

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

WRIT PETITION NO.4789 OF 2014

Tulshidas s/o. Baliram Bastewad,
Age 42 Years, Occu. Service (as
Associate Professor in Farm Power
& Machinery, Mahatma Phule Krishi
Vidyapeeth, Rahuri, R/o. A-103,
Oasis Apartment, Rasne Nagar,
Premdan Hudco Road, Savedi,
Ahmednagar

PETITIONER

VERSUS

- 1] The Mahatma Phule Krishi
Vidyapeeth, Rahuri,
Through its Registrar,
Rahuri, Dist. Ahmednagar
- 2] Mr. Sachin Madhukar Nalawade,
Associate Professor-in-Farm
Power & Machinery, Department of
Form Machinery and Power
Dr. Annasaheb Shinde College of
Engineering, MPKV, Rahuri
Dist. Ahmednagar (M.S.) 413 722

RESPONDENTS

...

Mr. Avinash Deshmukh, Advocate for the Petitioner
Mr. A.V.Deshmukh, AGP
Mr. M.N.Navander, Advocate for the Respondent No.1.
Mr. S.S.Kulkarni, Advocate h/f. Mr. S.D.Kulkarni, Advocate
for the Respondent No.2.

...

**CORAM: S.S.SHINDE &
A.M.BADAR, JJ.**

Dated: 22nd September, 2015.

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard.

2] Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3] This Petition takes an exception to the communication dated 26th August, 2013 [Annexure-F2]. The petitioner has further sought direction to the respondent No.1 to re-assign higher placement to the petitioner at serial No.15 vis-a-vis the respondent No.2 who shall be placed below at serial No.16 by carrying out necessary corrections to the final seniority list of the cadre of Associate Professors in Farm Power & Machinery as on 01.01.2013 published vide communication dated 26.08.2013. After steps are taken to correct the seniority list, all the consequential benefits to which the petitioner would become entitled be paid to him.

4] The learned counsel appearing for the petitioner submits that, the impugned action of the respondent No.1 of assigning higher placement to the respondent No.2 vis-a-vis the petitioner in the final seniority

list published on 26th August, 2013 is against the basic principles of justice, equity and good conscience. The impugned action of respondent No.1 is patently bad and untenable as being in violation of the basic principles of natural justice inasmuch as neither before nor at the time of unsettling the long settled *inter se* seniority positions of the petitioner and respondent No.2, the respondent No.1 did not give any notice or any opportunity of being heard to the petitioner, and it straightway took the impugned action behind his back thereby not only causing patent injustice to him but also severely affecting his service prospects and opportunities of higher studies. It is further submitted that, when the higher seniority position repeatedly assigned to the petitioner (at serial No.15) over and above the respondent No.2 (who was placed at serial No.16) was perfectly legal and proper being in tune with the statutory provisions of Rule 4 (2) (a) of the Maharashtra Civil Services [Regulation of Seniority] Rules, 1982 [in short 'said Rules'] that there was absolutely no question of effecting any change in it muchless at the instance of the person like respondent No.2 who had always accepted and / or acquiesced with the said lower placement given to him vis-a-vis the petitioner.

5] It is further submitted that, even if it is to be assumed without admitting that there was some flaw in the action of respondent No.1 of assigning higher placement to the petitioner vis-a-vis respondent No.2, still it needs consideration that in view of the provisions contained in Rule 5 of the said Rules as also in the Government Resolution dated 21st October, 2011 it was simply impermissible muchless legal and proper for the respondent No.1 to alter the long standing *inter se* seniority position of the petitioner and respondent No.2. It is submitted that, the impugned action of the respondent No. 1 is further bad and untenable in view of the fact that it was / is simply impermissible for it to unsettle a long-settled position through repeated publication of the final seniority lists. It is further submitted that, the impugned action of respondent No.1 is further bad and untenable inasmuch as it adversely affects the rights created in favour of the petitioner in relation to future service prospects and opportunities of higher studies by virtue of the higher placement repeatedly given to him through final seniority lists of the years 2010, 2011 and 2012. That is to say, by the impugned action taken at the instance of person like

respondent No.2 who had long acquiesced with the situation, the respondent No.1 has sought to take away rights long created in petitioner's favour in spite of the fact that, that is not legally permissible. It is further submitted that, it also needs consideration that, when the vacancy / slot of ST category, which was advertised by the respondent No.1 and upon which the petitioner was ultimately given appointment was available for a long period of about 8-10 years as compared to the vacancy / slot of open category upon which the respondent No.2 was given appointment that the placement of the applicant at serial No.1 in the select list [Annexure-A] prepared by the Selection Committee as compared to the placement at serial No.5 of the respondent No.2 was perfectly legal and proper and consequently the action of respondent No.1 taken vide the final seniority lists of 2010, 2011 and 2012 on the basis thereof was perfectly in tune with the provisions of Rule 4 (2) (a) of the said Rules and hence there was absolutely no question of affecting any change in the said position.

6] The learned counsel appearing for the petitioner placed reliance on exposition of the Supreme

Court in the case of ***H.S.Vankani & Ors. Vs. State of Gujarat & Ors.***¹ and submits that, the seniority is a civil right which has an important and vital role to play in ones service career. If the settled seniority at the instance of ones junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Therefore, the learned counsel appearing for the petitioner submits that, Petition may be allowed.

7] On the other hand, the learned counsel appearing for the respondent No.1 invited our attention to the averments in the affidavit-in-reply and submits that, the deponent University has been established and is governed as per the provisions of the Maharashtra Agricultural Universities [Krishi Vidyapeeth] Act, 1983 [herein after referred as the 'said Act of 1983', for the sake of brevity], and the Maharashtra Agricultural Universities [Krishi Vidyapeeth Statutes, 1990 [herein after referred as the

1 2010 AIR SC 1714

'said Statutes of 1990', for the sake of brevity]. As per Section 54 of the said Act, total control is of the State Government, including creation of new posts, grant of pay scales, allowances, age of retirement, everything rests with the State Government and directives as regard to service Rules, reservation, recruitment, etc. are also mandatory to be followed by this deponent. It is submitted that, in view of Statute-138 of the Statues of 1990, all the Maharashtra Civil Services Rules, as amended and added from time to time applicable to the State Government employees are made applicable *mutatis mutandis* to the employees of deponent's University, affiliated colleges and recognized institutions. All the Civil Services Rules prescribed by the State Government of Maharashtra are made applicable and are binding over the Agricultural Universities in the State of Maharashtra by Statute-138 of the Statues of 1990. The Statute-138 of the Statutes of 1990 is in respect of pay, allowance, pension, leave and general conditions and services of the employees of the Universities and affiliated colleges and in recognized institutions other than those recognized for Research, Specialized Higher Learning. The 100% of finance comes from the State Government to the Agricultural Universities, and therefore, the State

Government which prescribes the terms and conditions of services of the Academic Staff Members and Non Academic Staff Members are binding on the University and as such, the same are followed in strict sense. It is submitted that, the deponent University has published the advertisements for filling up the vacant post in various cadres and category on 20th February, 2009. In total advertisement, two posts of Associate Professor in the discipline of Farm Power and Machinery were advertised, out of which one post was for open category and one post for ST category respectively.

8] It is further submitted that, as per the structure of constitutional reservation, the sequence is SC, ST, DT/NT, OBC, SBC, Open and hence as per this sequence it is necessary to prepare the list of candidates calling for interview. The list of candidates called for interview is prepared alphabetical-wise, therefore, the name of petitioner stands at serial No.1 and name of respondent No. 2 stands at serial No.5. The said list was prepared only for interview purposes, and the said list is not selection list. It is only statement of marks given by the Selection Committee and on the basis of the said statement and merit rank, the final selection list was prepared which is

called as the minutes of Selection Committee. It is submitted that, the merit rank and selection list is not prepared on the basis of vacancy. The selection list is prepared on the basis of total marks obtained by the candidates from bio-data and interview, which is called as merit rank.

It is submitted that, the statement of assessment of the candidates that, in all there were 7 candidates called for interview. Out of 7 candidates the respondent No.2 has obtained / secured 83.27% marks, hence, he is the meritorious candidate and the petitioner had obtained / secured 63.67% marks. Therefore, while making selection list the name of respondent No.2 is shown at serial No.1 and the petitioner is shown at serial No.5. The learned counsel appearing for the respondent No.1 invited our attention to the provisions of Rule 4 (2) (a) of the MCS [Regulation of Seniority] Rules, 1982 and submits that, the seniority is to be determined as per the merit rank possessed by the candidates in the selection list. It is submitted that, the general principles of seniority are given in the Government Resolution dated 21st October, 2011. That, after carefully examination para 3 (2)(a) it is clear

that the State Government has directed that the final seniority published in the previous year should be considered for publishing the provisional seniority in next year and it should not publish provisional list again. It does not mean that while publishing the final seniority of next year, if any administrative mistake have been committed by the concerned staff of the deponents University, the same cannot be rectified. It is further submitted that, the seniority list of Associate Professor as on 01.01.2010 was published on 17.10.2010. While publishing the seniority list of Associate Professor the Noting Assistant / concerned Clerk had considered the date of joining of the petitioner i.e. 28.08.2009 and had shown petitioner's name at serial No.15 in the seniority. But the provision of preparing the seniority of direct recruited candidates is determined on the basis of merit of selection and as per the rule and not on the basis of date of joining. In view of this, it is clear that, there is an administrative mistake in preparing the seniority list. The said mistake was not brought to the notice of the office of this deponent and hence it was carried forward until the provisional seniority published as on 01.01.2012. In view of the above factual aspect, the allegation of the petitioner regarding higher placement to him vis-a-vis the

respondent No.2 is not legally proper. In view of this, it is clear that, there is an administrative mistake in preparing the seniority list of Associate Professors of the faculty of Farm Power and Machinery. The said mistake was not brought to the notice of the deponents office and hence same mistake as stated herein above was carried forward until the provisional seniority as on 01.01.2012.

9] It is submitted that, it is incorrect to state that, while publishing the provisional seniority as on 01.01.2013 petitioner's name was shown at serial No.15 and name of respondent No.2 was shown at serial No.16. The seniority list as on 01.01.2013 published on 06.03.2013 was in nil position. The provisional seniority list shows that, during the period from 01.01.2012 to 31.12.2012, there was no recruitment by way of nomination and / or promotion to the post of Associate Professors cadre. Therefore, the question of showing the petitioner at serial No.15 does not arise. It is submitted that, the final seniority as on 01.01.2012 was published by this office and hence as per old seniority the name of the petitioner was shown at serial No.15 and further it is stated that there is no recruitment during the period from 01.01.2012 to 31.12.2012 by way of

nomination / promotion to the post of Associate Professor of FPM, therefore, office of the respondent No.1 has published the provisional seniority as on 01.01.2013 in nil position. It is further submitted that, after publishing the provisional seniority list as on 01.01.2013 of Associate Professor of Agricultural Engineering Shri S.M. Nalwade, Associate Professor of FPM has submitted his application on the basis of minutes of Selection Committee, which is obtained by him under RTI Act, 2005 and he made a request to change his seniority number in the seniority list of Associate Professor in the faculty of Farm Power and Machinery. It is submitted that, on considering the request application of the respondent No.2, it is seen that, there is an administrative mistake committed by the Noting Assistant / Clerk, while preparing the seniority list. The learned counsel appearing for the respondent No.1 invited our attention to the merit list placed on record and submits that, the petitioner was at serial No.5 and the respondent No.2 was at serial No.1, and accordingly, the administrative mistake committed by the concerned Noting Assistant / Clerk has been corrected. Therefore, relying upon the averments in the affidavit-in-reply, the learned counsel appearing for the respondent No.1 submits that, the

Petition is devoid of merit, hence, same may be rejected.

10] The learned counsel appearing for the respondent No.2 adopted the arguments advanced by the counsel appearing for the respondent No.2 and submits that, the name of the respondent No.2 stood at serial No.1 in the merit list, and therefore, in view of the relevant Rules, the seniority list is rightly corrected and the respondent No.2 has rightly been shown senior to the petitioner.

11] We have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respective respondents. With their able assistance, we have perused the pleadings and the grounds taken in the Petition, annexure thereto, the relevant provisions of the Maharashtra Civil Services [Regulation of Seniority] Rules, 1982 and also all other documents placed on record. At the outset, it would be apt to reproduce herein below the provisions of Rule 4 (2) (a) of the MCS [Regulation of Seniority] Rules, 1982, which reads thus:

'Notwithstanding anything contained in sub rule (1)

(a) the inter-se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow."

It is not in dispute that, the petitioner and the respondent No.2 are selected from one selection process, and joined on the post of Associate Professor within 30 days from the date of issue of the order of appointment. It is also not in dispute that, the petitioner stands at serial No.5 in the merit list and the respondent No.2 stands at serial No.1 in the merit list. Therefore, if the relevant Rules and the other documents placed on record is considered in its entirety, inevitable conclusion is that, the respondent No.2 is senior to the petitioner. The Bombay High Court, Bench at Aurangabad in the case of **Abdul Saleem Siddiqui Abdul Rahim Vs. State of Maharashtra & others²**. On

interpretation of sub-rule (2) of Rule 4 in para No.4 held thus:

Reading of sub-rule (2) of Rule 4 makes it clear that the said sub-rule overrides all other provisions contained in rule 4 for the reason that the said sub-rule beings with a non obstante clause. Accordingly, the inter se seniority of direct recruits selected in one batch for appointment to any post, shall be determined according to their ranks in the order of preference arranged by the Competent Authority, and as revealed in the appointment order.

In the said Judgment, the High Court has also considered the submission of the one of the petitioners that, the seniority ought to be reckoned on the basis of the actual date of joining and not on the basis of ranking. However, the said contention was rejected in the light of the provisions of sub-rule (2) of Rule 4 of the said Rules. There is no any basis for the contention of the learned counsel appearing for the petitioner that, since the petitioner is selected from SC category and the post of the Associate Professor for the said category was vacant prior to the vacancy available from the open category, and therefore, he should be shown senior to the petitioner. As

already observed, the relevant Rules 4 (2) of the said Rules makes it abundantly clear that, if the candidates are selected from one selection process, the seniority has to be given as per the merit rank.

12] In the light of the discussion in the foregoing paragraphs, there is no merit in the Petition. Hence, the Petition stands rejected. Rule stands discharged.

Sd/-

[A.M.BADAR]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE

DDC