening of Panchayati Raj Institution; 01 -Salaries under Demand No.31.*

*On joining the new post by the officer at Sr. No. 5, he shall submit the joining report to this office.*

*This is issued vide Government approval vide U.O. No.2311 dated 01-02-2024.*

8. According to us, at least prima facie, the petitioner's grievances

stand substantially redressed with the issue of the above order, particularly since the petitioner has been granted promotion with retrospective effect and by restoring his seniority. Petitioner has also been granted financial benefits for the said post for the past period notionally and actual financial benefits from the date of his joining to the post of Assistant Engineer. However, this opinion of ours is a *prima facie* opinion.

**9.** Mr Sawant, learned counsel for the petitioner, submits that only a portion of the petitioner's grievance is redressed. He submits that in terms of the Government Office Memorandum dated 24.12.2004, that was it was the first point on the roster that was reserved for persons with disability(PWD). He submits that the order dated 6.2.2024 is capable of being interpreted as the petitioner being promoted against the 5th Roster point and not the 1st roster point to which he was entitled. Mr Sawant states that the petitioner's apprehension that this might affect the petitioner's seniority in the case of Assistant Engineer, and consequently, this matter also has an impact on further promotion the petitioner is entitled to.

**10.** At this stage, it is too premature to go into such apprehensions. *Prima Facie*, the column in the order dated 6.2.2024 does not refer to the

roster point, but it refers to the serial numbers of the officials of the zone of consideration. Be that as it may, we propose to dispose of this petition by granting the petitioner liberty to make a representation to the Director of Panchayat explaining his grievance with regard to roster point, seniority, etc. If the director is of the opinion that such representation is required to be considered by any other authority, it will be open to the director to forward the same to such appropriate authority.

**11.** Mr Sawant states that such representation will be made within two weeks from today. We direct the Director of Panchayats/appropriate authority to dispose of such representation as expeditiously as possible and in any case within a period of three months from the date of receipt of such representation. If the Director/Authority is of the opinion that granting any further reliefs to the petitioner might prejudice any other officials, the Director should grant an opportunity of hearing to such officials as well. In short, the Director/Authority must follow principles of natural justice and fair play while considering and disposing of the petitioner's representation.

**12.** If the petitioner is still not satisfied, the petitioner will have the liberty to challenge the Director's decision in accordance with law. We clarify that we have not gone into all such issues and the apprehension

now raised by and on behalf of the petitioner. We are disposing of the petition because of the order dated 6.2.2024, by which the petitioner has already been promoted to Assistant Engineer with retrospective effect against a post reserved for persons with disability (PWD). All contentions of all the parties are kept open.

**13.** With the above liberty, we dispose of this petition.

**14.** The Rule is disposed of in the above terms without any order for costs.

**BHARAT P. DESHPANDE, J**

**M. S. SONAK, J.**

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