

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

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WRIT PETITION NO.9081 OF 2014

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1. Anil s/o Raybhan Adhane,
age 40 years, Occ. Service as
Assistant Secretary with Aurangabad
Zilla Krishi Utpanna Bazar Samiti,
Jadhavwadi, Aurangabad.
Tq. Aurangabad, Dist. Aurangabad.

2. Santosh S/o Sukhdev Gaikwad,
age _ years, Occ. Service as
Marketing Superintendent with
Aurangabad Zilla Krishi Utpanna
Bazar Samiti, Jadhavwadi,
Aurangabad, Tq. Aurangabad.
District. Aurangabad.

Petitioners/
(orig non applicant nos.
3 and 4.)

VERSUS

1. The State of Maharashtra,
Through Its Principal Secretary,
Department of Agriculture and Panan,
M. S. Mantralaya, Mumbai.
2. The Hon'ble Minister,
Department of Agriculture and Panan,
Mantralaya, Mumbai (M.S.),
3. The Director,
Marketing, Maharashtra State, Pune.
4. The Administrator,
Aurangabad Agricultural Produce
Market Committee, Aurangabad.
5. Secretary,
Aurangabad Agricultural Produce
Market Committee, Aurangabad.

6. Kailas s/o Ramrao Chavan,
age 42 years, Occ. Service,
R/o. Aurangabad Agricultural Produce,
Market Committee, Aurangabad.
7. Machindra s/o. Jagannath Gore,
age 57 years, Occ. Retired.
R/o as above.
8. Machindra s/o Bala Kokane,
age 56 years, Occ. Retired,
R/o as above.

Respondents No.7 and 8 deleted
as per court's order dated 21.11.2014.

9. Dhananjay s/o Panditrao Deshpande,
age 47 years, Occ. Service,
R/o as above.
10. Ashok s/o Ambadas Kale,
age 49 years, Occ. Service,
R/o as above.
11. Bhanudas s/o Tukaram Kale,
age 44 years, Occ. Service,
r/o as above.
12. Arun Asaram Makode,
age 41 years, Occ. Service,
R/o as above.
13. Santosh s/o Baburao Wagh,
age 38 years, Occ. Service,
R/o as above.
14. Rajendra s/o Dadarao Kale,
age 37 yrs, Occ. Service,
R/o as above.
15. Sanjay s/o Sai Bansod,
age 36 years, Occ. Service,
R/o as above.
16. Vijay s/o Ashruba Sirsat,
age 39 yrs, Occ. Service,
R/o as above.

17. Ajabrao S/o. Rangnathrao Shejul,
age 56 years, Occ. Service,
R/o as above.

...Respondents...

(Resp no.4 and 5 orig non applnts.
1 and 2 and respondents no.6 to 17
orig applicants.)

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Advocate for Petitioners : Mr. Rajendra S. Deshmukh
AGP for Respondents 1-3 : Mr P.N. Kutti
Advocate for Respondents 6,9 and 11 : Mr. S.S.Thombre
Advocate for Respondents 4,5 :Mr. K.J.Suryawanshi
Respondents No.7 and 8 deleted.
Respondents No.10, 12 to 17 served.

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CORAM : V.K. JADHAV, J.

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Date of Reserving the Judgment : January 18, 2016
Date of pronouncing the Judgment : February 02, 2016.

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JUDGMENT :-

1. By this writ petition, petitioners have challenged the order dated 4.9.2014, passed by respondent no.2-the Hon'ble Minister of Agriculture and Panan Department, Mantralaya, Mumbai, thereby rejecting the appeal preferred by the petitioners, confirming the order dated 30.06.2014 passed by respondent No.3 – the Director of Marketing, Maharashtra State, Pune.

2. The petitioner no.1 Anil s/o Raybhan Adhane, appointed in the year 1996, is serving as a Junior Clerk in Agriculture Produce Market Committee, Aurangabad (hereinafter referred to as “the Committee” for short). The

petitioner No.2 Santosh Sukhdev Gaikwad, appointed in the year 2003, serving as a Vijtantri in Aurangabad Produce Market Committee, Aurangabad. Both of them have made an application dated 28.6.2011 to Respondent no.4-the Administrator for promotion on the post of Assistant Secretary and Marketing Superintendent, respectively, by way of creation of new posts. It is the case of the petitioners that, the Committee considered their performance on the work assigned to them and passed a resolution dated 2.7.2012 for creation of new posts as requested and accordingly by letter dated 3.7.2012 sent to Respondent No.3-Director of Marketing, Maharashtra State, Pune, sought approval to the creation of the said posts as well as giving promotions to the petitioners on respective posts. On receipt of the said letter, respondent No.3 directed certain inquiry regarding the complaints received till that date by the Deputy Registrar, Co-operative Society, Aurangabad, against the said resolution passed by the Committee for creation of new posts and promotions of the petitioners. Said complaint was filed by the present respondent nos. 10,13,14 and 17 along with the others which subsequently withdrew by them. Pursuant to the said directions, inquiry officer had conducted inquiry in the said complaints and forwarded his report to respondent no.3 by letter dated 10.09.2012. Thereafter,

respondent no.3 considered the proposal letter dated 3.7.2012 and also the report submitted by the Inquiry Officer, granted approval to creation of new posts and promotion of the present petitioners on the said post. In light of the said approval, the Committee, vide order dated 17.9.2012 promoted the present petitioners on newly created posts and also prepared the Bindu Namawali as directed by respondent no.3, in this regard.

3. Being aggrieved by the said order dated 14.9.2012, respondent nos. 6 to 17 approached this Court by way of filing Writ Petition No.236 of 2013. The Division Bench of this Court, by order dated 17.6.2013 disposed of the said writ petition with liberty to the petitioners therein to present a comprehensive representation to the Director of Marketing putting forth their their grievance, within a period of six weeks, and the Director of Marketing, after receipt of the said representation, directed to take a decision in the matter after extending opportunity of hearing to the petitioners therein as well as respondents no. 4 to 7 and the concerned Krishi Utpanna Bazar Samiti, as expeditiously as possible, and preferably within a period of eight weeks from receipt of the representation.

4. Thus, respondents no. 6 to 17 herein approached respondent no.3 by filing an application u/s 41-A of The Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for the sake of convenience hereinafter referred to as 'the said Act'). In the said proceedings, petitioners herein appeared and resisted the claim of the present respondents no. 6 to 17 by filing their say. Upon hearing both the sides, respondent no.3 by order dated 23.8.2013 allowed the said application preferred by present respondent nos. 6 to 17 and thereby quashed and set aside the order as well as Resolution passed by the Committee.

5. Being aggrieved by the said order, the petitioners herein preferred an appeal before Respondent No.2 - The Hon'ble Minister of Agriculture and Panan, Department, Maharashtra State, Mantralaya, Mumbai. After hearing the appellants i.e. present petitioners and the respondents, the Hon'ble Minister granted stay vide order dated 8.10.2013. Being aggrieved by the said stay order, present respondents no. 6 to 17 again preferred a writ petition no.8924 of 2013 before this Court. This Court, after hearing both the sides, by order dated 24.10.2013 directed the parties to maintain the position as on today with respect to the posts held by the

present petitioners till further orders passed by the Hon'ble Minister and further directed the Minister to hear the appeal itself on its own merits since the stay petition requires hearing on merit. It is also directed that, the Hon'ble Minister shall decide the appeal itself on its own merits, expeditiously and preferably within three months from the date of order. Thereafter, respondent no.2, the Hon'ble Minister, after hearing both the sides, has been pleased to remand the said matter by an order dated 01.03.2014 with a direction to consider the relevant provisions of the Act, seniority and decide the matter after giving due hearing to both sides.

6. Being aggrieved by the order dated 1.3.2014, present respondent nos. 6 to 17 preferred a writ petition No.2993 of 2014 before this Court. This Court, by order dated 3.4.2014 passed in writ petition No.2993 of 2014 directed respondent no.3 – the Director of Marketing to deal with the appeal as early as possible and preferably within a period of one month from the date of the order. Respondent No.3 – The Director of Marketing, by an order dated 30.6.2014 quashed and set aside the Resolution No.2 and 3 passed by the Committee and also quashed and set aside the order passed pursuant to the said Resolution by the Committee dated 17.9.2012.

7. Being aggrieved and dis-satisfied by the said order dated 30.6.2014 passed by respondent no.3, present petitioners preferred an appeal before the respondent no.2 – Hon'ble Minister. During the pendency of the said appeal, respondent no.4 without waiting for its decision, by an order dated 5.7.2014 reverted the present petitioners on their original posts i.e. Junior Clerk and Vijtantri, respectively. The petitioners, by way of filing writ petition Stamp No.18498 of 2014 challenged the order dated 30.6.2014 passed by the respondent no.3 – Director of Marketing and also their subsequent reversion by order dated 5.7.2014. During the pendency of the said writ petition before this Court, respondent no.2 the Hon'ble Minister heard the said appeal finally and passed the impugned order dated 4.9.2014, rejecting thereby the appeal preferred by the present petitioners. So, considering this very fact, the petitioners have withdrawn their said writ petition (Stamp) No.18498 of 2014 with liberty to file a fresh petition. Present petitioners, thus, approached this Court by filing present writ petition challenging the order dated 4.9.2014 passed by respondent no.2– the Hon'ble Minister, as detailed above.

8. Learned counsel for the petitioners submits that, in view of the provisions of Rule 46 of the Marketing Committee

Employees Service Rules (herein after referred to as “Service Rules”), the market Committee in exceptional circumstance, can promote any employee of the Committee on any post without following seniority list. The learned counsel submits that, the Hon'ble Minister has not considered Rule 46 of the Service Rules while deciding the appeal. Learned counsel further submits that, in view of the provisions of said Rule 46, the Committee by a resolution dated 2.7.2012 resolved for creation of new posts and accordingly, forwarded a letter dated 3.7.2012 to respondent no.3 Director of Marketing, seeking approval for creation of new posts as well as grant of promotion to the petitioners on the respective posts. Respondent no.3 – Director of Marketing, by order dated 14.9.2012 gave approval to creation of new posts as well as promotion of the petitioners on the said posts, respectively. Pursuant to the said order dated 14.9.2012, the Committee, by an order dated 17.9.2012 promoted the present petitioners on newly created posts and also prepared Bindu Namawali as directed by respondent no.3 therein. Learned counsel submits that, respondent no.3, as it appears from the order dated 23.8.2013 reviewed its own order dated 14.9.2012. Learned counsel submits that, respondent no.3 has no power to review its own order and in view of the provisions of Section 52-B of the said Act, respondent nos.6 to 17 herein

required to file a statutory appeal against the order dated 14.9.2012 passed by respondent no.3. Learned counsel submits that, respondent no.2-the Hon'ble Minister has not considered the same.

9. Learned counsel further submits that, as per order passed by the Hon'ble Minister dated 1.3.2014 matter was remitted back to respondent no.3-Director of Marketing for decision afresh considering the fact that respondent no.3 has not considered certain aspects of the matter. However, respondent no.3 Director of Marketing, even though matter was remitted by respondent no.2 the Hon'ble Minister with certain specific directions, without following the same by order dated 30.06.2014 allowed the application preferred by respondents no. 6 to 17 and thereby quashed and set aside the Resolution no.2 and 3 dated 2.7.2012 and further order of promotion based on its basis dated 17.9.2012. Learned counsel further submits that, respondent no.2 the Hon'ble Minister has not taken into account whether respondent no.3 has followed the directions given by him when the matter was remitted back by the impugned order dated 4.9.2014 rejected the appeal preferred by the present petitioners.

10. Learned counsel further submits that, the petitioners are not at all promoted by way of jumping promotions. Learned counsel submits that respondents no.6,7,8,9 and 17 are not eligible for being considered for promotion as per the Government Resolution dated 25.2.2005. Learned counsel submits that, respondents no.13 to 15 are juniors to the present petitioners and respondents no.11 and 12 have already been granted pay scale of promotional posts by way of time bound promotion. Learned counsel further submits that, the Market Committee is an independent local body having its own Rules and Regulations and as per the provisions of The Maharashtra Agricultural Produce Marketing Committee (Development and Regulation) Act, 1963 and rules therein, the Committee is having every power to create new posts and promote employees on the said post. Learned counsel for the petitioners further submits that, even most of the respondents lost their interest in the matter. Learned counsel submits that, the impugned order dated 4.9.2014 passed by the respondent no.2 – the Hon'ble Minister, is, thus liable to be quashed and set aside and further the petitioners may be granted all consequential benefits thereof in the event the impugned order passed by the Minister is quashed and set aside.

11. Learned counsel for respondents nos. 6, 9 and 11 submits that, the petitioners are junior employees to other employees including the respondents and in view of the said fact, the then Administrator, who was the retired Government Servant and the Secretary, who is cousin of petitioner no.1, only with a view to give jumping promotion by superseding other employees caused to pass an illegal resolution granting promotions to the petitioners thereby creating additional posts. Learned counsel submits that, even staff members were pressurized by passing some coercive orders like suspension and etc., for the reason that they should not raise any grievance against said resolution. Learned counsel submits that, on the basis of the order dated 14.9.2012 issued by respondent no.3 the Administrator issued the order dated 17.9.2012, which is admittedly a holiday, in favour of the petitioners.

12. Learned counsel for the said respondents submits that, in view of the provisions of Rule 46 of the Service Rules, promotions are required to be granted as per the Seniority. Learned counsel submits that, respondent no.3 has not reviewed its own order in view of the provisions of Section 41-A of the said Act. The respondents/employees preferred a representation before respondent no.3 as per the

liberty granted by the Division Bench of this Court vide order dated 17.6.2013 passed in Writ Petition No.236 of 2013. Learned counsel further submits that, respondent no.3 the Director of Marketing is empowered by the provisions of Section 41-A of the said Act to prevent implementation of any Resolution, if, it appears that, Resolution has been passed against the provisions and against the public interest or causing obstruction in day to day running of the Market Committee. Learned counsel submits that, in light of the said provisions, respondent no.3 by order dated 23.8.2013 pleased to allow said application filed by the respondents/employees u/s 41-A of the said Act and accordingly, cancelled resolution No.2 and 3 dated 2.7.2012 passed by the Committee and also cancelled the order passed pursuant to the said Resolution dated 17.9.2012.

13. Learned counsel submits that, the Respondent authorities ought not have created such posts and approved the same by passing resolution dated 2.7.2012. Learned counsel further submits that, even in the order of creation of posts itself, names of the petitioners were mentioned. In fact, after creation of the posts, the employees of the Market Committee should have been considered for the said newly created posts. The said order itself indicates that with some

ulterior motive it was decided to grant jumping promotions to the petitioners only. Learned counsel submits that, the order passed by the Hon'ble Minister is proper, correct and legal and calls for no interference. There is no merit in the writ petition. Writ Petition is liable to be dismissed.

14. Mr. Kutti, the learned AGP appearing for respondents No.1 to 3 submitted that, the Director of Marketing, by an order dated 30.6.2014 decided the appeal on merits with the observations that there is no any exceptional situation in the Agriculture Produce Market Committee, Aurangabad to grant jumping promotions to the petitioners by creation of new posts. The learned AGP further submits that respondent no.3 – the Director of Marketing has also recorded the reasons that, in the concerned Agriculture Produce Market Committee 19 posts are vacant and Assistant Secretary and Marketing (Bazar) Superintendent posts are available for promotion, even then, the Committee created the posts. It is also observed that reasons assigned for creation of said posts are not acceptable. The learned AGP thus, submits that respondent No.2- the Hon'ble Minister has rightly passed the impugned order. The impugned order calls for no interference. There is no substance in the writ petition and writ petition is thus, liable to be dismissed.

15. I have also heard Mr. Suryawanshi, the learned counsel for respondents No.4 and 5.

16. It appears that, present petitioners have made an application dated 28.6.2011 to the Respondent Administrator for promotion to the post of Assistant Superintendent and Marketing Superintendent respectively by way of creation of new posts. Consequently, the Committee by Resolution dated 2.7.2012 decided for creation of new posts and accordingly forwarded the proposal dated 3.7.2012 to respondent no.3 – the Director of Marketing seeking approval to creation of the said posts as well as giving promotion to the petitioners on the respective posts. Respondent No.3– Director of Marketing has considered the said proposal and also considered the report of inquiry officer on the complaints made by other employees in respect of creation of the new posts and resolution passed by the Committee with regard thereto, by order dated 14.9.2012 granted approval to the creation of the new posts and promotion of the present petitioners on the said posts, respectively. Accordingly, the Committee, vide order dated 17.9.2012 promoted the present petitioners on the newly created posts.

17. Being aggrieved by the same, respondents no.6 to 17 who are also the employees of the Committee had approached the Division Bench of this Court by way of filing Writ Petition No.236 of 2013. The Division Bench of this Court issued notices to the respondents therein. Even respondents no.2 and 3 also filed their affidavit-in-reply in said writ petition in response to the notices issued by the Division Bench of this court. The Division Bench, by order dated 17.6.2013, disposed of the said writ petition with a liberty to the petitioners therein (respondents no. 6 to 17 herein) to present a comprehensive representation to the Director of Marketing, putting forth their grievance, within a period of six weeks from the date of the order, and the Director of Marketing, after receipt of the said representation, directed to take decision in the matter after extending an opportunity of hearing to the petitioners therein as well as respondents no. 4 to 7 and the concerned Krishi Utpanna Bazar Samiti, as expeditiously as possible, and preferably within a period of eight weeks from receipt of the representation. It is to be repeated here that, in light of the said order passed in Writ Petition No.236 of 2013 respondents no. 6 to 17 herein preferred their representation u/s 41-A of the said Act and not u/s 52-B of the said Act. In compliance of the said order passed by the Division Bench

of this Court in Writ Petition No.236 of 2013, respondent no.3-Director of Marketing, by order dated 23.8.2013 decided the matter in favour of the present respondents no. 6 to 17 (petitioners therein) with the observations that the powers u/s 46 can be invoked only under the exceptional circumstances and said exceptional circumstances are lacking in the decision taken by the Committee and further observed that petitioner no.2 Santosh Gaikwad, though appointed as Vijtantri, he is promoted and appointed on the post of Superintendent Marketing which is totally impermissible. Consequently, the Director of Marketing, by said order dated 23.8.2013 set aside the Resolution No. 2 and 3 dated 2.7.2012 and the order passed pursuant to the said resolution by the Committee dated 17.9.2012. The Director of Marketing, as a consequential order, also called back the order dated 14.9.2012.

18. The petitioners have challenged said order by filing of appeal No.43 of 2013 before respondent No.2. The Respondent no.2 – the Hon'ble Minister, by order dated 1.3.2014 directed respondent no.3 – Director of Marketing to consider all the points raised by the parties and decide the matter on merit. The Hon'ble Minister, in the said order dated 1.3.2014 observed that, Respondent-Director of

Marketing is required to take an appropriate decision in the matter after considering the provisions of the said Act and the Rules framed therein with due regard to the Market Committee Employees Service Rules, Seniority etc. Thereafter, by order dated 30.6.2014 respondent-Director of Marketing cancelled the Resolution No.2 and 3 dated 2.7.2012 and pursuant to the said resolution the order passed by the Committee promoting the petitioners dated 17.9.2012. It appears from the said order dated 30.6.2014 that, respondent Director has considered the submissions made on behalf of the parties to the said appeal and also examined the record. The Respondent-Director of Marketing, in the said order has observed that, the reasons considered by the Committee for creation of the said posts are not acceptable. Respondent Director also observed that, even though 19 posts are vacant and post of Assistant Secretary and Superintendent of Marketing were available, there was no need to create new posts and the reasons given thereof by the Committee are not acceptable. Respondent Director of Marketing has also observed in the said order that, in view of Rule 46, promotion is required to be given by observing seniority and under exceptional circumstances only jumping promotions are acceptable. It is further observed in the said order that, in the Resolution passed by the Committee, no

exceptional circumstances are mentioned justifying the jumping promotions granted to the petitioners.

19. In view of the directions given by the Division Bench of this Court in Writ Petition No.236 of 2013, Respondent Director of Marketing had undertaken the exercise of looking into the representation submitted by the respondents no. 6 to 17 herein afresh. The Respondent No.2 the Hon'ble Minister had directed the Respondent No.3- The Director of Marketing to take decision in the matter after extending an opportunity of hearing to all the parties and considering the provisions of the Act and the Rules framed therein and also the provisions of the The Marketing Committee Employees Service Rules and to take an appropriate decision in the matter. So, in view of these peculiar facts, it cannot be said that, the respondent Director of Marketing has reviewed its own order. I find no substance in the submission made on behalf of the petitioners in this regard.

20. Apart from the technical points raised by the petitioners, it appears from the language of Rule 46 of the Service Rules that, on the vacant post of the Committee or newly created posts can be filled by the Committee from those employees who are already in service of the Committee.

For those promotions, seniority list of the officers, Senior Clerks and Junior Clerks shall be maintained and those employees from the list should be promoted as well as in exceptional case by giving reasons, the Committee can promote any employee from any post to any post for cadre. Apparently, there was no any exceptional situation in the Committee at Aurangabad to grant jumping promotions to the petitioners by creation of new posts. The post of Assistant Secretary and Marketing (Bazar) Superintendent were available for promotion and even then, the Committee created said posts. On the backdrop of this, the reasons assigned for creation of said posts are not acceptable. As per Rule 46 of the Service Rules, if certain discretion is vested with the Committee, then that discretion has to be used in exceptional case by recording the reasons. In view of this also, I do not find any error in the order impugned in this writ petition.

21. I have also carefully perused the impugned order passed by the Respondent no.2 the Hon'ble Minister dated 4.9.2014. The Hon'ble Minister has considered oral submissions of the respective parties to the appeal and also considered the documents submitted in support of the said submissions. The Hon'ble Minister, in the said order dated

4.9.2014 has observed that, the decision taken by Respondent No.3 -the Director of Marketing, Maharashtra State, Pune, is in accordance with law, and accordingly, confirmed the order passed by Respondent No.3 the Director of Marketing dated 30.6.2014. I find no fault in the order passed by the Hon'ble Minister. There is no reason to interfere in the impugned order. Writ Petition is, thus, liable to be dismissed. Hence, following order.

ORDER

1. Writ Petition is hereby dismissed.
2. In the circumstances, there shall be no order as to costs.

sd/-
(**V.K. JADHAV**)
JUDGE.

aaa/-

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