

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

WRIT PETITION NO. 5031 OF 2018

Dr. Tukaram s/o. Baburao Tambe, .. Petitioner
Age. 58 years, Occ. Service,
R/o. College of Horticulture, VNMKV,
Parbhani, Tq. & Dist. Parbhani.

Versus

1. The Maharashtra Council of .. Respondents
Agricultural, Education and Research,
Through its Chairman,
The Minister for Agricultural,
Animal Husbandry, Dairy Development
and Fisheries Department,
132/B, Bhamburda, Bhoslenagar,
Pune-01.
2. The Vasant Rao Naik Marathwada
Krishi Vidhyapeeth, Parbhani
Through its Registrar.
3. Dr. Giridhari s/o. Maroti Waghmare,
Age. Major, Occ. Service,
R/o. Department of Horticulture, VNMKV,
Parbhani, Tq. & Dist. Parbhani.
4. The State of Maharashtra,
Department of Agriculture,
Animal Husbandry, Dairy Science and
Fisheries, Government of Maharashtra.

Mr. V.P. Kadam, Advocate for the petitioner.
Mr. S.R. Yadav-Lonikar, AGP for the respondent/State.
Mr. S.R. Deshpande, Advocate for respondent No.1.
Mr. M.N. Navandar, Advocate for respondent No.2.
Mr. S.V. Natu, Advocate for respondent No.3.

CORAM : Z.A.HAQ &
S.M.GAVHANE, JJ.
DATED : 02.03.2020

ORAL JUDGMENT [PER : Z.A. HAQ, J.] :-

01. Heard.

02. Rule. Rule made returnable forthwith.

03. The petitioner is working as a Professor of Horticulture since 29th November 2007, in the college administered by the respondent No.2 – Vidhyapeeth. The respondent No.3 had also been working as a Professor in the college administered by the respondent No.2 – Vidyapeeth. The respondent No.3 is appointed as the Head of Department of Horticulture on 31st October, 2017. According to the petitioner, he being senior to the respondent No.3 and otherwise qualified and eligible to be appointed as the Head of Department, he should have been appointed as the Head of Department.

04. It is not in dispute that the petitioner is

senior to the respondent No.3. It is undisputed that the respondent No.1 – Council has not considered the respondent No.3 for the post of the Head of Department, finding that the annual confidential reports of the petitioner of 2013-14, 2014-15 and 2015-16 showed that his performance was not above the bench-mark. It is not in dispute that the above referred annual confidential reports were not communicated to the petitioner within the time limit prescribed by the Government Resolution dated 1st November, 2011. The annexure to the Government Resolution dated 1st November, 2011 lays down that the confidential reports should be communicated till 30th June every year and then the concerned employee has right to make representation within one month from the date of receipt of the annual confidential report, and in case of such representation by the employee, it has to be decided within three months from the date of receipt of the representation. In the present case, undisputedly the annual confidential reports were not communicated to the petitioner within the prescribed time and they were

communicated to the petitioner on 7th October 2017, and the meeting of the respondent No.1 – Council for selection of the candidate for the post of Head of the Department was held on 27th and 28th October, 2017. In these circumstances, the petitioner was deprived of the valuable right of making representation against the adverse entries in the confidential reports. Hence, as rightly pointed out by the learned Advocate for the petitioner, in view of clause 42 of the Government Resolution dated 1st November, 2011, the adverse entries in the annual confidential reports of the petitioner could not have been used against him to deny him the claim for the post of Head of the Department.

05. Learned Advocates for the respondent Nos.2 and 3 submitted that departmental enquiry was conducted against the petitioner and he was found guilty and warning was issued to him as per the enquiry report placed on record (Annexure R-1) along with the reply of respondent No.2. Though in the reply filed before this Court, the

respondent No.2 – Vidyapeeth has relied on the enquiry report and short term report of performance of the petitioner, there is nothing on record to show that this material was placed before the Committee which conducted interviews on 27th and 28th October, 2017. Learned Advocates for the respondent Nos.2 and 3 submitted that the details of this material, adverse to the petitioner were reported in the annual confidential reports.

. Be that as it may, even if it is accepted that the details of the material adverse to the petitioner were recorded in the annual confidential reports, there is nothing on record to show that the Committee which conducted interviews had given due weightage to that material to discard the claim of the petitioner for being appointed as Head of the Department.

06. Learned Advocate for the petitioner relied on the judgment given in the case of Dev Dutt Vs. Union of India and Ors. reported in AIR 2008 SC 2513 and the

judgment given in the case of Pankaj Prakash Vs. United India Insurance Co. Ltd. And Anr. reported in 2019 SCC OnLine SC 880 and argued that the annual confidential reports which were not communicated to the petitioner could not have been used against the petitioner for depriving him his legitimate claim of being appointed as Head of the Department.

07. After hearing the learned Advocates for the respective parties and examining the material placed on record, we find that the rejection of the claim of the petitioner for being appointed as Head of the Department of Horticulture is based on irrelevant considerations. Hence, in the facts of the case, in our view, the following order would sub-serve the ends of justice:-

i. The appointment of respondent No.3 as Head of the Department is quashed.

ii. The respondent No.2 – Vidyapeeth is directed to decide the applications/

representations dated 25th October, 2017 and 15th October, 2018, submitted by the petitioner for improving his grades as per the Government Resolution dated 1st November 2011, within two months from today.

iii. The petitioner may move fresh representation within 15 days from today along with the relevant documents, if so advised.

iv. After decision is taken on the applications/representations made by the petitioner, fresh procedure for appointment on the post of Head of the Department of Horticulture, shall be undertaken by the respondent Nos.1 and 2.

08. Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

[S.M.GAVHANE, J.]

[Z.A.HAQ, J.]