

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

WRIT PETITION NO. 5860 OF 2016

Sunil Namdeo Dighe and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Amol N. Kakade, Advocate for Petitioners.

Shri P. S. Patil, Addl.G.P. for Respondent Nos. 1 and 2.

Shri M. S. Taur, Advocate for Respondent Nos. 3 to 5.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 13TH SEPTEMBER, 2017.

FINAL ORDER :

. Mr. Kakade, the learned counsel for petitioners submits that, the petitioner Nos. 1 and 4 are appointed on 23.03.2009. The petitioner Nos. 2 and 3 are appointed on 21.06.2010 and the petitioner No. 5 is appointed on 23.03.2011. All these petitioners are appointed after issuance of advertisement and giving letters to the Education Officer seeking permission to fill in the posts. The learned counsel submits that, the petitioner No. 1 belongs to Other Backward Class category and petitioner Nos. 2 to 5 are from open category. As per the roster the posts were available to the open category candidates also, however the proposal is not been considered and rejected only on the ground that appointments do not appear as per the roster. The learned

counsel submits that, four posts for open category candidates were available even as per approved roster of the year 2009-2010 and 2010-2011.

2. The learned counsel for respondent Nos. 3 to 5/institution submits that, the petitioners are appointed on clear vacant posts as per the roster and the respondent/institution has also undertaken to fill in the backlog of reserved category candidates.

3. The learned Additional Government Pleader submits that, considering roster of the year 2011, there was backlog of reserved category candidates and the same has been rightly considered by the Education Officer and the order is rightly passed.

4. We have considered the submissions canvassed by learned counsel for respective parties.

5. The roster approved as on the date of appointment of the petitioners would be required to be considered. It appears that, the Education Officer has only considered the roster of the year 2011. The approved roster of the relevant academic year, when the petitioners are appointed will have to be considered and if the posts are available for open category candidates, then the Education Officer after satisfying himself of the procedure being followed for appointment would grant approval. The institution has already given undertaking that, if there are vacant posts for reserved category candidates, they would be filled in as vacancies

still exist.

6. In the light of the above, we pass following order.

7. The impugned order is quashed and set aside. The Education Officer shall consider approved roster as on the date of appointment of petitioners and take decision afresh.

8. If on the date respective petitioners are appointed the vacancy, was available for the open category candidates with regard to petitioner Nos. 2 to 5, so also after satisfying about appointment of the petitioner No. 1 from O.B.C. category, then the Education Officer after confirming himself of the procedure being followed shall consider the proposal for approval to the appointment and it shall not reject it only on the ground that the post meant for reserved category candidates are not filled in as the institution has undertaken to fill in the posts of reserved category candidates also. However, the Education Officer will consider that on the date, the petitioners were appointed the posts of open category candidates were vacant. The said proposal shall be decided expeditiously and preferably within a period of four (04) months from today. The writ petition accordingly disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/Sept. 17