

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

WRIT PETITION NO.6141 OF 2013

Sarika d/o. Digambar Lokare,
Age 32 Years, Occu. Service,
R/o. Panchayat Samiti, Omerga,
Tq. Omerga, Dist. Osmanabad

PETITIONER

VERSUS

- 1] The Chief Executive Officer,
Zilla Parishad, Osmanabad
- 2] Agricultural Development Officer,
Zilla Parishad, Osmanabad
- 3] Ashok s/o. Panchappa Kale,
Age Major, Occu. Service
as Agricultural Officer,
R/o. Panchayat Samiti Lohara,
Dist. Osmanabad

RESPONDENTS

...
Mr. N.B.Khandare, Advocate for the Petitioner
Mr. D.B.Pawar, Advocate for the Respondent Nos. 1 & 2
...

**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 23.04.2015
Pronounced on: 08.05.2015

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

- 1] Heard.
- 2] Rule. Rule made returnable forthwith heard
with the consent of the parties.

3] This Petition is filed with following prayers:

- A] By issue of Writ of certiorari or orders or directions in the nature of writ of certiorari Hon'ble Court may quash and set aside the order dtd. 18/04/2013 at Exhibit-"F", issued by the respondent no.1 C.E.O. cancelling the appointment of the petitioner as Agriculture Officer and appointing respondent no.3 in place of petitioner.
- C] By issuing Writ of mandamus or directions or orders in the nature of writ of mandamus the respondent Nos.1 be directed to permit the petitioner to resume the post of Agriculture Officer in Panchayat Samiti, Lohara; and for that purpose issue necessary orders.

The relevant facts for the purpose of deciding present Petition, as disclosed in the Memo of the Petition are as under:

4] It is the case of the Petitioner that, the Petitioner possessed B.Sc. [Agri] degree, and therefore, was eligible for appointment as an Extension Officer [Agriculture], District Technical Services, Class-III. Petitioner was appointed as an Extension Officer [Agriculture] Grade-I in the scale of Rs.5000-150-8000/-, and posted at Panchayat Samiti, Omerga, under the order

issued to the Petitioner by the Chief Executive Officer dated 10.08.2006. Petitioner joined the duties on 14th August, 2006 at Panchayat Samiti, Omerga. It is further the case of the Petitioner that, the Respondent No.3 was also appointed on 10th August, 2006 as an Extension Officer [Agriculture], Grade-I. However, the Respondent No.3 did not join the post immediately, as he was in the service of Mahatma Phule Agricultural University, Rahuri at the relevant time. After the appointment as an Extension Officer, the Respondent No.3 submitted his resignation to the University Authorities, and the University Authorities by an order dated 21st November, 2006 accepted the resignation of the Respondent No.3. The Respondent No.3 said to have been joined the services on 8th September, 2006, later than the Petitioner as indicated in the report dated 7th November, 2006 submitted by the Block Development Officer, Panchayat Samiti, Tuljapur.

5] It is further the case of the Petitioner that, Petitioner, during service tenure, has passed Departmental Examination as required under the Rules, and also completed the Computer Course namely MSCIT. Thereupon, the Petitioner's services were confirmed as

permanent employee of the Zilla Parishad, and necessary entries to that effect have been recorded in the service book. The petitioner, since the appointment, is in continuous service of Zilla Parishad, Osmanabad. It is further the case of the Petitioner that, the Agricultural Development Officer, Zilla Parishad, Osmanabad i.e. Respondent No.2 published a seniority list of the employees, working in the Zilla Parishad and the Petitioner was shown as senior to the Respondent No.3 and placed at the higher position in the seniority list. The Departmental Promotion Committee [DPC], in its meeting held on 16th November, 2009, considered the case of the Petitioner along with others for effecting promotions to the post of Agriculture Officer. The Petitioner, being Senior and meritorious, was considered as eligible and fit for promotion by the DPC. Accordingly, on the basis of recommendations made by the DPC, the Chief Executive Officer issued an order of promotion dated 19th December, 2009, promoting the Petitioner to the post of Agriculture Officer and posted at Panchayat Samiti, Lohara. The Petitioner was relieved for joining on promotional post on 31st December, 2009, and joined as such on 1st January, 2010 at Panchayat Samiti, Lohara. From the date of joining, on 1st January,

2010, on promotional post as an Agricultural Officer, Petitioner continuously worked as such.

6] It is further the case of the Petitioner that, the Respondent No.3 did not raise objection to the placement of the Petitioner in the seniority list, nor promotion of the Petitioner. The Respondent No.3 did not make any complaint regarding promotion of the Petitioner and did not challenge the said order. The petitioner, from the date of promotion in the Year 2009. was continuously working as an Agricultural Officer, and also confirmed in the said cadre. It is further the case of the Petitioner that, the Departmental Promotion Committee, Competent Authority has considered the case of the petitioner, and after subjective satisfaction recommended the promotion of the Petitioner. Accordingly, based on such recommendation, promotion order was issued. The Petitioner learnt from the unofficial sources that, the Respondent No.3 is trying for appointment on promotion as an Agriculture Officer on the post held by the Petitioner, and the Authorities are likely to consider his claim. Therefore, on 14th March, 2013, submitted a detailed representation to the Respondent No. 1. It is submitted that, after following due procedure and

considering the seniority, merits and confidential reports of the Petitioner, the DPC recommended the promotion, and accordingly, the order was issued. The Petitioner finally requested not to cancel the promotional appointment and before taking any decision, an opportunity of hearing may be given to the Petitioner. Petitioner also pointed out that, out of total 14 posts of Agricultural Officers in Zilla Parishad, the Petitioner is the only Lady candidate, and therefore, the Petitioner is entitled as per reservation policy to hold the post.

7] It is further the case of the Petitioner that, ignoring the aforementioned representation, all of sudden and without notice and opportunity to the Petitioner, the Respondent No.1 issued an order dated 18th April, 2013, thereby promotion granted in the Year 2009 as an Agriculture Officer is cancelled, and by another order of the even date respondent No.3 is granted promotion and appointed as an Agricultural Officer in place of the Petitioner. It is further the case of the Petitioner that, the order dated 18th April, 2013 cancelling promotion is without authority of law, and therefore, is unsustainable. Hence this Petition.

8] The learned counsel appearing for the Petitioner submits that, the appointment of the Petitioner on promotional post as an Agriculture Officer was based on the positive recommendation of DPC, on the basis of seniority and merits and on satisfaction of confidential reports of the Petitioner. The recommendations were based on subject to the satisfaction, and therefore, the impugned order, cancelling appointment is not based on any assessment on merits. The Respondent No.1 has no authority to take contrary decision of the DPC after lapse of more than 3 years. It is further submitted that, the right vested in the Petitioner by virtue of an order dated 19th December, 2009, after following due procedure to work as an Agriculture Officer, cannot be divested by issuing order dated 18th April, 2013.

9] It is further submitted that, the Respondent No. 1 Chief Executive Officer has no authority to consider belated representation as it is impermissible under law, in the light of the fact that, the Respondent No.3 did not raise any objection either to the placement of the Petitioner in the seniority list, or to the appointment order on promotional post dated 19th December, 2009. The

Respondent No.3 also did not raise any challenge to the promotion order or purported super-session to which an appropriate remedy was available. So called representation referred to in the order was not permissible, therefore, ought not to have been considered. The impugned order cancelling appointment of the petitioner as an Agriculture Officer and appointing the Respondent No.3 as such is illegal, arbitrary and contrary to the Rules and well established procedure of law, and also unknown to the service jurisprudence.

10] It is further submitted that, the relevant Service Rules do not give authority to the Chief Executive Officer to cancel the appointment of a permanent Government Servant, which is validly made without observance of the procedure prescribed therefor. The Rules do not permit to cancel the appointment without holding an inquiry and affording opportunity of hearing. The Chief Executive Officer does not possess powers of an Appellate Authority over the decision of DPC so as to cancel the appointment. It is further submitted that, total 14 posts of Agricultural Officers are available in the Zilla Parishad and out of 14, the petitioner was the only Lady Agriculture Officer, therefore,

even as per the reservation policy the Petitioner was entitled for the said post, and therefore, the cancellation of the appointment on promotional post i.e. Agricultural Officer is contrary to the reservation policy.

11] It is further submitted that, the Respondent No. 3 did not challenge the seniority list and same attained the finality. The Respondent No.3 did not challenge the promotion by way of filing an Appeal, though appeal is provided. It is submitted that, the Respondent No.3 did file a representation and on the said representation, without notice to the petitioner, the petitioner is demoted to the original post and the Respondent No.3 is appointed on promotional post. It is submitted that, the Committee appointed was not authorized to demote the Petitioner to the original post. The said action of the Committee was illegal, and therefore, on the said ground alone, the appointment of the Respondent No.3 as an Agricultural Officer of Promotion deserves to be set aside. It is submitted that, the petitioner filed a representation on 14th March, 2013 before the Committee, however, the petitioner's representation was not considered. The Petitioner was not called for hearing, and therefore, there is

utter violation of the principles of natural justice while cancelling the appointment of the Petitioner as an Agricultural Officer and demoted her to the original post. It is submitted that, if at all, the Respondent No.3 was aggrieved by the appointment of the Petitioner on the post of the Agricultural Officer, the Respondent No.3 ought to have filed the Appeal. It is further submitted that, the Chief Executive Officer alone cannot issue the order. The decision can only be taken by the Committee. The Committee could not have taken decision, demoting the Petitioner on her original post. It is submitted that, there is one vacant post of an Agricultural Officer, and therefore, the Respondents should have appointed the Respondent No.3 on the said post without disturbing the Petitioner's appointment as an Agricultural Officer. By way of an alternate submission, the learned counsel appearing for the Petitioner submits that, there is one vacant post of Agricultural Officer with the Respondent / Zilla Parishad. If the Petitioner is appointed on the said post, the Petitioner may accept the said post.

12] The learned counsel appearing for the Petitioner, at the cost of repetition, submits that, the bar of

alternate remedy of the entertainment of the present Petition, does not apply in the facts of the present case for two reasons; *firstly*, the order is passed in violation of principles of natural justice, therefore, is void and vitiated. In spite of application submitted by the Petitioner dated 14th February, 2013 at Exhibit-E to the Petition, the Chief Executive Officer has not considered the same and no opportunity and hearing was afforded. Thus, the impugned order is in brazen violation of principles of natural justice. The law is well settled in light of Judgments of the Hon'ble Supreme Court reported in *AIR 1961 SC 1506 [A.V.Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani & another]* and *[2010] 1 SCC 126 [Satwati Deswal Vs. State of Haryana and others]*. The Hon'ble Supreme Court has clearly laid down a law that, the rule of exhaustion of alternate remedy does not apply if there had been a violation of principle of natural justice. *Secondly*, the remedy of appeal contemplated in Rule 14 of the Maharashtra Zilla Parishad District Services [Discipline and Appeals] Rules, does not have application as the remedy would not be efficacious as the impugned action is based on the instructions / orders issued by the Divisional Commissioner, Aurangabad. The Divisional Commissioner

vide communication dated 28th January, 2013 asked the Chief Executive Officer to submit a report with recommendations. Accordingly, only in pursuance to the orders of Commissioner, the impugned action is taken. The remedy of appeal before the same Authority would be infructuous and futile. The Petitioner, therefore, cannot be relegated to the remedy before the Additional Commissioner. The objection as to the alternate remedy is thus misconceived.

13] It is further submitted that, the Petitioner was selected and appointed on the post of Extension Officer. The Respondent No.3 did not raise objection to the seniority list, nor challenged the same. Seniority list was allowed to become final, and thereafter, only promotion was given to the Petitioner. The Respondent No.3 did not raise any challenge to the promotion granted to the petitioner as back as in the Year 2009, and thereafter, at any point of time till today. If the Respondent No.3 was aggrieved by the promotion of the petitioner, it ought to have been challenged by resorting appropriate remedies. The right to challenge waived by the Respondent No.3, and therefore, in absence of such challenge the Chief Executive Officer is not

empowered to cancel the promotion order. The reliance placed on 1982 Circular is misconceived. The contentions raised in the reply affidavit by the Respondent Nos. 1 and 2 are not based on any legal foundation, and therefore, need not be considered. The reference to the selection process and interviews therein has no bearing, on the issue involved in the present Petition as the selection process has already over and selected candidates had already joined their respective posts. The promotion and selection process has no nexus, and therefore, the contentions in the affidavit in reply more particularly in absence of any challenge even in the present Petition at the instance of the respondent No.3 cannot be considered.

14] The learned counsel appearing for the Petitioner placed reliance on the reported Judgment of the Hon'ble Supreme Court in the case of ***A.V.Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani & another***¹ and submits that, existence of alternative remedy is no bar for the entertainment of the Petition wherein the impugned order is passed without jurisdiction, or where the order

1. AIR 1961 SC 1506

prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as *void* or non est. Therefore, the learned counsel appearing for the petitioner submits that, the present Petition is maintainable since in the present case there is violation of the principles of natural justice inasmuch as the petitioner is demoted to her original post without giving any notice or hearing and secondly, the Committee constituted had no jurisdiction to demote the petitioner to the original post. The learned counsel appearing for the petitioner pressed into service exposition of the Supreme Court in the case of ***Mariamamma Roy Vs. Indian Bank & others***² and submits that, when natural justice is denied, even if an alternative remedy is available, a writ petition is maintainable and High Court cannot dismiss the same without hearing the issue of violation of natural justice. For the same preposition, the learned counsel appearing for the Petitioner pressed into service exposition of the Supreme Court in the case of ***Satwati Deswal Vs. State of Haryana and others***³.

15] The Respondent Nos. 1 and 2 have filed

2. [2009] 16 SCC 187

3. [2010] 1 SCC 126

affidavit-in-reply. In para No.2 of the affidavit in reply, it is stated that, the petitioner is challenging the order of reversion passed by the Chief Executive Officer, Zilla Parishad, Osmanabad. Therefore, as per the Rule 14 of the Maharashtra Zilla Parishad District Service [Discipline and Appeals] Rules, the petitioner has to approach before the Commissioner of Division. It is further stated that, since the alternate remedy is available to the petitioner, Petition may be rejected.

16] It is further stated that, the Respondent No.3 is appointed by direct recruitment vide order dated 10th August, 2006 on the post of Extension Agriculture Officer, and as per the Government Resolution dated 21st June, 1982, seniority list is required to be prepared from the nominated candidates. It is further stated that, as per the oral interview held by Recruitment Committee, the Respondent No.3 has secured 82.10 marks and the present Petitioner has secured 73.32 marks. However, the present Respondent No.3 is appointed on 08.09.2006 while the Petitioner is appointed on 14.08.2006. Initially, considering the seniority of the present petitioner, she was promoted on the post of Agriculture Extension Officer. However, as per

the relevant clauses of Government Resolution dated 21.06.1982, the present respondent No.3 is required to be promoted as an Agriculture Extension Officer, as he has secured more marks than the petitioner. Therefore, considering the merit and higher marks secured in the interview held by the District Selection Committee. The respondent No.3 is promoted on the post of Extension Officer [Agriculture]. It is further stated that, considering the seniority of the petitioner, she was promoted on the post of Agriculture Extension Officer. However, the respondent No.3 made a complaint to the respondent No.1, pointing out the injustice caused to him. It is further submitted that, in order to remove injustice caused to the respondent No.3 and considering the objection raised by him, it is disclosed that, there is no reservation for women in promotion. However, as per the Government Resolution dated 21st June, 1982, the respondent No.3 is eligible and entitled for the promotion on the post of Agriculture Extension Officer. Therefore, in the meeting dated 18th April, 2013, this issue was discussed thoroughly and in order to remove injustice caused to the candidates of Scheduled caste Category, the alleged impugned order has been passed.

17] We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner, learned counsel appearing for the respondent Nos. 1 and 2, though the respondent No.3 is served none appeared for the respondent No.3. With their able assistance, we have carefully perused the pleadings and grounds taken in the Petition, annexure thereof, the impugned order passed by the Respondent No.1, and also the reply filed by the Respondent Nos. 1 and 2, rejoinder-affidavit filed by the Petitioner and the Judgments cited across the bar by the counsel appearing for the Petitioner. It is not in dispute that, the Respondent No.3 instead of challenging the appointment of the Petitioner on promotional post i.e. Agricultural Officer before the Appellate Authority, filed a representation and on the basis of the said representation, the Committee was constituted and the said Committee cancelled the appointment of the Petitioner on the post of the Agricultural Officer and demoted her to original post, without giving notice to the petitioner and without considering the representation given by the Petitioner in breach / violation of the principles of natural justice. There is considerable force in the argument of the learned counsel appearing for the Petitioner that, the

Committee which was constituted, had no authority or jurisdiction to pass an order of demotion of the petitioner. Though, the learned counsel appearing for the respondent Nos. 1 and 2 submitted that, the petitioner has an alternative remedy to challenge the order of promotion of respondent No.3 and her demotion, in view of the judgments of the Supreme Court in the case of *A.V.Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani & another [supra]*, *Mariamamma Roy Vs. Indian Bank & others [supra]*, and *Satwati Deswal Vs. State of Haryana and others [supra]*. Since there is violation of principles of natural justice, we are inclined to entertain this Petition.

18] It is undisputed position that, the respondents proceeded to cancel the appointment of the Petitioner as an Agricultural Officer and demoted the petitioner to her original post without taking into consideration her representation or without adhering to the principles of natural justice. In our opinion, it was incumbent upon the respondents at least to consider the representation of the Petitioner and then take appropriate decision. The Respondent Nos. 1 and 2 have not stated in their reply that,

the Respondent No.1 had jurisdiction – power to demote the Petitioner on the original post. It appears that, the respondents, while cancelling the appointment of the Petitioner on promotional post and demoting her on the original post, did not take into consideration that, the petitioner was appointed as an Agriculture Officer on the basis of the recommendation of DPC. It appears that, while passing the impugned order of demotion of the petitioner to the original post, the respondent No.1 has not adhered to the relevant Rules. In all fairness, the respondent No.1 ought to have adhered to the relevant Rules and principles of natural justice and only after affording an opportunity of hearing to the Petitioner, could have taken appropriate decision. As rightly contended by the learned counsel appearing for the petitioner that, total 14 posts of Officers are available in the Zilla Parishad and out of 14 posts, the Petitioner was the only Lady Agriculture Officer, and therefore, while passing the impugned order, the Respondent ought to have kept the said aspect in mind.

19] In the light of discussion in foregoing paragraphs, we are of the considered view that, the impugned order passed by the Respondent No.1, demoting

the petitioner on her original post, and cancelling her appointment as an Agriculture Officer was in breach of the principles of natural justice. *Secondly*, the learned counsel appearing for the Respondent No.1 has not brought to the notice of this Court any relevant provision that, the Respondent No.1 has an authority / power to demote the Petitioner to her original post without any notice to the Petitioner and without following principles of natural justice. *Thirdly*, when the remedy of an appeal is provided to the Respondent No.3, only on the basis of the representation the Respondents should not have casually cancelled the appointment of the petitioner as an Agriculture Officer without hearing the petitioner. *Fourthly*, the respondents, after hearing the Petitioner, should have tried to accommodate the petitioner on another post of Agriculture Officer, which is vacant, as informed by the learned counsel appearing for the Petitioner that, the Petitioner is the Senior most employee at present. Even in absence of any provision for hearing, when the respondents wanted to withdraw the benefits given to the Petitioner and demoted her on original post, the respondents were obliged to follow the principles of natural justice before such drastic action was taken.

20] Therefore, for the reasons aforesaid, in our opinion, the Petition deserves to be allowed in part, accordingly, we issue the following directions to the Respondents:-

- i] We direct the Respondent Nos.1 and 2 to reconsider the issue of appointment on promotion, for the post of Agriculture Officer, occupied by the Respondent No.3, and after giving an opportunity to the Petitioner, and also to others if any, take decision afresh by adhering to the relevant Procedure / Rules and principles of natural justice.
- ii] In case there is a vacant post of an Agriculture Officer, and the Petitioner is senior most in the seniority list, her claim for promotion on the said post of Agriculture Officer can be considered independently. The Respondent Nos.1 and 2 to take decision, as expeditiously as possible, however, within three months from today.
- iii] Till the Respondents Authority take decision afresh, benefits extended to the Respondent No.3 by virtue of his appointment as an Agriculture Officer on promotion shall remain suspended. However, he should be allowed to

draw the salary of the post occupied by him prior to his appointment on promotion as Agriculture Officer, and same will be subject to adjustment of outcome of *de novo* process as ordered herein below. However, he will continue to discharge duties on the said post so as to avoid loss of official work, however, the same will be subject to outcome of fresh decision, which would be taken by the Respondents, in respect of the post of an Agriculture Officer occupied by the Respondent No.3 and vacant post, if any.

- iv] We direct the Respondent No.1 to complete entire exercise as directed above within three months from today.

21] Rule made absolute in above terms. Petition is partly allowed and stands disposed of.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE

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DDC