

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.795 OF 2022**

**DISTRICT : MUMBAI**

Shri Balasaheb Baburao Thite, )  
52 years, Director Finance, )  
(Maharashtra Finance & Accounts Service), )  
presently posted on deputation to Maharashtra )  
State Power General Company Limited, Prakashgad, )  
Bandra (E), Mumbai 400051 )..Applicant

Versus

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

Shri M.D. Lonkar with Shri U.V. Bhosale – Advocates for the Applicant  
Smt. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Smt. Medha Gadgil, Member (A)  
RESERVED ON : 23<sup>rd</sup> November, 2023  
PRONOUNCED ON: 24<sup>th</sup> November, 2023  
PER : Smt. Medha Gadgil, Member (A)

**J U D G M E N T**

1. The applicant belongs to Maharashtra Finance and Accounts Service (MFAS). He challenges the GR dated 2.9.2021 and communication dated 21.7.2022 changing the short listing criteria for appointment by selection of non State Civil Services (SCS) Officers into the Indian Administrative Services (IAS). By way of amendment he challenges the GR dated 3.11.2023 regarding selection of non State Civil Services (SCS) Officers into the Indian Administrative Services (IAS).

2. The applicant submits that during pendency of this OA the respondent has issued GR dated 3.11.2023 changing the short listing criteria for short listing non SCS officers for selection to IAS cadre. The applicant further states that in the GR dated 3.11.2023 the respondent has prescribed only written test of 100 marks. The written test consist of only 50 Multiple Choice Questions (MCQ). No marks are given for interview, seniority, service record etc. He, therefore, prays that GR dated 3.11.2023 is unreasonable and arbitrary and needs to be quashed and set aside as it will cause great injustice to senior officers like the applicant. The applicant further states that the impugned GR dated 3.11.2023 has been issued pursuant to order dated 12.10.2023 passed by the Hon'ble High Court, Bench at Aurangabad in W.P. No.12339 of 2023. He states that the said order does not mention the short listing criteria but has directed the respondents to complete the procedure prescribed by 31.12.2023. It was necessary for the respondents to frame rules for selection to such senior level post instead of issuing GRs and making changes from time to time.

3. There are three modes of selection into IAS cadre, which are as follows:

- (i) Appointment by Competitive Examination – Nomination.
- (ii) Appointment by Promotion – From the State Civil Services Officers (From the post of Deputy Collector).
- (iii) Appointment by Selection – From the non-State Civil Services Officers (Officers of the State Government other than Deputy Collector).

4. The guidelines for recommendation of candidates by the State Government are mentioned in Regulation 4 of The Indian Administrative Service (Appointment by Selection) Regulations, 1997 (hereinafter referred to as 'Regulations of 1997' for the sake of brevity). Regulation 4 is reproduced below:

*“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 person 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 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.”*

5. As per Regulation 4 the State Government has to send proposals for consideration of the Committee. The number of persons proposed for consideration of the committee should not exceed 5 times the number of vacancies proposed to be filled during the year. While sending the proposal the State Government has to consider all non SCS officers who are of outstanding merit and ability, hold a gazetted post in a substantive capacity and have completed not less than 8 years of continuous service under the State Government in any post which has been declared equivalent to the pot of Deputy Collector in the State Civil Services.

6. As the cadre of IAS comes under the purview of Central Government the State Government is bound by the Regulations of 1997 framed by the Central Government. A careful reading of the Regulations of 1997 shows that the Central Government has not defined the detailed process for recommendation of candidates by the State Government. The State Government has to define the selection procedure within the framework of

the Regulations of 1997. Accordingly the State Government has issued resolutions from time to time prescribing the procedure.

7. In W.P. No.12339 of 2023 the Hon'ble High Court, Bench at Aurangabad has given the following directions on 12.10.2023:

*2. The learned Advocate for the Petitioners submits that this Court may call upon the Respondents to complete the procedure, if there is no legal impediment as the final selection for IAS nomination from the Non-State Civil Services in the State is to be completed, before 31.12.2023. The said process had been taken up prior to 2019, but was subsequently, aborted.*

*3. In view of the above, this Petition is disposed off with the expectation that the Respondents would complete the procedure within the timeline as is prescribed, if there is no legal impediment.*

8. Accordingly, the State Government vide GR dated 3.11.2023 has announced that an Online written examination of 100 marks of fully objective method will be conducted on 21.11.2023 through the IBPS. The said examination process will be conducted for 4 posts and 20 candidates will be recommended for interview in the ratio 1:5. The first 20 candidates (1:5) securing highest marks in the examination will be recommended to Union Public Service Commission (UPSC) for interview. The said examination process has been approved by the State Government.

9. Earlier for induction of non SCS officers to the IAS, written test and interview were conducted at the State level to short list the candidates for UPSC interview. However, this time to avoid duplication of interview process a decision has been taken to hold written examination as the interviews will be conducted by the UPSC.

10. Ld. Advocate for the applicant points out that the selection criteria for induction of non SCS officers has been changed arbitrarily. He pointed out that till the year 2019 only both written test and interview were conducted at the State level before sending the names to UPSC for final selection. However, the pattern was changed in the year 2019 vide GR dated 13.9.2019 and the bench mark criteria for induction of non SCS into IAS cadre was laid down and all eligible officers who had completed 8 years of continuous service under the State were taken into consideration. However, it was laid down that out of 10 CRs, 9 CRs had to be rated as 'Outstanding'. The effect of this GR was prospective.

11. Ld. Advocate for the applicant points out that another GR was issued on 2.9.2021 in which the short listing criteria was of 100 marks which is as follows:

(i)	Written Test	60	Marks
(ii)	Interview	30	Marks
(iii)	Service Period	10	Marks
	Total	100	Marks

12. The State Government has now issued a GR dated 3.11.2023 laying down the criteria for said selection. The State Government has announced that an Online written Examination of 100 marks of fully objective method will be conducted on 29.11.2023 through IBPS. The first 20 candidates (1:5) securing highest marks in the examination will be recommended to UPSC for interview.

13. Ld. Advocate for the applicant states that the process of examining the CRs is very important and this is not being considered in this examination. He further states that seniority is not being given any

weightage. He states that no interviews are being conducted at the State level and this should be a mandatory requirement for selection in order to judge the outstanding merit and ability. He states that the changes in the selection process are arbitrary.

14. Ld. Advocate for the applicant relied on the judgment of the Hon'ble Supreme Court in **Guman Singh Vs. State of Rajasthan & Ors. (1971) 2 SCC 452.**

15. Ld. CPO refutes the contentions raised by the Ld. Advocate for the applicant. Ld. CPO relied on the affidavit in reply dated 22.11.2023 filed by Anushka Anirudh Dalvi, Under Secretary, GAD, Mantralaya, Mumbai. She pointed out that the State Government has issued the GR dated 3.11.2023 in accordance with the Regulations of 1997. While sending proposals to the UPSC the State Government has to consider all non SCS Services officers who are of outstanding merit and ability, hold a gazetted post in substantive capacity and have completed 8 years of continuous services under the State in any post which has been declared equivalent to the post of Deputy Collector.

16. Ld. CPO relied on the ratio laid down by the Hon'ble Supreme Court in **Civil Appeal No.9193 of 2013 B. Amrutha Lakshmi Vs. State of Andhra Pradesh & Ors.** decided on 18.10.2013 wherein it is held that, it is for the State Government to lay down by rules as to how the outstanding merit and ability is to be assessed, and over how much period.

17. She pointed out that taking into consideration the above observations the State Government has issued GR dated 3.9.2019, 2.9.2021 and 3.11.2023 and fixed the eligibility criteria in such a way as to provide equal opportunity to all without considering only seniority. She

further stated that as per the observations of the Hon'ble Supreme Court the right to determine the eligibility criteria lays with the State Government and accordingly said GRs have been issued.

18. Ld. CPO stated that vide GR dated 3.11.2023 examination process has been initiated and now gone ahead. Approximately 290 candidates have filled in the application form since the said examination has not been conducted for the last 3 years. If the process is suspended at this stage, all candidates will suffer. Moreover, it would then not be possible for the State Government to comply with the orders given by the Hon'ble High Court regarding completion of selection process before 31.12.2023.

19. In this case it is important to look into the Regulations of 1997. As per Regulation 4 the State Government shall consider the case of outstanding merit and ability. A careful perusal of the Regulations of 1997, shows that the Central Government has not defined a detailed process for recommendation of candidates by the State Government. The State Government is free to define the selection procedure within the framework of Regulations of 1997. While it is a fact that earlier written test and interviews were conducted at the State level to shortlist candidates for the UPSC interview, we accept the explanation of the State Government that in order to avoid duplication of interview process for the same selection, additional interview process at the State level will not be conducted and candidates will be eligible for interview on the basis of written test only. The final selection will be made through the interview conducted at UPSC level.

20. As per the ratio laid down by the Hon'ble Supreme Court in *B. Amrutha Lakshmi* (supra) the State Government has issued GRs dated 13.9.2019, 2.9.2021 and 3.11.2023 and fixed the eligibility criteria in



such a way to provide equal opportunity to all without considering only seniority.

21. In *Guman Singh* (supra) the Full Bench of the Hon'ble Supreme Court has explained the term 'merit' as follows:

*“35. .... No doubt the term 'merit' is not capable of an easy definition, but it can be safely said that merit is sum total of various qualities and attributes of an employee such as his academic qualifications, his distinction in the University, his character, integrity, devotion to duty and the manner in which he discharges his official duties. Allied to this may be various other matters or work, quality and outturn of work done by him and the manner of his dealings with his superiors and subordinate officers and the general public and his rank in the service.”*

Thus, the Hon'ble Supreme Court has rightly enlightened that while considering the merit all these factors and other allied factors are to be taken into account. Regulation 4 of the Regulations of 1997 in the present case fixes the criterion for selection as “merit and ability”. Merit as considered by the Hon'ble Supreme Court can be judged undoubtedly on the basis of written test and also his CRs and general reputation and his standing, his character when he is interviewed by the Committee. The ability is also bunch of virtues deciding his work culture that also can be assessed on the basis of the written examination, CRs and interview. The State Government by deciding the procedure in the present selection has taken care of; that is competency, intelligence, integrity, honesty and character can be assessed properly through the written examination as well as CRs which will be taken into account at the time of interview. It appears that only the method is made more concise. However, the factors

which are going to be considered for assessment of the candidate have remained same and thus there is no deviation from the basic rules.

22. As regards the contention raised by the Ld. Advocate for the applicant that the CRs are not being considered in this selection process, it is seen that in GR dated 3.11.2023 clause 4, the CRs are being considered.

23. Considering all these factors we do not find valid reason to interfere with the selection process which appears fair and framed on the basis of the Regulations of 1997. We have also noted with concern that there has been no selection of non SCS candidates since the year 2019 and if there is any further delay, many deserving candidates may become age barred.

24. Considering all these factors, we find no merit in this OA and the same deserves to be dismissed.

25. Original Application is dismissed. No order as to costs.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**24.11.2023**

Sd/-

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**24.11.2023**

Dictation taken by: S.G. Jawalkar.