

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

WRIT PETITION NO.4828 OF 2015

Dr.Jawahar Dwarkadas Kabra,
Age : 57 Years, Occ. Service as
Associate Professor and Head of
the Department of Commerce Faculty
in JES College, Jalna.
R/o 56, Jethmal nagar,
Near Ganpati Netralaya, Jalna.

...PETITIONER

VERSUS

1. Jalna Education Society, Jalna
Through its Secretary,
C/o JES College, Jalna
2. JES College, Jalna,
Through its Principal.
3. Dr.Ramesh Shankarlal Agrawal,
Principal, JES College, Jalna,
Age : 59 Yrs., Occ : Service,
R/o JES College Quarters, Jalna.
4. Dr.Babasaheb Ambedkar Marathwada
University, University Campus,
Aurangabad,
Through its Registrar
5. The Joint Director,
Higher Education, Aurangbad.
6. Dr. Dileep Sopanrao Arjune,
Age : 44 Yrs., Occ.: Service as
Associate Professor in JES College,
R/o Rahi Sadan, Newasekar Nagar,
Mantha Road, Near Dnyaneshwar School,
Jalna.
7. Dr.Sunil Ramrao Mirgane,
Age : 50 Yrs., Occu.: Associate Professor

in JES College,
R/o Sukh Shanti Nagar,
Mantha Road, Jalna.

...RESPONDENTS

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Mr.Ajay S. Deshpande, Advocate for Petitioner;
Mr.S.R.Yadav, AGP for Respondent No.5;
Mr.Yogesh P. Deshmukh, Advocate for Respondent Nos. 1 to 3;
Mr.S.V.Deshmukh, Advocate for Respondent Nos. 6 and 7.

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

Date of reserving the judgment : 15th December, 2015

Date of pronouncing the judgment : 17th February, 2016

JUDGMENT:(Per P.R.Bora, J.)

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of the learned Counsel for the parties.

2. In the present petition, the petitioner has sought quashment of the process carried out by respondent no.2 College for the appointment of Professors under the Career Advancement Scheme (hereinafter referred to as, "CAS") from amongst the eligible Associate Professors alleging that the same has been carried out contrary to the Government decisions and

ignoring the principal of 'seniority-cum-merit'. The petitioner has also sought the direction to the respondents for carrying out the appointment process afresh strictly in accordance with seniority from amongst the eligible Associate Professors working in respondent no.2 College.

3. As is revealing from the contents of the petition, in the year 1986, the petitioner joined as Lecturer in Commerce in respondent no.2 College run by respondent no.1 and since then he is in service of respondent no.2 College. The petitioner has secured the degree of M.Com. in the year 1984. He obtained the Degree of M.Phill. in the year 1989 and the degree of Ph.D. in the year 2010. Being an appointee of the period prior to 1991-1992, the petitioner is exempted from passing NET/SET examinations. In the year 1993, the petitioner became a Lecturer in Senior College. He obtained the Selection Grade w.e.f. 1.1.2006 and was thus designated as an Associate Professor according to changed nomenclature of the said post.

4. It is the contention of the petitioner that the conferment of the status of Professor under CAS is on the basis of seniority amongst the eligible Associate Professors. The Associate Professors who have completed three years of service

in the annual grade pay of Rs.9,000/- and, who possess Ph.D. degree in the relevant discipline, are eligible to be appointed and designated as Professor. It is the further contention of the petitioner that since he was fulfilling the eligibility criteria, and since he was the senior-most teacher in respondent no.2 College, he was entitled to be conferred the post of Professor.

5. It is the further contention of the petitioner that, having regard to the fact that more than double the number of students are taking education in Commerce faculty of respondent no.2 college, as against the number of students studying in Arts and Science faculty taken together, the post of Professor must have been allotted to the faculty of Commerce. It is the further contention of the petitioner that out of three posts of Professor sanctioned by respondent no.5 i.e. the Joint Director of Education for respondent no.2 college, at least one post must have been allocated to Commerce faculty considering the number of students enrolled in the said faculty. The petitioner has alleged that respondent no.3 who holds the post of Principal of Respondent no.2 College, and who is vested with the power to decide the allocation of the posts of Professor to any particular subject, however, did not allocate any post of Professor for Commerce faculty with mala fide intention and

ulterior motive to make the petitioner to suffer financial loss.

6. As stated in the petition, one post of Professor is earmarked for being filled in by way of nomination in the subject of Physics whereas the other two posts which are to be filled in by promotion from amongst the eligible Associate Professors, are earmarked for the subjects of Chemistry and Economics. The petitioner has further alleged that respondent no.3, deliberately and with mala fide intention, earmarked the post of Professor under CAS for the subjects of Chemistry and Economics in which the incumbent being considered are quite junior to the petitioner. The petitioner has contended that Dr. S.R.Mirgane (respondent no.7) joined the respondent no.2 college in the year 1990 and Dr. Arjune (respondent no.6) is an appointee of 1995 whereas the petitioner has joined on 21.7.1986 and thus is senior to both of them. The petitioner has further contended that in view of the Government resolution dated 30th of July, 2010, the post of Professor under CAS is to be filled in by appointing the senior-most eligible Associate Professors and as such, the petitioner is entitled to be appointed on the said post in preference to respondent nos. 6 and 7. The petitioner has, therefore, prayed for quashment of the process alleging the same to have been carried out in

violation of the Government decisions and more particularly ignoring the norm of seniority and has consequently prayed for carrying out the said process afresh.

7. Respondent nos. 6 and 7 had filed Civil Application seeking intervention which was allowed by this Court and consequently they came to be added as respondents.

8. Respondent no.3, respondent No.5 and respondent Nos. 6 and 7 have filed their affidavits in reply and have thereby opposed the contentions raised in the petition and the prayers made therein. The petitioner has filed the rejoinder affidavit to the affidavit in reply filed by respondent nos. 6 and 7. The petitioner has, thereafter, filed one more rejoinder to oppose certain contentions raised in the affidavit in reply filed by respondent no.3. Respondent no.3 has also filed additional affidavit in reply.

9. Respondent no.3 has contended that the promotion under CAS is not , based upon number of students admitted in any particular Department in the college. According to respondent no.3, the contentions raised by the petitioner in this regard are misconceived. Respondent no.3

has also denied the allegation made against him that he was having any grudge against the petitioner. Respondent no.3 has further contended that the selection for the post of Professor has been done as per the guidelines and directions issued by the Government Resolution dated 30th July, 2010, 26th October, 2010, and 7th Sept., 2011. Respondent no.3 has further contended that, Regulation No.1893 of the University has also been considered for allocation of the post of Professor. Respondent no.3 has also referred to the circular dated 16.11.2010, issued by respondent No. 4 University wherein it is mentioned that the Department /Subject, where maximum research work is done by the faculty members and the number of Associate Professors is more, is to be given preference for the post of Professor.

10. In their joint affidavit in reply, respondent nos. 6 and 7 have alleged that the petitioner has not disclosed the complete facts and has suppressed the material facts. Respondent nos. 6 and 7 have further contended that as per the University Grants Commission (for short, `UGC') guidelines, the Government policy, and also the CAS regulations, promotion to the post of Professor is strictly on the merit basis and not on the basis of seniority. Respondent no.6

is claiming promotion from the reserved category as he belongs to Scheduled Caste (Mang) category and that he has maximum API Score. It is contended that respondent no.6 has published more than 30 papers in the year 2011 and more than 65 papers in the year 2014 and has acquired Ph.D degree in August, 2000. It is further contended that respondent no.6 had approached this Court by filing Writ Petition No.6544/2014, seeking directions to the College to complete the selection process for merit based promotion to the post of Professor. It is further contended that, in pursuance of the order passed by this Court in the aforesaid writ petition the process for the promotions has been initiated by the respondent College.

11. It is further contended that respondent no.7 is possessing the highest merit. It is denied that respondent No.7 was declared surplus and further that there is no workload available for him. It is further contended that respondent no.7 acquired the Ph.D degree in the year 1995. It is further contended that respondent no.7 has published more than 20 research papers upto year 2009 and more than 65 research papers upto the year 2014. It is further contended that API Score of respondent no.6 is 1074 and that of respondent no.7 is 1266. Further, it is averred that the

other colleges also have promoted the Associate Professors to the post of Professors strictly on the basis of merit and not on the basis of seniority. The respondents have, therefore, prayed for dismissal of the petition.

12. Heard the learned Counsel appearing for the respective parties. Perused the pleadings of the parties and the documents filed on record by them.

13. The issue which falls for our consideration in the present petition is whether the process of selection carried out by respondent nos. 1 to 5 in the appointment to the posts of Professor from amongst the Associate Professors is contrary to the Government decisions. As noted here-in-above, the petitioner has raised the following two objections in respect of the selection process so carried out:

- (i) That the principle of seniority-cum-merit has not been followed.
- (ii) That, the post of Professor has deliberately been not allocated to Commerce Faculty though the strength of students studying in Commerce Faculty is almost double to the number of students in Arts and Science Faculty.

As such, we do not find any substance in the submission made by the petitioner that the promotion to the post of Professor is to be given on the basis of, and in accordance with seniority-cum-merit.

14. As is revealing from the pleadings of the parties, total three posts of Professors were to be filled in in respondent no.2 College from amongst the eligible Associate Professors serving in the said College. As per the Government Resolution dated 30th of July, 2010, which is based on the directions issued by the Human Resources Department of Union of India, vide its letter dated 31st December, 2008, and the earlier State Government resolution dated 12th August, 2009, ten per cent of the sanctioned posts of Associate Professors on the establishment of the College are liable to be converted into the posts of Professors. Twenty five per cent of such converted posts of Professors are to be filled in by direct recruitment, or by deputation and the remaining seventy five per cent posts of such Professors are to be filled in by promotion from amongst the eligible Associate Professors.

15. It is not in dispute that having regard to the number of Associate Professors on the establishment of respondent no.2

College, three posts have been created in the cadre of Professors and the process of selection for the said posts has been carried out. The material on record further reveals that out of the said three posts, one post has been filled by direct recruitment and the same was allocated to the subject of Physics; whereas, the remaining two posts, which were to be filled from amongst the eligible Associate Professors, have been allocated for the subject of Economics and Chemistry, respectively.

16. The grievance of the petitioner is in respect of appointments made by way of promotion from amongst the Associate Professors. The petitioner has alleged that respondent no.3, with mala fide intention and ulterior motive, to make the petitioner suffer financial loss, earmarked one post for the subject of Chemistry and the other for the subject of Economics. According to the petitioner, taking into account the number of students studying in Commerce faculty, one post of Professor must have been allocated to, and earmarked for the faculty of Commerce.

17. As provided in the Government Resolution dated 30th of July, 2010, the posts of Professors to be filled in are to

be identified by the University in consultation with the concerned college. The material on record shows that in view of the provision as aforesaid, respondent no.3 had sought guidance from respondent no.4 University. The material on record further shows that respondent no.4 University vide its communication dated 16th November, 2010, addressed to the Principals of the affiliated colleges has laid down certain guidelines for filling in the ten per cent posts of the Professors from amongst the cadre of Associate Professors; clause No.7 of which stipulates that while determining ten per cent posts of Professors if it is not possible to allocate post of Professor for each and every faculty, the preference shall be given to allocate the posts of Professor to the Department / Faculty wherein there are more number of Associate Professors and wherein more research work has been done. It appears that, applying the aforesaid criteria the ultimate decision has been taken by respondent no.4 University to allocate the three posts, respectively for the subjects of Physics, Economics and Chemistry.

18. The aforesaid Government Resolution which has been heavily relied upon by the petitioner does not envisage that while identifying and allocating the post of

Professor to a particular subject or faculty, the number of students studying in the said subject / faculty shall be a weighing factor. Though it was vehemently argued by the learned Counsel for the petitioner that the post of Professor must have been allocated to the subject of Commerce, taking into account the strength of the students studying in the said faculty, the learned Counsel did not bring to our notice any such provision or Government decision or policy to support his said contention that the post of Professor was liable to be earmarked for or allocated to the subject / faculty by virtue of the strength of the students enrolled in the said faculty. Further, we are not convinced as to how the strength of the students in a particular faculty can be a relevant factor for giving promotion to the post of Professor in the said subject or the faculty. On the contrary, the decision of the Government as reflected in the Government Resolution dated 30th of July, 2010, to allocate the post of Professor for a subject in which maximum research work has been done appears to be a most rational and just criteria. Ultimately, the promotion to a higher academic post must depend upon and shall be co-related to the academic performance and not to the strength of the students. In the instant case, as has been contended by respondent no.3 in his affidavit in reply while

identifying the subjects for allocating the post of Professor, the standard which was applied was the volume of the research work done in the subjects concerned and, accordingly, the subjects / faculties wherein more research work has been done, have been selected for allocation of the post of the Professor to the said subject or the faculty. We do not find anything wrong in the said decision of the respondents. The objections raised in this regard by the petitioner are liable to be rejected for the reasons stated hereinabove.

19. Since subject of Commerce was not identified for allocation of the post of Professor, in fact, the petitioner was not at all in the fray and, as such, the another issue raised by the petitioner i.e. of the promotion on the basis of 'seniority cum merit' does not hold any relevance and appears us to be futile. Moreover, after having considered the material on record, we are not convinced that the promotional appointment on the post of Professor was to be made on the principle of seniority cum merit. On the contrary, there is ample material on record demonstrating that for such appointments the 'merit cum seniority' was the only yardstick.

20. After having carefully gone through the text of the

Government Resolution dated 30th of July, 2010, we find it difficult to accept the contention of the petitioner that the aforesaid Government resolution envisages promotion to the post of Professor on the basis of seniority-cum-merit. It would be appropriate to reproduce here-in-below clause (i) in the aforesaid Government resolution which reads thus:

"(i) विद्यापिठाशी संलग्नित महाविद्यालयाच्या कुठल्याही विभागामध्ये फक्त एकच प्रोफेसराचे पद असेल. सदर प्रोफेसराचे पद त्या महाविद्यालयातील एकुण सहयोगी प्राध्यापकाच्या (Associate Professor) संख्येच्या १०% राहणार असून त्यापैकी २५% पद हे सरळसेवा नियुक्तीने (Direct Recruitment) अथवा प्रतिनियुक्तीने (Deputation) भरण्यात येईल आणि उर्वरीत ७५% पदे (तीन चतुर्थांश पदे) हे एकुण गुणवत्तेच्या निकषा वरून विभागनिहाय अधिकतम १ या प्रमाणे सेवाजेष्ठ पात्रताधारक सहयोगी प्राध्यापकांमधून भरण्यात येईल. तथापि सहयोगी प्राध्यापकाच्या संख्येनुसार विहित गुणवत्तेवर आधारित पदोन्नतीने अथवा सरळसेवा भरतीने/प्रतिनियुक्तीने भरण्यासाठी प्राध्यापक (Professor) पदांची संख्या निश्चित करतांना ती पूर्णाकात नसेल तर ती पुढच्या पूर्णाकात (Integer) धरण्यात यावी."

From the contents of clause (1) reproduced here-in-above, it is quite clear that promotion is to be based on merit cum seniority.

21. The Government Resolution dated 12th August, 2009, issued by the Government of Maharashtra in regard to the revision of pay scales of teachers and equivalent cadres in higher education as per U.G.C. Scheme (6th Pay Commission) also provides that the posts of Professors were to be filled in on the basis of 'merit-cum-seniority' from amongst the Associate Professors. Clause 2(b) of the said Resolution reads thus:

"2.
(a)

(b) Professors in Under Graduate and Post Graduate Colleges:

(i) Ten percent of the number of sanctioned posts of Associate Professor in an Under Graduate College shall be that of Professors and shall be subject to the same criterion for selection / appointment as that of Professors in Universities, provided that there shall not be more than one post of Professor in each Department; and provided further that One-fourth (25%) of the posts of Professor in UG Colleges shall be directly recruited or filled on deputation by eligible teachers and the remaining three-fourths (75%) of posts of Professors shall be filled by **merit promotion from among eligible Associate Professors of the relevant department** of the Under Graduate College. Identification of posts of Professor in an Under Graduate College for being filled through direct recruitment / deputation shall be within the competence of the University acting in consultation with the College. Where the number of posts of Professor worked out as a percentage of the number of posts of Associate Professor for merit promotion or direct recruitment / deputation is not an integer, the same shall be rounded off to the next higher integer. "

22. As we have noted earlier, the Government Resolution dated 12th August, 2009, issued by the Government of Maharashtra was based on the communication dated 31st December, 2008, received from the Ministry of Human Resource Development Department, Higher Education, Union of India. In the said communication, similar provision is appearing, envisaging the promotions on the basis of merit.

23. Even in the UGC Regulation 6.5.2. (Page No.63 of the compilation of the writ petition) it is clearly averred that the post of Professor shall be filled through merit promotion from amongst eligible Associate Professors.

24. In view of the above, it is difficult to accept the contention of the petitioner that the posts of Professors to be filled in from amongst the eligible Associate Professors were to be filled on the basis of seniority cum merit. On the contrary, as elaborated hereinabove, there is ample material on record which unquestionably shows that the appointments on the posts of Professors were to be made on the basis of 'merit cum seniority'.

25. It is not in dispute that respondent no.6 has acquired the Ph.D. degree in the year 2000 and respondent no.7 achieved the same in the year 1995 whereas the petitioner has received the doctoral degree in the year 2010. It is further not in dispute that there were only 5 research publications by the petitioner in the year 2012 whereas respondent no.6 had to his credit 30 research publications upto the year 2014 and similarly, respondent no.7 had published more than 20 research papers upto 2009 and more than 65 research papers upto the year 2014. It is, thus, quite evident that respondent nos. 6 and 7 are possessing more merit than the petitioner.

26. In the judgment relied upon by the learned Counsel for the petitioner, in the case of **Saroj Rani and another V. State of Punjab and others** (AIR 1999 SUPREME COURT 3392), the proposition of law laid down by the Hon'ble Apex Court is in respect of the promotions to be made on the basis of seniority-cum-merit. In the instant case, as discussed by us here-in-above, the promotions were to be made on the basis of merit-cum-seniority. As such, the ratio laid down in the aforesaid judgment may not be of any help to the case of the petitioner.

27. Nextly, though the petitioner has alleged that respondent no.3 has deliberately deprived the petitioner from his rightful claim for being considered for promotion to the post of Professor under Career Advancement Scheme, since respondent no.3 has developed extreme animosity against the petitioner, there is absolutely no material adduced by the petitioner to substantiate his said allegation.

28. In so far as the objections raised by the petitioner, as about the eligibility of respondent nos. 6 and 7, for to be appointed on the post of Professor are concerned, both the respondents have denied the said objections. Respondent no.6 has contended that the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005, are applicable only to the Government services at the time of recruitment. Respondent no.7 has denied that he was ever declared surplus. In their affidavit in reply and the additional affidavit in reply, the respondent nos. 6 and 7 have raised certain allegations against the petitioner of having been involved in the malpractices at the time of examinations conducted in past. According to us, neither the allegations made by the petitioner

against respondent nos. 6 and 7 nor the allegations made by respondent nos. 6 and 7 against the petitioner have any material bearing on the subject matter and hence deserve no consideration.

29. After having considered the entire material on record, it does not appear to us that the petitioner is entitled for any relief as prayed in the petition. Hence, the following order:

ORDER

a) The petition is dismissed. Rule discharged. No order as to costs.

(P.R.BORA)
JUDGE

(S.S.SHINDE)
JUDGE

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