

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

BENCH AT AURANGABAD.

WRIT PETITION NO.8167 OF 2006

Ramnath S/o Jaisingh Chavan ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...
Mr.Vivek Dhage, advocate for the Petitioner.
Mr.M.M.Nerlikar, A.G.P. for the State.
Mr.S.D.Joshi, advocate for Respondent No.4.

...

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

Date : 22.08.2017.

PER COURT :

1. The present petitioner had filed Original Application before the Maharashtra Administrative Tribunal, Bench at Aurangabad, thereby, challenging the promotion of the Respondent NO.4 to the post of Senior Clerk from V.J.(A) category.

2. Mr.Dhage, learned counsel submits that the Respondent No.4 came to be appointed to the post of Junior Clerk-cum-typist on 7.2.1994 from open category. The petitioner was appointed on 19.12.1995. The learned counsel submits that even in the seniority list, the Respondent No.4 is shown at serial No.4 and the petitioner is shown at serial No.12 from V.J.(A) category. According to the learned counsel, while considering for promotional post, reserved for V.J.(A) category, Respondent No.4 is promoted though appointed from open category. The same is illegal. The learned counsel relies on the judgment of the Apex Court in the case of **"Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others"** reported in **2007 AIR SCW 5650** and another judgment in the case of **"Ritesh R.Sah Vs. Y.L.Yamul(Dr.)"** reported in **1996 (2) Mh.L.J.174.**

3. Mr.Joshi, learned counsel for the Respondent No.4 and learned A.G.P. supports the order and further submit that the Respondent No.4 belongs to V.J.(A) category. His caste claim as

belonging to Chapparband has been validated by the Committee.

4. It is not disputed that the caste claim of the petitioner as well as Respondent No.4 as belonging to V.J.(A) category has been validated by the competent Scrutiny Committee.

5. The judgments relied by Mr.Dhage, learned counsel deal with the contingency at the time of entry in service. It is trite that a person from the reserved category if he is more meritorious than the last candidate in the open category then such a candidate from reserved category has to be considered from open competition category.

6. While considering promotion to the post reserved for V.J.(A) category, the candidate from V.J.(A) category has to be considered. The Respondent No.4 belongs to V.J.(A) category and his caste claim is also validated by the Committee. The arguments of the learned counsel for the petitioner could have been accepted, had

the claim of Respondent No.4 being not validated.

7. The Tribunal has considered the relevant aspect of the matter and has not committed any error in passing the impugned order.

8. The Writ Petition is dismissed. Rule discharged. No costs.

(MANGESH S. PATIL, J.)

(S.V.GANGAPURWALA, J.)

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