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COLLEGE APPEAL NO. 1/2000

Shri M. Kunhanandan, aged about 34 years,
Indian National, resident of B-5, Furtado
Apartments, Gogol, P.O. Fatorda,
Margao, Goa. 403 602.

.... Appellant

V/s

1. The Governing Body, Smt. Parvatibai
Chowgule Cultural Foundations College
of Arts and Science, Margao, Goa. 403 601.
2. The Principal, Smt. Parvatibai
Chowgule Cultural Foundations College
of Arts and Science, Margao, Goa. 403 601.
3. The Goa University, through its Registrar,
having office at Taleigao Plateau, Goa. 403 206.

..... Respondents

Shri M. S. Sonak, Ld. Advocate for the Appellant.

Shri S. Y. Thali, Ld. Advocate for the Respondents No. 1 and 2.

Mrs. A. Agni, Ld. Advocate for the Respondent No. 3.

Coram: Z. E. Porobo,
President

JUDGEMENT

Panaji, 8.5.2006

This Appeal under section 7 of the Goa University Statutes is directed against the order/communication dated 12.5.1999 by which the Respondent No. 2, the principal of Smt. Parvatibai Chowgule Cultural Foundation College of Arts and Science, Margao, informed the Appellant that his services will not be required in the academic year 1999-2000 i.e. w.e.f. 20.6.1999.

2. The brief facts of the case which are relevant for disposal of this Appeal are that the Respondents No. 1 and 2 advertised on 18.4.1996 in the Journal "University News" inviting applications with full biodata for the post of lecturer in the reserved category

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SC/ST in Mathematics. In the said advertisement it was made clear that if suitable SC/ST candidates are not available, candidates from open category may be considered for appointment for one academic year on temporary basis. The Appellant who does not belong to SC/ST category in view of the clear indication in the advertisement as he possessed requisite qualifications applied for the post of lecturer in Mathematics and he was selected by Respondent No. 1 and 2 for the said post and issued appointment letter dated 29.6.1996 pursuant to which the Appellant joined duty w.e.f. 1.7.1996.

3. In view of the Circular dated 12.9.1989 issued by the Respondent No. 3, Goa University, for filling up the post reserved for SCs and STs, it is provided that it is permissible to appoint a candidate from general category against reserved post, if, despite efforts no candidate from the reserved category is available and upon appointment of such general category candidate, the post will have to be advertised for two more consecutive years. However, in the 2nd and 3rd advertisements, applications will have to be invited from candidates belonging to reserved category only and if no suitable candidate of the reserved category is available despite the 2nd and 3rd advertisements, the College/University will initiate process of de-reservation and thereupon give appointment to non reserved category candidate already appointed pursuant to the first advertisement. The said Circular also says that if for any reason the services of candidates belonging to non reserved category appointed against a reserved post are not available in the 2nd or 3rd year, the process of filling in reserved post will start de novo. In view of the said Circular dated 12.9.1989, the 2nd and 3rd advertisements should have been for inviting applications for the post of lecturers for



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Mathematics restricted to reserved category candidates only. However the Respondents No. 1 and 2 published advertisements dated 7.4.1997 and 25.3.1998 in "University News" inviting applications once again indicating that if suitable candidates from reserved category are not available the candidates from open category may be considered for appointment for one academic year on temporary basis. The Appellant in view of the 2nd and 3rd advertisement applied and was duly selected. He was issued second appointment letter dated 16.6.1997 for the academic year 1997-98 and 3rd appointment letter dated 12.6.1998 for the academic year 1998-99 informing him that his appointment as lecturer in subject Mathematics has been continued on temporary basis in the academic year 1998-99 as per the existing rules of the Goa University. Thereafter for the year 1999-2000, the Appellant was served with communication dated 12.5.1999 informing him that his services will not be required for that year w.e.f. 20.6.1999. The Appellant aggrieved by the said communication/order dated 12.5.1999 has preferred the present Appeal.

4. Shri M.S. Sonak, Ld. Advocate for the Appellant in his written submissions has contended that in the advertisement dated 18.4.1996 it was made clear that if suitable SC/ST candidates are unavailable, candidates from open category may be considered for appointment for one academic year on temporary basis and as there were no candidates from SC/ST categories, the Appellant who throughout had a brilliant academic career and who had applied for the said post, was selected. Under circular dated 12.9.1989 which governs appointment of General Category candidate against reserved post, (a) if no reserved category candidate is available it is permissible to



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appoint a general category candidate against reserved post, (b) upon appointment of general category candidate to reserved post, the post will have to be advertised for two consecutive years, (c) in the second and third advertisement applications will have to be invited only from reserved category candidates and (d) if no suitable candidates from reserved category are available despite second and third advertisement, the College/University shall initiate process of de-reservation and thereupon award regular appointment to the non-reserved category candidate already appointed pursuant to the first advertisement. Shri Sonak submitted that in the advertisement dated 7.4.1997 and 25.3.1998 it was stated by the Respondents No. 1 and 2 that the post is reserved for candidates from reserved category, but if suitable candidate from the reserved category is unavailable then candidate from general category will be considered for appointment and the Appellant who was not aware of the Circular dated 12.9.1989, on advice of Respondent No. 2 applied again for the said post and he was duly selected and issued second appointment letter dated 16.6.1997. For the academic year 1998-99 the Appellant was issued yet another letter of appointment dated 12.6.1998 and to Appellant's shock he received communication dated 12.5.1999 informing him that his services will not be required from the academic year 1999-2000 w.e.f. 20.6.1999. The said communication dated 12.5.1999 is impugned by the Appellant in the present Appeal. It is contention of Shri Sonak that the impugned order is in violation of Circular dated 12.9.1989 which provides details of the procedure to be followed in the matter of appointment of general category candidates as against reserved posts. It is submitted by him that in view of the said Circular the second and third advertisements are restricted to applications from candidates of reserved category only and as no



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candidate from reserved category was available for three consecutive years, it was for the Respondents to initiate process of de-reservation and thereafter regularize services of the Appellant as lecturer in Mathematics. Hence, the impugned order terminating the services of the Appellant is in breach of the Circular dated 12.9.1999 issued by the Respondent No. 3, Goa University which is binding on both the Management as well as the University. Shri Sonak pointed out the decision of the Division Bench of the Hon'ble High Court of Bombay in (Dr. A. S. Gadgil & Ors. V/s University of Pune & Ors.) reported in 1999(1) C.L.R. 304 in which it is held that as long as candidates belonging to backward class are not available, the Petitioners cannot be replaced by fresh candidates also not belonging to backward class and that the services of the Petitioner shall be continued till such time till candidates from backward class are available. He pointed yet another decision of the Division Bench of the Hon'ble High Court of Bombay reported in 2002(4) Bom. C.R. 152(Cacoli Shyamlal Sircar V/s Nagpur University) in which it is held that if a general category candidate is entitled to the benefit of a Circular and in the event that no backward class candidates are available pursuant to second and third advertisement, the services of general category candidate are to be regularized/approved. Taking the support of the above rulings, Shri Sonak submitted that the Appellant has served the Respondents No. 1 and 2 for three consecutive years without any break, and therefore, it was mandatory for the Respondents to comply with the principles of natural justice and fair play. In the present case, the Respondents having not complied with the principles of natural justice and fair play, the impugned order is a nullity. There are no reasons whatsoever in the impugned order although the impugned order terminates the services of the Appellant



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with serious civil consequences. The impugned order, being unreasoned and non-speaking, is illegal, arbitrary and unconstitutional. The services of Appellant were not terminated in order to accommodate any reserved category candidate, which admittedly were not available despite issuance of three consecutive advertisements. On this count also, the order is illegal and bad. In support of his above contentions, Shri Sonak relied on decision of the Hon'ble Apex Court reported in (1992) 4 S.C.C. 188 (State of Haryana V/s Piara Singh). He submitted that it is case of the Respondents in justifying the impugned order that the Appellant was selected pursuant to the second and third advertisements dated 7.4.1997 and 25.3.1998, and therefore, the fact that he is not entitled to any relief under the Circular dated 12.9.1989 is untenable for the reason that the Respondent No. 1 and 2 cannot take advantage of their own mistake in not restricting the second and third advertisements to the candidates of reserved category only. Besides, the Appellant has made clear averments that he was advised to apply by the Respondent No. 2 and thirdly, the waiver or relinquishment will arise only if it is established that the Appellant was fully aware of the Circular dated 12.9.1989 and its implications at the time of re-application. Fourthly, no reserved category candidate applied at the time of second and third advertisement and the selection committee found it fit to select the Appellant and therefore in such matters where there is inequality of bargaining powers inference of waiver or relinquishment can never be drawn. In support of his above contentions Shri Sonak relied on 1990(2) Bom. C. R. 586 (Mrs. Geeta Bhaskar Pendse V/s Principal Ayurveda College, Sion). He further submitted in the written submissions that the Respondents No. 1 and 2 have made certain allegations against the Appellant. In the event the termination of services of the Appellant is based



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upon said allegations, then such termination is punitive in nature, and therefore, compliance of principles of natural justice and fair play was mandatory. If the foundation for termination is the allegation made against the Appellant then in absence of compliance with principles of natural justice, by not affording opportunity to Appellant, the impugned order is illegal and void and the same is liable to be quashed and set aside. The impugned order is malafide and the same is liable to be quashed and set aside by allowing the Appeal and reinstating the Appellant in the services with all consequential benefits. Finally, he submitted that directions are to be issued to the Respondent to take steps for de-reservation of the post and regularize the services of the Appellant against de-reserved post with all consequential benefits from the year 1999-2000.

5. On the other side, Shri S. Y. Thali, Ld. Advocate for the Respondents No. 1 and 2 in his written submissions submitted that the order dated 12.5.1999 of the Respondent No. 2 informing the Appellant that his services would not be required for the academic year 1999-2000 w.e.f. 20.6.1999, has been challenged by the Appellant in the present Appeal. The Appellant has prayed for his reinstatement in the post of lecturer in Mathematics and for a direction against the Respondents to take steps for de-reservation of the post of lecturer in Mathematics and regularize the Appellant's services against the de-reserved post along with all consequential benefits w.e.f. the academic year 1999-2000. It is case of the Appellant that he had applied for the post of lecturer in Mathematics in view of the advertisement dated 18.4.1996. The said post was reserved for SC/ST, however the advertisement made it clear that if suitable SC/ST category



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candidates were not available, candidates from open categories may be considered for appointment for one academic year on temporary basis. Admittedly, the Appellant does not belong to SC/ST category, and on his application for the said post, he was appointed as lecturer in Mathematics by order dated 29.6.1996. The procedure for filling up the post reserved for SC/ST is prescribed by the University vide Circular dated 12.9.1989. The case of the Appellant is that the said post of lecturer in Mathematics was re-advertised for second and third time inviting applications for the post of lecturer in Mathematics. However, the said advertisements were in breach of Circular dated 12.9.1989 since in that it was set out that in case of non availability of candidates from reserved category, candidates from open category would be considered for appointment for one academic year on temporary basis when in fact in view of the Circular, second and third advertisement had to be inviting applications from candidates belonging to reserved category only. It is case of the Appellant that he applied for the said post on the second and third advertisement and it is further stated by him that vide communication dated 12.5.1999 he was informed by the College that his services would not be required for the academic year 1999-2000. It is submitted by Shri Thali that the Appeal is not maintainable since (1) the Appellant has not challenged the approval granted by the Goa University to Respondents No. 1 and 2 vide communication dated 29.6.1999 for discontinuance of services of Appellant and re-advertisement of the post, (2) consequently the Appeal suffers from non joinder of necessary parties so much so that the post of lecturer was re-advertised and a new incumbent was appointed to the said post. The Appellant has not made the new incumbent who is occupying the said post party to this Appeal. (3) The Appellant in view of fourth advertisement himself



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applied for the said post and was not selected and it is only after he was not selected that he started raising questions about the validity of the communication dated 12.5.1999, (4) during the period the Appellant was occupying the said post there were complaints about his ability to make the students understand the subject and the fact that he was facing problems in the matter of engaging interest of the students, was admitted by the Appellant himself in his 'Self Appraisal Performance Report'. (5) since according to the Appellant himself the advertisements were published in contravention of Circular dated 12.9.1989, but nevertheless, he applied pursuant to the said advertisement and was selected and appointed, the Appellant cannot take advantage of the appointment which he has secured pursuant to advertisements which are admittedly not in consonance to the Circular dated 12.9.1989 to claim benefits under the said Circular. He submitted that it is pertinent to note that the Appellant has fraudulently suppressed the fact that post of lecturer in Mathematics was re-advertised for the fourth time pursuant to letter dated 29.6.1999 which permitted the college to advertise the existing post of lecturer and refill the same for the academic year 1999-2000 after approving the discontinuance of the services of the Appellant. In this, what strikes the most is that the Appellant has suppressed the fact that he himself applied for the said post in response to the fourth advertisement and was not selected and it is only after when he was not selected he has preferred the present Appeal without joining the candidate who has been selected and appointed to the post pursuant to the advertisement. Hence, on this ground also the Appeal is liable to be rejected as the Appellant has suppressed material facts and also on the ground of non joinder of necessary parties. Shri Thali submitted that the Appellant in the Appeal has prayed for de-reservation of the post and regularization of his services



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against the said de-reserved post. For de-reservation of the said post, the State of Goa or the Department of Social Welfare are necessary parties and for not joining them in the Appeal, the Appeal has to fail. Shri Thali relied on (2001) 10 S.C.C. 11 (Shivkumar Tiwari V/s Jagat Narayan Rai and Ors.) in which the Hon'ble Apex Court dealt with the matter in which a lecturer had filed a suit for declaring himself as permanent lecturer in College and for declaration that notice issued by management stating that his appointment would be coming to an end, was challenged as being void in the suit without joining the State or any of the authorities of the Education Department and the lecturer who was appointed on the said post. However, only the College and the management were made parties to the Appeal. Although in the said suit decree was passed in favour of the lecturer and he was declared to be a permanent lecturer of the College and further declaring the notice issued by the management as void and pursuant to the said Judgement/Decree, the Education Department directed that the Lecturer be treated as permanent lecturer and the services of new incumbent who was appointed in place of said lecturer was terminated, upon the newly appointed teacher challenging the said order of the Education department by filing the Writ Petition, the Writ petition was allowed. The lecturer went in Appeal with Special Leave Petition to the Apex Court and the Hon'ble Apex Court dismissed the Special Leave Petition filed by the lecturer on the ground that the lecturer was aware of the advertisement in the newspaper inviting applications, he did not challenge the selection process nor implead the subsequently appointed teacher but only impleaded the college, and therefore, the decree passed in suit was not binding on the newly appointed teacher or Education Department of the Government. He submitted that in view of the observations made by the Hon'ble Apex



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Court in the above ruling which is squarely applicable to this case the act of the Appellant of not joining the newly appointed teacher as party to the Appeal, the rights of the newly appointed teacher would be seriously prejudiced in as much as his services would have to be terminated. Shri Thali submitted that the Appellant has not challenged the selection process by which the new lecturer was appointed and in which process of selection the Appellant himself participated and only after he was unsuccessful he turned around and filed the present Appeal which is purely an afterthought. The Appellant did not even mention the fact that in view of the advertisement inviting applications from interested persons for the year 1999-2000, he applied for the said post and he was not selected but some other candidate was selected in his place. It is submitted by him that it is also pertinent to note that in the representation made by the Appellant on 27.5.1999 addressed to Vice Chancellor of the University at its para 11, it is stated by the Appellant that even if his services have become surplus by virtue of availability of suitable candidates in reserved category, he may be accommodated in another vacancy in the department which is filled by candidates who are unqualified and junior to the Appellant since the college cannot terminate the services of a qualified person by retaining a junior unqualified person thereby violating principles of natural justice. In the said representation, it is also mentioned by the Appellant that fourth advertisement issued by the Principal of the College for the said post of lecturer in Mathematics for the year 1999-2000 is null and void. However, there is not a whisper of the said statement being made in the representation, in the Appeal. It is submitted by Shri Thali that the Appellant's contention is that his services were illegally terminated and that he is entitled for



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reinstatement by regularization of his services by de-reservation of the post of lecturer in Mathematics. The Circular dated 12.9.1989 is issued by the Registrar of the University. It prescribes that when the post of lecturer reserved for SC/ST category is filled up by suitable candidates belonging to non reserved category, the post will have to be advertised at least for two more consecutive academic years and that in the second and third advertisements, applications will be invited from candidates belonging to reserved category only and if no suitable candidate of reserved category is available for second time, the candidate from non reserved category appointed to the post will continue to hold post during the second academic year also, i.e. in other words in terms of the said Circular second and third advertisement should have been for inviting applications from candidates from reserved category only. The said Circular further provides that at the time of second and third advertisement, the candidate who has already been appointed should not be interviewed but will be automatically allowed to continue. Shri Thali submitted that there is no dispute that the second and third advertisements were not in accordance with the Circular in as much as in the said advertisements, applications were not invited from reserved category candidate only but on the contrary it was stated that if reserved category candidates are not available, the candidates belonging to non reserved category will also be considered and above all this, what is pertinent to note is that the Appellant had submitted himself to an interview pursuant to the second advertisement and was appointed against the vacancy only because he was selected. Thus, it is clear that appointment of Appellant was not in terms of Circular dated 12.9.1989. Hence, Shri Thali submitted that though the Appellant states that it was wrong on the part of College authorities to advertise post



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during second and third occasion in the manner in which it was done what is more indisputable is that the Appellant pursuant to advertisement applied for the said post and got appointed. The Appellant did not challenge the said advertisements. Hence, as appointment during three years was not in accordance with the Circular he cannot claim benefit under it. If the Appellant wanted to take benefit of the Circular it was for him to challenge the second and third advertisements which were in contravention of the Circular. Having not done so, the Appellant could not claim benefit under the said Circular. Further, the Appellant has continued in the said post in terms of Circular on this count also he cannot claim benefit under the said Circular. Shri Thali further submitted that the other point to be noted is that the authority competent to authorize de-reservation of post is Directorate of Social Welfare. For de-reservation, a candidate of non reserved category had to continue in the said post for the third year in succession and the Directorate of Social Welfare has to be satisfied with the efforts made by the University/College to fill up the post by candidate belonging to reserved category. In the case in hand, no steps were initiated for de-reservation of the post in view of the said Circular after third advertisement and the Appellant instead of demanding derservation continued in the post until the end of academic year 1999 and on top of it he applied for the post and appeared for interview in view of the fourth advertisement. Hence, the Appellant now cannot insist for de-reservation. The Appellant was appointed in the academic year on temporary basis. There is no provision in the Circular for continuation of the services of a teacher against reserved post beyond period of three years unless it is de-reserved. The fact is that the post was not de-reserved before end of academic year 1999-2000 and in view of Circular dated 12.9.1989 there is no



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provision for continuation of services of a teacher against reserved post beyond period of three years unless it is de-reserved. Hence, in absence of de-reservation the Appellant's services cannot be confirmed against the post belonging to reserved category. The Appellant also having not joined the Government of Goa or the Department of Social Welfare to these proceedings, no direction in the matter of de-reservation could be issued. Finally, Shri Thali submitted that the Circular issued by Registrar of University has no statutory force as it is not part of statute. It is merely in the form of guideline to affiliated colleges. Shri Thali relied on A.I.R. 1993 S.C.C. 2444(Union of India V/s S. L. Abbas) in support of his contention and prayed that the Appeal be dismissed on the said ground alone. He further submitted that the decisions cited by the Appellant are not applicable to this case as in the said cases the appointment of candidate was strictly made in accordance with the Circular which is not the case here. In the case cited by the Appellant the Circular was backed with Government order and ordinance of University. Thus, as there is an ordinance and Government order laying procedure, the candidate concerned can enforce de-reservation of vacancy and his regularization thereon. In the case in hand, the Circular is not backed by any ordinance of University or a Government order. This case is not of arbitrary termination of services. The Appellant was appointed for a specific period. The communication dated 12.5.1999 is not an order of termination of services but an intimation to the teacher. The appointment of the Appellant was restricted to the year 1998-99. Hence, there is no termination or the same is by way of punishment. Hence the Appeal deserves to be dismissed.

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6. Mrs. A. Agni, Ld. Advocate on behalf of Respondent No. 3 submitted that the Respondent No. 3, University, had called the Respondent No. 1 and 2 to submit an explanation regarding termination of Appellant's services, which was rendered by letter dated 23.6.1999, which the Respondent No. 3 approved and by letter dated 19.1.2000, the Appellant was informed that action taken by Respondents No. 1 and 2 for discontinuation of services was justified. She submitted that the circular dated 12.9.1989 was not followed by the Respondents No. 1 and 2. So much so the second and third advertisements were not issued in terms of the Circular. However the contention of the Appellant that he participated in the selection process which was in violation of Circular dated 12.9.1989 and for academic year 1998-99 his appointment was continued on temporary basis vide letter dated 12.6.1998. Hence, having participated in the selection process, it is not open now for the Appellant to say that it was in violation of Circular. She further submitted that undisputedly the second and third advertisements were in violation of Circular yet the Appellant having participated in the selection process, he cannot be allowed to contend that there is violation of Circular as the selection process ought to have been challenged at that time. However, after participating in the selection process, the Appellant could not somersault and contended that there is violation of a Circular issued by the University as the approval was granted by the Goa University upon considering relevant aspect of matters. The appointment of the Appellant was purely on temporary basis, and therefore, the Appellant has no right to continue as lecturer, and hence, the Appeal be dismissed.

7. I carefully considered the rival contentions. Admittedly, the Appellant was



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appointed as Lecturer in Mathematics on a post which was reserved for a candidate belonging to SC/ST category. In the advertisement inviting applications for filing the said post, it was specifically made clear that if suitable SC/ST candidates are not available, the candidates from open category may be considered for appointment for one academic year on temporary basis. The Appellant is not from reserved category, however he was duly selected by the Respondent for that academic year on temporary basis as no suitable candidates from SC/ST category were available and the Appellant being from open category possessed requisite qualifications. It is not disputed that in the Circular dated 12.9.1989 issued by the Respondent No. 3, Goa University, the procedure for filling up post reserved for SC/ST category has been laid.

In view of the said Circular dated 12.9.1989

"(1) When a post of lecturer reserved for SC/ST category in College/University teaching department is filled in by a suitable candidate belonging to the non reserved category by following proper procedure prescribed for appointment of lecturers in the College/University, the post will have to be advertised at least for two more consecutive academic years. However, in the second and third advertisements applications will be invited from candidates belonging to reserved category only. If no suitable candidate of reserved category is available for the second time also the candidate of non reserved category appointed in the post will continue to hold the post during the second academic year also. If the same thing happens for the third time also, the same candidate will continue to hold the post during third academic year also. Simultaneously, the College/University will initiate proceedings of de-reservation of the post by making a reference to the Directorate of Social Welfare of the Government of Goa giving the circumstances in which the candidate belonging to the non reserved category had to be continued for the third year in succession. The Directorate of Social Welfare after being satisfied with the efforts made by the College/University to fill the post by a candidate belonging to reserved category but without success may authorize de-reservation of the post.



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- (2) If for any reason, the services of the candidate belonging to non reserved category appointed against the reserved post are not available, in the second or third year the procedure of filling in the reserved post will be started de novo.
- (3) If the post is de-reserved as per the above procedure the candidate belonging to the non reserved category and holding the post continuously will be considered to have been appointed on probation, the period of the first two years of his appointment being the period of probation his appointment will be considered to have been considered on the date of completion of two year period of probation.
- (4) There is an SC/ST cell recently set up in the Goa University and any matters concerning the appointment of lecturers in the College/University Departments against reserved category posts can be referred to the said cell for guidance and advice if needed, if the same arises
- (4) It is reiterated that no appointment of lecturer shall be confirmed against the post belonging to reserved category unless process of de-reservation is followed and de-reservation of the post is duly authorized by the Directorate of Social Welfare, Goa.

In the case in hand, the Appellant was appointed as lecturer against the post reserved for SC/ST category as no suitable candidate from reserved category was available. In the advertisement, it was made clear that if suitable SC/ST candidates are unavailable, candidates from open category may be considered for appointment for one academic year on temporary basis. In view of Circular dated 12.9.1989 of the University which is guideline for filling up post reserved for SC/ST in College/University where the post of lecturer reserved for SC/ST is filled by appointing a general category candidate the appointment is only for one year and the same is purely on temporary basis. In case of such appointment the post will have to be advertised for two consecutive academic years inviting applications only from the reserved category candidates. It is also important to note that in view of the said Circular if suitable candidates from reserved category are not available despite second and third advertisement, candidate of non



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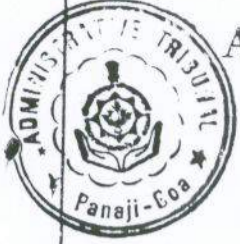


reserved category appointed pursuant to first advertisement will continue to hold his post for the said three years. However, simultaneously the College/University will initiate the proceedings of de-reservation of post by making a reference to Directorate of Social Welfare, Government of Goa stating the circumstances in which the candidate belonging to non reserved category had to be continued for three years in succession and the Directorate of Social Welfare if satisfied may authorize de-reservation of the post.

8. In the present case in the second and third advertisements, applications were not invited from candidates of reserved category only, but it was also mentioned that if suitable candidates from reserved category are not available, candidates from general category will be considered for appointment. In view of the advertisements dated 7.4.1997 and 25.3.1998, the Appellant applied for the said post and he was appointed for the second year by letter dated 16.6.1997, and likewise, he was appointed for third year also by appointment letter dated 12.6.1998. Thus, the Appellant for the said three years was given appointment year to year and the same was on temporary basis. Therefore, it cannot be disputed that the second and third advertisements were not in accordance with Circular dated 12.9.1989 nor appointment of Appellant was in terms of the said Circular. It is contended by Shri Sonak on behalf of the Appellant that it was wrong on part of College to advertise the post during second and third year in the manner it was done. It cannot be ignored that the Appellant has applied pursuant to the second and third advertisement and he was given fresh appointment against the said post every year during the said two years. The Appellant did not challenge the said



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advertisements for the second and third year. He remained quite as he was appointed every time on his applications against the advertisement. Hence, I agree with Shri Thali, Ld. Advocate for the Respondents No. 1 and 2 that as the selection and appointment of Appellant during the three years was not in accordance with the Circular he cannot claim defence under the said Circular.

9. It is also pertinent to note that the said post of lecturer in Mathematics was re-advertised for the fourth time and the same was done pursuant to letter dated 29.6.1999 of the University permitting the College to advertise the existing post of lecturer and refill the same in the academic year 1999-2000 after approving the discontinuance of services of the Appellant. In this respect, it is interesting to note that the Appellant applied for the post in response to the fourth advertisement and was not selected. As contended by Shri Thali, it is only after he was not selected that the Appellant preferred the present Appeal without joining the candidate who has been selected and appointed pursuant to the fourth advertisement. The Appellant, neither in the Appeal Memo nor in his written submission, made mention of this fact of the College advertising the post for the fourth time in the year 1999-2000 after discontinuance of his services and that he has not been selected and some other candidate is appointed on the said post. The Appellant in his Appeal has prayed that the order dated 12.5.1999 be quashed and set aside and also prayed for his reinstatement to the post of lecturer in Mathematics with all consequential benefits. I agree with Shri Thali that by not disclosing the above facts there is suppression of material facts and a candidate having already been appointed on the said post pursuant to the fourth advertisement, if the prayer of the Appellant for his



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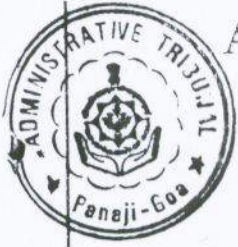
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reinstatement on the said post is allowed then it definitely will affect the said candidate who has been appointed on the said post, and therefore, the said candidate is a necessary party to this Appeal, and therefore, I agree with Shri Thali that the Appeal is liable to be dismissed for non joinder of parties. In (2001) 10 S.C.C. 11(supra) the Hon'ble Apex Court observed that the authorities of the Education Department could not have legitimately chosen to accept the Judgement when such acceptance has infact directly and seriously prejudicially affected the rights of the subsequently appointed teacher who was also not made a party to the suit before the Civil Court. The Apex Court dismissed the Special Leave Petition filed by the earlier teacher against the order of Hon'ble Apex Court in writ petition filed by newly appointed teacher against the order of the Education Department which pursuant to the Judgement in Civil Suit had directed to treat the earlier lecturer as permanent lecturer and further directed that the services of the new incumbent who had been appointed in place of earlier lecturer be terminated. In view of the Circular dated 12.9.1989 another most important requirement is that if during the third academic year also no suitable candidate of reserved category is available, the candidate appointed pursuant to first advertisement will continue to hold post during the third academic year also. However, simultaneously the College/University had to initiate proceedings of de-reservation of the post. The Circular states that the College/University will initiate the process of de-reservation of post by making a reference to Directorate of Social Welfare of Government of Goa giving the circumstances under which the candidate of non reserved category had to be continued for the third year in succession and the Directorate of Social Welfare may authorize de-reservation of the post if it is satisfied with the efforts made by the



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University to fill the post by candidate from reserved category. Here, no steps were initiated for de-reservation of the post after the third advertisement nor the Appellant demanded for the steps to be taken for de-reservation. However, on the contrary the Appellant continued in the post until the end of the academic year 1999, and besides, he applied for the post pursuant to fourth advertisement and appeared for interview, and it is only after he has not been selected and a new incumbent has been selected on the said post, the Appellant has been contending that the de-reservation process ought to have been initiated during the academic year 1998-99. The Appellant seeks a direction against the Government for de-reservation of the post. First thing that the Appellant has failed to do is that he kept quiet till the Academic year 1999-00 i.e. till the third year was completed, but appeared for the interview in view of the fourth advertisement and did not challenge the fourth advertisement and after he was not selected, in the representation dated 27.5.1999 addressed to Vice Chancellor of University, he mentions that even if his services have become surplus by virtue of availability of candidate of reserved category, there is another vacancy in the department which is filled by a unqualified candidate junior to him and as such college cannot terminate his services by retaining a junior unqualified person. All this shows that the Appellant has not been against the selection process by which the new lecturer has been appointed in pursuance of the fourth advertisement but only when he was unsuccessful he filed the present Appeal as an afterthought as rightly submitted by Shri Thali. The Appellant has sought direction for de-reservation of the post and for regularization of his services against the de-reserved post along with consequential benefits. For de-reservation of post, reference is to be made to Directorate of Social Welfare of Government of Goa who



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should be satisfied with the efforts of the Respondents. The Appellant has not joined the Government of Goa or the Directorate of Social Welfare as party to the Appeal, and as such, I find favour with the submission of Shri Thali that in absence of the Government of Goa and Directorate of Social Welfare no direction for de-reservation of the post or regularization of Appellant against the de-reserved post can be granted. Discontinuance of service of Appellant is approved by the Respondent No. 3 by its letter dated 23.6.1999 and the same approval by the Respondent No. 3 has not been challenged by the Appellant. Further, there is no dispute that Circular dated 12.9.1989 is not part of the statute created by the Goa University and that it is merely a Circular for the guidance of affiliated colleges and the same has no statutory force. As such, the same cannot be enforced by approaching the court. The decision 1999(1) C.L.R. 304(supra) relied upon by the Appellant is based on Government resolution laying down procedure for filling up post reserved for candidates belonging to SC/ST category, and besides, the resolution of Government, there is an ordinance issued by Vice Chancellor laying down the procedure for filling the post. Thus, in the case in the said ruling it was not a mere Circular like in the present case, but the same was backed by the Government resolution and ordinance of University. In the other ruling 2002(4) Bom. C. R. 152(supra) the position is also similar. Hence, I agree with Shri Thali that the said rulings relied upon by the Appellant are not applicable to his case. In the case in hand, the appointment of Appellant was only for academic year 1998-99 and the same is purely temporary. As such, the letter dated 12.5.1999 cannot be an order of termination. Another point raised by the Appellant is that in returns filed on behalf of Respondent No. 1 and 2 certain allegations have been made against the Appellant and in



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the event the termination of services is based on such allegations such a termination is punitive in nature, and therefore, the compliance of principles of natural justice and fair play is mandatory. It is contended by Shri Sonak that the foundation for termination is clearly the allegation referred to in the returns and in absence of compliance with principles of natural justice and fair play, the termination order is liable to be quashed. I do not find any favour with this submission of Shri Sonak for the simple reason that the appointment of Appellant was made on the post reserved for candidate from reserved category only for specific academic year and as such it was purely temporary basis. The Hon'ble Apex Court in 2006 A.I.R. SCW 2107(supra) has held that even in case of a probationer, order of discontinuance on the ground that his performance was unsatisfactory is not punitive order. In the decision 2006 A.I.R. SCW 2107(supra) it is held by the Hon'ble Apex Court:

"Read as a whole the letter of discontinuance gives impression that the removal of Appellant from service was only because the Respondents, after giving a long rope to Appellant, had come to the conclusion that the Appellant's service was unsatisfactory and there was no hope of his improvement. The Letter/Order was not punitive."

The Appellant herein was not appointed on probation. His appointment was for one specific year purely on temporary basis and the same is discontinued by the Respondents No. 1 and 2 by the letter dated 12.5.1999. Even considering the submission of Shri Sonak that order of discontinuance is issued on the ground that performance of Appellant was unsatisfactory, then also, in view of the decision of the Hon'ble Apex Court when in case of a probationer such discontinuance is not punitive then in case of Appellant herein who is not a probationer and whose appointment is purely temporary for one year, the communication of discontinuance dated 12.5.1999



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cannot be punitive. Therefore, there is no need for the Respondents No. 1 and 2 to comply with the principles of natural justice. Thus, in view of the facts and circumstances as above, I find that the Appellant has miserably failed on all fronts to make out a case in his favour in the Appeal, and as such, the Appeal is liable to be dismissed. Hence, I pass order as follows:

ORDER

The Appeal is dismissed.

PRONOUNCED



Haral
(Z. E. POROBO)
PRESIDENT

sk

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Copy applied for on 11/8/2006 by Resp. No. 3.
Date given to the party for taking delivery of the
Copy 11/8/2006
Copy ready for delivery on 11/8/2006
Copy delivered on 11/8/2006
Typed by Photo copy
Compared by [Signature] Checked by [Signature]
Copying fees Rs. 25/- (Rupees Twenty five only)
under receipt No. 47/83 dated 11/8/2006
Panaji.



[Signature]
11/8/2006
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