

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2412/2020

Sachin S/o Rameshwarrao Bhople,
Aged about 46 years, Occ. Service,
R/o. 05, Aryabhatta Colony, Opposite
Ghate Nursing Home, Near Gourkshan
Trust, Gourkshan Road, Akola 444004 (M.S.)

.... **PETITIONER**

// VERSUS //

- 1] **Dr. Panjabrao Deshmukh Krishi Vidyapeeth,**
PO Krishinagar, Akola,
Through its Registrar
- 2] **Vice Chancellor,,**
Dr. Panjabrao Deshmukh Krishi Vidyapeeth,
PO. Krishinagar, Akola 444 104
- 3] **State of Maharashtra,**
through its Secretary,
Department of Agricultural, Animal Husbandry,
Dairy Development and Fisheries, Mantralaya,
Mumbai – 400 032, Maharashtra
- 4] **Maharashtra Agricultural Universities Recruitment Board,**
Pune, Maharashtra
Council for Agricultural Research, through
its Chairman, 132-B, Bhamburda Bhosale Nagar,
Pune – 7, Maharashtra
- 5] **Dr. Amrapali W/o Atul Akhare,**
Aged : 41 years, Occ. Service,
R/o. Ravi Nagar, near Sudhir Colony, Akola
Tq. & Dist. Akola
- 6] **Ms. Vanita Khushatrao Khobarkar,**
Aged : 40 years, Occ. Service,
R/o. Gurudwarar Gurunanak Ashram
At post Kondhali, Tq. Katol, District Nagpur

- 7] **Dr. Shivaji Chaitram Nagpure,**
aged : 49 years, Occ. Service,
R/o. Datta Colony, Trimurti Nagar,
behind Gorakshan Sawanthan,
181-7/8, Akola
- 8] **Dr. Manish Ramdas Deshmukh,**
aged : 49 years, Occu, Service,
R/o. Shrikrupa Society, Near T.T.N. College,
Keshao Nagar, Akola
- 9] **Dr. Sanjay Uttamrao Kakade,**
aged : 47 years, Occu. Service,
R/o. Flat No.B-1, Ma-Vaishnavi Residency – 7,
Ravi Nagar, Akola
- 10] **Dr. Prashant C. Pagar,**
Aged : 50 years, Occu : Service,
Office of Associate Dean, College of Agriculture,
Maharajbag, Nagpur, Maharashtra
- 11] **Dr. Sachin N. Potkile,**
Aged : 50 years, Occ. Service,
Office of Associate Dean, College of Agriculture,
Maharajbag, Nagpur, Maharashtra
- 12] **Dr. Varsha A. Apotikar,**
Aged : 44 years, Occ. Service,
Office of Associate Dean, College of Agriculture,
Krishinagar, Akola, Maharashtra
- 13] **Dr. Vikas V. Goud,**
Aged : 45 years, Occ. Service,
Officer Incharge, Agriculture Research Station,
Washim, Dist. Washim, Maharashtra
- 14] **Dr. Vinod A. Khadse,**
Aged : 52 years, Occ. Service,
Office of Director of Extension Education,
Dr. Panjabrao Deshmukh Krishi Vidyapeeth,
Krushi Nagar, Akola, Maharashtra

- 15] **Dr. D. D. Mankar,**
Aged : 56 years, Occ. Service,
Office of Associate Dean, College of Agriculture,
Maharajbag, Nagpur, Maharashtra
- 16] **Dr. Pravin V. Mahatale**
Aged : 43 years, Occ. Service,
Office of Associate Dean, College of Agriculture,
Sonapur, Dist. Gadchiroli, Maharashtra
- 17] **Dr. U. T. Dangore,**
Aged : 48 years, Occ. Service,
Office of Associate Dean, College of Agriculture,
Nagpur, Maharashtra
- 18] **Dr. V. J. Rathod,**
Aged : 49 years, Occ. Service,
Office of Associate Dean, College of Agriculture,
Nagpur, Maharashtra
- 19] **Dr. Manish Y. Ladole,**
Aged : 45 years, Occ. Service,
College of Agriculture, Akola,
Dr. Panjabrao Deshmukh Krishi Vidyapeeth,
P. O. Krushi Nagar, Akola – 444 104, Maharashtra
- 20] **Dr. Manoj W. Marwar,**
Aged : 55 years, Occ. Service,
College of Agriculture, Akola,
Dr. Panjabrao Deshmukh Krishi Vidyapeeth,
P. O. Krushi Nagar, Akola – 444 104, Maharashtra
- 21] **Dr. Praful P. Gawande,**
Age : 42 years, Occ. Service,
Central Demonstration Farm,
Wani Rambhapur, Dr. Panjabrao
Deshmukh Krishi Vidyapeeth,
Post Nipana, Tq. Akola,
Dist. – 444 102, Maharashtra
- 22] **Dr. Rajendra D. Ratnaparkhi,**
Age : 51 years, Occ. Service,
Department of Agriculture Botany,
Post Graduate Institute, Dr. Panjabrao
Deshmukh Krishi Vidyapeeth,

P. O. Krushi Nagar, Akola – 444 104,
Maharashtra

.... **RESPONDENT(S)**

Shri S. Khedkar, Advocate for the petitioner
Shri A. Sambre, Advocate for the respondent no. 1
Shri M.J. Khan, AGP for the respondent/State
Shri R.V. Shiralkar, Advocate for the respondent nos. 10 to 14, 16 to 21
Shri M.M. Sudame, Advocate for the respondent nos. 5,6, 7, 8 & 9

**CORAM : DIPANKAR DATTA C.J. &
VINAY JOSHI J.**

DATE : DECEMBER 09, 2021

ORAL JUDGMENT : (PER:- DIPANKAR DATTA, C.J.)

1] W.P. No. 2412/2020 has been instituted by Shri Sachin Rameshwarrao Bhople seeking the following relief: -

“It is, therefore, most humbly and respectfully prayed that this Hon’ble Court may kindly be pleased to issue an appropriate writ, order or direction and thereby be pleased to hold and declare that the judgment & order dated 27/02/2020, passed by this Hon’ble Court in W.P. No. 2444/19, 2471/2019 & 2806/2019 (Annex-N) is obtained by misrepresentation by the respondent No. 5 to 9 & further be pleased to: -

- i) *quash & set aside/recall the said judgment & order dated 27/02/2020 (Annex-N) passed by this Hon’ble Court in W.P. No. 2444/19, 2471/2019 & 2806/2019 (Annex-J to L), in the interest of justice;*
- ii) *issue an appropriate writ, order or direction and thereby be pleased to quash & set aside the impugned communication dated 09/07/2020 (Annex-T) issued by the respondent No.*

1/University, cancelling the promotion of the petitioner on the post of Associate Professor & further be pleased to direct the respondent No. 1/University & respondent No. 2/Vice-Chancellor to restore the petitioner on the said post, with continuity & all benefits, in the interest of justice;

iii) during the pendency and final disposal of the present petition, stay the effect & operation of the impugned communication dated 09.07.20 (Annex-T), issued by the respondent No. 1/University and further restrain the respondent No. 1/University from proceeding ahead with the said selection process of promotion of Associate Professor in the respondent No. 1/University, in the interest of justice;"

2] Since order has been claimed for a declaration is prayed for quashing and/or setting aside the judgment and order passed by a co-ordinate Bench of this Court, on the ground of alleged misrepresentation, Mr. Sudame, learned advocate representing the respondents 5 to 7 has raised a preliminary objection to the maintainability of the writ petition. According to him, the judgment and order dated February 27, 2020 by which the petitioner feels aggrieved has attained finality by reason of no appeal being carried therefrom to the Supreme Court as well as no review application having been filed in line with the principles flowing from section 114 read with Order XLVII of the Code of Civil Procedure. These being the remedies made available by law to the petitioner, it is contended that he ought to have elected one such remedy but writ remedy is not available to him in the circumstances. He also contends that relief as

claimed by the petitioner cannot be granted since it is not open to us to quash and/or set aside the judgment and order of a co-ordinate Bench in exercise of judicial review powers; if at all the petitioner is aggrieved, his remedy lies elsewhere. It is, thus, prayed that the writ petition be dismissed.

3] Mr. Khedkar, learned advocate representing the petitioner counters such preliminary objection by placing reliance on a decision of the Supreme Court reported in (2007) 14 SCC 108 : Deepa Gourang Murdeshwar Katre vs. Principal, V.A.V. College of Arts and others. According to him, the said decision is an authority for the proposition that if an order has been passed by a Court of law based on fraud or misrepresentation, the Court can recall its order in exercise of its inherent power. It is, therefore, submitted that this Court may examine whether the contention of the petitioner that the judgment and order dated February 27, 2020 was obtained by misrepresentation has substance or not; if yes, the Court may proceed to grant such relief as it may consider appropriate in the circumstances.

4] Before dealing with the preliminary objection, it would be appropriate for us to notice what was under challenge in W.P. Nos. 2444/2019, 2471/2019 & 2806/2019 and what the judgment and order dated February 27, 2020 (hereafter “the said judgment”, for short),

whereby these writ petitions were disposed of, directed. Incidentally, the said three writ petitions were instituted by the respondents before us who are represented by Mr. Sudame.

5] The first of these writ petitions [W.P. No. 2444/2019], at the instance of Ms. Amrapali W/o Atul Akhare, challenged the promotional orders of appointments of the respondents 2 to 5 therein on the post of Associate Professor, Agricultural Botany. The second writ petition [W.P. No. 2471/2019] was instituted by Dr. Manish Ramdas Deshmukh & one other, wherein the appointments on promotion on the post of Associate Professor, Agronomy of the respondents 4 to 10 were challenged. In the third writ petition [W.P. No.2806/2019], wherein Ms. Vanita Khushalrao Khobarkar was the petitioner, challenge was laid to the appointments on promotion of the respondents 2 and 3 on the post of Associate Professor, Agricultural Economics. All the appointments under challenge were made by Dr. Panjabrao Deshmukh Krishi Vidyapeeth (hereafter “the University”, for short). The said three writ petitions were heard together and the operative part of the said judgment reads as follows: -

“28. Since it has been found that the manner in which the concerned respondents have been promoted to the post of Associate Professor is not in accordance with law, we have no hesitation in setting aside the orders of promotion as issued to the respondent nos.2 to 5 in Writ Petition No. 2444 of 2019 in the subject of Agricultural Botany, respondent nos.4 to 10 in Writ Petition No. 2471 of 2019 in the subject of Agronomy and

respondent nos.2 and 3 in Writ Petition No.2806 of 2019 in the subject of Agricultural Economics. The Selection Committee is free to consider the proposals as received by 06.11.2017 by applying the criteria that was prevailing on the said date for effecting promotions to the post of Associate Professor. As regards other Associate Professors who have been promoted but who have not been impleaded in these writ petitions, the matter is left to the wisdom of the University to take appropriate steps in accordance with law if so advised. It is clarified that we have not examined the legality of the promotions of such Associate Professors who are not parties in these writ petitions. It is also declared that Resolution No.26 of 2019 passed by the Executive Council dated 07.01.2019 to the extent it has the effect of modifying the criteria prescribed in the matter of effecting promotions which is in variance with Statutes 52 and 73 would not operate till the procedure as contemplated by Section 38 of the said Act is complied with. Rule in each writ petition is made absolute in aforesaid terms leaving the parties to bear their own costs."

(emphasis ours)

6] It is not in dispute that in terms of the operative directions as quoted above, the University (where the petitioners as well as the private respondents in the aforesaid three writ petitions are employed) initiated action for fresh selection and appointment. In course of such process being undertaken by the University, the present petitioner who was appointed on promotion on the post of Associate Professor in Horticulture was served with an order dated July 9, 2020, whereby he was reverted to the post of Assistant Professor in Horticulture. Upon this writ petition being

moved, a co-ordinate Bench of this Court by its order dated October 5, 2020 stayed the order of reversion with the effect that the petitioner has continued to function as an Associate Professor in Horticulture. However, the Court granted liberty to the University to finalize the process of fresh selection and we are informed that the process has been completed and the consequent recommendation kept in a sealed cover.

7] The vital circumstance that can never be overlooked and would always loom large is that the petitioner was not a party to the proceedings of W.P. Nos. 2444/2019, 2471/2019 & 2806/2019.

8] Bearing in mind the aforesaid facts and circumstances, we are now tasked to decide the preliminary objection as to whether this writ petition is maintainable. The question of grant of relief, if any, would arise only if the preliminary objection is overruled.

9] Mr. Sudame, Mr. Khedkar and Mr. Sambre, learned advocates for the University, respondent no. 1, have been heard and the materials on record perused.

10] We are inclined to overrule the objection of Mr. Sudame and hold the writ petition to be maintainable having regard to the Constitution Bench decision of the Supreme Court reported in AIR 1963 1909 : Shivdeo

Singh vs. State of Punjab. There, certain agricultural lands were allotted to a number of displaced persons including the appellants on a quasi-permanent basis under the administration of Evacuee Property Act, 1950 and Rules made thereunder in a particular village. It was an admitted fact that the appellants fell under the category of "non- faujis". On October 9, 1951, the Director of Relief and Rehabilitation, Punjab, made an order adverse to the interest of the appellants Shivdeo Singh and others. To maintain the character of the said village as "fauji", he directed that the appellants have to move out for being accommodated in some other village. Soon after this order was made, the appellants preferred a writ petition before the High Court of Punjab for quashing the order. The Director of Rehabilitation alone was made a party thereto. The petition was allowed by Hon'ble Khosla, J. (as His Lordship then was). Eventually the respondents 3 to 14 in the appeal before the Supreme Court, who were members of "fauji" families and in whose favour either allotment had been made or was intended to be made, preferred a petition before the High Court under Article 226 of the Constitution for impleading them as parties in the appellants' petition and re-hearing the whole matter. The petition was entertained by the High Court and Hon'ble Khosla, J. allowed it. The appellants preferred a Letters Patent appeal before the High Court which having been dismissed, the Supreme Court was approached in appeal by special leave. Hon'ble J.R. Mudholkar, J. (as His Lordship then was) speaking for the Bench ruled as follows:

"8. The other contention of Mr Gopal Singh pertains to the second order of Khosla, J., which, in effect, reviews his prior order. Learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J."

(emphasis ours)

11] The ratio of such decision has been followed in the decision reported in (2004) 6 SCC 126 : Pohla Singh vs. State of Punjab. The law declared in such decision is that, if a decision rendered in a writ petition adversely affects the interest of a third person who was not impleaded as a party in the writ petition, it is always open to him to ask for recall of the judgment which has been rendered without affording any opportunity of hearing to him.

12] The facts of the present case appear to be unusually similar to those arising for consideration in Shivdeo Singh (supra) and Pohla Singh (supra). Admittedly, the petitioner was not included in the array of respondents in any of the three writ petitions which were allowed by the said judgment. We have noted from paragraph 15 of the said judgment that objection had been raised to the effect that all the promotees were not impleaded as respondents in the writ petitions. The view expressed by the co-ordinate Bench while dealing with such objection needs to be noted.

Paragraph 15 records as follows:

“15. Another objection raised is the absence of all promotees being impleaded as respondents in the writ petitions. According to the promoted respondents, since the entire process of promotion was being challenged by the petitioners, it was necessary for them to implead all the Assistant Professors who had been promoted as Associate Professors. In reply, it has been submitted by the petitioners that only those Assistant Professors who were less meritorious than the petitioners but had been promoted as Associate Professors were impleaded as respondents. The justification for the same is that if the procedure as prescribed by the Statutes is adopted, the concerned respondents being less meritorious than the petitioners, they were not liable to be promoted. The petitioners therefore have chosen to challenge the promotions of such promotees who were less meritorious than the petitioners.

In the light of the specific challenge raised by the petitioners and as they are aggrieved by the adoption of a different procedure than the one prescribed by the Statutes which has resulted in less meritorious candidates being promoted, we are

inclined to examine the challenge as raised on merits and we do not find it appropriate to non-suit the petitioners only on the ground that all promoted Associate Professors have not been impleaded as respondents. In any event, the petitioners have no grievance with the promotion of such Associate Professors who are more meritorious than them and hence in this backdrop, such more meritorious candidates are not found to be even proper parties. We are conscious of the position that promotions of such Assistant Professors who have been promoted but have not been impleaded cannot be challenged in their absence.

(emphasis ours)

13] Once the co-ordinate Bench in the said judgment has observed that it was conscious of the legal position that promotions of such Assistant Professors as Associate Professors who have not been impleaded as respondents could not be challenged in their absence, our task becomes easy. We are inclined to the view that the observation in the operative directions quoted above constitute an error apparent on the face of the record which, in the exercise of the inherent power of this Court (being a court of plenary jurisdiction) deserves to be reviewed. The observation in paragraph 28 is plainly inconsistent with the conclusion recorded in paragraph 15 and, thus, interests of justice would require that the two inconsistent views be reconciled, if possible; if not, to review the said judgment and relieve such of the promotees, who were not parties to the earlier proceedings, from being visited with adverse civil consequences not only on the ground of their non-impleadment but

because of the clear stand of the petitioners in course of hearing of the said three writ petitions that only selection and appointment of less meritorious promotee candidates had been challenged consequent where to only such promotees were impleaded as respondents. The co-ordinate Bench having found that the highly meritorious candidates were not even proper parties, the observation made in paragraph 28 could be applied only to candidates who were not as meritorious as the petitioners in W.P. Nos. 2444/2019, 2471/2019 & 2806/2019; but such observation had no application *qua* a candidate like the petitioner, who was not only not a respondent, but is claimed to be a highly meritorious candidate. Also, the petitioner could not have figured in the scheme of things since none of the respondents, who instituted the said three writ petitions as petitioners, were Assistant Professors in Horticulture. Their subjects being different, the observation in paragraph 28 could not have been made the sheet anchor to direct reversion and fresh selection, and carried forward to the detriment and prejudice of the petitioner. The University while reading paragraph 28 seems to have been clearly oblivious of the unambiguous conclusion recorded in paragraph 15 by Their Lordships.

14] In such view of the matter, in exercise of our power of review, we hold that any action taken by the University to divest the petitioner of the fruits of promotion as an Associate Professor, Horticulture, triggered by the observation in paragraph 28, must be regarded as inoperative and ineffective having regard to the observation made in paragraph 15 of the

said judgment. As a consequence, we hold that the reversion of the petitioner by the University by the order dated July 9, 2020 not at all being lawful, in the sense that the University was nudged to act on the basis of the observation in paragraph 28 of the said judgment by the respondents represented by Mr. Sudame despite the observation in paragraph 15 thereof, merits to be set aside. We order accordingly.

15] The result of the aforesaid direction would be that the petitioner shall be deemed to have continued in service on the promoted post of Associate Professor, Horticulture from the initial date of his promotion notwithstanding the action taken by the University in terms of the said judgment. The selection process that the University has initiated, pursuant to the impugned order of this Court, needs to be aborted and shall not be carried forward any further. We, therefore, allow the writ petition with the aforesaid directions. Since the petitioner has not suffered adversely because of the timely intervention by this Court by its aforesaid interim order, we refrain from imposing costs.

16] We, however, make it clear that this order does not affect any action taken by the University against the promotees who were respondents in the said three writ petitions and which were disposed of by the said judgment. Any process initiated against any of the respondents

in such writ petitions may be taken to its logical conclusion, in accordance with law.

17] Pending application(s), if any, stand(s) disposed of.

(VINAY JOSHI, J.)

(CHIEF JUSTICE)