

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 4830 OF 2016**

Sandeep S/o Dashrath Shirsath
Age : 31 years, Occ : Service,
Presently working as Agricultural Officer
Panchayat Samitee Paithan,
R/o 6-A, Balajivihar, Yashwantnagar,
Paithan, Dist. Aurangabad.

...PETITIONER**VERSUS**

1. The State of Maharashtra,
Through the Principal Secretary
Rural Development Department,
Mantralaya, Mumbai.
2. The Commissioner of Agriculture,
Pune.
3. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
4. The Zillha Parishad, Aurangabad
Through its Chief Executive Officer
5. The Panchayat Samitee, Paithan,
Tq. Paithan, Dist. Aurangabad
Through its Block Development Officer.
6. M.U. Patkar
Age : 51 years, Occ : Service,
Presently working as Agricultural Officer
Zillha Parishad, Akola, Dist. Akola.

...RESPONDENTS

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Mr.V.M. Humbe Advocate for Petitioner.
Mr.P.N. Kutti Addl.G.P. for Respondent
Nos.1 to 3
Mr.M.C. Swami Advocate for Respondent No.5
Mr. K.B. Jadhav Advocate for Respondent No.6.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING JUDGMENT : 13TH FEBRUARY, 2018.

DATE OF PRONOUNCING JUDGMENT: 24TH FEBRUARY, 2018.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition is filed with the following prayers :-

"B) To quash and set aside the Government Resolution/order dt. 05.09.2014 thereby provisionally given promotion to the Res.No.6 in Maharashtra Agricultural

Services Class II from SBC category issued by the Agricultural, Animal Husbandry, Dairy development and Fishery department Mantralay Mumbai.

C) To direct the respondents to give promotion to the petitioner in Maharashtra Agricultural Services class II from SBC category with effect from 05/09/2014 as per seniority list Dtd. 28/08/2015 with consequential benefit."

3. The background facts for filing the present Petition, as disclosed in the memo of Petition, in brief are as under:

It is the case of the petitioner that, Respondent No.6 is initially appointed as Agricultural Officer in Zilla Parishad Technical Services Class-III from Special Backward Category, vide order dated 31st March, 2010. The petitioner

is appointed prior to Respondent No.6. It is the case of the petitioner that, the Rural Development Department by its letter dated 10th April, 2012 communicated all the Divisional Commissioners to provide information of employees, working in Zilla Parishad in Construction, Water Conservation, Water Supply, Deputy Engineer in Electricity and Mechanical, Assistant Animal Husbandry and Agricultural Officer Class I, who were in service from 1st January, 2009 to 1st January, 2012 for preparation of provisional seniority list. The Divisional Commissioner has communicated by its letters dated 2nd May, 2012 and 12th June, 2012 to all the Zilla Parishads to provide information as above till 18th June, 2012. The Zilla Parishad, Aurangabad by its letter dated 16-18/06/2012 provided information about employees in Zilla Parishad in proforma about Agricultural Department, wherein petitioner's name is at Sr. No.1, with 'option' for and in Maharashtra Agricultural Services, Class II MDS. The Panchayat

Samitee Paithan by letter dated 30th November, 2013 communicated to the Chief Executive Officer, Aurangabad about 'option' of petitioner, for Maharashtra Agricultural Services Class II post. The Zilla Parishad by its forwarding letter dated 4th January, 2014, had put up file before the Chief Executive Officer for taking appropriate steps. The Panchayat Samitee, Paithan has also communicated to the Divisional Commissioner, Aurangabad, about the preparation of provisional seniority list, and that, the petitioner has exercised 'option' for the class II post (MDS), in Maharashtra Agricultural Services.

4. It is the case of the petitioner that, Respondent has prepared provisional seniority list of Agricultural Officer, Zilla Parishad Technical Services Class-III (Agri) on 1st January, 2013, but the same was not made available to the petitioner or not affixed on notice board. Neither any objection nor suggestions were called to the said

provisional seniority list, and therefore, the petitioner could not raise objections about his status in seniority list. The provisional seniority list published on 1st January, 2013 was finally published by the State Government on 10th March, 2014, without considering the initial date of appointments. It is the case of the petitioner that, his date of birth is recorded as 30th July, 1985 and initially he was appointed as Agricultural Officer, Zilla Parishad Technical Services Class III (Agri) by order dated 23rd July, 2009. Therefore, his name should have been appeared at Sr. No.155-A prior to the name of Mr.P.N. Walki. It is the case of the petitioner that, while preparing seniority list, the rules and guidelines regarding preparation of provisional and final seniority list, as prescribed in Government Resolution dated 5th January, 2009, has not been followed. The objections and suggestions were not called for, and therefore, the petitioner could not raise any

objection about seniority list published on 10th March, 2014, and respondents provisionally promoted Respondent No.6, in Maharashtra Agricultural Services from Special backward category. It is the case of the petitioner that, Respondent No.6 is junior to the petitioner, and therefore, his promotion is liable to be cancelled.

5. It is the case of the petitioner that, Respondent Zilla Parishad has published the provisional seniority list of Agricultural Officer Zilla Parishad Technical Services Class III (Agri) on 1st January, 2014 and forwarded the same to the competent Authority. The petitioner raised objections vide his letter dated 22nd December, 2014 about his status in seniority list and requested for substitute his name at Sr. No.155-A. The final seniority list was published on 30th October, 2014, wherein his name is shown at Sr. No.156-A, therefore, he requested to substitute

his name at Sr. No.155-A prior to Mr. P.N. Walki. It is the case of the petitioner that, the provisional seniority list dated 1st January, 2014 was published, objections were called for and final seniority list was published by the Government on 28th August, 2015. The petitioner filed his objection about his status in seniority list. Considering his objection, his name is included at Sr. No.115 and the name of respondent No.6 is shown at Sr. No.124. The final seniority list dated 1st January, 2014 was finally published on 28th August, 2015 with remark about promotion of Respondent No.6 in Maharashtra Agricultural Services Class II from Special Backward category. The petitioner is senior than Respondent No.6. The petitioner and respondent No.6 belong to the same category, but Respondent No.6 is illegally provisionally promoted, therefore, his promotion is liable to be cancelled and it is necessary to promote the petitioner in Maharashtra Agricultural Services Class II from Special Backward Class

category. The petitioner is entitled to get promotion in Maharashtra Agricultural Services Class II from Special Backward Class category.

6. It is the case of the petitioner that, the petitioner is senior than Respondent No.6 and he has given an option for promotion in Maharashtra Agricultural Services Class II from Special Backward Class Category before finalization of seniority list. The petitioner has been given an option for promotion on 21st October, 2013. The Divisional Commissioner, Aurangabad has forwarded the same to the Government/Commissioner of Agriculture, Pune on 13th August, 2014, whereas the seniority list was published on 28th August, 2015 by giving provisional promotion to Respondent No.6, subject to changes in reservation and seniority in Maharashtra Agricultural Services Class II from Special Backward class category illegally, which is liable to be quashed and set

aside. The petitioner is entitled for promotion in Maharashtra Agricultural Services Class II from Special backward class Category.

7. Learned counsel appearing for the petitioner submits that, the petitioner being senior to Respondent No.6, he should have been promoted w.e.f. 5th September, 2014. Respondent No.6, who is junior to the petitioner, has been promoted and therefore, learned counsel submits that, the Petition deserves to be allowed.

8. Pursuant to the notices issued to the Respondents, Respondent No.1 Dnyanchandra Marotirao Gitte, working as Administrative Officer in the office of the Commissioner of Agriculture, Maharashtra State, Pune has filed affidavit in reply. It is stated that, while promoting Respondent No.6 due procedure was followed. The Respondents conducted the D.P.C. and on 17th May, 2014 submitted proposal for promotion of

Respondent No.6 to the Government. Accordingly, the Government issued promotion order in the name of Respondent No.6, who is from Special Backward class Category. It is stated in the reply that, the petitioner is challenging the promotion of Respondent No.6, without challenging the seniority list published by Respondent No.1 on 10th March, 2014. It is further stated that, the promotion to Respondent No.6 was given taking into consideration the seniority list dated 1st January, 2013 prepared and published by Respondent No.1, in which the name of the petitioner does not exist. Thereafter, Respondent No.1 has published the seniority list on 1st January, 2014 and 28th August, 2015, in which the petitioner is shown above Respondent No.6. Since already Respondent No.6 is provisionally promoted on certain terms and conditions and as thereafter no promotions have been given, the necessary action of promoting the petitioner will be taken as per the rules in the next D.C.P., as and when such meeting will be

conducted. Learned A.G.P. submits that, since the petitioner did not challenge the seniority list dated 1st January, 2013, the petitioner at the most can claim for promotion on the basis of the subsequent seniority list, however, cannot challenge the appointment of promotion of Respondent No.6.

9. Learned counsel appearing for Respondent No.6 has also filed the affidavit in reply, relying upon the seniority list dated 1st January, 2013. He submits that, Respondent No.6 has been promoted relying upon the said seniority list. Respondent No.1 has considered the seniority list published on 1st January, 2013 and 10th March, 2014 and promoted Respondent No.6 on the post of Maharashtra Agriculture Services Class II post. There is no fault on the part of the Respondents and the petitioner's case can be considered on the vacant post for promotion. Respondent No.6 is already promoted and working on the said post.

10. We have considered the submissions of learned counsel appearing for the parties. Admittedly, the petitioner has not challenged the seniority list dated 1st January, 2013. Be that as it may, it is admitted position that, the seniority list of employees working on District Technical Services (Class-II) as Agricultural Officers prepared on 1st January, 2014 has been published in which the petitioner is shown at Sr. No.115 and Respondent No.6 is shown at Sr. No.124. Therefore, even as on 1st January, 2014, the petitioner was senior to Respondent No.6. In that view of the matter, we find considerable force in the submission of learned counsel appearing for the petitioner that, the petitioner ought to have been promoted at least w.e.f. 5th September, 2014, instead of giving promotion to Respondent No.6, who was junior to the petitioner. Be that as it may, the ends of justice would be met, if following directions are issued. Accordingly we

pass the following order :-

ORDER

i) In case no decision is taken in respect of prayer of the petitioner to promote him on the post of Maharashtra Agricultural Services Class II from Special Backward Class category, in that case, we direct Respondent Nos.1 to 5 to take immediate steps to promote the petitioner on the said post.

ii) Such promotion on the said post be given w.e.f. 5th September, 2014. However, we make it clear that, the date of giving such promotion w.e.f. 5th September, 2014 till actually the petitioner is promoted/would be promoted, for the said period, the notional benefits be given to the petitioner for the purpose of reckoning seniority, continuity and pensionary benefits, and the petitioner will not be entitled to claim arrears of salary on the said post.

iii) In case, there is another vacancy of said post, Respondent No.6 may be considered for the promotion, however, keeping in view aforementioned seniority list.

iv) Respondent No.6 should be shown junior to the petitioner, in case he is promoted on the post of Maharashtra Agricultural Services Class II from Special Backward Class.

v) The monitory benefits, which are received by Respondent No.6 by virtue of such provisional promotion shall not be recovered.

11. The Writ Petition is allowed to the above extent. Rule made absolute accordingly.

[S.M. GAVHANE, J.]

[S.S. SHINDE, J.]

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