



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8769 OF 2023

Shivaji Kishan Mutkule
age 34 years, occ. Service
r/o Muda, Post Bori
Taluka Jintur,
Dist. Prabhani

.. Petitioner

versus

1. The State of Maharashtra
Through its Chief Secretary
Department of Agriculture
Mantralaya, Mumbai.
2. Vasantao Naik Marathwada Agriculture
University
Krushinagar, Vasmat Road,
Parbhani,
Through its Registrar
3. Shriram Devidas Waghmare
age 41 years, occ. Service
r/o c/o Office of Associate Dean
and Principal,
Agriculture College,
Parbhani

.. Respondents

Mr. S. S. Jadhavar, Advocate for the Petitioner.
Mr. S. K. Tambe, AGP for Respondent No. 1.
Mr. M. N. Navandar, Advocate for Respondent No. 2.
Mr. R. G. Nirmal, Advocate for Respondent No. 3.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

RESERVED ON : 3rd APRIL, 2024.
PRONOUNCED ON : 19th APRIL, 2024

JUDGMENT : (Per R. M. Joshi, J.)

1. Rule. Rule made returnable forthwith and heard finally by consent.

2. The Petitioner is seeking to raise challenge to the promotion order dated 29th December, 2022 issued by the Registrar, Vasantrao Naik Marathwada Agriculture University, Parbhani, in favour of Respondent No. 3 to the post of Agriculture Assistant (Group-C). He further seeks direction to grant promotion to the Petitioner on the said post with effect from 29th December, 2022 with all consequential benefits and difference in salary.

3. The Petitioner is working as a Watchman with Respondent No. 2 – University and, in the seniority list of Class IV employees prepared for the purpose for promotion to the higher post, he stands at Serial No. 217 whereas Respondent No. 2 is at Serial No. 216. It is further case of the Petitioner that he is qualified as Diploma in Agriculture and B.Sc. (Horticulture) and possesses requisite qualification for the promotional post of Agriculture Assistant (Group C). According to the Petitioner, Respondent No. 3

was promoted as Junior Clerk by order dated 6th April, 2022. However, he did not join the promotional post and as such he refused the promotion. It is claimed that in view of Government Resolutions dated 12th September, 2016 and 1st August, 2019, in the event the employee refuses the promotion granted to him, he should not be considered for promotion in subsequent two years. It is submitted that inspite of the refusal for promotion by Respondent No. 3, the impugned order dated 29th December, 2022 came to be issued by granting promotion to him to the post of Agriculture Assistant (Group C). The Petitioner claims that Respondent No. 3 ought to have been removed from the seniority list of Group IV employees for the period of two years as per the aforestated Government Resolutions and hence the promotion granted to this respondent is illegal and bad in law.

4. Respondent No. 2 opposed the Petition by filing affidavit-in-reply of Purbha s/o Kondiba Kale, Registrar, Vasantrao Naik Marathwada Krishi Vidyapeeth, Parbhani. He has not disputed the facts narrated by the Petitioner with regard to the employment of the Petitioner as well as Respondent No. 3 and the order of promotion issued to him. It is however claimed that the post of Junior Clerk as

well as Agriculture Assistant have different pay scales and an Agriculture Assistant draws higher salary than the Junior Clerk.

5. Respondent No. 3 also by filing affidavit-in-reply opposed the Petition. It is his contention that the Government Resolution dated 12th September, 2016 is applicable to the employees who deliberately avoid to take promotion order but in the present case, Respondent No. 3 claims to have possessed five different types of qualification to avail any promotional post of his choice and as per his convenience. It is therefore his contention that there is no substance in the Petition and that he could not have been removed from the select list of Group IV employees.

6. We have extensively heard the submissions of learned Advocates for the rival parties and carefully considered the material placed on record.

7. This Petition revolves around the interpretation of Government Resolution dated 12th September, 2016. The relevant provisions of the said Government Resolution are reproduced as under :-

प्रस्तावना —

एखादया कर्मचाऱ्याने पदोन्नती नाकारल्यावर अशा प्रकरणी कशा प्रकारे कार्यवाही करावी याबाबतचे आदेश दि. ३०.०४.१९९१ च्या शासन निर्णयान्वये दिलेले असून त्यानुसार वरच्या संवर्गात पदोन्नतीसाठी निवड झाल्यानंतर एखादया सेवकाने पदोन्नतीचे पद स्विकारण्यास नकार दर्शविल्यास त्याचे नांव पदोन्नतीसाठी पात्र असणाऱ्या सेवकांच्या निवडयादीतून काढून टाकण्याबाबत व पदोन्नतीसाठी पात्र असणाऱ्या कर्मचाऱ्यांची निवड यादी त्यानंतर जेव्हा बनविण्यात येईल त्यावेळी त्या कर्मचाऱ्याच्या प्रकरणाचा गुणवत्तेप्रमाणे पुन्हा विचार करण्याबाबत आदेश दिलेले आहेत. सदरहू आदेश अमलात असूनदेखील काही अधिकारी/कर्मचारी वैयक्तिक कारणास्तव वारंवार पदोन्नती नाकारत असल्याचे आढळून आले आहे. शासकीय अधिकारी/कर्मचारी यांच्या पदोन्नती नाकारण्याच्या प्रवृत्तीस आळा घालण्यासाठी संदर्भाधीन शासन निर्णयामध्ये बदल करण्याची बाब शासनाच्या विचाराधिन होती.

शासन निर्णय —

वरील बाबींचा विचार करून या शासन निर्णयान्वये आता पुढीलप्रमाणे आदेश देण्यात येत आहेत :-

१. वरच्या संवर्गात पदोन्नतीसाठी निवड झाल्यानंतर अथवा तत्पूर्वीच एखादया कर्मचाऱ्याने पदोन्नतीचे पद स्विकारण्यास नकार दर्शविल्यास, त्याचे नांव पदोन्नतीसाठी पात्र असणाऱ्या अधिकारी/कर्मचाऱ्यांच्या निवडयादीतून काढून टाकण्यात याचे व पुढील दोन वर्षी होणाऱ्या निवडसूच्यांमध्ये संबंधित अधिकारी/कर्मचाऱ्याची पदोन्नतीसाठीची पात्रता तपासण्यात यावी. त्यावेळेच्या गुणवत्तेप्रमाणे संबंधित अधिकारी/कर्मचारी पदोन्नतीसाठी पात्र ठरल्यास त्याचा नियमित निवडसूचीत समावेश करण्यात यावा.

(उदा. सन २०१५ च्या निवडसूचीकरिता (दि. १.०९.२०१४ ते दि. ३१.०८.२०१५) दि. १५.०१.२०१५ रोजी झालेल्या निवडसूचीत एखादया अधिकाऱ्याचा समावेश करण्यात आला असेल व त्यांनी पदोन्नतीस नकार दिल्यास त्यांचे नाव २०१५ च्या

निवडसूचीतून वगळून त्यांचा सन २०१६ व सन २०१७ च्या निवडसूचीकरिता देखील विचार न करता सन २०१८ च्या निवडसूचीकरिता विचार करण्यात यावा.)

२. ज्या अधिकारी/कर्मचार्याने कायमस्वरूपी पदोन्नती नाकारलेली आहे, त्यांचा पुढील कोणत्याही निवडसूचीकरिता विचार करण्यात येऊ नये.

३. ज्या अधिकारी/कर्मचारी यांचा पहिल्या वेळेस पदोन्नती नाकारल्यानंतर ३ वर्षांनंतर दुसऱ्या वेळेस निवडसूचीकरिता विचार करण्यात आल्यानंतर व संबंधित अधिकारी/कर्मचारी पदोन्नतीस पात्र ठरल्यास, मात्र संबंधित अधिकारी/कर्मचार्याने पुन्हा पदोन्नतीस नकार दिल्यास त्यांचा त्या निवडसूचीत व पुढील दोन वर्षांच्या निवडसूचीत विचार करण्यात येणार नाही. याप्रमाणे पुढील प्रत्येक वेळेस वरीलप्रमाणे कार्यवाही करण्यात यावी.

४. ज्या प्रकारणात निवडसूची तयार करण्याची कार्यवाही पुढील २ वर्षे न होता तिसऱ्या वर्षी निवडसूची केल्यास पहिल्या वेळेस पदोन्नतीस नकार दिलेल्या अधिकारी/कर्मचार्यांचा तिसऱ्या वर्षी होणाऱ्या निवडसूचीत पदोन्नतीसाठी विचार करण्यात यावा. (उदा. सन २०१५ च्या निवडसूचीत नकार दिलेल्या अधिकारी/कर्मचार्यांचा सन २०१६ व २०१७ मध्ये जरी निवडसूची झाली नाही तरी सन २०१८ मध्ये निवडसूची झाल्यास सन २०१८ च्या निवडसूचीमध्ये त्यांचा विचार करण्यात यावा.)

५. पदोन्नती नाकारणाऱ्या अधिकारी/कर्मचार्याचा पदोन्नती नाकारण्यासंदर्भातील अर्ज विभागीय पदोन्नती समितीच्या बैठकीच्या दिनांकापूर्वी प्राप्त झाल्यास किंवा पदोन्नतीचे आदेश निर्गमित केल्यानंतर देखील प्राप्त झाल्यास ते विचारात घेऊन संबंधित अधिकारी/कर्मचारीचे नाव निवडसूचीतून वगळण्यात यावे.

६. वरच्या पदावर पदोन्नतीसाठी निवड झाल्यानंतर पदोन्नतीचे पद स्विकारण्यास नकार दिलेल्या अधिकारी/कर्मचार्यांची वरच्या पदावरील सेवाज्येष्ठता ही, ज्यावेळी

संबंधित अधिकारी/कर्मचारी पुढील निवडसूचीत (३ वर्षानंतरच्या) पदोन्नतीस पात्र ठरेल व प्रत्यक्ष पदोन्नतीच्या पदावर रुजू होईल त्या दिनांकापासून विचारात घेतली जाईल.

७. पदोन्नती नाकारलेल्या अधिकारी/कर्मचार्यास, त्याने ज्या निवडसूचीमध्ये निवड होउन देखील पदोन्नती स्विकारली नाही त्या निवडसूचीतील अधिकाऱ्याचा व त्यानंतरच्या दोन्ही निवडसूचीतील अधिकाऱ्यांचा मानीव दिनांक प्राप्त होणार नाही.

८. पदोन्नती नाकारलेल्या अधिकारी/कर्मचार्यांना अश्वसित प्रगती योजने अंतर्गत लाभ दिले असल्यास ते काढून घेण्यासंदर्भात वित्त विभागाने वेळोवेळी निर्गमित केलेल्या आदेशानुसार कार्यवाही करण्यात यावी.

९. पदोन्नती नाकारलेल्या अधिकारी/कर्मचार्यामुळे रिक्त झालेल्या किंवा रिक्त होणाऱ्या पदावर संबंधित अधिकारी/कर्मचार्याच्या प्रवर्गानुसार/ज्येष्ठतेनुसार पात्र ठरणाऱ्या कनिष्ठ अधिकारी/कर्मचार्याचा निवडसूचीत समावेश करण्यात यावा.

२. सदरहू आदेश सन २०१६-२०१७ या निवडसूची वर्षापासून तयार करण्यात येणाऱ्या निवडसूच्यांना (तदर्थ पदोन्नतीसूची/नियमित निवडसूची) लागू राहतील.

Above Government Resolution clearly shows that the refusal of promotion by any Government servant would result into removal of his name from the select list for two years and that his case could be considered for promotion again only in third year of such refusal.

8. There is no dispute about the fact that the Petitioner as well as Respondent No. 3 as on 6th April, 2022 were in the select list of Group IV employees. There is no denial of the fact that for promotion of Junior Clerk and Agriculture Assistant, group IV employees formed a feeder cadre. Admittedly, Respondent No. 3 was promoted to the post of Junior Clerk by order dated 6th April, 2022. He did not join the promotional post, which amounts to refusal thereof. It thus can be safely held that Respondent No. 3 has refused the promotion as Junior Clerk (Group C) by order dated 6th April, 2022.

9. It is sought to be canvassed on behalf of the Petitioner that since Respondent No. 3 has refused the promotion of Junior Clerk, his name deserves to be removed from the select list of Grade IV employees for the period of two years and hence he is not entitled for promotion to the post of Agriculture Assistant. Whereas Respondent No. 3 claims that Government Resolution dated 12th September, 2016 pertains to the cases wherein the Government employee deliberately avoids to take promotion order. According to him, he is possessing qualification and that it is his choice to accept or not to accept any one of such promotions. The learned Advocate

for this Respondent has also sought to draw our attention to the pay scale of Junior Clerk and Agriculture Assistant to show that Agriculture Assistant draws more salary than the Junior Clerk and hence it was always open for Respondent No. 3 to refuse promotion for the post of Junior Clerk.

10. At the first blush, the argument sought to be canvassed on behalf of Respondent No. 3 appears to be attractive to say that if more than one promotional avenues are available to him, it is open for him to choose any one of them, more particularly, when he has requisite qualification to occupy both the posts. However, a careful perusal of Government Resolution dated 12th September, 2016, does not support such contention, as there is no condition laid down, under which circumstances promotion can be denied. The Government Resolution clearly states that whenever any Government employee refuses promotion, his name is required to be removed from the select list and that his case cannot be considered for the purpose of promotion for further two years and can be considered only in the third year. The Government Resolution is thus unambiguous. Resultantly, whenever any employee refuses the promotion, as a consequence thereof, his name must be removed from the select list.

Here in this case, Respondent No. 3 was from Group IV employees which is a feeder cadre for the purpose of promotion to the post of Junior Clerk and Agriculture Assistant. Thus, it is clear that unless his name appears/included in the select list, he would not be entitled for any further promotion, even to post of Agriculture Assistant.

11. By not accepting the promotion granted to him by order dated 6th April, 2022 to the post of Junior Clerk, he has refused the promotion and as such, his name ought to have been removed from the select list of Group IV employees. If his name would not appear in the select list, the question of granting him promotion does not arise. Though to some extent, we may agree with submissions on behalf of Respondent No. 3 that he has right to choose better promotion avenue and cannot be compelled to accept one of them. But Government Resolution dated 12th September, 2016 as it stands today, does not permit any such contention of any employee to be accepted. We, however, hope and trust that the Government will take into consideration this aspect and ensure that there is no injustice caused to the genuine Government employee who has not refused the promotion for any personal reason of not going on transfer on

account of promotion, but, wants to avail one of the promotional posts, available to him.

12. In view of the above, there is no scope for drawing the conclusion that the promotion order dated 29th December, 2022 issued by Respondent No. 2 in favour of Respondent No. 3 is in contravention with the Government Resolution dated 12th September, 2016 and hence it cannot be sustained.

13. Consequently, **this Writ Petition stands partly allowed.** The impugned order stands quashed and set aside. However, we direct that the benefits of actual work down by Respondent No. 3, shall not be taken away or recovered.

14. Though the Petitioner is seeking a direction to Respondent No. 2 to appoint him on the post of Agriculture Assistant, we do not wish to issue such directions as it would be for the employer to take decision about his promotion, depending upon he fulfilling all requisite conditions and there being no other impediment for promotion of the Petitioner to the said post. Hence,

Respondent No. 2 to consider the case of the Petitioner for promotion to the said post in accordance with the law.

15. Rule made partly absolute.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

dyb