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

WRIT PETITION NO. 9940 OF 2015

Suresh Bhanudas Jadhav ..PETITIONER

VERSUS

The State of Maharashtra & ors. ..RESPONDENTS

Mr A.N. Sabnis, Advocate for petitioner;
Mr V.S.Badakh, A. G. P. for respondent Nos 1 & 2;
Mr V.D. Gunale, Advocate for respondent Nos. 3 & 4;
Mr Sachin B. Munde, Advocate h/f Mr S.B. Gastgar,
Advocate for respondent No. 5

**CORAM : S.V. GANGAPURWALA &
N.W. SAMBRE, JJ.**

DATE : 14th SEPTEMBER, 2016

ORAL ORDER :

Mr Sabnis, learned Counsel for the petitioner states that the petitioner is working as Peon since 1986. Learned Counsel submits that the post of Clerk had become vacant. The petitioner is required to be promoted to the said post even as per his seniority. Even as per Government Resolution dated 10th May, 2005, 25% posts of Class-III are to be filled in by promotion from Class-D. The petitioner being senior most in Class-D is entitled to be promoted to the post of

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Clerk in Class-C. The said Government Resolution is violated by the respondents.

2. Mr. Gunale, learned Counsel for the respondent-management submits that the post for Clerk is reserved for S.C. category as per roster approved by B.C. Cell and as such, the person from S.C. category has been appointed on the said post on compassionate ground. The petitioner is from open category.

3. Mr. Badakh, learned A.G.P. submits that the Education Officer had directed respondent No.4-management to consider the grievance of the petitioner in view of Government Resolution dated 10th May, 2005, however, the same is not considered. The Government Resolution dated 10th May, 2005 is not complied by respondent No. 4.

4. We have considered the submissions.

5. We could have considered the case of the petitioner, had the petitioner being from reserved category i.e. category for which the post of Clerk

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is reserved. The roster is approved by B.C. Cell and as per approved roster, the post of Clerk is meant for S.C. category. The petitioner belongs to open category. Naturally, the petitioner cannot be considered for the reserved post.

6. One who is appointed as Clerk belongs to Scheduled Caste category. As the petitioner does not belong to the category for which the post was reserved, grievance of the petitioner cannot be considered. In future, if any post of Class-C becomes vacant, naturally, the respondent-management is required to consider the case of the petitioner for promotion on the said post, as per rules and Government Resolution dated 10th May, 2005.

7. The writ petition is accordingly disposed of. No costs.

(N.W. SAMBRE, J.)

(S.V. GANGAPURWALA, J.)