

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2891 OF 2021

Vijay Babarao Shende  
Aged 52 years, Deputy Director  
Town Planning, Pimpri Chinchwad  
Municipal Corporation D.P. Unit)  
Pimpri Chinchwad,  
and residing at  
Flat No.B-703, DSK Franjipani  
Cooperative Housing Society,  
Near Sadhu Waswani Chowk,  
Camp, Pune. 411001

... Petitioner

Versus

1. Maharashtra Public Service Commission,  
Through its Secretary  
Cooperage Telephone, Nigam Building,  
Maharshi Karve Road,  
Cooperage, Mumbai 400 021.
2. Government of Maharashtra,  
Through Principal Secretary,  
Urban Development Department,  
Mantralaya, Mumbai 400 032
3. Rajendra Mahadeo Pawar,  
Aged: 50 yrs, Occu: Working as  
Dy Director, Town Planning,  
Urban Research Cell, Head Office  
Director of Town Planning M.S,  
Central Building Near Sasoon  
Hospital, Pune, 411001

4. Harshal Chandrakant Baviskar  
Aged: adult, Occu: Working as Planner,  
Planning Department,  
MMRDA, BKC, Mumbai,  
R/at: F3/1, Type Owners Association  
Sector 7, Vashi, Navi Mumbai 703. ... Respondents

...

Mr. Akshay S. Malviya a/w Mr. Kailash N. Baug for the Petitioner.

Mr. B.V. Samant, AGP for Respondent Nos.1 -State.

Dr. Abhinav Chandrachud a/w Mr. Makarand M. Kale i/b Mr. Yogesh S. Sankpal for Respondent No.4.

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**CORAM: DHIRAJ SINGH THAKUR &  
SANDEEP V. MARNE, JJ.**

**DATE : JULY 11, 2023.**

**JUDGMENT (per – Sandeep V. Marne, J.):**

Rule. Rule is made returnable forthwith. Heard the learned Counsel appearing for the parties finally.

2 By this Petition, Petitioner challenges judgment and order dated June 24, 2021 passed by the Maharashtra Administrative Tribunal, Mumbai (**Tribunal**), dismissing Original Application No.544 of 2018. The Original Application was filed by Petitioner challenging selection process for appointment to the post of Deputy Director, Town Planning initiated in pursuance of the Advertisement no.15/2018. Petitioner had

prayed for declaration as to his eligibility and for his consideration in the selection process.

3 Briefly stated, facts of the case are that, Petitioner belongs to Scheduled Caste category. He was initially appointed as Assistant Town Planner on November 11, 1993. He was later appointed on the post of Town Planner through competitive examination conducted by Maharashtra Public Service Commission (**MPSC**) with effect from July 13, 2010. He further participated in the competitive examination for appointment as Assistant Director, Town Planning conducted by MPSC and came to be selected and appointed on that post with effect from March 6, 2014.

4 MPSC issued advertisement no.15/2018 on February 6, 2018 for filling of two posts of Deputy Director, Town Planning, Group-I, Gazetted, Urban Development Department. Out of the two posts, one post was reserved for Scheduled Caste category whereas the second post was reserved horizontally for Female-Open category. The advertisement specified educational criteria of Master's Degree in Town Planning or Post Graduate Diploma in Urban Planning. The advertisement also prescribed experience of not less than five years in Town Planning or Town Planning and Valuation of Lands and Buildings in a post not below the rank of Town Planner or equivalent post in government or semi-

government organization. There is no dispute to the position that Petitioner possesses the requisite eligibility criteria to participate in the selection process. Petitioner accordingly submitted online application on May 22, 2018 in pursuance of the advertisement.

5 The Maharashtra Public Service Commission Rules of Procedure 2014 provide for short listing of candidates for interviews. Applying the short-listing criteria, MPSC published list of eligible candidates and non-eligible candidates on June 12, 2018 and scheduled the interviews to be held on June 27, 2018. The Commission arranged the candidates in descending order depending on experience possessed by each candidate. In Female Open category, only one candidate namely Ms. Snehalata Vasantrao Rane was possessing requisite experience of five years, MPSC therefore shortlisted Ms. Rane and three other male candidates belonging to Open category in respect of one vacancy reserved for Open Female category. For the other post reserved in Scheduled Caste category, four candidates were selected. Petitioner was not included in the list of shortlisted candidates as he was at serial no.5 having the least experience amongst SC candidates and accordingly, only four candidates were shortlisted for interview.

6 Petitioner made representation dated June 13, 2018 challenging non-inclusion of his name in shortlisted candidates. He filed Original Application No.544 of 2018 before the Tribunal challenging the

selection process. He also prayed for grant of interim order to permit him to participate in the selection process. The Tribunal passed interim order dated June 20, 2018, directing that Petitioner be called for interview and his result was directed to be kept in sealed cover. Petitioner accordingly received two letters, dated June 12, 2018 and June 22, 2018 calling him for interview scheduled to be held on June 27, 2018. Petitioner accordingly participated in the interview process.

7 The State Government thereafter issued Corrigendum dated December 19, 2018 modifying instructions regarding filling up of posts in horizontal reservation. It was directed that names of backward candidates should also be included in the select list on their own merit and after doing so if the requisite number of horizontal reservation candidates are made available, there would be no difficulty and the appointments would be made accordingly. However, in the event of non-availability of requisite number of horizontal reservation candidates, the shortfall be made good by deletion of equivalent number of candidates from the select list and replacing them by candidates belonging to horizontal reservations on their merits. MPSC accordingly published publication dated March 27, 2019 directing that the selections where final results are not declared would be governed by the provisions of the Government Resolution dated December 19, 2018.

8 The Tribunal thereafter directed the MPSC to declare Petitioner's result by its order dated January 10, 2019. MPSC accordingly declared result and recommended Respondent No.3 to be appointed against horizontally reserved post of Female Open category and Respondent No.4 against post reserved for Scheduled Caste category by its recommendation letter dated February 12, 2019. The Tribunal by order dated March 11, 2019, permitted Petitioner to amend the Original Application and directed that Respondent Nos.3 and 4 shall not be allowed to join if they had not already joined.

9 The Tribunal thereafter heard the Original Application and was pleased to dismiss the same by its judgment and order dated June 24, 2021, which is impugned in the present Petition.

10 Appearing for Petitioner Mr. Malviya, the learned Counsel would submit that Petitioner was erroneously declared ineligible in the selection process by the MPSC. That Petitioner not only fulfilled the basic eligibility criteria but also held additional criteria in the form of additional charge of Town Planner with pay-scale of that post. He would submit that MPSC erroneously did not follow the rule of migration by not shifting Ms. Archana Madhukar Parlewar from Scheduled Caste category to Open category which resulted in Petitioner's ouster from shortlisted candidates. This was in violation of the law laid down by the Apex Court in *Anil Kumar Gupta vs. Municipal Corporation, Delhi*,

(1995) 5 SCC 505, *Rajesh Kumar Daria vs. Rajasthan PHC*, (2007) 8 SCC 785 and *Saurav Yadav vs. State of Uttar Pradesh*, (2019) 14 SCC 692.

11 Mr. Malviya would further submit that the erroneous process of shortlisting adopted by MPSC resulted in an incongruous situation where the cut off experience for Open quota was seven years six months whereas the same was fixed at 8 years 11 months for posts reserved for Scheduled Caste category. That Petitioner secured highest marks (47) in the interview process, but is not appointed, whereas Respondent No.4 has secured only 43 marks in the interview who is appointed against Scheduled Caste category. That Petitioner had secured two call letters for interview one of which was due to interim order of the Tribunal and the second interview letter would show that Petitioner was called for interview on account of he satisfying short-listing criteria. That therefore having secured highest marks against Scheduled Caste category Petitioner ought to have been appointed in place of Respondent No.4.

12 Mr. Samant, the learned AGP appearing for the State Government would oppose the Petition submitting that MPSC has correctly adopted the short-listing criteria. He would invite our attention to the provisions of the MPSC Rules of Procedure 2014 under which for two posts advertised, eight candidates are to be called for interview. That Petitioner was the 9<sup>th</sup> candidate arranged in the descending order of experience and

has rightly not being shortlisted on account of possessing lesser experience. That Tribunal has considered and dealt with all the submissions advanced by Petitioner in his Original Application and that there is no perversity in the finding recorded by the Tribunal.

13 Dr. Chandrachud, the learned counsel appearing for Respondent No.4 would also oppose the Petition. He would submit that the entire selection process has been conducted in a transparent manner and the candidates were arranged in order of longevity of experience while adopting the short-listing criteria. That this is permissible under the provisions of Rule 9 of the MPSC Rules of Procedure 2014. That Petitioner had the least experience amongst the five candidates amongst Scheduled Caste category and MPSC has short-listed only four candidates as per the norms prescribed in Rule 9. That Petitioner's marks in the interview are required to be ignored as he had no right to participate in the interview process. That his interview was conducted only on account of interim order passed by the Tribunal and that since the Original Application is ultimately dismissed, Petitioner cannot claim any rights flowing out of actions taken towards implementation of interim order. He would submit that the Order of the Tribunal is already implemented. He would submit that Petitioner has subsequently been promoted to the post of Deputy Director, Town Planning on March 5, 2021. That Respondent No.4 took over charge of the post of Deputy Director, Town Planning on July 13, 2021. He would pray for dismissal of the Original Application.

14. Rival contentions of the parties now fall for our consideration.

15. MPSC had advertised two posts of Deputy Director, Town Planning, out of which one was reserved for Open Female category and one post was reserved for Scheduled Caste category.

16 From the submissions advanced by the learned Counsel appearing for the Petitioner, it appears that Petitioner does not stake any claim for appointment against the vacancy reserved for Open-Female category. Since only one eligible candidate was available in Open-Female category, MPSC considered three Open-Male candidates to be included in the list of shortlisted candidates and ultimately Respondent No.3-Rajendra Mahadev Pawar is selected and appointed against that post.

17 The hotbed of controversy is about filling up one post of Deputy Director, Town Planning reserved for Scheduled Caste category. MPSC has adopted short-listing criteria as per provisions of Maharashtra Public Service Commission Rules of Procedure 2014. Rule 9 provides thus:

“9. *Direct Recruitment.*-(i) The number of candidates to be shortlisted for the interview shall be as follows:-

| No. of posts advertised | No. of candidates to be called for interview |
|-------------------------|----------------------------------------------|
| 1                       | 5                                            |
| 2                       | 8                                            |
| 3 and more              | 3 times                                      |

However, in cases of isolated posts at the State level i.e. Directors of field department etc. which are equivalent to the grade of Joint Secretary in

Mantralaya or above, the Commission may decide from time to time, the number of candidates to be called for the interview. The number of candidates to be shortlisted for interview shall not exceed **10 times** the number of such vacancies, in any case.

(ii) If the number of candidates found eligible after scrutiny are less than the proportion mentioned herein above in clause (i) all such eligible candidates shall be called for the interview.

(iii) If some of the candidates having called, either do not turn-up for the interviews or are found ineligible on verification of their original documents or fail to produce relevant documents and hence do not qualify for the interview, it shall not prevent the Commission from conducting the interviews of only the eligible candidates from amongst those called for the interview.

(iv) If the candidates once called for the interview, fail to produce the original documents for verification or are found to have made false, incorrect, excessive, misleading claims in their application, on the basis of which they were called for the interview, they shall be liable to be debarred from appearing in any of the examinations or applying for any vacancy published by the Commission.

(v) In case, the response to the advertisement exceeds the proportion laid down in Rule 9(i) above, the Commission may apply criteria for shortlisting of the candidates for interview as follows:-

(a) Whenever there is a provision for a preferential academic qualification or experience in the rules of recruitment of the post it shall be accorded the highest priority while shortlisting the candidates for interview.

(b) For the posts prescribing only minimum educational qualifications without experience, preference shall thereafter be given to the higher academic qualification. A higher academic qualification means, an educational qualification above the one that has been sought as a minimum academic qualification in the very same field i.e. when graduation is the minimum qualification, post graduation of that graduation stream shall be considered to be the next higher qualification, so however that every diploma or degree gained subsequent to the basic relevant graduation shall not be deemed to be a higher qualification:

Provided that M.Phil or equivalent degree, Ph.D. or equivalent qualification under any other nomenclature recognized by the competent authorities shall be construed as the next higher level academic qualification after the post graduation in ascending order:

Provided further that whenever the professional degrees (like B.Ed. etc) have been sought along with the basic graduation, they will not be regarded as higher academic qualifications for the purpose of short listing, though the higher professional degrees than the minimum required shall be treated as higher academic qualifications only after all the higher academic qualifications mentioned herein above are exhausted for short listing:

Provided also that no preference shall be accorded to any other additional degree, diploma or such other academic qualifications which are not relevant to the basic stream of minimum academic qualification asked for.

(c) The preferences mentioned above shall be applied in a sequential order till the prescribed ratio of short listing in the rule 9(i) is reached.

(d) For the posts prescribing minimum academic qualifications together with minimum experience, the criterion of higher experience than the minimum prescribed shall be applied after the preferential qualification for short listing and if the ratio is not reached, then only the criterion of higher academic qualification as provided for in clause (b) above shall be invoked.

(e) In the contingency that the ratio still remains higher after exhausting the procedure laid down above, the candidates having higher class, grade or percentage in that order in the basic graduation (minimum academic qualification) shall be shortlisted.

If the ratio still remains higher then the class grade or percentage in the higher academic qualification shall be taken into consideration.

... .. ”

18 Thus for two advertised posts, only eight number of candidates can be called for interview under Rule 9. In the present case, two posts were advertised and the Commission rightly restricted the total number of candidates to be called for interview 28. Under clause (d) of sub-rule (v) of Rule 9, the criteria of higher experience than minimum prescribed can be applied for shortlisting. Therefore, the action of the Commission in arranging the eligible candidates in the order of experience possessed by

them cannot be faulted. So far as one post of Deputy Director, Town Planning reserved for Scheduled Caste category is concerned, the Commission arranged the eligible candidates for that post in the following order:

“List of candidates shortlisted for S.C. General Category

|   |                               |        |    |                            |                                                                                                                            |    |                 |
|---|-------------------------------|--------|----|----------------------------|----------------------------------------------------------------------------------------------------------------------------|----|-----------------|
| 1 | Ms. Archana Madhukar Parlewar | Female | SC | 17 years 08 Months 12 days | Eligible as per shortlisting criteria for SC Category                                                                      | 36 | -               |
| 2 | Amit Sambhaji Sawant          | Male   | SC | 12 years 00 Months 27 days | Eligible as per shortlisting criteria for SC Category                                                                      | 37 | -               |
| 3 | Raja Bhaguji Waghmare         | Male   | SC | 10 years 02 Months 12 days | Eligible as per shortlisting criteria for SC Category                                                                      | 38 | -               |
| 4 | Harshal Chandrakant Baviskar  | Male   | SC | 08 years 11 Months 21 days | Eligible as per shortlisting criteria for SC Category                                                                      | 43 | Recommended     |
| 5 | Vijay Babarao Shende          | Male   | SC | 08 years 07 Month 25 days  | Not-Eligible as per shortlisting criteria for SC Category. However called for interview as per Hon'ble MAT's instructions. | 47 | Not Recommended |

19 Petitioner thus had the least experience amongst the five candidates who were found eligible for Scheduled Caste category post. The Commission shortlisted only four candidates each in Female Open category and Scheduled Caste category so as to reach the figure of eight as provided under Rule 9. Petitioner's name figured at serial no.5 in the list

of eligible candidates arranged in the order of possession of experience. He is thus rightly excluded from interview process by applying the short-listing criteria.

20 Faced with the above position, Petitioner has contended that Ms. Archana Madhukar Parlewar was required to be migrated from the list of Scheduled Caste category candidates to General category candidates. We proceed to examine this contention raised by Petitioner.

21 A Corrigendum was issued on December 19, 2018 modifying the earlier Government Resolution dated August 13, 2014. The relevant portion of the corrigendum dated December 19, 2018 reads thus:

“(A) **First Stage:-** Select list be prepared according to merit. In this list, the candidates belonging to backward categories (SC, ST, VJNT, NT, OBC and SBEC) shall also be included on the basis of merit. If the number of open category candidates in such list is sufficient, then no question will arise and accordingly posts be filled in. If the number of open category candidates in such list is not sufficient, then requisite number of candidates out of selected/qualified ones, shall have to be taken by deleting the corresponding number of candidates from the bottom of the list.”

22 MPSC issued a declaration/publication on March 27, 2019 that the provisions of the Corrigendum dated December 19, 2018 would be applicable only in respect of those selections where the results of the examinations were yet to be declared. In the present case, the interviews were already conducted on June 27, 2018 and the results were also finalised. So far as the Petitioner was concerned, interim order dated June

20, 2018 directed that his result be kept in the sealed cover. The said obstacle was removed by the Tribunal only on January 10, 2019. The Tribunal has considered this aspect. The Tribunal has further noted the fact that the Commission did permit Open Male category candidates to be included in the select list on account of non-availability of sufficient Open Female candidates. The Tribunal has decided the issue of migration by recording following findings in the impugned judgment:

“18. The submissions of learned Counsel Shri Panchal to the extent that the migration of the reserved candidates to the open category was permitted under the law laid down by the Hon'ble Supreme Court is correct. However, it is also to be considered on the background of following circumstances and legal position. The advertisement was issued on 06.02.2018. The interview was conducted and the results were declared before December, 2018. When the Government issued corrigendum on 19.12.2018, where the State on considering the decisions in different litigations decided that the said Circular of 2014 is not keeping up the spirit of law laid down in the judgments of **Anil Kumar Gupta & Ors. (supra)** and **Shri Rajesh Kumar Dariya (supra)**, naturally it was found very difficult for the M.P.S.C to again call out the process which was carried out and was consistent with the Circular of 2014 and policy of the State. Therefore the M.P.S.C. went ahead by declaring/issuing pronouncement dated 27.03.2019, that the corrigendum will be implemented where the results are not declared and therefore the M.P.S.C. took consistent stand with the State policy. Moreover, the submissions of learned Advocate Shri Bandiwadekar are also valid to that extent that the post was reserved against female so in view of Circular of 2014 the M.P.S.C called male candidates from the same i.e. open category to fill-up horizontal reservation post of female. Respondent No.3, Shri Rajendra Mahadeo Pawar was having higher experience and hence he was called for the interview who succeeded by securing highest marks. Thus his appointment cannot be faulted with at this stage.

19. The law laid down in **Indra Sawhey (supra)**, **Anil Kumar Gupta & Ors. (supra)**, and **Shri Rajesh Kumar Dariya (supra)** on migration is discussed at length in the case of **Saurav Yadav & Ors. Versus State of Uttar Pradesh & Ors, reported in (2019) 14 SCC 692** and thereby put different interpretations and views of different judgments of the High Court of Bombay at rest and the law on the point of migration in the horizontal reservation is made more clear. Thus all the reserved candidates, if found eligible, be shifted in the open category in vertical as well as horizontal reservation and such migration is not available either vertical or horizontal to any person falling in non-reserved class or community.

20. Before **Saurav Yadav & Ors. (supra)** there are instances in the examination conducted and recommendations made not applying this law of migration in horizontal reservation due to various judgments of Bombay High Court taking different views by interpreting the law laid down in the catena of judgments of the Hon'ble Supreme Court on the point of horizontal reservation and vertical reservation. For example, in the judgment of Aurangabad Bench of Bombay High Court in case of **Rajani Shaileshkumar Khobragade (supra)**, wherein the validity of Circular dated 13.08.2014 was challenged and the Division Bench held as follows:-

*"The aforesaid circular is in tune with the judgment of the Apex Court in the case of Anil Kumar Gupta and others Vs. State of UP and others referred to supra and cannot be said to be illegal.*

*27. Considering the above, the challenge to judgment of the Tribunal impugned in the present petition, so also the circular dated 13.08.2014 fails. The writ petition is dismissed, however, with no order as to costs."*

The said judgment is not considered in the judgment in O.A. No.202/2017 with O.A. No.203/2017 with M.A. No.19/2018, dated 18.06.2018 relied by the learned Advocate Mr. Panchal. Subsequently, in **Charushila Tukaram Chaudhari & Ors. Versus The State of Maharashtra & Ors, in Writ Petition No.4159/2018 & Ors, decided on 08.08.2019**, the Division Bench held the reserved candidates in the horizontal reservation can be shifted to open category and now the law

is settled by the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors (supra)**. Thus, if the law of migration is stretched back to all the earlier examinations and the recommendations, then it will have cascading effect which will cause tremendous prejudice and great loss to many who are already employed and have spent some years in the service and such chaos will also paralyze the administration. Be that as it may, here we need to consider each case on its facts whether the candidate was truly entitled to get the benefit of the migration.

21 We highlight the fallacy in the arguments in respect of migration advanced by the learned Advocate Shri Panchal. Firstly, assuming that the M.P.S.C. had applied the policy of migration for open female reserved post, only the eligible female candidates from the reserved category would have been called for the interview. Thus, along with Ms. Archana Madukar Parlewar, (S.C.) and Ms. Snehalata Vasantrao Rane (open), not Mr. Amit Sambhaji Sawant or Mr. Rajendra Mahadeo Pawar would have been called, but other two eligible female candidates from the reserved category as per the advertisement would have been called. The learned C.P.O. on query made by us informed that there were two female candidates from the reserved category who were having 5 years experience and were eligible as per the advertisement. Thus, the Applicant, Mr. Shende would not have been any way beneficiary of the migration. Those two female candidates i.e. Ms. Parlewar and Ms. Rane were interviewed and they failed and other two female reserved category candidates, did not challenge the process.

22. Secondly, the submissions of learned Advocate Shri Panchal are also not acceptable that if Ms. Archana Madukar Parlewar would have migrated and called for open female post then she would not have been called for S.C. post for the interview. The process of selection and the appointment are two different stages and not to be confused. For the purpose of selection, candidate from the reserved category, if found eligible, can compete for one or two posts. For example, Ms. Parlewar, S.C. candidate who is the topper in experience can be No.1 in both the lists i.e. for the post of open female as No.1 and simultaneously stand No.1 in the list of candidates who are competing for S.C. post. Ms. Parlewar was qualified and eligible candidates for both the posts for the interview. In the process of selection one candidate can claim and

compete for more than one posts, however, he/she can be selected only for one post. On this point we rely on the ratio laid down by the Hon'ble Supreme Court in **Union of India Versus Ramesh Ram, Civil Appeal Nos. 4310-4311/2010, dated 07.05.2010**. Thus, Ms. Parlewar would have been No.1 candidate in both the lists where her marks in the interview would have been considered for S.C. reserved post as well as in the open female category post, if migration would have been applied. Thus, the Applicant. Mr. Shende, as shown in the chart even by applying migration, anyhow, would not have been short-listed candidate for interview for S.C. post. The three judges Bench of Hon'ble Supreme Court in **Ramesh Ram (supra)** dealt with the important question -

*"Whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for Reserved Category and thereby migrate to reservation category."*

While answering to this issue, the Hon'ble Supreme Court held that the reserved category candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes categories who are selected on merit and placed in the list of general category candidates can choose to migrate to the respective reserved category at the time of allocation of service. In the said judgment the validity of sub Rule (2) of Rule 16 of Civil Services Examination, 2005 relating to Civil Services Examination held by Union Public Service Commission (U.P.S.C.) was the subject matter. The ratio laid down by the Hon'ble Supreme Court in this case is found useful on the point raised before us."

23 We do not find any infirmity in the above findings recorded by the Tribunal.

24 Petitioner's contention that the Commission fixed higher cutoff experience for reserved category as compared to open category. This submission is completely misplaced. There is no cutoff fixed by the

Commission. What is done is shortlisting by arranging the eligible candidates in the descending order of possession of experience. The concept of fixing cutoff marks is different and distinct from shortening the zone of consideration by applying the shortlisting criteria.

25. In our view, the Commission has rightly applied the shortlisting criteria, in which Petitioner could not be short-listed on account of possessing the least experience. His alleged possession of higher qualification or grant of pay-scale of the post of Deputy Director, Town Planning was not the relevant factor for short-listing of candidates. The Rules clearly permit the Commission to arrange the candidates in the order of possession of experience and to apply shortlisting criteria accordingly. We, therefore, do not find any infirmity in the action of the Commission or the finding recorded by the Tribunal. Petitioner is also promoted in the meantime to the post of Deputy Director, Town Planning.

26 Resultantly, we do not find any merit in the Petition filed by the Petitioner. Writ Petition is accordingly dismissed without any orders as to costs. Rule is discharged.

**SANDEEP V. MARNE, J.**

**DHIRAJ SINGH THAKUR, J.**