

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 968 OF 2015
WITH WP/969/2015

VAIBHAV DINKAR MAHAJAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Bhokarikar Madhav M
AGP for Respondents State: Mr.K.G.Patil
...

**CORAM : S. V. GANGAPURWALA &
V. L.ACHLIYA, JJ.
DATED : 5th MARCH, 2015**

P.C. :-

Mr.Bhokrikar, learned counsel for the petitioner submits that petitioners in both these Writ Petitions are eligible and qualified to be considered for promotion as Junior Clerk. The petitioners are working as Peons. As per Rule 46 of the Service Rules of the APMC the posts are to be filled in by promotion if candidates are available. The petitioners are working as Peons and are eligible to be appointed as Junior Clerks. They possess the requisite educational qualification as such they are required to be considered for promotion and the said post cannot be allowed to be filled in by nomination. Learned counsel submits that to be considered for promotion is a fundamental right. The learned counsel relies on the judgment of the Apex Court in the case of **Union of India V/s Hemrajsingh**

Chouhan reported in 2010 S.C. 1682. The learned counsel submits that tenure of the respondents is coming to an end and notification has been issued on 28/1/2015 by the State and the power has been vested with the Director, as such respondents could not have continued with the said selection process. The petitioners belong to O.B.C. category.

2] The learned counsel for the respondents submits that the posts of junior clerk which are being filled in are reserved for S.C. and S.T. candidates. The petitioners are from O.B.C. Category, as such cannot be considered.

3] We have considered submissions canvassed by learned counsel for respective parties. The roaster it seems has been considered and approved by the Divisional Commissioner, Nasik that is B.C. Cell. As per the said roaster, for post of junior clerk backlog for one S.C., one S.T. and one V.J.N.T. is available. The two posts advertised are for S.C. and S.T. category. The same is as per the roaster. The argument of learned counsel that petitioners could have been considered if the petitioners would have belonged to one such category. However, the petitioners belong to O.B.C. Category and the backlog is not meant for a candidate from O.B.C. Category. In light of that, Rule 46 of the Service Rules as relied by learned

counsel for the petitioners is of no avail.

4] In light of that, as the post is not available for O.B.C. Category, the judgment in the case of Union of India referred supra would be of no avail to the petitioners.

5] In light of above, case put forth by the petitioners cannot be considered. Writ Petitions as such are disposed of. No costs.

V.L.ACHLIYA, J.

S. V. GANGAPURWALA, J.

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