

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD
WRIT PETITION NO.6591 OF 2014**

- 1] Pravin s/o. Uddhavrao Ghatge,
Age: 41 years, Occu. Service
[as Assistant Professor on
reversion as Senior Research
Assistant], R/o : Maruti Krupa,
Near Hanuman Temple, New
Mondha Road, Parbhani
- 2] Sandesh s/o Shrimantrao Deshmukh,
Age : 48 years, Occu. As above,
R/o. Krishi Sarthi Colony, Near
Gandhi Vidyalaya, Vasmat Road,
Parbhani
- 3] Bhanudas s/o Madhurkarrao Patil,
Age : 40 years, Occu. As above,
R/o : H. No.43/1, 12 Jotirling
Mandir Parisar, Gajanan Nagar,
Kanegaon Road, Parbhani
- 4] Digamber s/o Govindrao More,
Age : 57 years, Occu. As above,
R/o. At Post, Tq. Kandhar,
Dist. Nanded.
- 5] Ajit s/o Balwantrao Tikotkar,
Age : 53 Years, Occu. As above,
R/o. C/o. Shri S.B.Kulkarni,
"Gayatri" Niwas, Soubhagya
Nagar, Latur
- 6] Balchand s/o Ambadasrao Madrap,
Age : 54 Years, Occu. As above,
R/o. Gajanan Nagar, Tal. & Dist.
Parbhani
- 7] Ajit s/o. Narayan Puri,
Age : 34 Years, Occu. As above,
R/o. : 'Radheya Niwas', Ganesh
Chowk, Sham Nagar, Latur

8] Sanjay s/o. Ramchandrarao
Ghungarde, Age : 54 Years,
Occu. As above, R/o. 'Matoshri'
Niwas, Vivekanandpuram,
Near Sonwane College, Latur.

9] Narayan s/o. Haribhau Chavan,
Age: 52 Years, Occu. As above,
R/o. C/o. Sow Meena
Panchakshari, Shiv Nagar,
Ashtavinayak Mandir
Road, Latur.

PETITIONERS

VERSUS

1] The Vasantrya Naik Marathwada
Krishi Vidyapeeth, Parbhani,
Through its Registrar,
Tal. & Dist. Parbhani

2] The State of Maharashtra,
Through its Secretary,
Dept. of Agriculture, Animal
Husbandry, Dairy Development
and Fisheries, M.S., Mantralaya,
Mumbai – 32.

RESPONDENTS

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WITH

WRIT PETITION NO.6592 OF 2014

1] Yakeenuddin s/o. Moinuddin,
Age: 59 Years, Occu. Nil
Abruptly retired from service
while working as Assistant
Professor], R/o. Behind Khan
Saheb Building, Turabul Haque
Nagar, Dargah Road, Parbhani

2] Suryakant s/o. Bansidharrao Gore,
Age: 59 Years, Occu. As above,
R/o. C/o. Vodafone Mini Store,
Gavane Chowk, Parbhani

- 3] Kumar s/o. Ganpatrao Shirsat,
Age: 58 Years, Occu. As above,
R/o. Kusumyog Niwas, Ganesh
Nagar, Gitta Road, Ambajogai,
Dist. Beed.
- 4] Subhash s/o. Radhakishanji Bhutada,
Age: 59 years, Occu. As above,
R/o. Radhay Niwas, Ganesh Nagar,
Near Bank Colony, Behind Govt.
Guest House, Ambajogai, Dist. Beed
- 5] Mohan s/o. Jaywantrao Wadekar,
Age: 58 Years, Occu. As above,
R/o. B-14, Dakshin Vihar Hsg.
Society, Kanchanwadi,
Paithan Road, Aurangabad

PETITIONERS

VERSUS

- 1] The Vasantrao Naik Marathwada
Krishi Vidyapeeth, Parbhani,
Through its Registrar,
Tal. & Dist. Parbhani
- 2] The State of Maharashtra,
Through its Secretary,
Dept. of Agriculture, Animal
Husbandry, Dairy Development
and Fisheries, M.S., Mantralaya,
Mumbai – 32.

RESPONDENTS

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WITH

WRIT PETITION NO.6593 OF 2014

- 1] Zafar Mohiuddin s/o Hasan
Mohiuddin Ansari, Age: 62 Years,
Occu. Nil, R/o. 2-12-202,
Gulshan Medical Store, Jubilee
Park, Aurangabad

- 2] Syed Noor Syed Karim,
Age: 61 Years, Occu. As above,
R/o. Madina Pati Chowk,
Madina Pati Road, Parbhani

PETITIONERS

VERSUS

- 1] The Vasantrao Naik Marathwada
Krishi Vidyapeeth, Parbhani,
Through its Registrar,
Tal. & Dist. Parbhani
- 2] The State of Maharashtra,
Through its Secretary,
Dept. of Agriculture, Animal
Husbandry, Dairy Development
and Fisheries, M.S., Mantralaya,
Mumbai – 32.

RESPONDENTS

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WITH

WRIT PETITION NO.6594 OF 2014

- 1] Dr. Anant s/o Tatesaheb Shinde,
Age: 45 years, Occu. Service
[as Associate Professor on
reversion as Assistant Professor],
R/o. Yeshwant Nagar, Near
Parag High School, Latur
- 2] Ramesh s/o. Wamanrao Deshmukh,
Age: 56 Years, Occu. As above,
R/o. 'Krashnai', Vaibhav Nagar,
Karegaon Road, Parbhani
- 3] Dr. Vyankat s/o. Namdeorao Toprope,
Age: 49 Years, Occu. As above,
R/o. Vishwa Bhagirathi Hsg. Scty.,
Vakil Colony, Vivekanand Chowk,
Latur.

- 4] Dr. Jayshree Vitthalrao Ekale,
Age: 54 Years, Occu. As above,
R/o. Mr. B.G.Patil, Girija Kunj,
C-132, Samarth Nagar,
Vasmat Road, Parbhani
- 5] Dr. Gautam s/o. Ramrao Hanwate,
Age 52 Years, Occu. As above,
R/o. 100, Bank Colony, Parvana
Nagar, Taroda [Kh.], Nanded.
- 6] Dr. Kailash s/o. Digambarrao Navgire,
Age: 51 Years, Occu. As above,
R/o. D-155/A, Ekta Colony,
Vasmat Road, Parbhani
- 7] Dr. Sadashiv s/o. Sayanna Gosalwad,
Age 50 years, Occu. As above,
R/o. C/o. College of Agriculture,
Ter Road, Kini, Osmanabad
- 8] Dr. Sahebrao s/o. Ramkisan Nagargoje,
Age: 56 Years, Occu. As above,
R/o. C/o. Taratmandli, Yeldarkar
Colony, Vasmat Road, Parbhani
- 9] Sadashiv s/o. Sahebrao Shinde,
Age 53 Years, Occu. As above,
R/o. Plot No.25, Ward No.10,
Kalyan Nagar, Vasmat Road,
Parbhani.
- 10] Chandrakant s/o. Baburao Patil,
Age : 46 Years, Occu. As above,
R/o. C/o. Mr. B.S.Kulkarni,
D-1, N-1, Cidco, Aurangabad.
- 11] Dr. Chandrakant s/o. Bhimrao Latpate,
Age: 50 Years, Occu. As above,
R/o. 'Satyabhama', 146-1, Ekta
Colony, Oppo. Vaibhav General
Stores, Vasmat Road, Parbhani

- 12] Dr. Prashant s/o. Rangnathrao
Deshmukh, Age: 44 Years, Occu.
As above, R/o.: C/o. Mr. R.L.
Deshmukh, Municipal Colony,
Dargah Road, Parbhani
- 13] Dr. Dilipkumar s/o. Gangadharrao
Hingole, Age: 42 Years, Occu.
As above, R/o. R.H.No. 63,
Kasliwal Bhagyodaya, Near
Shivaji Nagar Railway Gate,
Satara Parisar, Aurangabad.
- 14] Dr. Vilas s/o. Govindrao Takankhar,
Age: 50 years, Occu. As above,
R/o. 1360, Vivekanand Chowk,
Nanded Road, Latur
- 15] Dr. Shamrao s/o. Bhimrao Ghuge,
Age: 50 Years, Occu. As above,
R/o. C-146/2, Ekta Nagar,
Vasmat Road, Parbhani
- 16] Sheshrao s/o. Durgadas Chavan,
Age: 59 Years, Occu. As above,
R/o. 'Gajanan Krupa', Bhagya
Laxmi Nagar, Vasmat Road,
Parbhani
- 17] Harishchandra s/o. Dattatraya
Pawar, since dead through
his L.R.s-
- A-1] Smt. Pratibha wd/o. H.
Pawar, Age45, Occu.
Nil, R/o. At Post Pimpalwadi
[Chandani], Tal. Paranda,
Dist. Osmanabad.
- A-2] Vijay s/o. H. Pawar,
Age: minor, U/G of his
Mother – Applicant A-1,
R/o. As above.

A-3] Ajay s/o. H. Pawar,
Age: minor, U/G of his
Mother – Applicant A-1,
R/o. As above.

[Amendment carried out as per Court's
Order dtd.23 Jan.2015 in C.A. No. 706/2015
W.P.6594/2014]

18] Dr. Purushottam s/o. Ramnivas
Zanwar, Age: 51 Years, Occu.
As above, R/o. C/o. Dr. S.R.
Mantri, Krishi Sarathi Colony,
Parbhani

PETITIONERS

VERSUS

1] The Vasantryao Naik Marathwada
Krishi Vidyapeeth, Parbhani,
Through its Registrar,
Tal. & Dist. Parbhani

2] The State of Maharashtra,
Through its Secretary,
Dept. of Agriculture, Animal
Husbandry, Dairy Development
and Fisheries, M.S., Mantralaya,
Mumbai – 32.

RESPONDENTS

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WITH

WRIT PETITION NO.7061 OF 2014

Harishchandra s/o Wamanrao Awari,
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,
Vasantryao Naik Marathwada Krishi Vidyapeeth,
Parbhani

PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Secretary
Agricultural, Animal Husbandry,
Dairy Development and Fisheries Department,
Mantralaya Mumbai – 32.

[Copy to be served on G.P. Bombay
High Court Bench at Aurangabad]

- 2] The Registrar,
Vasantrao Naik Marathwada Krishi
Vidyapeeth, Parbhani

RESPONDENTS

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WITH

WRIT PETITION NO.7559 OF 2014

Abdul Quadeer s/o Abdul Hameed,
Age: 56 Years, Occu. Service,
[as Senior Research Assistant],
R/o. Plot No.1, N-12, D Sector,
Cidco, Park Lane, Aurangabad

PETITIONER

VERSUS

- 1] The Vasantrao Naik Marathwada
Krishi Vidyapeeth, Parbhani,
Through its Registrar,
Tal. & Dist. Parbhani
- 2] The State of Maharashtra,
Through its Secretary,
Dept. of Agriculture, Animal
Husbandry, Dairy Development
and Fisheries, M.S., Mantralaya,
Mumbai – 32.

RESPONDENTS

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Mr. Avinash Deshmukh and Mr.B.A. Darak, Advocates for
the Petitioners

Mr. M.N.Navandar, Advocate for the Respondent No.1

Mr. S.K.Kadam, AGP for the Respondent – State

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

Reserved on : 30.04.2015
Pronounced on: 11.06.2015

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

Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the respective parties.

2. These Petitions have been filed with following main prayer :-

“C. Rule may kindly be made absolute by quashing and setting aside the impugned orders of cancellation of promotions of petitioners (Annex. L Collectively) issued by Respondent No.1 with further directions to the Respondent No.1 to reinstate all the petitioners on the posts of and in the cadre of Assistant Professors.”

There are other prayers as well in the Petitions.

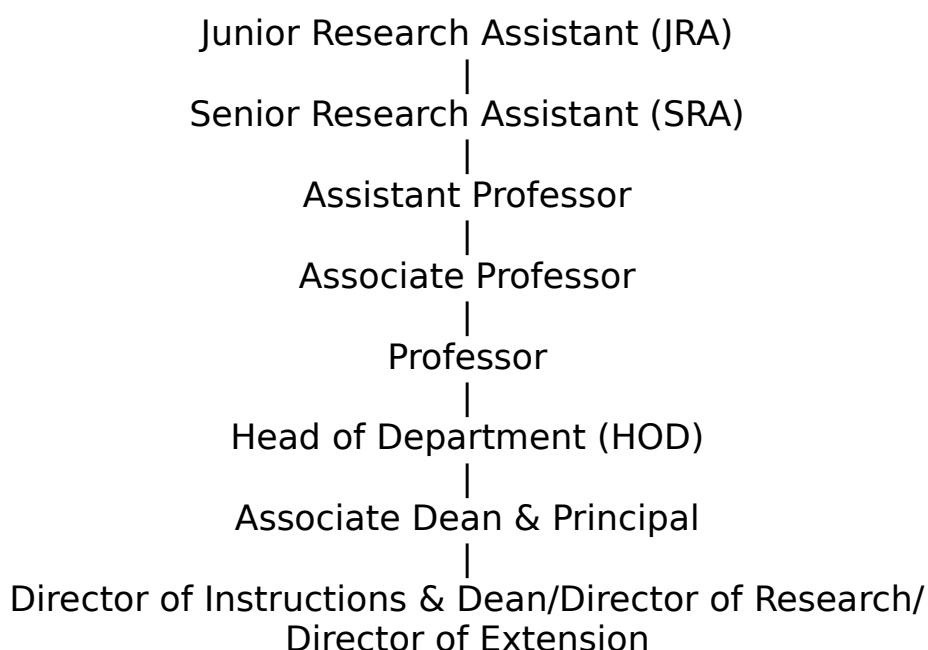
(I) The facts leading for filing the Writ Petitions in nutshell are as under :-

3. It is the case of the petitioners that, all the Petitioners are the Members of Academic Staff of the University referred under Chapter VII of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990 (hereinafter referred to as "the Statutes of 1990" for short), which deals with the duties of teaching, research and extension education of the Member of said Academic Staff. It is the case of the petitioners that, it is of common knowledge that, there are four Agricultural Universities in the State of Maharashtra situated at Akola in Vidarbha Region, at Rahuri in Western Region, at Parbhani in Marathwada Region and at Dapoli in Konkan Region. As far as petitioners are concerned, they are all employees of the Agricultural University

at Parbhani, known as “The Vasantao Naik Marathwada Krishi Vidyapeeth”, which was established way back in the year 1972. Since its establishment, all procedures of the said University were governed by the “Marathwada Krishi Vidyapeeth Act, 1972”. It is the case of the petitioners that, however it was subsequently in the year 1983, His Excellency the Governor of Maharashtra was pleased to give assent to the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983 (hereinafter referred to as “the Act of 1983”), which consolidated and amended the law relating to above-named four Agricultural Universities in Maharashtra. As such, from 1983 onwards the procedures in all four Agricultural Universities in the State are governed by the provisions of the said Act of 1983 and the Statutes framed thereunder.

4. It is the case of the petitioners that, after introduction of the above referred Act of 1983, it was in the year 1990, and to be precise on 12/07/1990,

the State Government was pleased to introduce the Statutes of 1990 in exercise of power conferred upon it by sub-section (6) of section 38 of the Act of 1983, providing for the designations, qualifications, method of recruitment, pay, allowances and other conditions of service of Professors, Associate Professors, Assistant Professors, Lecturers, Demonstrators and other categories of employees of affiliated colleges and recognized Institutions, and their powers & duties amongst other concerned matters. It is the case of the petitioners that, pertinently said Statutes of 1990, amongst other provision, specifically provided for the Academic Officers, Heads of Departments, Professors and other equivalent posts of the University, as also for the 'Academic Staff Members' of the University in Chapters V & VII respectively. Statute no. 71 under Chapter VII provided various ranks/posts existing in the University. As far as, the present case is concerned, it relates to the following hierarchy of posts under the Academic Staff in its ascending order-



5. It is the case of the petitioners that, prior to October 2013 appointments upto the cadre of Associate Professors were within the purview of the Vice Chancellor of University and the appointments of Professors and above were within the purview of "The Maharashtra Council of Agricultural Education & Research, Pune" (MCAER), by introduction of an Ordinance on 25/10/2013 bearing no. XVII of 2013 and His Excellency, the Governor was pleased to confer powers of appointment in all those cadres upon the "Recruitment Board". Further, it is the case of the

petitioners that, as far as pay-scales attached to the cadres of JRAs and SRAs are concerned, while they were extended on the basis of Maharashtra Civil Services (Revised Pay) Rules, as introduced from time to time, the pay-scales extended to the cadres of Assistant Professors and above were on the basis of University Grants Commission (UGC) pay-scales and Indian Council Agriculture Research (ICAR) Schemes. The learned counsel appearing for the petitioners has referred to the tabular form personal details of all the petitioners which is at Exhibit 'C' to the Writ Petition No. 6591/2014.

6. It is the case of the petitioners that, it is explicit that, all of them have been in service of Respondent No. 1 University since long, during which they have all rendered most sincere, efficient and bonafide services to the University without leaving a single stone unturned while doing so. It is the case of the petitioners that, at this stage a specific reference to provisions of Statute Nos. 71 to 77 under Chapter

VII of the Statutes of 1990 is of utmost necessity, inasmuch as, those were the provisions holding the field at the time when all petitioners were given promotions, which are now cancelled by the Respondent No. 1 and which action is impugned in these Writ Petitions. It is the case of the petitioners that, pertinently, while Statute No. 73 provided for 'qualifications of Academic Staff Members', Statute No. 74 spoke of the 'Manner of Appointment of Academic Staff Members'. Furthermore, Statutes 75 & 76 provided for composition of the 'Selection Committees' for selection to the posts of Associate Professor/Reader, Assistant Professor, Lecturers and to the remaining posts. Statute No. 77 lays down the procedure for appointment of Academic Staff Members in the event of occurring vacancies or creation of new posts. It is the case of the petitioners that, a cumulative consideration of all those provisions shows & establishes that, while two modes of appointment viz. nomination (i.e. by issuing advertisement and conducting interviews) and

promotions were provided for, it was within the discretion of the Vice Chancellor to determine from time to time, the number of posts under each category/cadre referred to in Statute 71 to be filled-in by promotion from the lower category. However, 1st proviso to Clause (2) of Statute 77 lays down that, the number of posts so determined by the Vice Chancellor *shall be* 25% of the total number of posts in the category as a whole to which promotions were to be made or such higher percentage not exceeding 50%, as may be determined from time to time by the Executive Council. That is to say, a minimum of 25% of the total number of posts in a particular category were to be filled-in through the mode of promotion, said quota for promotion could not exceed the ratio of 50% in any event. Furthermore, 2nd proviso to Clause (2) lays down that, the promotions were to be effected through the Selection Committee on the basis of merit & seniority in the discipline or group of disciplines, departments or sector and minimum academic qualification & experience as prescribed by

the Statutes.

7. It is the case of the petitioners that, it is therefore clear from the above referred provisions that, while two modes of appointments viz. nomination & promotion were prescribed under the Statutes of 1990 and further when the process of nomination & promotion, both were to be undertaken by the 'Selection Committees' constituted under subsection (1) of Section 58 of the Act of 1983. The provisions of Clause (1) of Statute 74 prescribed that, all appointments of the Members of Academic Staff shall be made by the Vice Chancellor strictly on merit and no person shall be appointed by the Vice Chancellor except on the recommendation of the competent Selection Committee. However, it is most pertinent & relevant to note here that, the 1st proviso to Clause (1) of Statute 74 specifically conferred powers upon the Vice Chancellor to make appointments of suitable persons having the minimum prescribed qualifications to any posts of the

academic Staff Member for period not exceeding one year in any emergency, which in his opinion required immediate action of making appointments without recommendation of the Selection Committee or without following the procedure prescribed in Statute 77. But, having conferred said extraordinary power on the Vice Chancellor by the 1st proviso, the 2nd proviso to Clause (1) of Statute 74 cast a mandatory duty upon the Vice Chancellor to initiate simultaneous action to fill in the post/s through due process of selection within a period of one year from the date of such appointment/s made by him in exercise of the extraordinary power. Therefore, it is quite explicit that, the Vice Chancellor of the University was very much empowered to effect appointments to any post of the Academic Staff Member for a period not exceeding one year.

8. It is the case of the petitioners that, on the aforestated backdrop, it needs to be specifically pointed out that, it is of common knowledge in the

University that, due to non-availability of Selection Committees on regular basis and/or at regular intervals of time, the Vice Chancellor/s were/are routinely required to exercise above referred power under 1st proviso to Clause (1) of Statute 74 and effect appointments through the mode of promotion from lower category to the higher category of posts, in view of urgent need of qualified personnel to occupy various posts from Academic Staff in the larger interests of students. Resultantly, the procedure which routinely was being followed in the University, in absence of Selection Committees at the required times, was that the Vice Chancellor used to effect promotions of suitable persons possessing prescribed qualifications, and that too only after duly completing all the procedural formalities, such as, one of it is considering their respective eligibility on the basis of educational qualifications & requisite experience, seniority, confidential reports for the relevant periods, social category-availability of roster point vacancy, fulfilling of other eligibility criteria for

promotion, etc, on the basis of Statutes of 1990. That is to say, the Vice Chancellor though was exercising the power under 1st proviso to Clause (1) of Statute 74 for making appointments for a stipulated period of time not exceeding one year, however the procedure, which was routinely being followed before exercise of that power, was the due procedure required to be followed by the Selection Committee while recommending names for promotions and it was only thereafter that, the promotion orders were being issued. In other words, all the procedural formalities, that were required to be mandatorily completed before or at the time of effecting regular promotions at the hands of the Selection Committee, were all duly completed even at the time when the Vice Chancellor effected promotions in exercise of the power conferred upon him under the 1st proviso to Clause (1) of Statute 74. Resultant effect thereof being that but for the formal stamp of approval by the Selection Committee, due to the non-availability of which, the Vice Chancellor was compelled to exercise said

extraordinary power vested in him, the promotions effected by the Vice Chancellor were in fact regular promotions for all practical purposes.

9. It is the case of the petitioners that, on the aforestated backdrop the provisions of 2nd proviso to said Clause (1) of Statute 74 were very much attracted inasmuch as, as stated above, the said 2nd proviso cast a mandatory duty upon the Vice Chancellor to initiate simultaneous action to fill those posts, upon which he had made appointments in exercise of the power under 1st proviso, by placing cases of such appointees before the Selection Committee within a period of one year from the date of appointment/s. As such, while the 1st proviso to Clause (1) conferred extraordinary power on the Vice Chancellor, the 2nd proviso thereto cast a mandatory duty upon him to initiate and complete due process of appointment within the period of one year for which he had made those appointments. It is the case of the petitioners that, on aforestated background, it may

specifically be mentioned that due to non-availability of regular Selection Committee, it routinely so happened under the Respondent No. 1 University that, due to compelling circumstances and in the interest of students the Vice Chancellor/s was/were required to effect appointments, those also through the mode of promotion only, in exercise of the extraordinary power conferred by the 1st proviso and then the cases of such appointees/promotees were used to be placed before the Selection Committee, upon it being constituted and then after approval of the said Selection Committee, the appointments/promotions already given by the Vice Chancellor were treated as regular. It is case of the petitioners that, though the time period required for completion of said process of placing the cases of the appointees/promotees before the Selection Committee normally extended to 2-3 years, still upon approval at the hands of the Selection Committee, the appointees/promotees were all treated as regular appointees/promotees w.e.f. their initial dates of

appointment/promotion, as given by the Vice Chancellor and not from the date of approval by the Selection Committee. That is to say, upon grant of approval to their respective promotion by the Selection Committee, all the promotees were treated as regular in the promotional cadre w.e.f. the initial dates of their respective promotions at the hands of the Vice Chancellor under 1st proviso to Clause (1) of Statute 74.

10. It is the case of the petitioners that, on the backdrop of all the afore-mentioned facts & circumstances, it is most pertinent & relevant to note that, all the petitioners while were discharging duties and working in the cadre of Senior Research Assistants (SRAs) were granted promotions to the next higher cadre of Assistant Professors by the Vice Chancellor on various dates. Pertinently, those promotions granted to all the petitioners by the Vice Chancellor were undoubtedly in exercise of the extraordinary power conferred upon him under the 1st

proviso to Clause (1) of Statute 74 and apparently, for a period of 11 months only. However, in spite of that being the case, all the due procedural formalities, such as, considering the aspects of eligibility on the basis of educational qualifications & requisite experience, seniority, confidential reports for relevant periods, social category, fulfilling of other eligibility criteria for promotion on the basis of the Statutes of 1990, which normally are complied with for grant of regular promotion at the hands of the Selection Committee were duly got complied with by the Vice Chancellor either before or at the time of issuance of those promotion orders. That is to say, but for the procedural part of approval at the hands of Selection Committee, the promotion orders of all the petitioners issued by the Vice Chancellor were duly preceded by the regular process of selection for considering the eligibility and/or fitness for promotion. It is also the case of the petitioners that, a bare look at above referred orders of promotions of petitioners show & establish that, the appointments given to all of them

on promotion were in the pay scale of the promotional post of Assistant Professors and further those were made subject to the final orders of Selection Committee.

11. It is the case of the petitioners that, above referred promotion orders having been issued in favour of all the petitioners, they had all joined on the promotional post of Assistant Professors and had started discharging their duties, and not only that but they had also started getting their salary in the higher pay scale of Rs. 15600-39100 with the grade pay of Rs. 6000 attached to the promotional post of Assistant Professors. It is the case of the petitioners that, since having joined the promotional post and having started drawing salary in the higher scale attached thereto in pursuance to said initial orders of their respective promotions, all the petitioners were continued on the promotional posts without a single day's break by issuing subsequent order/s and were also regularly paid not only their salary in the higher

scale of Assistant Professors, but they were all even granted the yearly increments as & when those had become due. As such, though the initial orders of appointment of all the petitioners issued by the Vice Chancellor were purportedly for a period of 11 months only, however those were all continued beyond said period of 11 months, that too without giving even a technical break but by continuing all the petitioners on their respective promotional posts. It is true that, subsequent orders of promotion on the same lines were admittedly issued by the Vice Chancellor through the Registrar on the same terms & conditions, however, fact remains that, not only the petitioners were continued on the promotional posts without any break, but they were also extended all the benefits of regular appointees/promotes, such as one of yearly increments. It is therefore, the case of the petitioners that, though the initial orders of their respective promotion issued by the Vice Chancellor through the Registrar conveyed in black & white that, those promotions granted to petitioners were on temporary

basis and as a stop-gap arrangement and only for a stipulated period of time, still in actuality all petitioners having been promoted by completing all due procedural formalities were continued on promotional post without a single day's break and were all treated as regular promotees for all practical purposes and were extended all service benefits.

12. It is the case of the petitioners that, under aforestated circumstances and further pertinently in the light of 2nd proviso to Statute 74 (1), as also in light of specific wording in orders of their promotion (which had said that their promotions were subject to the approval of the Selection Committee), it was mandatorily required of the Vice Chancellor/the University to have placed the cases of all petitioners before the Selection Committee at the first available opportunity and then to have taken the consequential step of regularizing those promotions w.e.f. the initial dates thereof. However, in spite of said statutory duty

cast by the 2nd proviso to Clause (1), no steps were taken for years together. That is to say, the cases of petitioners were not placed before the Selection Committee for reasons best known to the Respondent No. 1-University and that too when the Selection Committee could very well have been constituted and/or made available, as was done in case of the Ministerial Staff. Therefore, on the said backdrop, it is the case of the petitioners that, in spite of the fact that, the Selection Committee could have been constituted and their cases could have been placed before it, the Respondent No. 1, for reasons best known to it, did not do so. However, for said failure of Respondent No. 1 no fault could absolutely be attributed to the petitioners.

13. It is the case of the petitioners that, on the backdrop of all the aforementioned facts & circumstances an important development had taken place on 18th March, 2010, when the Respondent No. 2/ Government of Maharashtra in its Agriculture,

Animal Husbandry, Dairy Development and Fisheries Department was pleased to issue a Government Resolution providing for "Revision of pay scales of teachers and equivalent cadres in Agricultural Universities, Govt. Aided Colleges, Affiliated Colleges as per UGC/ICAR Scheme (6th Pay Commission). Pertinently, the pay scales granted to all petitioners upon their respective promotion from the cadre of SRAs to the cadre of Assistant Professors were the ones as granted/ sanctioned by the said Government Resolution dated 18th March, 2010, and therefore, a prescription in the 2nd paragraph of that G.R. under the caption "Resolution" which is of utmost importance needs a specific mentioning here, inasmuch as, it specifically provided that,

"... the revised University Grants Commission Pay Scales as shown in the Appendix - I shall be made applicable with retrospective effect from January 1, 2006 to all the academic, research, extension Staff Members working in all the State Agriculture Universities and affiliated colleges irrespective of whether they are

working in Colleges or post graduate College/University run by the Agricultural Universities in the State and who have the requisite qualification mentioned in the University Statutes published from time to time.....".

As such, it is explicit that the said G.R. dtd. 18/03/2010, which introduced and extended the revised pay scales to persons like petitioners working in Agricultural Universities clearly spoke of the requirement of possessing requisite qualification, as mentioned in the University Statute published from time to time. It was on the said backdrop and further in view of the fact that, all the petitioners duly fulfilled the requisite qualification mentioned in the Statutes of 1990 at the time of their initial dates of promotion from the cadre of SRAs to the cadre of Assistant Professors that, they were all extended the revised pay scales attached to the posts/cadre of Assistant Professors.

14. It is the case of the petitioners that, as it

further was to happen recently on 15/03/2014 i.e. practically after 4 years from the date of issuance of above referred Government Resolution dated 18/03/2010 that, the Respondent No. 2/Government of Maharashtra in its Agriculture, Animal Husbandry, Dairy Development and Fisheries Department was pleased to issue the "Maharashtra Agricultural Universities (Krishi Vidyapeeths) (First amendment) Statutes, 2014". As seen therefrom, by introducing it, the Respondent No. 2/State Government amongst other things has been pleased to provide for revised qualifications for the academic posts, as distinguished from the qualifications mentioned in the Statutes of 1990. That is to say, the qualifications prescribed for the members of academic staff under the Statutes of 1990 are replaced by the Respondent No. 2/State Government with the qualifications as prescribed in the Amendment Statutes of 2014. It is the case of the petitioners that, it goes without saying that, those new/revised qualifications can only be made applicable with prospective effect from the date of

introduction of said Amendment Statutes of 2014 i.e. from 15/03/2014 and by no stretch of imagination could they be made applicable with retrospective effect from any date moreso when the Amendment Statutes of 2014 do not make any such provision.

15. It is the case of the petitioners that, as far as the Amendment Statutes of 2014 are concerned, one of the qualifications, which is prescribed as an essential qualification is the one of NET/Ph.D. That is to say, the qualification of NET/Ph.D. is made compulsory by the Amendment Statutes of 2014 meaning that, unless & until the said qualification is acquired, the concerned person does not become eligible for the promotional post. While on the one hand the Amendment Statutes of 2014 have made acquisition of NET/Ph.D. a condition precedent for getting promotion to higher cadre amongst other revised conditions, however while doing so neither the State Government/Respondent No. 2 nor the University/Respondent No. 1 has kept it in mind that,

for the in-service candidates like present petitioners, the acquisition of Ph.D. qualification is not a matter of course or routine and in fact, it has to be done only & only after securing No Objection Certificate (NOC) from the University. It is the case of the petitioners that, further, as far as the Marathwada Agricultural University represented by the Respondent No. 1 is concerned, it is of common knowledge that, since last number of years the persons like present petitioners have been finding it difficult to get requisite NOC from the University for undergoing Ph.D. Not only that, but at times, the University had even refused permission to some of the petitioners and persons like them for acquiring the Ph.D. qualification. Apart therefrom, it had introduced such criteria (including the one of upper age limit of 50 years), which prevented willing candidates from applying for Ph.D. Registration. It was as a result of said action on the part of the Respondent No. 1/University that, even the “Marathwada Krishi Vidyapeeth Karmchari Sangh” was required to put up repeated demand for making

available opportunities of higher studies including Ph.D. to its Members. On the said backdrop, it is the case of the petitioners that, it becomes explicit that, while on the one hand the Respondents have sought to upgrade the requisite qualification for entry in higher cadres, at the same time however they have failed to appreciate that, the requisite opportunities for securing the higher qualifications are not provided to persons like present petitioners.

16. It is the case of the petitioners that, it is on the backdrop of all the afore-mentioned peculiar facts & circumstances that, all the petitioners were stunned to learn about issuance of their respective orders of cancellation of promotions by the Respondent No. 1, vide orders issued by the Vice Chancellor through the Registrar of the University. It is the case of the petitioners that, though the text of said orders of reversion issued by the Respondent No. 1 in regard to all petitioners may differ to a certain extent, however fact remains that, the Respondent No. 1 has used the

above referred Amendment Statutes of 2014 as the base for canceling the promotions of most of the petitioners. It is the case of the petitioners that, Respondent No. 1 has also used the ground of completion of tenure of promotion given to petitioners for effecting their reversions. However, while doing so the Respondent No. 1 clearly & apparently lost sight of the fact that, the promotions given to all the petitioners as being regular for all practical purposes, as stated supra, and further as all the petitioners fulfilled all the requisite eligible criteria, as required at the time of their initial promotions on the basis of Statutes of 1990, they could not have been reverted to the lower cadre on the ground of non-fulfilling the revised eligibility criteria, as introduced vide the Amendment Statutes of 2014, which have no retrospective applicability.

17. It is the case of the petitioners that, furthermore, as far as the ground of completion of tenure of promotion used by Respondent No. 1 is

concerned, it should have been kept in mind by the Respondent No. 1 that, all through the years since the petitioners were initially promoted, they were always continued on the promotional posts beyond the periods for which they were promoted. That is to say, though the promotions granted to petitioners were for period of 11 months, they were never discontinued after the end of said period of 11 months or even after further extended period, but on the contrary were further continued without any break and the petitioners were even granted, as stated hereinabove, the benefit of yearly increment, which is granted under Rule 36 of the MCS (Pay) Rules, 1981 upon completion of regular service of 1 year. Hence, even using of the said ground by the Respondent No. 1 was/is also absolutely inconsequential. At this stage, it is the case of the petitioners that, even the reference to the Government Resolution dated 18/03/2010 by the Respondent No. 1 in the orders of their reversion is also inconsequential, because as a matter of fact and as stated hereinabove, even the said Government

Resolution dated 18/03/2010 also spoke of possessing of requisite qualification by the academic Staff Members, as prescribed in the Statutes in force at the relevant time. It is the case of the petitioners that, none of the grounds used by the Respondent No. 1 in the orders of their reversion is palatable and/or sustainable either on facts or in law.

18. It is the case of the petitioners that, though the Respondent No. 1 on the one hand has issued above referred orders of mass cancellation of promotions given to petitioners, at the same time on the other hand, in the case of near about all petitioners, the Respondent No. 1 is now requiring them to discharge duties attached to the promotional posts, substantively held by them prior to issuance of the orders of cancellation in addition to the duties of the lower post of SRA, and that is being done by the Respondent No. 1 in view of the fact that, there is a total dearth of qualified personnels on the establishment of Respondent No. 1. As such, it is

explicit that, though the Respondent No. 1 has taken the above referred action of mass cancellation of promotions of persons like petitioners, however in most of the cases, the petitioners are being made to shoulder responsibilities and discharge duties not only of the lower post but also of the promotional post. It is the case of the petitioners that, said action on the part of Respondent No. 1 shows that, the services of petitioners are very much needed on the promotional posts and the petitioners having been working on those posts for long period of time, that too while being in possession of the requisite qualifications as prescribed under the Statutes of 1990 are now sought to be reverted back, that too by applying the newly introduced Statutes of 2014, which in fact could not and should not have been made applicable to their cases.

19. It is the case of the petitioners that, even if it is to be assumed for a moment, without admitting that, the Respondent No. 1 could in law have

cancelled the promotions given to petitioners, however on the backdrop of peculiar facts of petitioners' cases, wherein they have been occupying the promotional posts for long period of time that, it was not only essential & incumbent but was obligatory on the part of Respondent No. 1 to have given them an opportunity of being heard and/or to have given them notice about the proposed action of reversion. However, neither before nor at the time of issuance of said orders of their promotion did the Respondent No. 1 give any notice or any opportunity of being heard to any of the petitioners and that too, when said orders of petitioners' reversions are going to visit them with civil consequences and/or financial loss, inasmuch as, by virtue of their reversions to the lower cadre their pay scales are going to be reduced resulting in fixing of their salaries at lower rates. Therefore, it is the case of the petitioners that, the action of Respondent No. 1 of reverting them is bad & untenable, as being in violation of the basic principles of natural justice as well.

20. It is the case of the petitioners that, admittedly, at the time when the petitioners were given initial promotions from the cadre of SRAs to the cadre of Assistant Professors, they were made to execute an undertaking to the effect that, in the event of cancellation of their promotion and/or their reversion, they would not approach any Court of Law. However, as regards the said undertaking got executed by Respondent No. 1 from the petitioners is concerned, any such undertaking, which took away from the petitioners, their right to approach a competent Court of Law to seek redressal of their grievances has no sanctity in law, inasmuch as, no such undertaking in the first place could either have been sought or could have been executed by the Respondent No. 1 from the petitioners, which violated their right to seek a remedy against injustice caused to them. Hence, said undertakings got executed by the Respondent No. 1 from the petitioners cannot be used against them, much less for the purpose of

preventing them from approaching the Court of Law.

II) Arguments advanced by Shri. Avinash Deshmukh, the learned counsel appearing for the petitioners in W.P. 6591 to 6594 and 7559 of 2014:-

(a) Petitioners are all Members of Academic Staff of Vasantao Naik Marathwada Krishi Vidyapeeth, Parbhani. Government had introduced Statutes providing for designations, qualifications, method of recruitment pay, allowances and other conditions of service and powers and duties of Academic Staff members. All the petitioners have been in service of Respondent No.1 University since long period of time. Pertinently, 1st proviso to Statute 74(1) of the Statutes of 1990 specifically conferred powers upon Vice Chancellor to make appointments to any posts of academic Staff Member for a period not exceeding 1 year in any emergency. But, the 2nd proviso to said Statute 74(1) casts a mandatory duty

upon the Vice Chancellor to initiate simultaneous action to fill the post/s through due process of selection within 1 year from the date of such appointment/s. In Respondent No.1-University due to non-availability of Selection Committee on regular basis, the Vice Chancellor/s were/are routinely required to exercise above referred power and effect appointments through the mode of promotion from lower category to higher category of posts, in view of urgent need of qualified personnel in the larger interests of students.

(b) Resultantly, the procedure routinely being followed in the University was that, the Vice Chancellor used to effect promotions of suitable and eligible candidates, that too only after duly completing all the procedural formalities i.e. the Vice Chancellor though was exercising power under 1st proviso to Statute 74(1), however procedure which was routinely being followed was the due procedure required to be followed for regular promotions. As

such, but for the formal stamp of approval by the Selection Committee, the promotions effected by the Vice Chancellor were in fact regular promotions for all practical purposes.

(c) On said backdrop, petitioners were while working as Senior Research Assistants (SRAs) were promoted as Assistant Professors by the Vice Chancellor. Pertinently, those promotion orders of the petitioners though were camouflage, as being on ad-hoc basis only for 11 months, however, those were preceded by completion of all procedural formalities, which included consideration of important aspects, such as availability of clear vacancies, eligibility and fitness of the persons within zone of consideration for promotion decided on the basis of educational qualifications and requisite experience, seniority, confidential reports for relevant periods, social category/roaster point, etc. Pertinently, documents secured under Right to Information Act, which are placed on record, clearly establish said contention of

petitioners. All petitioners had duly joined on the promotional posts and had started discharging duties attached thereto and not only that but they had also started getting salary in the higher scale attached to the promotional post. Pertinently, all petitioners were continued on the promotional posts without a single day's break by issuing subsequent order/s and were also regularly paid not only their salary in the higher scale but they were all even granted yearly increments as and when those had become due till issuance of impugned orders of cancellation of their promotions. Furthermore, names of either petitioners or persons like them were included in the final Seniority List/s of the promotional cadre.

(d) Therefore, though initial orders of promotions conveyed that those were on ad-hoc basis and as stop-gap arrangement only for stipulated period, still in actuality all the petitioners were continued on promotional posts without a single day's break and were all treated as regular promotees for

all practical purposes and were extended all service benefits. On said backdrop, the Vice Chancellor was in fact mandatorily required to place cases of all petitioners before the Selection Committee at the first available opportunity and then to take the consequential step of regularizing those promotions. However, no steps were taken for years together and the Vice Chancellor had failed in performing his statutory duty that too in spite of availability of competent Selection Committee. On said backdrop, shockingly orders of cancellation of promotions were issued by Respondent No.1. As such, by those orders, Respondent No.1 has sought to abruptly cancel promotions given to petitioners that too in clear violation of the basic principles of natural justice, inasmuch as, none of the petitioners was given any notice and/or any opportunity of being heard before issuance of those orders, that too in spite of the fact that, those orders resulted in causing financial loss to all of them.

(e) Pertinently, said action is taken by Respondent No.1 on the ground that, the petitioners do not possess qualifications required for promotional posts as introduced under Amendment Statutes of 2014. But, it needs consideration that, in view of judgment of Hon'ble Apex Court in ***Y.V. Rangaiah Vs J. Sreenivasa Rao*** reported in ***AIR 1983 SC 852***, when the vacancies on which petitioners were given promotions pertained to the period before introduction of the new/Amendment Statutes of 2014 that for filling-in those vacancies on regular basis the old Rules (viz. the un-amended Statutes of 1990) and not the new/Amendment Rules Statutes of 2014 were/are required to be made applicable. Hence, on said backdrop and being aggrieved by said orders of cancellation of their promotions resulting in their reversions to the lower cadre and further being aggrieved by the inaction of Respondent No.1 University in regularizing their promotions on the basis of Statutes of 1990, petitioners are constrained to prefer present Writ Petitions and assail the said

orders of cancellation of their promotions and the inaction of Respondent No.1. The learned counsel in support of the case of the petitioners placed reliance on the following judgments of the Supreme Court

(a) Chairman, Railway Board V/s C.R. Rangadhamaiah (1997 AIR (SC) 3828), (b) A. Satyanarayana V/s S. Purushotham and ors. (2008 AIR (SCW) 3282, (c) P.N. Premachandran V/s State of Kerala (2004 AIR (SC) 255, (d) Virender Singh Hooda and others V/s State of Haryana and another (2004 AIR SCW 6386 and (e) Rudra Kumar Sain and others V/s Union of India and others (AIR 2000 SC 2808).

III) Arguments advanced by Shri. B.A. Darak, the learned counsel appearing for the petitioner in Writ Petition No. 7061 of 2014:-

(a) The petitioner completed his qualification as Master of Technology (Irrigation and Drainage Engineering) in the year 1994. He came to be

appointed for the post of Assistant Professor by the respondent no.2 on dated 28.04.1999 and since then he is working in the University/respondent no.2. He also promoted for the post of Associate Professor in the year 2010. The respondent no.2 prepared initially the provisional seniority list faculty wise and they were objected by the petitioner. The petitioner also filed Writ Petition No. 4909/2008 seeking directions that, the University ought to have prepared the common seniority list, as per the University Seniority Regulations 1988. During pendency of the writ petition, the University prepared final common seniority list, in which petitioner stood senior than one Shri R.G. Bhagyawant, who also filed Writ Petition No. 4367/2008. However, both Writ Petitions came to be decided separately. In Writ Petition No. 4909/2008, the respondent no.2 filed their reply and admitted that, the petitioner is senior than Shri. R.G. Bhagyawant and accordingly this Court held that, the petitioner is the senior person as per the seniority list and directed that, respondent no.2 University should

take decision in regard to filling of promotional post of Associate Professor, as the clear vacant post for Associate Professor was lying in respondent No.2 University since 2007. The respondent University accordingly granted the promotion to the petitioner, vide order dated 6.5.2010 for 11 months subject to final orders of Selection Committee. This has been approved by the competent authorities and Vice-Chancellor. This aspect can be gathered from the sanctioned notes dated 9.3.2010 by the Competent Authorities. The petitioner joined for promotional post on 14th May, 2010. Thereafter, the University issued temporary promotional orders since 2010 till impugned order dated 30th June, 2014, no gap had been given to the petitioner in the promotional order right from 14th May, 2010 to 30th June, 2014. This aspect can be gathered from the experience certificates issued by the University dated 13th October, 2014, more particularly, at Item No.5 speaks that, no gap had been given to the petitioner right from 14th May, 2010 to 30th June, 2014. Since 2010 till

this date, respondent no.2 University not placed the case of the petitioner in respect to confirm the promotion of the petitioner before the Departmental Promotion Committee (DPC).

(b) The learned counsel appearing for the petitioner, in support of aforesaid contention, invited our attention to the documents at page nos. 27 to 54, relates to the service matter of the petitioner and submitted that, while granting the promotion to the petitioner and one Shri. R.G. Bhagyawant, Respondent No.2/University made discrimination by violating the provisions of Articles 14 and 16 of the Constitution of India. On the post reserved for a candidate from S.C. category, Shri. R.G. Bhagyawant, who was junior to the petitioner came to be appointed. This fact also admitted in the reply filed by the Respondent No.2/University in Writ Petition No. 4909/2008. However at the same time, the clear vacant post after the departure of one Shri. Digrase, the open post for Associate Professor, remained vacant from 19.7.2007

and accordingly the petitioner was entitled for this vacant post, but the Respondent No.2/University deliberately and intentionally promoted the petitioner temporarily in the year 2010. This aspect can be gathered from the information received by the petitioner under the Right to Information Act on 14th October, 2014, more particularly, it can be gathered at Item no.3 showing the vacant post for S.C. & Open category on 31.12.2007.

(c) During the service period of the petitioner for the promotional post being Associate Professor, Respondent No.2/University sought amendment to the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990, more particularly, the Statute No.73 Appendix-III which pertains to the present dispute to the extent of qualification for the post of Academic Staff Members. The serial number 1 for the post of Associate Professor, the qualification being Ph.D. made compulsory, however earlier to the amendment, the qualification of Ph.D. was optional.

This amendment in the Statutes made with consultation of the Government of Maharashtra, prior to the amendment. The Law and Judiciary Department while perusing the draft amendment and notification, observed that, the amendment should not be made retrospective as per Section 38(6) of the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983. This has been informed to the Agricultural Universities in the State of Maharashtra. The same has been approved by the Deputy Draftsman-cum-Deputy Secretary to Government.

(d) While introducing the amendment in the Statutes, it nowhere reflected that, the said amendment is made retrospective. Therefore, the amendment should be made prospective in the service matter. The petitioner relied upon the judgments on the point of respective amendments. The learned counsel appearing for petitioner relied upon the judgment in the case of “**Chairman, Railway Board and others V/s C.R.**

Rangadhamaiah and others” reported in **1997 (6) S.C.C. 623** and also in the case of “**Virendra Singh Hooda and others Vs. State of Haryana and another”** reported in **2004 AIR SCW 6386**.

(e) The petitioner is entitled for promotion from the year 2007. The other person namely R.G. Bhagyawant (junior to the petitioner) made permanent for the post of Associate Professor by Respondent No.2/University. This conduct and attitude of the Respondent No.2/University is highly objectionable and same is arbitrary and discriminatory and against the principles of natural justice, since petitioner is senior person than one Shri.R.G. Bhagyawant, the case of the petitioner is not considered till this date by Respondent No.2/University for the post of Associate Professor inspite of the order rendered by this Court in Writ Petition No. 4909/2008 dated 27th January, 2010. It amounts to contempt committed by Respondent No.2/University. The petitioner is entitled for the

consequential benefits from 2007 and also entitled the deemed date for the seniority from Respondent No.2/University. This aspect requires to be considered by this Court in the interest of justice.

(f) Pending the Writ Petition, the petitioner is working and holding the additional charge in respect of Associate Professor with Respondent No.2/University though the petitioner received the impugned reversion order dated 30th June, 2014.

(g) In view of this, it is submitted that, the impugned order dated 30th June, 2014 (annexed to the Petition at page no.64) deserves to be quashed and set aside.

(IV) Arguments of Mr. M.N. Navandar, the learned counsel appearing for the Respondent -University :-

21. It is submitted that, that, State

Government has issued Government Resolution dated 15th March, 2014 and has been pleased to revise the academic qualifications for the posts of Assistant Professor and Associate Professor and has amended the Statutes of 1990. That, in view of said Revised Qualifications as per Government Resolution dated 15th March, 2014, all the petitioners were reposted to their Original Posts i.e. Senior Research Assistants and Assistant Professors, which is impugned in the petition. That, previously petitioners were temporarily promoted purely on Stop-Gap Arrangement basis for 11 months as Assistant Professors and Associate Professors.

22. It is submitted that, infact the petitioners were not reverted but were reposted to their original posts held by them as the previous promotional orders issued were not regular promotions but, was in the nature of purely temporary and stop gap arrangement for a period of 11 months. Said powers are exercised by the deponent University in view of

Statute Nos. 41, 71, 74 and 75 of the Statutes of 1990. That, in view of emergency the Vice-Chancellor of the University is empowered to fill in the posts as a temporary and stop gap arrangement for the period of 11 months.

23. It is submitted that, previously vide Government Resolution dated 18th March, 2010, the State Government revised pay scales of the teachers and equivalent cadres in Agricultural Universities, Aided Colleges, Affiliated Colleges as per the U.G.C./I.C.A.R. Scheme (6th Pay Commission) Guidelines. As the petitioners were being temporary promoted on the higher posts, the University has also granted them the pay scales of Higher Posts, as they were discharging their duties in view of the temporary promotions orders issued by the University.

24. It is submitted that, the grants for payment of Associate Professors and Assistant Professors are provided by the UGC/ICAR @ 80% and by the State

Government @ 20%. The Government of Maharashtra has accepted UGC qualifications as per the resolution dated 18th March, 2010 but, necessary amendment were required in the Statutes of 1990. Hence, the Executive Council of the University had passed resolution to amend the qualification of Assistant Professors and Associate Professors. Thereafter the M.C.A.E.R. Pune, which is the controlling authority of all 4 Agricultural Universities in the State of Maharashtra, has also passed resolution on the grounds of Executive Council's resolution of all the 4 Agricultural Universities in the State of Maharashtra.

25. It is further submitted that, the State Government has amended the Statutes of 1990 vide its Government Resolution dated 15th May, 2014. The basic amendment is of the qualifications of the Academic Posts and U.G.C. and the I.C.A.R. had prescribed the qualification and method of appointment and evaluation of Academic Officers, Head of Departments and other equivalent posts and

qualifications of Academic Staff Members of the University. Therefore, it had become utmost necessary to amend the Statutes of 1990 with the concurrence of the Chancellor, so as to make the qualifications in consonance with U.G.C. and the I.C.A.R. and likewise in view of the powers possessed by the Government under Section 38(6) of the Act and the Statutes of 1990 are amended on 15th March, 2014.

26. It is submitted that, the petitioners had alleged that, the qualifications which are prescribed by the amended Statutes, 1990 cannot be made retrospectively applicable i.e. to state that, they can only be prospectively applicable cannot be given weightage in the present matter, as the petitioners were not issued regular promotional orders to the higher posts but, they were issued temporary promotional orders purely on stop gap basis of 11 months. There was a break after the temporary promotional orders were issued of 11 months. As the

decision taken by the State Government is a policy decision, therefore, the same cannot be a subject matter of Judicial Review.

27. It is submitted that, the allegations as regards to affording the opportunity of hearing to the petitioners, it is clarified that, there was no need for affording opportunity of hearing to the petitioners, as the basic Statutes as regards to the qualifications are amended by the State Government based on the principles laid down by the U.G.C. and the ICAR. That, the State Government is the Executive authority to take Policy Decision in service matters apart from other issues and as such, the Policy Decision cannot be interfered by this Court under Article 226 of the Constitution of India.

28. Even though the petitioners have worked on higher posts, still they are not entitled for the relief/s claimed in the Petition, for the simple reason that, they were working under an order of Ad-hoc

Promotion, purely on Temporary Basis of 11 months. In support of aforesaid contentions in para Nos. 21 to 27, the learned counsel appearing for the University placed reliance on the following judgments:-

(a) AIR 2005 SC 2408 (BHADEI RAI V/S UOI), (b) AIR 1987 SC 424 (ASHOK GULATI V/S B.S. JAINAND), (c) AIR 1991 SC 363 (UOI V/S. S.L. DUTTA), (d) AIR 1991 SC 882 (RAJASTHAN STATE ELECTRICITY BOARD ACCOUNTANTS ASSOCIATION V/S RAJASTHAN STATE ELECTRICITY BOARD. (e) 2009(4) SCC 753 (DILIP KUMAR GARG AND ANR. V/S STATE OF U.P. & ORS) and (f) 2008(5) SCC 416 (A. SATYANARAYANA AND ANR. V/S S. PURUSHOTHAM & ORS).

29. It is submitted that, if the petitioners are possessed with the qualifications, as has been prescribed by the amended Statutes of 1990, then in those circumstances, they will be positively considered by the Selection Committee and if their names are recommended by the Selection Committee then, the Selection Committee of the University will consider the petitioners for regular promotion on the basis of the revised qualifications.

30. It is submitted that, the State Government

has issued Resolution dated 18th March, 2010, whereby not only the pay scales came to be revised but also the qualifications were desired to be revised. That, in view of said resolution dated 18th March, 2010, the M.C.A.E.R. Pune who is the controlling authority of all the Four Agricultural Universities in the State of Maharashtra, which is constituted under section 12 of the Act of 1983, for effective coordination in the activities of Teaching, Research, Extension Education and all other matters, has been pleased to issue a letter dated 23rd September, 2011 whereby it is intimated that, Council has decided in its meeting held on 25th July, 2011 vide resolution No. 49/89/11 to make applicable the provisions of the Government Resolution dated 18th March, 2011 to all the four agricultural universities as regards to educational qualifications eligibility, etc at the time of appointment. It was further intimated that, as such steps be taken at its level. The learned counsel invited our attention to the letter dated 21st September, 2014 and also to the minutes of meeting dated 25th July,

2011 placed on record along with reply.

31. It is further submitted that, thereafter the M.C.A.E.R. Pune issued a letter dated 14th January/June, 2012 to all the Vice Chancellors of Agricultural Universities in the State of Maharashtra intimating that, various subjects are to be decided in view of Government Resolution dated 18th March, 2010 and therefore a meeting is scheduled and a request was made to attend the meeting. That, in the said meeting four issues were to be discussed and decided. That, all the subjects i.e. the issues were important but to be more specific issue no.4 deals with as per the revised educational qualifications and it was decided to have change in Statute Nos. 41, 52 and 73 of the Statutes of 1990 in view of Government Resolution dated 18th March, 2010.

32. It is submitted that, thereafter the VCCC i.e. the Vice Chancellors Co-ordination Committee came to be constituted for proposed amendments in

the Statutes of 1990, more specifically Statute Nos. 41, 52 and 73, which was necessitated due to 6th Pay Commission by the U.G.C. Recommendations. That, as per the procedure, it was decided by the VCCC that, the concerned amendment has to be sanctioned and approval of the executive councils and the academic councils for post-facto approval has to be taken. That, even it was decided that, after the concerned authorities take the decisions, the concerned resolutions will be forwarded to M.C.A.E.R. Pune.

33. It is submitted that, thereafter the Academic Council was constituted by the deponent University in view of Section -33 of the Act of 1983. That, said Academic Council had decided to grant approval for the change in Statute Nos. 41, 52 and 73 in view of the Rules of the U.G.C. and I.C.A.R. for the educational qualifications and the issue came to be recommended to the Executive Council. In view of the decision, matter came to be referred to Chief Secretary of Agricultural Department, Mantralaya,

Mumbai vide letter dated 10th July, 2012 as a proposal in view of the revised educational qualifications to amend Statute Nos. 41, 52 and 73 as per Government Resolution dated 18th March, 2010 as per section 38(6) of the Act of 1983 by the M.C.A.E.R. Pune. The Executive Council came to be constituted in view of Section - 30 of the Act of 1983 and vide its decision dated 15th September, 2012, it is decided to grant approval for amendment in Statute Nos. 41, 52 and 73 of the Statutes of 1990 and the matter came to be referred to the M.C.A.E.R. Pune. Vide letter dated 26th September, 2012, it was intimated to the M.C.A.E.R. Pune that, the Executive Council has granted approval for amendment for the educational qualifications and likewise proposal is forwarded for further approval. In view of the decision to be taken by the State Government and other authorities, the State Government had intimated to the University vide its letter dated 12th March, 2014 that, w.e.f. the amendments is concerned, Statutes of 1990 will be published and also in view of the elections of

Maharashtra Assembly not to fill in the posts. It was also intimated that, in view of the above difficulties, new appointments should not be made till then.

34. It is submitted that, after going through resolution No. 49/84/2011, the decision has been taken to recommend the State Government for amendment of relevant Statute concerned with the educational qualifications in the Statutes of 1990 in view of Government Resolution dated 18th March, 2010.

35. It is submitted that, if the Academic Staff is willing to be benefited with the 6th Pay Commission, as has been recommended by the U.G.C. and M.C.A.E.R. Pune, which has been decided by the State Government vide its Government Resolution dated 18th March, 2010, then in such circumstances, it is also necessary to amend the relevant Statutes of 1990 as regards to educational qualifications. That, as regards to services of employees who are on regular

establishment, there cannot be any hue and cry and relevant provisions will be the terms and conditions of service which will prevail as per the service jurisprudence.

36. It is submitted that, looking to the above communications and dealing of the issue of Amendment of the Educational Qualifications at all concerned levels, there was no scope and/or power possessed with all the Vice-Chancellors of the Four Agricultural Universities in the State of Maharashtra to give effect to the provisions of Statute No. 74, 2nd proviso of the Statutes of 1990.

37. It is submitted that, there is I.Q.A.C. i.e. Internal Quality Assessment Cell. It is a committee for assessment of Academic Performance of Employees who are applying for the posts of Associate Professor. That, the applications received from the employees who are in service, they are kept before the I.Q.A.C. and said Cell after scrutiny allots/issues minimum

score cards to the employees and thereafter said minimum score cards are kept before the D.P.C. and thereafter if any employees are selected by the D.P.C. their names are recommended by the D.P.C. for regular promotion.

38. It is submitted that, the D.P.C. is going to be held on 23rd March, 2015 to 27th March, 2015. That, if the petitioners, who are possessing required qualifications as per the revised qualifications in view of Government Resolution dated 15th March, 2014 whereby the Statute No. 73 (Appendix-III) came to be amended, they only will be considered for promotion by following total procedure.

39. It is submitted that, the D.P.C. is held on 23rd March, 2015 to 27th March, 2015 for the posts of Assistant Professors and Associate Professors, to be filled in through regular promotions. The advertisements which are issued by the University for filling in the posts of Assistant Professors and

Associate Professors have got no concern with the employees who have applied for regular promotion.

40. It is submitted that, the petitioners working on higher posts were paid salary of the higher posts and there will be no recovery made as regards to the salary, as the petitioners have already discharged their duties on higher posts. However, in near future action of recovery as regards to the yearly increments will be taken, because wrongly the D & DO i.e. the Drawing and Disbursing Officer has granted yearly increments to the petitioners, who were not entitled for yearly increments, as their temporary promotion orders were only for a period of 11 months. Hence, in view of this the statement of the University made in the para no.12 of the Sur-Rejoinder may kindly be considered. As such, there cannot be any Judicial interference and/or judicial review of the issue raised by petitioners and the Writ Petitions deserve to be dismissed in limine.

**(V) POINTS FOR CONSIDERATION,
FINDINGS AND THE CONCLUSIONS :-**

41. We have heard the learned counsel appearing for the parties at length, with their able assistance, perused the pleadings and grounds taken in the Petitions, annexures thereto, the relevant provisions of the Act of 1983, Statutes of 1990 and Maharashtra Agricultural Universities (Krishi Vidyapeeths) (First amendment) Statutes, 2014, and also the judgments cited across the bar by the learned counsel appearing for the respective parties.

It is the contention of the learned counsel appearing for the respective petitioners that, all the petitioners while were discharging duties and working in the cadre of Senior Research Assistants (SRAs), were granted promotions to the next higher cadre of Assistant Professors by the Vice-Chancellor on various dates, in exercise of extraordinary powers conferred upon the Vice Chancellor under 1st proviso to clause

(1) of Statute 74 for a period of 11 months only. However, all the due procedural formalities i.e. considering the aspect of eligibility on the basis of educational qualifications and requisite experience, seniority, confidential reports for relevant periods, social category, fulfilling of other eligibility criteria for promotion on the basis of the Statutes of 1990, which normally are complied with for grant of regular promotion at the hands of the Selection Committee, were duly got complied with by the Vice Chancellor either before or at the time of issuance of those promotion orders. The appointments given to all the petitioners on promotion were in the pay scale of promotional post of Assistant Professors. All the petitioners were continued on the promotional posts without a single day's break by issuing subsequent order/s and were also regularly paid not only their salary in the higher scale of Assistant Professors but they were all even granted the yearly increments as and when those had become due. Therefore, it is the contention of the learned counsel appearing for the

petitioners that, though the initial orders of appointment of all the petitioners issued by the Vice Chancellor were purportedly for a period of 11 months only, however, those were all continued beyond said period of 11 months, without giving any technical break but continued all the petitioners on their respective promotional posts. The petitioners have been extended all the benefits of regular appointees/promotes, such as the one of yearly increments. The fact that, the petitioners were granted promotions indicates that, there were vacancies of the posts of Assistant Professors and Associate Professors at the relevant time. Sum and substance of arguments of the learned counsel appearing for the petitioners is that, the petitioners duly fulfilled the requisite qualification mentioned in the Statute of 1990 at the time of their initial dates of promotion from the cadre of SRAs to the cadre of Assistant Professors and they were extended the revised pay scale attached to the posts, the impugned orders after four years from their initial appointments

on promotion are bad-in-law, contrary to the relevant provisions, necessary qualifications and other requirement under the relevant Statutes of 1990.

In order to appreciate the main bone of contention raised by the learned counsel appearing for the petitioners, it would be apt to make reference to the relevant provisions of the Maharashtra Agricultural Universities (Krishi Vidyapeeth) Statutes, 1990. The petitioners were given appointment on promotion, and promotion orders were issued by the Vice-Chancellors of the concerned Universities, taking recourse to the provisions of the Statute 74 of the Statutes of 1990. The relevant provisions of the said Statute 74 clause (1) reads thus:-

“Statute 74. Manner of Appointment of Academic Staff Members. -

(1) All appointments of the members of academic staff shall be made by the Vice-Chancellor strictly on merit and no person shall be appointed by the Vice-Chancellor as

a member of the academic staff except on the recommendation of the Selection Committee constituted under section 58(2) of the Act and Statute 75:

Provided that in any emergency which in the opinion of the Vice-Chancellor, required that immediate action should be taken he may without recommendation of the Selection Committee or without following the procedure prescribed in Statute 77 make appointment of a suitable person having the minimum prescribed qualifications to any post of the academic staff member for a period not exceeding one year and shall at the earliest opportunity thereafter report his action to the Executive Council:

Provided further the Vice-Chancellor shall initiate simultaneous action to fill the post through due process of selection within a period of one year from the date of such appointment;"

Upon careful perusal of the aforesaid provisions, in the first place, all appointments of the members of academic staff shall be made by the Vice-Chancellor strictly on merit, and secondly, no person

shall be appointed by the Vice-Chancellor as a member of academic staff except on the recommendation of the Selection Committee constituted under section 58(2) of the Act and Statute 75 of the Statutes, 1990.

42. In the present case, the petitioners were appointed on promotion on the posts of Assistant Professors and Associate Processors by invoking 1st proviso to Statute 74 of the Statutes of 1990 by the Vice-Chancellor of the concerned University. Indisputedly, the petitioners were appointed on promotion on the post of Assistant Professors/Associate Professors for 11 months. It further appears that, the petitioners were given appointment letters for the period of 11 months on every occasion. It further appears that, when the petitioners were given initial promotions from the cadre of SRAs to the cadre of Assistant Professors, undertaking was given by the petitioners to the effect that, in the event of cancellation of their promotion

and/or their reversion, they would not approach any Court of Law. It is true that, the said undertaking cannot preclude the petitioners from approaching the Court of law and the petitioners have rightly approached to the High Court by filing the Writ Petitions, however, the fact remains that, the petitioners were aware that, their appointments on promotion were for 11 months on temporary basis. Therefore, the contention of the petitioners that, they are not heard before passing the order of reverting them on the original posts has no force, and same is devoid of any merits and deserves no consideration.

43. Upon careful perusal of the material placed on record, it is abundantly clear that, the Vice-Chancellor by invoking 2nd proviso to Statute 74(1), did not initiate simultaneous action to fill the posts through due process of selection within a period of one year from the date of appointments of the petitioners on the post of Assistant Professors or Associate Professors, as the case may be. According

to the petitioners, they have rendered services on the promotional posts for four years continuously without any break and in all respect they were eligible to be appointed, and therefore, the order of reversion would not have been passed by the respondents since their reversions are going to visit them with civil consequences and/or financial loss, inasmuch as, by virtue of their reversions to the lower cadre their pay scales are going to be reduced resulting in fixing of their salaries at lower rates, and therefore, their appointments should be treated as a regular on regular posts. According to the petitioners, the Vice-Chancellor was obliged to initiate action to fill in the posts through due process of selection within a period of one year from the date of appointments of the petitioners as Assistant Professors or Associate Professors, as the case may be and the said failure and continuation of the petitioners on the said posts without any break with all consequential benefits would entitle them to continue on the said posts, has no basis in the relevant statutes, inasmuch as, in case

the Vice-Chancellor did not initiate simultaneous action to fill in the posts through due process of selection within a period of one year from the date of appointments as contemplated under 2nd proviso of Statute 74(1) of the Statutes, 1990, the framers of the Statutes/legislature have not provided consequences of such inaction of the Vice-Chancellor under Statutes and therefore, in absence of any statutory provisions to that effect under the relevant Statutes of 1990, the contention of the petitioners cannot be accepted that, due to failure of the Vice-Chancellor to initiate simultaneous action to fill the post through due process of selection within a period of one year, from the date of such appointment of the petitioners, would entitle them deemed permanency or their appointments can be treated as regular on the post of Assistant Professors or Associate Professors, as the case may be. The provisions of Statutes, as they stand/appearing will have to be read as it is, and it is not permissible for the Court to add something in the Statutes, which is not provided by the framer of the

Statutes/legislature. In that view of the matter and the fact that, the appointments of the petitioners on the post of Assistant Professors or Associate Professors, as the case may be, were made for temporary period of 11 months, the petitioners' claim to accept their case that, their appointments are on regular basis on the promotional posts, deserves no consideration.

It is true that, and as rightly contended by the learned counsel appearing for the petitioners, and not disputed by the learned counsel appearing for the Respondents that, there was no break given in the services of the petitioners on the promotional posts. However, the said irregularity could not and would not mean that, the petitioners' appointment was on regular basis. The provisions of sub-section (1) of Statute 74 of the Statutes of 1990 makes it abundantly clear that, the Vice-chancellor has to make appointments strictly on merit and no person shall be appointed by the Vice-Chancellor as a

member of the academic staff except on the recommendation of the Selection Committee constituted under section 58(2) of the Act and Statute 75. Sub-Section (2) of Section 58 of the Maharashtra Agricultural Universities (Krishi Vidyapeeth) Act, 1983 (hereinafter referred to as “the said Act of 1983” for the sake of brevity) reads thus :-

“58. (1)

(2) The Selection Committee referred to in the proviso to sub-section (1) shall consist of -

(i) the Vice-Chairman of the State Council;

(ii) the Vice-Chancellor of the University concerned;

(iii) One non-official to be nominated by the Pro-Chancellor, from amongst the non-official members of the Executive Councils of the Agricultural Universities in the State;

(iv) two experts to be nominated by the Chancellor;

(v) two representatives of the Indian Council of Agricultural Research to be appointed by the State Government, one of whom shall be a specialist in the particular field for which the recruitment is to be made.”

44. The clause 1 of Statute 75 of the Statutes of 1990 reads thus :-

“Statute 75. Selection Committee for selecting persons for appointment as Academic Staff Members.- (1) Selection Committee constituted in accordance with the provisions of sub-section (1) of section 58, for selection to the post of Associate Professor/Reader, Assistant Professor, Lecturers and their equivalent posts shall consists of the following members, viz :-

- (i) The Vice-Chancellor;*
- (ii) One Director of the University by rotation;*
- (iii) Member of the Executive Council representing Indian Council of Agriculture Research;*
- (iv) One Dean of University by rotation;*
- (v) Three outside Experts to be nominated by the Vice-Chancellor out of the panel of six names of persons recommended by the Academic Council who have special knowledge of the subject for which the academic staff member is selected.”*

45. A conjoint reading of provisions of sub-

section 2 of Section 58 and the provisions of Statute 75 of the Statutes of 1990, make it abundantly clear that, selection committee has to be constituted for selection of the post of Associate Professor/Reader, Assistant Professor, Lecturers and their equivalent posts. As already observed, the provisions of Statute 74 mandates that, the appointment of members of the academic staff shall be made by the Vice-Chancellor strictly on merit and no person shall be appointed by the Vice-Chancellor as a member of the academic staff except on the recommendation of the Selection Committee constituted under Section 58(2) of the Act and Statute 75. Therefore, the Statute provides specific procedure for the appointment on the post of Assistant Professors and Associate Professors, and other posts on promotion. As per procedure, the Vice Chancellor has to act on the recommendation of the Selection Committee and then only issue the appointment orders on regular basis to those candidates whose names are recommended by the Selection Committee. In that view of the matter,

the statutory provision mandates/makes it compulsory to the Vice-Chancellor to select candidates purely on merit, and not to make appointments unless the recommendation received from the Selection Committee.

In the light of the discussion hereinabove, inevitable conclusion is that, under the provisions of Statutes of 1990, for the appointment on the post of Assistant Professors or Associate Professors, as the case may be, on promotion, the Statute 74 mandates that, Vice-Chancellor has to take merit as a basis for selection and only on the recommendation of the Selection Committee, the Vice-Chancellor can make appointment on the regular basis. If the statute provides procedure for the appointment on regular basis as Assistant Professors and Associate Professors, the selection and appointment can only be made in the manner stated in the statutory provisions, and it was not permissible to the Vice-Chancellor under Statutes of 1990, to appoint

candidate on regular basis in absence of procedure prescribed under the aforementioned relevant Statutes. In that view of the matter, we do not find any merit and substance in the contention of the learned counsel appearing for the petitioners that, the petitioners, though given appointments for 11 months on temporary basis, but the petitioners have completed four years on the said posts without any break and procedure followed by the Vice-Chancellor was as good as provided in the Statutes, and therefore, the petitioners' appointment should be treated as regular and the order of reverting them to lower cadre deserves interference.

46. As already observed, if the Statutes provide the selection on merit and appointment to be made only, on the recommendation of the selection committee after adhering to the procedure prescribed under the relevant provisions, the appointment on promotion on the post of Assistant Professors or Associate Professors or any other posts can only be

made after adherence to the procedure, which is mentioned in Section 58(2) of the said Act and 74 and 75 of the Statutes, and there cannot be departure from the said procedure/manners provided under the Statutes. It is well established rule of interpretation of Statutes that, if the statutory provision provides for the appointment in a particular manner, that has to be done in that manner alone, and there is no scope for different interpretation of the said statutory provision.

47. The petitioners have not placed any material on record to demonstrate that, the Vice-Chancellor invoked the 2nd proviso to the Statute 74, and their cases have been considered on merit and as a matter of fact, selection committee has favourably recommended their cases and Vice-Chancellor under the relevant provisions have appointed them on promotion on regular basis. In that view of the matter, we cannot accede to the prayer of the petitioners that, their appointments on promotions should be

treated as regular since at the relevant time they were fulfilling the qualifications, and also in all sense they were competent to be appointed on the promotional posts.

It is true that, before introducing or bringing into force new Amendment Statutes, 2014, the petitioners were fulfilling the qualifications for the post of academic staff members under the Statute of 1990, Appendix 2 and 3 of the Statute 41. Even the learned counsel appearing for the respondent – University has not disputed the fact that, at the relevant time, when the petitioners were appointed for 11 months on the post of Assistant Professors or Associate Professors, as the case may be, they were possessing requisite educational qualifications, however, the appointments of the petitioners to the promotional posts on adhoc basis for 11 months, in absence of following complete procedure provided under sub-section (1) of section 74, it will have to be held that, appointments of the petitioners were not on

regular basis, and those will have to be treated as adhoc for all practical purposes.

48. The next submission of the learned counsel appearing for the petitioners canvassed across the bar is that, the Respondent No.1 has taken the action to revert the petitioners to the lower cadre on the ground of non-fulfilling the revised eligibility criteria, as introduced vide the Amendment Statutes of 2014, deserves to be interfered on the ground that, the said amended Statute cannot be made applicable with retrospective effect and its operation have to be prospective in nature. In support of aforesaid contention, the learned counsel appearing for the petitioners have placed reliance on the exposition of the Supreme Court in the case of **Y.B. Rangaya (supra)**. However, in the present case, as rightly contended by the learned counsel appearing for the Respondent – University that, the amended Statutes introduced in the year 2014 are not made applicable with retrospective effect, and it will have to be applied

prospectively, and therefore, the selection process undertaken as per the Amended Statutes of 2014, would be governed by the said Statutes of 2014.

In view of the new Amended Statutes of 2014, the NET/Ph.D. qualification is made applicable for the post of Assistant/Associate Professors. As already observed from the date of appointment of the petitioners on the promotional posts for 11 months, and the continuation of the said appointments further for 11 months for about four years, during said period, there was no regular selection process undertaken by the Vice-Chancellor, and no candidates selected on merit were recommended for appointments by the Selection Committee as per the provisions of Statute 74 of the Statutes, 1990, which were in force during the said period. In case, there was regular selection process undertaken by the Vice-Chancellor under the relevant Statutes of 1990, and if the said selection process would have been completed, inasmuch as, culminated into preparation of selection list, and the

names of the petitioners would have been included in the selection list, and such selection list was maintained by the University, further, in that case the petitioners were justified in contending that, they are appointed on promotion and their appointments should be treated as on regular basis. However, in the present case, no such regular selection process was undertaken by the Vice-Chancellor of the concerned University for the various reasons stated in the reply filed by the University. One of the reasons stated in the reply is that, there was ban on the appointment by the Government of Maharashtra. The another reason stated is that, the Apex Body of the University namely M.C.A.E.R. Pune was under active process to prescribe the new qualifications for the appointment on the post of Assistant Professors, Associate Professors and/or other posts, as demonstrated by the learned counsel appearing for the University during the course of arguments. Upon considering the material placed on record by the Respondent - University, it appears that, the Vice-Chancellor could

not undertake regular selection process for various reasons. As already observed, failure of the Vice-Chancellor not to initiate the regular selection process from 2010 to 2014 would not make petitioners entitled for appointments on regular basis in absence of such provisions under the Statutes of 1990.

49. We find considerable force in the arguments of Mr. M.N. Navandar, the learned counsel appearing for the Respondent – University that, the State Government has issued Resolution dated 18th March, 2010, whereby not only the pay scales came to be revised but also the qualifications were desired to be revised. In pursuant to the said resolution dated 18th March, 2010, the M.C.A.E.R. Pune who is the controlling authority of all the Four Agricultural Universities in the State of Maharashtra was pleased to issue a letter dated 23rd September, 2011 to all the four agricultural Universities intimating that, Council has decided in its meeting held on 25th July, 2011 vide resolution No. 49/89/11 to make applicable the

provisions of the Government Resolution dated 18th March, 2011 to all the four agricultural universities as regards to educational qualifications eligibility, etc at the time of appointment. Thereafter, the M.C.A.E.R. Pune has issued a letter dated 14th January/June, 2012 to all the Vice Chancellors of Agricultural Universities in the State of Maharashtra intimating that, various subjects are to be decided in view of Government Resolution dated 18th March, 2010 and therefore a meeting is scheduled and a request was made to attend the meeting. In the said meeting four issues were to be discussed and decided. All the subjects i.e. the issues, were important but to be more specific issue no.4 deals with as per the revised educational qualifications and it was decided to have change in Statute Nos. 41, 52 and 73 of the Statutes of 1990 in view of Government Resolution dated 18th March, 2010. Thereafter the VCCC came to be constituted for proposed amendments in the Statutes of 1990, which was necessitated due to 6th Pay Commission by the U.G.C. Recommendations. As per the procedure, the

VCCC decided that, the concerned amendment has to be sanctioned and approval of the executive councils and the academic councils for post-facto approval has to be taken and thereafter, the concerned resolutions will be forwarded to M.C.A.E.R. Pune. The Academic Council, which has been constituted in view of Section -33 of the Act of 1983 had decided to grant approval for the change in Statute Nos. 41, 52 and 73 in view of the Statutes of the U.G.C. and I.C.A.R. for the educational qualifications and the issue came to be recommended to the Executive Council. In view of the decision, matter came to be referred to Chief Secretary of Agricultural Department, Mantralaya, Mumbai vide letter dated 10th July, 2012. The Executive Council came to be constituted in view of Section - 30 of the Act of 1983 and vide its decision dated 15th September, 2012, it is decided to grant approval for amendment in Statute Nos. 41, 52 and 73 of the Statutes of 1990 and the matter came to be referred to the M.C.A.E.R. Pune. Vide letter dated 26th September, 2012, same was intimated to the

M.C.A.E.R. Pune. In view of the decision to be taken by the State Government and other authorities, the State Government had intimated to the University vide its letter dated 12th March, 2014 that, the amendment to the Statutes of 1990, will be published and also in view of the elections of Maharashtra Assembly not to fill in the posts. It was also intimated that, in view of the above difficulties, new appointments should not be made.

50. Whether to continue with the same qualifications as prescribed earlier under the relevant Statutes for the appointment on the various vacant posts in the University, or to lay down the new educational qualifications would fall within the domain of framer of the Statutes/legislature and Apex body governing the respondent – University. It is not for the courts to interfere in such matters, where a particular qualification is prescribed for the appointment on the post of Assistant Professors/Associate Professors etc. The Supreme Court in the case of **Dilip Kumar Garg**

and anr V/s State of U.P. and ors. ¹ in para 17 held that, Article 14 should not be stretched too far, otherwise it will make the functioning of the administration impossible. The administrative authorities are in the best position to decide the requisite qualifications for promotion from Junior Engineer to Assistant Engineer, and it is not for this Court to sit over their decision like a Court of Appeal. The administrative authorities have experience in administration, and the Court must respect this, and should not interfere readily with administrative decisions. The Supreme Court in para 19, observed that, in *Tata Cellular V/s Union of India*, AIR 1996 SC 11 SC, it has been held that, there should be judicial restraint in interfering in administrative decisions. This principle will apply all the more to a Rule under Article 309 of the Constitution. In the case of **J. Ranga Swamy V/s Government of Andhra Pradesh and others**², the Supreme Court held that, it is not for the Court to assess the comparative

¹ 2009(4)SCC 753

² (1990) 1 SCC 288

merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question. In the case of **State of Rajasthan and others V/s Late Arun**³, the Supreme Court held that, policy decision prescribing minimum educational qualification for admission to a course and recognising certain educational qualification as equivalent to or higher than the prescribed one, it is not for the courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognised as equivalent to the prescribed qualification. It is further observed in para 13 that, from the ratio of the decision noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. In case of **Roop Chand Adlakha and others V/s Delhi Development Authority and others**⁴, the Supreme

³ (2002) 6 SCC 252

⁴ 1989 Supp(1)SCC 116

Court held that, prescribing the qualification or the higher academic and technical quality, these are essentially matters of policy. Unless the provision is shown to be arbitrary, capricious, or to bring about grossly unfair results, judicial policy should be one of judicial restraint. When the State makes a classification between two sources, unless the vice of the classification is writ large on the face of it, the person assailing the classification must show that it is unreasonable and violative of Article 14. The Supreme Court in the case of **Ashok Gulati V/s B.S. Jainand**⁵ held that, services rendered on ad hoc basis or stop gap arrangement cannot be considered. The Supreme Court in the case of **Union of India V/s S.L. Dutta**⁶ held that, the change in policy of promotion, would not amount to change in condition of service. It is further held that, the Court should rarely interfere where the question of validity of a particular policy is in question and all the more so where considerable material in the fixing of policy are of a highly technical

⁵ AIR 1987 SC 424

⁶ AIR 1991 SC 363

or scientific nature. The Supreme Court in the case of **Rajasthan State Electricity Board Accountants Association V/s Rajasthan State Electricity Board**⁷ has held that, classification of employees on the basis of educational qualifications is not violative of Article 14 and 16 of the Constitution of India.

51. Therefore, it follows from the authoritative pronouncements of the Supreme Court that, prescribing particular qualifications for the appointment on the post, would fall within the domain of administrative wing and courts must be loath in interfering in such policy decision, unless the said decision has to be demonstrated as arbitrary, capricious, or to bring about grossly unfair results. As already observed, we do not find any force in the contention of the learned counsel appearing for the respective petitioners that, by way of new Statutes of 2014, the respondents have tried to apply the said provisions with retrospective effect.

⁷ AIR 1991 SC 882

52. We are not prepared to accept the contention of the petitioners that, all the procedural formalities that were required to be mandatorily completed before or at the time of effecting regular promotions at the hands of the Selection Committee, were all duly completed even at the time when the Vice Chancellor effected promotions in exercise of the power conferred upon him under the 1st proviso to Clause (1) of Statute 74. Resultant effect thereof being that but for the formal stamp of approval by the Selection Committee, due to the non-availability of which, the Vice Chancellor was compelled to exercise said extraordinary power vested in him, the promotions effected by the Vice Chancellor were in fact regular promotions for all practical purposes. Even if the arguments of the learned counsel appearing for the petitioners is accepted that, there is workload available for providing the work on promotional posts to the petitioners, in that respect it is not for this Court to enter into the said arena, which would lead to disputed questions of facts, and reach

to a particular conclusion. It is a matter between the University and the petitioners, whether to offer them appointments on promotion for a temporary period due to availability of workload or otherwise.

53. The contention of the learned counsel appearing for the petitioners that, the petitioners have received increments is concerned, the learned counsel appearing for the Respondent – University during the course of his arguments has stated that, the said increments have been wrongly granted by the Ministerial staff and appropriate action has been initiated against those, who are responsible to grant the increments to the petitioners. Another contention of the learned counsel appearing for the petitioners that, the qualification of NET/Ph.D. is made compulsory by the Amendment Statutes of 2014 meaning that, unless & until the said qualification is acquired the concerned person does not become eligible for the promotional post. While on the one hand the Amendment Statutes of 2014 have made

acquisition of NET/Ph.D. a condition precedent for getting promotion to higher cadre amongst other revised conditions, however while doing so neither the State Government/Respondent No. 2 nor the University/Respondent No. 1 has kept it in mind that, for the in-service candidates like present petitioners the acquisition of Ph.D. is not a matter of course or routine and in fact it has to be done only & only after securing No Objection Certificate (NOC) from the University. In this respect, again the matter would be between the State Government, University and the petitioners and if the petitioners are advised, they can file the representation with the University and the State Government for providing the facility for acquisition of the NET/Ph.D. qualification and if such representation is made by the petitioners, certainly the University and the State Government will take care of the petitioners' representation. We are also not impressed by the arguments advanced by the learned counsel appearing for the petitioners that, action of the Respondents is of mass cancellation of

promotions and under the relevant Statutes at the relevant time, the petitioners were fully qualified and such mass cancellation of promotions was not contemplated. The petitioners were made aware by the respondents by issuing 11 months orders that their appointment is on adhoc basis on the promotional posts for 11 months. So far contention of the petitioners that, orders of petitioners' reversions are going to visit them with civil consequences and/or financial loss is concerned, the learned counsel appearing for the respondent No.1 – University, during the course of his arguments submitted that, the petitioners working on higher posts were paid salary of the higher posts and there will be no recovery made as regards to the salary, as the petitioners have already discharged their duties on higher posts. In case the petitioners have further grievance about financial loss/civil consequences suffered by them on account of their reversion from promotional post to the original post, the petitioners are free to make representations to the Respondent – University, and in

case such representation is filed, the Respondent - University to take appropriate decision on the said representation in respect of not to withdraw the financial benefits conferred on the petitioners by virtue of their adhoc appointments on the promotional posts from 2010 to 2014. It would be open for the Respondent - University and the State Government to take sympathetic view keeping in view the satisfactory services rendered by the petitioners on promotional posts on adhoc basis. In respect of the one of the petitioner namely Yakeenuddin s/o. Moinuddin in Writ Petition No. 6592/2014, who stood retired, it will be open for the Respondent - University and the State government not to withdraw the benefits already granted to the said petitioner, however, we make it clear that, we have not expressed any opinion about the said grievance.

54. It is the grievance of the petitioner in Writ Petition No. 7061 of 2014 that, One Shri R.G. Bhagyawant, who was junior to the petitioner was

given promotion, however, the petitioner was denied the same. In fact the said action of the Respondent granting promotion to said Shri R.G. Bhagyawant was challenged by the petitioner by way of filing Writ Petition, and certain directions were issued to the Respondents in the said Writ Petition, to consider the claim of the petitioner, and accordingly the petitioner was given ad hoc promotion for 11 months on every occasion. The petitioner's grievance that, Shri R.G. Bhagyawant, who was junior to the petitioner was given promotion on regular basis, has been already considered by this Court. The petitioner's prayer to grant him regular promotion cannot be considered in view of the reasons already assigned in the foregoing paragraphs.

It is also not possible for this Court to accept the arguments of the learned counsel appearing for the petitioner that, though the petitioner was entitled for the vacant post in the year 2010, however, the Respondent No.2 - University

promoted the petitioner temporarily in the year 2010. In fact along with other petitioners, the petitioner in Writ Petition No. 7061 of 2014 was appointed on temporary basis for 11 months pending regular selection process, and therefore, we do not find any deliberate and intentional attempt on the part of the University to deprive the petitioner from appointing him on promotional post.

However, we make it clear that, the petitioners, who are qualified as per the amended Statutes of 2014, their cases deserve to be considered for promotion by the D.P.C. which is already constituted. The learned counsel appearing for the Respondent University has submitted that, those petitioners, who possess qualifications as per the amended Statutes of 2014, they have already been considered for appointment on promotion. We make it clear that, the petitioners, who possess qualification as per the amended Statutes of 2014

have right to be considered for appointment on promotional post.

55. In the light of discussion/reasons recorded in foregoing paragraph Nos. 41 to 54, the reliefs prayed by the petitioners cannot be granted. Consequently the Petitions stand dismissed. Rule stands discharged accordingly.

Sd/-

(P.R. BORA, J.)

Sd/-

(S.S.SHINDE,J.)

sga/-