

Priya Soparkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 38609 OF 2025
IN
WRIT PETITION NO. 17196 OF 2025
WITH
WRIT PETITION NO. 17196 OF 2025**

1. Rahul Krishnaji Sakore
Age – 49 years,
Designation -Chief Officer, Pune MHADA,
Sagarika, Plot No.19, Survey No.46,
Kharadi road, Chandan Nagar,
Pune -411014.
2. Shrikant Madhukar Mahale
Age - 46 years
Designation - Dy. Commissioner of State Tax
Nathkrupa, RH-15, Lane no 2, Nandanvan CHS,
Sector 17, Nerul East, Navi Mumbai - 400 706.
3. Vinod Ramchandra Desai
Age - 52 years
Designation - Jt. Commissioner of State Tax,
Residing at B-703, Hubtown Sunstone CHS Ltd,
Shastri Nagar, Bandra East, Mumbai-400051.
4. Vijay Shankar Mulik
Age - 50 years
Designation - Additional Chief Executive Officer,
Zilla Parishad Ahilyanagar, Residing at A9,
Gayatri Elegance, Sector 26, Nigdi
Pradhikaran, Pune 411044.
5. Geetanjali Temgire
Age - 47 Years
Designation- Dy. Commissioner GST

3303, altia lodha NCP Wadala – 400037

6. Chandrakant Nivrutti Waghmare
Designation - Additional CEO,
At Zilla Parishad Pune
Residing at D404, Reelicon Garden Grove,
Ambegaon Bk, Pune 411046, Age - 50 years.
7. Subhash Mahadeo Katkar
Age - 52 years,
Designation - Div. Jt. Director of Agriculture,
Working at Ashwini barracks, Divisional Comm.)
Nasik office campus, Nashik - 422 101.
8. Satyajit Devidas Bade
Age - 52 years,
Designation - Additional CEO,
Residing at Zilla Parishad Raigad,
At post Alibag-402 201.
9. Sachin Bhimashankar Raval,
Aged-53 years,
Designation - Joint Director (Finance),
Working at O/o Commissioner of Sugar,
Maharashtra State, Pune 411005.
Residing at 601, Giripushp society,
Bhartkunj, near Karnataka High School,
Pune 411 004,
10. Rahul Kulkarni
Age - 52 years
Designation - Joint secretary, Home department,
Mantralay, Mumbai - 400 001.
Residing at 104, B Wing, Centre Point Society,
Panchpakhadi West, Thane - 400 602,
11. Rajesh Shrikrishna Gaikwad
Age: 52 Years
Designation - Deputy Commissioner of state tax
47-1502, Seawoods Estate, NRI Complex,
Sector 54, 56, 58, Navi Mumbai – 400706

12. Kamalkishor Shankarrao Futane
Age-50 years
Designation - Additional Chief Executive Officer,
Zilla Parishad, Nagpur,
Plot No. 66B, Flat-201, Ojas Oasis Apartment,
Manavsena Nagar, Seminary Hills, Nagpur-44006
13. Anil Sonawane
Age: 49 years
Designation: OSD to Hon'ble Minister Food
Civil supplies and consumer protection,
A-3, building, number-13, Govt Colony,
Hajiali, Mumbai-400 034
- ...Intervenors**

In the matter of :

The State of Maharashtra,
Through the Additional Chief Secretary (Services)
General Administration Department,
Mantralaya, Mumbai – 400032.

.... Petitioners

VERSUS

1. Shri. Venkatesh Madhav Bhat, Age-54 years, Occ. Service,
Joint Secretary, Home Department Mantralaya, Mumbai -
400032
2. The Union Public Service Commission
Through Secretary, Dholpur House
Shajahan Road, New Delhi - 110001
3. Shri. Pradip Dasharat Jagdale
Age: 48 years, Occupation: Service
Sales Tax Department, Mumbai
- ...Respondents**

Mr. N. K. Rajpurohit i/by Mr. S. N. Rajpurohit, for the Intervenors.

Mr. B. V. Samant, Addl. GP with Ms. Reena A. Salunkhe, AGP, for the State.

Mr. Anil V. Anturkar, Senior Advocate with Mr. Atharva Date i/by Mr. Sandeep S. Dere and Mr. Sachin A. Ambulkar, for the Respondent No.1.

Dr. Vinod Joshi, for the Respondent No.2.

Mr. Om M. Lonkar, for the Respondent No.3.

**CORAM: SUMAN SHYAM &
S. M. MODAK, JJ.**

DATED: 18th DECEMBER, 2025.

JUDGMENT (Per Suman Shyam, J.):-

1. Rule. Rule returnable forthwith. By the consent of the parties, heard finally.

2. Aggrieved by the order dated 2nd December, 2025 passed by the learned Maharashtra Administrative Tribunal (**MAT**), Mumbai, in Original Application No.1336 of 2025 instituted by the Respondent No.1, as the Original Applicant whereby, an interim direction has been issued to take steps, so as to enable the Original Applicant to appear for the interview before the Union Public Service Commission (**UPSC**) on 5th December, 2025. The State of Maharashtra, as Writ Petitioner, has approached this Court by filing the present Writ Petition. The core controversy involved in this proceeding is pertaining to the issue of selection of candidates from the Non-State Civil Service (**Non-SCS**) Category of Officers serving under the Government of Maharashtra for filling up the 3 (three) available

vacancies in the Indian Administrative Service (**IAS**) Cadre for the said category.

3. The Intervention Application bearing Interim Application No.38609 of 2025 has been filed by 13 out of the 15 Non-SCS category candidates from the State of Maharashtra who have been short-listed by the Committee of the State and their names forwarded to the Respondent No.2/UPSC for considering their candidature for appointment to the IAS cadre against the three available vacancies for the Non-SCS quota.

4. It would be pertinent to note herein that the order dated 2nd December, 2025 assailed in the Writ Petition is an interim order and the Original Application is still pending disposal before the MAT. Having regard to the nature of controversy involved in the proceeding, we deem it appropriate to reproduce the order dated 2nd December, 2025, in its entirety, for ready reference:-

“ We direct the respondents to take appropriate steps so as to enable the applicant to appear for the interview before the UPSC on 05.12.2025. His performance shall be subject to the final outcome of the O.A. He shall not be entitled to claim equities.

2) The Applicant shall join the candidates who are likely to be adversely affected by his insertion at sr. no.13 in the list of short listed candidates. Amendment to be carried out forthwith.

3) Issue notice of the O.A. to the respondent/s being added, before admission returnable on 16.12.2025, for being served by hand delivery, speed post, courier. The applicants shall

effect such service and shall file affidavit of service along with acknowledgment, within one week.

4) Applicants are authorized and directed to serve respondents intimation/notice of date of hearing, duly authenticated by Registry, along with complete paper book of O.A. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.

5) This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988. The questions such as limitation and alternate remedy are kept open.

6) Respondent No.1 shall provide the address of the respondent/s being added to the applicant as early as possible.

7) Parties to act on the authenticated copy of the operative part of this order.

8) S.O. to 16.12.2025.”

5. The Indian Administrative Service (Recruitment) Rules, 1954 envisages three different modes of recruitment to the IAS cadre viz. by competitive examination, by promotion and by selection, in special cases, from amongst persons who hold a gazetted post in substantive capacity in connection with the affairs of the State but are not members of the State Civil Service. There are three vacancies for the State of Maharashtra for the Non-SCS category. As per the requirement of the Rules, the committee constituted by the State Government is required to short-list candidates 5 times the number of available vacancies by maintaining the ratio of 1:5. As such, 15 candidates from the Non-SCS category would have to be recommended by the State Committee to the UPSC for final

selection. Accordingly, three times the number of eligible candidates (45 in total) had been considered by the State Committee for shortlisting the 15 candidates. As per Rule 4 of the Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as “**Regulations 1997**”) the State Government is required to short-list the Non-SCS candidates holding gazette posts in substantive capacity, having outstanding merit and ability provided they have 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. The Original Applicant/Respondent No.1 was eligible under the Regulations and therefore, his case was also considered. However, he had emerged at serial No.19 in order of merit by applying the criteria for selection as a result of which, his name was not recommended to the UPSC. According to the Original Applicant, due weightage was not given to the period of service rendered by him as a result of which he fell out of the league of 15 short-listed candidates. Hence, the Original Application was filed before the learned MAT.

6. The candidates coming within the zone of consideration are to be selected on the basis of the criteria of outstanding merit and ability which is required to be assessed on the parameters laid down in General Resolution (**GR**) dated 24th July, 2025. According to clause 3(vi) of the said GR, evaluation of the candidates is to be made on the criteria of 60 marks for written examination, 20 marks for service period and 20 marks for confidential report. Clause 3(vii) makes it clear that 20 marks for service period is to be divided, as per the total service period (in completed years), as

per the table provided in the said provision. The case of the Original Applicant is that the deemed date of his appointment in the substantive cadre post of Under Secretary is with effect from 23rd July, 2003. Yet, weightage for period of service has been given to him only with effect from 1st January, 2007, as a result of which, he was erroneously deprived of weightage of three years of service period, thus, scoring 14 marks instead of 17 marks on the count of period of service. According to the Original Applicant/Respondent No.1, had weightage for those three years on account of service period been given to him, then in that event, he would have scored 17 marks for service period and ranked 13th amongst the short-listed candidates on the basis of the Aggregate score.

7. In the above context, it would be pertinent to note herein that the post of Under Secretary is a gazetted post in substantive capacity within the meaning of Rule 4 of the Rules of 1954, for the Non-SCS category. The Original Applicant was promoted from Section Officer to the post of Under Secretary on 19th May, 2006. However, apparently due to some ongoing litigations, the seniority list of the Officers in the cadre of Under Secretary could not be finalized for several years. Ultimately, in the *inter-se* seniority list so published, the deemed dated of appointment/ promotion of the Original Applicant to the substantive post of Under Secretary was shown from 23rd July, 2003 although, his actual date of appointment/ promotion is 19th May, 2006. Such seniority of the Original Applicant by treating his date of appointment in the post of Under Secretary with effect from 23rd July, 2003 has admittedly been assigned in deference to the provision of Rule 5 of “The

Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (hereinafter referred to as “The Rules of 1982”) framed under the proviso to Article 309 of the Constitution of India.

8. The Respondent No.3, who ranks 15th in order of merit, and is at the bottom of the list of 15 candidates whose names have been recommended by the State Government to the Respondent No.2, was appointed to the gazette post of Sales Tax Officer, Class-I (Non-SCS category) in substantive capacity on 6th January, 2004. Accordingly, he had received due weightage of the period of service rendered by him with effect from 6th January, 2004 and scored 19 marks, thus, ranking above the Original Applicant on the aggregate score. Going by the date of actual appointment in the substantive post, he is senior to the Original Applicant.

9. Mr. B. V. Samant, learned Addl. GP appearing for the State has assailed the impugned order dated 2nd December, 2025, primarily on three counts. Firstly, by the impugned order final relief has been granted to the Original Applicant. Secondly, the relief granted by the learned Tribunal to the Original Applicant has not been prayed for in the Original Application. Thirdly, in view of the clarification provided in clause (3)(x) of the GR dated 24th July, 2025, no credit for the “Deemed date of appointment” could have either been claimed or granted to the Original Applicant.

10. Dr. Vinod Joshi, learned counsel appearing for the Respondent No.2 (UPSC) submits that the impugned order dated 2nd December, 2015, apart from being erroneous in the eyes of law, is also without jurisdiction in as much as the MAT does not have the authority or jurisdiction under the law to issue any direction to

the Respondent No.2 (UPSC) to conduct the interview of the Original Applicant. It is also his submission that the prescription of the rules is to interview five times the number of vacancies. Therefore, the Respondent No.2 cannot be compelled to interview even a single candidate exceeding the prescription of the Rules. He has also submitted that by the order dated 15th December, 2025 passed by the learned Central Administrative Tribunal (**CAT**), New Delhi, in an Original Applications Nos.1033 of 2025 and 1010 of 2025 instituted by 14 short-listed candidates, a direction has been issued to conduct the interview and complete it before 31st December, 2025. Accordingly, the schedule for interview has been fixed so as to commence from 23rd December, 2025.

11. Mr. Rajpurohit, Learned counsel appearing for the Intervenor has supported the submissions made by the learned AGP as well as the learned counsel for the Respondent No 2.

12. Opposing the said submissions, Mr. Anturkar, learned senior counsel appearing for the Original Applicant/Respondent No.1 has argued that neither the Regulations nor the relevant Government Resolution prohibits deemed service period to be taken into account for the purpose of awarding marks for service period (20 marks). It also the submission of Mr. Anturkar that in view of the language employed in Clause 3(x) of the GR dated 24th July, 2025, deemed period of service cannot be considered only for computing the continuous service of 8 years for the eligibility of the candidates and not otherwise. Contending that had the intention of the State being otherwise, the same could have been clarified in the GR in the manner that has been done in Clause 3(x).

13. By referring to the provisions of Rule 5 of the Rules 1982, Mr. Anturkar submits that as per the said rule the length of service is required to be computed with effect from the assigned date. He submits that by interpreting Rule 5, a Division Bench of this Court, in the case of ***Vijayendra Rajarao Hallar Vs. State of Maharashtra and another reported in 2003 SCC Online Bom 956***, has categorically held in paragraph No.8 that in view of the prescription of Rule 5 of the Rules of 1982, the deemed date is the real date of appointment to the post or cadre or service. Therefore, right of the Original Applicant/Respondent No.1, as asserted before the MAT, flows from the provisions of Rule 5 of the Rules of 1982, as interpreted by the Division Bench of this Court in the case of ***Vijayendra Rajarao Hallar Vs. State of Maharashtra and another*** (supra) which judgment has attained finality in the eyes of law.

14. Mr. Om M. Lonkar, learned counsel appearing for the Respondent No.3 has relied upon a decision of the Hon'ble Supreme Court of India rendered in the case of ***Girish Kumar Vs. State of Maharashtra and ors. reported in 2019(6) SCC 647*** to submit that the assignment of deemed date under Rule 5 of the Rules of 1982 is only for the purpose of seniority and the same cannot confer any right or privilege upon the candidate which is contrary to the scheme of the Regulations, 1997. He submits that the aforesaid position has been clarified by the Supreme Court in paragraph No.9, whereby, it has been categorically held that to become eligible under the relevant rules, only the criteria laid down by the Rules of selection would be relevant.

15. We have considered the submissions made at the Bar and have also gone through the materials available on record.

16. We are conscious of the fact that the Original Application is still pending before the learned MAT and the present Writ Petition is directed against an interim order. However, in view of the nature of controversy and the relief prayed for, with the consent of the learned counsel for both the sides, we have taken up this matter for final hearing and disposal at the stage of admission.

17. From the factual narrations in the foregoing paragraphs, it would be evident that the core question begging answer from this Court in the present proceeding is as to whether, as per the Regulations of 1997 read with GR of 24th July, 2025, the Original Applicant / Respondent No.1 can claim credit for the length of service for the period during which he did not actually serve in the substantive post of Under Secretary i.e. for the period from 23rd July, 2003 till 19th May, 2006. The answer to the said question, in our opinion, would lie in correct interpretation of the relevant provisions the Regulations of 1997 as well as the GR dated 24th July, 2025.

18. There is no dispute about the fact that the actual date of appointment of the Original Applicant/Respondent No.1 to the post of Under Secretary is 19th May, 2006. However, in the *inter-se* seniority list of the cadre his date of appointment has been shown as 23rd July, 2003 i.e. almost three years prior to the date of actual appointment/promotion to that post. Such fixation of seniority had evidently been done in exercise of powers under Rule 5 of the Rules of 1982. We, however, fail to understand the basis and the

logic behind framing such a Rule which recognizes the seniority of a candidate with effect from a date on which he was not even borne in the cadre. The learned AGP also could not throw any light on that. Such a Rule, *prima facie*, appears to be in conflict with the established principles of service jurisprudence. Be that as it may, there is no controversy about the fact that the recourse adopted by the department in recognizing the seniority of the Original Applicant with effect from 23rd July, 2003 was permissible under the provisions of Rule 5(1) of the Rules of 1982. However, what must be noted herein is that the Rules of 1982 have been framed for the purpose of fixing the seniority of the departmental candidates. Therefore, Rule 5 of the Rules of 1982 can at best have a relevant bearing while determining the question of *inter-se* seniority of the Officer in a particular cadre and no further. In other words, the fact that the date of appointment of the Original Applicant has been shown to be on 23rd July, 2003 may have some relevance for the purpose of determining his *inter-se* seniority but that certainly cannot mean that the Original Applicant had actually rendered service in that post or that he had gained experience thereof for the period during which he was actually not holding the post.

19. It would be significant to note herein that Government Resolution dated 24th July, 2025, laying down the parameters for assessing the merit of the eligible candidates had been issued in pursuance to sub-Rule 2 of Rule 8 of the Rules of 1954. The GR dated 24th July, 2025 is not under challenge. As per clause 3(vii) of the GR, it is only the completed years of service which is to be reckoned for the purpose of awarding marks (20 marks) for the

period of service. Clause 3(x) which related to the minimum period of 8 years of continuous service so as to become eligible for consideration clearly mentions that “service of officers from the Non-SCS shall not be counted from a deemed date”. From a conjoint reading of Clauses 3(vii) and (x), it is thus apparent that only the completed years of service and not deemed service is to be reckoned for computing the period of service. Although Mr. Anturkar has strenuously argued to convince us that the clarification given in Clause 3(x) regarding deemed date of service is applicable only for the purpose of counting the eligibility period of service, since the same has been specifically included in the clause which deals with the period of service for determining the eligibility criteria, going by the scheme of the GR, we are unable to agree with such submission of the learned senior counsel. Rather, we are of the opinion that it is only the completed years of actual service rendered by an eligible Officer of Non-SCS category which alone will count for assigning marks on the parameter of period of service.

20. In the above context, it would be further pertinent to mention herein that the legality and validity of the GR dated 24th July, 2025 in so far as paragraph No.3(vi) is concerned, was the subject matter of challenge by some departmental candidates in an earlier round of litigation before the learned MAT in Original Applications Nos.951 of 2005, 957 of 2025 and 953 of 2025. By the judgment and order dated 5th September, 2025, the learned Tribunal had held that clause 3 of the GR was illegal on the ground that it was violative of Articles 14 and 16(1) of the Constitution. Aggrieved thereby, the State had assailed the judgment passed by

the Tribunal by filing Writ Petitions Nos. 12382 of 2025, 12501 of 2025 and 12502 of 2025 before this Court. Allowing the Writ Petitions filed by the State, in the judgment and order dated 7th October, 2025, this Court had held that the criteria for short-listing eligible candidates including the marks awarded for the length of service was valid. The observations made in the judgment and order dated 7th October, 2025 in paragraph No.18 are relevant and therefore, have been reproduced herein below for ready reference:

“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.”

21. From the above observations, it is clear that for the purpose assessing the ability of a candidate, it would be the actual

experience gained in service that alone would count and not the deemed service. Viewed from that angle also, the arguments advanced by the learned senior counsel for the Original Applicant/ Respondent No.1, in our opinion, does not merit acceptance. Therefore, we are of the view that it is not the Rules for fixing seniority of the candidates, but the criteria for assessing the merit and ability of the candidates under the relevant GR, which alone would be relevant for the purpose of selection/shortlisting of eligible candidates.

22. While dealing with the purport of Rule 5 of the Rules of 1982 in *Girish Kumar Vs. State of Maharashtra and ors.* (supra) paragraph No.9, the Apex Court has made the following observations which are relevant for this case :-

“9. In the present case, the High Court has considered Rule 5 of the Seniority Rules, 1982 and has not at all considered the Recruitment Rules, 1967. Respondent No.3 might have been granted the deemed date of promotion to the post of Office Superintendent with effect from 07.10.2005. However, he was actually promoted as Office Superintendent on 22.10.2007. Therefore, in fact, he has rendered service as Office Superintendent only from 22.10.2007. As per Appendix IX to the Recruitment Rules, 1967, the eligibility for appointment to the promotional post of Section Officer requires three years continuous service. The language used in Appendix IX is unambiguous, simple and plain. Therefore, on a fair reading of Appendix IX of the Recruitment Rules, 1967, to become eligible for the promotional post of Section Officer, a person ought to have rendered continuous service of not less than three years. “Continuous service” might have been defined under the Seniority

Rules, 1982. However, the same shall be for the purpose of seniority and the Seniority Rules only. Therefore, if any employee is granted the deemed date of promotion, his seniority shall be considered accordingly from the deemed date of promotion. However, that shall be only for the purpose of *inter-se* seniority only and the same shall not be applicable while considering the eligibility criteria under the Recruitment Rules. In the Recruitment Rules, “continuous service” is not defined. Therefore, one has to consider the ordinary dictionary meaning of “continuous” which means “uninterrupted or unbroken”. The High Court has added the word “actual” which as such is not there in Appendix IX. While considering the relevant provisions and as per the rule of interpretation, when the language used is unambiguous, plain and simple, the provision is required to be read as it is and nothing is to be added. Therefore, when in Appendix IX, the eligibility criteria is that no person shall be eligible for promotion unless he has completed service for a continuous service of not less than three years means he has to render/complete service for a continuous period of uninterrupted/unbroken three years service. Therefore, when Respondent No.3 has not completed three years of service for a continuous period of not less than three years in the feeder cadre in District Service (Class III) (Ministerial) Grade II, he was not eligible for promotion to the post of Section Officer. The High Court has committed a grave error in holding otherwise. Therefore, the Additional Divisional Commissioner, Aurangabad rightly allowed the appeal and rightly set aside the order of promotion of Respondent No.3 dated 1.2.2008 to the post of Section Officer.”

23. There is yet another aspect of the matter which deserves mention herein. Although the Original Applicant admittedly ranks

19th in order of merit and there are atleast 18 candidates scoring higher marks than him, yet, save and except the Respondent No. 3 (15th position), none of the other candidates scoring higher than him have been made party in the Original Application. Therefore, in the absence of the other candidates, more particularly, the candidates ranking 16th to 18th, the question of permitting the Original Applicant to even provisionally participate in the interview process cannot arise in the eyes of law.

24. We have also noted that although the learned MAT has passed interim order in favour of the Original Applicant permitting him to participate in the interview process, no reason whatsoever, has been furnished for doing so. The impugned order is completely devoid of any reason and therefore, the same is liable to be set aside on such count alone.

25. In view of the observations and findings recorded hereinabove, we are of the opinion that the issue of jurisdiction of the learned MAT to issue direction to the UPSC, as raised by the learned counsel for the Respondent No.2, need not be gone into in the present proceeding and the said issue is kept open for consideration in an appropriate future proceeding.

26. For the reasons stated above, we are, of the view that this Writ Petition must succeed and the same is accordingly allowed.

27. The impugned order is hereby set aside.

28. Interim Application stands disposed of.

29. Rule is made absolute and the Writ Petition is disposed of in the aforesaid terms. No costs.

(S. M. MODAK, J.)

(SUMAN SHYAM, J.)