

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2739 OF 2014**

**Kolhapur Agricultural Produce Market)
Committee, Kolhapur through its Secretary)
Having its office at Shahu Marketyard Kolhapur) ..Petitioners**

Vs.

1 State of Maharashtra)
through Department of Marketing)
Mantralaya Mumbai)

2 Director of Marketing)
State of Maharashtra having his office at Pune)

3 Divisional Joint Registrar)
Co-operative Societies, Kolhapur Division,)
having his office at Udyog Bhavan,)
Assembly Road, Kolhapur,)

4 Sanjay B Kulkarni)
Age Adult, Occ: Service residing at 15, Swami)
904, "A" Ward, Sardar Park, Deokar Panand,)
Kolhapur)

..Respondents

Mr. Chetan Patil for the Petitioner
Mrs Gauri Rao AGP for the Respondent Nos.1 to 3
Ms Neha Bhide for the Respondent No.4

CORAM : R. M. SAVANT, J.

DATE : 25th June, 2015

ORAL JUDGMENT

1 Rule. With the consent of the Learned Counsel for the parties
made returnable forthwith and heard.

2 The Writ Jurisdiction of this court is invoked against the order dated 31-5-2012 passed by the Divisional Joint Registrar Co-operative Societies, Kolhapur, Division, Kolhapur, by which order, the Revision Application filed by the Respondent No.4 herein, came to be allowed and the directions as contained in the operative part of the impugned order came to be issued. The directions were to the effect that the Respondent No.4 should be given benefit of salary and arrears having regard to the directions issued by the Director of Marketing Committee dated 30-9-2010, the resolution passed by the Marketing Committee dated 30-9-1990 and as per the resolution and policy of the State Government in respect of time bound promotions.

3 The Respondent No.4 herein was appointed as a Junior Engineer with the Petitioner, Agricultural Produce Market Committee. A resolution came to be passed by the Petitioner on 30-9-1990 which resolution was passed in view of the representations made by the Respondent No.4 that he should be given the benefit of the designation and the salary of the Engineers working with the State Government. The resolution was to the effect that since the said aspect lies within the domain of the Director of Marketing and therefore if any recommendation is made by the Director of Marketing, then the Petitioner would have no objection to implement the said recommendation. At this stage, it is required to be noted that the aforesaid resolution has been cancelled in the meeting dated 26-5-2010 of the Petitioner on the ground that the resolution

passed on 30-9-1990 is illegal as the employees of the Petitioner Marketing Committee can only be given salary etc. as per the directions of the Director of Marketing. It seems that the Respondent No.4 herein was making representations from time to time for implementation of the said resolution dated 30-9-1990.

4 The Respondent No.4 ultimately invoked the Revisionary Jurisdiction under Section 43 of the said Act by filing a Revision Application and claimed the following substantive relief :

“(a) The Hon'ble Authority may call for and examine the proceeding of a Market Committee and record in respect of petitioners case and after verification issue directions to the Market Committee as per Government Rule, the Petitioner being graduate to designate him as Assistant Engineer and pay scale of the assistant engineer with retrospective effect of arrears payable to the petitioner by fixing the pay.”

5 The said Revision Application was replied to on behalf of the Petitioner and at the outset in one of the opening paragraphs, the Petitioner raised an objection to the maintainability of the Revision Application as also the jurisdiction of the Divisional Joint Registrar to try and entertain the said Revision Application. It was also stated in the said reply that the resolution dated 30-9-1990 has been cancelled by the Petitioner in its subsequent meeting dated 26-5-2010. It seems that in the Revision Application reliance was placed on behalf of the Respondent No.4 on the directions issued by the Director of

Marketing as contained in the letter dated 30-9-2010, as also the circular issued by the State Government dated 1-4-2010 concerning time bound promotions. In the context of the reliance placed on the said documents, the Petitioner in paragraph 20 of its reply submitted that in the circular dated 1-4-2010, the Government has specifically mentioned that in so far as isolated posts are concerned, separate orders will be issued in respect of time bound promotions. It was further submitted that as per the Petitioner's knowledge, the Government has not issued any orders in respect of time bound promotions for persons occupying isolated posts. It was further submitted that in view thereof, the Respondent No.4 who was the Revision Petitioner was not entitled for time bound promotion or the higher pay scale or arrears as claimed.

6 The Revisionary Authority considered the said Revision Application and has by the impugned order dated 31-5-2012, allowed the Revision Application and has issued the directions which have been adverted to in the earlier part of this order. The impugned order however does not disclose that the objection to the maintainability of the Revision Application has been considered by the Revisionary Authority. Nor the Revisionary Authority has considered the case of the Petitioner as regards the applicability of the circular dated 1-4-2010 to which reference has been made by the Director of Marketing in his letter dated 30-9-2010. Hence without considering the aforesaid aspects, the Revision Application has been allowed and the

directions which have been adverted to hereinabove, have been issued by the Revisionary Authority. In the context of the fact that the Respondent No.4 is occupying an isolated post unless there are clear cut directions of the State Government in respect of time bound promotions to persons occupying isolated posts, the benefit of the circular dated 1-4-2010 cannot be extended to the Petitioner as the said circular itself states that separate directions will be issued in respect of isolated posts. In the instant case, what the Revisionary Authority is done is without considering the aforesaid aspects issued the direction that the Respondent No.4 should be given benefit of the circular dated 1-4-2010 in respect of the time bound promotions, as also the direction as regards payment of arrears to the Respondent No.4, has been issued to the Petitioner APMC. The Revisionary Authority has also failed to take into consideration the import of the Resolution dated 30-9-1990 of the Petitioner and without considering the import of the said Resolution has issued the direction that the same be complied with.

7 In my view, therefore, the impugned order dated 31-5-2012 would have to be quashed and set aside and is accordingly quashed and set aside. The Revision Application is required to be relegated back to the Revisionary Authority i.e. the Divisional Joint Registrar, Kolhapur, Division Kolhapur, for a denovo consideration of the Revision Application in terms of the observations made hereinabove. On remand, the parties to appear before

the Revisionary Authority on 14-7-2015. The Revisionary Authority thereafter to decide the Revision Application latest by 15-10-2015. Needless to state that the Revision Application would be considered on its own merits and in accordance with law, but having regard to the observations made hereinabove.

8 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]