

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-70-2020

Mr. Melwyn Fernandes,
Resident of House No. 31711.
Goncoi, Aldona, Bardez-Goa

..... Petitioner.

Versus

1. The State of Goa,
through the Chief Secretary,

2. The Director,
Directorate of Education, Porvorim-Goa.

3. Dy. Director of Education (Acad),
Directorate of Education,
Alto-Porvorim, Goa.

4. Assistant District Educational
Inspector, (ADEI),
Office of the ADEI,
Department of Education Bardez-Goa.

5. Chairman,
Fransalian Education Society,
Aldona-Goa,

6. Fr. Jerad Sahayaraj,
Presently working as Principal,
St. Thomas Higher Secondary School,
Aldona-Goa.

..... Respondents.

Mr. C. Padgaonkar, Advocate for the Petitioner.

Mr. D. Pangam, Advocate General, with Mr. S.P. Munj, Additional
Govt. Advocate for Respondents No.1 to 4,

Mr. Sidharth Sardessai, Advocate for Respondent No.5.

Mr. Gaurang Panandikar, Advocate for Respondent No.6

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar, JJ.***

Date : 14th December, 2020.

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

Heard Mr. C. Padgaonkar for the Petitioner. Mr. D. Pangam, the learned Advocate General appears along with Mr. S.P. Munj, Additional Govt. Advocate for Respondents No.1 to 4, Mr. Sidharth Sardessai appears for Respondent No.5 and Mr. Gaurang Panandikar appears for Respondent No.6.

2. Rule. At the request of and with the consent of the learned Counsel for the parties, we make the Rule returnable forthwith.

3. The Petitioner seeks a writ of quo warranto, questioning the appointment of Respondent No.6 as the Principal of St. Thomas Higher Secondary School, Aldona, Goa (said School), *inter alia*, on the ground that Respondent No.6, at the time of his appointment, or even otherwise, did not fulfill the qualifications prescribed in Rule 78 of the Goa School Education Rules, 1986 (said Rules), in so far as direct recruitment or promotion to the said post is concerned.

4. There is no dispute that recruitment to the post of Principal of the said School is governed by Rule 78 of the said Rules and the

relevant extract of Rule 78, reads as follows :

“78. Minimum qualifications for the appointment of teaching staff. - The qualifications for the recruitment/ promotion of the teaching staff in the recognized schools, whether aided or not shall be as prescribed in the following table which is subject to change in future on the recommendation of the Advisory Board or the directives of the Central Government to fall in line with the National Educational Policy :

TABLE

<i>Sr. No.</i>	<i>Name of post</i>	<i>Qualifications for Direct Recruits</i>		<i>Qualifications for promotees</i>	<i>Pay Scales subject to revision</i>
		<i>Upper age limit</i>	<i>Qualification</i>		
<i>1.</i>	<i>Principals of Hr.Secondary School/Pry.Trs. Training Institute.</i>	<i>45 years.</i>	<i>(i) IInd Class Master's Degree from a Recognized University; (ii) Degree in Education or Teaching ; and (iii) 10 years teaching experience, out of which at least 5 years in Hr. Secondary Schools as Gr.I teacher or in Pry. Trs. Training Institute as Sr. Instructor, as the case may be, and remain- ing 5 years in equivalent posts.</i>	<i>(i) A Master's Degree from a recognized Recognized University; (ii) Degree in Education/ Teaching from a recognized University; and (iii) At least 7 years teaching experience as Gr.I teacher in in the Hr.Secondary School or a Sr. Instructor in a Pry.Trs. Training Institute, as the Case may be.</i>	<i>1100- 1600 (pre- revised)</i>
				<i>OR Headmasters of Secondary schools under the same management having at least 7 years service out of which</i>	

*at least 5 years in
Higher Secondary
School as Gr.I
teacher or in Primary
Training Colleges
as Sr. Instructor as
the case may be.*

5. Now, there is no dispute that Respondent No.6 was not directly recruited to the post of Principal, but promoted to the post of Principal by order dated 18/04/2014. Therefore, what is relevant is the qualifications prescribed for promotees in column 5 and not the qualifications prescribed for direct recruits in column 4 above.

6. The records indicates and it is even contended by Mr. Panandikar for respondent No.6 that as on 18/04/2014, Respondent No.6 had 10 years experience as Headmaster of the School under the same management. However, Respondent No.6 did not have 5 years service in Higher Secondary Schools as Grade I teacher or in Primary Training Colleges as a Senior Instructor, as the case may be.

7. The qualifications referred to above speak of a promotee having Master's Degree from a recognized University, Degree in Education/Teaching from a recognized University; and (alternate qualification) experience as a Headmaster of Secondary Schools under the same management having at least 7 years service, out of which at least 5 years in Higher Secondary School as Grade I teacher.

8. Since, there is no dispute that Respondent No.6, at the time of his appointment, did not have at least 5 years experience in Higher Secondary Schools as Grade I teacher, the writ as prayed for by the Petitioner is liable to issue and the appointment of Respondent No.6, as Principal of the said School, is liable to be quashed and set aside.

9. Mr. Padgaonkar, the learned Counsel for the Petitioner submits that further prayers in the Petition to require Respondent No.6 to refund the salary drawn by him, etc., are also liable to be considered. According to us, since Respondent No.6 has worked all this while as the Principal, it will not be appropriate to require him to refund the salary drawn by him all these years.

10. Although, there may be no period of limitation for issuance of such writ of quo warranto, it is necessary to record therein the explanation as to why the Petitioner instituted this Petition after a considerable delay. In such circumstances, the relief for refund of salary by Respondent No.6 is liable to be rejected and is, hereby, rejected.

11. Mr. Sardesai, the learned Counsel for the Management states that the Management will, in accordance with the provisions of the Goa School Education Act, 1984 (said Act) and the said Rules, hold the necessary DPC in order to select the Principal for Higher Secondary School, as early as possible. He submits that, in the

meanwhile, Respondent No.6 may be permitted to continue on ad hoc basis without claiming any equities.

12. According to us, the request made by Mr. Sardesai is quite reasonable in the facts of the present case. Accordingly, we direct the Management to fill up the post of the Principal by holding a DPC, in accordance with the said Act and the said Rules, as early as possible and, in any case, within a period of 3 months from today. In case any co-operation is necessary from Respondents No.1 to 4, we are sure that the Respondents will extend the same taking into consideration the directions made by the Court and in the interests of the Management of the said School.

13. Though, we are now setting aside the appointment of Respondent No.6, we clarify that Respondent No.6 will be entitled to continue as the Principal of the said School, on ad hoc basis for a period of 3 months, unless, of course, he is promoted by the DPC by adhering to the provisions of the said Act and the said Rules. We make it clear that the DPC, this time, will have to make the promotions by adhering to the provisions of the said Act and the said Rules.

14. Rule, in this Petition is made absolute to the aforesaid extent. There shall be no order as to costs.

15. All concerned to act on the basis of an authenticated copy of this order.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.