

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.14157 of 2017**

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Dhananjai Singh, Son of Sri Satyendra Narayan Sinha, Resident of Village-  
Kumhra, P.O.- Karkain, P.S.- Ghoshwari, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna
3. The Deputy Secretary, Education Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Director, Higher Education, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
5. The Bihar Public Service Commission, through its Secretary, Bailey Road, Patna.
6. The Chairman, Bihar Public Service Commission, Bailey Road, Patna.
7. The Secretary, Bihar Public Service Commission, Bailey Road, Patna.
8. The Special Secretary-cum-Examination Controller, Bihar Public Service Commission, Bailey Road, Pat
9. Manish Kumar Jaiswal, Roll No. 66011592, Merit serial No. 423, residential Address not known the Pe
10. Kumari Priti, Roll No. 66010598, Merit Serial No. 108, residential address not known to the petitioner

... .. Respondent/s

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**Appearance :**

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|-----------------------|---|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Petitioner/s  | : | Mr. Arup Kumar Chongdar, Advocate<br>Mr. Md. Nazir Ansari, Advocate                                                                                    |
| For the State         | : | Mr. Madanjeet Kumar, GP-20                                                                                                                             |
| For Respondent no.5   | : | Mr. Lalit Kishore, Sr. Advocate<br>Mr. Sanjay Pandey, Advocate                                                                                         |
| For Respondent no. 9  | : | Mr. Amarendra Narayan, Advocate<br>Mr. Deepak Kumar, Advocate                                                                                          |
| For Respondent no. 10 | : | Dr. Ranjeet Kumar, Advocate<br>Mr. Yogesh Kumar, Advocate<br>Mr. Ayush Kumar, Advocate<br>Mr. Kanishk Kaustubh, Advocate<br>Mr. Shikhar Mani, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

**CAV JUDGMENT**

**Date : 24<sup>th</sup> March, 2023**



The petitioner, by way of this writ petition, prayed for quashing the result dated 23.08.2017 with respect to him whereby his earlier result dated 17.05.2017 (Annexure-P4) was modified by the Bihar Public Service Commission (hereinafter referred to as 'the BPSC') and one Manish Kumar Jaiswal (respondent No.9) was replaced by him as a successful candidate for appointment as an Assistant Professor, Chemistry for Lalit Narayan Mithila University, Darbhanga and he was ousted from the selection process. Further, he has prayed to declare respondent No.9, namely, Manish Kumar Jaiswal ineligible for consideration as a Backward Category candidate. Alternatively, he further prays to shift respondent No.10, namely, Kumari Priti to the Backward Class Lady category from Backward Category and treat the said Backward Category post for the petitioner for appointment as Assistant Professor in Chemistry in Jai Prakash Narayan University, Chapra where the respondent No.10 has been posted.

2. Brief facts of the case which need to be noticed for the purpose of disposal of this writ petition are that an advertisement was published for appointment to the post of Assistant Professor, Chemistry for various Universities along with other subjects by the BPSC (in 2014). The last date for



filling up the form was fixed as 20<sup>th</sup> November, 2014. All 239 posts were advertised for Chemistry in various categories which were given different codes as UR [01] -121 posts, SC [02] -38 posts, ST [03]- 02 posts, EBC [04]-41 posts, BC [05]-29 posts, BCW [06] -8 posts.

The petitioner applied as a Backward Class Category Code -05. The result was published on 17.05.2017 and 117 candidates were found successful. The petitioner was placed in the merit at Sl. No.15 in the list of Assistant Professors allotted to Lalit Narayan Mithila University with overall merit of 452 in the Code-05 BC Category, the name of respondent No. 9 was shown at Sl. No.45 in the list of Assistant Professors allotted to Magadh University, Bodh Gaya with Code -04 mentioned against him which was meant for an EBC Category candidate while respondent No.10, namely, Kumari Priti was granted placement at Sl. No. 17 in Jai Prakash Narayan University, Chhapra showing her code -05 (BC Category).

The respondent – BPSC sought modification of the result as he was wrongfully shown belonging to EBC whereas he had mentioned his caste as ‘kalwar’ which falls in the BC Category. On the said basis, the result was revised by the BPSC treating him as a BC Category candidate and as the petitioner



was having lesser merit than respondent No.9, the petitioner was ousted from the merit, and respondent No.9 was placed in his place. The total number of successful candidates was reduced to 177.

3. As far as respondent No.10 is concerned, she has secured merit position 108 as the last Unreserved Category seat was filled up by a meritorious candidate bearing No.121.

4. In the aforesaid facts, the question which arises before this Court is (i) whether the petitioner has a claim for appointment on the post of Assistant Professor in BC-05 Category; (ii) whether the respondent No.9 could be selected under BC -05 Category when he had mentioned in his original form his category as EBC -04 and whether the BPSC could have shifted him from EBC -04 Category to BC-05 Category resulting in ousting the petitioner; and (iii) whether respondent No.10 who secured merit position 108 and was more meritorious than General Category (Unreserved) should be placed in the BC Category and if she is to be placed in Unreserved Category whether the petitioner has a claim on the BC Category post which would fall vacant on account of her placement in another category.

5. On the aforesaid questions both the learned counsel



for the petitioner and the respondent have submitted their arguments and the learned counsel for the petitioner relies on a judgment passed in ***Saurav Yadav Vs. State of U. P*** reported in ***(2021) 4 SCC 542*** which takes into account earlier judgment passed by the Supreme Court. In Bihar, applying the said principle the respondents are required to first fill up the open category candidate's list and, thereafter, the seats shall be filled up from the SC/ST, EBC, BC, and BCL Category vertically.

6. Learned counsel for the petitioner has referred to the condition no.2 stipulated in the advertisement published for appointment to the post of Assistant Professor with regard to filling up of form which specifies that incomplete and wrongfully filled up application will be considered as incomplete/improper information and the concerned application will be rejected. It further mentions that a woman who is from the BC Category has to fill up her reservation Code for BC Category as well as the BCL category. It states that in the advertisement that if a candidate has not claimed reservation in his or her application form, the benefit of reservation shall not be made available to such candidate.

6.1 Learned counsel submits that respondent No.9 has admittedly mentioned in his form Code-04, which is EBC



Category on the basis that he belongs to 'kalwar' community which he asserted as EBC. The BPSC wrongfully allowed him to be treated, after the final result was declared, to be a candidate from BC Category based on his caste name 'kalwar'. Learned counsel asserts that the respondent has participated in the selection process as an EBC Category candidate. If the respondent has filled up the form wrongfully, his candidature deserves to be rejected and the BPSC has wrongfully allowed him to shift over to BC Category and has erroneously ousted the petitioner from the list of successful candidates. It is submitted that the instructions are mandatory and are applicable for all and no departure can be made for any person.

6.2 It is also submitted that before issuing the revised result the petitioner was not given any notice and was not afforded any opportunity of being heard and, thus, it is a case of violation of principles of natural justice. Further, it is submitted that after the final result was published, the BPSC had no jurisdiction or authority to revise the final result.

6.3 It is further stated that, in the alternative, respondent No.10, namely, Kumari Priti has been wrongfully treated as a BC Category candidate while she was to be treated as a BCL Category candidate, more so, as she is a woman and



BCL Category posts were lying vacant. There was no occasion to shift her to BC Category. Further, she was to be treated as an Unreserved Category candidate as she possesses much more marks than the candidates who have been appointed in Unreserved Category Female and Unreserved Category otherwise.

6.4 Learned counsel for the petitioner also placed on record the document to show that in the list of selected candidates published by the BPSC, respondent No.9 was shown to be from 05 Category and treated as eligible. The mistake, therefore, of treating him 04 Category was on the part of the BPSC for which he cannot be held responsible.

6.5 Learned counsel relies on judgments passed in ***Rajesh Kumar Daria Vs. Rajasthan Public Service Commission***, reported in (2007) 8 SCC 785; ***Saurav Yadav Vs. State of U.P.***, reported in (2021) 4 SCC 542. He also relies on the judgment passed in ***Megha Shetty Vs. State of Rajasthan & Ors.*** reported in 2013 SCC online Raj 227.

7. The respondent – BPSC has submitted written submissions and it is stated that the petitioner was called for an interview on 02.06.2018 and, thereafter, a combined merit list was prepared wherein the petitioner was placed at overall merit



Sl No. 452 and allotted Lalit Narayan Mithila University under BC (05) Category. Before the recommendation of successful candidates, the documents of all the candidates were verified and in the light of the e-mail sent by respondent No.9, namely, Manish Kumar Jaiswal, it was found that he has been allotted Magadh University as EBC (04) Category whereas he actually belongs to BC (05) Category. In his application form, in the respective column, he had mentioned his caste as 'kalwar' but in the other respective column as EBC (04) Category whereas in terms of the list published by the General Administrative Department, he belongs to BC Category. The BPSC held a meeting on 23.08.2017 and decided to revise the earlier result of Manish Kumar Jaiswal (respondent No.9) and consider him at merit Sl. No. 423. He was placed in BC (05) Category and allotted the post which was originally allotted to the petitioner at Lalit Narayan Mithila University. Resultantly, the petitioner was ousted from the selection.

7.1 It is further stated that with reference to respondent No.10, the result/selection was made as per a combined merit list taking into consideration the respective merit of the candidates, choice/reference of the Universities preferred/opted by them, availability of reservation, category -



wise vacancies in the concerned University, the fitness of the candidates for University and reservation category. If a candidate having a higher merit position opted a certain University as his/her 1<sup>st</sup> preference and so on then he/she is allotted that particular University as per the availability of vacancy of General Category in the University concerned by virtue of his /her merit and choice/preference. But, if he/she does not get his/her 1<sup>st</sup> preference University with respect to merit serial in General Category, then he/she is allotted his/her preferred University in which vacancy is available in his/her respective reservation category. The same process was followed for respondent no.10, Kumari Priti, merit serial 108. She was allotted Jai Prakash University, Chapra as per her merit serial, reservation category, availability of vacancies in the Backward Class (05) Category, and preference for Universities.

7.2 The BPSC has further submitted that they requested the department to create/sanction one post of Backward Class (05) Category to accommodate the petitioner to the initially allotted Lalit Narayan Mithila University or other Universities. However, the department sent a letter on 08.05.2018 mentioning that it is not appropriate to send requisition of additional vacancies besides published vacancies.



It is further stated that four posts in BCL-06 have remained vacant due to the non-availability of a suitable candidate against which candidates of other categories cannot be accommodated as the same is meant only for BCL Category. All women candidates/applicants belonging to reserved categories i.e. SC-02, ST-03, EBC-04 and BC-05, come under the Backward Class Woman (06) Category as per the provisions made by the State Government dated 19.08.2013 (Annexure-H to 2<sup>nd</sup> supplementary counter affidavit). It is stated that BCL (06) Category posts are filled up from all female reserved category candidates following merit-cum-option principle. Therefore, it would be in violation of the reservation policy to change the result from BC (05) Category to BCL (06) Category with a higher merit position in BC (05) Category as the petitioner is suggesting. It is further stated that the petitioner has been placed on the waiting list at Sl. No. 3 under the BC (05) Category. Learned counsel submits that the BPSC has, therefore, followed the rules correctly.

**8.** The respondent No.9, namely, Manish Kumar Jaiswal contends that the petitioner's merit is lesser than him. He is from BC Category and erroneously the code was entered as EBC while he had mentioned, in his form, his caste as



‘kalwar’ which falls in BC Category. He also has stated that his caste certificate mentions the category to be BC. At the time of scrutiny of his form, he was shown to be from BC Category by the BPSC while in the final result, he was wrongly shown as EBC which was corrected by the BPSC later on. The fault does not lie with the petitioner and, he is entitled to be treated as from BC Category alone. Merely, on account of error in mentioning of code of caste in the form, his category cannot be changed.

9. This Court had stayed the appointments of respondent Nos. 9 and 10 vide order dated 16.10.2017. The respondent Nos. 9 and 10 was again selected as Assistant Professor, Chemistry under another advertisement no. 28/2014 and have been posted in Engineering colleges and they are presently working there. Respondent No.10 asserts that she is still interested to join under the present advertisement in question to the University.

**Findings and conclusions :-**

10. With regard to Respondent No.9, namely, Manish Kumar Jaiswal – the Respondent No. 9, admittedly, filled up his form mentioning both his caste ‘kalwar’ and also mentioning Category -04 which is meant for EBC Category. Kalwar caste falls in BC Category. The petitioner was allowed to participate



in the interview as a BC Category candidate as was declared eligible under the BC Category. Later on, in the final result, he was shown as EBC Category. Thus, the benefit has to go in favour of respondent No. 9. He has to be treated as per his caste certificate as a BC Category candidate alone. Moreover, since his interview was conducted as a BC category candidate. No fault lies on his part as he was always treated by the BPSC in the BC Category. The decision of the BPSC dated 23.08.2017 deciding to revise the earlier result dated 17.05.2017 of respondent No.9, namely, Manish Kumar Jaiswal in Backward Class (05) Category and allotting him the post as per his merit is, therefore, correct and does not warrant any interference. The result of ousting of the petitioner from the merit also, therefore, cannot be said to be unjustified.

10.1 While preparing a result, if there is any error found, the same can always be corrected even after the declaration of the result and it cannot be said that the BPSC does not have jurisdiction to revise the same. There can be several circumstances in which results can be revised which may be on account of the reason as above as well as for other reasons like a fraud being noticed by the BPSC; or wrongful entry of a person who may have expired before the final result



was declared. In such circumstances, the BPSC can revise the result. The contention raised by the learned counsel for the petitioner on this count, therefore, stands rejected.

10.2 Principles of natural justice would not also apply as no right is created in favour of any person at the time of declaration of result. It is only once a selected candidate joins the post that a vested right is created in his favour. Before such a person joins the post, the selection has to be treated as purely provisional, subject to verification of antecedents, documents, revision of results etc. The contention of not following principles of natural justice, thus, fails.

10.3 It is settled law that the status or category of an individual cannot be changed, meaning thereby, a person belonging to BC Category cannot be said to be belonging to EBC Category while a candidate from reserved category may be placed in a General Category, there is no provision and law or a legal concept to shift a person from one reserved category to another reserved category. If there is an error found, either the same can be allowed to be corrected or the candidature would be rejected.

10.4 In the circumstances as noted above, this Court has already concluded that the error could be corrected.



Somewhat a similar view has been taken by the Supreme Court in the case of *Dolly Chandra Vs. Chairman, Jee & Ors.* reported in *2005(9) SCC 779*.

11. With regard to respondent No.9, Kumari Priti, this Court finds that in a recent judgment in *Bharat Sanchar Nigam Limited & Anr. Vs. Sandeep Choudhary & Ors.* reported in *(2022) 11 SCC 779* somewhat a similar issue came up before the Apex Court with regard to the selection of a higher meritorious candidate and the issue as to where they had to be placed.

11.1 In the said case, two candidates having higher merit than General Category Candidates were placed in the OBC Category while an OBC Category Candidate was ousted. The said candidates Sandeep Choudhary and Ors. claimed the OBC seats asserting that the OBC Category candidates having higher merit than the General Category should be shifted to the General Category. The Supreme Court after considering the law laid down posed the following question for consideration as under:-

*7". Whether in a case where the reserved category candidates secured more marks than the general category candidates, such reserved category candidates will have to be first adjusted in the general category pool and they shall be considered for*



*appointment in the general category pool or against the vacancies meant for reserved category candidates?”*

11.2 After considering the law as laid down in ***Indra Sawhney Vs. Union of India*** reported in ***AIR 1993 SC 477***; ***Rajesh Kumar Daria (supra)***; ***UPSC Vs. Mamta Bisht***, reported in ***(2010) 12 SCC 204***; ***Ritesh R. Sah V. Y.L. Yamul*** reported in ***(1996) 3 SCC 253***; ***Saurav Yadav Vs. State of U. P.***, reported in ***(2021) 4 SCC 542***; ***Sadhna Singh Dangi Vs. Pinki Asati*** reported in ***(2021) SCC Online SC 1329***, the Supreme Court in its judgment in ***Bharat Sanchar Nigam Limited (supra)*** held as under :

*“11. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. The High Court has rightly observed and held that two reserved category candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar having more marks than the general category candidates appointed, were entitled to the appointment in the general category and the seats reserved for OBC category were required to be filled in from and amongst the remaining candidates belonging to the OBC category. Consequently, respondent No.1 – original applicant was entitled to the appointment on such post. However, at the same time in exercise of the powers under Article 142 of the Constitution of India, it is observed and directed that on reshuffling, the two candidates belonging to general category shall not be removed from service as they are working since long. However, at the same time, the respondent No.1 shall be entitled to the seniority from the date, the general category candidates having lesser marks than the aforesaid two reserved category candidates were*



*appointed.*

*With this, the present appeal stands dismissed. However, in the facts and circumstances, there shall be no order as to costs.”*

11.3 A three Judges Bench of the Supreme Court has further discussed the issue with regard to giving precedence of merit both to the permissible reservations in the case of **Saurav Yadav (supra)** held as under :

*38. The second view is thus neither based on any authoritative pronouncement by this Court nor does it lead to a situation where the merit is given precedence. Subject to any permissible reservations i.e. either social (vertical) or special (horizontal), opportunities to public employment and selection of candidates must purely be based on merit. Any selection which results in candidates getting selected against Open/General category with less merit than the other available candidates will certainly be opposed to principles of equality. There can be special dispensation when it comes to candidates being considered against seats or quota meant for reserved categories and in theory it is possible that a more meritorious candidate coming from Open/General category may not get selected. But the converse can never be true and will be opposed to the very basic principles which have all the while been accepted by this Court. Any view or process of interpretation which will lead to incongruity as highlighted earlier, must be rejected.”*

11.4 Concurrent judgment authored by **S. Ravindra**



**Bhat, J.** has observed as under :

61. The open category is not a “quota”, but rather available to all women and men alike. Similarly, as held in *Rajesh Kumar Daria*, there is no quota for men. If we are to accept the second view [as held by the Allahabad High Court in *Ajay Kumar v. State of U.P.* and the Madhya Pradesh High Court in *State of M.P. v. Uday Sisode*, referred to in paras 24 and 25 of *Lalit, J.*'s judgment], the result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore perhaps unconsciously supports but definitely results in confining the number of women in the select list to the overall numerical quota assured by the rule.”

11.5 The view taken in *Saurav Yadav (supra)* has been reiterated by a subsequent three judges Bench In *Sadhna Singh Dangi Vs. Pinki Asati* and connected appeals (supra) decided on 16<sup>th</sup> December, 2021, wherein the Apex Court has held as under :-

“26. It is true that the leading judgment in *Saurav Yadav (supra)* considered the matter from a general plane but the concurring judgment authored by S. Ravindra Bhat, J. did additionally consider the issue from the perspective of absence of any statutory Rules in the field. It is also true that in the instant case, there are Rules occupying the field and the case would be a fortiori, but we need not enter into that arena as, in our view, the general propositions laid down in *Saurav Yadav (supra)* by themselves are sufficient to take care of the controversy which has arisen in the instant matters.

27. The law laid down in *Saurav Yadav* is very clear that even while applying horizontal reservation, the merit must be given precedence and



*that if the candidates who belong to SCs, STs and OBCs have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates.”*

12. One argument has been raised by the respondents with reference to the option to be exercised by a particular University by a higher meritorious reserved category candidate. It is submitted that if a candidate from a reserved category although being higher in merit does not want to take a seat in a particular University which is not of his/her choice and on his/her reservation he/she is getting a post in a University of his/her choice he/she may choose to leave the said post of open category and join the University in his/her category post.

13. The argument is advanced in light of the judgment passed by the Apex Court in the case of ***Union of India Vs. Ramesh Ram*** reported in ***(2010) 7 SCC 234*** wherein the Apex Court held that a reserved category candidate if selected on his merit may retain his reserved category vacancy in order to get a service of higher choice at the time of service allocation.

13. The Supreme Court in ***Bharat Sanchar Nigam Limited (supra)*** in para 10 of its judgment noticed the aforesaid judgment and has observed as under :-

*“10. Now, so far as the decision of this Court in the case of Ramesh Ram (supra) relied upon by*



*learned counsel appearing on behalf of the BSNL is concerned, the aforesaid decision is not applicable to the facts of the case on hand. The said decision is distinguishable on facts. In the said case, this Court was considering Rule 16(2) of Civil Services Examination Rules relating to Civil Services Examination held by the Union Public Service Commission.*

*The said case was a case of Civil Services, where the selected candidates were having different preferences and in a given case, it may happen that the general category candidates, who are less meritorious and the reserved category candidates having more marks than the general category candidates and consequently they are to be adjusted against the reserved category and they can possibly secure posts in a service of a higher preference. Therefore, option was given to such candidates belonging to reserved category to consider their candidature against the reserved category only despite having higher merit than General Category Candidates. However, in the present case, there is no question of any such preference. On interpretation of Rule 16(2) in paragraph 42, it was observed and held as under :-*

*“42. Therefore, we are of the fir opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower -ranked reserved category candidates would result in aggregate reservations exceeding 50 % of the total number of available seats. Hence, we see no*



*hurdle to the migration of MRC candidates to the reserved category.”*

*We fail to appreciate how the said decision is applicable to facts of the case on hand and/or of any assistance to the BSNL faced with the decisions of this Court in the case of Indra Sawhney (Supra) and other decisions referred to hereinabove.”*

14. In the present case, there is not even a question of any higher post or a post having higher remunerations. It is a case only with regard to the choice of University. Merely for the purpose of a particular choice of University, the merit allocation cannot be put in jeopardy. The preparation of merit is at the stage of selection by the BPSC while the allocation of the University is a subsequent stage, transaction, thus, if there are in all 100 open category posts, the same would be filled up from the first 100 candidates alone subject to horizontal reservation of the several categories and other horizontal reservations available to candidates. It is thereafter that the remaining post shall be filled up by the other meritorious candidates of their respective categories. The option of such candidates would thereafter be examined according to their falling in their respective categories. If the aforesaid method would be the correct method for considering the choice/option of the Universities, the *inter se* merit cannot be tinkered with



merely on the basis of option.

15. On account of such action of the respondent whereby they have shifted the merit on the basis of choice of University, namely shifting respondent No. 10 to BC Category instead of open category, and additional open category candidates have been brought in while BC category candidate, namely the petitioner has been ousted, the action is perversely found to be illegal. The petitioner has a right to claim his BC post which has wrongfully been given to respondent No. 10 who is to be treated in the open category and allotted the University accordingly. The action of the respondent in ousting the petitioner from the BC category and including respondent No. 10 in the BC category is found to be *dehors* the reservation principle.

16. *A fortiori*, with regard to the open category candidates who were lesser meritorious than the respondent No.10, Kumari Priti, it cannot be said that they have committed any fault. Keeping in view of the law laid down by the Supreme Court in ***Sadhna Singh Dangi and Ors. Vs. Pinki Asati & Ors.*** (*supra*) where similar issue arose, considering the that said candidates cannot be held responsible for the anomalies, it is directed that their appointments shall remain saved.



17. The petitioner would be entitled to be treated as included in the selected candidates of the BC category and he would be entitled to be granted placement in an appropriate University where the BC post falls. Respondent No. 10 would also be placed in the open category as per her merit and entitlement for placement at the University accordingly.

18. The exercise has to be completed by the respondents within one month henceforth and the petitioner shall be, accordingly, offered an appointment.

19. The interim order dated 16.10.2017 passed by this Court shall cease to operate with aforesaid directions.

20. The writ petition, therefore, is allowed to the aforesaid extent. No cost.

**(Sanjeev Prakash Sharma, J)**

Ashwini/-

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