
For the Petitioners	:	Mr. Ghanshyam Kashyap, Advocate
For the Respondents No. 1 & 2	:	Mr. Gagan Tiwari, Dy. Govt. Advocate
For the Respondent No.3	:	Mr. Anand Mohan Tiwari, Advocate
Date of Hearing	:	14.02.2023
Date of Judgment	:	09.03.2023

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Narendra Kumar Vyas, Judge

C.A.V. Judgment / Order

***Per* Narendra Kumar Vyas, Judge**

1. Since common question of law and facts are involved in both the writ petitions, they were heard analogously and are being disposed of by this common order.

2. The petitioners have preferred these petitions assailing legality and constitutional validity of impugned Note-2 prescribed in Scheduled-III of the Chhattisgarh Medical Education (Gazetted) Service Recruitment Rules, 2013 (hereinafter referred to as " Rules of 2013") by which only female candidates are made eligible for direct recruitment to the posts of Demonstrator and Assistant Professor in Nursing Colleges. The petitioners have also challenged Clause-5 of the advertisement dated 08.12.2021 issued by Public Service Commission (Annexure P/2) for direct recruitment in the service by which only female candidates are

made eligible.

3. The brief facts as reflected from the records are that the impugned advertisement was published by the Chhattisgarh Public Service Commission, Raipur on 08.12.2021 for filling up various posts of Assistant Professor (Nursing) and Demonstrator for different subjects and as per Clause-5 of the advertisement only female candidates are eligible for recruitment and appointment to the post of Assistant Professor (Nursing) and Demonstrator. The petitioners who are having the requisite educational qualification prescribed in the advertisement for the post of Demonstrator Nursing, were not allowed to submit their forms in view of Note-2, mentioned in the Rules of 2013 as well as Clause-5 of the advertisement. As such, they have filed the present writ petitions. It is contended that as per Rules of 2013, 50% posts of Demonstrator and 75% posts of Assistant Professor for Nursing colleges are to be filled up by direct recruitment. 50% posts of Demonstrator are to be filled up by promotion from Staff Nurse/Nursing Sister/Assistant/ Nursing Superintendent. 25% of the posts of Assistant Professor are to be filled up from Demonstrator. Thus, he would submit that the reservation for female candidates has been granted to the extent of 100% for direct recruitment which is dehors constitutional provisions. He would further submit that the posts of Demonstrator and Assistant Professors for Nursing Colleges which have to be filled up by promotion, in which also as per Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rule, 1997 (for short the Rules of 1997"), 30% seats on the basis of horizontal reservation have to be filled up and as such, the

reservation for women will be more than 100%.

4. Learned counsel for the petitioners would further submit that at the time of studying nursing courses, there is no restriction between the male and female candidates and both are allowed to take admission in the course. By virtue of above stated Rules of 2013 and advertisement, the right of the petitioners to get employment is being violated and thus Note-2 of Rules of 2013 and advertisement are violative of Articles 14,15 and 16 of the Constitution of India. He would further submit that even in the promoted posts, in view of the Rules of 1997, 30% reservation has to be granted for women. As such, they are getting reservation beyond the permissible limit and accordingly, would pray for declaring Note-2 of the Rules of 2013 as well as Clause-5 of the advertisement ultra vires to the Constitution of India. Lastly, he would submit that for teaching in nursing courses, restriction imposed by the respondents that all the posts have to be filled up by female candidates, suffers from arbitrariness and without any foundation as teaching in nursing course can be imparted by male and female, as such, there is no justification for keeping all the posts for teaching to be reserved for female.

5. Learned counsel for the petitioners in support of his submissions, would refer to the judgments of Hon'ble Supreme Court in the cases of **Indra Sawhney vs. Union of India,** reported in **(1992) Supp. 3 SCC 217, Government of Andhra Pradesh Vs. P.B. Vijay Kumar,** reported in **(1995) 4 SCC 520, Union of India & Ors. vs. Premanand Singh,** reported in **(1999) SCC (L&S) 625, S. Renuka & Ors. vs. State of A.P. & Another,** reported in **(2002) 5 SCC 195, State**

of UP vs. Bharat Singh, reported in **(2011) 4 SCC 120, Deepak Sibal & Ors vs Punjab University And Another,** reported in **(1989) 2 SCC 145, and Walter Alfred Baid vs. UOI,** reported in **AIR 1976 Del 302** and **T. Katama Reddy vs. Revenue Divisional Officer,** reported in **1997 SCC Online AP 914.**

6. Learned counsel for the State would submit that the services of the male nurses are utilized in the Government Hospitals for Orthopedics wards, Psychiatry wards and Medico Legal cases and except for those hard nature of cases, service of female nurses are utilized in the Government Hospitals. Thus, majority of the nursing work in the hospital is carried out with the assistance of female nurse only, which clearly reflects that in the hospitals, taking care of patients is a women dominated field. He would further submit that keeping this aspect of the matter, as per Clause-5.5 of Chhattisgarh Nursing Entrance Rules, 2019, all the seats of Government Nursing Colleges are meant only for women and only women candidates are admitted in the course.

7. Learned counsel for the State would further submit that the Constitution itself provides for special provisions in case of women and children as per Article 15(3) of the Constitution of India. He would further submit that Articles 15(1) and 16(1) of the Constitution of India also provide certain prohibition in respect of a specific area of the State activities i.e. employment under the State. He would submit that classification between male and female persons for certain posts are permissible and such classification cannot be said to be arbitrary or unjustified. He would submit that separate college or school for girls are

justifiable, and as such, rules providing 100% appointment of women on the post of Demonstrator and Assistant Professor in Government Nursing Women College is justified. He would further submit that a policy decision has been taken by the State and the Rules have been framed which cannot be said to be arbitrary or unjustified. In support of his submissions, he would refer to the judgments of Hon'ble Supreme Court in the cases of **Govt. of A.P. vs. P.B Vijayakumar,** reported in **(1995) 4 SCC 520, Shiv Prasad vs. Government of India and Others,** reported in **(2008) 10 SCC 382, Vijay Lakshmi vs. Punjab University,** reported in **(2003) 8 SCC 440** and **Union of India vs. K.P. Prabhakaran,** reported in **(1997) 11 SCC 638** and would pray for dismissal of the writ petitions.

8. We have heard Mr. Ghanshyam Kashyap, learned counsel for the petitioners. We have also heard Mr. Gagan Tiwari and Mr. Anand Mohan Tiwari, learned counsel for the respondents.

9. From the above stated factual matrix of the case, the issues that emerge for determination by this Court are as under:-

> (1) Whether Note-2 appended in Scheduled-III of Rules of 2013 providing only female candidates to be eligible for direct recruitment to the posts of Demonstrator and Assistant Professor thus providing 100% reservation on these posts is ultra-vires to the Constitution of India being violative of Articles 14 and 16 of the Constitution of India?
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> (2) Whether as per Clause-5 of the advertisement dated 08.12.2021 providing 100% reservation in favour of female candidates is permissible?

10. In the case of **Government of Andhra Pradesh vs P.B. Vijayakumar & Anr,** reported in **(1995) 4 SCC 520,** Hon'ble the Supreme Court has held as under:-

> 6. This argument ignores Article 15(3). The interrelation between Articles 14, 15 and 16 has been considered in a number of cases by this Court. Article 15 deals with every kind of State action in relation to the citizens of this country. Every sphere of activity of the State is controlled by Article 15(1). There is, therefore, no reason to exclude from the ambit of Article 15(1) employment under the State. At the same time Article 15(3) permits special provisions for women. Both Articles 15(1) and 15(3) go together. In addition to Article 15(1) Article 16(1), however, places certain additional prohibitions in respect of a specific area of state activity viz. employment under the State. These are in addition to the grounds of prohibition enumerated under Article 15(1) which are also included under Article 16(2). There are, however, certain specific provisions in connection with employment under the State under Article 16. Article 16(3) permits the State to prescribe a requirement of residence within the State or Union Territory by parliamentary legislation; while Article 16(4) permits reservation of posts in favour of backward classes. Article 16(5) permits a law which may require a person to profess a particular religion or may require him to belong to a particular religious denomination, if he is the incumbent of an office in connection with the affairs of the religious or denominational institution. Therefore, the prohibition against discrimination on the grounds set out in Article 16(2) in respect of any

employment or office under the State is qualified by clauses 3, 4 and 5 of Article 16. Therefore, in dealing with employment under the State, it has to bear in mind both Articles 15 and 16- the former being a more general provision and the latter, a more specific provision. Since Article 16 does not touch upon any special provision for women being made by the State, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State.

7. The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Articles 15. Its object is to strengthen and improve the status of women. An important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to out at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3), is not whittled down in any manner by Article 16.

> 11.We do not, however, find any reason to hold that this rule is not within the ambit of Article 15(3), nor do we find it in any manner violative of Article 16(2) or 16(4) which have to be read harmoniously with Articles 15(1) and 15(3). Both reservation and affirmative action are permissible under Article 15(3) in connection with employment or posts under the State. Both Articles 15 and 16 are designed for the same purpose of creating an egalitarian society. As Thommen, J. has observed in Indra Sawhney's case (supra) (although his judgment is a minority judgment), "Equality is one of the magnificent cornerstones of Indian democracy". We have, however, yet to turn that corner. For that purpose it is necessary that Article 15(3) be read harmoniously with Article 16 to achieve the purpose for which these Articles have been framed.

11. Hon'ble Supreme Court in the case of **Union of India and Others vs. Permanad Singh,** reported in **(1999) SCC (L&S) 625,** has held as under:-

> 5. The impugned judgment of the Tribunal holding that reservation of 100% posts for women for appointment pm the posts of Telephone Operator in the Patna Telephone Exchange was not permissible has, therefore, to be affirmed and the appeal assailing the said view of the Tribunal has to be dismissed. But having regard to the facts and circumstances of this case and the fact that there is no competing claim inasmuch as the respondent has not pursued the matter by opposing this appeal in this Court, we are of the opinion that the appointment of the female operators who were so appointed on the basis of the

impugned advertisement be not disturbed. Exercising the power of this Court under Article 142 of the Constitution in order to do complete justice in the matter, we uphold that impugned judgment of the Tribunal with the modification that the appointment of the female Telephone Operators made on the basis of the impugned advancement shall not be upset, This appeal is disposed of accordingly. No costs.

12. Hon'ble Supreme Court in the case of **S. Renuka And Ors. vs State Of Andhra Pradesh,** reported in **(2002) 5 SCC 195,** has held as under:-

8.It is settled law that no right accrues to a person merely because a person is selected and his or her name is put on a panel. The Petitioners have no right to claim an appointment. Even otherwise, the selection was contrary to the rules in force at that time. There could not be 100% reservation for women. Also the reservation policy had not been adhered to. The posts which are created are posts of District and Sessions Judges, Grade II. There is no separate posts of Judges of Family Courts and Mahila Courts. Thus the Petitioners could not be appointed as Judges of Family Courts and Mahila Courts in ex-cadre posts even provisionally. This would amount to creation of Ex-cadre posts not sanctioned by the Government. No fault can be found with the High Court being in favour of not appointing the Petitioners.

13. Hon'ble Supreme Court in the case of **State Of U.P.& Ors vs Bharat Singh,** reported in **(2011) 4 SCC 120** has held as under:-

70. The decision of this Court in Indra Sawhney and

> Ors. v. Union of India and Ors., 1992 Supp.(3) SCC 217, continues to be the locus classicus on the subject of reservation. This Court in that case held that reservation under Articles 14, 15 and 16 must be applied in a manner so as to strike a balance between opportunities for the reserved classes on the one hand and other members of the community on the other. Such reservation cannot exceed 50% in order to be constitutionally valid.

14. Learned counsel for the State would submit that 100% reservation for female candidate is saved by Article 15(3) of the Constitution of India as Article 15(3) provides that the State is not prevented from making any special provisions for women and children. By virtue of the power conferred on the State, the respondents have framed the Rules, which neither suffers from arbitrariness or illegality nor is beyond the competency of the State to frame the Rules. Thus, challenge to the Rules and advertisement deserves to be negated by this Court and he would submit that the writ petitions deserve to be dismissed. In the case of **Shiv Prasad** (supra), the Hon'ble Supreme Court has held as under:-

> 24.The next question then is: How can this woman-reservation be implemented and enforced? Whether such reservation will violate Indra Sawheny (I) and exceed 50% reservation which is maximum? Our reply is in the negative. Let us consider the issue.
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> 26. A similar question came up for consideration in Swati Gupta. There, the petitioner appeared in the Combined Pre-Medical Test (CPMT) held by the State. She was not selected. She challenged a

notification of the State Government on the ground that the reservation was 65% which exceeded 50% and was thus violative of the constitutional guarantee under Articles 14, 16, 19 and 21 of the Constitution as also the ratio laid down in Indra Sawhney (I). The Government of U.P., however, issued another notification clarifying its stand on reservations.

28. The Court considered Indra Sawhney (I), applied it to the case on hand and held that the submission of the State was well founded and the contention of the petitioner that the reservation violated constitutional guarantee of 50% was not well-founded. The Court stated; The vertical reservation is now 50% for general category and 50% for Scheduled Castes, Scheduled Tribes and Backward Classes. Reservation of 15% for various categories mentioned in the earlier circular which reduced the general category to 35% due to vertical reservation has now been made horizontal in the amended circular extending it to all seats. The reservation is no more in general category. The amended circular divides all the seats in CPMT into two categories one, general and other reserved. Both have been allocated 50%. Para 2 of the circular explains that candidates who are selected on merit and happen to be of the category mentioned in para 1 would be liable to be adjusted in general or reserved category depending on to which category they belong, such reservation is not contrary to what was said by this Court in Indra Sawhney.

15. Hon'ble Supreme Court in the case of **Vijay Lakshmi** (supra), has held as under:-

5. In the light of the aforesaid principles, on the concept of equality enshrined in the Constitution, it can be stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified. If separate colleges or schools for girls are justifiable, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught. One may believe in absolute freedom, one may not believe in such freedom but in such case when a policy decision is taken by the State and rules are framed accordingly, it cannot be termed to be arbitrary or unjustified. Hence, it would be difficult to hold that rules empowering the authority to appoint only a lady Principal or a lady teacher or a lady doctor or a woman Superintendent are violative of Articles 14 or 16 of the Constitution.

10. In view of the aforesaid established law interpreting Articles 14 to 16, Rules 5 and 8 of Punjab University Calendar Volume – III providing for appointment of lady principal in Women's College or a lady teacher therein cannot be held to be violative either of Article 14 or Article 16 of the Constitution, because classification is reasonable and it has a nexus with the object sought to be achieved. In addition, the State Government is empowered to make such special provisions under Article 15 (3) of the Constitution. This power is not restricted in any manner by Article 16.

11. In the result, appeal is allowed. The impugned

judgment rendered by the majority striking down the Rules 5, 8 & 10 of the Punjab University Calendar Volume–III as violative of Articles 14 or 16 is set aside. Minority view holding that the said Rules are not violative of Articles 14 or 16 is upheld. There shall be no order as to costs.

16. Hon'ble Supreme Court in the case of **Union of India vs Prabhakaran** (supra)**,** has held as under:-

2. The learned counsel for the appellants has invited our attention to the restricting the guarantee under Articles 16(1) and (2) of the Constitution. recent decision of this Court in Govt. of A. P v. PB. vijayakumar [1995 (4) SCC 520: 1995 SCC(L&S) 1056 1995 (30) ATC 576]. In that case the question regarding validity of Rule 22-A (2) of the A. P. State Subordinate Service Rules came up for consideration. The said provision provided for reservation to the extent of 30 per cent for women in the matter of direct recruitment to the posts governed by the said rules. The Andhra Pradesh High Court had declared the said rule to be invalid on the viw that Article 15(3) was not applicable and the rule was violative of Articles 14 and 16 of the Constitution. The said view of the High Court has been reversed by this Court. It has been held that Article 15 deals with every kind of State action in relation to the citizens of this country and that every sphere of activity of the State is controlled by Article 15(1) and, therefore, there was no reason to exclude from the ambit of Article 15(1) employment under the State. Since Articles 15(1) and 15(3) go together, the protection of Article 15(3) would be applicable to employment under the State falling under Articles

16(1) and (2) of the Constitution. In view of the above-referred judgment of this Court in Govt of A. P v. PB. Wjayakumar1 the impugned judgment of the High Court holding that Article 15(3) has no application in matters relating to employment under the State falling under Articles 16(1) and (2) cannot be upheld and has to be set aside.

17. A reference to Articles 15(3), 16(2) and 16(4) of the Constitution of India has been made to show that reservation for women has been provided pursuant to Article 15(3) of the Constitution of India. For ready reference, Articles 15 and 16 are quoted hereunder:

"15. **Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**— (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to— (a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making, (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category. Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

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

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(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.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made

under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category."

18. Article 16(2) of the Constitution provides for equality of opportunity in matters of public employment and governs the specialised subject of public employment. Article 16(2) of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex, descent, place of birth, etc. The word "sex" used in Article 16(2) of the Constitution is required to be noted because discrimination on the ground of sex cannot be made as per Article 16(2) of the Constitution. Article 16(4) of the Constitution provides for reservation to the backward class of citizens and it is to be read along with Article 16(2) of the Constitution of India and thereby no discrimination

on the ground of “sex” can be made.

19. Submission of learned counsel for the State that the reservation to female candidate is saved by Article 15(3) of the Constitution of India cannot be accepted as Article 15(3) of the Constitution, at the outset, does not refer to reservation in public employment, rather the words used are “special provision” for women. That apart, the question would be that when there is a specific Article under the Constitution to govern public employment, whether it can be ruled by any other constitutional provision in conflict or otherwise. The answer to the aforesaid issue was summarized and given by the Constitution Bench of the Apex Court in the case of **Indra Sawhney** (supra), in paragraph 514, which is quoted hereunder:

> “514. It is necessary to add here a word about reservations for women. Clause (2) of Article 16 bars reservation in services on the ground of sex. Article 15(3) cannot save the situation since all reservations in the services under the State can only be made under Article 16. Further, women come from both backward and forward classes. If reservations are kept for women as a class under Article 16(1), the same inequitous phenomenon will emerge. The women from the advanced classes will secure all the posts, leaving those from the backward classes without any. It will amount to indirectly providing statutory reservations for the advanced classes as such, which is impermissible under any of the provisions of Article 16. However, there is no doubt

> that women are a vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. Hence reservations for them on that ground would be fully justified, if they are kept in the quota of the respective class, as for other categories of persons, as explained above. If that is done, there is no need to keep a . special quota for women as such and whatever the percentage-limit on the reservations under Article 16, need not be exceeded." [emphasis supplied]

20. The aforesaid judgment of the Apex Court clarifies that reservation for women in public employment cannot be under Article 15(3) of the Constitution and Article 16(2) of the Constitution bars reservation on the ground of sex and the reservations can be under Article 16 of the Constitution. However, a finding was recorded that women are vulnerable section and, therefore, reservation can be provided in the quota of respective classes. The issue thus remains open for the Parliament to provide reservation for the vulnerable class of candidates, because it is not so provided under Article 16(4) of the Constitution of India. The reservation therein is only to backward class of citizens and the Apex Court, in the case of **Indra Sawhney** (supra), observed that women en bloc cannot be brought under the category of backward class of citizens and, therefore, they are separately categorized as vulnerable class for which there exists no provision in the Constitution to provide reservation. It must be for the obvious reason that when public employment is governed by Article 16 of the Constitution, it cannot be ruled by Article 15 of the Constitution, which

is of general application to the field not occupied by other Articles guaranteeing fundamental rights, otherwise there would be conflict between Articles 15 and 16 of the Constitution of India.

21. The aforesaid conflict can be illustrated by referring to Article 16(2) of the Constitution which prohibits discrimination in public employment on the ground of “sex” and in contrast, if we hold that Article 15(3) of the Constitution allows reservation for women and, accordingly, it can be provided in public employment, such an interpretation of Article 15(3) of the Constitution would be nothing but to nullify the main provision of public employment under Article 16(2) of the Constitution prohibiting discrimination on the basis of “sex”.

22. Other limb of argument of learned counsel for the State is that the Rules have been framed by exercising power vested in it under Article 309 (2) of the Constitution of India by the competent authority and as such it cannot be questioned and the petitions challenging the Rules deserve to be dismissed by this Court. The said submission deserves to be rejected on the count that since the Rules are not saved by Article 15(3) of the Constitution of India which suffers from arbitrariness and are violative of Articles 14, 15 and 16 of the Constitution of India, and therefore, on the touchstone of equality before law, equality of opportunity in matters of public employment, the same can very well be quashed.

23. Hon’ble Supreme Court in the case of **A.L. Kalra v. Project and Equipment Corporation of India Ltd.,** reported in **(1984) 3 SCC 316** has held as under:-

18. It is difficult to accept the submission that executive action which results in denial of equal protection of law or equality before law cannot be judicially reviewed nor can it be struck down on the ground of arbitrariness as being violative of Article 14. Conceding for the present purpose that legislative action follows a legislative policy and the legislative policy is not judicially reviewable, but while giving concrete shape to the legislative policy in the form of a statute, if the law violates any of the fundamental rights including Article 14, the same is void to the extent as provided in Article 13. If the law is void being in violation of any of the fundamental. rights set out in Part III of the Constitution, it cannot be shielded on the ground that it enacts a legislative policy. Wisdom of the legislative policy may not be open to judicial review but when the wisdom takes the concrete form of law, the same must stand the test of being in tune with the fundamental rights and if it trenches upon any of the fundamental rights, it is void as ordained by Article 13.

19. The scope and ambit of Art. 14 have been the subject matter of a catena of decisions. One fact of Art. 14 which has been noticed in E.P.Rayappa vs. State of Tamil Nadu & Anr. deserves special mention because that effectively answers the contention of Mr. Sinha. The Constitution Bench speaking through Bhagwati, J. in concurring judgment in Royappa's case observed as under:-

The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now what is the content and reach of this great equalising principle? It is a founding faith, to use the words of pedantic or lexicographic

approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if is affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

This view was approved by the Constitution Bench in Ajay Hasia case It thus appears well-settled that Art. 14 strikes at arbitrariness in executive /administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal of protection by law. The Constitution Bench pertinently observed in Ajay Hasia's case and put the matter beyond controversy when it is said 'wherever therefore, there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12,

> Article 14 immediately springs into action and strikes down such State action.' This view was further elaborated and affirmed in D.S. Nakara vs. Union of India. In Maneka Gandhi vs. Union of India it was observed that Art. 14 strikes at arbitrariness in State action and ensure fairness and equality of treatment. It is thus too late in the day to contend that an executive action shown to be arbitrary is not either judicially reviewable or within the reach of Art. 14. The contention as formulated by Mr. Sinha must accordingly be negatived.

24. Hon'ble Supreme Court in the case of **Deepak Sibal & Ors vs Punjab University And Another,** reported in **(1989) 2SCC 145** has held as under:-

> 31. It has been already found that the impugned rule is discriminatory and is violative of Article 14 of the Constitution and, as such, invalid. The refusal by the respondents to admit the appellants in the evening classes of the Three-Year LL.B. Degree Course was illegal. The appellants are, therefore, entitled to be admitted in the evening classes. It is, however, submitted on behalf of the respond- ents that all the seats have been filled up and, according- ly, the appellants cannot be admitted. As injustice was done to the appellants, it will be no answer to say that all the seats are filled up.
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> 32. For the reasons aforesaid, the judgment of the High Court is set aside and the impugned rule for admission in the evening classes is struck down as discriminatory and violative of Article 14

of the Constitution and accordingly, invalid. We, however, make it clear that the striking down of the impugned rule shall not, in any manner whatsoever, disturb the admissions already made for the session 1988-89. The respondents are directed to admit both the appellants in the second semester which has commenced from January, 1989 and shall allow them to complete the Three-Year LL.B. Degree Course, if not otherwise ineligible on, the ground of unsatisfactory academic performance. As was directed by this Court in Ajay Hasia v. Khalid Mujib Sehravardi, [1981] 2 SCR 79, the seats allocated to the appellants will be in addition to the normal intake of students in the college.

25. Hon'ble Supreme Court in the case of **Chebrolu Leela Prasad Rao and Others vs. State of Andhra Pradesh and Others,** reported in **(2021) 11 SCC 401** has held as under:-

"113. What is sought to be achieved by Articles 14 and 16 is equality and equality of opportunity. In Indra Sawhney (supra), this Court emphasised that founding fathers never envisaged reservation of all seats, and 50% shall be the rule. Some relaxation may become imperative, but extreme caution is to be exercised, and a special case is to be made for exceeding reservation more than 50%. This Court held:

"808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving the very same objective.

Clause (4) is a special provision— though not an exception to clause (1). Both the provisions have to be harmonised, keeping in mind the fact that both are but the re- statements of the principle of equality enshrined in Article 14. The provision under Article 16(4) — conceived in the interest of certain sections of society — should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in para 693). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.

809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristically to them, need to be treated in a different way, some relaxation in this strict rule may become imperative.

In doing so, extreme caution is to be exercised and a special case made out.

811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

141. No law mandates that only tribal teachers can teach in the scheduled areas; thus, the action defies the logic. Another reason given is the phenomenal absenteeism of teachers in schools. That could not have been a ground for providing 100 percent reservation to the tribal teachers in the areas. It is not the case that incumbents of other categories are not available in the areas. When a district is a unit for the employment, the ground applied for providing reservation for phenomenal absenteeism is irrelevant and could not have formed the basis for providing 100 percent reservation. The problem of absenteeism could have been taken care of by providing better facilities and other incentives.

142. The reason assigned that reservation was to cover impetus in the scheduled areas in the field of education and to strengthen educational infrastructure is also equally bereft of substance. By depriving opportunity to the others, it cannot be said that any impetus could have been given to the

cause of students and effective education, and now that could have been strengthened. The provisions of 100 percent reservation are ignoring the merit. Thus, it would weaken the educational infrastructure and the merit and the standard of education imparted in the schools. Educational development of students cannot be made only by a particular class of teachers appointed by providing reservation, ignoring merit in toto. The ideal approach would be that teachers are selected based on merit.

143. Depriving the opportunity of employment to other categories cannot be said to be a method of achieving social equilibrium. Apart from that, roster points are maintained for appointment by providing 100 percent reservation, there would be a violation of the said provision also, and it would become unworkable and the action has an effect of taking away the rights available to the tribals settled in the other non-scheduled areas. By providing 100 per cent reservation in the scheduled areas, their right to enjoy reservation to the extent it is available to them had also been taken away by uncalled for distribution of reservation.

166.2 Question No.2: G.O.Ms. No.3/2000 providing for 100 per cent reservation is not permissible under the Constitution, the outer limit is 50 per cent as specified in Indra Sawhney.

26. The Hon'ble Supreme Court in the case of **M.R. Balaji & Ors. v. State of Mysore & Ors.,** reported in **(1963) Supp 1 SCR 439**, has held that total reservations in favour of disadvantaged sections of the society

could not exceed 50% which reads as under:-

> “16. It now remains to consider the report made by the Nagan Gowda Committee appointed by the State. This report proceeds on the basis that higher social status has generally been accorded on the basis of caste for centuries; and so, it takes the view that the low social position of any community is, therefore, mainly due to the caste system. According to the Report, there are ample reasons to conclude that social backwardness is based mainly on racial, tribal, caste and denominational differences, even though economic backwardness might have contributed to social backwardness. It would thus be clear that the Committee approached its problem of enumerating and classifying the socially and educationally backward communities on the basis that the social backwardness depends substantially on the caste to which the community belongs, though it recognised that economic condition may be a contributory factor. The classification made by the Committee and the enumeration of the backward communities which it adopted shows that the Committee virtually equated the classes with the castes. According to the Committee, the entire Lingayat community was socially forward, and that all sections of Vokkaligas, excluding Bhunts, were socially backward. With regard to the Muslims, the majority of the Committee agreed that the Muslim community as a whole should be classified as socially backward. The Committee further decided that amongst the backward communities two

divisions should be made (i) the backward and (ii) the More Backward. In making this distinction, the Committee applied one test. It enquired:

> "Was the standard of education in the community in question less than 50% of the State average? If it was, the community should be regarded as more backward; if it was not, the community should be regarded as backward."

As to the extent of reservation in educational institutions, the Committee's recommendation was that 28% should be reserved for backward and 22% for more backward. In other words, 50% should be reserved for the whole group of backward communities besides 15% and 3% which had already been reserved for the Scheduled Castes and Scheduled Tribes respectively. That is how according to the Committee, 68% was carved out by reservation for the betterment of the Backward Classes and the Scheduled Castes and Tribes. It is on the basis of these recommendations that the Government proceeded to make its impugned order."

27. The Hon'ble Supreme Court in the case of **M. Nagaraj and Ors. v. Union of India and Ors.,** reported in **(2006) 8 SCC 212,** has held that the ceiling limit of reservation is 50% without which structure of equality of opportunity in Article 16 would collapse. It is stated as under:-

> "122. We reiterate that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, the inadequacy of representation and overall administrative efficiency are all constitutional

requirements without which the structure of equality of opportunity in Article 16 would collapse."

28. Thus, 100% reservation for female candidates for appointment on the posts of Demonstrator and Assistant Professor is unconstitutional, violative of Articles 14 and 16 of the Constitution of India, and therefore, Note-2 in the Schedule-III of the Rules of 2013 as well as Clause-5 of the advertisement are adjudged illegal and hence, quashed.

29. Accordingly, the Writ Petition No. 7183 of 2021 and Writ Petition No. 7184 of 2021 are allowed.

30. Pending applications, if any, stand disposed of.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Narendra Kumar Vyas)
Judge

Santosh