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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3175 OF 2005
WITH
REVIEW APPLICATION NO. 82 OF 2008
IN
CIVIL APPLICATION NO.2898 OF 2007
WITH
CIVIL APPLICATION NO. 7803 OF 2010

Pandhari s/o Deoba Waghmare
Age – 53 years, Occ – Service
R/o Samarth Colony, Degloor Road,
Udgir, Taluka – Udgir,
District - Latur

PETITIONER

VERSUS

1. The Honourable Chancellor
Raj Bhavan, Mumbai
2. The Honourable Vice-Chancellor
Maharashtra Animal & Fishery Science University
(Through its Registrar)
Sminary Hills, Nagpur, 440 006
3. The State of Maharashtra
(Through the Principal Secretary
Animal Husbandry Department
Mantralaya, Mumbai)
4. Maharashtra Animal & Fishery
Sciences University,
(Through its Registrar)
5. Shri Avinash Dinkar Deshmukh
Age – 51 years, Occ – Service
Working as Deputy Registrar of
respondent No. 4
R/o to be served through respondent No.4
6. Marathwada Agriculture University, Parbhani
(Through its Registrar)

RESPONDENTS

.....
Mr. K. M. Nagarkar, Advocate for the petitioner
Respondent No. 1 served – Absent
Mr. P. G. Rodge, Advocate for respondent No.2
Ms. S. S. Raut, AGP for respondent - State
.....

**[CORAM : SUNIL P. DESHMUKH &
SANGITRAO S. PATIL, J.J.]**

DATE : 7th SEPTEMBER, 2017

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.):

1. After hearing, factual position emerges that the petitioner had been appointed as clerk in 1978 by respondent No. 6 – Marathwada Agriculture University, Parbhani and was promoted as senior clerk in 1981. He was selected as section officer and worked as such from 11th December, 1996 to 31st January, 2002. The petitioner had been given additional charge of the post of Assistant Registrar on 23rd December, 1997, which continued upto 31st January, 2002.

2. On formation of Maharashtra Animal and Fishery Sciences University (MAFS University), Nagpur, under Maharashtra Act No. XVII of 1998, the petitioner was transferred and promoted as Assistant Registrar in MAFS University at Nagpur pursuant to order dated 9th January, 2002 with effect from 1st February, 2002. He had been promoted as Assistant Registrar on *ad hoc*

basis for a period of eleven months. Under order dated 24th December, 2003 with effect from 8th December, 2003 it was continued for a further period of eleven months. By order dated 15th April, 2004, the petitioner's promotion as Assistant Registrar had been regularized and he was posted in the College of Veterinary and Animal Sciences, Udgir in Latur district. The petitioner complains that regularization had been with effect only from 29th December, 2003.

3. The petitioner contends that he had been subjected to discriminatory treatment in the matter of regularization of his promotion to the post of Assistant Registrar. The petitioner submits that such a treatment has prejudiced his career. In the normal course he would have been eligible to be considered for promotion as Deputy Registrar and would have been promoted accordingly. The petitioner, however, has not even been considered for said post which tantamounts to denial to promote him to the post of Deputy Registrar. He submits that he had been deprived of the post of Deputy Registrar and respondent no. 5 had been favoured by appointment to said post.

4. It is the contention of the petitioner that post of Assistant Registrar in Veterinary College at Udgir was vacant since 1998,

yet he was given only an additional charge although he was eligible for promotion to said post. He further contends that though three posts of Assistant Registrar in Veterinary Colleges in Maharashtra were available along with six other posts in different colleges, but only one post had been filled in at Warud. The petitioner purports to contend that he alone was eligible to be considered for promotion to the post of Assistant Registrar from 1998 from the category of Scheduled Caste, however, in order to see that scheduled caste category candidate does not get regular promotion, the posts were kept vacant without being filled in. The petitioner submits that as a matter of fact, he ought to have been appointed on regular basis by observing reservation to the post of Assistant Registrar.

5. The petitioner purports to compute his experience as more than five years in the post of Assistant Registrar since he was holding additional charge of the post of Assistant Registrar under aegis of the Maharashtra Agriculture University from 23rd December, 1997 to 31st January, 2002 and from 1st February, 2002 till the writ petition had been filed, in MAFS University he had been working as full fledged Assistant Registrar. According to the petitioner, experience certificate and other certificate issued to him on 15th September, 2003 are indication of him bearing

excellent service record.

6. Petitioner contends discrimination in the matter of regularization submitting that around September, 2004 posts of Associate and Assistant Professors to clear backlog of reservation were filled in by nomination and the appointments, according to him, were regularized with retrospective effect, whereas such a retrospective effect had not been given in the matter of his promotion to the post of Assistant Registrar. Although the petitioner has so submitted, the petitioner has not substantiated the same by producing any material to support said contention. Albeit, the petitioner also requests for production of record by respondent No. 4.

7. He claims that regularization on the post of Assistant Registrar with effect from 29th December, 2003 is arbitrary, unreasonable, discriminatory and oppressive and deserves corrective action and claims regularization in said post with effect from 23rd December, 1997.

8. It is submitted on behalf of the petitioner that although respondent No. 5 who had been working as Assistant Professor in Veterinary College at Nagpur, his qualifications did not meet with necessary eligibility criteria, yet, he was directly appointed

on the administrative post of Deputy Registrar for a period of eleven months under order dated 4th July, 2001.

9. Petitioner contends that respondent No. 5 had neither worked on administrative side nor had experience of administrative post or for that matter, that of Assistant Registrar or section officer, yet he was given administrative work under order dated 1st December, 2003 contending further that respondent No. 5 had virtually been made administrative head under the same.

10. It is contended that it was incumbent on respondent no. 4 University to have initiated steps to fill up said post of Deputy Registrar by promotion pursuant to the 1990 Statutes.

11. The petitioner contends that may be, under the statutes of 1990 and particularly under proviso to statute 63 thereof, the Vice-Chancellor is having power to make appointment in an emergency but the same is not for a period exceeding one year and it was incumbent that post ought to have been filled in by promotion and not by continuing appointment illegally made of respondent No. 5. He contends that astonishingly, respondent No. 5 was not only continued for more than eleven months after 4th July, 2001, but he was continued from time to time and had

also been given higher pay scale.

12. It is submitted that the appointment of respondent No. 5 had been illegal and in any case could not have been continued beyond the initial period of eleven months.

13. The petitioner submits that a serious objection has emerged in respect of respondent No. 5 obtaining higher pay scale. It is further submitted that from report of Comptroller, Accounts and Finances of respondent No. 4 MAFS University, it is clear that a fraud on public exchequer has been played and there has been fabrication of public record. He submits that respondent No. 5 had misled the higher authorities and had obtained higher pay scale.

14. It is being submitted that illegalities committed by respondents No. 4 and 5 are evident from the note of the Comptroller of Accounts and Finance. Respondent No. 5 had not got only higher pay scale of Deputy Registrar's post but also got higher pay scale as Assistant Professor under order dated 28th February, 2005. Petitioner submits that despite audit objection having been raised by Comptroller of Accounts and Finance of MAFS University putting up note about fabrication of record recommending instructions to concerned officer to recover

payment of excess amount of Rs.54,228/- no action is taken.

15. Petitioner submits, resultantly, due to appointment and continuation of respondent No. 5 as Deputy Registrar from 2001, the petitioner, who had been seeking appointment to said post on promotion, had been kept away from said post. In the process, it has resulted into denial of promotion to the petitioner as Deputy Registrar.

16. According to the petitioner, he was eligible incumbent to fill up said post of Deputy Registrar by following the Statutes of 1990 and 2002. The petitioner contends, the post of Deputy Registrar is to be filled in the manner, as prescribed under the 2002 Statute, however, respondent No. 5 continued to hold on to said post of Deputy Registrar without following said Statute. According to petitioner, respondent No. 5 has misused said position and gotten himself many undeserving benefits in illegal manner.

17. The petitioner's application in 2004 to Grievance Committee could not bear fruits for it had been difficult in the circumstances as have been referred to, to attend to the meeting scheduled.

18. Petitioner contends that the rejection of his grievance before

the committee had been on a very peculiar and interesting observation to the effect that respondent No. 5 came to be appointed for eleven months pursuant to the recommendation of the Government and the officer concerned. The petitioner did not possess requisite qualification in 2002 and further that the post being isolated, it may not carry any reservation to it. The decision of the Grievance Committee is untenable about him not holding the requisite qualification and the observations are arbitrary, discriminatory and illegal. The petitioner since 2002 had been eligible for promotion to the post of Deputy Registrar. The petitioner thus claims that in spite of being Assistant Registrar, there has been failure to make his appointment in said post. The circumstances and the events tantamount to denial of the same.

19. In its affidavit in reply filed by the Registrar, MAFS University, the writ petition before Aurangabad Bench is resisted contending that while the petitioner has been working as Assistant Registrar with MAFS University, Nagpur, where the University Head / Main Office is located, cause of action for the petitioner for redressal of his grievance being at Nagpur, the petitioner ought to be filed at Nagpur.

20. Referring to Statute 73 of 2002 MAFS University Statutes, it is being purportedly pointed out that appointments of staff in the university by promotion is available only up to the level of Assistant Registrar and the post which the petitioner is claiming on promotion is to be filled up only by nomination. It is contended that the petitioner has no *locus standi*, neither he is eligible nor the post he is claiming on promotion is capable of being filled in by promotion.

21. It is contended that respondent No. 5 has not been appointed as Deputy Registrar on regular basis and his appointment had been as a stopgap arrangement. While the process of filling up of post on regular basis been initiated, respondent No. 5 would be required to step down in the event of committee selecting a candidate.

22. It is submitted that post of Deputy Registrar carries along not only higher administrative responsibility but also has to have academic background. In Kothari Commission Report, need of academic administrator in education field had been emphasised and as such, the post of Deputy Registrar is expected to be occupied by a senior academician and not merely by an administrator.

23. While making appointment of respondent No. 5 as Deputy Registrar, on stopgap basis, same has been in accordance with the practice prevailing in most of the universities in the State wherein persons from academic side and particularly Assistant Professors are considered eligible and are preferred.

24. Having regard to nature of duties to be discharged and the higher responsibility coming along pursuant to the relevant statute, the concerned authorities have considered it appropriate to appoint a person by nomination only.

25. It has been contended that post of Deputy Registrar is an isolated post and as such, no precedence can be given to anyone, *inter alia*, to persons belonging to socially backward class.

26. It is submitted that after enforcement of 2002 Statutes, recourse can hardly be had to statutes of 1990 at Exhibit-D.

27. It is contended that while respondent No. 5 for the first time had been appointed on 4th July, 2001, petitioner had not been eligible for said post. A belated challenge after four years at the instance of petitioner does not deserve to be considered and it is liable to be dismissed at the threshold.

28. In his rejoinder, the petitioner contends that contention on behalf of the University that post of Deputy Registrar is to be occupied by a person having good academic background, in the face of Statutes of 1990 as well as of 2002, is untenable and is misleading and is contrary to the Statutes of 1990 and 2002. The rejoinder further purports to contend that the affidavit in reply had been filed immediately, since the deponent of the same and respondent No. 5 had been sailing in the same boat and in order to cover himself the stand was taken in quick exercise. The petitioner purports to contend that deponent Dr. S. V. Deshmukh had not been Registrar and had been appointed as Professor under order dated 9th May, 2005 and this development had been suppressed. The rejoinder then purports to contend that appointment of the deponent Dr. S. V. Deshmukh as Registrar of respondent No. 4 University was illegal and that affidavit filed by such a person would not be proper and an independent officer ought to have filed the reply.

29. The filing of writ petition at Aurangabad is sought to be justified stating that part of cause of action had arisen within the territorial jurisdiction of this bench as petitioner's promotion as Assistant Registrar had been regularized in the college of

Veterinary and Animal Science, Udgir, District – Latur, giving effect from 29th December, 2003, which is a fortuitous circumstance. The petitioner contends that he very much has *locus standi* since he is eligible incumbent fulfilling requirements under the Statutes and has right to be considered for appointment on the post of Deputy Registrar.

30. The petitioner claims that he had been holding the post of Assistant Registrar in respondent No. 6 Marathwada Agriculture University from December, 1997 to January, 2002 and in the MAFS University from February, 2002 to the date of the petition. It is, thus, contended that the petitioner has experience of post of Assistant Registrar for more than five years.

31. The petitioner contends that post of Deputy Registrar ought to be filled in by following the prescriptions under the statutes of 1990 and 2002. It is contention of the petitioner that having regard to his services having been rendered for more than five years holding additional charge of the post of Assistant Registrar and him being senior in the cadre – Assistant Registrar, he had been eligible for consideration and promotion as Deputy Registrar not only under 1990 statutes but also under the Statutes of 2002.

32. The amendments to writ petition in substance devote attention to appointment of Mr. S. V. Deshmukh, who had been working as Registrar and the events in respect of his employment trying to impute certain allegations and some irregularities in the same. So was the case in respect of appointment of respondent No. 5 Mr. A. D. Deshmukh.

33. Learned advocate for the petitioner during the course of his submissions has adverted to section 73 (3) of the Maharashtra Animal and Fishery Sciences University Act, 1998 (MAFS Act) which declares that until statutes are made under the MAFS Act, the statutes made under Maharashtra Agriculture Universities Act shall continue to be in force. In the first meeting of Executive Council of the MAFS University, it had been resolved to adopt 1990 statutes framed under the Maharashtra Agriculture Universities Act. Relying on 1990 statutes, he contends that post of Deputy Registrar ought to be filled in by promotion.

34. Petitioner contends that despite 2002 statutes having been enforced, post of Deputy Registrar had not been filled in by following those statutes.

35. The counsel for petitioner reiterates that respondent No. 5

had not been eligible even to be considered for appointment as Deputy Registrar pursuant to the criteria under 2002 statutes. and his appointment is void *ab initio* and illegal.

36. The counsel for the petitioner contends that decision of the Grievance Committee observing that the petitioner does not possess requisite qualification and experience for appointment / promotion to the post of Deputy Registrar according to the statutes of 2002 is not proper, is illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

37. According to the counsel, the reasons given by the Grievance Committee ought to have kept respondent No. 5 at bay. The petitioner claims that keeping the petitioner with additional charge of the post of Assistant Registrar from 1998 to 2002 had been improper, illegal and unjustified without following the policy of reservation to said post, without giving him regular promotion. He further claims, petitioner ought to have been given regular promotion from 1st February, 2002.

38. The counsel for petitioner further contends that it is failure of the respondents to fill up posts of Deputy Registrar by promotion in accordance with either the statutes of 1990 or for that matter statutes of 2002 on expiry of eleven months period

after appointment of respondent No.5.

39. The counsel for petitioner contends that according to section 74 (4) of the MAFS Universities Act and section 10 of the Maharashtra Agriculture University Act, 1983, service conditions of a transferred employee shall not be less favourable than those applicable to them immediately before such transfer and since Maharashtra Agriculture Universities Act provides for filling up of post of Deputy Registrar by promotion, post of Deputy Registrar of MAFS University ought to have been filled up by promotion.

40. Learned advocate for the petitioner submits that the post of other officers shall be on the recommendation of the selection committee and only in the cases of emergency, a power has been vested with the Vice-Chancellor to make appointment of suitable person having minimum qualification, not exceeding one year by making arrangement. According to learned advocate for the petitioner, respondent No. 5 is not a suitable person for appointment as Deputy Registrar as his qualifications do not comply with provisions pursuant to Statute No. 74 in Appendix Part II at serial No. 10 (1) to Statutes of 2002 of Maharashtra Animal and Fishery Sciences University, Nagpur. He makes various allegations against respondent No. 5. According to him,

appointment of respondent No. 5 being not in consonance with the Rules and Regulations, proper action against him is required to be taken.

41. According to the learned advocate for petitioner, although an inquiry ought to have been ordered for the commission of illegalities and fraud, it had received a premium with the award of higher pay scale to respondent No. 5.

42. Counsel contends that although Statute No. 54 of MAFS University and Statute No. 45 of Maharashtra Agriculture Universities Act, empower Vice-Chancellor to make appointments under emergency, but also requires him to simultaneously initiate action to fill up the post.

43. Petitioner, in this writ petition under Articles 226 and 14 of the Constitution of India seeks a declaration that appointment of respondent No. 5 under order dated 4th July, 2001 as Deputy Registrar is illegal, void *ab initio* and prays for quashing the same as also seeks similar declaration in respect of retrospective effect given to higher pay scale from the date of his appointment as Deputy Registrar and seeks direction to recover all the excess amount paid to respondent No. 5 and also to cause enquiry against him with further direction to respondents No. 3 and 4 to

fill up the post of Deputy Registrar of respondent No.4 University pursuant to statutes of 2002 and to give him a deemed date as Assistant Registrar on regular basis from 23rd December, 1997 or from 1st February, 2002 and for consequential benefits.

44. It would have to be adverted to that the petitioner, for the first time had been selected as section officer and continued to work as such from 11th December, 1996 to 31st January, 2002. The petitioner had been given an additional charge of the post of Assistant Registrar, may be invoking powers as may be available under proviso to Statute No. 63 of 1990 statutes of the then Marathwada Agriculture University.

45. Statutes of 1990 under Chapter VI provide for appointment of other officers of University such as, Deputy Registrar, Assistant Registrar etc. Statute 61 of the *Statutes of 1990 reads* thus-

*“ 61. Manner of appointment of other Officers of the University. All appointments of the other officers of the University shall be made strictly on the basis of merit except that the **posts of Deputy Registrar shall be filled in by promotion from the category of Assistant Registrar or Assistant Comptrollers and the post of Assistant Registrar and Assistant Comptroller shall be filled in 50 percent by promotion from ministerial staff and 50 percent by nomination.***

46. Statute 63 of 1990 Statutes enables the Vice Chancellor to

make appointment of any other person on the post of other officers, duration of which shall not exceed one year. The Statute 63 reads, thus -

63. Appointment only on the recommendations of the Selection Committee (I) No person shall be appointed by the University to any post of other Officers by promotion except to the posts of Deputy Registrar, Assistant Registrar and Assistant Comptroller. Appointment shall be made on the recommendation of the Selection Committee constituted under Statute 64:

Provided that in any emergency which in the opinion of the Vice-Chancellor requires that immediate action should be taken, he may without the recommendations of the Selection Committee or without following the procedure prescribed in statute 65 make appointment of a suitable person to any post of 'Other Officers' for a period not exceeding one year and shall at the earliest opportunity thereafter report his action to the Executive Council. ”

47. While the petitioner had been in employment of respondent No. 6 University, it does not appear that he had claimed regularization in appointment as Assistant Registrar while he had been holding additional charge. All the requests have been made after his transfer to respondent No. 4 university.

48. The petitioner in paragraph No. 3 of the writ petition has referred to that services of the petitioner were transferred to MAFS University at Nagpur under order dated 9th January, 2002.

A certificate at Exhibit-B, issued by the Registrar, MAFS University, Nagpur reflects that the petitioner had been working in MAFS University, Nagpur with effect from first February, 2002 and purports to convey that he knows the petitioner for ten years and petitioner had been performing his duties outstandingly. It purports to be dated 15th September, 2003. From the certificate it can be gathered that the petitioner had been in the services of respondent No. 4 University from February, 2002.

49. It, thus, is discernible that the petitioner had not been with MAFS University, Nagpur in 2001, while respondent No. 5 had been appointed as Deputy Registrar by the Vice-Chancellor of MAFS University, Nagpur under order dated 4th July, 2001.

50. Around 2002, MAFS University had framed its statutes. Chapter VII of its statutes deals with the appointment of other officers of University, *inter alia*, Deputy Registrar, Assistant Registrar etc.

51. From Statutes of 2002, statutes No. 72 and 73 relate to appointment of other officers of the MAFS University. Statute 72 reads, thus-

“ 72. ***Other Officers of the University*** – *In addition to other*

officers declared in Section 13 (c), the following are hereby declared as the 'Other Officers' of the University as per the provisions in section 13 (D) of the Act -

- (1) Controller of Examination;*
- (2) Director of Students Welfare;*
- (3) University Engineer;*
- (4) **Deputy Registrar;***
- (5) **Assistant Registrar;***
- (6) Assistant Comptroller*
- (7) Security Officer;*
- (8) Public Relation Officer.*

52. Statute 73 provides for the manner of appointments of other officers of the University, reading, thus-

*73. **The manner of appointment of other officers of the University –***
*(1) The procedure for reservation, advertisement, scrutiny, assessment, shall be similar as prescribed in Statutes 53, 55, 56, 59. All appointments of the other officers of the University shall be made strictly on the basis of merit. **The post of Registrar, Director of Students Welfare, Controller of Examination, Deputy Registrar, University Engineer shall be filled in by nomination only** for each term of three years. **The post of Assistant Registrar or Assistant Comptroller shall be filled in 50 per cent by promotion from the ministerial staff and 50 per cent by nomination.***

Provided that, in any emergency** which in the opinion of the **Vice-Chancellor** requires that immediate action should be taken, he **may**, without the recommendations of the Selection Committee or **without following the procedures** prescribed in respective Statutes, **make

appointment of a suitable person to any post of other officers for a period not exceeding one year and shall at the earliest opportunity thereafter report his action to the Executive Council. ”

53. Qualifications for the post of other officers pursuant to Statute 74, are,

*“ 74. The Eligibility and qualifications of Other Officers – The eligibility and qualifications of other officers shall be as per **Appendix (part II)**. The executive Council shall decide the eligibility and qualifications to the post of Director of Student's Welfare, Security Officer and Public Relation Officer*

54. Going by the prescriptions under items at serial No.10 and 11 of Part II of Appendix of Statutes of 2002, qualifications prescribed for Deputy Registrar and Assistant Registrar are as under -

[Part II : Qualifications for the posts of other officers of the University]

“ 10. Deputy Registrar –

(1) Bachelor's degree in any discipline with minimum 5 years experience in the rank of Assistant Registrar or equivalent.

(2) Capacity in Personnel management in a multidisciplinary office environment. Proven leadership qualities, novel office administration.

(3) Should be able to handle computers, data management and office integration soft-wares.

11. Assistant Registrar -

(1) Bachelor's degree in any discipline with at least 5 years experience in

front office desk management / Section Officer, Office Superintendent r equivalent.

(2) Proven capacity of working in multidisciplinary office environment.

(3) Should be able to handle computers, data management, word processing and integration soft-wares.”

55. The petitioner does not by whisper contend that he held qualifications as prescribed under said Appendix Part II, for the post of Assistant Registrar while he had been given additional charge of the post of Assistant Registrar in 1997 after having been promoted as Section officer. The petitioner's contention is that criteria of qualification under Appendix Part II are also not available with respondent No.5. In such a case, it may tantamount to that the petitioner resiles to a situation wherein qualifications are required to be compatible with the requirements under the Statute Appendix Part II.

56. The petitioner nowhere, in the writ petition, at any point of time, has referred to the qualifications as would be required and as were determined by the Executive Council under the Statutes of 1990 for the post of Assistant Registrar. It is not the case of the petitioner that while he had been appointed / working as section officer, he had been qualified to be appointed as Assistant Registrar.

57. It would not be a case wherein it can be said that the petitioner would be holding qualifications to be appointed as Assistant Registrar as required by the Statutes of either 1990 or statutes of 2002 since 1997.

58. Request of the petitioner for considering him to be Assistant Registrar with effect from 23rd December, 1997 does not appear to be in tune with the qualifications prescribed under Statutes of 2002. It is not the case at all that the petitioner could have been considered to be holding qualification for appointment as Assistant Registrar from the date from which he seeks regularization of his appointment as Assistant Registrar.

59. While the petitioner has approached this court in 2005, he complained about his non consideration as Assistant Registrar, since 1997, till then it does not appear that he had anywhere made such a claim. His matter before Grievance Committee had been in respect of appointment as Deputy Registrar on promotion claiming to have acquired qualifications based on him being Assistant Registrar for over five years.

60. Although the petitioner has contended that there were *malafides* in not setting process for appointment of Deputy

Registrar pursuant to the statute after expiry of eleven months upon *ad hoc* appointment of respondent No. 5 Mr. A. D. Deshmukh, yet Appendix Part II of Statutes of 2002 refer to eligibility and qualification / criteria to the post of Deputy Registrar.

61. The petitioner, under the amendment purports to point out deficiencies in respect of appointment of Mr. S. V. Deshmukh as Registrar. However, one is not clear as to how this is conducive to the claim made in the writ petition by the petitioner. May be it appears to be contention that Mr. S. V. Deshmukh had himself being not eligible to work as Registrar and that he had been instrumental in making appointment of respondent No.5 as Deputy Registrar. So far as other allegations in respect of appointment of Mr. S. V. Deshmukh, who is not a party to the petitioner, as aforesaid, is not likely to give any benefit to the petitioner.

62. What will have to be looked for is whether the petitioner can stake claim with certainty for appointment to the post of Deputy Registrar in respondent No. 4 University.

63. From Statutes of 2002, it is clear that after their enforcement, appointment to the post of Deputy Registrar

cannot be claimed by promotion at all. The petitioner would not be able to assert right to the post of Deputy Registrar to be filled up by promotion alone. The statute clearly stipulates that post of Deputy Registrar has to be filled in by nomination.

64. In such case, order passed in civil application No. 9265 of 2009 seeking direction to fill up post of Deputy Registrar by way of promotion would not prosecute case of the petitioner.

65. It is not at all that the petitioner held qualification for being appointed by nomination on the post of Deputy Registrar, having regard to qualifications prescribed in Part II as referred under Statute No.74 of 2002, of respondent No. 4 University while he had been transferred and promoted as Assistant Registrar in 2002.

66. He purports to claim appointment to the post of Deputy Registrar on the hypothesis that he had acquired qualifications since he had been holding additional charge of Assistant Registrar's post from 1997. That is the sole criterion, on the basis of which, he purports to attempt and assert right to the appointment to the post of Deputy Registrar. However, he is silent in respect of other two requirements pursuant to the prescription under the relevant statute. As the events have

occurred, it does not seem that the petitioner can be said to have been holding the additional charge of Assistant Registrar's post with reference to his eligibility to that post under the qualifications prescribed. He further purports to take support of him belonging to socially backward class. However, he is not in a position to show that the post of Deputy Registrar which is a single and isolated post would have been reserved pursuant to roster to his category of socially backward class. Petitioner would not be able to stake claim by virtue of him holding additional charge of Assistant Registrar's post pursuant to 1990 Statutes by promotion to the post of Deputy Registrar while 2002 Statutes have been enforced by respondent No. 4 University.

67. Nowhere, either at the time of filing writ petition or any the time thereafter, the petitioner has asserted that he holds qualifications as prescribed under Appendix II at serial No.10, of Statute 74 of the 2002 Statutes, apart from the contention that he had been holding additional charge for over five years as Assistant Registrar. The petition as well as the submissions are silent in respect of satisfaction of other two requirements under serial No.10 of Appendix II for the post of Deputy Registrar. Additionally, the petitioner, as observed hereinabove would hardly be able to assert a claim to the position of Assistant

Registrar from 1997 according to eligibility and qualifications as appearing under clause 11 of Appendix II.

68. Had it been a case that the petitioner would have been able to stake claim with reference to prescribed qualification under Appendix Part II, contention that the appointment process for Deputy Registrar's post ought to have been initiated as early as possible as claimed would have been of some significance. It does not appear that it can be assertively said that with reference only to experience as Assistant Registrar, the petitioner would be able to successfully stake claim to the post of Deputy Registrar, which is to be filled in by nomination under the Statutes of 2002. The petitioner had been appointed in respondent No. 4 University as Assistant Registrar with effect from 1st February, 2002. The MAFS University statutes were enforced in 2002. Applicability of MAFS University 2002 statute is are not subject matter of challenge in the instant petition.

69. Thus, only on the basis of contention that since the petitioner had been fortuitously holding additional charge of the post of Assistant Registrar, he be considered eligible for appointment to the post of Deputy Registrar is based on dithering and friable foundation.

70. In the circumstances, section 74 (3), (4) relied on would hardly be of any avail to the petitioner's interest. Section 74 (3) and (4) of the MASF University Act reads thus-

“ 74.

(1)

(2)

(3) All Statutes made by any Krishi Vidyapeeths relating to the Veterinary, Dairy and Fishery Faculties shall in so far as they are not inconsistent with the provisions of the Act, continue to be in force and be deemed to have been made under this Act until they are suspended or modified by the Statute made under this Act.

(4) All regulations made by the Executive Council, the Academic Council or the Veterinary, Dairy and Fishery Faculties or other authority of any Krishi Vidyapeeths shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force and be deemed to have been made under this Act by the Executive Council, the Academic Council, the Veterinary, Dairy and Fishery Faculties or other authority as the case may be, of the University until they are suspended or modified by the Regulations made under this Act. ”

71. However, with section 74 (3) (4), while indisputably 2002 Statutes having been enforced by MAFS University, the arguments advanced on behalf of the petitioner in respect of qualifications required for the post of Deputy Registrar do not hold any water.

72. It does not appear that in the circumstances, the petitioner

can rightfully claim while appointments to Deputy Registrar's post were being made by respondent No. 4, he was duly qualified as per statutes of 2002. With the enforcement of statutes of 2002, there does not appear to be any wind in the sail in the claims made in the writ petition.

73. Deficiencies alleged against respondent No. 5 for appointment as Deputy Registrar *ipso facto* would not have ended up automatically in appointment of the petitioner as Deputy Registrar. However, same is hardly going to inure any benefit as far as petitioner is concerned, seeking either regularization in Assistant Registrar's post from 1997 or for that matter seeking promotion to the post of Deputy Registrar, contingent upon his consideration as Assistant Registrar since 1997.

74. We do not consider that the allegations made and reliefs claimed against respondent No. 5 under the writ petition are likely to benefit the petitioner in any way.

75. Challenge in the writ petition, therefore, is razed to the ground. The writ petition, as such, fails and is dismissed with no order as to costs.

76. In view of dismissal of the writ petition, the review application and civil application stand disposed of.

[SANGITRAO S. PATIL, J.] [SUNIL P. DESHMUKH, J.]

drp