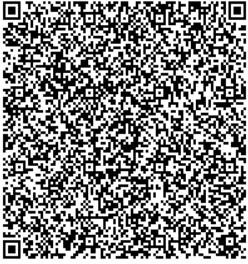




Amrut



IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.28 OF 2012

1. Smt. Snehal Sardesai,
U.D.C., Examination Section,
Goa University,
Taleigao Plateau Goa.
2. Smt. Uma Verenkar,
U.D.C., Admn. Div. III,
Goa University
Taleigao Plateau, Goa
3. Smt. Bhavana Mahale,
U. D.C., Examination Section,
Goa University,
Taleigao Plateau, Goa.
4. Shri Ashok Chodankar,
U.D.C., Admn. Div. IV,
Goa University,
Taleigao Plateau Goa.
5. Smt. Meena Naik,
U. D.C., Finance Section,
Goa University,
Taleigao Plateau, Goa.

... Appellants

Versus

1. Smt. Smita A. Kamat,
Examination Section,
Goa University,
Taleigao Plateau, Goa.
2. Shri Jose A.C.P. Vaz,
Admn. Div. II,



Goa University,
Taleigao Plateau Goa.

3. Kum. Surekha Pai,
Examination Section,
Goa University,
Taleigao Plateau, Goa.
4. Shri Gurudas Phal Dessai,
Admn. Div. V,
Goa University,
Taleigao Plateau, Goa.
5. Shri Ulhas Sawant,
Admn. Div. V,
Goa University,
Taleigao Plateau, Goa.
6. Goa University,
Through its Registrar,
Having its office at
Taleigao Plateau, Goa.
7. Smt. Prasheela Diukar,
Finance Section,
Goa University,
Taleigao Plateau, Goa.
8. Smt. Khurshid Sayed (Since deceased)
Adm. Div. I
Goa University
Taleigao Plateau, Goa.
Represented by her legal representatives
8(a) Shri Sayed Sardar Ahmed
Husband of Khurshid Sayed,



8(b) Shri Sayed Rizwan
Son of Khurshid Sayed
8(c) Shri Sayed Abdul Hameed
Son of Khurshid Sayed
8(d) Ms Sayed Tasneem
Daughter of Khurshid Sayed
All major of age, residents of Flat No.504,
Prime Complex, Vaddem, Vasco da Gama
403802

9. Smt. Monica Soares,
Admn. Div. IV,
Goa University,
Taleigaon Plateau, Goa.
(Deleted as per order dated 23.10.2008)

10. Shri Luis Noronha,
Finance Section,
Goa University,
Taligaon Plateau, Goa.
(Deleted as per order dated 23.10.2008)

11. Smt. Pratima Ballikar,
U.D.C. University Works Division,
Goa University,
Taleigao Plateau Goa.

...Respondents

Mr Deep Shirodkar, Advocate for the appellants.

Mr Abhijeet Kamat, Advocate for respondent Nos. 1 to 5.

Mrs A. Agni, Senior Advocate with Ms Afrin Harihar and Mr Junaid Shaikh, Advocates for respondent No.6.

CORAM: BHARATI DANGRE, J

DATED : 19th SEPTEMBER 2025



ORAL JUDGMENT

1. The appeal filed by Smt. Snehal Sardesai and four others was admitted on 04.10.2012, on the following substantial questions of law:-

(i) Whether the learned appellate Court erred in reversing the judgment and decree passed by the learned trial Court by holding that the suit would not lie in view of Section 28 of the Goa University Act, 1984, ignoring the mandate of Section 9 of the Code of Civil Procedure, 1908?

(ii) Whether for the purpose of determining the merits for the promotional post of Head Clerk, ACR's of candidates in the lower post for the period of three years or five years to be considered?

2. I have heard Mr Deep Shirodkar for the appellants, the learned Senior Counsel Mrs Agni for respondent No.6 – Goa University and Mr Kamat for respondent Nos.1 to 5.

3. When the appeal was taken up by me for hearing on 01.08.2025, it was deemed necessary to have the presence of the legal representatives of respondent No.8 who had demised and therefore, Mr Shirodkar brought the legal representatives of respondent No.8 on record and notice was issued to them. The office noting dated 18.09.2025, indicate that respondent No.8(a)



to respondent No.8(d) are duly served. Despite service of notice, they have chosen not to remain present before the Court.

4. The plaintiffs, employees of the Goa University, joined the University as Lower Division Clerk (L.D.C.) on various dates and came to be promoted to the post of Upper Division Clerk (U.D.C.) and having completed three years in the cadre of U.D.C. claimed entitlement for being considered for promotion to the post of Head Clerk.

The Goa University Recruitment Rules, 1988 for the post of Head Clerk, a Group 'C' post in the Pay Scale of 1400-40-1800-EB-50-2300, prescribed that the post shall be filled in by selection and in case of recruitment by promotion, it contemplated the UDCs/Junior Stenographers/Stores or godown Keepers/Account Clerks/Senior Laboratory Assistants with three years regular service in respective grades to be fit for consideration. For selection to the post, as per the Recruitment Rules, the DPC/DSC to be constituted for selection of Head Clerk included the Registrar, Finance Officer, and Deputy Registrar of the University, the Chairman of the DPC being the Registrar. Since the Recruitment Rules did not prescribe the criteria to be adopted by the DPC for selecting the candidates to the post of Head Clerk, it took assistance of the guidelines on Departmental Promotion Committee issued



by the Government of Goa, Department of Personnel, Secretariat, Panaji Goa, vide Office Memorandum dated 26.09.1990 under the subject “Departmental Promotion Committee and related matters – Consolidated instructions on”. The Office Memorandum, clearly prescribed the procedure to be followed in processing and implementing the recommendations of DPCs.

5. The Office Memorandum stated that where the promotions are to be made by selection method as prescribed in the recruitment rules, the DPC shall, for the purpose of determining the number of officers who will be considered from out of those eligible officers in the feeder grade(s), restrict the field of choice with reference to the number of clear regular vacancies proposed to be filled in a particular year.

The relevant guidelines in the Office Memorandum read to the following effect:-

“6.1.2 At present DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered by them. In order to ensure greater selectivity in matters of promotions and for having uniform procedures for assessment by DPCs, fresh guidelines are being prescribed. The matter has been examined and the following broad guidelines are laid down to regulate the assessment of suitability of candidates by DPCs.

6.2.1 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence –



- (a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject to (c) below.
- b) The DPC should assess the suitability of the Officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year).
- c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account.
- d) Where an officer is officiating in the next higher grade and has earned CRs in that grade, his CRs in that grade may be considered by the DPC in order to assess his work, conduct and performance, but no extra weightage may be given merely on the ground that he has been officiating in the higher grade.
- e) The DPC should not be guided merely by the overall grading if any, that may be recorded in the CRs but should make its own assessment on the basis of the entries in the CRs; because it has been noticed that some times the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.”

6. What is important and relevant for consideration here, is clause 6.2.1(b), where the DPC is directed to assess the suitability of the officers for promotion on the basis of their service record by taking into consideration the confidential remarks (CRs) for five preceding years and in cases where the required qualifying service is more than five years, the DPC should record with particular reference to the CRs for the years equal to the required qualifying



service. Another relevant facet of the aforesaid guidelines is, that the DPC shall have a uniform procedure adopted for assessment of the candidates i.e. all candidates shall be gauged by the same yardstick.

7. The plaintiffs working as UDCs on completion of their service in the said cadre of three years expected consideration of their candidature, when eight posts of Head Clerk fell vacant in the years 1995-96 and 1996-97, which were required to be filled in by promotion from feeder cadre of UDCs/Junior Stenographers/Senior Laboratory Assistants strictly in accordance with the recruitment rules. As per the guidelines, it was necessary to consider 12 UDCs, 6 Junior Stenographers, and 4 Senior Laboratory Assistants who fell within the zone of consideration.

8. It is the grievance of the plaintiffs that they were aggrieved because while considering the candidature of the plaintiffs along with defendant Nos. 2 to 10, only three years CRs were considered and in fact, the defendant No.2 was working on ad-hoc basis was came to be promoted as Head Clerk without even officially regularising his services. The plaintiffs pleaded that defendant Nos. 2 to 10 were selected in utter violation of procedure ought to have been followed by the DPC with the sole intention to deny the



promotional avenue to the plaintiffs who had legal existing right which was infringed.

The plaint further plead that as per clause Nos. 3.1 and 3.2 of the Office Memorandum dated 26.09.1990, it is mandatory for defendant No.1 to convene the DPC meeting annually at regular intervals, to draw a panel, which could be utilized in making promotions against the vacancies occurring during the course of the year, and the time schedule to be laid down for holding the DPC. However, none of the above directions were followed.

The plaintiffs therefore felt aggrieved by the action of the promoting the private defendants by showing complete disregard to the DPC guidelines, which had made imperative for consideration of five years CRs but by restricting the examination of CRs for only three years, it was pleaded that the plaintiffs have been denied their right of promotion and the entire procedure adopted by defendant No.1 while promoting and appointing defendant Nos.2 to 10 by holding DPC is illegal, arbitrary and against the procedure laid down for its conduct. The cause of action is alleged to have been accrued to the plaintiffs against defendant Nos.2 to 9 on 10.03.1997 and 30.09.1997 when appointment orders were issued in their favour and it was pleaded that it continued to remain in force.



9. Regular Civil Suit No.145/97/B therefore claimed the following reliefs:-

- (a) For a judgment, order and decree, declaring that the order of appointment of the defendant Nos.2 to 9 dated 10th March 1997, and the order dated 30th September 1997 appointing the defendant No.10 to the post of Accountant, is ultra-vires and bad in law and consequently to quash and set aside the same;
- (b) For a judgment, order and decree of permanent injunction restraining defendant No.1 from giving effect to the orders of appointment dated 10th March 1997 and the order dated 30th September 1997;
- (c) For a judgment, order and decree of mandatory injunction, ordering and directing defendant No.1 to forthwith hold a review D.P.C. and consider the plaintiffs for promotion for the post of Head Clerk/Accountant.

10. The written statement was filed by the defendants to the plaint through the Assistant Registrar (Legal), Goa University, at the outset, raised a preliminary objection about the maintainability of the suit by alleging that no cause of action arises in favour of the plaintiffs nor they have a locus standi. Another objection raised, is the Court have no jurisdiction to entertain and try the suit in view of the provisions of Section 28 of the Goa University Act read with Section 30 and Statute 116 framed under the Goa University Act.



Without prejudice to the aforesaid objection, it was denied that the promotion of defendant Nos.2 to 10 to the post of Head Clerk in supersession of the claim of the plaintiffs are in utter disregard of the settled law governing promotions or dehors the guidelines in functioning of the Departmental Promotion Committee.

Reference is specifically made to the guideline No.6.1.1 and the pleading in the plaint is contradicted by stating that :-

“8. With reference to the contents of para 10, it is stated that D.P.C. considered the available C.R's. It is denied that D.P.C. has considered only 3 years confidential reports (CR's) while promoting the defendants no.2 to 10. D.P.C. has considered available CR's of five preceding years in terms of the guidelines 6.2.1.(c). It is denied that the defendant no.2 was considered illegally or was graciously promoted to the post of Head Clerk. It is denied that she was not officially regularized or that any statutory provisions have been violated or that any unfair practises have been practised with a view to deny promotional avenues to the plaintiff. The defendant no.2 has been considered by the D.P.C. for effecting promotion to the post of Head Clerk and upon being selected she has been regularised in terms of the guidelines referred to above.

9. With reference to the contents of para 11, the same are specifically denied. It is denied that the procedure adopted by the defendant no.1 in promoting the defendant no.2 to 10 smacks of malafide and ill will or that it is with intentions to deny promotional avenues to the plaintiff. It is denied that the plaintiff have any existing legal rights and it is denied that it has utter disregard or disregard at all of any mandate of Art. 14 & 16 of the Constitution of India.”



It is a specific stand adopted that the seniority was not main criteria while effecting the promotion to a selection post and only if the merit of the candidates is equal, then the seniority shall be taken into consideration. It was thus denied that it was illegal and arbitrary action was contemplated at the end of the defendant No.1 and it was also denied that any malafides intention or ulterior motive was the factor in surpassing the claim of the plaintiffs.

The defendant No.4 adopted the written statement filed by defendant No.1.

11. In the wake of the pleadings, the Civil Judge Senior Division, Panaji, framed the following issues: -

“1. Do the plaintiffs prove that the entire procedure adopted by defendant No.1 in promoting defendants 2 to 10 is illegal?

2. Do the plaintiffs prove that the orders dt. 10/3/97 and 30/9/97 are bad in law?

3.Does the defendant no.1 prove that this Court has no jurisdiction to entertain the suit in view of Sec. 28 of University Act?”

12. In support of the plaintiffs’ case Mr Ashok Chodankar, plaintiff No.5 filed his affidavit/deposition. On behalf of the Goa University, two witnesses came to be examined, namely Mr Mohan Sangodkar (DW1), the Registrar who was examined for bringing on record the minutes of the DPC. Similarly, Mr Devidas Borkar



(DW2) was also cross-examined after he tendered his affidavit in evidence.

The relevant portion of his deposition reads to the following effect:

“2. I say that in all the Departmental Promotion Committee considered twenty candidates for the post of Head Clerk and fourteen candidates for the post of accountant. There were 9 vacant posts of Head Clerk to be filled and there was one post of Accountant to be filled. I further say that we considered the ACR's of all the candidates who were falling in the zone of consideration for a period of 5 years, in respect of candidates falling in the zone of consideration in respect of both the posts however as in terms of the recruitment rules, for the post of head clerks the requisite service to be considered for eligibility was 3 years of regular service in the lower grade in terms of recruitment rules we recorded the ACR's pertaining to the last 3 years in the minutes of the DPC.

3. I say that the post of Head Clerk as that of the Accountant is a selection post and the criteria to be followed is that of merit cum seniority, in other words merit being equal the seniority is required to be considered.”

In his cross-examination, he categorically admits thus:-

“It is not true to suggest that while considering the candidates for the promotion to the post of Head Clerk and Accountant, we did not consider the ACR's of all the candidates who were falling within the zone of consideration for a period of five years”

13. Another material which was placed before the trial Judge is the proceedings of the DPC and the said noting being exhibited at Exhibit 63 Colly referred to the minutes of the DPC for promoting



the persons from the list of UDCs to the post of Head Clerk. What is pertinent to take note of is the statement of fact contained in the minutes, which record thus:-

“The committee examined carefully all the available ACR’s of five years of each of the above candidates. The overall grading unanimously carried out at the Departmental Promotion Committee and found that three candidates have been qualified for the post of Accountant, is as follows:-

<i>Sr.No.</i>	<i>Name</i>	<i>Designation</i>	<i>Grade</i>
<i>1</i>	<i>Shri Luis J. D. Noronha</i>	<i>U.D.C.</i>	<i>Good</i>
<i>2</i>	<i>Smt. Uma U. Verenkar</i>	<i>U.D.C.</i>	<i>Good</i>
<i>3</i>	<i>Smt. Bharati V. Naik</i>	<i>U.D.C.</i>	<i>Good</i>

14. The minutes of the meeting (DPC) held on 25.02.1997 to consider the promotion to the post of Head Clerk, referred to the existence of nine sanctioned posts of Head Clerk, out of which eight lying vacant, and it is referred to the RR which provide that these posts have to be filled in by promotion, failing which by transfer/deputation.

It is recorded that the DPC took the final seniority list of UDCs/Junior Stenographers as the basis and found 20 candidates to be within the zone of consideration. The minutes specifically record that all the officials have completed three years of regular



service in the respective cadres and are eligible to be considered for the promotion to the post of Head Clerk.

The relevant observation in the minutes read to the following effect:-

“The eight posts are vacant and to be filled as per the sequence/roster. The Committee examined carefully all the available ACR’s of three years of each of the candidates. The overall grading unanimously carried out at the Departmental Promotion Committee is as follows:-

Sr.No.	Name	Designation	Grade
1.	Smt. Prasheela Diukar	Ad-hoc H.C.	Good
2.	Shri Luis J. D.Noronha	U.D.C.	Good
3.	Smt. Kurshid Sayed S. A.	“	V. Good
4.	Smt. Teja Shirodkar	“	Good
5.	Smt. Snehal Sardessai	“	Good
6.	Smt. Uma Verenkar	“	Good
7.	Smt. Smita Kamat	“	V.Good
8.	Smt. Pratima Ballikar	“	Good
9.	Smt. Bhavana Mahale	“	Good
10.	Shri Ashok Chodankar	“	Good
11.	Kum. Surekha Pai	“	V. Good



2025:BHC-GOA:1801

28-SA 28-12.DOCX

12.	Smt. Meena Naik	“	Good
13.	Shri Gurudas Phal Desai	“	V.Good
14.	Smt. Nutan Mohite	“	Good
15.	Shri Ulhas Sawant	“	V. Good
16.	Smt. Tanuja Volvoikar	“	Good
17.	Shri Jose A. C.P. Vaz	Jr. Steno	V. Good
18.	Smt. Monica Crasto	“	V. Good
19.	Kum. Maria Lia Gonsalves	“	Good
20.	Smt. Rekha Verekar	“	Good

As far as the candidate Smt Prasheela Diukar is concerned, who was working on ad-hoc basis, noted that she was promoted to the post of Head Clerk w.e.f. 01.04.1994 and her name is also recommended.

15. With the aforesaid evidence brought before him, including the deposition as well as the relevant documents including the minutes of the DPC meeting, the Civil Judge Senior Division at Panaji, pronounced upon the issues formulated in deciding the suit for declaration, mandatory injunction, permanent injunction and



consequential relief. In pronouncing upon the issue Nos.1 and 2, the trial Judge arrived at the following findings:-

“21. A perusal of the minutes of the DPC meeting held on 25.02.1997, to consider the promotion of the post of the Head Clerks, which are at exhibit 42, bring out that the Committee had examined the ACR’s of three years of each of the candidates, who were considered for the post of Head Clerks.

22 Upon consideration of the aforesaid evidence, I am of the opinion that the evidence brings out that ACR’s of only three years was considered, for the post of Head Clerks, though the DPC was required to consider the ACR’s of five years, while the ACRs of five years of each of the candidates, were considered for the post of Accountant.”

16. With the aforesaid observations and due deliberation on the said issues, the trial Judge recorded the final conclusion in Para 41 as below:-

“41. In the circumstances, I am of the opinion that the procedure adopted by defendant no.1 in promoting the defendants no.2 to 9 was not as per the procedure laid and consequently, it has to be concluded that the order dated 10.03.1997, appointing the defendants no.2 to 9 was bad in law. As discussed herein above, the allegations made by the plaintiffs in respect of the promotion of the defendant no. 10, have remained unproved. The issues no.1 and 2 are thus answered in the affirmative as regards the defendants no.2 to 9 and the order dated 10.03.1997, and negatively as regards the defendant no. 10 and the order dated 30.09.1997.”

17. As regards the issue No.3, whether Section 28 of the Act creates a bar, the trial Judge answered thus: -

“46. In view of the aforesaid provisions of law, I am unable to agree with the contention of Ld. Advocate Smt. Agni that there are no Rules



under F.R, S.R, which deal with a grievance of promotion not granted. It therefore follows that the provisions of Sections 28 and 30 of the University Act would not be applicable to the facts of this case. I am therefore unable to agree with the contention of Ld. Advocate Smt. Agni that this Court has no jurisdiction to entertain the suit in view of section 28 of the University Act. Issue no.3 is thus answered in the Negative.”

By answering the questions framed in the aforesaid manner, the decree is directed to be drawn accordingly in favour of the plaintiffs.

18. The said judgment was subjected to challenge in Regular Civil Appeal No.69/2008 and by judgment dated 05.10.2011, the finding along with decree passed by the trial Judge is reversed and the Appellate Court determined the two issues namely, the issue of jurisdiction as to whether the Court has no jurisdiction to entertain the suit in view of Section 28 of University Act and whether the plaintiffs prove that the entire procedure adopted by defendant No.1 in promoting defendant Nos.2 to 10 is illegal.

While answering the said issues, the Appellate Court observed thus:-

“15. It is an admitted fact that the post of Head clerk is selection post where the criteria is merit-cum-seniority and that plaintiffs were considered while effecting promotion to the posts of Head Clerk and therefore the contention of the plaintiffs that they are senior to the defendant nos. 2 to 10 is of no consequence as when post is a selection post, seniority takes a back seat and based on



seniority alone, the plaintiffs cannot claim any promotion. The recruitment rules for the post of Head Clerk are as follows:

"U.D.C./Jr. Stenographers/stores/or godown keeper/account clerks/Sr. Lab Asst. with three years of regular service in respective grade."

16. The plaintiffs have produced on record Forms of confidential report in respect of defendant nos. 2,3,7,8,9,10 and plaintiff no.2,3,4,5, and 6 so also final seniority list of UDC, Jr. Stenographer, Office order, representation, legal notice and other documents. The recruitment rules establish that the post of head clerk is selection post and from the evidence, no violation of the guidelines regarding DPC is established. Moreover, there is nothing on record that the guidelines are binding on the defendant no.1 nor the plaintiffs have established that the University is bound to follow the guidelines. DW1, Dr. Mohan Sangodkar who is the Registrar of the University has deposed that they have followed the guidelines in terms of the recruitment rules produced on record and that plaintiffs were duly considered by DPC while effecting promotion to the posts of Head Clerk and that the DPC had acted in terms of settled practice and rules and that there were no unfair practices adopted to deny the plaintiffs their legal right to promotion. In the cross examination, he however admitted that three years ACR were considered by DPC in the present case.

17. DW2, Shri D.V. Borkar who was the Chairman of DPC has deposed that he was holding the post of Registrar of Goa University during the period from 1996-97 and was the Chairman and that they considered the ACR who were falling in the zone of consideration for promotion for a period of 5 years while considering the candidates for the post of head clerk and accountant, however ACR pertaining to last three years were recorded in the DPC as the requisite service to be considered for eligibility for promotion was three years of regular service of lower grade. He also deposed that posts of Head clerk and accountant are selection posts and the criteria to be followed is merit cum seniority and that they had evaluated the merits of the candidates falling within the zone of consideration for promotion and had accordingly recommended defendant nos.2 to 9 for promotion for the posts of head clerk and defendant no.10 for accountant."



19. The Appellate Court concluded that the plaintiffs had not pleaded as to who had acted malafide and there is no evidence of malafide on record. It further recorded the conclusion that the trial Court was wrong in setting aside the appointment which was long standing for 11 years on the basis of a report which nowhere holds that the DPC acted with bias or that the DPC acted illegally and in any case the recommendations made by the Sub-Committee were not accepted by the Executive Council. As regards the period of consideration of ACRs, the finding is recorded in Para 21 thus:-

“21. The Ld. Trial Judge has wrongly relied upon Office Memorandum/guidelines to hold that ACR of 5 years were required to be considered and has not taken into the consideration the recruitment rules and failed to appreciate the executive instructions hold the field only till statutory rules are enacted and once the statutory recruitment rules come into the force, the earlier administrative instructions cannot be adhered to and will have no force and that it cannot override the rules statutorily made governing the conditions of service of the employees and therefore the office memorandum/guidelines which is in the nature of executive instructions can never override the statutory rules. There is no dispute that the recruitment rules stipulates three years preceding service shall be considered and as per the office memorandum/guidelines ACR of 5 years were required to be considered. It is therefore the office memorandum/guidelines will have no force and cannot override the statutory rules which stipulates three years of preceding service to be considered for promotion and therefore it was not open for the Trial Court to set aside the appointments.”

On the point of jurisdiction, the Appellate Court recorded thus:-



“22. Ld. Advocate Shri R. Chodankar for the plaintiffs has submitted that plaintiffs and defendants have been appointed under CCS Rules and not under section 28 of the Act. Section 28 of The Goa University Act, 1984 requires the University to appoint its employee under a written contract which shall be lodged with University and a copies to be furnished to the employee concerned. The University has not produced any contract before the Court to show that the appointments of plaintiffs and defendant nos. 2 to 10 were made under section 28 of the Act and therefore section 28 is not applicable and jurisdiction of the court is not ousted. The Sub-section 2 of section 28 give a right to the employee to refer the dispute to a Tribunal of Arbitration and such an opportunity can be availed only if any dispute arises out of said contract and therefore referring the dispute does not arise.”

20. In conclusion, the Appellate Court recorded that the trial Court erred in holding that DPC did not consider the ACR of the five preceding years and has failed to consider the evidence of DW1, Dr Sangodkar and also the Chairman of DPC DW2, Prof. D. V. Borkar. It also rendered a finding that the trial Court misread the documentary evidence produced by the plaintiffs i.e. the minutes of the DPC held on 25.02.1997, to hold that the committee has examined the ACR of three years of each of the candidates and has overlooked the evidence of the witnesses examined by the defendants. Further, it also find fault with the observation in the trial Court, in holding that the plaintiffs were not considered on a fair and equal basis and that the University cannot cause any inequality between the plaintiffs and defendants, since the ACRs of all the candidates were considered and that as per the recruitment rules for the post of Head Clerk, the requisite service to be considered was three years of regular service and



therefore recording of ACR for three years was sufficient to fulfil the requirement of the recruitment rules. As a result, the appeal was allowed and the judgment and decree dated 19.07.2008 passed in favour of the plaintiffs in Regular Civil Suit No.145/1997/B was quashed and set aside.

21. The learned counsel Mr Deep Shirodkar appearing for the appellants/original plaintiffs would submit that the Appellate Court has wrongly answered both the issues and as far as the issue of jurisdiction is concerned, by reading the provision i.e. Section 28 of the Goa University Act, 1984 it is his submission that there is no complete embargo in filing the civil suit and the Appellate Court has not construed the provisions in consonance with the spirit and essence of the Act and also the principles of statutory interpretation.

As regards the second point about five years of CRs to be considered, he would submit that the University had never pleaded its case before the trial Court or Appellate Court that there is any contradiction in the statutory rules or DPC guidelines, but despite these specific findings rendered by the Appellate Court, which are evidently contrary to the minutes of the DPC itself.



Per contra, the learned Senior Counsel Mrs Agni would support the judgment of the Appellate Court and she would submit that as far as the issue of jurisdiction is concerned, since the trial Judge had determined the matter on merits and so was the process adopted by the Appellate Court, she is not much insistent and keen to determine the issue as regards the jurisdiction of the Civil Court to try a dispute as set out in the plaint by the plaintiffs. However, as far as the second issue as regards consideration of CRs, Mrs Agni by inviting my attention to the cross examination of DW2 has urged me that he had categorically denied the suggestion even in the cross examination that considering the candidates for the post of Head Clerk and Accountant, they did not consider the ACRs of all the candidates falling in the zone of consideration for a period of five years. In light of the aforesaid, she would submit that the ACRs of five years were considered in terms of the guidelines of DPC.

22. Answering the substantial questions of law formulated on 04.10.2012, when the appeal is admitted, I must turn my attention to the first question.

For answering the aforesaid questions, it is apposite to reproduce Section 28 of the Goa University Act, 1984, which reads thus:-



“28. Conditions of service of employees.— (1) Every employee of the University shall be appointed under a written contract which shall be lodged with the University and a copy of which shall be furnished to the employee concerned.

(2) Any dispute arising out of a contract between the University and any employee shall, at the request of the employee, be referred to a Tribunal of Arbitration consisting of one member nominated by the employee concerned, a representative of the Executive Council and an umpire appointed by the [Chancellor].

(3) The decision of the Tribunal shall be final, and no suit shall lie in any civil court in respect of the matters decided by the Tribunal.

(4) Every such request shall be deemed to be a submission to arbitration upon the terms of this section, within the meaning of the Arbitration Act, 1940.”

23. A reading of the aforesaid provision makes it evidently clear that every employee of the University shall be appointed under a written contract. However, reading of sub-section (2) would reveal that any dispute arising out of a contract between the University and any employee shall, at the request of the employee, shall be referred to a Tribunal of Arbitration which is constituted as prescribed.

The aforesaid provision clearly prescribes that if a dispute arises between the University and an employee and the employee request it to be referred to the Tribunal of Arbitration, then it is imperative for its reference to the Arbitration. However, by no stretch of imagination, this clause shall be construed as an ouster clause for ousting the jurisdiction of the Civil Court, when a



dispute arises between the University and employee and the employee do not choose to have a reference to be made to the Tribunal of Arbitration.

Sub section (3) of Section 28 further make this position clear as it is stipulated that the decision of the Tribunal shall be final, and no suit shall lie in any Civil Court from such a decision of the Tribunal. It is thus evidently clear that Section 28 do not act as a complete embargo or it do not amount to ouster the jurisdiction of Civil Court and unless and until the statute specifically exclude the remedy of Civil Court, in my considered opinion, the jurisdiction of the Civil Court cannot be barred. Section 9 of the Code of Civil Procedure is very clearly prescribed so and it would be appropriate to reproduce the said provision.

“9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

24. Section 9 of the Civil Code confer the extensive authority to adjudicate all suits of civil nature unless the jurisdiction is specifically barred and this can be specifically provided in a statute and such express exclusion would bar the jurisdiction of the Civil Court or the creation of Tribunal or special forum with effective



machinery to decide the issue related to the specific liability implies that the Civil Court jurisdiction is barred.

The principle underlying Section 9 is loud and clear; the Civil Courts are presumed to have civil matters unless specific provisions of law clearly state otherwise. Section 9 thus ensure that individuals have right to approach the Civil Courts for enforcement of their civil rights except when restrain is imposed on exercise of its jurisdiction in certain matters and this can include creation of special forum, Tribunal for the said purpose. However, without that exception, the Civil Courts can exercise jurisdiction in all civil matters, which shall even include a contract or contractual right. In the wake of the aforesaid, issue No.1 stands answered accordingly.

25. Coming to the second substantial question of law, it is not in dispute that the recruitment rules for the post of Head Clerk have prescribed the period of three years of regular service as an essential qualification for being selected for a higher post of Head Clerk. The recruitment rules also prescribe that the promotion/selection can be conducted by the DPC but the criteria to be adopted by the DPC for determining the relative merit is not to be found in the recruitment rules but on the other hand, it is to be found in the Office Memorandum determining the procedure of DPC and this clearly provide for consideration of confidential



rolls, which are the basic inputs, on the basis of which assessment is to be made by each DPC by clearly stating that evaluation of CRs should be fair, just and non-discretionary. It clearly contemplates that the DPC shall assess the suitability of the officers for promotion on the basis of their service records and with particular reference to the CRs for five preceding years. It also clarified that where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per clause (b) above.

It is thus clear that for assessing the suitability of the officer for promotion, his performance for the five years which is reflected in the CRs is the determining factor. Apart from the fact that the DPC shall also make its own assessment on the basis of the entry in the CRs.

There is no doubt in the mind of the University, that it was bound by the aforesaid directive and for this very precise reason, I find the witnesses on behalf of the University deposing that the ACRs for all the candidates falling in the zone of consideration for the period of five years were considered but in terms of the



recruitment rules, for the post of Head Clerk the requisite service being eligibility of three years, there is recording of ACR's pertaining to three years in the minutes of DPC. The categorical statement on oath made by Dr D. V. Borkar, DW2 is to the following effect:-

“2. I say that in all the Departmental Promotion Committee considered twenty candidates for the post of Head Clerk and fourteen candidates for the post of accountant. There were 9 vacant posts of Head Clerk to be filled and there was one post of Accountant to be filled. I further say that we considered the ACR's of all the candidates who were falling in the zone of consideration for a period of 5 years, in respect of candidates falling in the zone of consideration in respect of both the posts however as in terms of the recruitment rules, for the post of head clerks the requisite service to be considered for eligibility was 3 years of regular service in the lower grade in terms of recruitment rules we recorded the ACR's pertaining to the last 3 years in the minutes of the DPC.”

In the cross-examination, he denied the suggestion that the University did not consider the ACRs of all the candidates for a period of five years.

However, when the minutes of DPC for the promotion to the post of the Accountant and that to the Head Clerk is carefully perused, I find that as far as the Accountant is concerned, it is recorded that the DPC examined the available ACRs of five years of each of the above candidates and grading of three candidates was based upon their performance assessed on the basis of the ACRs.



However, when it comes to the case of UDC/Junior Stenographer to be considered for the post of Head Clerk, 20 candidates were in the race, the noting clearly reflect that the committee examined the available ACRs of three years of each of the candidates. Admittedly, both the posts i.e. Accountant and Head Clerk, are governed by the recruitment rules formulated by the Goa University and since it was also imperative to follow the Office Memorandum setting out the procedure for conducting the DPC, I find that two different yardsticks are applied to the two posts i.e. post of the Accountant and Head Clerk. If for the post of Accountant, it was imperative to have consideration of CRs for five years, it was also imperative for considering the candidature for the post of Head Clerk.

26. I have not heard Mrs Agni urging before me that the guidelines framed in form of OM are not binding upon the University and she cannot so argue as I find the guidelines having been made available to the post of Accountant by applying the norms of consideration of five years of CRs but an exception has been made in case of the Head Clerk and probably this has caused the petitioners their rights.

I find Mrs. Agni's argument that the petitioners have no right to be promoted but have the right to be considered for



promotion, as a settled position of law. However, I find that the plaintiffs as claimed by them have lost their chance as the CRs for only three years have been taken into consideration and at this stage, it cannot be assessed, whether on considering the five years CRs, the plaintiffs would have marched against the defendant Nos.2 to 10 but I definitely find that non-consideration of the five years CRs may have prejudiced them and since the Appellate Court has reversed the findings of the trial Court and held that the criteria of five years as contained in guidelines for the DPC could not have been made applicable, I find the findings unsustainable.

27. It is not in dispute that all the plaintiffs have retired from service and I specifically inquired with Mr Shirodkar as to what could be the mechanism that could be followed as today, I find that the plaintiffs were wrongly kept out of the selection process by applying the wrong norms. He would place reliance of the decision of Apex Court in case of *N. A. Khan Vs Union of India and others*¹ in support of his submission that even now the review DPC could be held and the eligibility of the plaintiffs could be determined, and if they are found to be eligible on that date, then the benefits can be notionally conferred upon them.

¹ (2016) 16 SCC 524



The Apex Court, in the said decision, has specifically issued a direction to conduct a review DPC and to assess whether the appellant was suitable for being considered for promotion at the relevant point of time i.e. 1991-1992, and also to determine whether sufficient vacancies were available at the relevant point of time. The relevant observations of the Apex Court deserve reproduction: -

“10. It is an admitted position that the Review DPC had passed an order without going into the question whether sufficient vacant seats were available at the relevant point of time i.e. in the year 1991- 1992 when the appellant was found suitable for being considered for promotion. We are informed and in fact, we find from the aforesaid order itself that five members/candidates have already been promoted superseding the claim of the appellant. If vacant seats were made available in the year 1991-1992 and the appellant was suitable for promotion, then the question of declining his claim for promotion ought not to have arisen.

11. We are therefore of the view that the impugned orders cannot be sustained. Let the matter be sent back to the Review DPC concerned to ascertain whether the appellant herein was suitable for promotion in the year 1991-1992 and if it is found so, the appellant should be promoted notionally. Since the appellant has already retired in the meantime, the appellant should be paid the amount payable to him on the basis of said notional promotion.”

28. Mr Shirodkar has prepared a chart reflecting the certain details of the plaintiffs and it is not in dispute that all the plaintiffs are promoted to the post of Head Clerk in the year 2009/2010 but since I am of the view that they ought to have been considered by applying the criteria to the Office Memorandum of DPC requiring



assessment of five years CRs, I find that they have been prejudiced and following the precedent in *N.A. Khan* (supra), I deem it appropriate to direct the University to convene the review DPC, to determine the eligibility of the plaintiffs on the date on which the post of Head Clerks fell vacant and by applying revised norms of consideration of five years CRs, their eligibility shall be reassessed and any of the plaintiff is found to be fit for consideration, then the benefit of the said post shall be notionally conferred upon the plaintiffs. However, it is made clear that none of the respondents No.2 to 10 shall be displaced, as I find that they have been selected and promoted as early as in the year 1997 and the benefits which accrued to them cannot be withdrawn after a length of time. Only via media available to me, therefore, is to direct notional benefit on the plaintiff(s), if any of them is found to be considered for promotion on the date on which respondent Nos.2 to 10 were found to be fit and subsequently issue the order of promotion.

29. Since the Appellate Court has failed to take into consideration the aforesaid aspect and has arrived at conclusion that the criteria to be applied for considering the CRs should be the CRs of past three years and not five years, I find that it has fallen into grave error and therefore, the impugned judgment and decree dated 05.10.2011 in Regular Civil Appeal No.69/2008 is set aside, thereby restoring the judgment and decree dated



19.07.2008 in favour of the plaintiffs except to the extent of not displacing the respondent Nos.2 to 10.

30. The substantial questions of law in the Second Appeal are answered thus:-

- (1) The Appellate Court has grossly erred in reversing the judgment and decree passed by the trial Court by holding that the suit would not lie in view of Section 28 of the Goa University Act, 1984.
- (2) For the purpose of determining the merits for the promotional post of Head Clerk, the ACR's of candidates in the lower post should be considered for the period of five years in consonance with the guidelines on promotion committee contained in Office Memorandum dated 26.09.1990.

The Second Appeal is allowed in the aforesaid terms.

BHARATI DANGRE, J