

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12382 OF 2025
WITH
INTERIM APPLICATION (ST) NO. 31867 OF 2025
IN
WRIT PETITION NO. 12382 OF 2025

The State of Maharashtra
Through Additional Chief Secretary,
General Administration Department,
Mantralaya, Mumbai. ...Petitioner

Versus

1. Pralhad Shankar Rode
Occupation – Service,
Flat No. 301, Bldg. No. 23,
Plot No. 13, Neel Sidni Prime CHS,
Sector 18, New Panvel (E).
2. Prasad R. Shinde
Flat No. 6, Gharkul CHS,
Sector 8, Sanpada, Navi Mumbai.
3. Sushila D. Pawar
A/7, Sanjeevan Govt. Quarters,
Mahatma Jyotiba Phule Road,
Naigaon, Mumbai.
4. Ajunkya Vasant Bagade
B-304, Hubtown Sustone,
Shastri Nagar, Bandra (E),
5. Amol Ankush Kanase,
B-1202, Sunrise Charkop CHS,
Sector-8, Charkop, Kandivali (E),
Mumbai.

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PATIL

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6. Mohinudding B. Tahsildar,
D-1903, Exotica, Casa Rio Gold,
Palava City, Dombivali (E),
7. Shrikrishna B. Pawar,
Y-6/96, Government Colony,
Bandra (E), Mumbai.
8. Tusha V. Mahajan,
Flat No. 203, B-wing, Tilaknagar,
Manyata CHS, Tilaknagar,
Chember (W), Mumbai.
9. Satish Shival Bharitya,
Flat No. 20, Darshana,
Dr. A. B. Road, Worli, Mumbai.
10. Subrao N. Shinde
A-102, Ishwar CHS, Plot No.2,
Sector 50, Nerul, Navi Mumbai.
11. Anirudha Jewlikar,
Y2/24, Government Colony,
Bandra (E), Mumbai.
12. Priyanka R. Chhapwale,
14, Priti Apt. Veer Desai Road,
Andheri (W), Mumbai.
13. Vidya R. Hampayya,
Pratikshanagar, Sion, Mumbai.
14. Mahesh Ashokrao Varudkar,
Tushal-1001, A-Road,
Churchgate, Mumbai.
15. Randhir Suryawanshi,
Kaveri Building, Govt. Quarters,
Worli, Mumbai.

16.Ambadas Chandanshive,
Y5/74, Government Colony,
Bandra (E), Mumbai.

17.Amol S. Mutyal,
Government Quarters,
Darshan Building, Worli,
Mumbai.

18.Shrikant C. Andge,
Y-4/58, Y colony, Government Colony,
Bandra (E), Mumbai.

19.Praful Thakur,
Y-2/27, Government Quarters,
Bandra (E), Mumbai.

20.Santosh B. Karad,
Y-10/136, Government Colony,
Bandra (E), Mumbai.

21.Vijay K. Powar,
107, Hind Paradise,
Tarabai Park, Kolhapur. ...Respondents

**WITH
WRIT PETITION NO. 12501 OF 2025**

The State of Maharashtra
Through Additional Chief Secretary,
General Administration Department,
Mantralaya, Mumbai. ...Petitioner

Versus

1. Amit Angad Pathak,
Age- 38 yrs., Occupation – Service,
D-331, 3rd Floor, New Building,
GST Bhavan, Pune.
2. Dr. Nilesh Vishwanath Sangale,
Age-40 Yrs., Occupation- Service,
State Excise, Fort, Mumbai.

3. Smt. Sangharatna Murlidhar Khillare
Age-44 Yrs., Occupation-Service,
Navi Mumbai Municipal Corporation,
Navi Mumbai, Thane.
4. Maheshkumar Shivaji Karande,
Age-45 Yrs., Occupation-Service,
Collector Office, Court Naka, Thane.
5. Santosh Uddhav Bhosale,
Age-44 Yrs., Occupation-Service,
301/302, Sukhsagar Apartment,
Kalyan Naka, Bhiwandi, Dist. Thane.

...Respondents

**WITH
WRIT PETITION NO. 12502 OF 2025**

The State of Maharashtra
Through Additional Chief Secretary,
General Administration Department,
Mantralaya, Mumbai.

...Petitioner

Versus

1. Aniket Arun Manorkar,
Age: 40 years, Occ: Service,
Address: F 1002, Green World CHS,
Opp. Digha Station, Thane-Belapur Road,
Digha, Navi Mumbai, Mob: 8087589051,
Email id: amanorkar@gmail.com
2. Prashant Dattatray Rasal,
Age-51 years, Occu: Service,
Address: At Post Panchgani,
Tal. Mahabaleswhar, Dist: Satara,
Maharashtra: 421805, Mob: 9967527926
Email id: pdrasal74@gmail.com.
3. Vipin Suresh Paliwal,
Age 44 years, Occu: Service,
Address: Sneh Nagar, Wadgao Ward,
Chandrapur, Maharashtra – 442404,

Mobile: 9405975676,
Email id: vipmmuddha@gmail.com

4. Nitin Rajaram Kapadnis,
Age: 44 years, Occu. Service,
Address: Maay Bungalow, Shamaji Nagar,
Tal Baglan, Dist. Nashik,
Maharashtra – 423301.
Mob : 9923014353
Email id: nitinkapadnis@gmail.com

Dr. Birendra B. Saraf, Advocate General, a/w Smt. Pooja Patil, AGP,
for the Petitioner-State.

Mr. Ravi Shetty, Senior Advocate, i/b Sachin A. Ambulkar, for the
Respondent Nos. 1 to 10.

Mr. Sandeep Dere, i/b Arati Patil, for the Respondent Nos. 11
to 15.

Ms. Sonali Pawar, for the Respondent Nos. 16 to 19.

Mr. Laxman Deshmukh, for the Respondent Nos. 20 to 21.

**CORAM: SUMAN SHYAM &
MANJUSHA DESHPANDE, JJ.**

RESERVED ON: 25th SEPTEMBER, 2025.
PRONOUNCED ON: 7th OCTOBER, 2025.

JUDGMENT : (Per *SUMAN SHYAM, J.*)

1. Rule. Rule is made returnable forthwith. By consent of the learned Counsel for the parties, the matter is taken up for final hearing and disposal.

2. These three Writ Petitions, preferred by the State of Maharashtra, are directed against the common Judgment and Order dated 5th September, 2025, passed by the learned

Maharashtra Administrative Tribunal (hereinafter referred to as the “Tribunal”) disposing of as many as three original applications being Original Applications Nos. 951 of 2025, 957 of 2025 and 953 of 2025, partly allowing the Original Applications by declaring that part of Clause No. 3 of the G. R. dated 27th April, 2025 was violative of Articles 14 and 16(1) of the Constitution of India and hence, the same was struck down. The controversy involved in these proceedings pertain to the procedure adopted by State Government under the impugned Government Resolution (“G.R.”) dated 27th April, 2025, for preparing the list of candidates from the Non- State Category Service (Non SCS) category of Officers for recruitment in the Indian Administrative Service (“IAS”) Cadre. The factual back drop of these cases, as apparent from the materials placed before us, are briefly narrated here-in-below.

3. The Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter referred to as “ the Rules of 1954”) framed in exercise of powers conferred under sub-section (1) of section 3 of the All - India Services Act, 1951 envisages three different methods for recruitment to the IAS Cadre viz.-:

- i) by a competitive examination;
- ii) by promotion of a (substantive) member of a State Civil service; and
- iii) by selection, in special cases, from among persons, who hold in a substantive capacity gazetted posts in connection with the affairs of a State and who are not members of a State Civil Service.

In this case, we are concerned only with the third category of Officers i.e. those who are not members of the State Civil Service (“SCS”).

4. Rule 8(2) of the Rules of 1954 lays down that recruitment to the IAS Cadre will be by promotion or selection from amongst the members of the SCS. As per the Rule 8(2), an Officer, who is not a member of the SCS (NON-SCS) category can also be considered in special circumstances. Rule 8(2) of the Rules of 1954 is reproduced herein below for ready reference;

“8. Recruitment by promotion or selection for appointment to State and Joint Cadre:-

(1)

(2) The Central Government may, in special circumstances and on the recommendation of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Government and the Commission, from time to time, make, recruit to the Service any person of outstanding ability and merit serving in connection with the affairs of the State who is not a member of the State Civil Service of that State [but who holds a gazetted post in a substantive capacity].”

5. In exercise of powers conferred under Section 3 of the All India Services Act, 1951 and in pursuance to sub- Rule 2 of Rule 8 of the Rules of 1954, the Central Government has framed the

Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as “ the Regulations of 1997”). Regulation No. 4 prescribes the selection criteria and eligibility condition for consideration of Non-SCS category Officers for recruitment in the IAS Cadre. Regulation No.4 is reproduced herein below for ready reference :-

“ 4. State Government to send proposals for consideration of the Committee.

(1) The State Government shall consider the case of a person not belonging to the State Civil Service but serving in connection with the affairs of the State who,-

(i) is of outstanding merit and ability; and

(ii) holds a Gazetted post in a substantive capacity; and

(iii) has completed not less than 8 years of continuous service under the State Government on the first day of January of the year in which his case is being considered in any post which has been declared equivalent to the post of Deputy Collector in the State Civil Service and propose the person for consideration of the Committee. The number of persons proposed for consideration of the Committee shall not exceed five times the number of vacancies proposed to be filled during the year :

Provided that the State Government shall not consider the case of a person who has attained the age of 54 years on the first day of January of the year in

which the decision is taken to propose the names for the consideration of the Committee :

Provided also that the State Government shall not consider the case of a person who, having been included in an earlier select list, has not been appointed by the Central Government in accordance with the provisions of Regulation 9 of these Regulations.”

6. As per Regulation 4, subject to the eligibility conditions prescribed there-in, the State Government is required to send proposal for consideration of the Committee constituted under regulation 3 of the Indian Administrative Service (Appointment by Promotion) Regulation 1955. The candidature of all eligible Officers are to be assessed on the criteria of out standing merit and ability. However, as per regulation 4, the number of persons proposed for consideration by the Committee shall not exceed five times the number of vacancies proposed to be filled during the year.

7. The Regulations of 1997 clearly provide that the selection of the candidates for Non-SCS category must be on the criteria of outstanding merit and ability. The Regulations, however, do not prescribe the parameters for assessing the “merit and ability” of the candidate. As such, the State Government had issue (General Resolution (G.R) dated 7th September, 2011 prescribing the parameters for evaluating out-standing merit and ability of the eligible Officers. The G.R. dated 07.09.2011 had clearly included

length of service in a Group-A post as one of the bench mark/criteria for evaluation. G.R. dated 07.09.2011 was replaced by G.R. dated 8th February, 2016 prescribing bench mark criteria for evaluation which included 15 marks for seniority. On 4th February, 2017, another G.R. was issued, partially modifying the weightage, which was followed by the G.R. dated 19th April, 2017 and thereafter, by the G. R. dated 20th January, 2018. In this manner, the State Government has from time to time issued a number of G.Rs. prescribing the bench mark/parameters for selecting the candidates on the touchstone of “outstanding merit and ability”.

8. The G.R. dated 24th July, 2025 also lays down the similar bench mark/ parameters of selection/ evaluation of the candidature of all eligible candidates of the non SCS category. According to Clause 3 of G.R. dated 24th July, 2025 assessment of the candidature of eligible Officers will be made on a total score of 100 marks by combining the marks of written examination (60 marks), marks of service period (20 marks) and confidential report (20 marks). Sub clauses (i) to (vi) of Clause 3 of the G. R. dated 24th July, 2025, would be relevant for the purpose of this case. Therefore, the same is being reproduced here-in herein below for ready reference :-

“ 3. After the proposals are received by the General Administration Department from the Administrative Departments of Mantralaya as per the procedure mentioned in the above paragraph 2, the following

permanent procedure is being finalized for recommending eligible officers to the Union Public Service Commission in a ratio of 1:5 (5 officers for 1 vacant post):

i) A written examination of 60 marks shall be organized for the concerned eligible officers based on the proposals received by the General Administration Department from the Ministerial Administrative Departments.

ii) The format of the said written examination shall be Multiple Choice Questions (MCQ (Objective)]. The negative marking system shall be applicable for incorrect answers.

iii) The syllabus for the examination shall be as per the attached Annexure-A.

iv) The examination fee prescribed by the Government from time to time shall be charged for the written examination.

v) The number of officers to be shortlisted from the written examination will be 3 times the number of officers (1:5) to be recommended to the Union Public Service Commission for selection to the Indian Administrative Service. While selecting the officers at the 3-times ratio, all officers who have scored marks equal to the mark of the last selected officer shall be considered eligible for the next stage of evaluation.

vi) All officers who qualify in the above written examination shall be evaluated for a total of 100 marks by combining the marks of the written examination (60 marks), marks for the service period (20 marks), and confidential reports (20 marks). Based on this evaluation, the names of the first 1:5 officers (05 officers for 01 vacant post) in order of merit shall be finally recommended to the Union Public Service Commission.”

9. Clause 3(vii) provides a table indicating the manner in which 20 marks for the service period shall be divided with reference to the total service period (in complete years). The said table makes it apparent that the 20 marks for service period would be relatable to the tenure of service of the officer(s). In other words, the Officers completing more years of service would be scoring more marks due to this criteria.

10. The Original Applicants (Private Respondents here-in) do not have any objection to the criteria of written examination (60 marks) and confidential report (20 marks). Their objection is only on account of the weightage of 20 marks for the service period. According to the Original Applicants, by introducing the criteria (20 marks) for service period the State has given weightage to seniority which is not a criteria envisaged by the Rules or the Regulations framed thereunder. According to the Original Applicants, by introducing seniority of the officers as a parameter for shortlisting the eligible officers, the State has altered the

provisions of the Rules of 1954 and Regulations of 1997, both of which, do not envisage seniority as a criteria of selection of the eligible officers belonging to the non-SCS category thus diluting the merit criteria to the detriment of the interest of Officers with out- standing merit and ability. Therefore, clause 3 in the G. R. dated 24th July, 2025, was violative of fundamental rights of the applicants guaranteed under Articles 14 and 16 (1) of the Constitution of India.

11. The stand of the State before the learned Tribunal was to the effect that the length of service of the eligible officers has been treated as an essential component so as to ascertain their ability, which is a relevant criterion prescribed by the Regulations of 1997. Since, such criteria has a reasonable nexus with the object sought to be achieved, hence, the same cannot be termed as illegal.

12. After hearing the submissions of both the sides, the learned Tribunal had partly allowed all the Original Applications by declaring Clause 3 of the impugned G.R. dated 27th April, 2025, as illegal by holding that the State did not have the authority or jurisdiction to supersede the Statutory Rules by issuing administrative instructions. By relying on the decision of the Supreme Court rendered in the case of **Sant Ram Sharma vs. State of Rajasthan & Ors., AIR 1967 SC 1910**, the learned Tribunal has further held that the State can merely supplement the Rules so as to fill up the gaps but cannot supplant the same. According to the learned Tribunal, by prescribing 20% weightage for seniority/tenure of the Officers, the State has attempted to

supplant the Recruitment of the Rules of 1954 and the Regulations of 1997. The learned Tribunal was also of the view that by taking the seniority factor into account, the State has created a class within the class, thus offending of the principles of equality enshrined under Articles 14 and 16(1) of the Constitution of India.

13. Assailing the impugned Judgment and Order dated 5th September, 2025, Dr. Birendra B. Saraf, learned Advocate General appearing for the State of Maharashtra i.e. the Writ Petitioners, has argued that although the Regulations of 1997 prescribes the criteria for selection of officers, which is “outstanding merit and ability” yet, neither the Rules of 1954 nor the Regulations 1997 lay down the parameters for shortlisting the eligible candidates. Contending that, the State Government had initially issued a G.R. way back on 7th September, 2011 introducing the parameters for evaluating/assessing “outstanding merit and ability” of the candidates based on length of service, which has been followed till date, the learned AG has argued that the same methodology for short-listing of candidates is being followed over the years which is now sought to be up-set at the instance of the Respondents. According to Dr. Saraf, the Clause 3 in the G.R. does not introduce a new criteria but merely prescribes a methodology which is consistent with the past practice, thus prescribing a more objective and transparent criteria so as to assess the candidature of the eligible candidates.

14. By referring to the decision of the Supreme Court in the case of **B. Amrutha Lakshmi vs. State of Andhra Pradesh & Ors., (2013)**

16 SCC 440, Dr. Saraf has further argued that prescribing parameters for assessing “outstanding merit and ability” of the candidates would lie within the exclusive domain of the State Government. Therefore, unless such criteria is found to be arbitrary, irrational or non-transparent, the same cannot be struck down as being violative of Articles 14 and 16(1) of the Constitution of India. To sum up his argument, Dr. Saraf, has submitted that the case of the Original Applicants/Private Respondents is purely a hypothetical in as much as, at this point of time, it cannot be said with any degree of certainty as to which of the Original Applicants would eventually be included and which of them will be excluded from the final list due to the operation of the above selection criteria.

15. Resisting the above arguments made on behalf of the State, Mr. Ravi Shetty, learned Senior Counsel representing the Original Applicants, has submitted that seniority is not a criteria envisaged by the Rules for assessing the candidature of non-SCS category candidates and, therefore, by issuing the G.R. which is nothing but Executive Instruction, it was not permissible for the State to introduce a new criteria, which is incompatible with the Rules as well as the Regulations framed by the Central Government. According to Mr. Shetty, the impugned Clause in the G.R. being nothing else but a seniority criteria, the same has no role in assessing the merit and ability of the candidates. Mr. Shetty has, therefore, argued that if the 20% weightage for length of service is given effect to then in that event many officers in the NON-SCS cadre having “outstanding merit” would be left out from the

purview of selection, in a manner not intended either by the Rules of 1954 or the Regulations of 1997. In support of his above arguments, Mr. Shetty has relied upon the following decisions of the Supreme Court:-

1. State of Kerala & Anr. vs. N. M. Thomas & Ors. (1976) 2 Supreme Court Cases 310.
2. Palure Bhaskar Rao & Ors. vs. P. Ramaseshaiah & Ors. (2017) 5 Supreme Court Cases 783.
3. B. Amrutha Lakshmi vs. State of Andhra Pradesh & Ors., (2013) 16 Supreme Court Cases 440.
4. Parmeshwar Prasad vs. Union of India & Ors. (2002) 1 Supreme Court Cases 145 : 2002 Supreme Court Cases (L & S) 112 : 2001 SCC, Online SC 1290.

16. We have considered the submissions made at the bar and have also gone through materials on record. The core controversy involved in these Writ Petitions, in our view, lies in narrow compass. , The core question arising for consideration of this Court in the present proceeding is as to whether by assigning 20% weightage to the service period, whether the State has introduced a selection criteria which is in conflict with the provisions of the Rules of 1954 or the Regulations of 1997 or was violative of Articles 14 and 16(1) of the Constitution of India . In order to answer the said question, it would be apposite to note here-in that as per the regulations the consideration of the candidates belonging to the Non-SCS category is by selection on the touchstone of out-standing merit and ability. However, neither the Rules of 1954 nor the Regulations of 1997 lay down the parameters based on which, the assessment of candidatures of the

eligible candidates, on the touchstone of “outstanding merit” and “ability” is to be determined.

17. There is no wrangle at the bar that eight (8) years of service is the minimum eligibility criteria for an officers of this category is to be considered. Therefore, all such officers who have completed eight years of continuous service and fulfill the other requirements of the Regulation 4 would come within the zone of consideration. However, the aforesaid criteria is too broad based for shortlisting candidates in a situation where a large number of Officers could come within the zone of consideration for a limited number of vacancies. We are informed that there are only three vacancies available to the Non-SCS category Officers for this year. In these circumstances some transparent and objective criteria of evaluation would have to be employed by the State for short listing of eligible candidates by maintaining ratio prescribed by the Regulations(1:5).

18. The expression “ability” is not defined in the Rules or the Regulations. However, as per Blacks Law Dictionary (Eight Edition) ability means capacity to perform an act or service. Going by the dictionary meaning, the expression “ability”, in the context of the Rules and the Regulations, would undoubtedly relate to the capacity of an Officer to undertake certain responsibilities in discharge of his official duties. Therefore, it is logical that with experience, the capacity of an officer to perform his duties more efficiently is likely to increase, thus adding to his ability. As such, it

cannot be denied that experience in the job can form an essential component for assessing the ability of the officer. If that be so, we are of the opinion that by assigning weightage to the period of service rendered by the Officer, the State has merely made an attempt to identify more experienced officers having better ability to discharge their duties. The issue is not of seniority but more experience adding to the ability of the Officer. Viewed from that perspective, it cannot be said that the length/ period of service of an officer has no nexus with the ability of such officer.

19. As a matter of fact, in paragraph No. 15 of the impugned judgement, the learned Tribunal has also observed that the contention of the Government that the tenure of a Government Officer can be one of the factors to be considered while assessing his merit and ability was logical. Having held as above, the impugned clause in the G.R. dated 24th July, 2025, has been struck down on the ground that the same was in conflict with the provisions of the Rules of 1954 as well as the Regulations of 1997 and also violative of Articles 14 and 16(1) of the Constitution of India. We are, however, unable to agree with such observation and conclusion of the learned Tribunal, for the following reasons-

(A) Firstly, as noted above, neither the Rules of 1954 nor the Regulations of 1997 prescribe any methodology for assessing the “merit” and “ability” of the officers. If that be so, prescribing a methodology based on pre-determined and transparent evaluation criteria by issuing the G.R., in our opinion, cannot even remotely

be termed as an Act on the part of the State to supplant the Rules or Regulations framed by the Central Government.

(B) Secondly, the parameter for assessing the merit and suitability of non-SCS category officers with length of service as a component for the purpose of recruitment on Non-SCS category Officers to the IAS cadre was introduced in the year 2011 and the said process has been continued till date, albeit with some modifications, by issuing subsequent GRs. In the GR dated 07.09.2011 also length of service was a criteria which was continued by the subsequent GRs. As such, it is evident that similar bench mark and methodology for evaluation of merit and ability of the Non-SCS Officers have been in place since past several years. However, the Original Applicants had not challenged any of those earlier GRs including the initial G.R. dated 07.09.2011. There is no valid explanation for not doing so. Therefore, the plea raised by the Original Applicant, in our view, would be hit by the principles of waiver, estoppel and acquiescence.

(C) Thirdly, after the decision in the case of *B.Amrutha Lakshmi* (supra) rendered in the context of the All-India Service Act 1951 and the Rules of 1954, law is well settled that it would be open for the State Government to lay down Rules prescribing criteria for assessing out- standing merit and ability of the Officers. There is nothing in the Rules or the Regulations that prohibits the State from prescribing any criteria/ bench mark for evaluation of merit and ability of the Officers nor do we find that clause 3 of the GR dated 24th July ,2025 is in any manner, in conflict with any of the

provisions of the Rules or the Regulations. In such view of the matter, as long as the evaluation criteria followed by the State is transparent and has a reasonable nexus with the purpose sought to be achieved, the same cannot be struck down on the ground that such criteria has the effect of supplanting the Rules.

(D) Fourthly, it is not the case of the Original Applicants that by employing the impugned evaluation criteria any eligible officer has been ousted from the zone of consideration or that the criteria have not been applied uniformly. It is also not clear at this stage as to which of the Original Applicants would be included or excluded from the final list to be prepared by the State Government by applying the prescribed criteria and maintain the ratio of 1:5. Therefore, the question of the impugned GR offending Articles 14 and 16 (1) of the Constitution of India, in our considered opinion, would also not arise in these cases. A selection criterion introduced by the State cannot be struck down by the Court merely because application of the same works to the dis-advantage to one set of candidates. As long as the criteria is applied uniformly and the same does not result in ousting of any eligible candidate from the zone of consideration, the question of violating Articles 14 and 16(1) of the Constitution would not arise.

20. For the reasons stated herein above, the impugned Judgment and Order dated 5th September, 2025 of the learned Tribunal is found to be unsustainable in law. The same is accordingly set aside. Accordingly, the Writ Petitions stand allowed.

21. Consequently, the three Original Applications filed by the respondents/ original applicants stand dismissed.

22. The parties to bear their own costs.

(MANJUSHA DESHPANDE, J.)

(SUMAN SHYAM, J.)