

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

WRIT PETITION NO.6550 OF 2006

Dr. Laxman Pandurang Kulkarni
Age 68 years, Occu. Pensioner,
R/o 156, Shivram Nagar, Parbhani,
Taluka and District Parbhani

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary,
Agriculture and Co-operation
Department, Mantralaya,
Mumbai.
2. Marathwada Agricultural University,
through its Registrar,
Parbhani, Taluka and Dist. Parbhani...

RESPONDENTS

.....
Shri A.S. Kale, Advocate holding for
Shri S.B. Talekar, Advocate for petitioner
Shri V.M. Kagne, A.G.P. for respondent No.1
Shri M.N. Navandar, Advocate for respondent No.2
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CORAM: R.D. DHANUKA AND
SUNIL K. KOTWAL, JJ.

Date of reserving judgment : 29th August, 2017

Date of pronouncing judgment : 11th September, 2017.

JUDGMENT (PER R.D. DHANUKA, J.)

1. By this petition filed under Article 226 of the
Constitution of India, the petitioner has prayed for an order and
direction against the respondents to give the petitioner deemed

date of promotion on the post of Professor as 10/9/1976 and for directions that the petitioner would be entitled for all consequential benefits in pursuance to the deemed date of promotion on the post of Professor w.e.f. 10/9/1976.

2. Some of the relevant facts for the purpose of deciding this petition are as under :

It is the case of the petitioner that, he was appointed by the respondent No.2 University on the post of Agricultural Supervisor on 5/8/1960 and was promoted as Agricultural Officer w.e.f. 21/6/1963. According to the petitioner, he was promoted on the post of Assistant Professor on 1/1/1971 and was promoted as Reader, which is allegedly the post equivalent to the post of Associate Professor. According to the petitioner, he was promoted as Associate Professor on 5/3/1976 and was promoted as Professor on 20/11/1991. It is the case of the petitioner that, the respondent No.1 had not finalized the seniority list and had given promotion to Dr. M.A. Quader instead of the petitioner. The petitioner, therefore, filed a Writ Petition No.1572/1988 in this Court. During the pendency of the said Writ Petition, the respondent No.2 University published a seniority list as on 1/1/1998 for the post of Associate Professor. This Court accordingly held that the seniority was to be counted in respect

of the post of Assistant Professor and accordingly, dismissed the said Writ Petition on 8/6/2001. On 1/1/1998, the respondent No.2 published the seniority list showing the name of the petitioner at Sr.No.4. The petitioner came to be retired on superannuation on 31/5/1996.

3. It is the case of the petitioner that on 9/4/1976, four persons came to be appointed by the respondent No.1 on the post of Associate Professor, namely (1) Shri V.V. Patil, (2) Shri V.K. Shinde, (3) Shri R.A. Patil and (4) Shri V.G. Reddy. It was the case of the petitioner that, the petitioner was senior to those 4 persons, who were appointed to the post of Associate Professor on 9/9/1976. On 27/10/1988, the respondent No.2 issued an order, thereby promoting Mr. V.G. Reddy on the post of Professor (Director of Seed) on temporary basis and as and by way of stop gap arrangement.

4. It is the case of the petitioner that, one Dr. Ram Pandharinath Rodge and others had filed a Writ Petition No.269/1979 in this Court against the respondent No.1 herein. By an order dated 26/11/1991, this Court disposed of the said Writ Petition. The respondent No.1 had thereafter issued an order on 17/6/1992. The said order dated 17/6/1992 was modified by this Court in the Civil Application filed by the said

petitioners. Pursuant to the said modification of the order passed by this Court, the respondent No.1 placed the matter before the Executive Council of the respondent No.1 and also before the Legal Committee of the University regarding deemed date, seniority and payment of arrears. The Vice Chancellor of respondent No.1 accordingly passed an order to give seniority with effect from the date shown against their names in the cadre of Professor/ equivalent in their respective discipline. Those 5 petitioners were accordingly given the deemed date. Insofar as Dr. V.G. Reddy is concerned, by the said order passed by the Vice Chancellor of respondent No.1, in the discipline "Agricultural Botany", the deemed date of promotion was 10/9/1976.

5. It is the case of the petitioner that, the date of the promotion of the petitioner on the post of Associate Professor was 5/3/1976 and thus, the petitioner was senior to the said Dr. V.G. Reddy in the cadre of Associate Professor and since the said Dr. V.G. Reddy though junior, was given deemed date of promotion as 10/9/1976, the petitioner shall be given deemed date of promotion, arrears and consequential monetary benefits of the post of professor considering the deemed date of promotion of the petitioner also as 10/9/1976.

6. The petitioner made representations on 25/3/1998,

7/10/2000 and 14/5/2006 to the respondents for giving the deemed date of promotion to the petitioner as 10/9/1976 and to provide all consequential benefits. It is the case of the petitioner that the petitioner was under bonafide impression that his representations would be considered on merits. However, the respondent No.2 did not consider the representation of the petitioner and was given an unequal treatment. It is the case of the petitioner that, there was discrimination between the petitioner and said Dr. V.G. Reddy, and the action on the part of the respondent No.2 was thus, in violation of Articles 14 and 16 of the Constitution of India. The petitioner accordingly filed this Writ Petition on 16/8/2006 in this Court, interalia praying for various reliefs.

7. Mr. Kale, learned counsel for the petitioner invited our attention to various annexures to the Writ Petition and would submit that, the petitioner was promoted as Assistant Professor on 1/1/1971 and was appointed as Associate Professor on 5/3/1976. The said Dr. V.G. Reddy was appointed as an Associate Professor on 10/9/1976 i.e. after more than 6 months of the promotion of the petitioner to the said post of Associate Professor. He submits that, the said Dr. V.G. Reddy could not have been granted deemed date of promotion in the cadre of Professor w.e.f. 10/9/1976 he being much junior to the petitioner

in the seniority list. He submits that, though several representations were made by the petitioner from time to time, the respondent No.2 did not consider those representations. It is submitted by the learned counsel for the petitioner that, since the representations of the petitioner were pending before the respondent No.2 from last several years, the petitioner could not file this petition earlier.

8. It is submitted that, in any event, since the right of promotion of the petitioner is a fundamental right enshrined under Article 16 of the Constitution of India, even if this Court comes to the conclusion that there was any delay on the part of the petitioner to approach this Court by filing this Writ Petition, the fundamental right of the petitioner cannot be allowed to be violated even if there is an alleged delay in filing this Writ Petition. The petitioner cannot lose his fundamental right or interest due to alleged delay in filing the Writ Petition. In support of this submission, learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of **Ramchandra Shankar Deodhar Vs. The State of Maharashtra & ors.** reported in [(1974) 1 SCC 317] and in particular, para No.10 thereof. He also placed reliance on the judgment delivered by Division Bench of this Court in case of **Baswant Devidas Nandgavali Vs. Secretary, Water**

Resources Department reported in [**2013 (3) Mh.L.J. 389**], and in particular, paras 4 to 6 thereof. He submits that, no prejudice of any nature whatsoever is caused to the respondents in view of any alleged delay on the part of petitioner to file this Writ Petition.

9. Learned counsel for the petitioner also placed reliance on the judgment of Supreme Court in case of **Union of India & anr. Vs. Hemraj Singh Chauhan & ors.**, reported in [**(2010) 4 SCC 290**] and in particular, paras 35 and 36, in support of his submissions that right of eligible employees to be considered for promotion is part of their fundamental rights guaranteed under Article 16 of the Constitution of India and such rights cannot be taken away.

10. Learned counsel for the petitioner invited our attention to the order dated 8/6/2001, passed by the Division Bench of this Court in Writ Petition No.1572/1988, which was filed by the petitioner, interalia praying for an order and direction against the respondent No.2 University to finalise the seniority list of the academic staff member as per the University Service (Regulation of Seniority) Rules, 1987 and to fix the seniority of the petitioner having regard to his earlier appointment as compared to Dr. M.A. Quader. He submits that, this Court, in the

said order, has held that, the post of Agricultural Officer was not included in the academic staff and thus, what was relevant for consideration was, the date of the petitioner joining in the post of Assistant Professor. He submits that, since the petitioner was already promoted as Assistant Professor, on 1/1/1971 whereas the said Dr. V.G. Reddy was appointed as Assistant Professor much later, the petitioner ought to have been given the deemed date of promotion w.e.f. 10/9/1976 and not the said Dr. V.G. Reddy.

11. The next submission of the learned counsel for the petitioner is that, the post of Reader was equivalent to the post of Associate Professor. He submits that, though the petitioner was promoted as Assistant Professor, the petitioner was granted pay-scale of Reader by the respondent No.2. He submits that, the Court has to consider the pay-scale granted to an employee and not the nomenclature of the post to which the petitioner was granted.

12. Mr. Navandar, learned counsel for the respondent No.2 University, on the other hand, submits that, there is gross unexplained delay and laches on the part of the petitioner to file this Writ Petition and thus, on that ground itself the petition deserves to be dismissed. He submitted that, the said Dr. V.G.

Reddy was granted the deemed date by the respondent No.2 as 10/9/1976 by an order dated 19/4/1993. The petitioner stood retired by superannuation on 30/5/1996. He submits that, till the date of his retirement, the petitioner did not challenge the said order of the respondent No.2 granting the deemed date to Dr. V.G. Reddy as 10/9/1976 and not granting such deemed date as 10/9/1976 to the petitioner.

13. The petitioner addressed a letter for the first time and that also to the Chancellor on 31/3/1997 and thereafter sent reminders on 25/3/1998, 7/10/2000 and 14/5/2006. The last representation was made by the petitioner on 14/5/2006 i.e. after expiry of six years from the date of earlier representation dated 7/10/2000. He submits that, the petitioner has thus, after more than 10 years from the knowledge of the petitioner that the petitioner was not granted deemed date of promotion whereas the said Dr. V.G. Reddy was granted the deemed date w.e.f. 10/9/1976 filed this Writ petition.

14. Learned counsel distinguished the judgments relied upon by the learned counsel for the petitioner on the issue of delay in filing the petition. He submits that, there is no dispute about the propositions of law laid down by the Supreme Court and this Court in those judgments relied upon by the learned

counsel for the petitioner. He, however, submits that, the petitioner has not explained the delay of more than 10 years in this case at all. He also disputes the submission urged by the petitioner that the respondent No.2 cannot be affected or prejudiced in any manner whatsoever if the petitioner is granted deemed date as 10/9/1976.

15. It is submitted by the learned counsel for the respondent No.2 that, the claim of seniority made by the petitioner over the seniority of Dr. M.A. Quader in Writ Petition No.1572/1988 was turned down by this Court in the said order dated 8/6/2001, passed by this Court. He submits that, the petitioner did not challenge the said order passed by this Court.

16. It is submitted by the learned counsel that the respondent No.2 itself was established on 18/5/1972. The question of the petitioner being promoted as Assistant Professor on 1/1/1971 by the respondent No.2 University did not arise. It is submitted by the learned counsel that the petitioner was allocated from the Panjabrao Krushi Vidyapeeth, Akola w.e.f. 18/5/1972 as Assistant Professor, Agriculture Botany afterwards and not on 1/1/1971 as claimed by the petitioner. He submits that, the post of Assistant Professor and Reader are two distinct and separate categories. The Executive Council of the

respondent No.2 has passed resolution on 31/8/1974, prescribing the academic eligibility criteria for awarding the Indian Council for Agricultural Research by pay-scales to the academic staff of the respondent No.2. He submits that, one third of the senior persons in the Department from the category of Assistant professor were considered for the award of higher scale without challenging their status, category and seniority. The post of Reader is not provided under old Statute No.49 of the Marathwada Krushi Vidyapeeth Statutes, 1972, which has been repealed as well as under Statute No.71 of the Maharashtra Agricultural universities Statutes 1990 which are in existence.

17. It is submitted by the learned counsel for respondent University that, order dated 20/11/1991, which is annexed at Exhibit B to the petition, clearly indicates that the petitioner was transferred on his own and was not promoted as Professor. He was transferred as Associate Professor against the post of Assistant Oil Seed Specialist, Latur on administrative ground. He submits that, this Court has already found that the petitioner was junior to Dr. M.A. Quader in the scale of Assistant Professor and had dismissed his petition and thus, the petitioner could not claim any seniority in the cadre of Assistant Professor.

18. Learned counsel for the respondent No.2 submits

that, the Executive Council had passed a resolution, bearing No.159/75, dated 19/2/1975, prescribing the quota for nomination of promotion as 75:25. Four persons were nominated as Associate Professor in view of the said resolution passed by the Executive Council on 19/2/1975. It is submitted by the learned counsel that, those four persons including Dr. V.G. Reddy were appointed on the recommendations of the selection committee by an order dated 9/9/1976. The petitioner was appointed on temporary basis as Associate Professor as per resolution passed by the Executive Committee dated 19/2/1975 in promotion quota as per order dated 5/3/1976. The petitioner joined as Associate Professor w.e.f. 25/1/1977 and not 5/3/1976 as canvassed by the petitioner.

19. It is submitted by the learned counsel that the said Dr. V.G. Reddy was promoted as Associate Professor purely on temporary basis on stop gap arrangement as he was senior to the petitioner.

20. Learned counsel for respondent No.2 invited our attention to the order dated 19/4/1993, in which a reference was made by the respondent No.2 to the order passed by this Court in Writ Petition No.269/1979 filed by Dr. Ram Pandharinath Rodge and others against the respondent No.2. He submits that,

the said Dr. V.G. Reddy was one of the petitioner in the said Writ Petition. Pursuant to an order passed by this Court in the said Writ Petition, the said Dr. V.G. Reddy along with other petitioners were awarded the deemed date of promotion to the post of professor. The petitioner did not fall under the grounds involved in the said Writ Petition and thus, could not claim any benefit under the said order passed by this Court.

21. Learned counsel for respondent No.2 submits that, petitioner had joined as Associate Professor w.e.f. 25/1/1977. The petitioner, however, has misled this Court by not producing any documents to show that he was appointed on 5/3/1976. He submits that, the petitioner was temporarily promoted to the post of Associate Professor vide order dated 5/3/1976 and was not promoted to the said post on 8/3/1976 as inadvertently stated by the respondent No.2 in the affidavit-in-reply.

22. Learned counsel for respondent No.2 invited our attention to the order of reversion, dated 9/9/1976, annexed to the affidavit in sur-rejoinder, and would submit that, the petitioner was demoted from the post of Associate Professor which was held by him on temporary basis vide order dated 5/3/1976, in view of maintaining nomination quota and selection of candidates for the Associate Professor cadre. The officers who

were officiating on promotion in Associate Professor cadre purely on temporary basis were reverted to the post of Assistant Professor. The name of the petitioner was at Sr.No.1 in the said order of reversion.

23. It is submitted by the learned counsel that, for the first time on 25/1/1977, the petitioner was promoted to the post of Cotton Seed Production Specialist, equivalent to Associate Professor in the pay-scale of Rs.700-50-950 in the newly sanctioned scheme for Integrated Cotton Development project, Cotton Seed Production and Processing Unit with the Headquarter at Parbhani. He invited our attention to the copy of the promotion order dated 25/1/1977 issued to the petitioner. He submits that, thus, it is clear that the petitioner was granted promotion on 25/1/1977 on the post of Associate Professor – equivalent and thus, the question of granting any deemed date to the petitioner as 9/9/1976 does not arise. It is submitted that the said Dr. V.G. Reddy and 3 others were not promoted, but were nominated on the post of Associate Professor on the recommendation of the Selection Committee vide order dated 9/9/1976 and in view of the order passed by this Court.

24. Learned counsel for the University invited our attention to the Government Resolution dated 6/2/2002 and

would submit that, under the said Government Resolution, it is specifically provided under clause (2) that, the employee to whom deemed date has to be granted, he should be equally promoted to the said post and not otherwise. The petitioner, however, was entitled for promotion to the post of Associate Professor for the first time on 25/1/1977, which was granted to him

25. It is submitted by the learned counsel that the petitioner was temporarily appointed to the post of Assistant Oil Seed Specialist vide order dated 25/3/1993 for a period of not exceeding one year or for lesser period or till the suitable substitute was appointed, whichever was earlier. He submits that, the petitioner was appointed temporarily vide order dated 28/4/1994 and was posted to discharge the duties against the post of Assistant Cotton Seed Specialist – equivalent to Professor on temporary basis.

26. It is submitted by the learned counsel that, pursuant to an order dated 31/5/1996, the petitioner has already stood retired on attaining the age of superannuation on the post of Associate Professor and was, therefore, granted pensionary benefits by the respondent No.2 by order dated 10/7/1996. He submits that, the petitioner was also granted revised pensionary

benefits as per 5th Pay Commission vide order dated 31/10/2000. Petitioner was not appointed or promoted as Professor on regular basis at any point of time nor could be appointed as Professor at any time before his retirement.

27. Learned counsel for the University also produced the Service Book of the petitioner and in particular, pages 22 and 23 thereof, showing that the petitioner was relieved from Horticulturist Fruit Research Station from 20/7/1971 due to transfer vide order from Registrar, P.K.V., Akola. Page 23 of the Service Book indicates that on 28/1/1973, due to appointment by promotion to the post of Assistant Professor, Botany, vide order dated 29/1/1973, the petitioner joined on 29/1/1973.

28. Learned counsel for respondent No.2 placed reliance on the judgment of Supreme Court in case of **State of Orissa Vs. Pyarimohan Samantaray** reported in [**1976 AIR (SC) 2617**] and in particular, para 6, and would submit that, merely because the so called representations made by the petitioner were pending before respondent No.2 University, the petitioner was never prevented from filing a Writ Petition for redressal of his grievance immediately. He submits that, since there is no satisfactory explanation of the inordinate delay, the petition deserves to be dismissed on that ground itself.

29. Mr. Kale, learned counsel for the petitioner, in rejoinder, submits that, the respondent No.2 has not produced any proof in support of the submission that the petitioner has joined the service on 25/1/1977. Insofar as quota of nomination and promotion or for recruitment of the staff is concerned, it is submitted that the earlier quota of 75:25% was modified and was made 50:50. In support of this submission, the learned counsel for the petitioner invited our attention to the resolution dated 5/9/1972, passed by the respondent No.2. He submits that, the respondent No.2 University had published a seniority list of the academic staff as on 31/7/1986, showing the name of the petitioner at Sr.No.8 and showing the name of Dr. V.G. Reddy at Sr.No.16. It is submitted that, the respondent No.2 thus cannot be allowed to contend that the said Dr. V.G. Reddy was senior to the petitioner and thus, cannot be granted deemed date in the cadre of Professor w.e.f. 10/7/1976.

30. The petitioner filed an affidavit dated 29/8/2017 before this Court to demonstrate that the Executive Council of the respondent No.2 had passed a resolution on 17/10/1974 and had resolved that the post of Assistant professor was equivalent to the post of Reader having pay-scale of Rs.700-50-1250. He submits that, since the petitioner was promoted as Reader vide

appointment order dated 18/5/1972, his services were equivalent to that of the Assistant Professor since 18/5/1972 and thus, the petitioner was senior to Dr. V.G. Reddy, according to he said resolution dated 17/4/1974.

31. Learned counsel for the petitioner placed reliance on the judgment of this Court, delivered on 8/6/2001 in case of Dr. Sharad Vitthal Mahajan Vs. Marathwada Agricultural University, in Writ Petition No.2023/1988, in support of his submission that the post of Associate Professor was equivalent to post of Reader and thus, petitioner was entitled to the deemed date of promotion as 10/9/1976.

32. Mr. Navandar, learned counsel for the University distinguished the judgment of this Court in case of Dr. Sharad Vitthal Mahajan on the ground that the facts before this Court in the said judgment were totally different. He would submit that, in this case, the petitioner has already retired as Associate Professor and thus, cannot be granted deemed date of promotion on the post of professor as 9/9/1976.

33. It is not in dispute that the respondent No.2, University came to be established with effect from 18th May 1972. In so far as the petitioner is concerned, it was his case that

on 1st January, 1971 he came to be promoted as Assistant Professor. There was a seniority dispute between the petitioner and Dr. M.A. Quader in the cadre of Assistant Professor. The petitioner had filed a writ petition bearing No.1572/1988 in this Court challenging the seniority of Dr. M.A. Quader. By an order dated 8th June 2001 passed by Division Bench of this Court in the said writ petition, this Court held that in so far as seniority of the petitioner above Dr. M.A. Quader was concerned, the petitioner came to be appointed in the post of Assistant Professor with effect from 23rd July, 1971 whereas Dr. M.A. Quader was appointed in the said post from 30th April 1968.

34. The petitioner claimed seniority above Dr. M.A. Quader only based on his date of appointment in the post of Agriculture Officer, on which his appointment was with effect from 21st June, 1963 whereas Dr. M.A. Quader was appointed in the said post with effect from 5th September, 1964. This Court held that the post of Agriculture Officer was not included in the academic staff and what was relevant for consideration was the date of joining of the post in the post of Assistant Professor. This Court accordingly rejected the claim of seniority of the petitioner in the post of Assistant Professor over the seniority of Dr. M.A. Quader and dismissed the said writ petition. It is thus clear that the date of the petitioner's joining the post of Assistant Professor

was relevant and not the date of joining in the post of Agriculture Officer.

35. It is not in dispute that the deemed date of promotion to Dr. V.G. Reddy, who was one of the petitioners in Writ Petition No.269/1979, was granted pursuant to an order passed by this Court on 26th November, 1991 and modified on 23rd November, 1992 in the post of Professor. The Executive Council of the respondent No.2 University had passed a resolution on 15th March, 1993 and granted deemed date of seniority to the said Dr. V.G. Reddy with effect from 10th September 1976. The petitioner did not challenge the said order passed by the respondent No.2 University or did not apply for any relief in favour of the petitioner for granting the deemed date of promotion till 16th August, 2006. The petitioner only has alleged that the petitioner had made representation to the respondents firstly on 25th March, 1989 to the Chancellor of respondent No.2, thereafter on 7th October 2000 and lastly on 14th May, 2006 which was made after about six years of the representation dated 7th October 2000. The petitioner already stood retired in the year 1996. It is thus clear that this writ petition has been filed after about 10 years of the petitioner having retired from service.

36. A perusal of the averments made in the writ petition

indicates that the petitioner has not explained the gross delay and laches in filing this writ petition. The objection raised by the respondents about the gross delay in filing this writ petition is thus justified.

37. In so far as the judgment of the Supreme Court in the case of Union of India And Another Vs. Hemraj Singh Chavan (supra) relied upon by the learned counsel for the petitioner is concerned, it is held by the Supreme Court that right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution. This right of fair consideration guaranteed in the matter of promotion under Article 16 virtually flows from guarantee of equality under Article 14 of the Constitution.

38. The Supreme Court in the case of Ramchandra Shankar Deodhar and Others v. State of Maharashtra (supra) relied upon by the learned counsel for the petitioner while rejecting the plea of the respondents of gross delay of the petitioner in filing the writ petition, held that it must be remembered that the rule which says that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the

Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. It is held that it will all depend on what was the breach of the Fundamental Right and the remedy claimed are and how the delay arose.

39. In the said judgment, the Supreme Court had rejected the plea of the delay raised by the employer on the ground that the Commissioner, Aurangabad Division, the employer and also the then Secretary of the Revenue Department had informed the petitioner therein that on 18th October, 1960 and in January, 1961 respectively that the rules of recruitment to the posts of Deputy Collector in the reorganized State of Bombay had not yet been unified and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of July 30th, 1959 had no application to the petitioners. Accordingly, the petitioner therein proceeded on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional to be regularized when unified rules of recruitment were made.

40. The petitioners in that matter however came to know only when in another matter this Court accepted the

statement made by the State Government that the Rules of 30th July, 1959 were the unified rules for recruitment to the posts of Deputy Collector applicable throughout the reorganized State of Bombay. The petitioners had then immediately filed a writ petition in this Court. With these facts in hand, the Supreme Court took a view that the delay was liable to be condoned.

41. In our view, the facts of this case, however, are totally different. In this case the claim of the seniority of the petitioner over Dr. M.A. Quader was rejected by this Court on 8th June, 2001. The respondent No.2 had even given effect to the order passed by this Court in the writ petition filed by Dr. V.G. Reddy on 19th April, 1993 much prior to the date of retirement of the petitioner. The petitioner, however, did not challenge the said order passed by the respondent No.2 granting deemed date to Dr. V.G. Reddy as 10th September, 1976 in the cadre of Professor. The cause of action in our view, if any, to challenge the appointment Dr. V.G. Reddy and four others and for seeking deemed date of promotion as Professor in favour of the petitioner, if any, was in the month of April 1993 whereas the petitioner had filed this petition only in the year 2006.

42. In so far as the submission of the learned counsel for the petitioner that the right of eligible employees to be

considered for promotion is virtually a part of their fundamental right guaranteed under Article 16 of the Constitution is concerned, there is no dispute about this proposition of law. However, no person has a right to be promoted but has only a right to be considered for promotion provided he fulfills the terms and conditions of the employment. The promotion is governed by the conditions of employment and is not based on any general principles of justice and fair play. No person has vested right to be promoted.

43. In so far as the judgment of this Court in the case of Basawant Devidas Nandgavali Vs. Secretary, Water Resources Department (supra) relied upon by the learned counsel for the petitioner is concerned, this Court adverted to the judgment of the Supreme Court in the case of **State of Uttar Pradesh Vs. Harish Chandra, [AIR 1996 SC 2173]** in the said judgment and also the judgment of the Supreme Court in the case of **N. Balakrishnan Vs. M. Krishnamurthy, [JT 1998 (6) SC 242]** holding that the applicant seeking condonation of delay is duty bound to explain the reasons for the delay but as has been held by the Supreme Court in several cases, the very manner in which the bureaucratic process moves, if the case deserves merit the Courts are to consider the question of condonation from that perspective.

44. It is held in the said judgment that, rules of limitation are not meant to destroy the right of the parties. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door of substantial and real justice against him so as to render him remediless. The Division Bench of this Court held that liberal, reasonable, and justice oriented approach is necessary under the circumstances when lapse of time was not solely attributable to the petitioner, who was merely seeking to rectify what according to him was 'grave injustice' done to him, by examination of his case on the basis of evidence & merits. In this case the petitioner, however, has not blamed the respondents for the delay caused in filing this petition after more than 12 years.

45. The Supreme Court in the case of *State of Orissa v. Pyarimohan Samantaray* (supra) has held that since there was no satisfactory explanation of the inordinate delay for making of repeated representations after rejection of one representation could not be held to be a satisfactory explanation of the delay. In our view, the petitioner has not satisfactorily explained the delay of more than 12 years in filing this writ petition. Admittedly, there was no follow up action by the petitioner between 7th October, 2000 and 13th May, 2006. We are not inclined to accept

the submission of the learned counsel for the petitioner that, even if there was delay on the part of the petitioner in filing this petition, no prejudice of any nature whatsoever would be caused to the respondent No.2.

46. Be that as it may. We shall now deal with the rival contentions of both the parties on merit.

47. A perusal of the record indicates that the petitioner was allocated from Punjabrao Krishi Vidyapeeth Akola with effect from 18th May, 1972 as Assistant Professor, Agriculture, Botany. The respondent No.2 University came to be established with effect from 18th May, 1972. The Executive Council of the respondent No.2-University had passed a resolution on 31st August, 1974 prescribing the academic eligibility criteria for awarding the Indian Council of Agricultural Research (ICAR) by pay scales to the academic staff of the respondent No.2. One-third of the senior persons in the department from the category of Assistant Professor are considered for the award of higher scale without changing their status, cadre and seniority. We are inclined to accept the submission of the respondent-University that the post of Reader was not provided under the old Statute No.49 of Marathwada Krishi Vidyapeeth Statutes, 1972 as well as under the Statute No.71 of Maharashtra Agricultural Universities

Statutes 1990.

48. A perusal of the order dated 20/11/1991 passed by the respondent No.2, which is at Exhibit B to the petition, clearly indicates that the petitioner was transferred by the said order against the post of Assistant Oilseeds Specialist, Latur and was not promoted. The petitioner was transferred as Associate Professor against the said post of Assistant Oilseeds Specialist, Latur.

49. A perusal of the record further indicates that the Executive Council had passed a resolution on 19th February, 1975 prescribing the quota for nomination and promotion as 75:25. Mr. V.V. Patil, Mr. V.K. Shinde, Mr. R.A. Patil and Mr. V.G. Reddy were nominated as Associate Professor in view of the Executive Council Resolution dated 19th February, 1975. Those four persons were appointed on the recommendation of the selection committee by an order dated 9th September, 1976. In so far as the petitioner is concerned, the petitioner was promoted as Associate Professor as per resolution dated 19th February, 1975 in promotion quota as per order dated 5th March, 1976. The petitioner, however, joined as Associate Professor with effect from 25th January, 1977.

50. The learned counsel for the respondent No.2 produced for perusal and consideration of this Court the service book of the petitioner and in particular pages 22 and 23 thereof showing that the petitioner was relieved from the office of the Assistant Horticulturist, Fruit Research Station Aurangabad on 20th July, 1971 due to transfer vide order from the Registrar, Punjabrao Krishi Vidyapeeth, Akola. The said service book further indicates that on 28th January, 1973 due to appointment on promotion to the post of Assistant Professor, Botany by order dated 29th January, 1973, the petitioner joined on 29th January, 1973. The respondent No.2 also filed a sur-rejoinder before this Court placing such documents on record.

51. In our view, since the actual date of promotion of the petitioner thus could be considered only as 25th January, 1977 for the post of Associate Professor and equivalent, the petitioner could not claim deemed date as 9th September 1976 which was granted in favour of Dr. V.G. Reddy and few others. A perusal of the record indicates that said Dr. V.G. Reddy and few others were not promoted but were nominated on the post of Associate Professor on the recommendation of the selection committee vide order dated 9th September 1976.

52. A perusal of the Government Resolution dated 6th

June, 2002 annexed by the respondent No.2 in its sur-rejoinder clearly indicates that unless an employee is actually promoted to a particular post, he cannot be granted any deemed date. In our view, the learned counsel for the University is thus right in his submission that since the petitioner was granted promotion and had joined on 29th January, 1977, the question of granting any deemed date of the promotion as 9th September, 1976 did not arise. The petitioner could not produce any material on record before this Court to show that the petitioner was promoted as Professor on regular basis. The comparison of the petitioner himself with Dr. V.G. Reddy and others was thus itself *ex facie* incorrect and without any basis.

53. Be that as it may, the petitioner neither impleaded the said Dr. V.G. Reddy and others nor sought any relief against the promotion granted to Dr. Reddy and others in this writ petition. A perusal of the record further indicates that by an order dated 9th September, 1976, the petitioner was already reverted from the post of Associate Professor which was held by him temporarily vide order dated 5th March, 1976. By the said order, in view of the maintaining nomination quota of the selected candidates for the Associate Professor cadre, the persons who were officiating on promotion in the Associate Professor cadre purely on temporary basis were reverted and

were posted in the cadre of Assistant Professor. A perusal of the said order of reversion indicates that the name of the petitioner was at Sr.No.1 in the said order. The petitioner has not challenged the said order of reversion dated 9th September, 1976 at any point of time.

54. A perusal of the order dated 23rd March, 1993 issued by the respondent No.2 clearly indicates that by the said order, the Vice Chancellor of the respondent No.2 ordered that until further orders, the petitioner who was then working against the post of Assistant Oilseeds Specialist, O.R.S., Latur was appointed as Assistant Oilseeds Specialist in the scheme for "Estt. of Res. on spreading varieties of groundnut at O.R.S. Latur" in the pay scale of Rs.4500-150-5700-200-7300 temporarily for a period not exceeding one year or for lesser period or till the suitable substitute was appointed, whichever was earlier, under the control of the Director of Research, MAU, Parbhani. It is thus clear that the petitioner was not appointed to the said post on permanent basis.

55. In so far as the deemed date of promotion to the post of Professor granted to Dr. V.G. Reddy is concerned, it is not in dispute that the said Dr. V.G. Reddy was one of the petitioners in Writ Petition No.269/1979. Pursuant to the order passed by this

Court in the said writ petition, the said Shri. Dr. V.G. Reddy along with other petitioners were granted deemed date of promotion to the post of Professor. The petitioner did not satisfy those conditions on which this Court had granted the deemed date of promotion to the post of Professor to Dr. V.G. Reddy. The petitioner, thus could not claim parity with the case of Dr. V.G. Reddy. The judgment and order in Writ Petition No.269/1979 thus was not applicable to the case of the petitioner.

56. In our view, the Academic Council Resolution dated 3rd September, 1974 annexed at Exhibit R-1 to the short affidavit filed by the petitioner on 29th August, 2017 will not advance the case of the petitioner.

57. In so far as the judgment delivered by this Court on 8th June 2001 in Writ Petition No.2032/1988 filed by Sharad Vithal Mahajan against the Marathwada Agricultural University and others is concerned, in our view the learned counsel for the respondent No.2 is right in distinguishing that judgment on the ground that in this case the petitioner had already retired as Associate Professor and thus cannot be granted deemed date of promotion on the post of Professor as 9th September 1976. In view of such facts, the University in that matter had not

controverted the case of the petitioner that he was entitled for deemed date of promotion in the post of Associate Professor with the effect from 18th November, 1973 and, therefore, this Court considered the prayer of the petitioner therein for deemed date as prayed by the petitioner therein.

58. This Court in the said judgment had also considered an admitted position that the petitioner was not subsequently promoted to the post of Professor and he had filed the writ petition for consequential benefits in the post of Professor. With these facts in hand, the Division Bench of this Court allowed the said petition filed by the petitioner therein and held that the petitioner therein was entitled for deemed date of promotion in the post of Associate Professor with consequential benefits. In this petition, however, the petitioner has not been able to demonstrate before this Court that he was promoted to the post of Professor on permanent basis. In our view the judgment of this Court in the case of Dr. Sharad Vithal Mahajan (*supra*) is clearly distinguishable to the facts of this case and would not assist the case of the petitioner.

59. In our view, even on merit, the petitioner has not made out any case for any relief as sought in the petition. The petition is devoid of merit. We, therefore, pass following order :

ORDER

Writ Petition No.6550/2006 is dismissed. Rule is discharged. There shall be no order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

fmp/