

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
13 WRIT PETITION NO.2940 OF 2018**

NARENDRA AJABRAO DESALE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. U. R. Awate, Advocate for the Petitioner.

Mr. N. E. Deshmukh, Advocate for Respondent Nos.4 and 5.

...

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 10th JANUARY, 2019.

PER COURT:-

1. The petitioner seeks directions against respondents to grant approval, so also assail the order rejecting the proposal for approval.

2. Mr. Awate and Mr. Deshmukh, learned counsel for the petitioner and Institution respectively submit that the petitioner was appointed after following due selection process. Prior to the advertisement, application was given to the Joint Director of Higher Education, Jalgaon. The Joint Director of Higher Education, Jalgaon granted no objection to the Institution to fill in two post of Junior Clerk from OBC category. Pursuant thereto the advertisement was issued. The petitioner was selected and appointed on the post of Junior Clerk. The roster was approved by the cell of University, wherein two posts of Junior Clerk from OBC category were admissible in the year

2010. Subsequently, the roaster was sent for verification to the Special Backward Cell. The Special Backward Cell found that only one post is admissible of Junior Clerk from OBC category and other posts would go to SBC candidates. In view of that, the proposal for approval is rejected.

3. We have also heard learned A.G.P..

4. The competent authority to verify the roaster is the Special Backward Cell. There is nothing before us to conclude that the reservation as has been approved by the Special Backward Cell has undergone change after 2010. The University cell may not be final authority as far as roaster is concerned and the roaster as affirmed by the Special Backward Cell would be final.

5. We cannot direct the petitioner to be accommodated in a post meant for SBC.

6. Mr. Awate, learned counsel for the petitioner on instructions submits that there are four posts of Lab Attendant for OBC vacant, three posts of Peon for OBC are vacant and one post of Library Attendant is vacant. The petitioner is ready to work on any of these posts and he is qualified to work on these posts.

7. The petitioner has worked for almost eight years. The respondents took long time to take decision on the proposal for approval and to verify

the roaster also. Certainly, it is not the fault of the petitioner. The petitioner was appointed as per the advertisement and the advertisement was issued as per the no objection granted by the Joint Director of Higher Education, Jalgaon. The petitioner cannot be penalized for no fault of his.

8. In light of the above, it would be appropriate to pass an equitable order. The Management shall accommodate the petitioner in the vacant post meant for OBC category to which the petitioner is qualified and shall submit the proposal to the Joint Director of Higher Education for approval. The Joint Director of Higher Education considering the peculiar facts of the case shall consider the proposal for approval and after considering the qualification of the petitioner and the availability of the vacant post for OBC category for the said post grant approval. The earlier service may be considered for the purpose of continuity, but respondents-State will not be liable to pay any actual amount for the said period.

9. Writ Petition is disposed of. No costs.

(A. M. DHAVAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE