

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

WRIT PETITION NO. 3906 OF 2010

Madhav S/o Annarao Patil,
Age – 61 Years, Occu – Pensioner,
R/o. Bhatangali, Lature, Taluka and
District – Latur ..PETITIONER

VERSUS

1. The Marathwada Agricultural University, through its's Registrar, Parbhani, District – Parbhani.
2. The Maharashtra Council of Agricultural, Education and Research, through it;s Chairman, the Minister for Agricultural, Animal Husbandry, Dairy Development and Fisheries Department, 132/B, Bhamburda, Bhoslenagar, Pune-07. ..RESPONDENTS

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Mr. P. R. Katneshwarkar, Advocate for the Petitioner.

Mr. Manish N. Navandar, Advocate for Respondent No.1.

Mr. Siddharth R. Deshpande, Advocate for Respondent No.2.

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**CORAM : S. V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

DATED : 10th JULY, 2018.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.):

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final disposal at admission stage.

2. The petitioner claims benefit of Career Advancement Scheme.

3. Mr. Katneshwarkar, learned counsel submits that the petitioner was appointed as an Associate Professor after undergoing selection process conducted by the selection committee under appointment order dated 15.09.1993. On completion of 8 years, the petitioner is entitled for the CAS benefit viz. the pay scale of a Professor. The learned counsel submits that initially on 26.10.2004, the petitioner alongwith others was granted the CAS benefit and was awarded the pay scale of a Professor but subsequently, under order dated 04.02.2008, the benefit was withdrawn. The learned counsel submits that the petitioner alongwith other 22 persons had filed writ petition challenging the said order, the writ petition came to be dismissed.

4. Learned counsel submits that the said petition was collectively filed, however, fact that the petitioner by selection was appointed as an Associate Professor under appointment order dated 15.09.1993 was not brought to the notice and the petitioner was all long treated as an Assistant Professor. The learned counsel submits that the similarly situated persons, who were in the list of the order dated 26.10.2004, are subsequently granted the benefit of the pay scale of a professor upon completion of 8 years, as an Associate

Professor. According to the learned counsel, the University had constituted selection committee as per the direction of the respondent no.2-MCAER and the name of the present petitioner was also recommended for the CAS benefit, but, the petitioner was denied the benefit. However, the other persons such as Dr. P. S. Borikar, Dr. S. P. Jinturkar and R. M. Kulkarni were given benefit under revised order of the year 2005.

5. Mr. Deshpande, learned counsel for respondent no.2 submits that the present petition is not tenable, in as much as, the present petitioner had earlier filed the writ petition before this Court bearing Writ Petition No.7364 of 2008, challenging the order withdrawing the CAS benefit granted to the petitioner. The writ petition was dismissed. The order dismissing the writ petition is confirmed by the Apex Court. The petitioner cannot now again re-agitate the same issue.

6. The learned counsel further submits that the petitioner being an Assistant Professor certainly was not eligible to be given the benefits of CAS and the pay scale of a Professor on completion of 8 years. The learned counsel further submits that as per the scheme evolved for Career Advancement of Teacher on 1.1.1996, the petitioner is not automatically entitled for the benefit of CAS an Associate Professor with a minimum 8 years

of service will be eligible for consideration for appointment as a Professor if the selection committee finds the candidate eligible. The learned counsel submits that respondent no.2 had intimated respondent no.1 to constitute the selection committee at its end and recommend names for the purpose of CAS. Though, the name of the petitioner was recommended by respondent no.1, the same was not considered by respondent no.2, as the petitioner was an Assistant Professor and could not have been given the benefit. The other persons are given the benefits, who were working as Associate Professor and such revised order is passed.

7. Mr. Navandar, learned counsel submits that the petitioner was appointed as Associate Professor under order dated 15.09.1993. The selection committee had recommended the name of the petitioner, but respondent no.2 did not accept the same.

8. We have considered the submissions canvassed by the learned counsel for the respective parties.

9. The appointment order dated 15.09.1993, issued by the Registrar of respondent no.1-University appointing the petitioner as Associate Professor of Plant Pathology is placed on record. The appointment order specifically refers to the recommendation by the selection committee (academic

staff) in its meeting held on 10.06.1993, thereby recommending name of the petitioner to the post of Associate Professor.

10. The learned counsel for respondent no.1-University also does not dispute the issuance of the said appointment order. The petitioner having been appointed as an Associate Professor in the year 1993, certainly would be eligible for consideration of CAS benefit after 8 years. It is also not disputed that, the petitioner possesses Ph.D. Qualification viz. the necessary qualification required for the purpose of considering the eligibility of the petitioner for the CAS benefit that is pay scale of a Professor after completion of 8 years. It is also matter of record that, the respondent no.1-University was entitled to constitute the selection committee and recommend the names of those who are considered eligible for the benefit of CAS. The selection committee constituted by respondent no.1 found the petitioner eligible for the CAS benefit and the pay scale of a Professor and recommended the name of the petitioner alongwith other candidates. The case of the petitioner did not find favour with respondent no.2, though, in the year 2005, revised orders were issued in favour of some of the candidates, similarly situated like the petitioner and the petitioner was not considered. It is the case of respondent no.2 that the case of the petitioner could not have been considered, as the

petitioner was in the cadre of Assistant Professor and only by passage of time the nomenclature was given to the post of the petitioner as an Associate Professor. The change in the nomenclature would not enure to the benefit of CAS to the petitioner. In our opinion, the said assumption of the respondent no.2 is misplaced. The appointment order dated 15.09.1993, succinctly states that the petitioner's name is recommended by the selection committee for the post of Associate Professor pursuant to which the petitioner is appointed as Associate Professor. In view of that, the case of the petitioner certainly was required to be considered for the benefit of CAS in tune with appointment order.

11. Respondent no.1-University as in no uncertain words clarified that the selection committee constituted to test the eligibility of the candidates for CAS was constituted as per the direction of respondent no.2 and the petitioner was found eligible for CAS benefit by the selection committee. It appears that, the respondent no.2 under misconception that the petitioner is an Assistant Professor has negatived the claim of the petitioner. The same was on altogether erroneous belief.

12. Considering the above, the petitioner would be entitled for CAS benefit, as is given to others such as Dr. P. S. Borikar, Dr. S. P. Jinturkar and R. M. Kulkarni.

13. The petitioner certainly had filed the writ petition earlier alongwith with 22 other petitioners bearing Writ Petition No.7364 of 2008 challenging the order withdrawing the CAS benefit. The said writ petition is dismissed and the Special Leave Petition filed against the said order is also dismissed. However, it appears that, this Court had considered all the petitioners therein as Assistant Professors and the order appointing the present petitioner as an Associate Professor in the year 1993 was not brought to the notice of the Court by any of the parties, neither by the University nor by the petitioner. On the face of it, it appears that, the petitioner having been appointed as Associate Professor and the similarly situated persons are given benefit, the petitioner cannot be denied the same, more particularly, when the petitioner has been found eligible by the selection committee for the CAS benefit.

14. In light of the above, the respondents shall grant the CAS benefit i.e. pay scale of the Professor to the petitioner under the Career Advancement Scheme, considering date of his appointment to the post of Associate Professor as 15.09.1993. The same shall be considered expeditiously and preferably within a period of (03) months from today. The consequential benefit would follow.

15. Rule is made absolute in the aforesaid terms. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/July-18