

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

WRIT PETITION NO. 6866 OF 2016

Prashant Janardhan Nage .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Vijay A. Dhakne, Advocate for the Petitioner.

Shri S. G. Karlekar, A.G.P. for the Respondent No. 1.

Shri M. N. Navandar, dvocate for the Respondent No. 2.

Shri Arvind S. Deshmukh, Advocate for the Respondent No. 3.

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

DATE : 24TH JULY, 2018.

FINAL ORDER :

. The petitioner seeks promotion to the post of Deputy Registrar from the Scheduled Caste category.

2. Mr. Dhakane, the learned advocate for the petitioner submits that, the petitioner is working as an Assistant Registrar with the respondent No. 2/University. The petitioner belongs to the Scheduled Caste category. The Government has sanctioned two posts of Deputy Registrar in the respondent No. 2/university. These two posts are to be filled in by promotion. From the two posts, one post is reserved for reserved category as per roster point and another is meant for open category. On or about

07.06.2011, the Government has verified and approved the roster point of various reserved category posts and had confirmed that one post of Deputy Registrar is reserved for the Scheduled Caste category. According to the learned counsel, one Mr. D. P. Mohite was promoted on the post of Deputy Registrar from the S. C. category for a period of eleven months as per the proviso to Statute No. 63(1) of the Statutes 1990. He retired from service on attaining the age of superannuation during the period he was temporarily promoted.

3. The learned counsel strenuously contends that, unless and until a regular or permanent promotion is given from a particular reserved category under Statute No. 65(3) of the Statutes of 1990, the roster point of that particular reserved category does not shift, nor move to next reserved category. Upon superannuation of Mr. Mohite, the petitioner was granted temporary promotion on 15.01.2013 from the S. C. category as per the seniority. According to the learned counsel on or about 31.08.2013 without giving any opportunity of hearing and without assigning any reason, the respondent No. 2 cancelled the promotion given to the petitioner and reverted him to the post of Assistant Registrar. Mean while the respondent No. 3 filed complaint before the S. C. and S. T. Commission and demanded to promote him on the post of Deputy Registrar from the S. T. category. Before the S. C. and S. T. Commission, the respondent No. 2 submitted its reply thereof clarifying that Mr. D. P. Mohite

was not promoted on regular basis and until regular promotion is given from S.C. category, the roster point would not shift. According to the learned counsel, without proper application of mind and without seeking guidance from the competent authority that is Chief Secretary, General Administration Department (G.A.D.), the respondent No. 2 regularly promoted the respondent No. 3 on the post of Deputy Registrar from the S. T. category pursuant to the opinion expressed by the S.C. and S. T. Commission.

4. The learned counsel further submits that, the petitioner tendered his written say before the respondent No. 2 and contended that, the temporary promotion given under Statute 63(1) from a particular reserved category does not change or shift the roster point of that particular category. The respondent No. 2 very casually rejected the claim of the petitioner for promotion on the post of Deputy Registrar. According to the learned counsel, the S.C. and S.T. Commission does not have authority to direct the respondent No. 2 with regard to appointment of a particular person from a particular category. The S. C. and S. T. Commission is only recommendatory body and any observation made by it will not have a binding force. The learned counsel relies on the judgment of the Delhi High Court in a case of **Professor Ramesh Chandra Vs. University of Delhi and another** reported in *ILR (DEL) 2007 2 593*. So also judgment of the Apex Court in a case of **All India Indian Overseas**

Bank SC and ST Employees' Welfare Association and others Vs. Union of India and others reported in (1996) 6 SCC 606. The learned counsel further submits that, the post facto sanction accorded to the promotion of Mr. Mohite is without following any procedure and only superficial. The same is illegal. The illegality cannot be cured. The learned counsel relies on the judgment of the Apex Court in a case of Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and others reported in (2018) 1 SCC 468.

5. Mr. Navandar, the learned counsel for the respondent No. 2 submits that, there were lot of complaints against the petitioner from his controlling officers and colleagues in the department, wherever he was posted on duty. After preliminary enquiry, the petitioner was *prima facie* found guilty. Therefore, the petitioner was transferred from College of Agriculture, Kolhapur to the College of Agriculture, Dhule. At said place also various complaints were received against the petitioner. So he was again transferred from College of Agriculture Dhule to Central Campus at Rahuri. At Central Campus Rahuri also complaints were received against the petitioner and primary enquiry was initiated against the petitioner. The learned counsel submits that, the respondent No. 3/V. A. Dabhade submitted application on 04.07.2012 to the Vice Chancellor of the deponent University. The S.C. and S.T. Commission passed an order and clarified that the roster point of S.C. has now shifted to

S.T. in view of promotion of Mr. Mohite. Mr. Mohite has drawn all the privileges and retiral facilities of the post of Deputy Registrar and the respondent No. 3 was directed to be promoted. The learned counsel submits that, the Selection Committee considered the case of Mr. Mohite and had granted post facto sanction to his temporary promotion. The total procedure as prescribed under Statute 65 of the Statutes of 1990 was followed by the university. The decision was taken by the selection committee constituted on 19.08.2014 to promote the respondent No. 3 as Deputy Registrar in view of the roster point of S.T. category. The petitioner has not challenged the decision of the S. C. and S.T. Commission, which goes to the root of the matter.

6. The learned counsel for the respondent No. 3 adopts the arguments of the learned counsel for the respondent No. 2.

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

8. Two posts of Deputy Registrar are available for the respondent No. 2/university. Both the posts are to be filled in by promotion. One post is meant for open category and another for the reserved category. In the year 2011 at the relevant time the reserved category post of Deputy Registrar was meant for the Scheduled Caste. One Mr. Mohite was temporarily promoted on the said post and while officiating as Deputy Registrar during his

tenure of temporary promotion, he retired on attaining the age of superannuation. Thereafter, the petitioner was promoted temporarily. It appears that, the respondent No. 3/approached the S.C. and S.T Commission and after conducting the hearing the S.C. and S.T. Commission observed that, now the roster point would be meant for S.T. category and in view of that the petitioner stood reverted and the respondent No. 3 was promoted from the S.T. category. The petitioner belongs to the S.C. category.

9. The roster points are verified by the B. C. Cell as has been observed.

10. Even if we consider the observations of the S.C. and S.T. Commission to be recommendatory, still considering the case on hand, it would be difficult to comprehend the case put forth by the petitioner.

11. Though, Mr. Mohite was temporarily promoted from S.C. category to the post of Deputy Registrar and has retired therefrom the selection committee in its meeting dated 19th August, 2014 granted post facto sanction to the said promotion thereby considering the promotion to be regular promotion. It was only because meeting was not conducted of selection committee during his tenure of a temporary promotion to the post of Deputy Registrar, Mr. Mohite was not granted a regular

promotion. However, on his retirement selection committee met, discussed the issue and granted post facto sanction to his temporary promotion. It has been considered that, Mr. Mohite has been granted all the benefits of the post of Deputy Registrar including the retiral benefits. The grant of post facto sanction was not mere formality, but the selection committee granted and sanctioned the post considering that Mr. Mohite was competent and eligible to be promoted. It is not disputed that Mr. Mohite was senior to the petitioner. In a case of **Orissa Lift Irrigation Corporation Limited Vs. Rabi Sankar Patro and others** (*supra*) relied by the learned counsel for the petitioner, it was observed by the Apex Court that permissions granted of by Distance Education Council allowing the deemed to be Universities to introduce courses leading to the award of degrees in engineering were illegal and opposed to law and illegality could not be cured by ex-post facto approvals granted later and the same were also superficial and without causing any inspection. In the present case, the selection committee in its meeting considered case of Mr. Mohite and after considering that Mr. Mohite possessed all the eligibility criteria granted post facto sanction to the temporary promotion of Mr. Mohite, thereby promotion being considered as a regular promotion.

12. As Mr. Mohite would be deemed to be regularly promoted, certainly the roster point would change. If post facto sanction had not been granted to the promotion of Mr. Mohite, then the

case of the petitioner could have been considered of the roster point not undergoing any change. However, in view of the post facto sanction granted by the selection committee to the temporary promotion of Mr. Mohite, promotion of Mr. Mohite would be considered as regular promotion and in view of that roster point would change to the S.T. category.

13. It is not disputed by the petitioner that, the respondent No. 3 belongs to S.T. category. In view of the same, the grievance of the petitioner certainly is not justified. The temporary promotion of the petitioner was rightly considered and he was rightly reverted to the post of Assistant Registrar.

14. In the light of the above, no case for interference is made out. The writ petition as such is dismissed. No costs.

[SUNIL K. KOTWAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/July 18

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