



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

Writ Petition No. 8573 of 2016

Prof.Dr.Dilip Sopanrao Arjune,
Age : 46 years, Occu. Professor in
JES College,
R/o. Rahi Sadan, Newaskar Nagar,
Mantha Road, Near Dnyaneshwar School,
Jalna,Dist.Jalna.

..Petitioner

versus

1. The State of Maharashtra
Through the Secretary
Higher Technical Educational Department
Mantralaya Mumbai- 32.
2. Director of Higher Education,
Maharashtra State, Pune
3. Joint Director of Higher Education
Aurangabad, Dist. Aurangabad.
4. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad.
5. JES College, Through its Principal
College Road, Jalna.

...Respondents

- * Mr. Shambhuraje V.Deshmukh, Advocate for petitioner.
- * Mr.D.R.Korde, AGP for Respondent Nos.1 to 3.
- * Mr. Mehul V. Navandar, Advocate for Respondent No.4.

**CORAM : S.G.MEHARE &
SHAILESH P. BRAHME, JJ.**

DATE : 10.03.2025

PER COURT :

1. Rule. Rule is made returnable forthwith by the consent of the parties. Heard both sides finally.
2. Petitioner is challenging communication dated 31.03.2016 issued by Respondent No.3/Joint Director of Higher Education and seeking direction for treating 11.08.2011 as a date for promotion with consequential benefits.
3. Petitioner was appointed as Lecturer in the respondent No.5/Aided College on 01.12.1995. His appointment was approved by the respondent No.4/University vide letter dated 21.12.1995. He was granted promotion to the post of Reader which was also approved vide letter dated 24.11.2005 with effect from 19.08.2005. Thereafter, he was designated as Associate Professor with effect from

19.08.2008. After completion of three years as Associate Professor, he was eligible for promotion to the post of Professor. He was already possessing requisite qualification of Ph.D. He submitted application in view of circular dated 31.12.2008, Government Resolution dated 12.08.2009 and Regulation issued by University Grants Commission (in short U.G.C) dated 30.06.2010 staking a claim to the post of 'Professor' from the date of eligibility i.e. 19.08.2011.

4. It is the case of the petitioner that respondent No.1 issued Government Resolution dated 30.07.2010 to carve out post of Professor and to appoint eligible candidates by way of promotion. No timely steps were taken. Petitioner was required to file Writ Petition No. 6544 of 2014 soliciting directions. The screening committee examined the claim of the petitioner and recommended promotion of the petitioner to the post of Professor with effect from 11.08.2011. The respondent No.4/University granted approval on 04.03.2016 for appointment of the petitioner to the post of Professor with effect from 11.08.2011. However, respondent No.3/Divisional Joint Director of Higher Education instead of granting benefit of Career Advancement Scheme (in short C.A.S) to the petitioner from

11.08.2011, granted the benefits from 27.08.2012 which is cause of action for him to prefer the present writ petition.

5. Learned counsel Mr.Deshmukh appearing for the petitioner submits that impugned communication granting benefit from 27.08.2012 instead of 11.08.2011 is bad in law and it is against Circular dated 31.12.2008, Government Resolution dated 12.08.2009 and Regulation dated 30.06.2010. He would submit that the screening committee made recommendations for promotion of the petitioner to the post of Professor with effect from 11.08.2011. The respondent No.4/University also granted approval on the same line. Therefore, it is not permissible to restrict C.A.S. benefits from 27.08.2012.

6. He further submits that respondent No.3/Joint Director who passed impugned order was member of the screening committee which recommended the promotion of the petitioner with effect from 11.08.2011. Hence, he is estopped from granting benefits from 27.08.2012. It is submitted that impugned communication is arbitrary and against law laid down by Delhi High Court in the

matter of **Dr.Kiran Gupta Vs. University of Delhi** in Writ Petition No.10564 of 2019 and Bombay High Court in the matter of **Manohar V.Lokhande vs. Union of India and Others** in Writ Petition No.579 of 2021.

7. *Per contra*, learned AGP appearing for Respondent Nos.1 to 3 supports impugned order. He is relying on affidavit-in-reply to oppose the submissions of the petitioner. It is submitted that the post of Professor was sanctioned on 27.08.2012 and therefore the benefits were conferred from that date. It is submitted that the clause 6.3.1 was not adhered to. No proposal was submitted before three months in advance for consideration of promotion under C.A.S. Our attention is also adverted to circular dated 07.09.2011. Thus, he prays for dismissal of the petition.

8. The respondent No.4 submits that appropriate orders be passed. None appeared for the respondent No.5, though served.

9. Having heard both sides, there appears no dispute on facts especially for dates of Appointment, Promotion, Approvals and the Recommendations. We are called upon to decide as to what would be

the date for granting C.A.S benefit to the post of Professor to the petitioner.

10. Petitioner has produced on record Circular dated 31.12.2008, Government Resolution dated 12.08.2009, Regulation-1893 for C.A.S and Regulation of U.G.C dated 30.06.2010 to buttress the submission that date of eligibility is the relevant date for conferring the benefits and not any future date. Undisputedly, petitioner was having Ph.D and had put in three years of services as Associate Professor so as to be eligible for the promotional post of Professor. He was approved as Associate Professor vide letter dated 20.10.2012 issued by respondent No.4/University with effect from 19.08.2008. Thus, after three years therefrom he became eligible for promotional post of Professor according to following norms governing the field :

a) Circular dated 31.12.2008 issued by Department of Higher Education. Clause no.(ii) which is as follows :

1.General

(i).....

(ii) No one shall be eligible to be appointed, promoted or designated as Professor, unless he or she possesses a Ph.D and satisfies other academic conditions, as laid down affect those who are already disbanded as

“Professor”.

b) The above referred Circular was adopted by State Government vide Government Resolution dated 12.08.2009 and following is relevant :

(xiii) Associate Professor completing 3 years of service in the AGP of Rs. 9000 and possessing a Ph.D. degree in the relevant discipline shall be eligible to be appointed and designated as Professor, subject to other conditions of academic performance as laid down by the UGC and if any by the university. No teacher other than those with a Ph.D. shall be promoted, appointed or designated as Professor. The Pay Band for the post of Professors shall be Rs.37400-67000 with AGP of Rs. 10000.

c) Regulation issued by U.G.C on 30.06.2010 stipulates relevant provisions which are as follows :

6.3.1 A teacher who wishes to be considered for promotion under CAS may submit in writing to the university/college, with three months in advance of the due date, that he/she fulfils all qualifications under CAS and submit to the university/college the Performance Based Appraisal System proforma as evolved by the concerned university duly supported by all credentials as per the API guidelines set out in these Regulations. In order to avoid delays in holding Selection Committee meetings in various positions under CAS, the University/College should immediately initiate the process of screening/selection, and shall complete the process within six months from the date of application. Further, in order to avoid any hardships, candidates who fulfill all other criteria mentioned in these Regulations, as on 31 December, 2008 and till the date on which this Regulation is notified, can be

considered for promotion from the date, on or after 31 December, 2008, on which they fulfill these eligibility conditions, provided as mentioned above.

6.3.12 (a) If a candidate applies for promotion on completion of the minimum eligibility period and is successful, the date of promotion will be from that of minimum period of eligibility.

(b) If, however, the candidates find that he/she fulfills the eligibility conditions at a later date and applies on that date and is successful, his/her promotion will be effected from that date of application fulfilling the criteria.

(c) If the candidate does not succeed in the first assessment, but succeeds in the eventual assessment, his/her promotion will be deemed to be from the later date of successful assessment.

d) Regulation-1893 for C.A.S issued by the respondent

No.4/University making following observations :

4) Required qualification of Assistant Professors for Promotion Under CAS from Stage 4h to 5", i.e. Associate Professors to Professors in Pay Band of Rs. 37,400 67,000 with AGP 10,000.

a) An Associate Professors who has completed 3 years service in 4th grade and the minimum Annual Average API score for Assessment Period would be required 120 Point and 50 Point by Expert Assessment shall be eligible to Promotion in the 5th Grade i.e. for the post of Professor as per UGC regulation and under CAS for College and University Teachers. 100 and 20 Point should be required compulsory from Category-I, II and III respectively out of determined API Score i.e. 120.

b) A minimum of 5 publications since the period that the Teacher is

placed in Third Grade Service.

c) Should have obtained a Ph.D degree or has equivalent published work.

11. It is unequivocal by various norms stated above that the petitioner was entitled to receive promotional benefits or the C.A.S benefits on completion of minimum eligibility or from the date of promotion. Petitioner acquired minimum eligibility on 19.08.2011. Therefore, his claim to the C.A.S benefits to the promotional post with effect from 19.08.2011 is in consonance with the policy in question and norms regulating the field fixed by the Competent Authorities.

12. Petitioner was required to approach High Court soliciting directions vide letter dated 29.01.2015 by Writ Petition No.6544 of 2014. It was recorded in the order that petitioner was entitled to be appointed as a Professor in the year 2011 which was not objected. In pursuance of the claim of the petitioner, screening committee was appointed belatedly. In its meeting dated 25.04.2015, recommendation was made for designation of the petitioner as Professor with effect from 11.08.2011, the date of eligibility.

Pertinently, Joint Director of Higher Education was the member of the committee and he did not express any demur. Petitioner was having requisite API score. He was designated as a Professor which was approved by respondent No.4/University vide letter dated 04.03.2016 that too with effect from 11.08.2011.

13. There is overwhelming evidence to show that petitioner was eligible with effect from 19.08.2011 for the post of Professor. Accordingly, he was recommended and approved by the Competent Authority. The respondent No.3/Joint Director arbitrarily conferred benefits of C.A.S to the petitioner from 27.08.2012, being the date of sanction of post. This action is against the norms and the regulations laid down by the competent authorities. It is liable to be corrected.

14. It is already stipulated by Government Resolution dated 12.08.2009 vide clause no. (b) and Regulation-1893 for C.A.S issued by the respondent No.3/University that there should be one post of Professor in each department. The respondents should have conducted the exercise of carving out one post of Professor from

amongst 10% post of Associate Professor, in time. It is not a case that any special post was required to be created for post of Professor in the respondent no.4/College. Even vide Government Resolution dated 30.07.2010, the instructions were issued to carve out post of Professor so as to appoint the eligible teachers to the same. Therefore, we are of the considered view that date mentioned in the impugned communication for sanctioning the post from 27.08.2012 misconceived and is inconsequential .

15. Petitioner has referred to the judgment of Delhi High Court in the matter of **Dr.Kiran Gupta** (supra). In paragraph No.17 of the judgment, Learned Single Judge while considering self-same clause No.6.3.12 of U.G.C Regulation dated 30.06.2010 held that date of promotion will be from date of minimum eligibility period . The next reliance is placed on the judgment of Division Bench in the matter of **Manohar V.Lokhande** (supra). The question which fell for consideration was mentioned in paragraph No.7 of its judgment. Ultimately, it was held that the date of the order of the promotion is not relevant but the date of acquiring minimum eligibility.

15. We find that the submissions of learned AGP can not be accepted. Petition deserves to be allowed. Hence, we pass following order :

ORDER

- a) The communication dated 31.03.2016 issued by Respondent No.3/Joint Director of Higher Education is quashed and set-aside. The petitioner is held to be entitled to the benefits to the post of 'Professor' with effect from 19.08.2011 instead of 27.08.2012.
- b) Respondent Nos.1 to 3 shall grant C.A.S benefits and consequential benefits to the petitioner admissible to the post of Professor with effect from 19.08.2011.
- c) Rule is made absolute in above terms.

[SHAILESH P. BRAHME, J.]

[S.G.MEHARE, J.]