

IN THE HIGH COURT OF JHARKHAND AT RANCHI**L.P.A. No. 231 of 2021**

Chandan, aged about 39 years, son of Late Deoki Paswan, resident of village Deogan P.O. Chaparwar, P.S. Chhatarpur, District-Palamau, (Jharkhand).

... .. Writ Petitioner/Appellant

Versus

1. The State of Jharkhand.
2. The Principal Secretary, Personnel and Administrative Reforms Department, Government of Jharkhand, officiated at Project Building, Dhurwa, Ranchi, P.O. & P.S. Dhurwa, District- Ranchi.
3. Jharkhand Public Service Commission represented through its Secretary, Circular Road, P.O. G.P.O., P.S. Lalpur, District- Ranchi.
4. Nityanand Das, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Deputy Collector, Palamau, having its office at Collectorate Building, Medininagar, Palamau, P.O., P.S. & District- Palamau.
5. Sunny Kumar Das, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Executive Magistrate, Lohardaga (Sadar), having its office at Lohardaga, P.O., P.S. & District -Lohardaga.
6. Ghanshyam Kumar Ram, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Deputy Collector, Chaibasa having office at Chaibasa, P.O. & P.S. District-Chaibasa.
7. Anil Ravidas, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Deputy Collector, Jamtara, having its office at Jamtara, P.O., P.S. & District-Jamtara.
8. Pramod Anand, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Executive Magistrate, Sahebganj having office at Sahebganj, P.O., P.S. & District-Sahebganj.
9. Vijay Kumar Das, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Executive Magistrate, Chatra (Sadar) having its office at Chatra, P.O., P.S. & District-Chatra.
10. Pramod Kumar, aged about and son of not known to the petitioner, currently posted as Deputy Collector, Seraikela Kharsawan having office at Seraikella Kharsawan, P.O., P.S. and District-Seraikella.
11. Prem Kumar Das, aged about and son of not known to the petitioner, currently posted as Executive Magistrate, Sahebganj, having its office at Sahebganj, P.O., P.S. & District-Gumla.
12. Lalit Ram, aged about not known to the petitioner, son of is not known to the petitioner, currently posted as Block Development Officer, Gumla having office at Gumla, P.O., P.S. & District-Gumla.

13. Taleshwar Ravidas, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Executive Magistrate, Chandil, having its office at Chandil, P.O., P.S. & District-Chandil.
14. Akansha Kumari, aged about not known to the petitioner, son of not known to the petitioner, currently posted as Executive Magistrate, Jamtara, P.O., P.S. & District-Jamtara.
15. Satyendra Narayan Paswan, aged about not known to the petitioner, son of is not known to the petitioner, currently posted as Executive Magistrate, Bermo, having its office at Bermo, P.O., P.S. & District-Bermo.
16. Vivek Kumar, aged about not known to the petitioner, son of is not known to the petitioner, currently posted as Block Development Officer, Goikera (Singhbhum) having office at Singhbhum, P.O., P.S. & District-Singhbhum.
17. Nidhi Rajwar, aged about not known to the petitioner, son of is not known to the petitioner, currently posted as Executive Magistrate, Garhwa, having office at Garhwa, P.O., P.S. & District-Garhwa.
18. Ajay Kumar Das, aged about not known to the petitioner, son of is not known to the petitioner, currently posted as Executive Magistrate, Garhwa (Sadar), having office at Garhwa, P.O., P.S. & District-Garhwa.

... .. Respondents/Respondents

With
L.P.A. No. 275 of 2021

Sanjay Kumar Mahto, aged about 44 years, Son of Ramjee Mahto, resident of Dundigachhi, Maganpur, P.O. and P.S. Ramgarh, District, Ramgarh, PIN – 829110.

... .. Petitioner/Appellant

Versus

1. The State of Jharkhand through the Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, Ranchi, Project Bhawan, P.O. & P.S. Dhurwa, District- Ranchi.
2. Jharkhand Public Service Commission through its Chairman, having its office at Circular Road, P.O. & P.S. Lalpur, District-Ranchi.
3. The Chairman, Jharkhand Public Service Commission, having its office at Circular Road, P.O. & P.S. Lalpur, District-Ranchi.
4. The Secretary, Jharkhand Public Service Commission, having its office at Circular Road, P.O. & P.S. Lalpur, District-Ranchi.
5. The Controller of Examination, Jharkhand Public Service Commission, Ranchi, having its office at Circular Road, P.O. & P.S. Lalpur, District-Ranchi.
6. Sewa Ram Sahu, s/o Sri Guru Dayal Sahu, r/o Village Jamua Tand, P.O. & P.S. Khukhra, VIA Pirtand, District Giridih, presently posted as Probationer Deputy Collector, Ranchi, P.O., P.S. and District-Ranchi.

7. Santosh Kumar Mahto, s/o Sri Bisheswar Mahto, r/o Village Chitarpur, P.O. Chitarpur, P.S. Rajrappa, District Ramgarh, presently posted as Probationer Deputy Collector, Dumka, P.O., P.S. and District-Dumka.
8. Jitendra Kumar Gupta, s/o Sri Vijay Prasad Gupta, r/o House No. 73, Mohalla-Guru Chatti, Village Barkagaon, P.O. and P.S. Barkagaon, District-Hazaribagh, presently posted as Probationer Deputy Collector, Dumka, P.O., P.S. and District-Dumka.
9. Avinash Ranjan, s/o Sri Teklal Sharma, r/o village Chandwar, P.O. Chandwar, P.S. Mufssil, District Ramgarh, presently posted as Probationer Deputy Collector, Latehar, P.O., P.S. and District-Latehar.
10. Abhishek Kumar, son of not known to the petitioner, resident of not known to the petitioner, presently posted as Probationer Deputy Collector, Deoghar, P.O., P.S. and District-Deoghar.

.. ... Respondents/Respondents

With
L.P.A. No. 279 of 2021

Gautam Kumar, aged about 32 years, Son of Balkishun Prasad, resident of Village-Bariatu, P.O. Bariatu, P.S. Balumath, District-Latehar

... ... Appellant/Petitioner

Versus

1. State of Jharkhand through the Chief Secretary, Government of Jharkhand, having its office at Project Building, Dhurwa, P.O., Dhurwa, P.S. Jagarnathpur, District-Ranchi.
2. The Secretary, Personnel, Administrative Reforms and Rajbhasa Department, Government of Jharkhand, Ranchi, Project Bhawan, P.O. & P.S. Dhurwa, District-Ranchi.
3. Jharkhand Public Service Commission through its Secretary, having its office at Circular Road, P.O. & P.S. Lalpur, District- Ranchi.
4. The Controller of Examination, Jharkhand Public Service Commission, having its office at Circular Road, P.O. & P.S. Lalpur, District- Ranchi
5. Santosh Kumar Mahato, aged about 33 years, S/o not known to the petitioner, bearing Roll no. 6803875, currently holding the post in Jharkhand Administrative Service Batch 2020 of 6th Combined Civil Service Examination through Department of Personnel Administrative Reforms and Rajbhasa, Government of Jharkhand having office at Project Bhawan, Dhurwa, P.O. Dhurwa, P.S. Jagarnathpur, District Ranchi, Jharkhand.
6. Sewa Ram Sahu, son of not known to the appellant, presently posted as Probationer Deputy Collector, Ranchi, P.O., P.S. & District Ranchi, Jharkhand.
7. Jintendra Kumar Gupta, son of now known to the appellant, presently posted as Probationer Deputy Collector, Dumka, P.O., P.S. & District Dumka, Jharkhand.

8. Avinash Ranjan, son of now known to the appellant, presently posted as Probationer Deputy Collector, Latehar, P.O., P.S. & District Latehar, Jharkhand.
9. Abhishek Kumar, son of not known to the appellant, present posted as Probationer Deputy Collector, Deoghar, P.O., P.S. & District-Deoghar, Jharkhand.

.. ... Respondents/Respondents

With
L.P.A. No. 302 of 2021

Kumar Avinash, aged about 28 years, son of Manoj Kumar Rajak, resident of Gonda Town, Kanke Road, P.O. Ranchi University, P.S. Gonda, District-Ranchi.

... ... Petitioner/Appellant

Versus

1. The State of Jharkhand through the Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, Ranchi, Project Bhawan, P.O. & P.S. Dhurwa, District-Ranchi.
2. Jharkhand Public Service Commission through its Chairman, having its office at Circular Road, P.O. & P.S. Lalpur, District-Ranchi.
3. The Chairman, Jharkhand Public Service Commission, having its office at Circular Road, P.O. & P.S. Lalpur, District- Ranchi.
4. The Secretary, Jharkhand Public Service Commission, having its Circular Road, P.O. & P.S. Lalpur, District-Ranchi.
5. The Controller of Examination, Jharkhand Public Service Commission, having its office at Circular Road, P.O. & P.S. Lalpur, District-Ranchi.
6. Vivek Kumar, s/o Sri Yugeshwar Manjhi, r/o Village Pokhaha Khurd, P.O. Rajwadih, P.S. Sadar, Medininagar, District Daltonganj, presently posted as Probationer Deputy Collector, Chaibasa, West Singhbhum, P.O. & P.S. Chaibasa, District-West Singhbhum.
7. Nidhi Rajwar, d/o Sri Biren Rajwar, r/o Village Gola, P.O. & P.S. Gola, District Ramgarh, presently posted as Probationer Deputy Collector, Deoghar, P.O., P.S. and District-Deoghar.
8. Ajay Kumar Das, s/o Sri Prem Ram, r/o village Katkamdag, P.O. Sultana & P.S. Katkamdag, District Hazaribagh, presently posted as Probationer Deputy Collector, Dumka, P.O., P.S. and District – Dumka.
9. Nityanand Das, son of not known to the appellant, presently posted as Deputy Collector, Palamau, P.O., P.S. & District-Palamau.
10. Sunny Kumar Das, son of not known to the appellant, presently posted at Lohardaga, P.O., P.S. & District -Lohardaga.

11. Ghanshyam Kumar Ram, son of not known to the appellant, presently posted as Deputy Collector, West Singhbhum at Chaibasa P.O., P.S. & District-West Singhbhum at Chaibasa.
12. Anil Ravidas, son of not known to the appellant, presently posted as Probationary Deputy Collector, Jamtara, P.O., P.S. & District-Jamtara.
13. Pramod Anand, son of not known to the appellant, presently posted as Deputy Collector, Sahebganj, P.O., P.S. & District-Sahebganj.
14. Vijay Kumar Das, son of not known to the appellant, presently posted as Probationary Deputy Collector, Chatra, P.O., P.S. & District-Chatra.
15. Pramod Kumar, son of not known to the appellant, presently posted as Deputy Collector, Seraikela Kharsawan, P.O., P.S. and District-Seraikella – Kharsawan.
16. Prem Kumar Das, son of not known to the appellant, presently posted as Deputy Collector, Sahebganj, P.O., P.S. & District- Sahebganj.
17. Lalit Ram, son of not known to the appellant, presently posted as Deputy Collector, Gumla, P.O., P.S. & District-Gumla.
18. Taleshwar Ravidas, son of not known to the appellant, presently posted as Deputy Collector, Chandil, Seraikella, P.O., P.S. & District-Chandil, Seraikella.
19. Akansha Kumari, d/o not known to the appellant, presently posted as Deputy Collector, Jamtara, P.O., P.S. & District-Jamtara.
20. Satyendra Narayan Paswan, son of not known to the appellant, presently posted as Deputy Collector Bermo, Bokaro, P.O., P.S. & District-Bermo, Bokaro.

.. ... Respondents/Respondents

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR**

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For the Appellants	: Mr. Ajit Kumar, Sr. Advocate Ms. Aparajita Bhardwaj, Advocate Ms. Tanya Singh, Advocate [L.P.A. No. 231 of 2021] Mr. Rahul Kumar, Advocate Ms. Apoorva Singh, Advocate [L.P.A. No. 275 of 2021; L.P.A. No. 279 of 2021 & L.P.A. No. 302 of 2021]
For the Resp.-State	: Mr. Rajiv Ranjan, A.G. Mr. Mohan Kumar Dubey, AC to A.G.
For the Resp.-JPSC	: Mr. Sanjoy Piprawall, Advocate Mr. Prince Kumar, Advocate Mr. Rakesh Ranjan, Advocate
For the Resp. No.7	: Mr. Sushil Kumar Sharma, Advocate [L.P.A. No. 275 of 2021]
For the Resp. No.5	: Mr. Sushil Kumar Sharma, Advocate [L.P.A. No. 279 of 2021]
For the Resp. Nos.6-20	: Mr. Ashutosh Prasad Joshi, Advocate [L.P.A. No. 231 of 2021 & L.P.A. No. 302 of 2021]

For the Resp. Nos.6, 8 & 9 : Mr. Ashutosh Prasad Joshi, Advocate
[L.P.A. No. 275 of 2021 & L.P.A. No. 279 of 2021]

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C.A.V./Reserved on 21.09.2023

Pronounced on 18/10/2023

Per Sujit Narayan Prasad, J.:

1. The appeals are against the common order passed by the learned Single Judge in analogous cases, hence, all the appeals have been directed to be listed together for analogous hearing, as such, all the appeals have been heard together and are being disposed of by this common order/judgment.
2. Reference of one order is also there dated 24.08.2022 to list this case after disposal of S.L.P. (C) No. 4310 of 2022, 4443 of 2022 and 5409 of 2022.
3. It has been informed at bar that the aforesaid S.L.P. have been disposed of.
4. The appeals under clause 10 of the Letters Patent is directed against the order/judgment dated 07.06.2021 passed by the learned Single Judge of this Court in W.P.(S) No. 1428 of 2020 and other analogous cases, whereby and whereunder, the writ petitions have been dismissed seeking therein direction upon the respondents that the writ petitioners who have got higher marks and have been selected in the open merit, allotted Jharkhand Information Service, Finance Service and Planning Service but, the candidates who have lesser marks in reserved category, to which the writ petitioners belong, have been allotted Jharkhand Administrative Service, hence, in such circumstances, the direction has been sought for to consider the candidature of the writ petitioners under reserved category with a further direction to allot them Jharkhand Administrative Service cadre. The writ petitions have been dismissed declining to pass positive direction, hence, the instant appeals.

5. The brief facts of the case as per the pleading made in the writ petitions, which require to be enumerated, read as under:

L.P.A. No. 231 of 2021:

The Appellant/petitioner belongs to the category of Scheduled caste reserve category candidate, fulfilling the requisite criteria having claimed reservation, applied for his appointment in Pursuant to Advertisement no. 23/2016 issued by the JPSC, for Jharkhand Administrative Service, Jharkhand Finance Service and Jharkhand Education Service Class-II, Jharkhand Cooperative Service, Jharkhand Social Security Service, Jharkhand Information Service, Jharkhand Police Service and Jharkhand Planning service.

The examination was to be completed in three parts i.e. Preliminary examination, Mains examination and interview. The admit card was issued to the petitioner showing the petitioner to be of Scheduled caste reserve category candidate and after clearing all the stages of the said examination he finally selected by obtaining 611 Marks out of 1150.

The writ petitioner/appellant submitted all his credentials including the caste certificate issued by competent authority ie S.D.O., Chhatarpur. The petitioner while filling up the main examination form has indicated the preference of service; the first preference of the petitioner was Jharkhand Administrative Service, the second preference was Jharkhand Police Service and the third preference was Jharkhand Finance Service and onwards.

The final result of the selected candidates was published vide dated 21.04.2020 and the petitioner's name has been mentioned in the final result in "Jharkhand Information Service" under unreserved category.

The petitioner was surprised that one Ajay Kumar Das and Taleshwar Ravidas, who also belongs to SC category secured 576 and 584 marks in total and their name have been recommended for the "Jharkhand Administrative Service" whereas the petitioner/appellant secured 611 marks and he has been allocated the "Jharkhand Information Service".

The case of the petitioner is that he being reserved category candidate has been put in disadvantageous position in service allocation since he has been selected on merit and obtained more marks than the cut off marks of the unreserved category candidate but below in overall merit of unreserved category candidate as such he was allotted "Jharkhand information services", whereas on the other hand the other reserved category candidates below in merit than writ petitioner/appellant has been allocated " Jharkhand Administrative Service".

For redressal of his grievances, he filed various representation through his e-mail but no heed was paid. Thereafter the writ petitioner preferred a writ petition bearing no. W.P.(S) 1428 of 2020 before the learned single Judge. The said writ petition was dismissed vide order dated 07.06.2021. Hence this appeal.

LPA 275 of 2021:

The Appellant/petitioner possesses the qualification of B.A. and M.B.A. (Finance) and he was preparing for Combined Civil Services Examination. The Appellant/petitioner belongs to the category of EBC-I

and he has been issued valid caste certificate by the Deputy Commissioner, Ramgarh. Pursuant to Advertisement no. 23/2016 issued by the JPSC, the Appellant/petitioner being eligible candidate applied for Jharkhand Administrative Service, Jharkhand Finance Service and Jharkhand Education Service Class-II, Jharkhand Cooperative Service, Jharkhand Social Security Service, Jharkhand Information Service and Jharkhand Police Service.

The examination was to be completed in three parts i.e. Preliminary examination, Mains examination and interview. The petitioner applied and claimed reservation under the reserved category of EBC-I. The admit card was issued to the petitioner showing the petitioner to be of EBC-I category. Thereafter in the revised result of Preliminary examination, the petitioner was declared successful. The JPSC issued an application form for Mains examination to the petitioner. The petitioner declared in unreserved category based upon his merit and marks in the Mains examination.

The petitioner filled up the form indicating the preference of service; the first preference of the petitioner was Jharkhand Police Service, the second preference was Jharkhand Administrative Service and the third preference was Jharkhand Finance Service.

The petitioner received call letter for interview and he was directed to appear for document verification on 25.02.2020 and for interview on 26.02.2020. The original caste certificate was also called. The final result of the selected candidates was published and the petitioner's name has been mentioned in the final result of Jharkhand Finance Service under unreserved category.

The petitioner downloaded the marks statement, from where, he came to know that he got 621 marks and he has been allocated the Jharkhand Finance Service. The petitioner was surprised that one Sewa Ram Sahu, who also belongs to EBC-I category secured 607 marks in total and his name has been recommended for the "Jharkhand Administrative Service". The petitioner secured 621 marks and he has been allocated the Jharkhand Finance Service.

The case of the petitioner is that he being reserved category candidate has been put in disadvantageous position in service allocation since he has been selected on merit and obtained more marks than the cut off marks of the unreserved category candidate but below in overall merit of unreserved category candidate as such he was allotted "Jharkhand Finance services", whereas on the other hand the other reserved category candidates below in merit than writ petitioner/appellant has been allocated Jharkhand Administrative Service".

Against this anomaly the appellant has preferred writ petitions bearing no. 1449 of 2020 but the same were dismissed by the learned single judge vide order dated 07.06.2021. Hence this appeal has been preferred.

LPA 279 of 2021:

The Appellant/petitioner belongs to the category of EBC-I and he has been issued valid caste certificate. Pursuant to Advertisement no. 23/2016 issued by the JPSC, the Appellant/petitioner being eligible candidate applied for Jharkhand Administrative Service, Jharkhand Finance Service and Jharkhand Education Service Class-II, Jharkhand

Cooperative Service, Jharkhand Social Security Service, Jharkhand Information Service and Jharkhand Police Service. The examination was to be completed in three parts i.e. Preliminary examination, Mains examination and interview. The petitioner applied and claimed reservation under the reserved category of EBC-I.

The admit card was issued to the petitioner showing the petitioner to be of EBC-1 category. Thereafter in the revised result of Preliminary examination, the petitioner was declared successful. The JPSC issued an application form for Mains examination to the petitioner. The petitioner declared in unreserved category based upon his merit and marks in the Mains examination.

The petitioner filled up the form indicating the preference of service; the first preference of the petitioner was Jharkhand Administrative Service, the second preference was Jharkhand Finance Service.

The petitioner received call letter for interview and he was directed to appear for document verification on 23.02.2020 and for interview on 24.02.2020. The original caste certificate was also called. The final result of the selected candidates was published and the petitioner's name has been mentioned in the final result in "Jharkhand Finance Service" under unreserved category.

The petitioner downloaded the marks statement, from where, he came to know that he got 619 marks and he has been allocated the Jharkhand Finance Service but very surprisingly, one Sewa Ram Sahu and Jitendra Kumar Gupta, who also belong to EBC-I category have secured

607 and 605 marks, respectively in total and their name have been recommended for the Jharkhand Administrative Service whereas the petitioner secured 619 marks and he has been allocated the Jharkhand Finance Service.

The case of the petitioner is that he being reserved category candidate has been put in disadvantageous position in service allocation since he has been selected on merit and obtained more marks than the cut off marks of the unreserved category candidate but below in overall merit of unreserved category candidate as such he was allotted "Jharkhand Finance services", whereas on the other hand the other reserved category candidates below in merit than writ petitioner/appellant has been allocated Jharkhand Administrative Service".

Against this anomaly the appellant has preferred writ petition bearing no. 1984 of 2020 but the same were dismissed by the learned single judge vide order dated 07.06.2021. Hence this appeal has been preferred.

LPA 302 of 2021:

The Appellant/petitioner belongs to the category of Scheduled caste reserve category candidate, fulfilling the requisite criteria having claimed reservation, applied for his appointment Pursuant to Advertisement no. 23/2016 issued by the JPSC, for Jharkhand Administrative Service, Jharkhand Finance Service and Jharkhand Education Service Class-II, Jharkhand Cooperative Service, Jharkhand Social Security Service, Jharkhand Information Service, Jharkhand Police Service and Jharkhand Planning service.

The examination was to be completed in three parts i.e. Preliminary examination, Mains examination and interview. The admit card was issued to the petitioner showing the petitioner to be of Scheduled caste reserve category candidate and after clearing all the stages of the said examination he finally selected by obtaining 606 Marks out of 1150.

The writ petitioner/appellant submitted all his credentials including the caste certificate issued by competent authority. The petitioner while filling up the main examination form has indicated the preference of service; the first preference of the petitioner was Jharkhand Administrative Service; the second preference was Jharkhand Finance Service and the third preference was Jharkhand Police Service and onwards.

The final result of the selected candidates was published vide dated 21.04.2020 and the petitioner secured 606 marks and his name was mentioned in the final result in "Jharkhand Planning Service" under unreserved category, but, one Sunny Kumar Das who also belongs to SC category secured 602 marks in total and his name has been recommended for the "Jharkhand Administrative Service".

The case of the petitioner is that he being reserved category candidate has been put in disadvantageous position in service allocation since he has been selected on merit and obtained more marks than the cut off marks of the unreserved category candidate but below in overall merit of unreserved category candidate as such he was allotted "Jharkhand planning services", whereas on the other hand the other reserved category candidates below in merit than writ petitioner/appellant has been allocated * Jharkhand Administrative Service".

For redressal of his grievances, the writ petitioner preferred a writ petition bearing no. W.P.(S) 1451 of 2020 before the learned Single Judge. The said writ petition was dismissed vide order dated 07.06.2021. Hence this appeal.

6. It appears from the factual aspect that the Jharkhand Public Service Commission, in short JPSC, came out with an advertisement being Advertisement No.23 of 2016 for filling 326 vacancies as was requisitioned by the State for different services and categories. The writ petitioners belong to reserved category. They have been declared to be successful. They got more marks than the candidates under their category but since they have got marks at par with the candidates who have been selected under the open merit (UR) have been treated at par with them. Accordingly, they have been given Jharkhand Information Service, Planning Service and Finance Service Cadre. The grievance of the writ petitioners before the writ court was that even though they have been secured higher marks than the last selected candidates under the Jharkhand Administrative Services Cadre but instead of allotting the Jharkhand Administrative Service by treating them under the reserved category, they have been allotted other services by treating them under the open category (UR). Grievance was raised that the writ petitioners cannot be subjected to victimization merely because they have worked hard and secured marks at par with the marks obtained by the open category candidates.
7. The ground has been raised that the writ petitioners may be considered under the respective reserved category and accordingly, they be given Jharkhand Administrative Service Cadre by taking into consideration the

fact that the candidate under the schedule caste category and other reserved category who have secured lesser marks in comparison to the writ petitioners have been allocated Jharkhand Administrative Service Cadre. Grievance having not been redressed, the writ petitioners have filed writ petitions.

The writ petitions have been heard by the learned Single Judge and by considering the condition stipulated under clause 8 of the advertisement which is based upon the executive instructions issued by the Personnel Administrative Reforms and Rajbhasha Department as also the various pronouncements of the Hon'ble Apex Court wherein the consideration of Article 16 (4) has been made, has refused to pass positive direction by dismissing the writ petitions against which the present appeals have been preferred.

Argument on behalf of the appellants/writ petitioners:

8. Mr. Ajit Kumar, learned senior counsel for the appellants/writ petitioners in all the appeals has taken the following grounds while assailing the order passed by the learned Single Judge:
 - (i) The writ petitioners cannot be subjected to discrimination from the candidate under the reserved category by considering them as an open category candidate due to which the rights of the writ petitioners have been denied for getting the post under the Jharkhand Administrative Service cadre. It has been contended that under the Jharkhand Administrative Service Cadre, the candidate who has even secured lesser marks in comparison to that of the writ petitioners have been allotted lucrative post.

The learned senior counsel in the aforesaid backdrop has submitted that merely because the appellants have worked hard and got higher marks, they cannot be allowed to be deprived from the lucrative post and to restrict them to the post other than the post under the Jharkhand Administrative Service Cadre.

(ii) Reliance has been placed upon the judgments rendered by the Hon'ble Apex Court in *Ritesh R. Sah vs. Dr. Y.L. Yamul & Ors.*, (1996) 3 SCC 253; *Satya Prakash vs. Union of India*, 2002 SCC OnLine Del 1000; *Union of India vs. Satya Praksh* (2006) 4 SCC 550; *Anurag Patel vs. UPPSC* (2005) 9 SCC 742; *Union of India vs. Ramesh Ram*, (2010) 7 SCC 234; *Alok Kumar Pandit vs. State of Assam* (2012) 13 SCC 516; *Tripurari Sharan & Anr. Vs. Ranjit Kumar Yadav*, (2018) 2 SCC 656 and; *Dega Venkata Harsha Vardhan vs. Akula Venkata Harshvardhan*, (2019) 12 SCC 735.

(iii) It has been contended by placing reliance upon the judgments rendered in *Anurag Patel vs. UPPSC*(supra) and *Alok Kumar Pandit vs. State of Assam* (supra) wherein exactly in the similar situation, the Hon'ble Apex Court has criticized to put a candidate under the open category by subjecting such candidate in detrimental situation in comparison to the other candidates under the reserved category who have been given the post as per their choice even though they have secured lesser marks in comparison to that of the writ petitioners.

(iv) The learned senior counsel has also placed reliance upon the judgment rendered by the Hon'ble Apex Court in *Union of India vs. Ramesh Ram* (supra) wherein the Constitution Bench of the Hon'ble Apex Court according to the learned senior counsel has laid down the

same proposition but the learned Single Judge has not appreciated the factual aspect in perspective of the settled position of law.

(v) It has been contended by making reference of names under reserved category who have secured lesser marks in comparison to that of the writ petitioners and have been allocated Jharkhand Administrative Service Cadre while the writ petitioners who have secured higher marks in comparison to them, have been considered under the open category and allocated other services like Jharkhand Planning Services, Jharkhand Information Services and Jharkhand Finance Services.

Argument of the learned Advocate General on behalf of the State:

9. Mr. Rajiv Ranjan, learned Advocate General appearing for the State has defended the impugned order by taking the following grounds:

(i) The Personnel Administrative Department came out with a policy decision as contained in Circular No. 12165 dated 31.10.2011 issued by the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand, whereby clause-8 was incorporated. By the said circular, decision has been taken by the State Government that a candidate who is under reserved category has secured marks at par with the candidate who is under the open category, will have to be considered to be a candidate under the open category if the candidature of such candidate has not been accepted under reserved category based upon any relaxation.

(ii) It has been contended that based upon the policy decision, the advertisement also refers the same as under condition no.8 thereof. The JPSC, in compliance of the aforesaid policy decision of the State

Government, has considered the candidature of one or the other candidate who have offered their candidature for its consideration under the reserved category.

(iii) The JPSC, on consideration thereof, and after finding out that the candidate of the reserved category who have secured marks at par with the candidate of the open category, have been considered to be under the open category and accordingly, the post available under the open category on the basis of the merit list prepared based upon the marks secured by one or the other candidate, the services have been allocated.

(iv) The writ petitioners since have secured 611 marks, hence, considering his subject, i.e., Economics, and as per the note as contained in condition no.3 that the services of the writ petitioners of W.P.(S) No.1451 of 2020 has been considered for Planning Services considering him to be a candidate under the open category.

(v) The learned Advocate General has submitted that in view of the said policy decision of the State if the recruitment process has been concluded by considering the candidature of the writ petitioners under the open category, the same cannot be said to be in violation of Article 16(1) of the Constitution of India and Article 16(4) thereof. Since Article 16(1) guarantees right to equality under Part III of the Constitution and although Article 16(4) being an enabling provision and in absence of any provision being brought into effect by the State in order to provide the benefit of reservation, the same cannot be said to be an over-riding effect over and above Article 16(1) of the Constitution.

(vi) It has been contended that the matter would have been different if the State under the enabling provision as stipulated under Article 16(4) of the Constitution comes out with any policy decision or rule for the purpose of granting benefit of reservation then the Article 16(1) will also be treated to be statutory right, i.e., fundamental right for the candidate belonging to the reserved category.

(vii) The learned Advocate General has submitted that the judgment as has been relied upon on behalf of the appellants rendered in *Alok Kumar Pandit vs. State of Assam* (supra) and *Anurag Patel vs. UPPSC* (supra) are concerned, the same are not applicable in the facts and circumstances of the case. Since the judgment rendered by the Hon'ble Apex Court in *Anurag Patel vs. UPPSC* (supra) and *Alok Kumar Pandit vs. State of Assam* (supra) are altogether on different facts. So far as the judgment rendered in *Union of India vs. Ramesh Ram* (supra) is concerned, it has been contended that the said judgment is based upon scrutiny of the rule, i.e., Rule 16(2) of the Civil Services Examination Rules wherein condition has been carved out for treating the open category candidate to be candidate of reserved category in case such candidate has secured marks at par with the candidate of the open category by seeking option from such candidate. The Hon'ble Apex Court while considering the provision of Rule 16(2) has come to the conclusive finding that the said rule cannot be said to be in the teeth of the constitutional mandate. The Hon'ble Apex Court while considering the case of *Union of India vs. Ramesh Ram* (supra) has also disapproved the view taken by the Hon'ble Apex Court in *Anurag Patel vs. UPPSC* (supra) so far as the observation made at paragraphs-5 and 6 are concerned. So far as the judgment rendered in *Alok*

Kumar Pandit vs. State of Assam (supra) is concerned, the same is altogether on different facts.

(viii) It has further been contended that so far as the judgment rendered in *Ritesh R. Sah vs. Dr. Y.L. Yamul & Ors.* (supra) and *Tripurari Sharan & Anr. Vs. Ranjit Kumar Yadav* (supra) are concerned, the same relates to the issue of admission in the educational institution. Hence, the ratio laid down therein will not be applicable in view of the observation made by the Hon'ble Apex Court in *Dega Venkata Harsha Vardhan vs. Akula Venkata Harshvardhan* (supra).

(ix) Learned Advocate General on the basis of the aforesaid premise, has submitted that the order passed by the learned Single Judge suffers from no error.

Argument on behalf of JPSC:

10. Mr. Sanjoy Piprawall, learned counsel for the JPSC has adopted the argument advanced on behalf of the learned Advocate General but in addition to that it has been contended so far as the ground raised regarding the candidates who have secured less marks have been given the Jharkhand Administrative Service Cadre.

11. It has been contended on this issue that there is no unfairness as would appear from para-43 of the counter affidavit filed before the writ court wherein by way of tabular chart, it would be evident that one of the writ petitioners has secured 611 marks (writ petitioner of W.P.(S) No. 1428 of 2020), hence, as per the marks obtained treating the writ petitioner to be under the open category has been allocated the service of Jharkhand Information Services. But the candidates who admittedly have got lesser

marks and their candidatures have been considered in reserved category itself, hence, the JPSC has taken the decision to treat such candidates under the reserved category and while doing so, these candidates based upon their marks, have been found to be higher in comparison to the other candidates under the schedule caste category and accordingly, as per their option treating them under the reserved category have been allocated Jharkhand Administrative Service Cadre.

12. It has been further contended that those candidates are eligible for consideration of Jharkhand Planning Service who are having graduation in subjects Economics, Commerce, Statistics, Mathematics, Geography, Agriculture Science and Civil Engineering which would be evident from clause-3 of the advertisement. At the time of allocation of cadre it was found that such candidate even have secured marks equivalent to unreserved category candidates and candidature of such candidates was considered under unreserved category but such candidate not having requisite qualification as stipulated in the note of clause-3 of the advertisement then such candidates have been allocated other than Planning Services like State Police Service and State Administrative Services treating them under Scheduled Caste category candidate.

In justification of the said decision, if these candidates would not have been treated under the reserved category, then they would have been out from the competition and the same would have been harsh and contrary to the very object and intent of the reservation policy.

13. The learned counsel for the JPSC on the basis of the aforesaid premise, has submitted that the order passed by the learned Single Judge cannot be said to suffer from error.

Argument on behalf of Private Respondents:

14. Learned counsel appearing for the private respondents has submitted that no specific relief has been sought for against them. However, it has been submitted that they are adopting the arguments advanced on behalf of the learned Advocate General for the State and learned counsel for the JPSC.
15. We have heard the learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned Single Judge in the impugned order.
16. This Court considering the arguments advanced on behalf of the parties and going across the pleading made on their behalf has found the following admitted facts:
- (i) There was an advertisement being Advertisement No. 23 of 2016 inviting applications to fill up the various posts.
- (ii) The writ petitioners have made their applications by making reference of reserved category to which they belong. The writ petitioners participated in the process of selection, i.e., preliminary, written and viva voce. The writ petitioners have been declared to be successful and have secured the following marks:

L.P.A. Nos.	Name of Appellant	Category	Marks Obtained (out of 1150)	Service Allocated
231 of 2021	Chandan	Scheduled Caste	611	Jharkhand Information Services
275 of 2021	Sanjay Kumar Mahto	EBC-I	621	Jharkhand Finance Services
279 of 2021	Gautam Kumar	EBC	619	Jharkhand Finance Services
302 of 2021	Kumar Avinash	Scheduled Caste	606	Jharkhand Planning Services

(iii) It appears that the writ petitioners have either been allocated State Planning Services or State Information Services or State Finance Services. The writ petitioners have not been allocated the Jharkhand Administrative Services.

It further appears from the tabular chart as has been produced on behalf of JPSC before the writ court in the counter affidavit filed in W.P.(S) No. 1428 of 2020 wherein at paragraph-49 the marks secured by the last selected candidate in unreserved category in respective services have been referred. For ready reference, the same is being referred as under:

Administrative Services	631
Police Services	679
Finance Services	614
Education Services	614
Co-operative Services	613
Social Security Services	613
Information Services	611
Planning Services	600

(iv) It appears from paragraph-47 that at the time of consideration of case of Rohit Kumar Rajwar for allocation of cadre, i.e., Planning Service it was found that the said candidate was having qualification of graduation with subject history, as such, he was not eligible for consideration in Planning Services since the Rohit Kumar Rajwar has secured 608 marks. As such, the JPSC considered the candidature of said Rohit Kumar Rajwar in reserved category, i.e., SC category, accordingly, he was allocated Jharkhand Police Service in view of the fact that the candidature cannot be rejected on the ground that he was not eligible for consideration

in Jharkhand Planning Services in unreserved category. The said decision was taken on the ground that he was having no requisite educational qualification for Jharkhand Planning Services in terms of advertisement.

(v) It further appears from paragraph-48 that the last selected scheduled caste category candidate whose candidature has been considered in unreserved category on the basis of his/her own merit has secured 606 marks who was having essential educational qualification for planning services.

(vi) The writ petitioner of L.P.A. No. 231 of 2021 has secured 611 marks and hence, he has been allocated the Information Service. Likewise, writ petitioner of L.P.A. No. 275 of 2021 has secured 621 marks and hence, he has been allocated the Finance Services, and writ petitioner of L.P.A. No. 279 of 2021 has secured 619 marks and hence, he has been allocated the Jharkhand Finance Services and writ petitioner of L.P.A. No. 302 of 2021 has secured 606 marks and hence, he has been allocated the Jharkhand Planning Services.

(vii) The advertisement contains a condition to that effect as under the condition no.3 which contains a note wherein it has been provided that the Planning Services will be allocated to such candidate who has graduation qualification in Economics, Matha, Geography, etc. For ready reference, condition no.3 is being referred as under:

“3. शैक्षणिक योग्यता:-

ऑनलाईन आवेदन भरने की अंतिम तिथि तक आवेदक को केन्द्र अथवा राज्य सरकार द्वारा स्थापित संस्था / मान्यता प्राप्त विश्वविद्यालय से किसी संकाय में कम से कम स्नातक अथवा समकक्ष परीक्षाओं में उत्तीर्ण होना अनिवार्य है।

नोट:- झारखण्ड योजना सेवा के लिए आवेदन करने वाले अभ्यर्थियों को किसी मान्यता प्राप्त विश्वविद्यालय से अर्थशास्त्र, वाणिज्य, सांख्यिकी, गणित, भूगोल, कृषि विज्ञान अथवा सिविल इंजीनियरिंग में से किसी एक में स्नातक उत्तीर्ण होना अनिवार्य होगा।”

(viii) Another condition is condition no.8. For ready reference, condition no.8 is being referred as under:

“8. कार्मिक, प्रशासनिक सुधार तथा राजभाषा विभाग, झारखण्ड सरकार के पत्रांक- 12165 दिनांक-31.10. 2011 के आलोक में निम्नांकित प्रावधान लागू होंगे:-

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय, भारत सरकार के कार्यालय ज्ञापन संख्या- 36012/22/93-ईस्ट (एस०सी०टी०), दिनांक- 08.09.1993 तथा 36011/1/98 ईस्ट (रेंज) दिनांक 01.07.1998 से राज्य सरकार को यह समाधान हो गया है कि आरक्षित वर्ग के वैसे अभ्यर्थी जिनका चयन उन मानकों के आधार पर होता है, जो सामान्य अभ्यर्थियों के लिए विहित हो उन्हें आरक्षित वर्ग के रिक्तियों के विरुद्ध सामंजित नहीं किया जाएगा। दूसरे शब्दों में जब आरक्षित वर्ग के अभ्यर्थियों का चयन, सामान्य वर्ग के अभ्यर्थियों की तुलना में ऊपरी उम्र सीमा में छूट/रियायत प्रदान कर दी जाती है तो वे संबंधित आरक्षित वर्ग के रिक्तियों के विरुद्ध सामंजित होंगे। ऐसे अभ्यर्थी अनारक्षित रिक्तियों के लिए अयोग्य समझे जायेंगे।”

(ix) It appears in view of the aforesaid background, the appellants claimed themselves to be considered under reserved category instead of considering their candidature in the open category by virtue of the marks secured by them which has been found to be at par with the last selected candidate under the open category.

(x) The reason for such grievance is that the writ petitioners claimed themselves to be the securer of higher marks in comparison to the other candidate under the reserved SC/EBC-I category and the reserved category candidates who secured less marks have been allocated the lucrative cadre or cadre of their choice, i.e., Jharkhand Administrative Service Cadre or the Jharkhand Police Service while the writ petitions have been subjected to harassment only because they have been found to

be more meritorious by securing more marks in comparison to other candidates under the scheduled caste/EBC reserved category.

(xi) The writ petitioners being aggrieved with such decision have approached to this Court by filing writ petitions.

(xii) The learned Single Judge while taking note of the aforesaid fact has formulated two issues, i.e., (a) whether the writ petitioners are entitled for migration to other service in reserved category; and (b) whether the reservation is a right or not. Both the issues had been answered against the appellants by dismissing the writ petitions against which the present appeals.

17. This Court, on the basis of the material available on record, argument advanced on behalf of the parties and by going through the order impugned, is of the view that the following issues require consideration herein:

- (i) Whether in absence of any policy decision of the State to extend the benefit of reservation to the members of the reserved category can be said to be conferment of right to seek benefit of reservation treating the candidature of the writ petitioner under the open category on the ground that they have secured marks at par with the open category candidates can be said to be not in consonance with the mandate of Article 16(1) of the Constitution of India?
- (ii) Whether the candidature of the writ petitioners who have been treated under the open category (UR) can be said to be unjustified if they have secured marks at par with the last selected candidate under the open category?

- (iii) Whether the consideration of candidature of such candidate can be said to be unjustified in view of the policy decision of the State Government as contained in circular no.12165 dated 31.10.2011?
- (iv) Whether the judgment rendered by Hon'ble Apex Court in the case of *Anurag Patel vs. UPPSC* (supra) and *Alok Kumar Pandit vs. State of Assam* (supra) are applicable in the facts and circumstances of the case?
- (v) Whether the judgment rendered by the Constitution Bench of the Hon'ble Apex Court in *Union of India vs. Ramesh Ram* (supra) aid the case of the appellants for the purpose of treating them under the reserved category?

18. All the issues are linked together, as such, the same are being considered and answered together.

19. This Court while deciding the issue in the context of Article 16(1) and Article 16(4) of the Constitution is of the view that both the articles needs to be referred herein, which read as under:

“16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

16(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”

20. It is evident from Article 16(1) of the Constitution wherein the constitution mandates that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The aforesaid constitutional mandate therefore cast obligation upon the State that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be

ineligible for, or discriminated against in respect of, any employment or office under the State.

21. Article 16(4) provides for reservation of services underneath the State in favour of the backward category. The State shall decide whether or not specific category or citizen is backward or not.

22. (i) The meaning of Article 16 was clarified by the Hon'ble Apex Court in *State of Kerala and Anr. vs. N.M. Thomas and Ors., (1976) 2 SCC 310*. It has been observed in the said case by Justice V.R. Krishna Iyer that the benefits of reservation, by and large, are snatched away by the top creamy layer of the “backward” caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake.

(ii) The Hon'ble Apex Court in *K.C. Vasanth Kumar and Anr. vs. State of Karnataka, 1985 Supp. SCC 714* has observed that the reservation in favour of backward classes must be based upon the means test so as to maintain equality as guaranteed under Article 16(1) of the Constitution.

(iii) The Hon'ble Apex Court in *T. Devadasan vs. Union of India and Anr., (1964) 4 SCR 680* while dealing with the scope of Article 16(4) has delved upon the principle of carry forward rule.

(iv) The Constitution Bench of the Hon'ble Apex Court in *General Manager, Southern Railway, Personnel Officer (Reservation), Southern Railway vs. Rangachari, AIR 1962 SC 36*, wherein, writ petition was filed to restrain the railway administration from implementing the policy

of reservation in promotion to the post of railway services which was allowed by the Madras High Court.

The Hon'ble Apex Court while considering the said order wherein the scope of Article 16(1), 16(4) and 335 have been considered to determine whether the reservation in promotion was permissible under the Constitution. The Hon'ble Apex Court was in agreement on the point that the Article 16(1) covered all matters related to appointment including that of promotions and that the SC/ST are inherently included within the meaning of backward class of citizen under Article 16(4).

It appears from the aforesaid judgment that the Article 16(4) has been treated to be exception to Article 16(1). For ready reference, the relevant paragraph is being referred as under:

“30. Before I construe the words of Article 16(4), I may state that I am not unmindful of the fact that Article 16(4) is a constitutional provision and that constitutional provisions are not to be interpreted in any narrow or pedantic sense. At the same time it cannot be forgotten that Article 16(4) is in the nature of an exception or a proviso to Article 16(1), which is a fundamental right providing equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. This aspect of Article 16(4) in my opinion inevitably requires that the proviso or the exception should not be interpreted so liberally as to destroy the fundamental right itself to which it is a proviso or exception. The construction therefore of Article 16(4) cannot ignore this aspect of the matter.”

The majority view in the said judgment is that the position of Article 16(4) as an exception to the larger principles of equality and non-discrimination.

(v) The Hon'ble Apex Court has also delved upon the Article 16(4) of Constitution in *C.A. Rajendran vs. Union of India and Ors., AIR 1968 SC 507* wherein it has been held that the Article 16(4) does not confer any right on the petitioner and there is no constitutional duty imposed on the

Government to make a reservation for SC and ST either at the stage of recruitment or at the stage of promotion.

23. It is thus evident that Article 16(1) since provides equality clause whereas Article 16(4) confers power upon the State to make out policy decision for the purpose of providing reservation if the State is of the view that a class of society is to be given benefit of such reservation so as to bring such category into the main stream. Perhaps that was the reason for holding the Article 16(4) to be not a fundamental right so long as the State is not coming with any policy decision or regulation under the power conferred under the enabling provision. But the moment, the State under the provision of Article 16(4), which is enabling provision, comes out with a policy decision, the same will be treated to be exception to that of Article 16(1) so as to be given benefit to the members of the backward classes in order to achieve the constitutional goal.

24. The Hon'ble Apex Court in their constitution bench judgment in *State of Kerala and Anr. vs. N.M. Thomas and Ors.* (supra) dealt with the validity of a test-relaxation rule for SCs and STs in promotions from lower division clerks to upper clerks. The majority of four Judges upheld the rule under Article 16(1). According to the majority, Article 16(4) was held to be facet of Article 16(1).

25. Thereafter, the Hon'ble Apex Court in *Indra Sawhney and Ors. vs. Union of India and Ors., 1992 Supp (3) SCC 217* in which the view of the *State of Kerala and Anr. vs. N.M. Thomas and Ors.* (supra) judgment was approved treating the Article 16(1) is a fundamental right, whereas Article 16(4) if an enabling provision.

26. In the case of *Indra Sawhney and Ors. vs. Union of India and Ors.* (supra), the Hon'ble Apex Court was dealing with the validity of 27% reservation provided to OBCs and 10% reservation for economically weaker sections (EWS) in the vacancies in posts and services under the Government of India which were to be filled by direct recruitment.

The Constitution Bench of the Hon'ble Apex Court has approved the policy decision of the State reserving 27% to be provided to the OBCs under the enabling provision of Article 16(4) of the Constitution and the moment the decision was taken, it takes the shape of the fundamental right in view of the enabling power of the State to make out rule for upliftment of the member of the OBC category. Relevant paragraph of the said judgment is being referred as under:

“563. Thus Article 16(1) and (4) operate in the same field. Both are directed towards achieving equality of opportunity in services under the State. One is broader in sweep and expansive in reach. Other is limited in approach and narrow in applicability. Former applies to ‘all’ citizens whereas latter is available to ‘any’ class of backward citizens. Use of words ‘all’ in Article 16(1) and ‘any’ in Article 16(4) read together indicate that they are part of the same scheme. The one is substantive equality and the other is protective equality. Article 16(1) is a fundamental right of a citizen whereas Article 16(4) is an obligation of the State. The former is enforceable in a court of law, whereas the latter is “not constitutional compulsion” but an enabling provision. Whether Article 16(4) is “in substance, an exception” [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] or “a proviso” [Id., p. 939 (Khanna, J)] or an “emphatic way of putting the extent to which equality of opportunity could be carried” [Id., p. 956 (Mathew, J)] or “presumed to exhaust all exception in favour of backward class” [Id., p. 960 (Beg, J)] or “expressly designed as benign discrimination devoted to lifting of backward classes” [Id., p. 969 and 978 (Krishna yer, J)] but if Article 16(1) is the “positive aspect of equality of opportunity”, Article 16(4) is a complete code for reservation for backward class of citizens as it not only provides for exercise of power but also lays down the circumstances, in which the power can be exercised, and the purpose and extent of its exercise. One is mandatory and operates automatically whereas the other comes into play on identification of backward class of citizens and their inadequate representation.

812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture : all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled

Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.

27. It is, thus, evident that the Constitution Bench of the Hon'ble Apex Court in ***Indra Sawhney and Ors. vs. Union of India and Ors.*** (supra) has held the Article 16(4) to be a fundamental right but the same is to be treated a fundamental right if the State comes out with a policy decision to provide benefit of reservation.
28. It is, thus, evident from various judicial pronouncements of the Hon'ble Apex Court that Article 16(1) is the basic concept to provide equality while Article 16(4) confers power upon the State to make out a policy for reservation so as to achieve the very mandate of Article 16(1) of the Constitution. But, in order to provide the right to equality to the members of the other backward communities, the State is to make out a policy decision to provide benefit of reservation, of course, not exceeding 50% ceiling as per the ratio laid down by the Hon'ble Apex Court in the case of ***Indra Sawhney and Ors. vs. Union of India and Ors.*** (supra) coupled with the judgment in the case of ***R.K. Sabharwal and Ors. vs. State of Punjab and Ors., (1995) 2 SCC 745*** wherein in order to maintain ceiling limit the proposition has been laid down that the roster is to be prepared not vacancy wise rather post wise. Relevant paragraph of the said judgment is being reproduced as under:

“6. The expressions ‘posts’ and ‘vacancies’, often used in the executive instructions providing for reservations, are rather problematical. The word ‘post’ means an appointment, job, office or employment. A position to which a person is appointed. ‘Vacancy’ means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a ‘post’ in existence to enable the ‘vacancy’ to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of ‘vacancy’ has no relevance in operating the percentage of reservation.

7. When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in Indra Sawhney v. Union of India [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477] observed as under: (SCC p. 737, para 814)

“Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and Other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e. 270 by Other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say, the number of members of OBCs in the unit/service/category is only 50, a shortfall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all Backward Classes reaches 500, i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age-barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be.””

29. The purpose of dealing these judgments is to come to a conclusion in the facts of the given case that if the State has not come out with a policy decision which is to be taken in the light of the power conferred under Article 16(4) of the Constitution then can the benefit of reservation be given to such candidate.

30. In the light of the aforesaid discussion, we are now proceeding to examine the judgment on the issue of migration.

(i) In *Ritesh R. Sah vs. Dr. Y.L. Yamul and Ors.*, (supra) the issue crept up of reservation that respondent nos. 5 to 36 belonging to the reserved category though could have been admitted on the basis of marks secured in open merit, yet they were admitted as against the reserved category and as a result the petitioner, also belonging to the reserved category, was excluded from getting admission into the MBBS course.

It was held that the student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category candidate. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. Paragraph-17 of the said judgment is being referred as under:

“17. In Ajay Kumar Singh v. State of Bihar [(1994) 4 SCC 401] a three-Judge Bench considered the same question for admission in postgraduate medical course. It was contended that once the candidates seeking admission to postgraduate medical course have already enjoyed the benefit of reservation at the stage of their admission to MBBS course, they are not eligible for admission to postgraduate medical course, as reserved candidates. The contention that provision for reservation at the stage of admission to postgraduate medical course is uncalled for and contrary to

public interest, cannot be accepted. Firstly, the assumption on the basis of which this argument is addressed is untenable. A candidate who is seeking reservation at the stage of admission to postgraduate medical course may not have availed of the benefit of reservation at the stage of admission to MBBS course as he would have been admitted on his own merit in the general quota (open competition quota) but because the competition at the level of postgraduate medical course is extremely acute, he may have to seek the benefit of reservation. Therefore, the assumption that a student seeking benefit of reservation at the stage of admission to postgraduate medical course has already enjoyed the benefit of reservation once previously is not necessarily true. Secondly, there is no rule under Article 15(4) that a student cannot be given the benefit of reservation at more than one stage during the course of his education career. Where to draw the line is not a matter of law but a matter of policy for the State to be evolved keeping in view the larger interests of the society and various other relevant factors. Unless the line drawn by the State is found to be unsustainable under the relevant article, the court cannot interfere. With regard to the observations in *Indra Sawhney case* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] in paragraphs 834 and 839 relied upon to contend that the reservation for admission at the postgraduate level is unconstitutional, it was clarified in paragraph 8 that “the Court was not speaking of admission to specialities and super-specialities. Moreover, MS or MD are not super-specialities. In any event, this Court did not say that they were not permissible”. The argument that reservation at postgraduate level is detrimental to the interests of the society was not countenanced holding that “no one will be passed unless he acquires the requisite level of proficiency. Secondly, the academic performance is not guarantee of efficiency in practice. We have seen both in law and medicine that persons with brilliant academic record do not succeed in practice while students who were supposed to be less intelligent come out successful in profession/practice. It is, therefore, wrong to presume that a doctor with good academic record is bound to prove a better doctor in practice. It may happen or may not”. In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate. The Full Bench of the Bombay High Court in *Ashwin Prafulla Pimpalwar v. State of Maharashtra* [AIR 1992 Bom 233 : 1991 Mah LJ 1336 : (1992) 94 Bom LR 43], held that selection of candidates for admission to postgraduate medical course in colleges run by or under the control of the State Government shall be regulated in accordance with the prescription in that behalf contained in the rule for selection of the candidates for admission to the postgraduate medical course notified by the Government. The contention that the candidates belonging to the Backward Classes admitted to MBBS course selected as general candidates are not eligible for admission as reserved candidates or for scholarship etc. and also for admission to postgraduate medical course as reserved candidates,

is illegal for and in negation of Article 15(4). The memorandum issued by the Government on the basis of the statement made by the Minister of Health, Government of Maharashtra was placed before us showing that such candidates are entitled to all the benefits though admitted on merit basis. The said statement is consistent with Article 15(4). Therefore, the candidates belonging to Backward Classes but selected as general candidates for admission to graduate or postgraduate medical course are entitled to the concessions or scholarships and other benefits according to the rules or instructions of the State Government or the Central Government as the case may be. The admission to the medical colleges for the year 1995-96 in the State of Maharashtra is already over and we are not inclined to interfere with the admissions already made, but we do commend that while deciding and publishing the rules for admission in the next academic session, directions given in this judgment should be borne in mind and the rules should be made accordingly. In view of our conclusion, and admittedly the authorities having admitted the candidates belonging to the reserved category only against seats meant for reserved category even though they were entitled to be admitted on the basis of their merit, the petitioner who could have been otherwise admitted, has been debarred from taking admission. Since the petitioner is a single applicant before us, we direct that the petitioner be admitted to any one of the colleges where he can be so admitted to the MBBS course where seat is still available and if no seat is available then he may be admitted by increasing one seat in any one of the colleges. It may be made clear that if the petitioner is desirous of being admitted to any of the medical colleges in pursuance of this Court's order then he should approach the Designated Authority within two weeks from today and the Designated Authority will then take appropriate action within two weeks thereafter. The Designated Authority will decide the college to which the petitioner will be admitted.

(Emphasis applied)''

(ii) In ***Union of India and Anr. vs. Satya Prakash*** and Ors. (supra) the issue was that the respondent appeared in the reserved quota of OBC. The Union Public Service Commission recommended 737 candidates one-to-one for appointment for various posts from various categories. Against OBC category, total of 174 candidates were recommended for 174 vacancies. 03 (three) candidates were included in the general merit list. 36 OBC category candidates were also included in the general merit list on the recommendation of the Commission. However, preference was given from the relaxed quota, reserved for OBC category despite 174 vacancies earmarked for OBC candidates and the candidates recommended for them only 138 OBC category candidates were provided with the job and the rest 36 OBC category candidates (the respondents) were denied job, for example, a candidate, whose name figure at serial No. 620 in the merit list

had been provided with a job but the respondent herein, whose rank was 606, has been denied the job.

The question was framed as to whether those OBC candidates, who were selected on merit and were placed in the list of open category candidate, could still for the purpose of placement (preference) be considered to be OBC candidate, thereby, exhausting the quota reserved for relaxed OBC category candidates. The Hon'ble Apex Court has been pleased to hold as under paragraph-18, 19 and 20 that if a candidate of the schedule caste/scheduled tribe and other backward class who has been recommended by the Commission without resorting to the relaxed standard, would not get his/her preference in the merit list, he/she can opt a preference from the reserved category but while completing the quota/percentage of reservation, he/she will be deemed to have been allotted a seat as an open category candidate, i.e., on merit and not as a reserved category candidate recommended by the Commission by resorting to the relaxed standard. Simply because he opted a preference from the reserved category would not exhaust the quota of OBC category candidate selected under the relaxed standard. Paragraph-18,19 and 20 of the said judgment read as under:

“18. By way of illustration, a reserved category candidate, recommended by the Commission without resorting to relaxed standard (i.e. on merit) did not get his own preference “say IAS” in the merit/open category. For that, he may opt a preference from the reserved category. But simply because he opted a preference from the reserved category does not exhaust the quota of OBC category candidate selected under the relaxed standard. Such preference opted by OBC candidate who has been recommended by the Commission without resorting to the relaxed standard (i.e. on merit) shall not be adjusted against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes. This is the mandate of the proviso to sub-rule (2) of Rule 16.

19. In other words, while a reserved category candidate recommended by the Commission without resorting to the relaxed standard will have the option of preference from the reserved category recommended by the Commission by resorting to relaxed standard, but while computing the

quota/percentage of reservation he/she will be deemed to have been allotted seat as an open category candidate (i.e. on merit) and not as a reserved category candidate recommended by the Commission by resorting to the relaxed standard.

20. If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category and in such process the choice of preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference.”

(iii) In **Anurag Patel vs. UPPSC** (supra) the issue was that the 3rd respondent i.e. Rajesh Kumar Chaurasia secured 76th place in the select list, who had filed Civil Miscellaneous Writ Petition No. 46029 of 1993 before the High Court of Allahabad contending that he was appointed as a Sales Tax Officer, although the appellant in another writ petition being CA No. 4794 of 1998 i.e. Nanku Ram (Anurag Patel) who was also a Backward Class candidate, was appointed as a Deputy Collector, who according to the 3rd respondent, had secured 97th rank in the select list, a rank lower than him. The Hon'ble Apex Court in the aforesaid context, as under paragraph-5 and 6 has been pleased to hold that if these candidates who got selection in the general category are allowed to exercise preference and then are appointed accordingly the candidates who were appointed in the reserved categories would be pushed down in their posts and the vacancies thus left by the general category candidates belonging to Backward Classes could be filled up by the persons who are really appointed against the quota reserved for Backward Classes. There will not be any change in the total number of posts filled up either by the general category candidates or by the reserved category candidates. For ready reference, relevant paragraphs are being referred as under:

“5. In the matter of admission to the medical college, the same difficulty was experienced and this Court held in Ritesh R. Sah v. Dr. Y.L.

Yamul [(1996) 3 SCC 253] in SCC para 17 of the judgment at pp. 261-62 as follows:

“In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate.”

The same question was considered by this Court in State of Bihar v. M. Neethi Chandra [(1996) 6 SCC 36] wherein it was held in para 13 as follows: (SCC pp. 40-41)

“However, to the extent the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The circular, therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject.”

In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list, were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later. We do not think any error or illegality in the direction issued by the Division Bench of the High Court.

6. *Mr R.N. Trivedi, learned Senior Counsel appearing for the Commission submitted that in case any rearrangement is made, the same persons who had already been appointed are likely to lose their posts. Going by the counter-statement filed by the State in Writ Petition No. 22753 of 1993 it appears that altogether 358 candidates were appointed and 57 posts earmarked for Backward Classes were filled up by the candidates belonging to Backward Classes. Amongst the 358 candidates, those from Backward Classes who secured higher marks than the cut-off mark for the general category also must have got selection in the general category even though they belong to the Backward Classes. If these candidates who got*

selection in the general category are allowed to exercise preference and then are appointed accordingly the candidates who were appointed in the reserved categories would be pushed down in their posts and the vacancies thus left by the general category candidates belonging to Backward Classes could be filled up by the persons who are really appointed against the quota reserved for Backward Classes. There will not be any change in the total number of posts filled up either by the general category candidates or by the reserved category candidates.

(iv) In ***Union of India vs. Ramesh Ram and Ors.*** (supra) the matter on the issue was with constitutional validity of sub-rule (2) to (5) of the Civil Services Examination Rules relating to Civil Services Examinations held by the Union Public Service Commission in the years 2005 to 2007 was the subject-matter. A three-Judge Bench of the Hon'ble Apex Court, by order dated 14-5-2009 [Union of India v. Ramesh Ram, (2009) 6 SCC 619] has referred these cases to the Constitution Bench as it raises an important legal question as to whether candidates belonging to reserved category, who get recommended against general/unreserved vacancies on account of their merit (without the benefit of any relaxation/concession), can opt for a higher choice of service earmarked for reserved category and thereby migrate to reserved category.

The Constitution Bench of the Hon'ble Apex Court had considered all the judgments rendered by the Hon'ble Apex Court in ***Ritesh R. Sah vs. Dr. Y.L. Yamul and Ors.***, (supra); ***Union of India and Anr. vs. Satya Prakash*** (supra) and; ***Anurag Patel vs. UPPSC*** (supra) and has observed by framing out three questions as under paragraph-20 thereof, i.e.,

I. Whether the reserved category candidates who were selected on merit (i.e. MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of “service allocation”?

II. Whether Rules 16(2), (3), (4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14, 16(4) and 335 of the Constitution of India?

III. Whether the order of the Central Administrative Tribunal was valid to the extent that it relied on *Anurag Patel v. U.P. Public Service Commission* [(2005) 9 SCC 742 : 2005 SCC (L&S) 563] (which in turn had referred to the judgment in *Ritesh R. Sah v. Dr. Y.L. Yamul* [(1996) 3 SCC 253] , which dealt with reservations for the purpose of admission to postgraduate medical courses); and whether the principles followed for reservations in admissions to educational institutions can be applied to examine the constitutionality of a policy that deals with reservation in civil services.

The question no.I pertains to whether the reserved category candidates who were selected on merit (i.e. MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of “service allocation”?. It has been answered by taking into consideration the provision of rule 16(2) of the Civil Services Examination Rules and while answering the same, the Hon'ble Apex Court as under paragraph-42 has been pleased to hold that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. Paragraph-42 reads as under:

“42. Therefore, we are of the firm opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category

candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the reserved category."

The question no.II pertains to whether Rules 16(2), (3), (4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14, 16(4) and 335 of the Constitution of India?

This Court before proceeding to examine the verdict of the Hon'ble Apex Court on the issue, deems it fit and proper to refer the provision of Rule 16(2), (3), (4) and (5) of the CSE Rules which read as under:

"Rule 16

(1) ...

(2) While making service allocation, the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Government. If by this process they get a service of higher choice in the order of their preference.

(3) The Commission may further lower the qualifying standards to take care of any shortfall of candidates for appointment against unreserved vacancies and any surplus of candidates against reserved vacancies arising out of the provisions of this rule, the Commission may make the recommendations in the manner prescribed in sub-rules (4) and (5).

(4) While recommending the candidates, the Commission shall, in the first instance, take into account the total number of vacancies in all categories. This total number of recommended candidates shall be reduced by the number of candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes who acquire the merit at or above the fixed general qualifying standard without availing themselves of any concession or relaxation in the eligibility or selection criteria in terms of the provision to sub-rule (1). Along with this list of recommended candidates, the Commission shall also declare a consolidated reserve list of candidates which will include candidates from general and reserved categories ranking in order of merit below the last recommended candidate under each category. The number of candidates in each of these categories will be equal to the number of reserved category candidates who were included in the first list without availing of any relaxation or concession in eligibility or selection criteria as per provision to sub-rule (1). Amongst the reserved categories, the number of candidates from each of the Scheduled Caste, the Scheduled Tribe and Other Backward Class categories in the reserve list will be equal to the respective number of vacancies reduced initially in each category.

(5) The candidates recommended in terms of the provisions of sub-rules (4), shall be allocated by the Government to the services and where certain vacancies still remain to be filled up, the Government may forward a requisition to the Commission requiring it to recommend, in order of merit, from the reserve list, the same number of candidates as requisitioned for the purpose of filling up the unfilled vacancies in each category."

The Hon'ble Apex Court while answering the said issue has been pleased to hold as under paragraph-60 wherein it has observed that the need for incorporating such a provision is to arrest arbitrariness and to protect the interests of the meritorious reserved category candidates. If such rule is declared redundant and unconstitutional vis-à-vis Articles 14, 16 and 335 then the whole object of equality clause in the Constitution would be frustrated and MRC candidates selected as per the general qualifying standard would be disadvantaged since the candidate of his/her category who is below him/her in the merit list, may by availing the benefits of reservation attain a better service when allocation of services is made. Rule 16 in essence and spirit protects the pledge outlined in the Preamble of the Constitution which conceives of equality of status and opportunity. For ready reference, paragraph-60 is being referred as under:

“60. The need for incorporating such a provision is to arrest arbitrariness and to protect the interests of the meritorious reserved category candidates. If such rule is declared redundant and unconstitutional vis-à-vis Articles 14, 16 and 335 then the whole object of equality clause in the Constitution would be frustrated and MRC candidates selected as per the general qualifying standard would be disadvantaged since the candidate of his/her category who is below him/her in the merit list, may by availing the benefits of reservation attain a better service when allocation of services is made. Rule 16 in essence and spirit protects the pledge outlined in the Preamble of the Constitution which conceives of equality of status and opportunity.”

The question no.III has been taken at paragraph-61 of the said judgment wherein the Hon'ble Apex Court has been pleased to hold that the impugned Rule 16(2) is declared as valid so long as it is confined to allocation of services and confirms to the ratio of paras 5 to 7 of **Anurag Patel** (supra) and in that view of the matter it has been held that the respondents should apply Rule 16(2) to ensure that allocation of the service is in accordance with rank-cum-preference with priority given to meritorious reserved candidates for service allocation by virtue of Rule 16(2) which is as per para 5 of **Anurag Patel** (supra).

It has further been held at paragraph-61 thereof that applying the ratio of *Anurag Patel* (supra) (paras 6 and 7), if there is need for reallocation of services, the respondents will take appropriate measures to that extent and complete this process also within two months from the date of receipt of a copy of this order.

It is, thus, evident from the judgment rendered by the Hon'ble Apex Court in *Union of India vs. Ramesh Ram and Ors.* (supra) that the UPSC has formulated a rule in order to deal with the condition of candidates who may not be subjected to suffer by virtue of obtaining higher marks at par with the marks obtained by the candidate under the open category so as not to put them in disadvantageous position and in that view of the matter, an option is required to be taken.

The *Union of India vs. Ramesh Ram and Ors.* (supra) judgment, therefore, lays down the proposition by declaring the Rule 16 of the Civil Services Examination Rules to be valid one.

(v) Another judgment rendered in *Alok Kumar Pandit vs. State of Assam and Ors.* (supra) wherein it would be evident from the fact as under paragraph-7 that the reserved category candidates, who were more meritorious than open category candidates, but were appointed against the reserved category posts should be deemed to have been appointed against the posts earmarked for the open category and they cannot be treated as appointed against the posts earmarked for the reserved category, which is constitutionally and legally impermissible.

While answering the said issue, the Hon'ble Apex Court has been pleased to hold at paragraph-23 that the official respondents did not

commit any illegality by appointing more meritorious candidates of OBC to Assam Civil Service for which they had given preference and the High Court did not commit any error by dismissing the writ petition.

While at paragraph-24.1 it has been held that a reserved category candidate who is adjudged more meritorious than the open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category.

(vi) The judgment rendered in *Tripurari Sharan and Anr. vs. Ranjit Kumar Yadav and Ors.* (supra) and *Dega Venkata Harsha Vardhan vs. Akula Venkata Harshavardhan* (supra) are on the same issue but in the case of admission in the medical institution.

(vii) The Hon'ble Apex Court recently in *Bharat Sanchar Nigam Limited and Anr. vs. Sandeep Choudhary and Ors., (2022) 11 SCC 779* wherein the factual background was that the private respondent No.1-original applicant applied for the post of Telecom Technical Assistants ("TTAs") in pursuance to the Notification dated 6-10-2008 issued by BSNL for filling up of TTA posts. The appointment was to be made by way of direct recruitment by open competitive examination in the Rajasthan Telecom Circle. The said advertisement further provided that the unit of recruitment shall be the respective Secondary Switching Area ("SSA"). The dispute in the said case was relating to the Ajmer SSA. The recruitment process was to be made by conducting competitive examination of eligible candidate. The original applicant got 68.25 marks was placed at waiting list no.1 in the OBC category.

The BSNL came out with a circular/letter to all heads of telecom circles, inter alia, stating that there has been poor pass percentage of candidates in the TTA examination and number of vacancies had remained unfilled. There was acute shortage of manpower and hence it was decided to relax the qualifying marks by 10% for all candidates. Accordingly, the qualifying marks were refixed at 30% for general category and 23% for reserved category. Clauses (iii) & (v) of the said letter provides:

(iii) Successful candidates, qualifying through normal standards in aggregate will rank en bloc senior to those qualifying through relaxed standard in the merit list. However, the provisions of the Recruitment Rules will determine their inter se seniority in the cadre.

(v) The Circles who have already announced the result but have not got adequate number of successful candidates, may further extend the merit/waiting list as per above instructions.

However, while doing so, one Alok Kumar Yadav and Alka Saini, who were found to be more meritorious than the general category candidates subsequently were found eligible to be appointed against the reserved category-OBC. Therefore, Respondent no.1-original applicant, who was wait listed No.1 in OBC category, approached the Tribunal by way of application being OA No. 159 of 2009 for a direction to prepare a fresh list for all candidates based on relaxed standard and act on the said combined merit list. It was the case on behalf of the original applicant that those two candidates belonging to OBC category, who were having more merit, were required to be adjusted against the general category seats and

consequently the seats reserved for OBC category were required to be filled in from remaining reserved category candidates on merit.

The Tribunal, disposed of the OA and directed BSNL to consider the candidature of the original applicant-Respondent no.1, if sufficient vacancies exist for placement of the candidates of OBC and further his candidature shall be considered against the present and future vacancies on OBC category.

Feeling aggrieved and dissatisfied with the judgment and order passed by the Tribunal, BSNL preferred the writ petition before the High Court. The High Court while placing relying upon the decisions of the Hon'ble Apex Court rendered in *Indra Sawhney v. Union of India* (supra); *R.K. Sabharwal vs. State of Punjab* (supra) and; *Rajesh Kumar Daria v. Rajasthan Public Service Commission, (2007) 8 SCC 785* has dismissed the said writ petition by observing that BSNL should have given appointment to Mr. Alok Kumar Yadav and Mr. Dinesh Kumar against the vacancies which were not reserved vertically in the event of shuffling the said two persons to general category. The High Court has further observed that consequently the original applicant could have been selected against the vacancies reserved for the OBC.

The Hon'ble Apex Court while deciding the said issue has formulated the issue, i.e., Whether in a case where the reserved category candidates secured more marks than the general category candidates, such reserved category candidates will have to be first adjusted in the general category pool and they shall be considered for appointment in the general category pool or against the vacancies meant for reserved category candidates?

The Hon'ble Apex Court has considered the judgment rendered in ***Indra Sawhney v. Union of India*** (supra) as under para-812 and the judgment rendered in ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Ors.***, (2007) 8 SCC 785 wherein at paragraph-8 to 11 was taken note which is referred herein also:

8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be: "For SC: 30 posts, of which 9 posts are for women." We find that many a time this is wrongly described thus: "For SC: 21 posts for men and 9 posts for women, in all 30 posts." Obviously, there is, and there can be, no reservation category of "male" or "men".

*9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide *Indra Sawhney* [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , *R.K. Sabharwal v. State of Punjab* [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , *Union of India v. Virpal Singh Chauhan* [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and *Ritesh R. Sah v. Dr. Y.L. Yamul* [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:*

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19

candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)

10. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 woman candidates, which was equal to the quota for "general category women". There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven woman candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 and 41 of the selection list) and another eleven (candidates at Sl. Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 and 80 of the selection list) included under reservation quota for "general category women". This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of "OBC women", instead of adding only two which was the shortfall. Thus there were in all 8 women candidates among the 24 OBC candidates found in the selection list. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for women.

Thereafter, the Hon'ble Apex Court has also considered the judgment rendered in ***Public Service Commission, Uttaranchal vs. Mamta Bisht and Ors., (2010) 12 SCC 204*** wherein at paragraphs-3,4 and 13 to 15, it has been observed which reads as under:

"3. Out of 42 posts, 26 were filled up by general category and 16 by reserved category candidates. Some women candidates stood selected in the general category while others had been given the benefit of horizontal reservation being residents of Uttaranchal. Respondent 1, being aggrieved preferred Writ Petition No. 780 of 2003 (M/B) in the High Court of Uttaranchal seeking quashment of select list dated 31-7-2003 mainly on the ground that women candidates belonging to Uttaranchal had secured marks making them eligible to be selected in the general category and had it been done so, Respondent 1 could have been selected in the reserved category being a woman of Uttaranchal. It had also been pleaded in the petition that

some of the women candidates who not only claimed the benefit of horizontal reservation but have been selected giving the said benefit, did not submit their respective certificate of domicile at the time of filling up the application forms but they produced the said certificate at a later stage and it was accepted.

4. The High Court accepted the first submission of Respondent 1 after examining the record of selection and came to the conclusion that the last selected woman candidate who was given the benefit of horizontal reservation for Uttaranchal women had secured marks higher than the last selected candidate in the general category. Thus, the said candidate ought to have been appointed against the general category vacancy and Respondent 1 ought to have been offered the appointment giving her the benefit of horizontal reservation for Uttaranchal women. Hence, these appeals.

13. In fact, the High Court allowed the writ petition only on the ground that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidates (social) as it held as under:

“In view of the above, Neetu Joshi (Sl. No. 9, Roll No. 12320) has wrongly been counted by Respondent 3/Commission against five seats reserved for Uttaranchal Women General Category as she has competed on her own merit as general candidate and as the fifth candidate the petitioner should have been counted for Uttaranchal Women General Category seats.”

Admittedly, the said Neetu Joshi has not been impleaded as a respondent. It has been stated at the Bar that an application for impleadment had been filed but there is nothing on record to show that the said application had ever been allowed. Attempt had been made to implead some successful candidates before this Court but those applications stood rejected by this Court.

14. The view taken by the High Court on application of horizontal reservation is contrary to the law laid down by this Court in Rajesh Kumar Daria v. Rajasthan Public Service Commission [(2007) 8 SCC 785 : (2009) 1 SCC (L&S) 1055 : AIR 2007 SC 3127] , wherein dealing with a similar issue this Court held as under : (SCC pp. 790-91, para 9)

“9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SCs, STs and OBCs under Article 16(4) are ‘vertical reservations’. Special reservations in favour of physically handicapped, women, etc. under Articles 16(1) or 15(3) are ‘horizontal reservations’. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477] , R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and Ritesh R. Sah v. Dr. Y.L. Yamul [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special)

reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Caste women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women."

(emphasis added)

*15. In view of the above, it is evident that the judgment and order of the High Court is not in consonance with the law laid down by this Court in **Rajesh Kumar Daria** [(2007) 8 SCC 785 : (2009) 1 SCC (L&S) 1055 : AIR 2007 SC 3127]. The judgment and order impugned herein is liable to be set aside and all the consequential orders become unenforceable and insequential. Thus, the appeals succeed and are allowed. The judgment and order of the High Court dated 26-10-2005 passed in Writ Petition No. 780 of 2003 (M/B) is hereby set aside. No costs."*

The Hon'ble Apex Court, by considering all the judgments as referred above, has also considered the judgment rendered in **Ritesh R. Sah vs. Dr. Y.L. Yamul and Ors.**, (supra); **R.K. Sabharwal vs. State of Punjab** (supra); **Union of India v. Virpal Singh Chauhan**, (1995) 6 SCC 684; as also the judgment rendered in **Saurav Yadav and Ors. vs. State of Uttar Pradesh and Ors.**, (2021) 4 SCC 542 has been pleased to answer the issue. The appeal was dismissed and the view of the High Court was upheld wherein it was observed and held that the two reserved category candidates, namely, Mr. Alok Kumar Yadav and Mr. Dinesh Kumar having more marks than the general category candidates appointed, were entitled to the appointment in the general category and the seats reserved for OBC category were required to be filled in from and amongst the remaining candidates belonging to the OBC category. Consequently, Paragraph-30 of the said judgment reads as under:

"30. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. The High Court has rightly observed and held that two reserved category

candidates, namely, Mr Alok Kumar Yadav and Mr Dinesh Kumar having more marks than the general category candidates appointed, were entitled to the appointment in the general category and the seats reserved for OBC category were required to be filled in from and amongst the remaining candidates belonging to the OBC category. Consequently, Respondent 1—original applicant was entitled to the appointment on such post.”

31. It appears from the aforesaid judgment wherein the judgment rendered by the Constitution Bench of the Hon'ble Apex Court in ***Union of India vs. Ramesh Ram*** (supra) was distinguished on fact since the judgment in ***Union of India vs. Ramesh Ram*** (supra) was especially on the issue of the benefit to be extended in view of the provision of Rule 16 (2) and the Hon'ble Apex Court has also observed as under paragraph-29 which reads as under:

“29. We fail to appreciate how the said decision in Ramesh Ram [Union of India v. Ramesh Ram, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412] is applicable to the facts of the case on hand and/or of any assistance to BSNL faced with the decisions of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] and other decisions referred to hereinabove.”

32. This Court, after discussing the aforesaid judgments as above, is now proceeding to examine the issue raised on behalf of the parties for the purpose of answering the same as has been formulated as above.

33. Admittedly herein, the advertisement contains a condition as under clause-8. We have considered the aforesaid condition which is based upon the policy decision of the Personnel Administrative Reforms and Rajbhasha Department dated 31.10.2011. Under the rules of executive business, the Personnel Administrative Reforms and Rajbhasha Department is the Nodal Department to frame rules and once the rules are being framed, the same is to be followed by other departments in view of the implication of the formulation of the said rule said to be in exercise of power under Article 166(3) of the Constitution.

34. It is evident from clause-8 that the State has taken policy decision under the said resolution dated 31.10.2011 that a candidate who has secured marks at par with the open category candidate are to be considered under the open category candidate by making room for the other members of the reserved category candidates. However, the aforesaid principle will not be applicable if a candidate under the reserved category has been considered by virtue of relaxation.
35. The writ petitioners have secured marks at par with the marks secured by the last selected candidate under the open category. The writ petitioners are also having the subject as per the requisite educational qualification as appended to condition no.3. The minimum cut-off marks have been reflected under the Information Service or under the State Planning Service or under Finance Services, in the tabular chart, which was been reproduced herein from the counter affidavit filed on behalf of the JPSC.
36. Herein, the marks secured by the writ petitioner have been reproduced in the tabular chart as above based upon which it is evident that they have secured marks at par with the open category candidate. The writ petitioners were having requisite qualification as stipulated in the condition no.3 of the advertisement, in the graduation, hence, treating their candidature under the open category by virtue of the marks secured by one or the other writ petitioners, they have been allocated respective service cadre.

The writ petitioners are claiming that they have been put to detrimental situation since the candidates who have secured lesser marks in comparison to that of the writ petitioners, have been allocated Jharkhand Administrative Service Cadre, for example, Ajay Kumar Das

and Taleshwar Ravidas, who belong to SC category, have secured 576 and 584 marks respectively, have been allocated with Jharkhand Administrative Service Cadre and the writ petitioners even though have secured higher marks in comparison to the aforesaid mentioned persons and other reserved category candidates, have been put in disadvantageous position by allocating them Jharkhand Finance Services, Jharkhand Planning Services and Jharkhand Information Services.

37. The learned senior counsel appearing for the appellants in the light of the aforesaid argument has relied upon the judgment rendered by the Hon'ble Apex Court in *Anurag Patel vs. UPPSC* (supra); *Alok Kumar Pandit vs. State of Assam* (supra) and; *Union of India vs. Ramesh Ram* (supra) particularly. There is no dispute that in *Anurag Patel vs. UPPSC* (supra) case or *Alok Kumar Pandit vs. State of Assam* (supra) case, the view has been taken that the employees cannot be put to detrimental status.

38. However, due to the conflicting view of the Hon'ble Apex Court comprising of 09 Hon'ble Judges, the Constitution Bench had decided the said issue in *Union of India vs. Ramesh Ram* (supra) case while dealing with the validity of Rule 16(2) of the Rules framed by the Union Public Service Commission wherein the validity of rule has been approved by making observation that if any rule has been formulated in order to provide benefit of option to a candidate who has secured more marks than the marks secured by reserved category candidate in order to protect the right of placing them in the disadvantageous position.

But, herein the question is that whether the judgment rendered in the case of *Anurag Patel vs. UPPSC* (supra) case or *Alok Kumar Pandit*

vs. *State of Assam* (supra) are applicable in the facts and circumstances of the case or the case of *Union of India vs. Ramesh Ram* (supra).

39. The law is well settled that the applicability of judgment is to be tested on the basis of the facts governing the case. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in *Dr. Subramanian Swamy vs. State of Tamil Nadu and Others, (2014) 5 SCC 75*, paragraph 47 of which reads hereunder as:

“47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. “The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.””

40. Herein, it is not the case of the writ petitioners that there was a rule to the effect of taking option from the candidate who have been considered under the open category by virtue of the marks secured by them which was at par with the candidate of the open category rather the writ petitioners have participated in the process of selection based upon the policy decision of the State Government which came into being in the year 2011 itself based upon which the advertisement was issued incorporating the said condition in the advertisement itself.

41. The writ petitioners have appeared without any demeaner and even after seeing the said condition, participated in the process of selection and when the selection process was concluded then they by taking turn around, are now questioning the entire process of selection, but they cannot be allowed to turn around as per the judgment rendered by the Hon'ble Apex Court in *Manish Kumar Shahi Vrs. State of Bihar, reported in (2010) 12 SCC 576*, wherein, at paragraph-16, it has been held which reads as under:-

“16. We also agree with the High Court [Manish Kumar Shahi v. State of Bihar, 2008 SCC OnLine Pat 321 : (2008) 4 PLJR 93] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.” [See also: Madan Lal v. State of J&K, (1995) 3 SCC 486 : 1995 SCC (L&S) 712, Marripati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68, Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 and K.A. Nagamani v. Indian Airlines, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57].

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.”

42. The fact remains that herein, the appellants have participated in the process of selection and as per the criteria fixed by the Jharkhand Public Service Commission, the candidates have been allocated cadres depending upon the marks secured by them.
43. The condition no.8 having not been challenged, as such, it is not available for the writ petitioners to question the same on the principle that once a candidate has participated in the process of selection, he/she cannot be allowed to turn around and question the same.
44. Further, there is another judgment on the issue of availing right to challenge the process of selection, i.e., in the case of ***Dr. (Major) Meeta Sahai vs. State of Bihar and Ors., (2019) 20 SCC 2017*** wherein it has been held as under paragraphs- 15-22 that the turn around principle will be not applicable in a situation where the candidates alleges mis-construction of statutory rules and discriminating consequences, the same cannot be condoned merely because the candidate has taken part in it. The aforesaid paragraphs of the said judgment read as under:

“Preliminary issues

15. Furthermore, before beginning analysis of the legal issues involved, it is necessary to first address the preliminary issue. The maintainability of the very challenge by the appellant has been questioned on the ground that she having partaken in the selection process cannot later challenge it due to mere failure in selection. The counsel for the respondents relied upon a catena of decisions of this Court to substantiate his objection.

16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgments including *Manish Kumar Shahi v. State of Bihar* [*Manish Kumar Shahi v. State of Bihar*, (2010) 12 SCC 576 : (2011) 1 SCC (L&S) 256] , observing as follows: (SCC p. 584, para 16)

“16. We also agree with the High Court [*Manish Kumar Shahi v. State of Bihar*, 2008 SCC OnLine Pat 321 : (2008) 4 PLJR 93] that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.” [See also: *Madan Lal v. State of J&K*, (1995) 3 SCC 486 : 1995 SCC (L&S) 712, *Marripati Nagaraja v. State of A.P.*, (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68, *Dhananjay Malik v. State of Uttaranchal*, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 and *K.A. Nagamani v. Indian Airlines*, (2009) 5 SCC 515 : (2009) 2 SCC (L&S) 57]

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

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.

18. The question of permissibility of giving weightage for “work experience” in government hospitals is also not the bone of contention in this case. Medicine being an applied science cannot be mastered by mere academic knowledge. Longer experience of a candidate adds to his knowledge and expertise. Similarly, government hospitals differ from private hospitals vastly for the former have unique infrastructural constraints and deal with poor masses. Doctors in such non-private hospitals serve a public purpose by giving medical treatment to swarms of patients, in return for a meagre salary. Hence, when placing emphasis on the requirement of work experience, there is no dispute on such recognition of government hospitals and private hospitals as distinct

classes. Instead such recognition ensures that the doctors recruited in not-so-rich States like Bihar have the requisite exposure to challenges faced in those regions.

19. The appellant has thus rightly not challenged the selection procedure but has narrowed her claim to only against the respondents' interpretation of "work experience" as part of merit determination. Since interpretation of a statute or rule is the exclusive domain of courts, and given the scope of judicial review in delineating such criteria, the appellant's challenge cannot be turned down at the threshold. However, we are not commenting specifically on the merit of the appellant's case, and our determination is alien to the outcome of the selection process. It is possible post what is held hereinafter that she be selected, or not.

Statutory Interpretation

20. It is a settled canon of statutory interpretation that as a first step, the courts ought to interpret the text of the provision and construct it literally. Provisions in a statute must be read in their original grammatical meaning to give its words a common textual meaning. However, this tool of interpretation can only be applied in cases where the text of the enactment is susceptible to only one meaning. [Nathi Devi v. Radha Devi Gupta, (2005) 2 SCC 271, para 13.] Nevertheless, in a situation where there is ambiguity in the meaning of the text, the courts must also give due regard to the consequences of the interpretation taken.

21. It is the responsibility of the courts to interpret the text in a manner which eliminates any element of hardship, inconvenience, injustice, absurdity or anomaly. [G.P. Singh on Principles of Statutory Interpretation, 14th Edn., 2016, pp. 145-170.] This principle of statutory construction has been approved by this Court in Modern School v. Union of India [Modern School v. Union of India, (2004) 5 SCC 583, para 62 : 2 SCEC 577] , by reiterating that a legislation must further its objectives and not create any confusion or friction in the system. If the ordinary meaning of the text of such law is non-conducive for the objects sought to be achieved, it must be interpreted accordingly to remedy such deficiency.

22. There is no doubt that executive actions like advertisements can neither expand nor restrict the scope or object of laws. It is therefore necessary to consider the interpretation of the phrase "government hospital" as appearing in the Rules. Two interpretations have been put forth before us which can be summarised as follows:

- (a) Only hospitals run by the Government of Bihar.*
- (b) Hospitals run by the Bihar Government or its instrumentalities, as well as any other non-private hospital within the territory of Bihar.*

The former interpretation to the term, as accorded to it by the respondents, forms a narrower class whereas the latter interpretation used by the appellant is broader and more inclusive.

45. But, the fact of the said case is quite different to the present one since herein, stipulation is there regarding the decision which was taken by the Personnel and Rajbhasha Department, Govt. of Jharkhand and condition no.8 has been incorporated in the advertisement and as such, it ought to have been challenged but the writ petitioners have chosen not to do so.

46. The question is that when the selection process commenced and the JPSC has concluded the process of selection based upon the decision of the State Government which has clearly been stipulated in the terms of advertisement, then can it be said to suffer from error, that is the question to be looked into.
47. It is settled position of law that the recruitment process is to be concluded based upon the recruitment rules/regulation or the policy decision so as to maintain fairness and transparency.
48. The State of Jharkhand, for the said purpose, has come out with the policy decision as under circular no.12165 dated 31.10.2011 and in order to maintain fairness, the same has duly been referred in the advertisement as under clause-8 based upon which the selection process has been concluded and as such, it cannot be said that there is error in the decision making process in the process of selection as is being agitated.
49. We have examined the aforesaid aspect as to why such discrimination has been made. We have found from the counter affidavit filed on behalf of the JPSC wherein justification has been given as under paragraphs-43, 47, 48 and 49, which read as under:

“43. That Petitioner in Support of his prayer for allocation Jharkhand Administrative Service as made in this writ application has stated that Ajay Kumar Das and Taleshwar Ravidas also belong to S.C Category and have secured less marks than the Petitioner but they have been allocated Jharkhand Administrative Services.

In this respect it is most humbly submitted that aforesaid contention of the Petitioner is misconceived in view of the facts that Ajay Kumar Das and Taleshwar Ravidas have secured less marks than the last successful candidate in unreserved category in other words their candidature have been consider in reserved category itself and as per the merit they have been allocated Jharkhand Administrative Service and as such there is no illegality in considering their candidature in S.C. category.

47. That it is stated that at the time of consideration of the case of Rohit Kumar Rajwar for allocation of cadre i.e. Planning Services, it was found that said candidate has having qualification of Graduation with subject

History and as such he is not eligible for consideration in Jharkhand Planning Services in terms of the Advertisement, since said candidate i.e. Rohit Kumar Rajwar has secured 608 marks and as such J.P.S.C considered the candidature of said Rohit Kumar Rajwar in his own category i.e. S.C. category and accordingly he was allocated Jharkhand Police Service in view of the fact that his candidature cannot be rejected on the ground that he is not eligible for consideration in Jharkhand Planning Service in unreserved category on the ground that he has having no requisite educational qualification for Jharkhand Planning Service in terms of the Advertisement.

48. That it is also very relevant to mention here that the last selected S.C Category candidate whose candidature has been considered in unreserved category on the basis of his/her own merit has secured 606 marks who has having essential educational qualification for Planning Service.

49. That for the appreciation of the merit of the case, the marks secured by the last successful candidate in unreserved category in respective services are being quoted here in below:-

<i>Administrative Services</i>	<i>631</i>
<i>Police Services</i>	<i>679</i>
<i>Finance Services</i>	<i>614</i>
<i>Education Services</i>	<i>614</i>
<i>Co-operative Services</i>	<i>613</i>
<i>Social Security Services</i>	<i>613</i>
<i>Information Services</i>	<i>611</i>
<i>Planning Services</i>	<i>600</i>

50. It is evident from the said paragraphs that those candidates although have secured lesser marks than the writ petitioners even then they have been allocated the Jharkhand Administrative Service Cadre.

51. The justification is also there in the aforesaid paragraph that those candidates were having History subject and hence, they cannot be allocated the Planning Service Cadre because these cadres is only to be provided to the candidates who are having with the special subject as per the note of the condition no.3 of the advertisement.

52. The JPSC if, in such circumstances, had not considered the candidature of these candidates even though they have secured more than 600 marks at par with the open category candidates, can it be said to be justified in the context that if they would not have been considered under the open category candidate, then what would be the result.

53. The result would be that they would be thrown out from the process of selection. The benefit of reservation is for the purpose of extending the benefit to the OBC category candidates and when any legislation is being made for the purpose of extending the benefit, the same is to be construed to extend the benefit and not to frustrate the legislative intent and purpose of making it.

54. We have taken aid of the judgment rendered by the Hon'ble Apex Court in this context in *Edukanti Kistamma (Dead) through LRs & Ors Vs. S. Venketareddy (dead) through LRs. & Ors [(2010) 1 SCC 756]*, wherein at paragraph 26 it has been held as under:

“26. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose.....”

Similarly, in *K.N. Nazar Vs. Mathew K. Jacob & Ors 18 [(2020) 14 SCC 126]*, wherein paragraph 13, it has been held as under:

“13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. [Indian Performing Rights Society Ltd. v. Sanjay Dalia, (2015) 10 SCC 161 : (2016) 1 SCC (Civ) 55] It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction [Shivram A. Shiroor v. Radhabai Shantram Kowshik, (1984) 1 SCC 588] . It was observed in Shivram A. Shiroor v. Radhabai Shantram Kowshik [Shivram A. Shiroor v. Radhabai Shantram Kowshik, (1984) 1 SCC 588] that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council [Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council, 2008 HCA 48 : (2008) 237 CLR 285] , Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly.”

55. We have examined the decision of the JPSC in the light of the very object and intent of the interest of the candidate belong to the scheduled caste category and since those candidates have not done graduation in the specialized subject as per the note as contained under condition no.3 of the advertisement, hence, if in that circumstances, the JPSC has taken decision instead of cancelling their candidature rather to consider their candidature under the reserved category and placing them as per the merit and by virtue of which they have been Jharkhand Administrative Service Cadre, it cannot be said to be unjustified.
56. It requires to refer herein again that in view of clause-8 based upon which the policy decision of the Personnel Department of the State of Jharkhand, it is not available for the writ petitioners to take the ground that any right has been said to be conferred under Article 16(4) of the Constitution of India since the State under the enabling provision as enshrined under Article 16(4) has not made out any policy decision for migration of such candidate to be treated under the reserved category and in that view of the matter if the decision has been taken by the JPSC not to migrate the said candidate who have secured marks at par with the open category candidates under the reserved category, it cannot be said to suffer from error.
57. Learned counsel for the appellant has emphasized by placing reliance upon the judgment rendered by the Hon'ble Apex Court in the case of *Alok Kumar Pandit vs. State of Assam* (supra). The question of consideration of such judgment even if on fact is to be accepted, then the question would be that as to whether the *Bharat Sanchar Nigam Limited and Anr. vs. Sandeep Choudhary and Ors.* (supra) almost in the similar

facts of the case which is the recent judgment will be applicable or the previous one which is rendered in ***Alok Kumar Pandit vs. State of Assam*** (supra).

58. Law is well settled that if two views are there of the same coram, the latest judgment is to be relied upon. Reference in this regard be made to the judgement rendered by the Hon'ble Apex Court in ***Subhash Chandra and Another v. Delhi Subordinate Services Selection Board and Others [(2009) 15 SCC 458]***. For ready reference, the relevant paragraph of the aforesaid judgment is quoted hereunder:-

“96. A decision, as is well known, is an authority for what it decides and not what can logically be deduced therefrom. In S. Pushpa [(2005) 3 SCC 1] , decisions of the Constitution Benches of this Court in Milind [(2001) 1 SCC 4] had not been taken into consideration. Although Chinnaiah [(2005) 1 SCC 394] was decided later on, we are bound by the same. It is now a well-settled principle of law that a Division Bench, in case of conflict between a decision of a Division Bench of two Judges and a decision of a larger Bench and in particular Constitution Bench, would be bound by the latter. (See Sardar Associates v. Punjab & Sind Bank [(2009) 8 SCC 257] .)”

59. In that view of the matter, this Court is of the view that the consideration which has been sought to be taken by putting reliance upon the judgment rendered by the Hon'ble Apex Court in ***Alok Kumar Pandit vs. State of Assam*** (supra) is concerned, the same is not of any aid apart from the fact as also on the basis of the legal position and by putting reliance upon the judgment rendered in the case of ***Bharat Sanchar Nigam Limited and Anr. vs. Sandeep Choudhary and Ors.*** (supra), more particularly, the observation made in the said judgment at paragraphs-28, 29 and 30 thereof, which reads as under:

“28. Ramesh Ram case [Union of India v. Ramesh Ram, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412] was a case of Civil Services, where the selected candidates were having different preferences and in a given case, it may happen that the general category candidates, who are less meritorious and the reserved category candidates having more marks than the general category candidates and consequently they are to be adjusted against the reserved category and they can possibly secure posts in a service of a higher preference. Therefore, option was given to such candidates belonging to reserved category to consider their candidature against the reserved category

only despite having higher merit than general category candidates. However, in the present case, there is no question of any such preference. On interpretation of Rule 16(2) in para 42, it was observed and held as under : (Ramesh Ram case [Union of India v. Ramesh Ram, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412] , SCC p. 251)

“42. Therefore, we are of the firm opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the reserved category.”

29. We fail to appreciate how the said decision in Ramesh Ram [Union of India v. Ramesh Ram, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412] is applicable to the facts of the case on hand and/or of any assistance to BSNL faced with the decisions of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1] and other decisions referred to hereinabove.

30. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. The High Court has rightly observed and held that two reserved category candidates, namely, Mr Alok Kumar Yadav and Mr Dinesh Kumar having more marks than the general category candidates appointed, were entitled to the appointment in the general category and the seats reserved for OBC category were required to be filled in from and amongst the remaining candidates belonging to the OBC category. Consequently, Respondent 1—original applicant was entitled to the appointment on such post.”

60. The judgment rendered by the Hon'ble Apex Court in **Alok Kumar Pandit**

vs. State of Assam (supra), according to our considered view, will not be applicable due to the following reasons:

- (i) The question would be that the judgment rendered by the Constitution Bench of the Hon'ble Apex Court in **Union of India vs. Ramesh Ram** (supra) will bind this Court or the judgment rendered in the case of **Alok Kumar Pandit vs. State of Assam** (supra).
- (ii) The law of precedence is there laid down by the Hon'ble Apex Court that the judgment rendered by the higher forum will bind the court. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in **Official Liquidator vs. Dayanand & Ors [(2008) 10 SCC 1]**, so far basics of judicial discipline is concerned

wherein law has been laid down that discipline is sine qua non for effective and efficient functioning of the judicial system. For ready reference, the relevant paragraph nos. 90 and 91 of the judgment is quoted as under:

“90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.”

(iii) Herein also, the case of ***Union of India vs. Ramesh Ram*** (supra) is based upon the consideration of all the previous judgments, as such, rule has been framed in order to protect the interest of the members of the reserved category so that they may not be subjected to any suffering due to obtaining higher marks by keeping them in open category. Hence, in view of the judgment rendered in ***Union of India vs. Ramesh Ram*** (supra) we are of the view that the judgment rendered in ***Alok Kumar Pandit vs. State of Assam*** (supra) cannot be of any aid to the appellants.

61. Accordingly, all the issues are hereby, answered.
62. This Court after having discussion along with the legal position has considered the judgment of the learned Single Judge.
63. We have found that the learned Single Judge has considered the condition stipulated under clause-8 as also clause 14 based upon which the issue has been examined by the learned Single Judge.
64. This Court based upon the reason as assigned by the learned Single Judge in the impugned order, is of the view that the impugned order required no interference.
65. Accordingly, all the appeals stand dismissed.
66. Pending interlocutory application, if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree,

(Navneet Kumar, J.)

(Navneet Kumar, J.)

High Court of Jharkhand, Ranchi

Dated: 18/10/2023

Saurabh/-

A.F.R.