

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

BENCH AT AURANGABAD.

WRIT PETITION NO.9327 OF 2016

Pandharinath S/o Madhavrao
Dawkare ... Petitioner.

Versus

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

...
Mr.V.U.Jadhav, advocate for the petitioner.
Mr.S.G.Karlekar, A.G.P. for the State.
...

**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVAL, JJ.**

Date : 12.03.2018.

PER COURT :

1. Mr.Jadhav, learned counsel submits that petitioner was appointed as a Cashier by the Respondents on 12.4.1979. The petitioner retired on attaining the age of superannuation. The Respondents have failed to give the benefit of first and second time bound promotional pay-scale to the petitioner and thereby has fixed lower pension. The learned counsel submits that under

the impugned order, the Respondents sought validity certificate from the petitioner for giving benefit of time bound promotional pay-scale. The same is erroneous.

2. Mr.Karlekar, learned A.G.P. submits that on 8.6.1999, the petitioner was promoted as Senior Clerk against the post meant for reserved category of Scheduled Tribe. The petitioner did not pass the Departmental examination on the day of promotion. The pay fixation unit raised objection, however, petitioner completed 45 years of age on 7.8.2001 and he was exempted from passing Departmental examination. As such promotion of the petitioner would be treated with effect from 7.8.2001. He did not raise any objection in that regard. As the petitioner failed to produce the validity certificate, it could not be considered for benefit of ACPS in view of GR dated 1.7.2011. Learned A.G.P. further submits that the Departmental Promotion Committee did not consider petitioner fit to be promoted for the post of Head Clerk and the said promotion was refused. Even the petitioner on

5.3.2011 has shown his unwillingness for the promotion.

3. The benefit of time bound promotional pay-scale is to be given to an employee on the ground that the avenue of promotional post is not available and to remove stagnation, the said benefit is given.

4. The impugned order suggest that the petitioner has not produced the validity certificate and for ACPS validity certificate is necessary. The said observation may not be correct as the petitioner is appointed from the open general category as is admitted by the Respondent in their affidavit-in-reply. As the petitioner was appointed from open general category, there was no need for the petitioner to produce validity certificate. However, as petitioner has not produced validity certificate, the petitioner would also not get benefit of reservation for the purpose of promotion. It is stated that the petitioner was promoted considering him from the reserved category in the

year 1999 and was given benefit of the post of Senior Clerk on attaining the age of 45 years in the year 2001. The petitioner certainly could not have been promoted as Senior Clerk considering him from the reserved category as the petitioner did not produce the validity certificate and was also appointed from open category. The said benefit, the petitioner would not be entitled to retain also, however, the case of the petitioner will have to be considered from open general category even for the purpose of time bound promotional pay-scale.

5. The Respondents shall consider the case of the petitioner for the time bound promotional pay-scale considering the petitioner from open general category.

6. With these observations, the Writ Petition is disposed of. No costs.

(A.M.DHAVAL, J.)

(S.V.GANGAPURWALA, J.)

