

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

WRIT PETITION NO. 4906 OF 2016

Mirza Ashraf Saeed S/o Anwar Iqbal Baig,
Age : 45 Years, Occu. : Service,
R/o Regional S. T. Workshop,
Beed. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Department of Transport,
Mantralaya, Mumbai.
2. Divisional Controller,
Maharashtra State Road Transport
Corporation, Divisional Office,
Near S. T. Bus Stand, Beed. .. Respondents

Shri C. V. Dharurkar, Advocate h/f Ms. Vinaya C. Dharurkar,
Advocate for the Petitioner.

Shri A. B. Chate, A.G.P. for Respondent No. 1.

Shri S. R. Gagal, Advocate for the Respondent No. 2.

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

DATE : 08TH APRIL, 2019.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :

. Rule. Rule made returnable forthwith. With the consent
of parties taken up for final hearing.

2. Mr. Dharurkar, the learned counsel for the petitioner submits that, the petitioner was appointed from open (General) category. The respondent No. 2/employer directed the petitioner to submit the caste validity certificate. The petitioner challenged the same by filing Writ Petition No. 5869 of 2012. This Court under order dated 19th August, 2014 observed that, the petitioner is appointed from open category, as such directed the respondents to treat the petitioner from open category, so also for all subsequent trade test for promotional post. The learned counsel submits that, the respondent No. 2 promoted the petitioner under order dated 04th March, 2015. However, considering the petitioner for promotion from the date he joins the promotional post, whereas one Mr. A. R. Sagle, Junior to the petitioner was promoted with effect from 25.08.2009.

3. Mr. Bagal, the learned advocate for the respondent No. 2 submits that, the petitioner accepted the promotional order dated 04th March, 2015 without any protest. The petitioner was agreeable for the same. The learned counsel submits that, now the petitioner cannot turn around and contend otherwise.

4. The petitioner is required to be considered as having been appointed from open category since the date of his appointment and the same has also been clarified in the order dated 19th August, 2014 in Writ Petition No. 5869 of 2012. It is not

disputed by the respondents that, Mr. A. R. Sagle is junior to the petitioner and he has been promoted on the higher post under order dated 25th August, 2009 from the date he joins the post. It is also not disputed that the petitioner had passed the qualifying examination as trade test for promotion in the year 2009 itself. In view of the above, the petitioner also ought to be given same treatment as given to his junior Mr. A. R. Sagle.

5. In the result, we direct that the respondent No. 2 shall treat the petitioner promoted to the post of Rubber Sanyojak with effect from date Mr. A. R. Sagle had joined the said post. The same shall be notionally construed for the purpose of pay fixation and all further consequential benefits. The petitioner will not be entitled for actual monetary benefit from the date the petitioner is given deemed date till the date the petitioner is actually promoted on the said post.

Rule accordingly is made absolute in above terms. No costs.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

bsb/April 19