



2026:AHC-LKO:69231-DB

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 233 of 2026

Bhavna Yadav and 6 others

.....Appellant(s)

Versus

State of U.P. Thru. Prin. Secy. Deptt. Appointment and Personnel Lko.
and 2 others

.....Respondent(s)

Counsel for Appellant(s)	: Navneet Yadav, Aahuti Agarwal, Abhishek Khare, Chhote Lal Yadav, Jitendra Kumar, Mohd. Yasir, Vijay Nandan Mani Tripathi
Counsel for Respondent(s)	: C.S.C., Raj Kumar Upadhyaya (r.k.upadhyaya)

Judgment Reserved On: 12.08.2026

Judgment Delivered On: 29.09.2026

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE MANJIVE SHUKLA, J.**

(Per: Rajan Roy, J.)

1. Heard learned counsel appearing on behalf of the parties.
2. This is an Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 filed by the appellants challenging the judgment and order dated 01.05.2026 passed by the learned Single Judge in Writ-A No. 4502 of 2026 (Bhavna Yadav and others Vs. State of U.P. & Others).

3. By a very detailed order dated 13.05.2026 we have already held that the writ Court had erred in dismissing the writ petition as not maintainable. The relevant extract of the said order is quoted below:

“4. As is evident from the relief clause the notification dated 09.01.2020, by which the Commission decided that migration from the Reserved category to the Unreserved/Open category based on the marks secured on merit will be done only at the stage of final selection and not at the preliminary stage. This notification was under challenge. The other challenge was to the advertisement dated 22.12.2025 wherein similar stipulation, as is contained in the notification dated 09.01.2020, was incorporated at Item No. 10. The other relief sought was to hold this recruitment strictly in accordance with the constitutional scheme of reservation and to treat the Reserved category candidates who secured equal or more marks, as an Unreserved / Open category candidate.

5. The appellants-petitioners filled the form for being considered for recruitment to the post which were advertised by the Commission vide impugned advertisement dated 22.12.2025 but before appearing in the selection, they filed the aforementioned Writ-A No. 4502 of 2026 seeking the aforesaid reliefs.

6. The learned Single Judge has dismissed the writ petition on the ground that at that stage, the appellants-petitioners did not have any right to challenge the aforesaid notification / advertisement and that the petition was pre-mature, as, it was still a contingency whether such a situation, as has been alleged in the writ petition, would arise or not. The writ petition according to learned Single Judge was based merely on apprehension, however, while dismissing it on the ground that it is pre-mature, he also observed that it was devoid of merit, as no actionable cause has arisen.

7. With respect, we find the reasoning given by the Writ Court as erroneous in law. The very notification dated 09.01.2020 and the advertisement containing Item No. 10 clearly prohibiting, treatment of a Reserved candidate as an Open category at the preliminary stage and allowing the same only at the final stage, were specifically under challenge. There was already a decision by the Commission to that effect,

therefore, obviously, the recruitment would be held in terms of the stipulation contained in the office order dated 09.01.2020 and Item No. 10 of the advertisement. There could be no presumption that contrary to its own decision and advertisement, the Commission would hold the selection otherwise. The conditions of recruitment could be challenged if they were contrary to law and the Constitution. We are of the considered opinion that the appellants-petitioners approached the Writ Court at the right time, before the selection had actually commenced in the sense that before the examinations took place, as, this would avoid complications in future.

8. We wanted to dispose of the the appeal and remand the matter back to the learned Writ Court for consideration on merits, however, on being asked, learned counsel appearing for the Commission stated that he would like to file counter affidavit in the matter, therefore, we entertain the appeal and keep the matter pending.”

4. We reiterate and affirm the observations contained in the above quoted order.

5. In fact, by the order dated 13.05.2026 we had granted interim relief by which Condition no. 10 of the advertisement dated 22.12.2025 and the decision of the Commission dated 09.01.2020 impugned in the writ petition were stayed till the next date of listing.

6. In fact, we wanted to dispose of the writ petition at that stage itself by remanding the matter to the learned Single Judge, but the counsel for the respondent-Commission insisted that he be given time to file counter affidavit in the matter, and ultimately he has filed a counter affidavit on the merits of the issues involved in the writ petition and the appeal. Not only this, at the time of final arguments, learned counsel for the State and Commission argued on the merits of the issues involved, so that the appellate Court may itself decide the merits of the issues, which was quite reasonable,

as, remanding the matter back in a recruitment matter may consume a lot of time till fresh disposal, and, in the meantime, the recruitment may get stalled on account of the interim order passed by us on 13.05.2026. We may in this regard quote the order dated 17.07.2026 which is as under:

“1. Heard learned counsel appearing on behalf of the parties.

2. Shri Jaideep Narain Mathur, learned Senior Counsel has appeared for the Commission assisted by Shri R.K. Upadhyaya, learned counsel. He prays for ten days time to file counter affidavit.

3. The time prayed for is granted.

4. Three days thereafter shall be available to the appellants for filing rejoinder affidavit.

5. During course of arguments, it transpired that considering the legal issues involved, the same be decided in this appeal itself, therefore, let the writ petition bearing Writ-A No. 4502 of 2026, out of which this appeal arises, be tagged with this appeal, so that, it may be decided along with this appeal. The opposite parties should file their response as aforesaid to the writ petition and the appeal to facilitate the same. Learned counsel for the parties are agreeable to this.

6. List/Put up this case on 04.08.2026, as first case of the day.

7. Interim order, granted earlier, shall continue to operate until further orders.”

7. We, therefore, proceed to decide the merits of the issues raised in the writ petition in the appeal itself.

8. The writ petition out of which the appeal arises was filed seeking following reliefs:

"(a) Issue a writ, order, or direction in the nature of certiorari quashing the notification/ office memorandum No. 343/20/1/S-10ANPARI/2019-20 dated 09.01.2020 (Annexure No. 1) in the interest of justice;

(b) Issue a writ, order or direction in the nature of Certiorari quashing Clause/Paragraph 10 in important instructions of Advertisement No. D-6/E-1/2025 dated 22.12.2025 (Annexure No.2) to the extent it provides that candidates belonging to reserved categories shall be adjusted against the unreserved (open) category only at the stage of final selection, as being arbitrary, unconstitutional, contrary to the U.P. Public Services (Reservation for SC, ST & OBC) Act, 1994, and violative of Articles 14 and 16 of the Constitution of India;

(c) Issue a writ, order or direction in the nature of Mandamus commanding the Respondents to conduct the recruitment process strictly in accordance with the constitutional scheme of reservation and the law laid down by the Hon'ble Supreme Court, by treating all candidates who secure marks equal to or above the unreserved category cut-off as part of the unreserved (open) category at the stage where merit is first determined, including the stage of shortlisting/screening after written examination."

9. The Commission issued an advertisement dated 22.12.2025 for filling various posts including the post of Swasthya Shiksha Adhikari under the Government of U.P. This is the post with which we are concerned in this case. The recruitment to the aforesaid post of Swasthya Shiksha Adhikari is in two stages; one is what the Commission refers as 'preliminary/screening test' and the next stage is of 'interview'. There is no other examination. The appellants-petitioners applied by submitting the form for being considered for recruitment to the aforesaid post, but before appearing in the selection, they filed Writ A No. 4502 of 2026 claiming reliefs as quoted hereinabove.

10. We may refer to impugned Clause 10 of the advertisement with which we are concerned in this appeal/writ petition which is as under:-

"10. The candidates of reserved categories will be adjusted against the unreserved category in the final selection only if

he/she has not availed any benefit/concession in qualifying standard at the stage of Screening Examination."

11. We may also refer to impugned O.M. dated 09.01.2020 issued by the Commission, which reads as under:-

कार्यालय उत्तर प्रदेश लोक सेवा आयोग

संख्या--343/20/01/एस-10/आ०नि०परि०/2019-20

दिनांक : प्रयागराज : 09 जनवरी, 2020

कार्यालय-ज्ञाप

मा० आयोग की असाधारण बैठक दिनांक 09.01.2020 को पत्रावली संख्या--27/मिस/एस-10/2019-20 में मा० आयोग की असाधारण बैठक दिनांक 18.12.2019 में निम्नलिखित निर्णय लिया गया था-- "किसी भी परीक्षा में जिसमें प्रारम्भिक परीक्षा, मुख्य परीक्षा एवं साक्षात्कार तथा स्क्रीनिंग परीक्षा सम्मिलित है, में आरक्षित वर्ग (अनुसूचित जातियों, अनुसूचित जनजातियों, अन्य पिछड़े वर्ग एवं ई०डब्ल्यू०एस०) के अभ्यर्थियों द्वारा यदि किसी स्तर पर चयन प्रक्रिया में खुली प्रतियोगिता के आधार पर किसी अर्हकारी मानक में शिथिलीकरण/छूट का लाभ न लिया हो तो उन्हें ही अन्तिम रूप से अनारक्षित श्रेणी में समायोजित किया जाय यदि वे अन्तिम चयन में अनारक्षित श्रेणी के न्यूनतम कट ऑफ से अधिक अंक प्राप्त करते हैं, अन्यथा वे अन्तिम चयन तक अपनी सम्बन्धित (Respective) श्रेणी में ही रहेंगे।"

उक्त निर्णय के सम्बन्ध में निम्नलिखित निर्णय लिया जाता है--

"मा० आयोग का उक्त निर्णय तत्काल प्रभाव से लागू रहेगा तथा ऐसे सभी पूर्व विज्ञापनों पर भी लागू होगा, जिनके परिणाम अभी घोषित नहीं किये गये हैं।"

2. मा० आयोग की उक्त असाधारण बैठक दिनांक 09.01.2020 में लिये गये निर्णय की प्रतियां सूचनार्थ/अनुपालनार्थ एतद्वारा परिचालित की जा रही हैं।

संलग्नक : यथोक्त

(सत्य प्रकाश)

उप सचिव।

पृष्ठांकन संख्या--343(I)/20/01/एस-10/आ०नि०परि०/2019-20,
तदिनांक।

प्रतिलिपि :- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1- निजी सचिव ग्रेड- I को मा० अध्यक्ष महोदय के सूचनार्थ।
- 2- समस्त निजी सचिवगण को मा० सदस्यगण के सूचनार्थ।
- 3- सचिव महोदय के अपर निजी सचिव।

- 4- समस्त प्रभारी अधिकारी/अपर प्रभारी/उप/अपर सचिव(वित्त)/सिस्टम एनालिस्ट।
 5- समस्त अनुभाग अधिकारी।
 6- वरिष्ठ शोध अधिकारी/पुस्तकालयाध्यक्ष।

(सत्य प्रकाश)
 उप सचिव।

मा० आयोग की असाधारण बैठक दि० 09/01/2020 में लिए गए निर्णय

:-

"पत्रावली संख्या-27/मिस/एस-10/2019-20 में मा० आयोग की असाधारण बैठक दिनांक 18.12.2019 में निम्नलिखित निर्णय लिया गया था-- किसी भी परीक्षा में जिसमें प्रारम्भिक परीक्षा, मुख्य परीक्षा एवं साक्षात्कार तथा स्क्रीनिंग परीक्षा सम्मिलित है, में आरक्षित वर्ग (अनुसूचित जातियों, अनुसूचित जनजातियों, अन्य पिछड़े वर्ग एवं ई०डब्ल्यू०एस०) के अभ्यर्थियों द्वारा यदि किसी स्तर पर चयन प्रक्रिया में खुली प्रतियोगिता के आधार पर किसी अर्हकारी मानक में शिथिलीकरण/छूट का लाभ न लिया हो तो उन्हें ही अन्तिम रूप से अनारक्षित श्रेणी में समायोजित किया जाय यदि वे अन्तिम चयन में अनारक्षित श्रेणी के न्यूनतम कट ऑफ से अधिक अंक प्राप्त करते हैं, अन्यथा वे अन्तिम चयन तक अपनी संबंधित (Respective) श्रेणी में ही रहेंगे।"

उक्त निर्णय के सम्बन्ध में निम्नलिखित निर्णय लिया जाता है

"मा० आयोग का उक्त निर्णय तत्काल प्रभाव से लागू होगा तथा ऐसे सभी पूर्व विज्ञापनों पर भी लागू होगा, जिनके परिणाम अभी घोषित नहीं किये गये हैं।"

ह० प्रेम कुमार सिंह
 सदस्य

.ह०आलोक प्रसाद
 सदस्य

ह० सुशीला सिंह
 सदस्य

ह० डा० रामजी मौर्य
 सदस्य

ह० डा. जयराम प्रसाद वैद्य
 सदस्य

ह० डा० प्रभात कुमार
 अध्यक्ष

12. The impugned O.M. dated 09.01.2020 refers to a decision by the Commission dated 18.12.2019 according to which only those reserved category candidates who had not taken benefit of relaxation in eligibility norms at any stage of selection would be finally adjusted against the unreserved category in the final selection, if they secure more than the cut off marks for unreserved category, otherwise they will remain in their reserved category till final selection. O.M. dated 09.01.2020 applies the said decision prospectively from 09.01.2020 and also to earlier advertisement

where the result of candidates had not been declared. Condition no. 10 of the advertisement impugned in the writ petition is based on the O.M. dated 09.01.2020 and the decision referred therein.

13. There are two limbs to the O.M. dated 09.01.2020; firstly, the inclusion/adjustment of reserve category candidates in the list of successful unreserved category candidates will take place only at the time of final selection. The second limb is, if any relaxation as envisaged in Section 8 of the Act, 1994 has been availed by the candidate, then, such 'inclusion or migration', as the Commission refers to it, will not be available to a reserve category candidate.

14. The contention of the appellants-petitioners' counsel, in nutshell, is that the decision contained in the O.M. dated 09.01.2020 issued by the Commission is unconstitutional, unreasonable and violative of Article 14 of the Constitution of India. It denies the appellants-petitioners fair and equal opportunity in matters of public employment, therefore, it violates Articles 14 and 16 of the Constitution of India. On account of the impugned action, in spite of securing more marks than unreserved category candidates, a reserved category candidate would not be adjusted/included in the list of unreserved category candidates at the stage of preliminary/screening test although the marks obtained therein are counted while preparing the final merit list after the interview is held, which is apparently unreasonable and unsustainable. It was also submitted that none of the appellants-petitioners have taken or claimed any relaxation as is referred in Section 8 of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (hereinafter referred to as the 'Act, 1994') or the O.M. dated 09.01.2020, therefore, the impugned decision is gravely prejudicial to them and is unconstitutional.

15. On the contrary, the counsel for the Commission, in nutshell, submitted that the preliminary/screening test is only in the nature of shortlisting of candidates for the final test which is an interview and, therefore, migration of reserved category candidate to the unreserved category is not mandatory at the stage of preliminary test and the writ petition of the appellants is misconceived. Various other arguments were also advanced which shall be considered as and when we proceed to consider relevant issues.

16. First and foremost is the issue as to whether migration or adjustment of reserve category candidates to the unreserved category can take place only at the final stage of selection or even at the preliminary/screening stage, especially in a case where the marks obtained in the preliminary/screening test are added to the marks of the final selection? Secondly, whether such migration or adjustment can take place where the reserved category candidate has claimed or availed relaxation as envisaged in Section 8 of the Act, 1994 or O.M. dated 09.01.2020? Validity of Condition no. 10 of advertisement dated 22.12.2025 and O.M. dated 09.01.2020 is to be tested in the aforesaid context.

17. Meaning of migration of reserved category candidate to unreserved category and its applicability have been considered by the Supreme Court of India in a catena of decisions, most recent being the case of **(2025) SCC OnLine SC 2931, Rajasthan High Court & Another Vs. Rajat Yadav & Others**. Paragraphs 57 to 62, 66, 67 of which are quoted below:

“57. We are convinced, on the facts that have emerged, that we have an “open” slate before us. As would unfold from the discussion hereafter, our stance remains unchanged from what was conveyed to Mr. Gupta in course of hearing.

58. We begin our observations, analysis and ruling on migration by refreshing our memory with certain well-established principles in relation to affirmative action under our Constitution. It is well-settled that the concept of 'equality before law' ingrained in Article 14 of the Constitution of India contemplates, inter alia, elimination of inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people and is aimed at securing the educational and economic interests of the weaker sections of the society and to protect them from social injustice and exploitation. The equal protection clause urges affirmative action for those who are placed unequally. Affirmative action is also recognised by Article 16. Then again, Article 335 thereof provides for special consideration in the matter of claims of the Scheduled Castes/Scheduled Tribes for public employment. The entire field of law relating to affirmative action is so well occupied by authoritative decisions that we consider it unnecessary to burden this judgment by referring to the same. What particularly concerns us in these appeals is not a sterile invocation of formal legal equality, but an assessment of the real-world consequences flowing from the principle of equality. The focus, therefore, must be on outcomes as much as on rules.

59. Indra Sawhney (supra) explained the principles of reservation. Hon'ble B.P. Jeevan Reddy, J. (as His Lordship then was) declared, inter alia, that where a vertical reservation is made in favour of a backward class, the candidates in this category may compete for open or general category and that if they are appointed on merit in the open or general category, their number will not be counted against the backward class category and, as such, it cannot be considered that the vertical reservations have been filled up to the extent candidates of this category have migrated to the open category on merit.

60. In Saurav Yadav (supra), Hon'ble S. Ravindra Bhat, J. in His Lordship's supplementing opinion³² outlined the features of vertical and horizontal reservation as follows:

59. The features of vertical reservations are:

59.1. They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the social category concerned only (SC/ST/OBC).

59.2. Mobility (“migration”) from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance.

59.3. In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in rank.

59.4. If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be “carried forward” or dealt with appropriately by rules.

60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are “interlocking” reservations 49. As a sequel, they are to be calculated concurrently and along with the inviolate “vertical” (or “social”) reservation quotas, by application of the various steps laid out with clarity in para 21.3 of Lalit, J.'s judgment. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation.

61. The open category is not a “quota”, but rather available to all women and men alike. ...”.

61. The above observations were followed by His Lordship's observation, found almost at the end of the opinion, that the “open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him”. The same have a profound meaning, and needs to be translated into action without being unnecessarily bothered by a term like ‘migration’.

62. Drawing inspiration from the guiding light provided by Indra Sawhney (supra) and Saurav Yadav (supra), we hold that the word ‘open’ connotes nothing but ‘open’, meaning thereby that vacant posts which are sought to be filled by earmarking it as ‘open’ do not fall in any category. One does find categories like ‘open’ or ‘unreserved’ or ‘general’ being widely used in course of recruitment drives but they are meant to signify the open/unreserved vacant posts on which any

suitable candidate can be appointed, regardless of the caste/tribe/class/gender of such candidate. For all intents and purposes, the vacancies on posts which are notified/advertised as open or unreserved or general, as the terms suggest, are not reserved for any caste/tribe/class/gender and are, thus, open to all notwithstanding that a cross-section of society can also compete for appointment on vacant posts which are 'reserved' - vertical or horizontal - as mentioned in the notification/advertisement.

66. Scenario 2, with which we are concerned, occurs when there is a "Merit Induced Shift". Although this shift is largely referred to as migration, we find in Saurav Yadav (supra) Hon'ble Ravindra Bhat, J. explaining the term as adjustment of a reserve category candidate in the unreserved category based on his/her merit.

67. Here, we do not see reason to agree with Mr. Gupta that any shift or adjustment, or even migration as he contends, as such is required where a candidate, who is also otherwise entitled to compete and be selected for a reserved vacant post, happens to outscore, outperform and outshine not only reserved candidates but also general candidates and figures at the top of the list of successful candidates prepared after a qualifying/preliminary examination (for screening/shortlisting) solely by dint of the marks secured by him/her in such examination (without availing any concession/relaxation) thereby entitling him/her to participate in the second tier of a further suitability test. Such a meritorious candidate, notwithstanding that he/she belongs to a reserved category, be it Scheduled Caste or Scheduled Tribe or Other Backward Class, must of necessity (arising out of the concept of equality before law and equal protection of the laws in Article 14, and extended to Article 16 in matters of public employment) be treated as a candidate who has competed for the 'unreserved' category and not the 'reserved' category, thereby obviating the need for any 'migration' or, so to say, shift or adjustment."

18. The plea of double benefit being made available to reserve category candidates i.e. against reserved posts as well as unreserved posts was also considered in **Rajat Yadav** (supra) in Paragraphs 48 to 50 which are as under:

“48. Moving on with consideration of the objection regarding ‘double benefit’, we see no reason to agree.

49. A reserved category candidate, howsoever meritorious he/she might be, in present times has to face stiff competition from other equally meritorious candidates having regard to dearth of jobs in our country. It is out of an anxiety to obtain an employment that such a reserved category candidate typically indicates the category to which he/she belongs for being considered for appointment on a reserved vacancy. Certainly, mere indication of one's reserved category in the application form does not automatically qualify the candidate for appointment on a reserved vacant post but only enables him/her to stake a claim amongst all reserved candidates based on the inter se merit position. Equally, for a deserving reserved category candidate to be appointed on an unreserved vacant post, it is merit and merit alone that must determine suitability. In other words, for the unreserved vacant posts, the inter se merit among all the competing candidates serves as the benchmark for appointment in public service.

50. Bearing such well-acknowledged legal position in mind, we have no hesitation to record our clear agreement with the view expressed by the Division Bench, notwithstanding the assiduous arguments of Mr. Gupta. The premise underlying the argument of potentially conferring ‘double benefit’ to the candidates of the reserved category proceeds on an erroneous assumption that a reserved category candidate is necessarily availing the benefit of reservation at more than one/every stage of a multi-tier process. It is entirely conceivable that a candidate belonging to a reserved category may, on his or her own merit, secure marks in the preliminary stage exceeding the cut-off for the unreserved category and may, likewise, on cumulative assessment, surpass the unreserved cut-off in the final stage as well. In such a situation, the reserved candidate does not draw upon the benefit of reservation at any stage and is entitled to be considered and appointed against an unreserved vacant post purely on merit. The apprehension of a ‘double benefit’, therefore, is misconceived, since the availability of reservation does not operate as a bar for a reserved category candidate from being considered on merit against the unreserved category, placement therein depending solely on merit demonstrably sufficient at the particular stage, a proposition we propose to examine.”

19. The policy of reservation as applicable in the State of U.P. is determined by an enactment, namely, the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 as amended from time to time, and Government Orders on the subject issued by the State of U.P. These enactments and Government Orders are referable to Article 16(4) of the Constitution of India. Section 3 of the Act, 1994 deals with reservation in direct recruitment. It is not in dispute that the service and post in question fall in the category of public services and post as defined in Section 2(c) of the Act, 1994, nor is the applicability of the Act, 1994 to the case at hand in dispute. Section 3(6) relates to adjustment of reserved category candidates in the unreserved category on the basis of merit in an open competition with general candidates. Section 3(6) reads as under:

3 (6) If a person belonging to any of the categories mentioned in sub-section (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1).

20. On a bare reading of the provisions of the Act, 1994, especially Section 3(6), we find that the said provision does not draw any distinction as to its applicability based on the stage of recruitment, meaning thereby, it does not create any embargo on its application to the initial stage of a selection, such as the stage of a preliminary or screening test, as is to be held herein. In fact, the aforesaid provision and the first issue referred by us earlier came up for consideration before a Division Bench of this Court in the case of ***U.P. Power Corporation Ltd. & Anr. Vs. Nitin Kumar & Ors., 2015 SCC Online All 8611***, and it was categorically held that the principle which is embodied in Section 3(6) of the Act, 1994 is not confined in its application only to the stage when the final select list

is to be drawn up. We may quote Paragraphs 8 and 9 of the said decision, which read as under:

“8. Section 3 (6) is a statutory recognition of the principle that if a candidate belonging to a reserved category is selected on the basis of merit in open competition with general candidates, such a candidate is to be adjusted not against the vacancies reserved for the reserved category to which the candidate belongs but against the unreserved seats. This proceeds on the foundation that where a candidate is meritorious enough to be placed within the zone of selected candidates independent of any claim of reservation and purely on the basis of the merit of the candidate, the candidate ought not to be relegated to a seat against the reserved category. The simple reason for this principle is that reservation is a process by which a certain number of posts or seats is carved out for stipulated categories such as OBC, Scheduled Castes and Scheduled Tribes. Unreserved seats do not constitute a reservation for candidates belonging to categories other than the reserved categories. An unreserved post or seat is one in which every individual irrespective of the category to which the person belongs can compete in open merit. Hence, the principle which is embodied in Section 3 (6) is not confined in its application only at the stage when the final select list is to be drawn up. If the submission of the appellants were to be accepted, that would result in seriously absurd consequences. As the learned Single Judge noted, in the present case itself, the petitioners who belong to the OBC category had in fact secured higher marks in the written test than the last short-listed candidate from the unreserved category. However, they were sought to be excluded from short-listing for the unreserved posts only on the ground that as a candidate who had declared himself or herself to be of a reserved category, that candidate would have to be excluded from shortlisting from the unreserved category even if on the basis of the position in merit, such a candidate would otherwise fall in the list of short-listed candidates in the open or unreserved category. Such a consequence would not be permissible in law.

9. The principle of law has been laid down in the judgment of the Supreme Court in Andhra Pradesh Public Service Commission v. Balaji Badhavath- in the following observations:

"One other aspect of the matter must be kept in mind. If category wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well settled principle of law as has been laid down by this Court in several decisions".

21. In **Nitin Kumar** (supra), as is evident from the above quoted paragraphs, the O.B.C. category candidates had secured more marks than the last shortlisted unreserved category but they were sought to be excluded from shortlisting for the unreserved posts only on the ground that as a candidate who had declared himself to be a reserved category that candidate would not be included in the shortlisted unreserved category, which was held to be impermissible and this Court held that application of Section 3(6) of the Act, 1994 is not confined in its application only at the stage of final selection. Similar fact situation arose in Special Appeal No. 200 of 2026 as noticed by us in order dated 13.05.2026 passed in this appeal. The O.M. dated 09.01.2020 does not take into consideration such fact situation rather it contains omnibus provision regarding migration/adjustment of reserved category candidates against unreserved posts only at the stage of final selection which is not in consonance with the law discussed.

22. Similarly, the Supreme Court of India in the case of **Rajat Yadav** (supra) also applied such adjustment/migration at the preliminary stage also.

23. Further, it is admitted to the Commission as recorded in the order dated 26.05.2026 and the order dated 17.07.2026 passed in

this appeal that the marks obtained by the candidates in the preliminary/screening test stage are added to the final marks after interview, based on which the merit list is to be prepared. We have already quoted the order dated 17.07.2026. We may, therefore, quote the order dated 26.05.2026 in this context, which is as under:

"1. Heard.

2. Counsel for the Uttar Pradesh Public Service Commission accepts that in this case marks obtained in the preliminary examination are counted in the final result, therefore, Section 3(6) of the Reservation Act, 2004 will come into the picture and in this context the recent decision of Hon'ble the Supreme Court dated 19.12.2025 passed in Civil Appeal No.14112 of 2024; Rajasthan High Court and Others vs. Rajat Yadav and Others will squarely apply. There is a Division Bench judgment of this Court also dated 19.05.2015 rendered in Special Appeal No.310 of 2015; U.P. Power Corporation Limited and Others vs. Nitin Kumar and Others which would also apply in this case, as such, the interim order dated 13.05.2026 granted earlier shall continue till the next date of listing.

3. In view of the aforesaid discussion, it is made open to the Commission to reconsider deletion of Condition No.10 of the advertisement in question and if it is deleted then the recruitment in question can go on subject to further orders/final order in the appeal and the impugned circular will not be used against the candidates in this recruitment.

4. List/put up this case on 29.05.2026, as fresh.

5. Let a copy of this order be provided to the parties today, if possible."

24. In fact, Clause 2(c) of the advertisement dated 22.12.2025 itself provides for addition of marks of preliminary/screening test to the marks obtained in interview for preparing the final merit. The entire Clause 2 of the advertisement is quoted below:-

"2. By Notification No. 151-ayog/47-ka-4-2023/15/19/18, dated 29 October 2025, issued by the Personnel Department-

4, the "Uttar Pradesh Public Service Commission (Direct Recruitment through Screening Examination) Regulations, 2025" have been promulgated and have come into force with immediate effect. Relevant provisions of aforesaid Regulations provides as follows:

(a) Notwithstanding anything otherwise contained in relevant service rules regarding direct recruitment, the Commission may, hold Screening Examination for selection of suitable candidates for admission to interview.

(b) Where a Screening Examination is held, only such candidates as qualify in the Screening Examination will be entitled for Interview as per the standard of the Commission.

(c) The final merit order will be determined by adding 75% marks in screening test and 25% marks in interview.

(d) The Screening Examination shall be held at places and on dates and time as is fixed by Commission."

25. According to Clause 2(c) of the advertisement 75% marks obtained in the screening test will be added while calculating and preparing the final merit list. The remaining 25% marks would be for interview, meaning thereby, there are only two stages of examination, one is the screening test and the other is the interview. There is no other examination in the interregnum.

26. The advertisement dated 22.12.2025 has been issued after framing of the Uttar Pradesh Direct Recruitment through Public Service Commission (Screening Examination) Rules, 2025 (hereinafter referred to as 'the Rules, 2025') which have been made by the State Government under the proviso to Article 309 of the Constitution of India. Learned counsel for the Commission, Shri R.K. Upadhyaya, accepts that these Rules, 2025 apply to the case at hand and the advertisement has been issued in pursuance thereof.

27. We find that, in fact, condition no. 2(c) in the advertisement dated 22.12.2025 is verbatim reproduction of Rule 4(c) of the

aforesaid Rules, 2025, which provide that the final merit order will be determined by adding 75% marks in screening test and 25% marks in interview. Rule 4(c) is as under:

“4. (c) The final merit order will be determined by adding 75% marks in screening test and 25% marks in interview.”

28. We may, at this stage, point out, that there is slight discrepancy in Rule 1 Clause (iii) of the English version of the Rules, 2025 viz-a-viz the Hindi version. On a reading of the Hindi version, we find that the aforesaid Rules, 2025 applies where direct recruitment is held on the basis of screening examination and interview, both.

29. Learned counsel for the Commission placed heavy reliance upon Rule 33(ii) of the U.P. Public Service Commission (Procedure and Conduct of Business) Rules, 2011 which have been made under Section 11 of the U.P. State Public Service Commission (Regulation of Procedure) Act, 1985 to submit that the preliminary test conducted by the Commission is only a screening test to find out suitable candidate in required proportion as fixed in each category reserved and unreserved for admission to the main examination or interview, therefore, the need to prepare three lists without permitting migration from reserve category to unreserved category at this stage. Rule 33 (ii) reads as as under:-

"33.(ii) Preliminary examination shall mean screening test to be conducted by the Commission with the purpose of finding out suitable candidates in required proportion as fixed by the Commission in each category, reserved and unreserved for admission to the main examination or interview, as the case may be;"

30. The submission of the learned counsel for the Commission was that at the stage of preliminary examination/screening test,

merit is not being determined and therefore, three separate lists based on the category under which the candidate has applied, are prepared i.e. the O.B.C., S.C./S.T. and Unreserved category and candidates continue to remain in their respective category, which is in consonance of the Supreme Court in the case of ***Chattar Singh & Others Vs. State of Rajasthan & Others, AIR 1997 SC 303.***

31. He initially submitted that there is no question of migration of reserved category candidates to the list of unreserved category candidates because merit is not determined at this stage, but subsequently, as is recorded in our orders dated 26.05.2026 and 16.07.2026, he accepted the fact that 75% marks obtained in the screening/preliminary test would be added to the final marks meaning thereby the screening test will have a bearing on the final marks and selection based thereon and interview will be only of 25% of total marks. Thus, the factual premise put forth by Shri Upadhyaya which was the basis to justify non-adjustment/non-migration at the preliminary stage, is incorrect rather non-existent, admittedly so. The screening test in the case at hand is not *stricto sensu* a mere shortlisting exercise instead it has bearing on the final selection, substantially, as, largely (75% marks) the marks in the final selection are based on this very test and interview comprises of only 25% of total marks.

32. We pointedly asked Shri R.K. Upadhyaya, learned counsel for the Commission as to whether in the case of ***Chattar Singh*** (Supra), the marks of the preliminary/screening test were added or were to be added while preparing final merit list, he fairly submitted that, that was not the issue, meaning thereby, marks of the preliminary exam or screening test were not added while preparing the final merit. The Rule position and facts of this case in this regard are different from ***Chattar Singh*** (supra).

33. Apart from the fact that in **Chattar Singh** (supra) marks of the preliminary test were not added to the final marks of the final exam, we find that certain rules applicable in the State of Rajasthan were considered in the case of **Chattar Singh (Supra)** and validity of the said rules was not under challenge. Further, **Chattar Singh's** case has been considered in a recent judgment of Hon'ble the Supreme Court reported in **Rajat Yadav** (supra), which also pertained to State of Rajasthan, wherein the marks which were to be awarded at the stage of preliminary/screening test, were to be added while preparing the final merit list, and the reserved category candidate had not been extended any relaxation/concession, in that eventuality, the Supreme Court after taking into consideration **Chattar Singh** and distinguishing it, held in Paragraphs 68 to 74 of the judgment as under:-

"68. In a two-tier process, as in the present case, we wish to illustrate how, generally, the exercise of screening/short-listing of candidates (belonging to General/Open, Scheduled Caste or Scheduled Tribe or Other Backward Class, etc., categories) with five times the number of vacancies in each category, who would literally be gaining the 'pass' to reach the second tier to participate in the typewriting test on computer can be conducted without complaints of unfairness and non-transparency in the process. Say, 100 vacancies in the General/Open category are notified and a similar number for the reserved categories is also notified. Five times the number of vacancies would mean not more than 500 candidates can be screened/shortlisted for the General/Open category. At the outset, based on the performance of the candidates who take the written test, the recruiting authority has to screen/short-list the candidates to be included in the General/Open category and subsequently for reserved categories. Judicial notice can be taken that this exercise is often facilitated by preparing a broad-sheet, also called a short-list, containing names of all the candidates (who acquit themselves successfully in the written test). For the preparation of the short-list for the General/Open category, candidates are first arranged strictly in descending order of merit and, thereafter, candidates

falling short of the cut-off for such category figure in descending order of merit according to their respective reservation category in separate short-lists. If any candidate, say 'C', being the member of a Scheduled Caste or Scheduled Tribe or Other Backward Class, outscores the candidates not belonging to any reserved category in the written test, he/she shall be included in the short-list for the General/Open category. At this stage, there is no question of any migration; merit is the only criterion amongst all candidates who have to be seen as belonging to General/Open category. Once 'C' gains the 'pass' for the second-tier process and qualifies in the typewriting test on computer obtaining marks in excess of the requisite marks, his/her marks obtained in such test would be required to be added to the marks obtained in the written test. Once again, a broad-sheet has to be prepared based on cumulative scores containing names of all the candidates in order of highest to lowest marks with the more meritorious candidates, obviously, figuring at the top. Preparation of this broad-sheet is a handy tool for drawing up the final merit list of candidates. From the broad-sheet, names of candidates drawn up in order of merit with candidates ranked according to their marks in descending order, commonly called the Combined Merit List, ought to reflect where each one of the aspiring candidates stand on merit. If 'C' figures within the first 100 candidates in order of merit, i.e., the number of vacant posts for the General/Open category, he/she shall be counted as a General/Open candidate for the purpose of appointment. Here too, there is no question of migration for the reason we have already indicated above, i.e., merit being the only criterion and not caste/tribe/gender, etc. If 'C' does not figure in the first 100 candidates and whilst preparing the merit list of reserved category candidates it is found that he/she figures within the specified number of vacancies in the reserved category to which he/she belongs and which can be filled up by appointing him/her, he/she ought to be counted as a candidate of such reserved category for appointment. If 'C' fails to figure in the merit list for the reserved category list as well, question of his/her appointment would not arise.

69. We, however, sound a note of caution that our observations above are relatable to the selection process of the kind under consideration. It has not been shown with reference to the recruitment rules that the same ordain otherwise. If, at all, the recruitment rules governing any

selection process ordain otherwise than what is observed above, obviously the recruitment rules would have precedence subject to the condition that such rule passes the test of constitutionality.

70. Reverting to the appeals under consideration, we see no reason to say that there has been a 'migration', in the sense of either an adjustment or a shift being made. At the time of screening/short-listing of candidates based on their performance in the qualifying examination and even thereafter, initially all the aspiring candidates including the reserved candidates should be seen as General/Open candidates. If such a candidate, notwithstanding that he/she belongs to a reserved category maintains excellence in standard even in the second tier of examination (typewriting test, in this case), he/she would cease to be treated as a candidate belonging to any category and entitled to treatment as a candidate seeking appointment on a vacant post which is categorised as General/Open. Should there be a decline in performance in the second tier test pushing out the candidate from the zone of consideration for appointment on posts which are open or unreserved or general but not beyond the zone for the reserved vacant posts, it is necessary to regard him/her as a candidate belonging to the reserved category to which he/she belongs, thereby paving the way for him/her to stake a claim for consideration for appointment on an appropriate reserved vacant post.

71. In the milieu of facts, none of the petitioning candidates has been shown to have availed of any concession/relaxation. No law either rule or executive instruction has been shown which prevented the High Court from treating the reserved candidates as General/Open candidates once it transpired that they outshone the latter. Question of any migration or deriving twin benefits of migration did not and could not arise in the circumstances.

72. If we accept the proposition advanced by the appellants, it would not only have a detrimental impact on candidates from the disadvantaged sections but also erode the principles enshrined in the Constitution.

73. Now, turning to Chattar Singh (supra) which was heavily relied on by the appellants, we have to record that the ratio laid down therein must be appreciated in its proper

context. In that case, the scheme of examination clearly provided that the marks obtained in the preliminary examination would not be considered for the determination of final merit. The rule therein, appearing from paragraph 5 of the decision, read as follows:

5. Rule 13 of the Rules prescribes the mode of conducting preliminary as well as Main Examination. It reads as under:

"13. Scheme of Examination, personality and viva voce test.- The competitive examination shall be conducted by the Commission in two stages, i.e., Preliminary Examination and Main Examination as per the scheme specified in Schedule III. The marks obtained in the Preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit..."

It is in view of this rule that this Court held that the claim of reserved category candidates to be accommodated in the open category on the basis of marks obtained will be determined at the final stage. We find no reason to differ from that principle. However, the facts of the present case stand on a distinct footing. First, the main written examination here is not a mere preliminary/screening test but an integral and substantive component of the selection process, carrying 300 marks out of a total of 400 constituting 75% of the final assessment. Its weight and determinative value distinguish it from the limited preliminary stage examination contemplated in *Chattar Singh (supra)*, thereby rendering that ratio inapplicable to the present factual matrix. Secondly, the inclusion of a reserved category candidate in the open merit list at the stage of shortlisting cannot be equated with migration', for no benefit or concession of reservation is availed. Such Inclusion is purely merit-based and, therefore, stands on a plahe distinct from the concept of 'migration' as addressed in *Chattar Singh (supra)*.

74. Before we part, we find it necessary to enter a caveat. A situation could arise, if the aforesaid principles were applied, of a reserved category candidate based on his/her performance outshining General/Open candidates and figuring in the General merit list, but finding the options to be limited. He/she may, as a consequence of being counted as a General candidate, lose out on a preferred service or a

preferred post because the same is reserved for a reserved category candidate. Should such an eventuality occur, the same is bound to breed dissatisfaction, disappointment and displeasure which are not in the interests of public service. After all, fairness matters even in public employment. Where adjustment against the unreserved category would, result in a more meritorious reserved category candidate being displaced in favour of a less meritorious candidate within the same category for a preferred service or a preferred post within the reserved quota, the former must be permitted to be considered against the service/post in the reserved quota. This would ensure merit being preserved both across categories and within them, and that reservation functions as a means of inclusion rather than an instrument of disadvantage. The approach adopted by us in holding so is consistent with the view expressed by this Court, encapsulated in paragraph 24.1 of Alok Kumar Pandit (supra). We may also mention here that prior to the view expressed in Alok Kumar Pandit (supra), the High Court at Calcutta in a somewhat like situation took the same view in Mukul Biswas v. State of West Bengals."

34. Further, the Supreme Court, for the reasons given in the above-quoted paragraphs, held that inclusion of Reserved category candidates in the Unreserved category would have to take place in such a scenario. The factual position in the case before us is similar to that of **Rajat Yadav** (Supra). In this view of the matter, reliance placed by Shri R.K. Upadhyaya, learned counsel for the Commission upon **Chattar Singh** (Supra) is misplaced.

35. **Chattar Singh's** case is not applicable to the recruitment at hand, for various reasons; firstly, the issue involved therein was very different from the one involved herein. The question of migration or inclusion of reserve category candidates in the unreserved category list was not involved therein. In the said judgment, the issue was regarding interpretation of proviso to Rule 13, which permitted the Commission to lower the cut-off marks by 5% for Scheduled Caste candidates. The second question was as to whether the benefit of the said proviso to Rule 13 of the relevant

rules was available to OBC candidates or not, which are not the issues involved herein. Of course, while considering the said issue, towards the end of the judgment, it was mentioned that under the latest amendment to the relevant rules, separate lists are required to be published by the Service Commission in respect of the candidates in the respective categories so as to make up number of candidates 15 times the notified or anticipated posts/vacancies so as to enable them to appear in the main examination. Learned counsel for the Commission laid great emphasis on these observations, but this aspect of the matter and the judgment in **Chattar Singh** has already been considered in **Rajat Yadav** extensively, and not only it has been distinguished on the issues involved before us, but, even otherwise, the implementation and application of the policy of reservation in this regard has been explained in detail. We have already quoted relevant extracts thereof, therefore, **Chattar Singh** does not help the cause of the Commission on the issues involved herein. There is no rule of recruitment made by the State of U.P. as applicable in this case which prohibits such adjustment/migration.

36. Learned counsel for the Commission also placed before us a situation where a reserved category candidate is included in the list of successful candidates at the preliminary or screening stage but in the final selection he secures lower rank amongst the unreserved category, whereas, a reserved category candidate who had secured less marks than him in the OBC category at final/screening stage secures higher rank in the reserved category consequently is entitled to a higher post whereas the reserved category candidate who had had been included in the unreserved category gets a lower post or does not get the preferred post where the recruitment is for various selection/post such as Provincial Civil Services Examination (Executive), etc., and posed a question, whether this will not defeat

his rights and will it not be unfair? because if he continues in the list of reserved category this prejudice will/would not be caused. This conundrum has been answered by the Supreme Court in para 74 of **Rajat Yadav** (supra) which we quote once again:

“74. Before we part, we find it necessary to enter a caveat. A situation could arise, if the aforesaid principles were applied, of a reserved category candidate based on his/her performance outshining General/Open candidates and figuring in the General merit list, but finding the options to be limited. He/she may, as a consequence of being counted as a General candidate, lose out on a preferred service or a preferred post because the same is reserved for a reserved category candidate. Should such an eventuality occur, the same is bound to breed dissatisfaction, disappointment and displeasure which are not in the interests of public service. After all, fairness matters even in public employment. Where adjustment against the unreserved category would, result in a more meritorious reserved category candidate being displaced in favour of a less meritorious candidate within the same category for a preferred service or a preferred post within the reserved quota, the former must be permitted to be considered against the service/post in the reserved quota. This would ensure merit being preserved both across categories and within them, and that reservation functions as a means of inclusion rather than an instrument of disadvantage. The approach adopted by us in holding so is consistent with the view expressed by this Court, encapsulated in paragraph 24.1 of Alok Kumar Pandit (supra). We may also mention here that prior to the view expressed in Alok Kumar Pandit (supra), the High Court at Calcutta in a somewhat like situation took the same view in Mukul Biswas v. State of West Bengals.”

37. The law as elucidated by the Supreme Court in **Rajat Yadav** (supra) (para 74, etc.) is a complete answer to the question posed by learned counsel for the Commission, as aforesaid.

38. The O.M. dated 09.01.2020 apparently contains an omnibus provision which applies the principle of adjustment/migration as referred above only at the final stage and not at the initial stage of preliminary test or screening test, irrespective of the fact situation

occurring in a particular recruitment and irrespective of the conditions of recruitment as determined by an enactment or Rules made by the State, such as, in a fact situation as occurred in **Nitin Kumar** (supra) and one which had occurred in Special Appeal No. 200 of 2026 decided on 12.05.2026 as referred in our order dated 13.05.2026 passed in this appeal or for that matter in a case such as the one at hand where the marks obtained in the preliminary/screening test are to be added to the final marks of the final examination. O.M. dated 09.01.2020 thus suffers from non-application of mind to relevant aspects as noticed. A blanket decision, assuming that the Commission has jurisdiction in this regard, such as the one contained in O.M. dated 09.01.2020, is apparently not in consonance with the law as enunciated by the Division Bench in **Nitin Kumar** (supra) as also the decision of the Supreme Court of India in **Rajat Yadav** (supra)

39. We are conscious of the fact that in the case at hand, the preliminary/screening test has not been held as yet, but in Special Appeal No. 200 of 2026 which we have quoted in our order dated 13.05.2026 in this appeal, referred above, we found that a situation arose where the cut-off marks of the O.B.C. was higher than the Unreserved category and the Commission ousted the O.B.C. candidate from consideration in the main examination at the preliminary/screening stage itself on the ground that he has not secured the minimum cut-off marks for his own category, oblivious of the fact, that he had secured higher marks than the minimum cut-off for the Unreserved category. As such O.B.C. candidates were not adjusted/migrated to unreserved category, the result was that the O.B.C. category candidates in spite of having secured more marks than the Unreserved category candidate, even if at the stage of preliminary/screening test, were ousted from further consideration in the main examination, whereas, the Unreserved category

candidate, even after having secured less marks, was allowed to appear, therefore, we had observed in the said case that this would be a case of apparent violation of Article 16(1) of the Constitution of India. The situation was similar to that of **Nitin Kumar** (supra). This is relevant in the context of O.M. dated 09.01.2020 which does not take into consideration such a fact situation.

40. In view of the above, inclusion or adjustment of a reserve category candidate in the list of unreserved category candidates, which the Commission refers as migration is applicable even at the preliminary or screening test stage, especially where the marks obtained in such preliminary/screening tests are added to the marks of the final selection or a fact situation as existed in **Nitin Kumar** (supra). The legal position in this regard has been settled by a Coordinate Bench of this Court in the case of **Nitin Kumar** (supra). Such migration or adjustment was also applied by the Supreme Court in **Rajat Yadav** (supra) at the preliminary/screening test stage which was a case where the reserved category candidate had not availed any relaxation or concession, therefore, the logical and legal inference is that the same is applicable even at the preliminary/screening test stage, especially where the marks of the preliminary/screening test are added to the final marks of the final selection, and in a case where the reserved category candidates have not claimed or availed any relaxation or concession, such as the case at hand. In this case, it is not the case of the opposite parties in the counter affidavit that the appellants-petitioners have claimed or availed any relaxation or concession referable to Section 8 of the Act, 1994 or the O.M. dated 09.01.2020. In fact, the appellants-petitioners have specifically averred in Para 5 of the rejoinder affidavit that they have not claimed or taken any relaxation or concession while filling up the form for being considered for

selection. The situation could be different if marks obtained in such preliminary or screening or shortlisting test are not added to the final marks/final selection and the situation as discussed in **Nitin Kumar** (supra) and Special Appeal No. 200 of 2026, does not exist, but, the O.M. dated 09.01.2020 does not contain any application of mind to different fact situations which may exist instead it contains an omnibus and blanket provision which is bound to result in violation of valuable constitutional and legal rights of reserved category candidates in respect to migration/inclusion of/to unreserved posts at the preliminary stage, as discussed.

41. The O.M. dated 09.01.2020 and the decision dated 18.12.2019 referred therein insofar as it restricts the migration or adjustment of reserved category candidates to the unreserved category at the final stage of selection only, suffers from non-application of mind to relevant aspects and is unreasonable. There is no constitutional or legal basis for such a blanket prescription, that too, by the Commission, especially when Section 3(6) of the Act, 1994 does not put any such restriction. Further, in the present case, it is the admitted position that marks obtained in the preliminary/screening test are added to the final marks of the final selection, as already discussed, therefore, in view of the Supreme Court judgment in **Rajat Yadav** (supra), the said part of the OM dated 09.01.2020 cannot be applied to the case at hand.

42. On the point of relaxation/concession as referred in Section 8 of the Act, 1994 or the OM dated 09.01.2020 there is no averment in counter affidavit to the effect that any such relaxation or concession has been claimed or extended to the appellants-petitioners at the preliminary/screening stage. In fact, in para 5 of the rejoinder affidavit, the appellants-petitioners have categorically

stated that none of the appellants have taken any relaxation while filling application form for the selection in question.

43. In view of the above discussion, and considering the Rule position and fact in this case, reliance placed by the counsel for the Commission on a Division Bench judgment in ***Sanjeev Kumar Singh vs. State of U.P. and others; 2007 (2) ESC 1042 (All)*** is of no help as the Rules in the said case did not require addition of marks obtained in the preliminary examination to the final selection/marks and and it was a judgment rendered prior to judgment of Supreme Court in ***Rajat Yadav*** (supra) . Likewise the coordinate Bench judgment in ***Special Appeal No. 763 of 2026 (Pankaj Verma and others vs. State of U.P. and another)*** held the appeal as not maintainable as it was directed against a procedural order passed by the learned Single Judge which did not decide any issue and in this context made some *prima facie* observations were made which do not constitute a binding ratio or precedent, for obvious reasons, as such, said decision is also of no help to the Commission on the aforesaid issue, especially in view of the discussions already made.

44. The other issue to be considered by us is as to whether the O.M. dated 09.01.2020 insofar as it restricts migration/adjustment of reserved category candidates to the unreserved category, in the event the former secures marks above the cut-off marks of the unreserved category, to only such reserved category candidates who have not claimed or availed any relaxation or concession in the minimum eligibility/qualifying standards/norms, is sustainable in law?

45. In this regard, the legislative policy, as already stated, pertaining to reservation in the matter of employment to posts under

the State Government is contained in the Act, 1994, especially Section 3(6) thereof which pertains to inclusion/adjustment (migration) of reserved category candidates in unreserved category. Section 3(6) of the Act, 1994 entitles a reserve category candidate to be adjusted in the open category on the basis of merit, Section 8 speaks of concession. The Act of 1994 categorically permits concession and relaxation vide Section 8 thereof, which reads as under:

“8. Concession and relaxation. – (1) The State Government may, in favour of the categories of persons mentioned in sub-section (1) of Section 3, by order, grant such concessions in respect of fees for any competitive examination or interview, and relaxation in upper age limit, as it may consider necessary.

(2) The Government Orders in force on the date of the commencement of this Act, in respect of concessions and relaxations, including concession in fees for any competitive examination or interview and relaxation in upper age limit and those relating-to reservation in direct recruitment and promotion, in favour of categories of persons referred to in sub-section (1), which are not inconsistent with the provisions of this Act, shall continue to be applicable till they are modified or revoked, as the case may be.”

46. The said provision does not contain any prohibition or embargo as to the migration or inclusion of reserve category candidates in the list of unreserved category candidates after having availed concession or relaxation as envisaged therein. In fact, this issue came up for consideration before the Hon'ble the Supreme Court in the case of ***Jitendra Kumar Singh and another vs. State of U.P. and others; (2010) 3 SCC 119***, wherein the scheme of the Act of 1994, including Section 8 thereof and the instructions issued by the Government on the question in issue were considered and their Lordships held as under:

“70. It was strenuously argued by Mr. Rao and Dr. Rajeev Dhawan that Section 3 (6) of the Act of 1994 does not permit the reserved category candidates to be adjusted against general category vacancies who had applied as reserved category candidate. In the alternative, learned counsel had submitted that at least such reserved category candidate who had appeared availing relaxation of age available to reserved category candidates cannot be said to have competed at par in Open Competition with General category candidates, and therefore, cannot be adjusted against the vacancies meant for General Category Candidates.

71. We are of the considered opinion that the concessions falling within Section 8 of the Act of 1994 cannot be said to be relaxations in the standard prescribed for qualifying in the written examination. Section 8 clearly provides that the State Government may provide for concessions in respect of fees in the competitive examination or interview and relaxation in upper age limit.

72. Soon after the enforcement of the 1994 Act the Government issued instructions dated 25.03.1994 on the subject of reservation for Scheduled Caste, Scheduled Tribe and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:-

"4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category."

From the above it becomes quite apparent that the relaxation in age limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. Main Written Test followed by Interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that Government Orders in force on the commencement of the Act

in respect of the concessions and relaxations including relaxation in upper age limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.”

47. The Supreme Court considered the Government instructions dated 25.03.1994 which did not prohibit the migration of such reserve category candidates to the unreserved category if they had secured the requisite marks, merely because they had availed certain concessions or relaxations referable to Section 8 of the Act of 1994. Thus, the State policy was found to be very categorical in this regard. Accordingly, based on the aforesaid legislative policy and the policy of the State evinced in the G.O. dated 25.03.1994, the Supreme Court opined that such relaxations cannot deprive a reserve category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination.

48. In fact, the Supreme Court in ***Jitendra Kumar Singh*** (supra) held that such concession or relaxation in fee or age are not relaxation/concessions in the standard prescribed for qualifying an examination.

49. It also noticed sub-section (2) of Section 8, which clearly provided that Government Orders in force on the commencement of the Act of 1994 in respect of concessions and relaxations, including relaxation in upper age limit, which are not inconsistent with the Act, continue to be applicable till they are modified or revoked. These observations were necessary as the Act of 1994 had come into force subsequent to the aforesaid G.O. dated 25.03.1994. In fact, the Act of 1994 was notified in the Gazette on 23rd March, 1994, but as per Section 1(2), it is deemed to have come into force on 11th December, 1993.

50. The judgment in ***Jitendra Kumar Singh*** (supra) came up for consideration in the case of ***Niravkumar Dilipbhai Makwana vs. Gujarat Public Service Commission and others***, (2019) 7 SCC 383, and their Lordships observed in paras 24, 25 and 26 of the report as under:

“24. Now, let us consider the judgment in *Jitendra Kumar Singh* (supra). In this case, this Court was considering the interpretation of Subsection (6) of Section 3 of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short "1994 Act") and the Government Instructions dated 25.03.1994. Sub section (6) of Section 3 of this Act provided for reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward Classes which is as under:

"(6) If a person belonging to any categories mentioned in subsection (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under subsection (1)."

25. The State of U.P. issued Instructions dated 25.03.1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Groups in the Uttar Pradesh Public Services. Last line of these instructions is as under: "It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category."

26. On consideration of subsection (3) of Section 6 of the 1994 Act and the Instructions dated 25.03.1994, this Court held that grant of age relaxation to a reserved category candidate does not militate against him as general category candidate if he has obtained more marks than any general category candidates. This judgment was based on the statutory interpretation of 1994 Act and the Instructions dated 25.03.1994 which is entirely different from the statutory scheme under consideration in the instant appeal. Hence, the principle laid down in *Jitendra Kumar Singh* (supra) has no application to the facts of the present case."

51. Of course, in the aforesaid case of **Niravkumar Dilipbhai Makwana** (supra), the reservation policy as evinced in the Government Orders/Circulars/O.Ms which were applicable was different from the one in the State of U.P.

52. Similarly, the case of **Jitendra Kumar Singh** came up for consideration before the Supreme Court in another case, namely, **Gaurav Pradhan and others vs. State of Rajasthan and others; (2018) 11 SCC 352**, and their Lordships held in para 32 as under:

“32. We are of the view that the judgment of this Court in Jitendra Kumar Singh which was based on statutory scheme and the Circular dated 25-3-1994 has to be confined to scheme which was under consideration, statutory scheme and intention of the State Government as indicated from the said scheme cannot be extended to a State where the State circulars are to the contrary especially when there is no challenge before us to the converse scheme as delineated by the Circular dated 24-6-2008.”

53. The said decision came up for consideration in **Ajit Kumar P. vs. Remin K.R., (2015) 16 SCC 778; Vikas Sankhala vs. Vikas Kumar Agarwal, (2017) 1 SCC 350** and **Union of India and others vs. Sajib Roy, 2025 SCC OnLine SC 1943**. These were all cases where the legislative policy or the Government policy, on the question of migration of reserve category candidates to unreserved category after having availed relaxation or concession in age etc., was different from the one prevailing in the State of U.P, therefore, in **Sajib Roy** (supra), the Supreme Court ultimately opined in para 32 as under:

“32. On an analysis of the aforesaid cases, we summarise as follows:

Whether a reserved candidate who has availed relaxation in fees/upper age limit to participate in open competition with general candidates may be recruited against unreserved seats

would depend on the facts of each case. That is to say, in the event there is no embargo in the recruitment rules/employment notification, such reserved candidates who have scored higher than the last selected unreserved candidate shall be entitled to migrate and be recruited against unreserved seats. However, if an embargo is imposed under relevant recruitment rules, such reserved candidates shall not be permitted to migrate to general category seats.”

54. In this context, we may point out that in spite of opportunity having been given vide our order dated 17.07.2026 the State of U.P. which is opposite party no. 1 in the writ petition and respondent no. 1 in the special appeal has chosen not to file any counter affidavit. The Commission's counter affidavit also does not mention any revocation or modification of the Government Order dated 25.03.1994 which was considered in the case of **Jitendra Kumar Singh** nor does it refer to any Government Order or policy decision having been taken by the State Government putting an embargo on shifting/migration of reserved category candidates to the list of unreserved category candidates in the event they had been granted relaxation/concession as envisaged in Section 8. How far the Commission can put such condition or embargo is another issue touching upon its jurisdiction, as discussed earlier.

55. In this very context we may also refer to the decision of the Supreme Court in the case of **Chaya and others vs. State of Maharashtra and another, rendered in Civil Appeals arising out of SLP (C) Nos. 14517-14539 of 2025**, decided on 23rd March, 2026, which was a matter pertaining to candidates who had availed relaxation in the qualifying examination to become eligible for the main selection process and in that context, the question arose as to whether the said reserve category candidates are entitled to migrate to the open/unreserved category on the basis of merit secured in the main examination. It was a case where 5% relaxation in the

qualifying examination for TET was granted to reserved category candidates and the Supreme Court held that not only this was permissible under the relevant Rules and circulars, it merely created a level playing field as the *inter se* merit for appointment had to be determined solely on the basis of performance in the main examination, therefore, migration of such reserve category to the open category was held as permissible, especially as, no such relaxation had been granted in the main examination and no concession/relaxation had been granted in educational or preferential qualification. The Supreme Court considered various decisions, including ***Jitendra Kumar Singh*** etc., as referred to hereinabove, as also ***Pradeep Kumar's*** case, and ultimately opined in para 19 as under:

“19. From the aforesaid decisions, the following legal principles can be culled out: -

(i) A concession/relaxation in a qualifying examination merely enables entry of a candidate into the zone of consideration and cannot be treated as relaxation in the standard prescribed for qualifying the written examination if such relaxation does not affect the merit which has to be determined solely on the basis of performance in the main examination and the interview, if any.

(ii) A relaxation or concession in the qualifying examination merely creates a level playing field where no concession or relaxation is granted in the ultimate selection and the same is solely made on the basis of inter se merit.

(iii) If a candidate belonging to a reserved category, does not fulfil the essential eligibility criteria prescribed for a selection, he/she cannot be permitted to migrate to an open category.

(iv) Migration of a reserved category candidate who has availed of a concession/relaxation in qualifying examination depends on the Recruitment Rules or the employment notification. If such Recruitment Rules or

employment notification permits such migration, the same is permissible.

(v) Such migration shall also be permissible if the Recruitment Rules or employment notification are either silent or do not expressly prohibit it.”

56. Clause (iv) of para 19 of the said decision is on the same lines as **Sajib Roy** (supra). Inter alia the law laid down in **Chaya** (supra) is that migration of reserved category candidates who had availed concession or relaxation in qualifying examination to the general category depends on the recruitment rules or employment notification. If they permit such migration it is permissible. Further, such migration is also permissible where the Rules or notifications are either silent or do not expressly prohibit it. We may clarify that such concession or relaxation may be in respect of fees and age or in respect of minimum qualifying standard. **Chaya** (supra) fall in the latter category whereas **Jitendra Kumar Singh** (supra) fall in the former category.

57. In this very context, we may also refer to another decision reported in **AIR 2024 SC 2147; Deependra Yadav and others vs. State of Madhya Pradesh and others**, wherein a similar provision prescribing adjustment/migration of reserved category candidates, if they have availed any relaxation had been brought into operation by amendment of the relevant service rules, which were considered by a Single Judge Bench of the High Court which allowed the petition and after affirmation of the judgment by a Division Bench in appeal matter went to Hon’ble the Supreme Court. During pendency of the proceedings before the Courts the State of Madhya Pradesh restored the pre-amendment position and the Supreme Court observed as under:

“30. We may also note that Rule 4(3)(d) (III) of the Rules of 2015 patently harmed the Interests of the reservation category candidates, as even meritorious candidates from such categories, who had not availed any reservation benefit/relaxation, were to be treated as belonging to those reservation categories and they were not to be segregated with meritorious unreserved category candidates at the preliminary examination result stage. As a result, they continued to occupy the reservation category slots which would have otherwise gone to deserving reservation category candidates lower down in the merit list of that category, had they been included with meritorious unreserved category candidates on the strength of their marks.

31. In Saurav Yadav and Ors. v. State of U.P. and Ors. 2020 : INSC:714: (2021) 4 SCC 542, a 3-Judge Bench of this Court affirmed the principle that candidates belonging to any of the vertical reservation categories would be entitled to be selected in the 'open category and if such candidates belonging to reservation categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories of vertical reservation that they belong to. It was further observed that reservations, both vertical and horizontal, are methods of ensuring representation in public services and these are not to be seen as rigid 'slots', where a candidate's merit, which otherwise entitles him to be shown in the open general category, is foreclosed. The Bench further observed that the 'open category' is open to all and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type was available to him or her.

32. This being the settled legal position, it appears that the State of Madhya Pradesh itself realized the harm that it was doing to the reservation category candidates and chose to restore Rule 4, as it stood earlier, which enabled drawing up the result of the preliminary examination by segregating deserving meritorious reservation category candidates with meritorious unreserved category candidates at the preliminary examination stage itself. As this was the process that was undertaken after the Judgment in Kishor Choudhary (supra), whereby a greater number of reservation category candidates cleared the preliminary examination and were held eligible to appear in the main examination, there can be no dispute with the legality and validity of such process.”

58. The Act of 1994, enacted by the State Legislature, does not contain any such embargo or prohibition preventing a reserve category candidate from being included in the list of unreserved category candidates merely because of any relaxation or concession availed by him as referred in Section 8 thereof. The Act, 1994 is relevant as regards migration in a case of concession or relaxation other than in age, and fee. In fact, the Government instructions dated 25.03.1994, considered in ***Jitendra Kumar Singh***, permit such migration in a case of relaxation in age, etc.

59. Initially learned counsel for the Commission relied upon the decisions reported in ***(2019) 7 SCC 383, Nirav Kumar Dilipbhai Makwana vs. Gujarat Public Service Commission & Others***; and Paragraph No. 32 of the decision reported in ***(2025) SCC OnLine SC 1953, Union of India & Others Vs. Sajib Roy***, to contend that wherever there is a circular putting an embargo that in any case where concession/relaxation has been taken by Reserved category candidate, such as, in the matter of age, payment of fee etc. in case of direct recruitment, then they cannot compete against non-reserved vacancies and cannot be counted against them. According to him, the embargo referred in Paragraph 32 of the ***Sajib Roy (Supra)*** is contained in the Office Memo dated 09.01.2020, therefore, in the event the appellants-petitioners are claiming or are granted any relaxation or concession in the matter of age, payment of fee etc. as a Reserved category candidate, then they cannot claim to be included in list of Unreserved category, but, subsequently during course of argument he made a *volte face*, that, for recruitment to posts in the services of the Government of U.P., by the Commission, relaxations in the matter of fee, age limit etc., as prescribed in Section 8 of the Act, 1994, are not treated as an

impediment for the purposes of such inclusion/migration. He stated that in the recruitments held by the Commission albeit at the stage of final selection, the word 'relaxation' in O.M. dated 09.01.2020 has a different meaning than what is referred in Section 8 of the Act, 1994.

60. In this context, he invited our attention to the impugned O.M. dated 09.01.2020 to submit that the relaxations spoken of therein, are with regard to relaxation in minimum qualifying/eligibility standards/norms and not age, fee, etc. Shri R.K. Upadhyaya emphasized that the O.M. dated 09.01.2020 applies only where relaxation/concession is granted to any Reserved category candidate in the qualifying standards/norms, which did not include fee, age limit and number of attempts. We may in this context refer to para 71 of the judgment in ***Jitendra Kumar Singh*** (supra), which has already been quoted, wherein the Supreme Court of India also observed that relaxation/concession falling within Section 8 of the Act, 1994 can not be said to be relaxation in the standards prescribed for qualifying in the written examination. Likewise are the observations of Supreme Court in Para 19 of ***Chaya and others*** (supra). It seems Shri Upadhyaya's contention is on the same lines. We asked Shri Upadhyaya as to what is meant by terms - '*Aharkari Manak*' used in the said O.M. dated 09.01.2020, he submitted that it would mean minimum qualification such as educational qualification, qualifying marks (cut off), etc. but not age, fee, etc. He referred to Para 19 (d) of the Commission's counter affidavit in this regard. In view of his statement, O.M. dated 09.01.2020 will not apply in cases of relaxation/concession in age, fee, etc. as referred in Section 8 of the Act, 1994 and also to the case at hand as it is nobody's case that appellants-petitioners had claimed or availed any such relaxation/concession in the minimum qualifying standard

as referred by Shri Upadhyaya, in fact, migration is to take place only if reserved category candidate had secured more than the cut off marks for the general category in the screening test.

61. There is no averment in the counter affidavit filed by the Commission that any such relaxation in qualifying standards/norms as referred in O.M. dated 09.01.2020 had been claimed or availed by the appellants before us and there is a contrary assertion in 5 of the rejoinder affidavit of appellants-petitioners, therefore, even otherwise, the said condition in the O.M. cannot be an impediment in adjustment of the appellants-petitioners in the reserved category based on their marks at the initial or final stage of selection.

62. Shri R.K. Upadhyaya further stated that this O.M. dated 09.01.2020, even otherwise, applies only in a case where recruitment which is held on the basis of preliminary examination, main examination, interview and screening test, all four, and not to other examinations such as the one at hand, where there are only two stages of examination. He categorically stated that O.M. dated 09.01.2020 has no application to the recruitment in question. We asked Shri Upadhyaya whether this statement has been made on affidavit filed by the Commission, he could not point out any such averment in the counter affidavit of the Commission.

63. Irrespective of the aforesaid statement of Shri R.K. Upadhyaya, learned counsel for the Commission, in the facts of this case and the discussion already made, as marks of the screening test are to be added to the final marks, the O.M. dated 09.01.2020 will not have any application to the recruitment in the case at hand and also to fact situation such as the one discussed in **Nitin Kumar** (supra) and **Rajat Yadav** (supra) as also the fact situation in Special Appeal No. 200 of 2026 as discussed.

64. The decision of the Supreme Court in the case of ***Union of India and Another vs. Satya Prakash and others; JT 2006 (4) SC 524*** which was relied upon by Shri Upadhyaya does not help the cause of the Commission in any manner, in this regard.

65. In view of the discussion already made, reliance placed by the Commission on the decisions referred above is misplaced, especially as, they have been considered in the subsequent decision in ***Rajat Yadav*** (supra), wherein the facts and issues involved were very similar to the one at hand. The relevant extracts of the said decision have already been quoted earlier and we are of the opinion that the case at hand is squarely covered by the said decision, especially as, the decisions rendered by the Supreme Court in the cases of ***Vikas Sankhala*** (supra), ***Pardeep Singh Dehal*** (supra), ***Gaurav Pradhan*** (supra), ***Saurav Yadav and others vs. State of Uttar Pradesh and others; (2021) 4 SCC 542***, ***Niravkumar Dilipbhai Makwana*** (supra), ***Government (NCT of Delhi) vs. Pradeep Kumar; (2019) 10 SCC 120***, ***Sadhana Singh Dangi vs. PinkI Asati; (2022) 12 SCC 401***, ***Ramnaresh @ Rinku Kushwah vs. State of Madhya Pradesh; (2024) SCC OnLine SC 2058***, ***Alok Kumar Pandit vs. State of Assam; (2012) 13 SCC 516***, and many other decisions, including ***Jitendra Kumar Singh*** (supra), have been considered in ***Rajat Yadav*** (supra).

66. The assertion of counsel for Commission that impugned advertisement and notification were issued prior to the decision in ***Rajat Yadav*** (supra) has no relevance. All judgments apply retrospectively unless specifically made prospective. The said judgment has clarified the law on the subject. Moreover the selection in question is still pending. The preliminary exam/screening test has also not been held. The decision in ***Rajat Yadav*** (supra) and the law enunciated therein squarely applies to the

case at hand. It is also the requirement of Article 16(1) of the Constitution of India. Any other understanding or application of Rules and Office Memorandum to selection at hand will be unconstitutional.

67. We may in this very context point out that so far as reservation policy applicable to public services and posts in the State of U.P. is concerned, the same is governed and determined by a legislative enactment as already referred of the year 1994 and Government Orders issued by the State of U.P. These are matters purely within the domain of the 'State' and are referable to Article 16(4) and 16(4-A), apart from relevant entries in the relevant List of the Seventh Schedule of the Constitution of India. Conditions of recruitment and conditions of service are the domain of the employer under Article 309 of the Constitution, which in this case is the State of U.P. The policy of reservation is applied in the context of the services and the posts under the 'State', therefore, it is part of the conditions of recruitment/conditions of service which are to be determined by the State Government. The Commission is not the employer under Article 320 (1) of the Constitution, it has the duty to conduct examinations for appointments to the services of the 'State'. It has no authority to decide the conditions of service, including the policy of reservation and its modalities. It is required to be consulted only on matters referred in Article 320 (3) of the Constitution of India.

68. The functions of the Commission are enumerated in Article 320 of the Constitution of India. Article 320 reads as under:

“320. Functions of Public Service Commissions: (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted--

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award, and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them: Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State,

may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid.”

69. Article 320 (4) specifically prohibits the Public Service Commission from being consulted as respects the manner in which any provision referred to in Article 16(4) may be made or as respects the manner in which effect may be given to the provisions of Article 335 i.e., it is prohibited from being consulted in respect of matter pertaining to reservation in public services and maintenance of efficiency in this regard. This provision itself indicates that these are matters purely in the domain of the ‘State’ and the Commission has not jurisdiction or role in this regard. It is the policy of the State in this regard which has to be followed by the Commission.

70. It has the power to decide the ‘procedure or method of recruitment’, that too, subject to the enactments, rules and Government Orders issued by the Government in this regard, if any, which may be applicable to the specific public service or post in question, as, there are specific service rules for separate services and cadres in different departments of the State of U.P. prescribing

the conditions of recruitment also, including reservation, therefore, whatever procedure for recruitment is to be determined by the Commission, of course, it has authority in this regard under the relevant Act i.e. U.P. State Public Service Commission (Regulation of Procedure) Act, 1985, Rules and Regulations made by it, but they are subject to the enactments, Rules and Government Orders referred hereinabove, and, there is no way that the Commission can encroach upon the domain of the State Government to frame the conditions of service and recruitment, including the reservation policy as applicable in the State in this context. We may in this context refer to the decision of the Supreme Court of India reported in **(2003) 11 SCC 559; State of Punjab and others vs. Manjit Singh and others**, relevant extracts of which are quoted below:

“9. In the present case, the stand of the appellant Commission is that for medical services where the members of service have to deal with the health and life of the people, they must have some minimum standard of efficiency and it is the bounden duty of the Commission to ensure the same. It is perhaps with this view in mind that the Commission fixed 45% minimum qualifying cut-off marks for general category candidates and 40% cut-off marks for Scheduled Caste candidates. We feel, here lies the fallacy in the whole reasoning of the Commission. It is no doubt true that the Commission is an independent and autonomous body and has to work without influence of any authority or the Government. It is rather under duty to act independently. But at the same time the fact cannot be lost sight of that the State Government is competent to lay down the qualifications for different posts, and frame rules for the purpose or take policy decisions which may of course not be against the law. In this context, we may refer to the provisions contained under Article 320 of the Constitution. It reads as under:

“320. Functions of Public Service Commissions.—(1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:

Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335.

(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the legislature of the State may make during the session in which they are so laid.”

It is to be noted that under clause (3), the Union Public Service Commission or the State Public Service Commission, has to be consulted by the Government relating to methods of recruitment in civil services and for civil posts, promotions and transfers as well as about suitability of candidates etc. The consultation may also be in regard to disciplinary matters affecting a person serving under the Government. We then find that clause (4) particularly provides that nothing in clause (3) shall require consultation of the Commission in respect to the manner in which any provision referred to in Article 16(4) may be made or the manner in which the effect may be given to the provisions of Article 335. We may peruse clause (4) of Article 16 and Article 335. They read as follows:

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

335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.—The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.”

Article 16(4) deals with reservations and Article 335 pertains to consideration of reservation consistent with the maintenance of efficiency of the administration. As indicated earlier, clause (4) of Article 320 clearly provides that consultation of the Commission would not be necessary in the matters relating to Articles 16(4) and 335. Therefore, it would be a matter of policy to be decided by the State Government as to what measures, if necessary, may be provided regarding reservations vis-à-vis maintenance of efficiency in services. Where no special qualification or any prescribed standard of efficiency over and above the eligibility criteria is provided by the Rules or the State, it would not be for the Commission to impose any extra qualification/standard supposedly for maintaining minimum efficiency which, it thinks, may be necessary. No consultation with the Commission, in such matters, is envisaged in view of clause (4) of Article 320 of the Constitution.

12..... Therefore, the stand of the appellant Commission in this case that, it being an independent body, is not subservient to any authority or the State Government, hence it is competent for it to lay down the minimum efficiency standards including in the matters which may fall within the purview of Article 335 of the Constitution, is erroneous.”

71. Thus, the Commission should have first of all considered whether it has the authority to decide on matters pertaining to reservation in view of the law discussed hereinabove.

72. No such enactment as is referred in Article 321 pertaining to State of U.P. has been brought to our notice.

73. Learned counsel for the Commission referred to Section 11 of the U.P. Public Service Commission (Regulation or Procedure) Act, 1985 to defend the said OM as being referable to the power vested under it. Section 11 empowers the Commission only to make Rules not inconsistent with the provisions of the Act, 1985 for regulation of its procedure. The Act, 1985, as is evident from its long title, has been enacted to provide for certain matters relating to the procedure of the Commission and the conduct of its business. The Act, 1985, for the reasons already given above especially in view of Article 320 (4) and the decision in **Manjit Singh** (supra), can not be given meaning beyond the scope of Article 320 and other relevant provision of the Constitution of India and cannot be interpreted to confer jurisdiction which the Constitution does not confer upon it, certainly not by encroaching upon the domain of the 'State' as already discussed. We have already held the O.M. dated 09.01.2020 and the decision contained therein to be inapplicable to the facts of this case and certain situations as mentioned earlier, therefore, we are not conclusively pronouncing any judgment on the jurisdiction of the Commission in this regard, but such a blanket decision as contained in the O.M. dated 09.01.2020 ignoring the fact situations and Rule position as discussed is clearly unreasonable and can lead to unnecessary litigation. Whether Commission has power to impose such conditions vide O.M. dated 18.12.2009 and 09.01.2020 regarding reservation policy and its application or not? Whether such an omnibus O.M. dated 09.01.2020 containing a blanket decision is otherwise sustainable? Whether it can be applied to all recruitments mechanically without reference to specific condition of recruitment prescribed in Rules of the concerned Department?

These issues are required to be considered and answered by the Commission as per law, at the earliest, keeping in mind what has been discussed herein.

74. It would be better if the State Government comes up with a specific and comprehensive policy in this regard, as it is competent to do so under Article 16(4) of the Constitution and the Act, 1994, so that such issues do not arise in future.

75. An objection was raised by the Commission's counsel as to the very maintainability of the writ petition at the behest of the appellants-petitioners as they had already applied for being considered for recruitment on various dates between 27.12.2025 to 09.01.2026 in pursuance to the advertisement dated 22.12.2025, condition no. 10 which they subsequently challenged in the writ petition. According to him this was impermissible in law.

76. Learned counsel for the appellants-petitioners on the other hand relied upon a judgment of Hon'ble the Supreme Court in ***Dr. (Major) Meeta Sahai vs. State of Bihar and others; (2019) 20 SC 17***, especially paragraph 17, to contend that merely because they had applied in pursuance to the advertisement dated 22.12.2025 and filed the writ petition subsequently, this would not operate as estoppel and embargo in law as regards maintainability of such petition, especially as, the petition was filed before start of the selection process. Paragraph 17 of the aforesaid report reads as under:

“17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be

condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

77. No doubt, in view of the law declared in Paragraph 17 of the aforesaid report, there is no impediment in maintainability of the writ petition of the appellants-petitioners.

78. In this very context we may refer to some other decisions of the Supreme Court of India reported in **1997 (9) SCC 527; Raj Kumar & Ors. vs Shakti Raj & Ors.** wherein Hon’ble the Supreme Court after considering the earlier judgment reported in **Madan Lal vs. State of J&K and others; 1995 (3) SCC 486** observed that principles of estoppel, acquiescence and waiver do not apply where the recruitment has been held *de hors* the Rules. Para 16 of the said report reads as under:

“16. Yet another circumstance is that the Government had not taken out the post from the purview of the Board, but after the examinations were conducted under the 1955 Rule and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the post were taken out from the purview thereof. thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal vs. State of J & K [(1995) 3 SCC 486] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the selection Board or the method of Selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, So also in the method of selection and exercise of the power in taking out from the purview of the and also conduct of the selection in accordance with the Rules. Therefore, the principle of

estoppel by conduct or acquiescence has no application to the facts in this case, thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action take by the Government are not correct in law.”

79. Likewise, in **Dr. (Major) Meeta Sahai** (supra), the Supreme Court of India has held in paragraphs 16 and 17 thereof as under:

“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 judgements including Manish Kumar Shahi v. State of Bihar⁴, observing as follows:

“16. We also agree with the High Court 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.”⁵ 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 4 (2010) 12 SCC 576 5 See also: Madan Lal v. State of J&K [(1995) 3 SCC], Marripati Nagaraja v. State of A.P. [(2007) 11 SCC 522], Dhananjay Malik v. State of Uttaranchal [(2008) 4 SCC 171] and K.A. Nagamani v. Indian Airlines [(2009) 5 SCC 515] Page | 11 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.”

80. In this case validity of the impugned condition of advertisement has been challenged on the anvil of Constitutional provisions and law declared by the Supreme Court of India in this regard, that too, before preliminary/screening test had been held, *albeit*, after applying for such consideration. Fundamental constitutional and legal issues being involved regarding right of fair consideration in matter of recruitment to posts under the Government referable to Articles 16 and 14 of the Constitution, there is no question of estoppel, etc., as asserted by the Commission. Such an objection has also been considered and rejected in **Rajat Yadav** (supra) (Paragraphs 41 to 47).

81. We are of the considered opinion that there was/is no impediment in maintainability of the writ petition at the behest of the appellants-petitioners.

82. In view of the above, we declare that the said O.M. dated 09.01.2020 does not apply to the recruitment at hand. Condition no. 10 of the advertisement dated 22.12.2025 qua recruitment to the post in question is set aside. Commission should consider applicability of Condition no. 10 to recruitment for other posts which have been advertised for recruitment and take an early decision to avoid further litigation.

83. We further direct the Commission to revisit the OM dated 09.01.2020 in its application to recruitments to be conducted by it in the light of discussion made hereinabove, especially as the

Commission conducts recruitment for various services/posts under the Government governed by different Rules/Orders of recruitment. A considered decision, after scrutinizing the law on the subject should be taken by it within three months keeping in mind all relevant aspects and the test of constitutionality on the anvil of Articles 14, 16 and Part XIV, especially Article 309, 320, etc. of the Constitution so that future recruitments do not get entangled in further litigation. The State Government is also directed to consider and clarify its stand by laying down a specific policy in this regard as per law, as referred earlier, within three months.

84. In view of the aforesaid, appellants-petitioners if they secure more marks than the minimum cut-off for the Unreserved category in the screening test will have to be included in the Unreserved category and the recruitment shall be held accordingly in terms of the judgment in ***Rajat Yadav*** (supra), and the discussion made hereinabove.

85. The special appeal and the writ petition are ***allowed*** in the aforesaid terms.

(Manjive Shukla,J.) (Rajan Roy,J.)

September 29, 2026

Santosh/-