

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

WRIT PETITION NO.11844 OF 2021

Mahesh s/o. Shankarrao Moklikar

Age : 29 years, Occu : Student,

R/o. Mokli, Post Kundalwadi,

Tal. Dharmabad, Dist. Nanded

.. Petitioner

Versus

1. Vasantrao Naik Marathwada
Agricultural University,
Through its Registrar, Basmat
Road, Parbhani.

2. Deepak s/o. Gunwanta Ingole,
Age : 31 years, Occu : Student,
R/o. Vajjnath Hostel, Vasantrao Naik
Krushi Vidyapeeth, Parbhani.

.. Respondents

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Mr. Pratap P. Mandlik, Advocate for the petitioner.

Mr. Manish N. Navandar, Advocate for Respondent No.1

Mr. Vishnu Y. Patil, Advocate for Respondent No.2

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**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

RESERVED ON : 06-09-2022

PRONOUNCED ON : 12-09-2022

JUDGMENT (*PER* SANDEEP V. MARNE, J.) :

. Heard. Rule. Rule is made returnable forthwith. Learned
Advocate Mr. Manish N. Navandar waives service for respondent
no.1. Learned Advocate Mr. Vishnu Y. Patil waives service for

respondent no.2. At the joint request of the parties, the matter is heard finally at the stage of admission.

2. When the petition came up before this Court on 26.10.2021, it was directed that if any appointment orders are issued, the same would be subject to the decision of the petition. It appears that no appointment order has yet been issued by the respondent – University.

3. The petitioner challenges revised merit list dated 19.01.2021 issued by the respondent – University and seeks appointment on the post of Senior Research Assistant (Agriculture Department).

4. The facts of the case, in nutshell, are as under :

. An advertisement was issued by the respondent – University on 25.07.2017 *inter alia* for the post of Senior Research Assistant (Agriculture Department). One post was reserved for O.B.C. category. The petitioner and respondent no.2 applied in pursuance of the advertisement and both of them belong to O.B.C. category. Respondent no.2 submitted two separate applications, one from Open

category and another from O.B.C. category. On 15.01.2021 merit list was published, in which, petitioner's name was shown at serial no.1 in O.B.C. Category, having secured 110 marks. However, later a revised merit list was published on 19.01.2021, in which both petitioner and respondent no.2 were shown to have secured 110 marks. Against the name of respondent no.2, numbers of two hall tickets were mentioned. The petitioner is younger than respondent no.2 and since he has apprehension that the respondent – University may appoint respondent no.2, the petitioner has filed this petition challenging the revised merit list.

5. Mr. Mandlik, learned advocate for the petitioner would submit that respondent no.2 could not have filed two applications in pursuance of the advertisement for same post in two separate categories. He would further submit that even if respondent no.2 had submitted two applications, the respondent - University erred in entertaining both those applications. It is further submitted that even though respondent no.2 had also applied from O.B.C. category, his candidature was considered only for open category. This is claimed on the basis of general merit list, in which the category of respondent no.2 was shown as 'Open'. Mr. Mandlik would further submit that in a similar case of Mr. Kale Ravi Kurmadas, the respondent – University

refused to consider candidature in O.B.C. category and following similar course of action, candidature of respondent no.2 in O.B.C. category ought to have been rejected.

6. Mr. Navandar, learned advocate appearing for the respondent – University justified the action by submitting that respondent no.2 was issued two hall tickets. He invited our attention to two separate applications supported by two separate challans of payment of fees, by which respondent no.2 applied in two different categories. He would submit that since respondent no.2 belongs to OBC category, the respondent – University has validly taken a decision to consider candidature of respondent no.2 in O.B.C. category.

7. Mr. Patil, learned advocate appearing for respondent no.2 submitted that there was no bar in the advertisement for submitting multiple applications. He would submit that the hall tickets issued to the candidates did not specify the particular category under which the candidate was to appear in the examination. He distinguished the case of Mr. Kale Ravi Kurmadas stating that he had not submitted two separate applications under Open and O.B.C. category like that of respondent no.2. He, therefore, prayed for

dismissal of the petition.

8. Upon hearing the learned Counsel for the parties at length, we find that the advertisement did not contain any specific bar for submitting two applications for two categories. Despite absence of specific bar in the advertisement for submitting multiple applications, it was open to the respondent – University to reject the candidature of respondent no.2 for having submitted two applications for same post in different categories. However, the same is not done. Rather two separate hall tickets were issued to respondent no.2 for participating in the selection for the same post. The examination, however, was common. Even though ideally respondent no.2 ought not to have submitted two separate applications for Open and O.B.C. categories, we find that in absence of any specific bar to that effect in the advertisement, the respondent – University was justified in treating his candidature in O.B.C. category. Even though initially candidature of respondent no.2 was considered in Open category alone, he raised objection to the merit list and the said objection has been considered and corrective action is taken by the University. We do not find any error is committed by the respondent – University in doing so.

9. There is no dispute about the fact that respondent no.2 belongs to O.B.C. category. Since the impugned action resulted in appointment of O.B.C. category candidate against post reserved for that category, the petitioner cannot be permitted to take benefit of technicalities.

10. The contention of Mr. Mandlik that the case of Mr. Kale Ravi Kurmadas is similar, is incorrect. He had applied only under Open category and not under O.B.C. category. The respondent – University rightly did not permit the candidate to change his category subsequently. As against this, respondent no.2 had specifically applied under O.B.C. category as well. Therefore, the case of Mr. Kale Ravi Kurmadas is clearly distinguishable.

11. Reliance of Mr. Mandlik on representation of respondent no.2 dated 18.01.2021 is also misplaced. Mr. Mandlik relied upon admission of respondent no.2 that he had participated in the examination on the basis of hall ticket No.610566 (Open category). We have perused both the hall tickets issued to respondent no.2 bearing Nos.610565 and 610566 and are unable to find any specific category being mentioned on either of the hall tickets. Thus, the hall tickets did not restrict candidature of respondent no.2 to any

particular category.

12. We are, therefore, of the considered view that no fault can be found in the revised merit list prepared by the respondent – University. The petition being devoid of merits is liable to be dismissed and it is dismissed without any order as to costs.

13. Rule is discharged.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)

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