

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

WRIT PETITION NO. 12156 OF 2015

1. Pratibha Niketan Education society, Nanded,
Through its General Secretary
Sakharam Digambarrao Mahajan
Aged 72 years, Occu: Retired
Principal R/o 53, Bhagyanagar,
Nanded.
2. Umesh s/o Madhukarrao Chalikwar, ... **Petitioners**
Aged 36 years, Occu: Service,
R/o Block No.5, chintamani Apart.
Chaitanya Nagar Road, Nanded.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya, Mumbai.
2. The Director of Higher Education,
Maharashtra Government, Central
Building, Pune.
3. The Joint Director of Higher ... **Respondents.**
Education, Nanded Region, Nanded.

Mr. Suresh M. Kulkarni, Advocate for the Petitioners
Mr. V. S. Badakh, AGP for the Respondents.

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 19th September, 2016

JUDGMENT:

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal

3. Mr. Kulkarni, the learned counsel for the petitioners, submits that petitioner No.2 was appointed in the year 2013 as Library Clerk on a sanctioned vacant post. Petitioner No.2 belongs to physically disabled category. The said post, though was reserved for ST category candidate, no candidate from ST category was available and as such petitioner N.2 is appointed. There are still vacant posts from the open category. Petitioner No.1 has filed an undertaking to this Court that the same would be filled in from the ST category candidates.

4. The learned AGP states that reservation for physically disabled candidate is altogether a different reservation and cannot be equated with the reservation for ST category. The learned AGP further submits that as petitioner No.2 belongs to open category, proposal seeking approval to his appointment has been rightly rejected.

5. We have considered the submissions.

6. The fact that the post on which petitioner No.2 was appointed was reserved for ST category is not disputed. It is also not disputed that petitioner No.2 belongs to physically disabled category.

7. It is submitted by the learned counsel for the petitioners that there are still vacant posts for open category candidates and the same posts would be filled from the reserved category candidates. The said undertaking is accepted.

8. Petitioner No.2 is working since the year 2013. Considering the undertaking given by petitioner No.1 and that there are still vacant posts available with petitioner No.1 institution and the same are to be filled in from the ST category candidates, we quash and set aside the impugned order and direct respondent No. 3- the Joint Director of Higher Education to reconsider the proposal seeking approval to appointment of petitioner No.2 and shall not reject it only on the ground that the said post was reserved for ST Category candidates. The said exercise shall be done expeditiously, preferably within four months from today.

9. Rule is made absolute accordingly. There shall be no order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC