



(1)

wp7061.14

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7061 OF 2014

Harishchandra s/o Wamanrao Awari, ... Petitioner
Age: 45 years, Occu: Serving as Assistant
Professor (Reverted from the post of
Associate Professor) of Irrigation & Drainage,
Department of Irrigation & Drainage Engineering
College of Agricultural Engineering & Technology,
Vasantrao Naik Marathwada Krishi Vidyapeeth,
Parbhani.

VERSUS

1. The State of Maharashtra ... Respondents
Through its Secretary
Agricultural, Animal Husbandry,
Dairy Development and Fisheries Department,
Mantralaya, Mumbai – 32.
2. The Registrar,
Vasantrao Naik Marathwada Krishi Vidyapeeth,
Parbhani.

Mr. V. D. Salunke h/f Mr. B. A. Darak, Advocate for the Petitioner.
Mr. S. N. Kendre, AGP for Respondent-State No.1.
Mr. M. M. Navandar, Advocate for the Respondent No.2

**CORAM : KISHORE C. SANT &
AJIT B. KADETHANKAR, JJ.
DATE : 03.08.2026**

JUDGMENT [PER : KISHORE C. SANT.J.] :-

01. Rule. Rule made returnable forthwith, by consent of the parties.



(2)

wp7061.14

02. Heard learned Advocate for the petitioner, AGP for respondent No.1 and learned Advocate for respondent No.2.

03. The petitioner has approached this Court challenging inaction on the part of the respondent in giving him promotion in time to the post of Associate Professor. The challenge is raised to the order dated 30.06.2014 reverting the petitioner from the post of Associate Profession to the post of Assistant Professor. During pendency of the petition, now the petitioner is given promotion as Associate Professor. The grievance now remains is about deemed date, which is claimed to be 19.07.2007.

04. It is case that the petitioner was holding qualification of M.Tech. (Irrigation and Drainage Engineering). He was appointed as Assistant Professor on temporary basis in 1996 for a period of 11 months. Same arrangement continued till 1998. Thereafter, the petitioner came to be selected as Assistant Professor by following selection process on 28.04.1999. The respondent No. 2 prepared a seniority list of the employees of the University. The petitioner was shown at Sr. No.6 in the seniority list as on 01.01.2008; whereas one Mr. Bhagyawant was shown at Sr. No.7. Said Mr. Bhagyawant was also possessing qualification only as M.Tech. Initially the seniority list was



common for Agricultural Engineering College and for College of Agriculture.

05. Mr. Bhagyawant filed Writ Petition No. 4767 of 2008 with grievance that two separate seniority lists need to be prepared one for Agricultural Engineering College and one for Agricultural College; whereas the petitioner also filed Writ Petition No. 4909 of 2008 claiming that there should be only one seniority list. The University filed reply to Writ Petition No. 4909 of 2008 and accepted that the petitioner is senior to Mr. Bhagyawant. On the basis of reply, this Court passed order dated 27.01.2010, in view of the undertaking by the University and disposed off the petition.

06. On 06.05.2010, the petitioner came to be temporarily promoted as Associate Professor. Since it was temporary appointment, the petitioner could not get regular promotion. In the meantime, the statutes of the University to be amended. In view of amended statute, the qualification for becoming Associate Professor was prescribed as Ph.D.. Since the petitioner was not holding Ph.D., he was reverted back to the post of Assistant Professor. The petitioner therefore filed Writ Petition. In the year 2018 i.e. pending the petition, the petitioner is



(4)

wp7061.14

promoted to the post of Associate Professor, as he acquired qualification of Ph.D.. Thus, now the grievance is only about deemed date.

07. Learned Advocate Mr. V.D. Salunke vehemently argued the petition. He submitted that one post of Assistant Professor had fallen vacant in view of promotion of one Mr. Digrase as Professor on 19.07.2007. At that time itself the petitioner was eligible and entitled to be promoted in the place of Mr. Digrase. He was having requisite qualification required for the post of Associate Professor. However, said post was not immediately filled. The University later on promoted Mr. Bhagyawant on 14.01.2010, who happens to be junior to the petitioner. The petitioner thereafter was illegally superseded. Even in 2010, when the petitioner was given temporary promotion, he should have been given regular promotion. Giving temporary promotion itself shows that there was no dispute about qualification and eligibility of the petitioner. It is only in view of the amended statute of 2014, he came to be reverted back. Action of not giving promotion is thus arbitrary. He submits that since now the petitioner is already promoted, the question is only of giving deemed date as 19.07.2007, in any case from the date on which Mr. Bhagyawant was promoted.



08. Learned Advocate Mr. Navandar vehemently opposes this petition. He submits that the petitioner belongs to open category; whereas said Mr. Bhagyawant happens to be candidate from Scheduled Caste category. Considering this aspect, he was given promotion prior to the petitioner. The petitioner could not have been promoted in 2007, since he was not given regular promotion till 2014 and as he had not acquired Ph.D. qualification, there was no question of the petitioner being promoted to the post of Associate Professor. When the petitioner acquired Ph.D. qualification, he is rightly promoted from 2018 to the said post. No illegality is committed by the University. He submits that there is no substance in the petition and the same deserves to be dismissed.

09. Learned AGP adopts the stand of learned Advocate Mr. Navandar. He submits that the requisite qualification is, *sine qua non*, for giving promotion to the post of Associate Professor. He prays for passing appropriate order.

10. It is admitted that the petitioner was eligible to be promoted in the year 2007 itself. However, no promotion was given to anyone Mr. Bhagyawant was given promotion in 2010 against the post reserved for Scheduled Caste. Since the petitioner happens to be a person belonging



to open category, there was no question of appointing him against post reserved for Scheduled Caste. However, this Court finds that the petitioner was given temporary promotion by order dated 06.05.2010. On that date certainly he was holding qualification as was required at the relevant time. It is only in 2014, because of change in the statute, the petitioner was required to obtain Ph.D. qualification for the post of Associate Professor. There is no reason coming forth as to why the petitioner was not regularly promoted in the year 2010, when admittedly, he was possessing the qualification.

11. So far as promotion to Mr. Bhagyawant is concerned, it is accepted fact that he happens to be a person belonging to Scheduled Caste and was entitled for promotional post reserved for the Scheduled Caste person. The petitioner being open category person, was not eligible to be appointed against a post reserved for the Scheduled Caste. When the petitioner was given temporary promotion, it is clear that the petitioner was holding qualification for promotion on that date. Thus, this Court safely infers that on that date the petitioner could have been certainly appointed as Associate Professor. This Court thus finds substance in the submission of learned Advocate Mr. Salunke. This Court, therefore, finds that this petition deserves to be allowed. Hence,



(7)

wp7061.14

the following order :-

12. This Writ Petition stands partly allowed. The petitioner is directed to be given deemed date of promotion as 06.05.2010 and be paid all the benefits and arrears of difference of salary within six months from today. If the arrears are not paid within six months from today, same shall carry interest at the rate of 6% per annum from today.

13. Rule made partly absolute accordingly.

[AJIT B. KADETHANKAR, J.]

[KISHORE C. SANT, J.]