



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11840 OF 2024

1. Nitin Ramesh Rathod,
Age : 31 years, Occu. : Unemployed,
R/o Mujada Tanda, Post Pathrud,
Tq. Jalna, Dist. Jalna.
2. Balaji Shesherao Gude,
Age : 29 years, Occu. : Unemployed,
R/o Chavanda Nagar, Ahmedpur,
Dist. Latur – 413 420.
3. Pallavi Pandharinath Gite,
Age : 27 Years, Occu. : Unemployed,
R/o Bhagwan naga, Salegaon,
Dist. Beed.
4. Bilappate Anil Shivraj,
Age : 24 Years, Occu. : Unemployed,
R/o At post Wanjarwada, Near
Shri Sant School, Tq. Jalkot,
Dist. Latur – 413 420.
5. Anuradha Vishwanath Jamdhade,
Age : 29 years, Occu. : Unemployed,
R/o Nageshwadi, Jawala Bazar,
Sub Dist. Aundha (Nagnath),
Dist. Hingoli.
6. Sunil Sopanrao Kamble,
Age : 28 Years, Occu. : Unemployed,
R/o Siddharth Nagar Yevati,
Tq. Mukhed, Dist. Nanded – 431 715. .. Petitioners

Versus

1. State of Maharashtra ,
Through its Secretary,

Ministry of Energy, Govt.
of Maharashtra, Mantralaya,
Mumbai – 400 032.

2. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL),
Through its Managing Director,
Prakashgad, Plot NO. G-9,
Anant Kenekar Marg,
Bandra (East), Mumbai.
3. Maharashtra State Electricity
Distribution Company Ltd. (MSEDCL),
Through its Chief General Manager,
(Human Resources). .. Respondents

Shri Sayyed Tauseef Yaseen, Advocate for the Petitioners.
Shri P. S. Patil, Addl.G.P. for the Respondent No. 1.
Shri R. N. Dhorde, Senior Advocate i/by Shri Anil S. Bajaj,
Advocate a/w Shri P. S. Dighe and Shri V. D. Khivesara,
Advocates for the Respondent Nos. 2 and 3.

**WITH
CIVIL APPLICATION NO. 1011 OF 2025
IN
WRIT PETITION NO. 11840 OF 2024**

Mayur Suryakumar Ban and others .. Applicants

Versus

1. Nitin Ramesh Rathod and others .. Respondents

Shri Mohd. Aseem Mohd. Abdul Kaleem, Advocate for the
Applicants,
Shri Sayyed Tauseef Yaseen, Advocate for the Respondent Nos. 1
to 6.
Shri P. S. Patil, Addl.G.P. for the Respondent No. 7.
Shri Anil S. Bajaj, Advocate for the Respondent Nos. 8 and 9.

**WITH
CIVIL APPLICATION NO. 2261 OF 2025
IN
WRIT PETITION NO. 11840 OF 2024**

Harshad Uddhavrao Misal and others .. Applicants

Versus

1. Nitin Ramesh Rathod and others .. Respondents

Shri P. R. Katneshwarkar, Senior Advocate i/by Shri Anuj A.
Fulpagar, Advocate for the Applicants,
Shri Sayyed Tauseef Yaseen, Advocate for the Respondent Nos. 1
to 6.

Shri P. S. Patil, Addl.G.P. for the Respondent No. 7.

Shri Anil S. Bajaj, Advocate for the Respondent Nos. 8 and 9.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR JUDGMENT ON : 05.03.2025

JUDGMENT PRONOUNCED ON : 17.03.2025

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With the consent of the parties heard both sides finally at the admission stage.

2. Petitioners have invoked jurisdiction of High Court under Article 226 of the Constitution of India for challenging advertisement No. 07/2023 dated 29.12.2023 and corrigendum dated 30.01.2024 especially condition of awarding 10% weightage to the Graduation Aptitude Test in Engineering (for short 'GATE') score.

3. Petitioners are aspirants for the post of Graduate Engineering – Trainee (Distribution). The respondent No. 2/Company hereinafter referred as to the MSEDCL floated advertisement for recruitment of 281 posts of Graduate Engineer – Trainee (Distribution) along with 40 posts of Graduate Engineer – Trainee (Civil) vide advertisement dated 29.12.2023. The terms and conditions appended to advertisement stipulated. Condition Nos. 6.1 and 6.7 are as follows :

6.1 The candidates who have appeared for GATE examination in the last three years i.e. GATE-2021, GATE-2022 & GATE-2023 will be considered eligible for applying.

6.7 The candidates will be selected based on the score obtained in the GATE exam.

Petitioners and other candidates, who did not qualify GATE or did not appear for the same for preceding three years objected to the above clauses. Resultantly, corrigendum was issued on 30.01.2024 modifying the relevant conditions, which are as follows :

6.1 The candidates will be selected on the basis of performance in the online test and valid GATE score obtained in the last three years i.e. GATE-2021, GATE-2022 & GATE-2023 by giving 90% weightage to the online test & 10% weightage to the GATE score.

6.2 If candidates want to take benefit of 10%

weightage of GATE score, candidates must have qualified in the GATE examination from one of the following disciplines ;

- i. Electrical Engineering (GATE code :EE)
- ii. Civil Engineering (GATE code : CE)

6.4 The candidates do not possessing GATE score will also be eligible to apply. All candidates will have to appear for online test.

Thus, candidates, who were not possessing GATE score were also made eligible for the selection. Petitioners applied for the post in question. Last date for submitting application was extended upto 16.08.2024.

4. The respondent/MSEDCL conducted examination on 24.10.2024. Before appearing for the examination, petitioners approached this Court on 16.10.2024 by filing present petition. The results were declared on 16.01.2025. The verification of documents was done on 23.01.2025. A final select list is prepared, but due to the interim orders, appointment orders are not issued.

5. Petitioners are challenging condition of giving weightage of 10% to the candidates having GATE score. Following submissions are advanced by Mr. Syed Tauseef, learned advocate for the petitioners :

I Condition Nos. 6.1 and 6.7 of the advertisement and condition Nos. 6.1 and 6.2 of the corrigendum are

unconstitutional, unreasonable and against the Article 14 and 16 of the Constitution of India.

II The above conditions are extraneous and besides classification and Recruitment Regulations 2005 (for short 'Regulation 2005).

III No relative amendment is made to the regulation of 2005 to introduce any preference or weightage to the GATE score, though the respondent/MSEDCL passed some correction slip or resolution on 30.01.2021.

IV The score and the clearance in the GATE is meant for altogether different purpose and there is no reasonable nexus for awarding 10% weightage for the GATE score.

V Petitioners are discriminated and impugned conditions would amount to creation of class in class itself, which is impermissible.

VI There is no hurdle of principle of estoppel for the petitioners as they are neither unsuccessful candidates, nor approaching belatedly. The conditions under challenge are unconstitutional.

VII Previously in advertisement No. 06/2019 and 01/2020 no such condition was incorporated.

6. Reliance is placed on following judgments of the Supreme Court by the petitioners.

- A Abhimeet Sinha and others Vs. High Court of Judicature at Patna and others reported in (2024) 7 SCC 262.
- B V. N. Sunanda Reddy and others Vs. State of A. P. and others reported in 1995 Supp (2) SCC 235.
- C Kailash Chand Sharma Vs. State of Rajasthan and others reported in (2002) 6 SCC 562.
- D Dr (Major) Meeta Sahai Vs. State of Bihar and others reported in (2019) 20 SCC 17.

7. The petition is opposed by the respondent Nos. 2 and 3 by filing affidavit in reply and sur rejoinder. Based on those pleadings Mr. R. N. Dhorde, learned senior counsel for the respondent Nos. 2 and 3 made following submissions.

(i) Petition is liable to be dismissed at the threshold due to belated challenge to the conditions in question. Despite wide publication on 17.07.2019, no objections were raised by the petitioners. Petitioners are estopped from challenging the advertisement and the corrigendum having participated in the selection process.

(ii) By due procedure impugned conditions were incorporated in the advertisement preceded by the office note, resolution and publicity through news paper.

(iii) Present selection process is one time procedure and it was

communicated that selection would be by GATE score only.

(iv) All public sector undertakings have adopted the parameter of score in GATE for the purpose of recruitment, hence the conditions in question are neither unreasonable, nor arbitrary. It is recognized by Department of Higher Education.

(v) Previously also similar type of bifurcation of weightage existed for performance in the online test and academic performance in the ratio of 90 : 10. The same is followed in the present process, which would not amount to creating class within class.

(vi) No challenge is raised to Resolution dated 30.01.2019 passed by the respondents/MSEDCL.

8. Learned senior counsel relied on following judgments of the Supreme Court :

- a Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and others reported in (2011) 9 SCC 645.
- b Maharashtra Public Service Commission, through its Secretary Vs. Sandeep Shriram Warade and others reported in (2019) 6 SCC 362.
- c J Ranga Swamy Vs. Government of Andhra Pradesh and others reported in (1990) 1 SCC 288.

- d Ramesh Chandra Shah and others Vs. Anil Joshi and others reported in (2013) 11 SCC 309.
- e AIR Commodore Naveen Jain Vs. Union of India and others reported in (2019) 10 SCC 34.
- f The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and others reported in (1974) 1 SCC 19.
- g Chandan Banerjee and others Vs. Krishna Prosad Ghosh and others reported in (2022) 15 SCC 453.
- h Government of Andhra Pradesh Vs. P. Dilip Kumar and another reported in (1993) 2 SCC 310.
- i Surinder Singh Vs. Union of India and others reported in (2007) 11 SC 599.

9. Learned counsel for the applicant in Civil Application No. 1011 of 2025 adopted the submissions of the petitioner. Shri P. R. Katneshwarkar, learned senior counsel for the intervenor in Civil Application No. 2261 of 2025 would adopt the submissions of the respondent Nos. 2 and 3/MSEDCL. Additionally, he would submit that the self-same criteria of GATE score has been consistently applied in the selection process of various states PAN India. The criteria which is under challenge is well recognized and accepted parameter and it cannot be faulted.

10. Having heard rival submissions of litigating sides

including intervenors, the fulcrum of controversy is validity of the conditions stipulating 10% of the weightage for the GATE score and entertainability of the petition after participation of the petitioners in the selection process. The petitioners are challenging condition Nos. 6.1 and 6.7 of the advertisement and condition No. 6.1 of the corrigendum. It is not that they are disqualified from participating in the process. Before we dilate on the merits of the matter, we propose to examine objection as to the entertainability of the petition.

11. Petitioners have challenged impugned condition being unconstitutional and against Article 14 and 16 of the Constitution of India. The challenge is based on intelligible differentia, discrimination and reasonable nexus to apply such parameters. One ground of attack is want of legal and statutory sanction to incorporate impugned conditions in Regulation of 2005.

12. Advertisement bearing objectionable conditions was issued on 29.12.2019. Petitioners and others immediately made representations challenging impugned conditions and they were partly succeeded. Corrigendum came to be issued on 30.01.2024 making the petitioners eligible for applying for the post, but simultaneously introducing condition of awarding 10% weightage for GATE score. Upto this extent, there is no cause for them to approach High Court. From 30.01.2024 till 09.08.2024, there was no progress. The last date for submitting application was declared as 16.08.2024. By further notification dated 24.09.2024,

the schedule for examination (online test) was declared to be 24th October, 2024. Present petition is filed on 16.10.2024. Initial orders were passed on 22.10.2024 and it was before the Court from time to time.

13. The examination was conducted on 24.10.2024 and results were declared on 16.01.2025. It is not that petitioners are unsuccessful and they are turning around and challenging the process. It is not that petitioners are earlier disqualified or not permitted to participate in the process, they waited and, thereafter, the challenge is raised to the selection process. Considering the nature of the challenge which we have recorded in the earlier paragraphs and the sequence of events, we do not find that petitioners have deliberately waited and after finding them unsuccessful have approached this Court. Unless they participate in the process, the petition could not have been entertained.

14. It is strenuously argued by Mr. R. N. Dhorde, learned senior counsel for the respondent/MSEDCL that the respondent/MSEDCL proposed to incorporate criteria of performance in GATE by passing resolution and by making it public on 17.07.2019 itself, but no objection was raised and just before two days of the online test present petition was filed. The office notes and the resolution did not culminate in the amendment to the Regulation of 2005. When the petitioners were confronted with the impugned conditions by advertisement and thereafter corrigendum, it can be said that cause of action

arose for them. We do not find that they have belatedly approached High Court and muchless after finding themselves unsuccessful in the selection process. We cannot countenance the submissions of the respondents in this regard.

15. Reliance is placed on the judgment in the matter of **Ramesh Chandra Shah and others Vs. Anil Joshi and others** (supra) and more particularly paragraph Nos. 18, 19 and 23. In that case the appellant had participated in the selection process and could not be given promotion to the post of Air Vice Martial as no post was available before his superannuation. In that context the ratio was laid down. The policy of promotion was held to be legal and valid. The facts are distinguishable and ratio cannot be made applicable to the present case.

16. A useful reference can be made by referring to latest decision of the Supreme Court in the matter of **Abhimeet Sinha and others Vs. High Court of Judicature at Patna and others** (supra). Relying upon and following the exception carved out to the settled legal position, we have held that the writ petition is entertainable. We propose to rely on following paragraphs of the above referred judgment.

“35. At the outset, it is apposite to address the issue of the maintainability of the writ petitions. It is argued by Mr. Gautam Narayan and Mr. Purvish Jitendra Malkan learned counsel that after having participated in the recruitment process, the writ petitioners having not succeeded, cannot turn around and challenge the recruitment process or the

vires of the Recruitment Rules. It is submitted that all candidates knew about the prescription of minimum marks for viva voce, well before the selection process commenced and the principle of estoppel will operate against the unsuccessful challengers. On the other hand, the learned counsel representing the writ petitioners argued that the principle of estoppel would have no application when there are glaring illegalities² in the selection process. Further, estoppel is not applicable when the arbitrariness affects fundamental rights under Articles 14 and 16 of the Constitution of India³.

36. As argued by the learned counsel for the High Courts, the legal position is that after participating in the recruitment process, the unsuccessful candidates cannot turn around and challenge the recruitment process⁴. However, it is also settled that the principle of estoppel cannot override the law⁵. Such legal principle was reiterated by the Supreme Court in *Dr.(Major) Meeta Sahai Vs. Union of India*⁶ where it was observed as under:

“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

37. Guided by the above ratio, in matters like

this, to non-suit the writ petitioners at the threshold would hardly be reasonable particularly when the alleged deficiencies in the process could be gauged only by participation in the selection process.”

17. Further reliance is placed on the judgment in the matter of **AIR Commodore Naveen Jain Vs. Union of India and others** (supra). We have gone through paragraph Nos. 23 and 24. Considering the factual position in the present matter, we do not find that principle of estoppel is attracted. This judgment is considered by the Supreme Court in the latest judgment in the matter of **Abhimeet Sinha and others Vs. High Court of Judicature at Patna and others** (supra). We have already considered the latest judgment of **Abhimeet Sinha and others Vs. High Court of Judicature at Patna and others** (supra).

18. Petitioners have placed on record Regulations of 2005. Those are incorporated by statutory provisions mentioned in its preface. There is no dispute that selection process of the respondents/MSEDCL is regulated by it. It provides for designation, pay scale, eligibility namely qualification, experience and method for filling the vacancies. For the post in question, following is the relevant extract :

**TECHNICAL POSTS
PAY GROUP – I**

3. Assistant Engineer	Degree in Electrical/Electro	No previous experience	25% by departmental	Note 1 : Out of 75% vacancies to
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(Distribution) (Rs. 15285-670-18635-705-36965) Rs. 19110-840-23310-885-46320	nics/Instrumentation/Computer/Mechanical Engineering/Technology of a University or Institute in India established or incorporated by or under a Central Act or a State Act or any other qualification recognized as equivalent thereto.	is necessary in the case of Graduate / AMIE Engineer in case of recognized Diploma holder or its equivalent, minimum 3 years relevant experience in the line is essential	promotion of Diploma Holders and 75% by direct recruitment of Graduate in Engineering (Electrical)	be filled in by direct recruitment of Graduates in Engineering, up-to 5% of the vacancies shall be filled in by appointment of departmental employees who possess AMIE or recognized Degree in Engineering qualification on the last date of receipt of application under direct recruitment.
	<u>For Direct Recruitment</u> : Bachelors Degree in Electrical Engineering / Technology	No experience		Note 2 : The departmental employees shall compete amongst themselves in a recruitment process comprising of written test and personal interview. Note 3 : The employee shall have 5 years of service experience in technical cadre in the company. N.B. : For direct recruitment procedure as prescribed in Annexure 'N' of the MSEDCL Classification and Recruitment Regulations shall be followed.

19. It does not stipulate any eligibility condition of providing 10% weightage to GATE score, nor is it a condition that the candidates who have passed GATE would be eligible for the post in question. Only educational qualification is prescribed i. e. Bachelors degree in Electrical Engineering/Technology. These regulations have not been amended so far to incorporate additional criteria of performance in GATE. Though reference was made by the respondents to office note, resolution dated 30.01.2019 and public notification dated 17.07.2019 to make out a point that performance in GATE was sought to be introduced since 2019, but no amendment was effected in the Regulation 2005 to introduce new criteria. Clause Nos. 4 to 7 of the office note dated 24.01.2019 and its annexure A would not partake statutory regulation. Therefore, though the object of introducing new criteria is laudable and more pragmatic, in absence of relative amendment in the regulation, it is unenforceable and vulnerable.

20. We do not doubt that Department of Higher Education and the expert bodies have proposed the criteria of GATE score in the recruitment and number of Public Sector Undertakings (for short PSU) have adopted the same, but that would not *ipso facto* become enforceable in the present case. In all probabilities, the prevalent rules or the norms of those PSU must be having the foundation for applying the criteria of GATE performance. In the present case, the respondents failed to make out that there is foundation and legal sanctity for the criteria in question.

21. An attempt is made by drawing our attention to Condition No. 6.2 of the advertisement No. 06/2019, which provides for 90% weightage to the performance in the written/online test and 10% weightage to the academic performance. This 10% weightage to the academic performance cannot be equated to impugned 10% weightage to GATE performance.

22. We have not been pointed out any provision in the Regulation of 2005 or any such provision so as to confer such a power to adopt criteria of weightage in GATE. Though intervenors relied on various advertisements of PUS's across the country floated by electricity generation companies of different states, neither the enabling provision, nor the regulating provisions are placed on record to make out a case for parity. The respondents as well as intervenors are unable to point out any enabling provision for the respondents/MSEDCL to adopt, incorporate or to mold the eligibility criteria.

23. Petitioners have grievance for giving 10% weightage to the GATE score. Petitioners have relied on office memorandum dated 25.02.2018 to show that GATE examination is meant for higher studies.. The score in GATE was never eligibility criteria for the recruitment of the respondents/MSEDCL. It is submitted that sisterly concern of the respondents i. e. Maharashtra State Electricity Transmission Company Ltd. had introduced the GATE score instead of online written test for selection of entry level graduate engineers. It was cancelled by administrative circular No. 596 dated 16.02.2022. We do not find

that selection regulation of the respondents provides for such criteria. At this stage, it can be said that there is no rationale for applying parameters of performance in GATE.

24. Mr. R. N. Dhorde, learned senior counsel for the respondents has strenuously taken us through the documents produced along with reply Exhibit – R - 3 to buttress that GATE score is routinely applied parameter for selection of PSUs. We cannot be oblivious of the facts pointed out by the respondents that many PSUs have been adopting GATE as one of the parameters for recruitment process. It no longer remains to be eligibility for admission to higher studies, but is essential parameter for recruitment also. But we have already recorded that unless respondents/MSEDCL incorporates the said parameters in its regulation, it cannot be made applicable automatically.

25. By the corrigendum, the candidates who have not appeared for GATE are also made qualified for the post in question. Simultaneously, GATE score bears 10% weightage. It means that those candidates having GATE score will march ahead of the candidates like the petitioners. This is arbitrary, discriminatory and against the principles of equality.

26. To assess the merit online test was already there. Had the weightage of 10% been not given to those candidates that would not have offended principle of equality or intelligible differentia. Thus giving 10% weightage is creating class within class. We

find substance in the submissions of the learned counsel for the petitioners. It cannot be said that engaging talented work force to meet future challenges can only be achieved by selecting the candidates having GATE score. Petitioners cannot be said to be less meritorious than those candidates. We find no real nexus in the purpose sought to be achieved by applying those eligibility conditions for the selection. There is already online written test as a part of selection process, which is adequate to find out desirable talent. Further scrutiny by applying 10% weightage to GATE score is unreasonable in given facts and circumstances.

27. Respondents in their sur rejoinder have referred to its association with Institute of Banking Personnel Selection. The method adopted by the said institute is not relevant to examine the validity of parameters of weightage to the GATE score. Unless there is amendment to the Regulation 2005, it is not permissible for the respondents to introduce the parameter in question.

28. Petitioners relied on the judgment of the Supreme Court in the matter of **V. N. Sunanda Reddy and others Vs. State of A. P. and others** (supra). In that case State of Andhra Pradesh promulgated rules under Article 309 of the Constitution prescribing weightage of 5% of total aggregate maximum marks to the candidates having basic educational qualification through Telgu medium. The Division Bench of Andhra Pradesh High Court rejected the challenge. The Supreme Court held that such weightage is violative of Articles 14 and 16 of the Constitution. The

observations of para No. 13 are relevant. The ratio is applicable to the case in question.

29. Petitioners relied on the judgment of the Supreme Court in the matter of **Kailash Chand Sharma Vs. State of Rajasthan and others** (supra). The circular of 1998 issued by Rajasthan Government was under scrutiny, which prescribed recruitment procedure for the teachers of Panchayat schools. It provided for assigning bonus marks to the candidates who are domiciles of Rajasthan or residents of the district concern. This is found to be discriminatory. We prefer to reproduce para Nos. 11 and 14 of the said judgment as under :

“11. The first and foremost question that would arise for consideration in this group of appeals is, whether the circular dated 10.6.1998 providing for bonus marks for residents of the concerned district and the rural areas within that district is constitutionally valid tested on the touch stone of Article 16 read with Article 14 of the Constitution? It is on this aspect, learned senior counsel appearing for the candidates concerned have argued at length with admirable clarity, making copious reference to several pronouncements of this Court. There can be little doubt that the impugned circular is the product of the policy decision taken by the State Government. Even then, as rightly pointed out by the High Court, such decision has to pass the test of Articles 14 and 16 of the Constitution. If the policy decision, which in the present case has the undoubted effect of deviating from the normal and salutary rule of selection based on merit is subversive of the doctrine of equality, it cannot sustain. It should be free from the vice of arbitrariness and conform to the well-settled norms both

positive and negative underlying Articles 14 and 16, which together with Article 15 form part of the Constitutional code of equality.

14. Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socioeconomic backwardness of the area for the purpose of admissions to professional colleges, it has been suggested that residence within a district or rural areas of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Art. 16(3). An argument of this nature flies in the face of the peremptory language of Article 16 (2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself be it be within a State, region, district or lesser area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into Districts with a view to offer employment to the residents of that District on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article 16.

We are guided by the ratio laid down by the Supreme Court referred to above.

30. Mr. R. N. Dhorde, learned senior counsel relied on the judgment of the Supreme Court in the matter of **Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and others** (supra). We have gone through para Nos. 19 to 24. Scope of judicial review of the recruitment process is laid down. It is held that in the absence of rules under Article 309 of the Constitution or statute, then appellant had power to appoint under its general power of administration and prescribe eligibility criteria as is necessary and reasonable. Ph. D. degree was prescribed to be eligibility criteria in that case for direct recruitment of principals. It was under challenge. Recruitment Rules in that case had prescribed eligibility qualification of Ph. D. In the present matter, we have already recorded that weightage to the GATE score is not prescribed criteria under Regulation 2005. Hence, this judgment will be of no assistance to the respondents.

31. Further reliance is placed on the judgment of the Supreme Court in the matter of **Maharashtra Public Service Commission, through its Secretary Vs. Sandeep Shriram Warade and others** (supra). In that case the preference was given vide Clause 4.7 for candidates having a post graduate degree in the subject mentioned or research experience in the synthesis and testing of drugs. In that context observations are made in para Nos. 9 and 13 of the judgment. The facts are distinguishable from our case. In the case in hand qualification prescribed vide Regulation 2005 is not under challenge. This judgment is also not helpful to the respondents.

32. The next judgment of the Supreme Court in the matter of **J Ranga Swamy Vs. Government of Andhra Pradesh and others** (supra) is relied by the respondents. We have gone through para No. 6 of the judgment. The judgment is also distinguishable on facts and cannot be made applicable to the present case.

33. The respondents further relied on the judgment of the Supreme Court in the matter of **the State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and others** (supra). Our attention is adverted to para Nos. 33 and 35 of the judgment. We are bound by the ratio laid down by five Judges Bench in that matter. We have applied those principles to the present case. We find that for the reasons recorded above, the petitioners succeed in proving arbitrariness and unreasonableness of incorporating condition of weightage to GATE score.

34. Respondents further relied on the judgment of the Supreme Court in the matter of **Chandan Banerjee and others Vs. Krishna Prosad Ghosh and others** (supra). The principles laid down by three Judges Bench are in paragraph No. 28. We are bound by those parameters. In the wake of those principles only, we propose to decide in favour of the petitioners.

35. Respondents further relied on the judgment of the Supreme Court in the matter of **Government of Andhra Pradesh Vs. P. Dilip Kumar and another** (supra). Rule 4 of the A. P. Engineering Services Rules was under consideration by which

preference was given to post graduate engineers. In that contest the observations are made in para Nos. 13 and 15. The facts are distinguishable. The ratio cannot be made applicable.

36. Reliance is placed on the judgment of the Supreme Court in the matter of Surinder Singh Vs. Union of India and others (supra). In that case selection of candidate on the basis of marks obtained in preferential qualification was under consideration. Under those facts of the case observations are made in para Nos. 15 and 16 of the judgment. In the present case there is no question of any preferential qualification. We do not find that this judgment is applicable to the present case.

37. The analysis of our discussion is that petitioners have succeeded in proving the criteria of 10% weightage to the GATE score is unreasonable and unconstitutional. Document verification is over on 23.01.2025. Select list is prepared. Recruitment process which commenced on 29.12.2023 is at the final stage. We do not propose to quash entire process. The candidates who participated in the process having GATE score are also eligible only if their GATE score is to be excluded. As condition Nos. 6.1 and 6.7 of the advertisement dated 29.12.2023 and condition Nos. 6.1 and 6.2 of the corrigendum dated 30.01.2024 are unconstitutional, those need to be excluded for determining the merits of the eligible candidates.

38. The respondents/MSEDCL will have to prepare fresh merit list excluding benefit of 10% weightage of GATE score and,

thereafter the appointment orders will have to be issued. We, therefore, pass following order.

O R D E R

A. The condition Nos. 6.1 and 6.7 of advertisement dated 29.12.2023 and condition Nos. 6.1 and 6.2 of the corrigendum dated 30.01.2024 are quashed and set aside.

B. The respondent Nos. 2 and 3 shall prepare fresh merit list by excluding the parameters of 10% weightage to the GATE score. They shall issue appointment orders accordingly to the selected candidates.

C. The above exercise shall be completed within three (03) weeks from today.

D. Rule is made absolute in above terms.

E. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

[S. G. MEHARE, J.]

bsb/March 25