

WRIT PETITION NO. 390 OF 1996

Shri Ramkrishna S. Naik,
Indian National, r/o
Saraswati Niwas,
Khadpaband, Ponda, Goa.

... Petitioner.

Versus

1. State of Goa,
through the Chief
Secretary with office
at Secretariat, Panaji,
Goa,
 2. The High Court of
Judicature at Bombay,
through its Hon. Chief
Justice, having office at
High Court Bldg., Fort,
Mumbai, 400 002,
 3. Shri Anil Scaria,
permanent r/o Bangalore,
now r/o Judges' Quarters,
Pernem, Goa, functioning
as J.M.F.C. at Pernem,
 4. Shri Vijay Jatley,
permanent r/o Korel
Bagh, New Delhi, now r/o
Judges' Quarters,
presently functioning as
J.M.F.C. at Bicholim, Goa,
 5. Shri Gopal Krishna Bhat,
permanent r/o Udupi, North
Karnataka, now r/o Judges'
Quarters, Mapusa, Bardez,
Goa, and
 6. Vasudevan Shaileja,
permanent r/o Belgaum,
r/o Judges' Quarters,
Margao, presently attached
to Chief Judicial Magistrate
Civil Judge, Senior
Division, Margao, Goa.
- ... Respondents.

Shri J. Godinho, advocate for the petitioner.

Shir A.N.S. Nadkarni, Advocate General with Shri H. R.
Bharne, Govt. Advocate for respondent no.1.

Shri A.N.S. Nadkarni, Advocate General with Shri H. D. Naik, Addl. Govt. Advocate for respondent no.2.

Shri D. B. Ambekar, advocate for respondents no.3 and 6.

Shri M. S. Sonak, advocate for respondent no.4.

Shri Sudesh Usgaokar, advocate for respondent no.5.

CORAM: P. V. KAKADE &
P. V. HARDAS, JJ.

DATE: 30th September, 2002.

ORAL JUDGMENT (Per P. V. Kakade, J.)

The petitioner has moved this Writ Petition under Article 226 of the Indian Constitution, inter alia seeking the quashing of Order of appointment of respondents no.3 to 6 as Civil Judge, Junior Division and J.M.F.C., made by respondent no.1, State Government, with the concurrence from respondent no.2, who is the Chief Justice of the High Court of Judicature at Bombay.

2. The facts involved in the petition in brief are thus:-

The petitioner is an advocate practising in the State of Goa and registered with the Bar Council of Maharashtra since the year 1989. there was an advertisement published in the newspapers for the posts of Civil Judges, Junior Division and J.M.F.C. The petitioner alongwith the respondents no.3 to 6 applied for the said post through proper channel and appeared for the interview on 10th April, 1994. In due course thereafter, respondents no. 3 to 6 were appointed as

Civil Judges, Junior Division and J.M.F.C. and were posted at various places under probation, as per the relevant Rules.

It is the case sought to be made out by the petitioner that the High Court has been defined by Rule 2 of the Goa Civil Services (Judicial Branch) Rules 1992, (hereinafter called the "said Rules") and means the High Court of Judicature at Bombay, having its jurisdiction over the State of Goa. It is further submitted that the said Rules however, are silent in the matter of making a provision for knowledge of Konkani and Marathi languages as eligibility condition for appointment to the said posts and knowledge of Konkani and Marathi languages being made only a desirable condition. According to the petitioner, he was holding the necessary qualifications and eligibility for the post of Civil Judge, Junior Division and J.M.F.C.. However, he was not selected for the said post and instead preference was given to respondents no.3 to 6. It is further the case of the petitioner that respondents no.3 to 6 are all permanent residents of States other than the State of Goa and have no knowledge of Konkani or Marathi languages and inspite of that they were called for interview and were selected, though they have never practised before the High Court of Judicature at Bombay, having jurisdiction over the State of Goa. In view of this position, it is submitted that

the respondents no. 3 to 6 have not fulfilled the eligibility criteria as is otherwise required for the purpose of appointment to the said post and it is further alleged that the said respondents materially suppressed the said fact from respondent no.1 and 2 at the time of the interview and respondent no.1 has illegally and unwarrantedly appointed them to the post of Civil Judge, Junior Division and J.M.F.C. and hence, it is submitted that the entire process of selection has been vitiated on account of lack of requisite eligibility criteria by respondents no.3 to 6 and, therefore, their appointments to the said posts are liable to be set aside and quashed, being illegal and unlawful.

3. The petition was admitted and the respondents have appeared in due course. Affidavit has been filed on behalf of respondent no.2 as well as the other respondents. In its affidavit, respondent no.2 has categorically denied all the allegations and has submitted that the appointments made of respondents no.3 to 6 to the said posts are as per the relevant Rules and Regulations and they are quite legal and, as such, the petition for setting aside their appointments deserves to be dismissed.

4. We have heard the learned counsel for the petitioner as well as the respondents and we have perused

the entire record at length.

5. At the outset, it should be noted that the appointments of respondents no.3 to 6 are governed by the said Rules. It may further be noted that the said Rules are silent in the matter of making provisions for Konkani and Marathi languages as eligibility condition for appointment to the said post. Rule 6(d) of the said Rules makes knowledge of Konkani and Marathi as an eligibility condition and it requires a candidate to produce a certificate from the District Judge that he has sufficient knowledge of Konkani or Marathi. It is pertinent to note that the condition of knowledge of local languages i.e. Konkani or Marathi language, as envisaged in Rule 6(d) of the said Rules, though may not have been advertised by the Government of Goa, as the record shows, a precaution was taken to observe the same meticulously by making it obligatory on the selected candidates to obtain such certificate of local language i.e. either Konkani or Marathi, as is evident from condition (iv) incorporated in the Notification of the appointments of respondents no.3 to 6 dated 18th January, 1996. The condition no.(iv) reads thus:-

"(iv) The appointment is subject to the appointee acquiring the knowledge of local languages i.e. Konkani or Marathi, within the period of probation fixed under the Rules."

Therefore, there is no doubt whatsoever that proper compliance was made with the relevant Rule of the said Rules, in this regard. At this juncture, it may also be noted that as the matter stands today, all the concerned respondents i.e. respondents no. 3 to 6, have satisfactorily completed the probation period and have been appointed in their officiating capacity in the said posts. The very fact that the respondent no.2 has certified that all the concerned respondents have satisfactorily completed the probation period, would show, by necessary implication, that condition no.(iv) as quoted above, was fulfilled by them and therefore, there is sufficient compliance of Rule 6(d) of the said Rules in the case of the said respondents.

6. It appears from the record that the real grievance of the petitioner is that he was not selected for the post. However, the affidavit in reply filed on behalf of respondent no.2 makes it clear that the petitioner failed to secure the minimum required marks in the interview which was held on 10th April, 1994 and, therefore, he was not selected despite having all the qualifications as required under the Rules.

7. The learned counsel for the petitioner, in the course of his arguments, sought to raise various points in this regard. However, he fairly conceded that

those were not raised in the body of the petition and therefore, neither respondent no.2 nor the other respondents had opportunity to meet those points effectively in the course of their affidavits. Be that as it may, the fact remains that the appointments of respondents no.3 to 6 to the posts of Civil Judge, Junior Division and J.M.F.C. are found to have been made legally and properly and, therefore, such appointment Orders under which the appointments have been made need not be interfered with by this Court.

8. In the result the petition stands dismissed. Rule is discharged.

P. V. KAKADE, J.

P. V. HARDAS, J.

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