

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

WRIT PETITION NO. 4236 OF 2004

Shri Bhavanrao s/o. Prataprao Thorat .. Petitioner
Age. 58 years, Occ. Service, working as
Senior Scientist, Network Project on Sheep
Improvement, Mahatma Phule Krishi
Vidyapeeth, Rahuri, R/o. Krishi Vidyapeeth
Quarters, Rahuri, Taluka : Rahuri,
District : Ahmednagar.

Versus

1. The State of Maharashtra .. Respondents
Through its Secretary,
Agriculture Department,
Maharashtra State,
Mantralaya, Mumbai – 32.
2. The Mahatma Phule Krishi Vidyapeeth
Rahuri, Taluka : Rahuri,
District : Ahmednagar
through its Registrar.
3. The Hon'ble Vice Chancellor,
The Mahatma Phule Krishi Vidyapeeth
Rahuri, Taluka : Rahuri,
District : Ahmednagar through
its Registrar.

Mr.S.P. Thorat h/f. Mr. R.M. Deshmukh, Advocate for the
petitioner.

Mr.S.M. Ganachari, AGP for respondent/State.

Mr.M.N. Navandar, Advocate for respondent No.2.

**CORAM : S.S.SHINDE &
S.M.GAVHANE, JJ.**
RESERVED ON : 27.02.2018
PRONOUNCED ON : 15.06.2018

J U D G M E N T [PER : S.M. GAVHANE, J.] :-

1. By this petition under Articles 14 and 226 of the Constitution of India, the petitioner is seeking directions to respondent No.2-Mahatma Phule Krishi Vidyapeeth, Rahuri through its Registrar and respondent No.3 – the Vice Chancellor of the said Vidyapeeth to assign the deemed date as 23.11.1983 for the post of Associate Professor and to promote the petitioner on the post of Professor and assign deemed date for the post of the Professor as 20.10.2000 in view of the order dated 16.01.2002 passed by the Division Bench of this Court in Writ Petition No.2714 of 1990 and further claimed declaration that the orders dated 10.11.2003 and 11.11.2003 issued by respondent No.2 i.e. Exh. "S" collectively are not in consonance with order dated 16.01.2002 passed in the aforesaid writ petition by this

Court and therefore the said orders are wrong and illegal and hence the petitioner is entitled to get all the consequential promotional benefits of the post of Professor and the pensionary benefits pursuant to the deemed date i.e.23.11.1983 for the post of Associate Professor and the deemed date i.e.22.10.2000 for the post of Professor by setting aside the letter/order dated 10.11.2003 and 11.11.2003.

2. Facts giving rise to this petition are as under :-

A) The petitioner was in service of respondent No.2 – University right from 02.07.1973. Initially, he was working as an Assistant Professor and thereafter he became Associate Professor. He was due for promotional post of Associate Professor on 23.11.1983. However, respondent No.2 did not give promotional post to him and instead of him a Junior Professor of the said university namely Mr. D.P. Koratkar was given said promotional post

by giving deemed date i.e. from 23.11.1983. Therefore, the petitioner filed Writ Petition No.2714 of 1990 before this Court. Said writ petition was allowed on 16.01.2002 in the light of paragraphs 14 and 15 of the said order as under :-

"14. We, therefore, direct the respondent No.1 to re-draw the seniority list for the cadre of Assistant Professor (in discipline of Animal and Dairy Science) as on 01.06.1989 without considering the provisions of Rules 10(b) and 13(a) of the Seniority Regulations of 1972 within a period of two months from today and show the petitioner senior to the respondent Nos.2 and 3. The respondent Nos.2 and 3 shall be shown in the seniority list below Shri V.D.Savkar, who figures at Serial No.38 of the seniority list dated 27.11.2001. We further hold that the petitioner shall be entitled to all the consequential benefits of promotion in all the higher cadres from the dates on which his juniors were promoted and notwithstanding the fact that respondent Nos.2 and 3 have already retired. The petitioner shall be entitled to the deemed dates of promotion in higher posts as well.

15. Rule is made absolute in terms of above order with no order to costs."

B) Thereafter, the petitioner by his letter, applications and correspondence on 20.03.2002,

11.06.2002, 24.09.2002, 25.11.2002 and 16.10.2003 submitted to respondent No.2-University and the Registrar of the University pointed out his grievance, however, they did not give response to the grievances of the petitioner. Thereafter, again on 13.03.2003 and 06.05.2003, the petitioner submitted his grievances to the office of Pro-Chancellor and Minister of Agriculture and Law and applied to the Vice Chancellor and reiterated his grievances pointing out that though 15 months have been passed, no order of the Court is followed and again requested that he may be given deemed date in the cadre of the Associate Professor from 23.11.1983, which was actually given to Dr.Koratkar, though he was junior to him and he also submitted that the order for the post of the Professor is also required to be issued immediately as he was already due for the said post as Dr.Koratkar was assigned the post of Professor on 21.10.2000 although he was junior to the petitioner. Thereafter also on 25.06.2003, 02.08.2003 and 09.09.2003 the petitioner made representations to respondent No.1 and the Registrar

informing that the provisional seniority list was prepared and published by the University and the Registrar, however, the second part of the order of the High Court was not followed. It is stated that in the provisional seniority list of the cadre of the Assistant Professor, Associate Professor and Professor published on 22.10.2002 and 19.10.2002, the petitioner was shown junior to Dr. Koratkar, who was in-fact junior to the petitioner. In-fact, as per order dated 27.11.1990, the deemed date which was given to Dr.Koratkar as 23.11.1983 was required to be assigned to the petitioner, however, the respondent did not assign said deemed date to the petitioner and therefore the petitioner did not get the consequential benefits of promotions of the post of Associate Professor and the post of Professor.

C) According to the petitioner on 10.11.2003 letter is given by respondent No.2-University in which deemed date to the petitioner was given as 10.08.1987 in the cadre of the Associate Professor of Animal Science and

Dairy Science and the said list was revised and published on 06.06.2003 being the provisional seniority list. In the said letter, it is further pointed out that the protection of pay of the petitioner at par with Dr.S.B. Shinde would be reviewed only after issue of final provisional list of the Assistant Professor, Associate Professor and Professor. So also, on 11.11.2003 again the Registrar issued letter to the petitioner that the deemed date assigned to Dr.Koratkhar has been withdrawn as per the office order dated 18.06.2003. In-fact, there was no order from the High Court directing respondent No.2 and the Registrar to withdraw deemed date, however, the University instead of abiding the order passed by the High Court, wrongly and illegally withdrawn the deemed date of Dr.Koratkhar only with the intention to not to give benefit to the petitioner as per the direction given by the High Court.

D) Further, it is the case of the petitioner that on 06.12.2003 respondent University issued a circular

about the seniority list of the Assistant Professor, Associate Professor in which the petitioner's name is shown at Sr. No.30 and 24 respectively. Said list is not according to the directions of the High Court in order dated 16.01.2002 in Writ Petition No.2714 of 1990. In fact, in the list of Professors, name of Dr.Koratkhar is shown at Sr.No.19, though he was junior to the petitioner and therefore, again in order to deprive the petitioner of the consequential benefits as directed by the High Court, name of the petitioner is not shown in the said seniority list as no order for the post of Professor was issued in favour of the petitioner before issuing the final seniority list. Thereafter, on 01.04.2004, the petitioner submitted detailed representation to respondent No.2-University and thereby informed that arrears of Rs.66,041/- are not paid and that said respondent has not promoted the petitioner on the post of Professor with deemed date as on 20.10.2000 and also submitted that petitioner should have been given deemed date as 23.11.1983 in the cadre of Associate Professor,

however, the respondent has not paid any attention. As a matter of right, the petitioner's name was required to be shown in the list of Professors when there was order of the High Court directing the respondents to give consequential benefits to the petitioner. Unfortunately, the respondents did not follow said order and on the contrary they have issued the seniority list before abiding the order and promoting the petitioner to the post of Associate Professor and subsequently to the post of Professor. In the above circumstances, the petitioner has filed this petition for the reliefs stated earlier.

3. On behalf of respondent Nos.2 and 3, affidavit of Vishwasrao Narayanrao Ahire, Deputy Registrar (Administration) of respondent No.2 – University is filed. So also on behalf of said respondents affidavit of Ganesh Kashinath Ghorpade, Registrar of respondent No.2 – University is filed as reply to para 36-A of the petition added after amending the petition. In the affidavit of the Deputy Registrar (Adm.), it is stated that the writ petition is not tenable and if the petitioner is aggrieved for whatsoever

reason, he may have his remedy in some other proceeding, but not in the present writ petition. In the said affidavit, it is not disputed that the petitioner was appointed as Assistant Professor of Animal Science and Dairy Science by order dated 19.06.1973 by way of nomination and he joined on 02.07.1973 and that the University had published provisional list for the cadre of Assistant Professor in various disciplines as on 01.04.1983 by its letter dated 06.04.1985. So also it is not disputed that Dr.Koratkhar was promoted by order dated 04.09.1990 to the post of Associate Professor. It is stated that final seniority list as on 01.01.1999 in the category of Assistant Professor of Animal Science and Dairy Science and also Associate Professor of Animal Science and Dairy Science in various disciplines and faculty of Agriculture, which was published through letter dated 19.06.2000 in which position of the concerned person was shown as under :-

Associate Professors of Animal Science and Dairy Science

Sr. No.	Sr.No. in the seniority list of Asso.Professor A.S. & D.S.	Name	Date of Appointment	Deem date
1	2	3	4	5
	20	Dr.D.P. Koratkhar	11/04/90	23/11/83

				(P)
2	21	Dr.S.S. Patil	09/01/84	09/01/84 (P)
3	24	Shri B.F. Patil	10/08/87	10/08/87 (P)
4	26	Shri B.P. Thorat	21/03/96	21/03/96 (P)

Assistant Professor of Animal Science & Dairy Science

Sr. No.	Sr.No. in the seniority list of Asso.Professor A.S. & D.S.	Name	Date of Appointment	Deem date
1	2	3	4	5
1	22	Dr.D.P. Koratkar	14/10/76	03/12/72 (P)
2	21	Dr.S.S. Patil	07/12/72	04/12/72 (N)
3	24	Shri B.F. Patil	29/11/72	11/12/72 (N)
4	26	Shri B.P. Thorat	02/07/73	02/07/73 (N)

4. The Deputy Registrar has further stated that on the basis of revised seniority list, Dr.Koratkar was assigned deemed date as 04.12.1972 in the cadre of Assistant Professor of Animal Science and Dairy Science and 23.11.1983 in the cadre of Associate Professor of Animal Science and Dairy Science as per order dated 01.06.1990 of the deponent's office. He further stated

that in obedience of this Court's order in Writ Petition No.2714 of 1990, this deponent has revised the seniority list in the cadre of Associate Professor and Assistant Professor of Animal Science and Dairy Science and published the same as provisional on 07.06.2002 and on 06.06.2003, in which the petitioner was shown senior to Dr.Koratkhar and Shri Sayyed also in the cadre of Assistant Profesoor of Animal Science & Dairy Science and also shown senior to Dr. Koratkhar in the cadre of Associate Professor of animal Science and Dairy Science.

5. It is further stated that as regards demand of the petitioner to assign him deemed date as 23.11.1983, Dr. Koratkhar had been assigned deemed date as 23.11.1983 in the cadre of Associate Professor of animal Science and Dairy Science on the basis of seniority list published on 27.06.1989 as he was shown senior to Dr.S.S. Patil in the cadre of Assistant Professor of Animal Science and Dairy Science and Associate Professor of Animal Science and Dairy Science also. It is also stated that this Court

has clearly directed, by order in Writ Petition No.2714 of 1990 to re-draw seniority list of the cadre of Associate Professor of Animal Science and Dairy Science as on 01.06.1989 without considering the provision of Rules 10(b) and 13(a) of the Seniority Regulations, 1972. As per order of this Court, same seniority has been re-drawn and maintained the position of the concerned persons as was shown in the seniority list as on 01.04.1983. It is stated that in view this Court's order in the Writ Petition No.2714 of 1990 the Provisions of Rule 10(b) and 13(a) are not applicable in the case of the petitioner and also as per the rules provided in the Maharashtra Civil Services (Regulation of Seniority) 1982, the demand of the petitioner cannot be considered.

6. Finally it is stated by the Deputy Registrar that petitioner's case is not based on any rules and in view of the fact that this deponent has given full effect to the judgment and order of this Court in Writ Petition No.2714 of 1990, the petitioner is not

entitled to assign any of the deemed date as claimed by him. The seniority list was re-drawn as per directions of this Court and on the basis of that Dr.D.P. Koratkar was placed much below the petitioner and the deemed dates granted to Dr. D.P.Koratkar were also withdrawn. As such the claim of the petitioner that the deemed dates granted to Dr.D.P.Koratkar should be granted to him, cannot be done in the eye of law. It is further stated that Article 16 of the Constitution of India confers the right on a particular candidate to be considered for promotion. Once such legally valid consideration is given, no further right for promotion springs out of it. Thus, it is prayed to dismiss the writ petition.

7. Respondent Nos.2 and 3 filed their additional reply to the amended portion of the petition in para 36-A and denied the allegations made therein. It is stated in the additional affidavit that Dr. Koratkar was promoted in the Cadre of Professor on 13.10.2000. In the seniority list, Shri B.F. Patil is senior to Dr. Koratkar and the

petitioner in the Cadres of Assistant Professor and Associate Professor. Therefore Shri B.F. Patil was entitled to promotion in the Cadre of Professor and as such the petitioner is not at all entitled for the deemed date from the cadre of professor. It is further stated that the allegations of the petitioner that the decision of the deponents dated 11.11.2003 is illegal is denied in toto and said decision taken by the deponent is according to the decision of this Court in Writ petition No.2714 of 1990 and there is no illegality committed with any employee by the deponent.

8. The petitioner has filed his rejoinder affidavit and reiterated almost all the contentions which have been raised by him in the writ petition. In addition, the petitioner stated that it is a fit case in which this Court may take a judicial note and give him justice. If the respondents would have acted in good faith, he would have received the post of Associate Professor, when his junior Shri Koratkar had received. He would have

received further promotional post of Professor, which was in fact vacant at the end of few years of his service period. However, respondent Nos. 2 and 3 deliberately and intentionally did not give him said opportunity and therefore, he was entitled to get atleast monetary benefit of salary of Associate Professor on the basis of deemed date i.e. 23.11.1983 and further on the basis of deemed date i.e. 23.11.1983 for the cadre of Professor. Thus, the petitioner prayed to direct respondent Nos. 2 and 3 to give him monetary benefit of his service right from the aforesaid deemed date i.e. 23.11.1983 for the post of Associate Professor and further for the post of Professor from deemed date 21.10.2000. Said monetary benefit should be given along with interest at the rate of 18% p.a.

9. Learned Advocate appearing for the petitioner made submissions in the light of contentions in the petition. He submits that the petitioner is entitled to directions to respondent No.3 to assign the due date as

23.11.1983 for the post of Associate Professor and to promote the petitioner on the post of Professor and assign due date for the post of professor as 22.10.2000 in view of order dated 16.01.2002 passed by the Division Bench of this Court in Writ Petition No. 2714 of 1990 and to the relief of declaration as claimed. It is submitted that the impugned orders issued by respondent No.2 are not in accordance with the decision dated 16.01.2002 of the High Court. It is submitted that the principle of "no work no pay" cannot be accepted as a rule of thumb and there are exceptions where Courts have granted monetary benefits from back date also. According to learned Advocate full back wages in certain circumstances may be justified, particularly when the promotion is wrongly denied. In support of his submissions, learned Advocate has relied upon the following decisions :-

- A) State of Karala & Ors. Vs. E.K. Bhaskaran Pillai, (2007) 6 SCC 524.
- B) P.M. Ravindran Vs. State of Kerala, WP(C)No.29242 of 2008 of Kerala High Court decided on 17.02.2009.
- C) Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur & Anr. (1998) 7 SCC 44.

. In the case of Baij Nath Sharma (Supra), the appellant was Judicial Officer of Rajasthan Judicial Service. He retired on superannuation on 01.06.1996. His grievance was that before his retirement, there were vacancies in promotion quota against which he could be considered for promotion to Rajasthan Higher Judicial Service. He claimed promotion from the date the vacancy arose against promotion quota. The Rajasthan High Court (on administrative side) however took a conscious decision in its Full Court meeting on 09.02.1996 not to make further promotions till recruitment was made from the Bar, otherwise there would be imbalance between strength of promotees and direct recruits.

. On facts, it was however found that no Judicial Officer junior to the appellant was promoted before his superannuation. On the other hand, four officers who were senior to the appellant were promoted on 30.12.1996 i.e. after appellant's superannuation.

10. On the other hand, learned advocate appearing for respondent No.2-University submits that respondent No.3 authority has issued the impugned orders properly in accordance with order dated 16.01.2002 of the High Court. Further, he submits that when the claimant has not worked on promotional post even on adhoc basis, no payment of arrears of salary to the claimant can be made. To support his submissions, learned Advocate has relied upon decision in the case of State of Haryana Vs. O.P. Gupta, 1996(1) DGLS (SC) 89. In the said case, it was held that unless promotions are made on the basis of seniority list prepared in accordance with rules, entitlement to work in promotional posts does not arise. It was held that claimant has not worked on promotional posts even on adhoc basis and therefore no payment of arrears of salary can be made to the claimant.

. So also, the learned Advocate appearing for respondent No.2 has relied upon the decision in the case of Jaysing Rangrao Raut Vs. Maharashtra State Electricity

Board, 2004(6)Bom.C.R.641 on the point whether employee is entitled for benefits from deemed date of promotion. In the said case it was held that person is not entitled to arrears of pay and salary on the basis of deemed date granted unless he has actually functioned or worked on the said higher post. It was held that the petitioner is not entitled to get benefits of arrears of salary and back wages on the basis of deemed date of promotion.

11. We have also heard learned AGP appearing for respondent No.1.

12. We have carefully considered the submissions made by the learned Advocate appearing for the petitioner, learned AGP appearing for respondent No.1 and learned Advocate appearing for respondent No.2. With their assistance, we have perused the pleadings and affidavit in replies and rejoinder affidavit as well as copies of documents produced on record in support of their respective contentions by the contesting parties.

13. There is no dispute that the petitioner was in service of respondent No.2 – University right from 02.07.1973. Initially, he was working as Assistant Professor and thereafter he became Associate Professor. According to him, he was due for promotional post of Associate Professor from 23.11.1983. However, respondent No.2 did not give promotional post to him and instead of him a junior professor of the said University, namely, Mr.D.P. Koratkar was given said promotional post by giving due date as 23.11.1983.

14. So also, there is no dispute that the petitioner filed Writ Petition No.2714 of 1990 before this Court and said writ petition was allowed on 16.01.2002 in the light of paragraphs 14 and 15 of the said order which are already reproduced in para 2(A) (supra). At the cost of repetition, as per the said decision dated 16.01.2002, respondent No.1 was directed to re-draw the seniority list for the cadre of Assistant Professor as on

01.06.1989 without considering the provisions of Rules 10(b) and 13(a) of the Seniority Regulations of 1972 within a period of two months from the date of said order and to show the petitioner senior to respondent Nos. 2 and 3 and respondent Nos.2 and 3 shall be shown in the seniority list below Shri V.D. Savkar, who figures at Serial No.38 of the seniority list dated 27.11.2001. Further, as per said order, it was held that the petitioner shall be entitled to all the consequential benefits of promotion in all the higher cadres from dates on which his juniors were promoted and notwithstanding the fact that respondent Nos.2 and 3 have already retired. So also, it was held that the petitioner is entitled to deemed date of promotion in higher posts as well.

15. There is no dispute that aggrieved by the above said order dated 16.01.2002 respondent No.2-Dr. Koratkar in the said Writ Petition No. 2714 of 1990 had filed review application with delay condonation application

No.4837 of 2004 in this Court and by order dated 30.08.2004 this Court [Coram : B.H. Marlapalle & N.H. Patil, JJ.] rejected the application to condone delay to file review application. While passing the said order, it was observed as under :-

"Writ Petition No.2714 of 1990 has been decided by us on 16.01.2002. The petitioner therein had challenged the seniority list of 27.06.1989 wherein he was shown at serial no.32 and the respondent no.2 (present applicant) was shown at serial no.22. We had allowed the writ petition and directed the respondent no.2 University to re-draw the seniority list in the cadre of Assistant Professor as on 01.06.1989. We had further directed that the respondents no.2 and 3 should be shown in the seniority list below Shri V.D. Savkar who figured at serial no.38 of the seniority list dated 27.11.2001. This order had received its finality as admittedly none of the respondents in the said petition had challenged our decision before the Apex Court.

2. This application for condonation of delay in filing Review Petition Stamp No.27974 of 2003 was heard by us on 09.07.2004 and we had issued the notice.

3. As per the office note, the review petition is filed beyond time by 565 days. Hence, this civil application for condonation of delay.

4. The present respondent no.3 has not yet been served.

5. Shri N.K. Kakde, learned Advocate for the present applicant, in support of his prayer for condonation of delay submitted that if regards be had to the order dated 18.06.2003 issued by the respondent no.2 University and the date of filing of the review petition on 03.09.2003, the delay is not more than 60 days. We have, therefore, considered the order dated 18.06.2003 which has admittedly resulted in the applicant coming with the review petition. By the said order the Vice-

Chancellor of the respondent no.2 University has ordered that the deemed dates of 04.12.1972 in the cadre of Assistant Professors of Animal Science and Dairy Science and 23.01.1983 in the cadre of Associate Professor of Animal Science and Dairy Science to Shri D.P. Koratkar (present applicant) be withdrawn.

6. Though this order is claimed to be in consequence of our directions in W.P.No.2714 of 1990, we do not find any scope to accept this contention that the order dated 18.06.2003 is by way of implementation of our directions. The applicant may have his remedy to challenge this order in some other proceedings and a review petition arising out of the said order dated 18.06.2003 cannot be entertained.

7. We, therefore, reject C.A.no.4837/2004 for condonation of delay and make it clear that this order would not come in the way of the applicant to challenge the order dated 18.06.2003 in appropriate fresh proceedings, if so advised."

16. It appears that Dr.Koratkar-respondent No.2 in the earlier writ petition has not challenged the above order dated 30.08.2004. So also he or respondent-University in the earlier writ petition have not challenged order dated 16.01.2002 passed by the High Court in the earlier Writ Petition No.2714 of 1990. So also, he did not challenge order dated 18.06.2003 in appropriate proceeding as observed in the above order. Thus, it appears that the order dated 16.01.2002 passed in Writ Petition No.2714 of 1990 and order dated 30.08.2004 in delay condonation application have attained

finality.

17. From the above referred order dated 30.08.2004, it is also clear that the order dated 18.06.2003 issued by the University is not by way of implementation of direction of the Court, in Writ Petition No.2714 of 1990.

18. In the above circumstances, respondent No.2 – University herein was required to re-draw seniority list for the cadre of Assistant Professor as on 01.06.1989 and required to show the petitioner senior to respondent Nos. 2 and 3 i.e. respondent No.2-Dr.D.P.Koratkhar and respondent No.3-S.F.Sayyad in Writ Petition No.2714 of 1990 and said respondents were required to be shown in the seniority list below V.D. Savkar, who figured at Sr.No.38 of seniority list dated 27.11.2001, as per directions in the order dated 16.01.2002 in Writ Petition No.2714 of 1990. But it appears that respondent No.2-University herein who was respondent No.1 in Writ Petition No.2714 of 1990 has issued letters dated

10.11.2003 and 11.11.2003 Exh."S" respectively addressed to the Senior Scientist, Network Project on Sheep Improvement, MPKV, Rahauri and to the petitioner. It appears that by letter dated 10.11.2003, the Registrar of respondent No.1 – University informed the Senior Scientist that the seniority list of Assistant Professor, Associate Professor and Professor of Animal Science and Dairy Science published on 07.06.2002, in which the deemed date of Prof. B.P. Thorat is shown as 10.08.1987 in the cadre of Associate Professor of Animal Science and Dairy Science, as on 01.01.1999 is now revised and published on 06.06.2003 as provisional seniority list of Animal Science and Dairy Science as on 01.01.2002, in which the deemed date is shown as 11.04.1990 in the cadre of Associate Professor of Animal Science and Dairy Science, to Prof. B.P. Thorat. In-fact, as per the order dated 16.01.2002 in Writ Petition No.2714 of 1990, seniority list of cadre of Assistant Professor as on 01.06.1989 was required to be re-drawn to show the petitioner senior to respondent Nos.2 and 3 in the said

petition. The letter dated 11.11.2003 of the Registrar addressed to the petitioner shows that the petitioner was informed that as per order passed by the High Court in Writ Petition No.2714 of 1990, said office has taken action as per the rules and maintained the petitioner's original position in the seniority list where applicable. It appears from final seniority list of Assistant Professor (page 106-A) that name of Dr.D.P. Koratkar who was respondent No.2 in the earlier writ petition was shown at Sr. No.37 and the name of V.D.Savkar was shown at Sr.No.36 and the name of the petitioner was shown at Sr.No.30. It appears from the said seniority list that deemed date of promotion as 04.12.1973 was given to V.D. Savkar and deemed date as 14.10.1976 was given to Dr.D.P. Koratkar. It appears from final seniority list of Associate Professors (page No.106-E) as on 01.01.2002 that the name of the petitioner is shown at Sr.No.30 and deemed date is given as 11.04.1990. Name of Dr.D.P. Koratkar is shown at Sr. No.37 and deemed date is shown as 30.09.1997. So also, it appears that in the final

seniority list of Professor as on 01.01.2002, name of Dr. D.P. Koratkar is at Sr.No.28 and date of appointment is shown as 21.10.2000. The name of petitioner is not shown in the said seniority list of Professor. As per order dated 16.01.2002 in Writ Petition No.2714 of 1990, the petitioner was ordered to be shown senior to Dr.D.P. Koratkar and S.F. Sayyad i.e. respondent Nos. 2 and 3 in the said petition, in the seniority list for the cadre of Assistant Professor and it was directed that the petitioner shall be entitled to deemed date of promotion in higher posts as well. The name of the petitioner was required to be shown in the above referred final seniority list of Professor as on 01.01.2002, in view of the directions in order dated 16.01.2002 in earlier writ petition, but as observed above, his name was not shown.

19. It appears that final seniority list of Assistant Professor as on 01.01.1999 and revised seniority list of Associate Professor as on 01.01.1999 were prepared (page No.39 to 41) by the Registrar of the

University. As per final seniority list of Assistant Professor as on 01.01.1999, name of the petitioner is shown at Sr.No.30, name of Dr.D.P. Koratkar is shown at Sr.No.37, name of S.F. Sayyad is shown at Sr.No.38. This list shows deemed date of the petitioner as 02.07.1973, deemed date of Dr.D.P. Koratkar as 14.10.1976 and deemed date of S.F. Sayyad as 14.10.1976. The revised seniority list of Associate Professor (page No.41) shows that deemed date of petitioner is 10.08.1987 and deemed date of Dr.D.P.Koratkar is 20.09.1997. This revised seniority list also shows that almost all the employees above the petitioner have been retired and so also Dr.D.P.Koratkar has also been retired. Exh."B" (page No.33) shows that the petitioner was appointed as Assistant Professor on 02.07.1973 by nomination and Dr.D.P. Koratkar was appointed as Assistant Professor on 14.10.1976 by promotion. It is further seen that the petitioner was given promotion as Associate Professor on 21.03.1996, Dr.D.P. Koratkar was given promotion as Associate Professor on 11.04.1990 and 23.11.1983 deemed date was

assigned to him in the order of Associate Professor. Moreover, it is seen that Dr.D.P.Koratkhar was given post of Professor on 21.10.2000. There is no dispute that the petitioner – Shri Thorat is retired, and Dr.D.P. Koratkhar is also retired on the post of Professor on 01.12.2001.

20. Thus, it is clear from the above discussion that the petitioner was senior to Dr.D.P.Koratkhar when he was appointed as Assistant Professor. So also the petitioner was given promotion on 21.03.1996 as Associate Professor and Dr.D.P.Koratkhar was given promotion as Associate professor on 11.04.1990, however, 23.11.1983 was given as deemed date to Dr.D.P. Koratkhar in the order of the Associate Professor. Thus, it is obvious that the petitioner was not given said date i.e. 23.11.1983 i.e. deemed date in the cadre of Associate Professor, which deemed date was given to Dr.D.P.Koratkhar, who was junior to the petitioner. In such circumstances, we hold that the petitioner is entitled to 23.11.1983 as deemed date in the cadre of Associate Professor.

21. It appears that instead of giving deemed date i.e. 23.11.1983 to the petitioner in the cadre of Associate Professor, in the light of directions of the High Court in the Writ Petition No.2714 of 1990, the Registrar of respondent No.2-University vide order dated 23.08.2002, assigned deemed date 10.08.1987 to Prof. B.P. Thorat i.e. the petitioner in the cadre of Associate Professor and accordingly pay-scale was fixed and it appears that said order was passed consequent upon modification of final seniority list of Assistant Professors, Associate professors and Professors working in the discipline of Animal Science and Dairy Science, as on 01.01.1999, published vide letter referred to in the preamble-1 in the said letter. Thus, it is clear that the petitioner was not given deemed date 23.11.1983 in the cadre of Associate Professor, although he was entitled to said date, as observed earlier.

22. As stated earlier Dr.D.P.Koratkar was promoted

as Professor on 21.10.2000 as seen from Exh."B". In the rejoinder affidavit dated 21.12.2015, the petitioner has stated in paragraph Nos.18,19 and 24 as under :-

"18. I say that this Hon'ble Court had never directed the Respondent no.2 and 3 to withdraw the deem date, which was given to Dr. Koratkar, however the Respondent no.2 and 3 have deliberately withdrew the said deem dates only with the intention to give subsequent date to the present Petitioner, instead of earlier deemed date which was given to the Dr. Koratkar and Dr. Sayyed. On the contrary the operative part of the order in paragraph no. 14 of the judgment and order dated 16.1.2002 in W.P.no2714/1990 this Hon'ble Court clearly ordered that the Petitioner shall be entitled to all the benefits of promotion in all the higher cadres from the dates on which his juniors were promoted. The Petitioner shall be entitled to the deemed dates of promotion in higher post as well. This Hon'ble Court contemplated the deemed date i.e. 23.11.1983 for the cadre of Associate Professor and further promotional post for Professor i.e. 21.10.2000. Unfortunately the Respondent no.2 and 3 with a malafide intention withdrew the said deemed date and assigned new dates i.e. 11.4.1990 for the post of Associate Professor. It is pertinent to note that this Hon'ble Court never directed to give fresh deemed date as given by the Respondent no.2 and 3 and therefore it is a clear case of breach of order passed by this Hon'ble Court.

19. I say that it is falsely averred by the Respondent no.2 and 3 that he cannot be

promoted to the cadre of Professor because to fill the said post it was depend upon the availability of the vacancy and according to the Respondent no.2 and 3 the vacant post was given to B.F.Patil. As a matter of fact B.F. Patil was already enjoying the post of Professor on yearly basis on each year and he enjoyed the said post till his retirement. The record shows that said Shri. B.F. Patil was in the said post for a period of around 3 to 4 years and he received all benefits in the cadre of Professor including the pensionary benefits of the said post. Question arose that why I am not given the opportunity of Professor and not promoted to the post of the said cadre when it is observed by this Hon'ble Court that I am a senior than the Dr. Koratkar. It was necessary for the Respondent no.2 and 3 to promote me in the cadre of Professor as soon as Dr.Koratkar was retired, however the Respondent no.2 and 3 did not give me the said post in the cadre of Professor and therefore again they have breached the order dated 16.1.2002 passed by this Hon'ble Court in Writ Petition No.2714/1990. As a matter of fact it is admitted by the Respondent no.2 and 3 on page 125 that:-

"At present one post is vacant in promotion group due to retirement of Dr. D.P. Koratkar with effect from 1.12.2001. This vacancy should have been filled in from the senior persons working in the cadre of Associate Professor of Animal Science & Dairy Science."

24. In view of the aforesaid facts and circumstances it is a fit case in which this Hon'ble Court may kindly take a judicial note

and kindly give me justice, if the Respondents would had acted in a good faith I would had received the post of Associate Professor when my junior Shri. Koratkar had received. I also would have received further promotional post of professor which was in fact vacant at the end of few years of my service period. However the Respondents no.2 and 3 deliberately and intentionally did not give me said opportunity and therefore I am entitled to get at least monetary benefit of the salary of Associate Professor on the basis of deemed date dated 23.11.1983 and further on the basis of deemed date dated 23.11.1983 for the cadre of Professor. I therefore say that this Hon'ble court may kindly direct the Respondent no.2 and 3 to give monetary benefit of my service right from the aforesaid my deemed dates i.e. 23.11.1983 for the post of Associate Professor and further for the post of Professor from deemed date 21.10.2000. The said monetary benefit should be given along with the interest at the rate of Rs.18% p.a. I therefore say that the present Petition filed by me may be allowed finally in the above term as well as the reliefs sought in the petition."

23. In the affidavit-in-reply submitted on behalf of respondent Nos.2 and 3 dated 21.09.2017 of the Registrar of respondent No.2-University, it is stated that Dr.D.P.Koratkar was not entitled to deemed date 23.11.1983, when he was granted promotion to the post of Associate Professor from 11.04.1990 and therefore deemed

date of 23.11.1983 granted to Dr.D.P.Koratkhar has been cancelled. It is stated that said date i.e. 23.11.1983 cannot be given to any employee as per the rules and as such the petitioner is not entitled for the said date of promotion. So also, it is stated in the reply affidavit that Dr.D.P.Koratkhar was being promoted in the cadre of Professor on 13.10.2000. It is stated in the seniority list that Shri B.F.Patil is senior to Dr.D.P.Koratkhar and the petitioner in the cadres of Assistant Professor and Associate Professor. Therefore, Shri B.F. Patil was entitled to promotion in the cadre of Professor and as such the petitioner is not at all entitled for deemed date from the cadre of Professor. It is stated that therefore, the allegations of the petitioner that the decision of deponent-Registrar dated 11.11.2003 is illegal and wrong, is denied.

24. It appears from Exh. R-7 (page No.158) that deemed date as 04.12.1972 in the cadre of Assistant Professor, Animal Science and Dairy Science and

23.11.1983 in the cadre of Associate Professor in Animal Science and Dairy Science assigned to Dr.D.P. Koratkar, retired professor of Animal Science and Dairy Science, on the basis of seniority list of Assistant Professor, were withdrawn and the arrears if any paid to Dr.D.P.Koratkar on assignment of above deemed dates were ordered to be recovered from him. Said order was passed on 18.06.2003 i.e. after decision of the High Court dated 16.01.2002 in Writ Petition No.2714 of 1990. Admittedly, order dated 16.01.2002 was not challenged by the respondent / University or no review of the said order was sought by the University. As said earlier, said order has attained finality. Therefore, when the deemed dates i.e. 04.12.1972 in the cadre of Assistant Professor and 23.11.1983 in the cadre of Associate Processor, which were assigned to Dr.D.P. Koratkar, who was junior to the petitioner, which dates were to be assigned to the petitioner in the light of decision dated 16.01.2002, in Writ Petition No.2714 of 1990, being senior to Dr.Koratkar, the act of the respondent/University in

passing order dated 18.06.2003 withdrawing above said deemed dates assigned to Dr.Koratkhar, appears to be mala fide and with intent to defeat the claim of the petitioner to get benefit of above said deemed dates, in the light of directions of the High Court in the earlier Writ Petition, without getting said order set aside or without permission of the High Court. Said act of the respondent/University was unwarranted. Besides the same, it is stated in the rejoinder-affidavit of the petitioner as referred earlier that as per the directions of the High Court, the petitioner is entitled to all the benefits of promotion in all the higher cadres from the dates on which his juniors were promoted. As per order dated 16.01.2002 of the High Court in the above said writ petition, directions were issued to show the petitioner senior to respondent Nos.2 and 3 in Writ Petition No.2714 of 1990 i.e. Dr.D.P.Koratkhar and Shri S.F. Sayyed and it was further directed that the petitioner shall be entitled to all the consequential benefits of promotion in all higher cadres and that all the consequential

benefits should be given to the petitioner from the dates on which juniors of the petitioners were promoted. As observed earlier while rejecting delay condonation application i.e. C.A.No.4837 of 2004 to condone delay caused in filing Review Application to review order dated 16.01.2002 in Writ Petition No.2714 of 1990, it was observed that though order dated 18.06.2003 issued by respondent No.2 – Vice Chancellor of respondent No.2 withdrawing deemed dates of 04.12.1972 in the Cadre of Assistant Processors and 23.01.1983 in the Cadre of Associate Professors assigned to Dr.D.P.Koratkar [applicant in said application] is claimed to be in consequence of directions in Writ Petition No.2714 of 1990, the Court did not find any scope to accept the said contention that the said order dated 18.06.2003 is by way of implementation of directions of the Court. As stated earlier the order passed in Civil Application No.4837 of 2004 and order dated 16.01.2002 in Writ Petition No.2714 of 1990 have not been challenged by the applicant – Dr.Koratkar in said application or concerned

respondents , including the University, in the writ petition and said orders have attained finality. Considering order dated 30.08.2004 in Civil Application No.4837 of 2004, letters/orders dated 10.11.2003 and 11.11.2003 issued by the respondents refusing deemed dates in the cadre of Associate Professor to the petitioner and informing the petitioner that the deemed dates assigned to Dr.Koratkhar as per order dated 01.06.1990 are withdrawn and deemed date 11.04.1990 has been assigned to Dr.Koratkhar and the petitioner in the cadre of Associate Professor and therefore the petitioner is not entitled to deemed date as 23.11.2003 is not tenable and therefore the petitioner's claim to assign deemed date of promotion in the cadre of Professor from 21.10.2000 is not acceptable, are not sustainable. In this view of the matter, the arguments advanced by the learned Advocate appearing for the respondent/University that the impugned orders are properly issued in accordance with the order of the High Court and that the present writ petition is not tenable, is not accepted.

25. For all the reasons discussed here-in-above, we hold that the petitioner is entitled to assign deemed dates i.e. 23.11.1983 for the post of Associate Professor and 20.10.2000 for the post of Professor, which were assigned to Dr.D.P.Koratkar, who was junior to him. Admittedly, the petitioner is now retired. When he has not actually worked as Associate Professor from 23.11.1983 and as Professor from 20.10.2000, he is not entitled to arrears of salary of the said post. However, salary of the said posts can be considered for the pensionary benefits to the petitioner, in view of the law laid down by the Apex Court in the case of State of Haryana (Supra) and the decision of this Court in the case of Jaysing Rangrao Raut (Supra) relied upon by the learned Advocate appearing for respondent No.2. The decisions relied upon by the learned Advocate appearing for the petitioner, referred earlier in para 9 (Supra) cannot be suitably made applicable to this case, to state that the petitioner is entitled to arrears of salary on

the basis of deemed dates referred to above in the cadre of Associate Processor and Professor.

26. In the result, we quash and set aside letters dated 10.11.2003 and 11.11.2003 issued by respondent No.2 to the petitioner annexed at Exh."S". We direct respondent Nos.2 and 3 to assign the deemed date 23.11.1983 for the post of Associate Processor and deemed date 20.10.2000 for the post of Professor to the petitioner, only for the purpose of continuity of service and for calculating pensionary benefits.

27. Rule is accordingly made absolute in the above terms. The writ petition is disposed of. No costs.

[S . M . GAVHANE , J .]

[S . S . SHINDE , J .]