

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

WRIT PETITION NO. 6748 OF 2015

- 1] Shri Digambar s/o Madhavrao
Tangalwad, age 38 years,
Occ. Asstt. Registrar,
having office address
Swami Ramanand Teerth Marathwada
University, Dnyanteerth,
Vishnupuri, Nanded ...Petitioner

VERSUS

- 1] The State of Maharashtra,
through it's Chief Secretary,
General Administration Department,
Backward Class Cell, Mantralaya,
Mumbai-32,
- 2] The Principal Secretary,
Higher & Technical Education,
Mantralaya, Mumbai-32,
- 3] The Asstt. Commissioner,
Backward Cell, Divisional
Commissioner Office, Aurangabad,
- 4] The Director, Higher Education,
Directorate, Middle Building,
Pune - 411 001,
- 5] The Swami Ramanand Teerth
Marathwada University,
Dnyanteerth, Vishnupuri,
Nanded, through it's Registrar,
- 6] The Vice Chancellor of
Swami Ramanand Teerth Marathwada
University, Dnyanteerth,
Vishnupuri, Nanded,

- 7] The Registrar,
Swami Ramanand Teerth Marathwada
University, Dnyanteerth,
Vishnupuri, Nanded,
- 8] The Departmental
Promotion Committee,
Swami Ramanand Teerth Marathwada
University, Dnyanteerth,
Vishnupuri, Nanded,
- 9] The Director,
Board of College & University,
Development Committee,
Swami Ramanand Teerth Marathwada
University, Dnyanteerth,
Vishnupuri, Nanded,
- 10] Ramtirthee Venkat Prabhu,
Age major, occ. Service,
R/o having official address
Swami Ramanand Teerth Marathwada
University, Dnyanteerth,
Vishnupuri, Nanded. ...Respondents

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Shri Vijay Dixit, Senior advocate i/b
Shri G.A.Gadhav Patil, advocate for the petitioner
Mr. M.B.Bharaswadkar, A.G.P. for respondent nos. 1 to 4
Shri U.S.Malte, Advocate for respondent nos. 5 to 8
Shri Vijay Sharma, advocate for respondent no.10

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CORAM : S.V.GANGAPURWALA
AND
K.L.WADANE, JJ.

DATE OF RESERVING
THE JUDGMENT : 2.3.2017

DATE OF PRONOUNCEMENT
OF THE JUDGMENT : 31.3.2017

JUDGMENT (Per K.L.Wadane, J.)

Rule. Rule is made returnable forthwith.
With the consent of the learned counsel for the parties, taken up for final hearing.

2. The petitioner challenged the roster verification report of respondent no.1 and the order, dated 29.6.2015 passed by the respondent no.6 by which promotional claim of the petitioner on the post of Deputy Registrar is rejected.

3. As per the Government Resolution, dated 10.10.1997 it was directed to all the Universities that they should follow the reservation policy in view of the judgment delivered by the Apex Court in the case of **R.K.Sabbarwal vs State of Punjab**. The State Government issued directions that the roster of the direct recruitment and promotion should be maintained differently.

4. In the year 2008 Departmental Promotion

Committee of respondent no.5 conducted meeting and took a decision to fill in the five posts of Deputy Registrar through promotion. As per the reservation policy the 5th post of Deputy Registrar ought to have been filled in from the Scheduled Tribe category, but the University did not fill in it from the Scheduled Tribe category and converted that post for open category for direct recruitment. In fact, that post was to be filled in by promotion from the Scheduled Tribe category. Just to deprive the right of the petitioner the University has filled in that post by way of direct recruitment.

5. As per the Government Resolution, dated 23.7.2009 the Government has approved seven posts of Deputy Registrar of respondent no.5 University.

6. The petitioner filed Writ Petition No. 808 of 2013 seeking direction to the respondents that they should give promotion to the petitioner. The petitioner withdrew that Writ Petition with

permission.

7. On 10.7.2013 the respondent no.3 communicated to respondent no.5, that they should fill up the backlog of the reserved category. The petitioner then filed representation to respondent nos. 5 and 6 and requested that unless roster is verified by the competent authority the University should not give promotion to any person on the post of Deputy Registrar and the petitioner prayed to give him promotion on the post of Deputy Registrar. Without verification of the roster, the respondent nos. 5 to 8 initiated the proceedings to fill up 3 posts of Deputy Registrar. Being aggrieved by the same, the petitioner filed Writ Petition No. 31 of 2015, in which this Court has directed respondent nos. 5 to 8 that they shall not give promotion to any person on the post of Deputy Registrar unless and until they get verified roster from respondent nos. 1 to 3. So also, directions were given to respondent no.6 to decide the claim of the

petitioner about his promotion. In that Writ Petition, the University filed its reply and contended that one post has been kept vacant due to the complaint of the petitioner and that post will be filled in after verification report of the roster. This Court further directed to respondent no.1 to take decision on the roster forwarded by the University within three months and thereafter respondent/authority shall decide the representation of the petitioner within 15 days.

8. On 15.12.2014, respondent no.3 verified the roster preliminary and forwarded report to respondent no.5 and it was observed that it was incumbent on the part of respondent no.5 to fill up one post of Deputy Registrar from Scheduled Tribe category.

9. On 5.6.2015 respondent no.1 has done the final verification of the roster of respondent no.5 and forwarded its report to respondent no.5. In the report, respondent no.5 observed that the

decision taken by the University in the year 2008 in regard to 100 per cent promotion is not correct. On 27.6.2015, respondent no.8 decided to take the written test of respondent no.10 for the post of Deputy Registrar. However, in spite of taking decision on the claim of the petitioner they have initiated the proceedings to fill up the post of Deputy Registrar. On 29.6.2015 the petitioner was heard on his claim of promotion by respondent no.6. At the same time, respondent no.5 issued call letter of interview to respondent no.10. On 30.6.2015 the respondent no.6 informed to the petitioner that his claim of promotion is rejected. On the same day, interview of respondent no.10 was taken. He was given promotion on the same day. He joined on the promoted post. Hence, this Writ Petition.

10. Respondent nos. 5 to 8 have submitted their affidavit-in-reply. On the establishment of respondent no.5 one post of Deputy Registrar was transferred from the Marathwada University.

Subsequently, respondent no.5 received two additional posts. It was not possible to fill up 3 posts by promotion. Hence, such posts are filled in by direct recruitment. In the year 2004, the University received four posts. All the previous three posts were vacant due to death, dismissal and resignation of the employees. As per the Government communication, dated 28.10.2004 all the four posts were to be filled in through promotion. Out of four, three posts were filled by promotion and one post was vacant due to non-availability of qualified candidate. On 13.11.2007 the University received one post. Departmental Promotion Committee i.e. respondent no.8 promoted one Hambarde. On 23.7.2009 the Government sanctioned two posts, hence, there were 7 posts, 4 goes to promotee and 3 goes to direct recruitee. The University has already promoted four persons i.e. one from Scheduled Caste category and three from open category and remaining three posts were fill in, of which one was direct belonging to Scheduled Caste category

and two were for open category and such promotion is accepted by respondent no.1.

11. The petitioner joined as Assistant Registrar in the year 2011 and he can claim such promotion after three years subject to availability of the post. As per the order of this Court in Writ Petition No. 31 of 2015 the University had submitted all the documents to respondent no.1 for verification of the roster. Respondent no.1 has given report dated 5.6.2015 and accepted and approved the reservation i.e. one for Scheduled Caste category and three for open category. The petitioner was heard by respondent no.6. The process was completed by regularizing promotion of Mr. Sable and Mr. Ramtirtha was promoted in the vacant post of one Mr. Mali. So, according to the respondents the process of promotion undertaken by respondent nos. 5 to 8 is in accordance with the Rules, Regulations and Guidelines issued by the State Government from time to time. The promotion was as per the final

roster verification by respondent no.1. Hence, there was no illegality or irregularity in the process of promotion.

12. We have heard the arguments of Mr. V.J.Dixit, learned Senior Counsel for the petitioner, Mr. M.B.Bharaswadkar, learned A.G.P. for respondent nos. 1 to 4, Mr. U.S.Malte, learned counsel for respondent nos. 5 to 8 and Mr. Vijay Sharma, learned counsel for respondent no.10.

13. We have perused the documents on record and it appears that the petitioner was appointed in the year 2011 and he was due for promotion after three years as per the availability and suitability of the post. Therefore, prior to 2014 the petitioner was not eligible to be promoted. Mean time, as per the directions given by this Court in Writ Petition No. 31 of 2015 the University has submitted all the documents to respondent no.1 for verification of roster and the respondent no.1 after scrutiny of all the relevant

documents submitted its report on 5.6.2015. From the record, it appears that there were 7 sanctioned posts of the Assistant Registrar, 4 goes to promotee and 3 goes to direct recruitee. The University has already promoted 4 persons i.e. one from the scheduled category and 3 from open category and remaining 3 posts were fill in and appointed from direct recruitees, in that category also one was belonging to scheduled caste and two were from open category, and such promotions given by the University were accepted by respondent no.1 as per the final roster.

14. On perusal of the final roster, dated 5.6.2015 it appears that reservation for the recruitment of 4 posts was finalised, out of which one post was reserved for scheduled caste and three were kept for open category. The post reserved for scheduled caste was already filled in. Only one post from the open category was vacant and on that post the University has appointed respondent no.10 after following due

process of law. At the time of selection of respondent no.10, the post reserved for scheduled tribe was not vacant. The roster is verified by the experts. We would not sit in appeal over the decision of experts.

15. It appears that initially in the year 2004-05 some mistake was committed by the University in filling of the post as per roster and so also not maintaining the ratio of appointment by direct recruits and promotees. However, at that time petitioner was not eligible for promotion of Deputy Registrar. For the first time petitioner was appointed as Assistant Registrar in the year 2011. He has to wait for three years as Assistant Registrar to be eligible for being considered for the post of Deputy Registrar by promotion. On or after 2014 no vacant post of Deputy Registrar from the scheduled tribe category is available and vacant. Therefore the petitioner was not promoted. As per respondent, next vacancy would be for scheduled

tribe category candidate. At that time claim of petitioner can be considered and/or if post of Deputy Registrar are increased the claim of petitioner can be considered. In view of above, the University has rightly selected respondent no.10 from open category.

16. Hence, Writ Petition is dismissed. No costs.

(K.L.WADANE, J.)
JUDGE

(S.V.GANGAPURWALA, J.)
JUDGE

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