

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 9608 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9048 of 2022**  
**With**  
**CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2022**  
**In R/SPECIAL CIVIL APPLICATION NO. 9048 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 8928 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9474 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9082 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9470 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9458 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9820 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9910 of 2022**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9996 of 2022**

**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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**JATINKUMAR KISHORKUMAR BHATT**

**Versus****STATE OF GUJARAT**

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**Appearance:**

**MR RAJESH O GIDIYA(5222) for the Petitioner(s) No. 1,2,3,4,5,6**  
**for the Respondent(s) No. 1 so far as SCA Nos.9608/2022 and 9082/2022**

MR S P MAJMUDAR, for the Petitioner(s) IN REST OF THE PETITIONS.

Shri Kamal Trivedi, learned Advocate General with Ms. Manisha Lavkumar Shah, learned Government Pleader assisted respectively by Mr. Vinay Bairagra, learned AGP and Ms. Shruti Pathak, learned AGP for the Respondent(s) No. 1,2  
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**CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV**

**Date : 08/06/2022**

**COMMON ORAL JUDGMENT**

1. *Rule*, returnable forthwith. Mr. Vinay Bairagra, learned AGP and Ms. Shruti Pathak, learned Assistant Government Pleaders waive service of notice of Rule for the respondent - State.
2. With the consent of the learned advocates appearing for the respective parties, these petitions are taken up for its final disposal.
3. In all these petitions, under Article 226 of the Constitution of India, the petitioners have prayed for a direction that the action of the PSI Recruitment Board of including reserved category candidates in the list of general category candidates in the preliminary merit list of the preliminary exams, for the purpose of appearing in the main

examination for the post of PSI, Class III is unlawful and in violation of Article 14, 15, 16 and 21 of the Constitution of India. The petitioners have further prayed that a fresh merit list of candidates for appearing in the main examination be prepared by calling upon three times the candidates of each category i.e. reserved category and general category to the number of vacancies notified for each of the categories without including candidates of the reserved category in general category for the purposes of the said recruitment.

4. For the purposes of this judgment, the facts of SCA No.8928 of 2022 are considered.

4.1. An advertisement for the post of PSI, Class III has been issued by the Recruitment Board on 15.3.2021 inviting online applications for the purpose of recruitment to the post of PSI, Class III. A total of 1382 posts are to be filled in. The petitioners are candidates who have undergone the physical examination and the preliminary examination and aspire to appear for the main examination. It is their case that in accordance with Clause 16 of the advertisement, read with Rule 8(f) of the Posts of

Sub Inspector, Class III (Combined, Competitive Examination for Direct Recruitment) Rules, 2021 (for short, hereinafter referred to as 'the Rules'), the number of candidates that are to be called for the purpose of appearing in the main examination are three times the candidates of each category i.e. reserved category and general category to the number of vacancies notified.

5. The lead arguments have been made by Shri S. P. Majmudar, learned counsel for the petitioners of SCA No.8928 of 2022. He made the following submissions:

- 5.1. Inviting the Court's attention to Clause 16 of the advertisement Mr. Majmudar would submit that the Clause indicating that for appearing in a main examination, three times the candidates of each category have to be called.

- 5.2. Mr. Majmudar would then invite the attention of the Court to the Rules and submit that in accordance with Rule 8 the stages and mode of examination were physical test, preliminary examination and main examination. He would submit that for the purposes of preparing the final

merit list, marks of the preliminary examination are not to be considered for preparing the select list. The preliminary examination is only a screening test and the marks of such examination are therefore not to be added for counting merit.

5.3. Relying on Rule 8(f) of the Rules in context of Clause 16 of the advertisement, he would submit that the candidates who passed the preliminary examination shall be called for the main examination. The number of candidates to be called for main examination shall be about three times the number of vacancies requisitioned. The minimum qualifying standard shall not in any case be less than 40% of the marks in the preliminary examination.

5.4 Mr. Majmudar would submit that what the respondents have done is that rather than calling three times the number of candidates category wise, the respondents have included candidates belonging to the reserved category in the general category as well. In other words, they have clubbed reserved category candidates with general category candidates which will result in

restricting large number of candidates of general category. Secondly, the merit cut off for the reserved category has become higher resulting into the exclusion of some of the petitioners who belonged to the reserved category.

5.5 Mr. Majmudar would submit that even the GPSC while preparing list of candidates qualifying to appear in the main examination pursuant to the preliminary examination would prepare the list wherein for the vacancies notified for general candidates, only general candidates are included without including candidates belonging to the reserved categories. As a result of which, when the cut off marks of the reserved category candidates is higher than the general category candidates, cut off marks of reserved category candidates is lowered down to the cut off marks of general category candidates.

5.6 In other words, Mr. Majmudar would submit that by clubbing together general and reserved categories candidates together the respondents have applied the Rule of Migration in preparing the merit list. He would submit that the Rule of Migration, will apply only after the stage of

main examination and not for the purposes of calling of candidates at the preliminary examination stage. By applying the Rule of Migration, what the respondents have done is clubbing the reserved and general categories together resulting in a lower number of candidates of the general category and depriving other candidates of the same category.

5.7 Mr. Majmudar would submit that applying the Rule of Migration at the stage of preliminary examination, which is purely for screening purposes and then applying the same for main examination would amount to double reservation. In support of his submission, Mr. S. P. Majmudar would rely on a decision of the High Court of Rajasthan in the case of **Sunita Meena, d/o. Shri Jagdish Prasad Meena v. Rajasthan High Court, Jodhpur** through its Registrar General (Civil Writ Petition No.1244 of 2022) decided on 20.4.2022. Extensively reading the relevant paras of the decision in context of the scheme of examinations for the purposes of appointment of Civil Judges, Mr. Majmudar would rely on the paragraphs which would suggest that the Rule of Migration on the basis

of merit from one category to another cannot apply at the stage of preliminary examinations and can only be at the stage of final examinations. He would submit that relying on the past decisions of the Division Bench of the Rajasthan High Court, the Court had held that migration is not to be applied while short listing candidates for interview / main examination after subjecting them to screening test. It was held that the Rule of migration will be applicable only at the time of final selection.

5.8 Mr. Majmudar would submit that the Rules are in favour of the petitioners and they are not being correctly applied and by applying Rule of Migration, the reserved category candidates included in the merit category are cutting into the seats of general category.

5.9 Mr. Majmudar also relied on a decision of the Andhra Pradesh High Court in the case of ***S. Jaffer Saheb and others v. State of Andhra Pradesh in writ Petition No.7605/1984***. He would rely on paragraph 11 of the judgment of the Division Bench which held that the purpose of holding a screening test is to ensure the basic



standard of eligibility of the candidates and even at the stage of admission to the main examination, the rule of reservation of posts cannot be applied.

5.10. Mr. Majmudar also relied on a decision of the Hon'ble Supreme Court of India in the case of ***Ravindra Singh v. State of Chhattisgarh and others reported in 2014(2) SCC 232*** to submit that the question of law whether Rule of Migration applies to preliminary exams is kept open.

5.11. Mr. Majmudar would also submit that the appointments were made on the principle and not on the figures in the chart which was given at the stage of argument.

6. For the State, the arguments were canvassed by Shri Kamal Trivedi, learned Advocate General with Ms. Manisha Lavkumar Shah, learned Government Pleader assisted respectively by Mr. Vinay Bairagra, learned AGP and Ms. Shruti Pathak, learned AGP.

7. Shri Kamal Trivedi, learned Advocate General for the State has made the following submissions:

7.1 Mr. Trivedi would submit that as is evident from the advertisement, 1382 vacancies were notified for Recruitment to the post of PSI, Class III. He would submit that in accordance with the Rule, the Board is required to call candidates about three times the number of vacancies requisitioned. In other words, the figure three times of the number 1382 would require the Board call 4146 candidates for the purposes of the main examinations.

7.2 Mr. Trivedi would submit that the argument of the learned counsel for the petitioners of the concept of reserved categories and general categories is fallacious. He would submit that what the petitioners have lost sight of is that there is nothing like general categories and reserved categories. There is concept known as the open category where every candidate strictly in the context of merits and the marks obtained is entitled to be considered. It is settled that the term `general categories' or `open categories' or `unreserved categories' means a category open to all

meritorious candidates, regardless of the fact that they belong to the reserved categories. In support of his submission, the learned Advocate General would rely on a decision of the Supreme Court in the case of ***Bihari Lal Rada v. Anil Jain (Tinu) and others reported in 2009(4) SCC, 1***. He would rely on para 40 of the decision to submit that general category means persons belonging to all categories irrespective of their caste, class or community or tribe. Reliance is also placed on the decision in the case of ***Tammanaben Ashokbhai Desai v. Shital Amrutlal Nishar reported in 2020 (SCC-On Line) Gujarat, 2592***. He would rely on paras 45 to 52 of the decision to submit that there is no separate category like general category. It is irrelevant whether the reservation provided for is vertical or horizontal. There cannot be two interpretations of the words “open categories.” Reliance was also placed on the decision of the Supreme Court in the case of ***Saurav Yadav and others v. State of Uttar Pradesh and others reported in 2021 (4) SCC, 542***. Paras 23.10, 26 and 38 were pressed into service.

7.3 In support of his submission, Mr. Trivedi submits that

the term “general category” cannot have two different meanings at two stages i.e. one meaning at the time of preliminary examination and different meaning at the time of main examination.

7.4. Shri Trivedi relied on a decision in the case of ***Niravkumar Dilipbhai Makwana v. Gujarat Public Service Commission and others reported in 2019 (7) SCC, 383***. He pressed into service paras 7 to 10 and 34 of the said decision.

7.5 Mr. Trivedi also relied on a decision of Madhya Pradesh High Court in Writ Petition No.542/2021 dated 7.4.2022 where the amendment to the Rule which restricted the rule of migration only at the time of final selection was challenged and the amendment was set aside on the ground that the same runs contrary to the judgment of the Supreme Court in the case of ***Saurav Yadav (Supra)***.

7.6. Mr. Trivedi would further submit that it is erroneous for the petitioners to contend that the policy for

reservation has not been followed. The policy of reservation has been followed by excluding those meritorious reserved categories candidates who have availed the benefit of relaxation. The distinction between the stage of preliminary examination and the stage of main examination loses its significance in respect of the term “open categories” as held by the Supreme Court in the case of **Nirav Makwana (Supra)**.

7.7. Reading the Rule namely Rule 8(f) of the Rules Mr. Trivedi would submit that it is very clear that the candidates who passed the preliminary examination shall be called for the main examination. However, the proviso indicates that the number of candidates to be called for the main examination shall be about three times the number of vacancies requisitioned or the number of all candidates who passed the preliminary examination whichever is lower. He would submit that the number of requisitioned posts are 1382 and subject to merit three times the number would be 4146 candidates are required to be called.

7.8 In support of his submission, the learned AGP presented a chart before the Court explaining the scenario as done by the Recruitment Board (Scenario 3) and as suggested by the petitioners (Scenario 1). Referring to the scenario 1 as claimed by the petitioners, he would submit as under:

**Scenario No.1:**

- (i) In this scenario, which is sought to be pressed by the Petitioners, the Recruitment Board would not have to consider reserved category candidates in General category, though meritorious.
- (ii) For example, in case of General Male, **424** seats are required to be filled and hence, as per Rule 8(f) of the Examination Rules, 3 times the said posts, i.e. 1272 candidates are required to be called for Main Examination. In such manner, the Recruitment Board would have to consider only top 1272 General Male candidates, not the reserved candidates, which would make the cut off marks in this category to **51.25 marks**. However, those candidates who have equal cut off marks are also to be considered and therefore, instead of 1272 candidates, **1286** candidates have to be called for Main examination.

- (iii) Similarly, in the SC male category, the Recruitment Board would have to consider only top 147 SC male candidates, which would make the cut off marks in this category to **71.25 marks**.
- (iv) However, when the cut-off marks of General Male category would be 51.25, and cut-off marks of SC Male category would be 71.25, the cut-off marks of SC Male category would be required to be **lowered down** to 51.25, so as to match with the Cut-off marks of General Male category.
- (v) Once the cut off marks are revised in all the categories, then as per the revised cut off marks, the Recruitment Board may have to call additional 19637 candidates and in all **23783 candidates** for Main Examination. Pertinently, the total advertised posts are only **1382**. Thus, 23783 candidates would be **17 times** the number of advertised posts (23782 candidates ÷ 1382 posts), which would be against the mandate in Rule 8(f) (pg.38) of the Examination Rules.

### **Compromise on Merit:**

The said exercise of Scenario No.1, as sought by the Petitioner, would also lead to **compromise on merits** of the candidates, inasmuch as, in Scenario No.1, all those Male candidates who have scored above 51.25 marks would have to be called for Main Examination, whereas in the Scenario No.3, as followed by the Recruitment Board,

the “cut-off marks” in all the categories are much higher as compared to the “revised cut-off marks” in Scenario No.1.

Thus, Scenarios No.3 complies with the mandate of 3 times the advertised posts and at the same time, without comprising on merit of such candidates.

8. And in accordance with the Scenario as per the Recruitment Board (Scenario 3) he would submit as under:

**Scenario No.3 (As done by the Recruitment Board):**

- (i) In this scenario, the Recruitment Board has also considered ‘meritorious reserved candidates’, who have not availed of any relaxation in terms of age and physical standards, in ‘General Category’.
- (ii) For example, in case of General Male, **424** posts are to be filled and hence, as per Rule 8(f) of the Examination Rules, 3 times the said posts, i.e. 1272 candidates, are required to be called for Main Examination. Hence, the Recruitment Board considered top 1272 meritorious male candidates, irrespective of their castes. The last candidate of the above list of 1272 meritorious male candidates is having 75.00 marks and hence, **cut off marks** in this category have been fixed at **75.00**. However, those candidates who have equal cut off marks are also required to be considered and therefore, instead of 1272 candidates, **1286** candidates are called for Main examination.



(iii) Similarly, in the SC Male category, **49** seats are to be filled and hence, as per Rule 8(f) of the Examination Rules, 3 times the said posts, i.e. 147 candidates are required to be called for Main Examination. Hence, from the remaining students, the Recruitment Board considered top 147 SC male candidates. The last candidate of the above SC Male select list of 147 candidates is having 68.50 marks and hence, **cut off marks** in this category were fixed at **68.50**. However, those candidates who have equal cut off marks are also to be considered and therefore, instead of 147 candidates, **160** candidates are called for Main examination.

9. The chart so furnished is reproduced as under:

Sr. No.	Category	No. of Advertised Post	3 Times to Select	SCENARIO-1 (As Claimed by the Petitioners)			
				Cut-off	Revised Cut-off	No. of Additional Candidates	Total Candidates to be called for mains exam
1	General Male	424	1272	51.25	51.25	12	1284
2	General Female	191	573	40.00	40.00	7	580
3	EWS Male	94	282	75.75	51.25	2759	3041
4	EWS Female	43	129	59.75	40.00	543	672
5	SEBC Male	247	741	75.25	51.25	11231	11972
6	SEB Female	110	330	61.25	40.00	2543	2873
7	SC Male	49	147	71.25	51.25	1478	1625
8	SC Female	22	66	59.25	40.00	435	501
9	ST Male	137	411	56.25	51.25	389	800
10	ST Female	65	195	48.00	40.00	240	435
<b>TOTAL</b>		<b>1382</b>	<b>4146</b>			<b>19637</b>	<b>23783</b>

Note:

(1) As per the Examination Rules, 3 times the no. of advertised post are considered from each of the categories

(2) Cut-off marks of each reserved category is levelled down to match the cut-off marks of general category

(3) In this scenario, additional 19637 candidates (i.e. 17 times) may have to be considered, which will be against the Examination Rules

<b>SCENARIO-2 (Consideration of meritorious candidates irrespective of category)</b>	
<b>Cut-off</b>	<b>Total Candidates to be called for mains exam</b>
67.75	240
	25
	854
	26
	2554
	107
	261
	13
	64
	2
	<b>4146</b>

**Note:**

(1) In this scenario, top 4146 candidates i.e. three times the no.of advertised posts are considered in order of merit, irrespective of their categories

(2) Thus, this would breach the requirement of 3 times the no. of advertised posts.

(3) In this scenario, only 173 female candidates as against 1293, would be called for main examination.

<b>SCENARIO-3 (As per the result published by the Recruitment board)</b>			
<b>Cut-off</b>	<b>3 Times selected</b>	<b>Additional Candidate Selected due to equal mark</b>	<b>Total Candidates to be called for mains exam</b>
75.00	1272	14	1286
61.25	573	9	582
70.50	282	13	295
54.25	129	3	132
71.00	741	37	778
56.50	330	8	338
68.50	147	13	160
55.25	66	0	66
56.25	411	9	420
47.25	195	0	195
	<b>4146</b>	<b>106</b>	<b>4252</b>

**Note:**

(1) In general category, all meritorious candidates are considered having not obtained any relaxation in terms of age & physical measurement standards

(2) Candidates from respective reserved categories have been selected three times the no. of advertised posts of respective categories.

(3) Additional candidates having equal marks at cut-off standard are also included in the result

10. Mr. Trivedi, learned Advocate General in context of the Division Bench decision in the case of **Sunita Meena (Supra)** would submit that the said judgment merely follows the earlier judgment of the Rajasthan High Court including

the judgment in the case of **Garima Sharma** which has been stayed by the Apex Court vide its order dated 31.8.2018.

11. In rejoinder, Mr. Majmudar, learned counsel for the petitioners would submit that none of the judgments cited by the learned Advocate General would be applicable. He would submit that the case of **Bihari Lal Rada (Supra)** was in context of reservation in Election matters.
12. The case of **Tamma Ben (Supra) and Saurva Yadav (Supra)**, nowhere deal with the issue of Rule of Migration in the context of preliminary examination and they deal with only the concept of reservation in final merit.
13. Even the judgment in the case of **Nirav Makwana (Supra)** would not apply in the facts of the case.
14. Having considered the submissions of the learned advocates for the respective parties, what needs to be considered is whether, in calling 4146 candidates for the main examination which are scheduled on 12.6.2022 (three times

of the number of notified vacancies being 1382) have the respondents followed the Rule of Migration. Is the preparation of the merit list of candidates of the preliminary examinations in consonance with the Rules read with the relevant clause of the advertisement. Clause 16 of the advertisement when read and translated would read thus:

*“The minimum qualifying standard for the preliminary examination would be 40%. All those candidates who have obtained 40% marks or those candidates based on merit, three times in number, category wise whichever is lower will be called for main examination.”*

15. The relevant rules for the purposes of answering the issue are Rule 8, in particular Rule 8(f), Rule 12, Rule 17 and Rule 18 which read as under:

**“ Rule 8. Stages and Mode of examination :-**

*(a) The examination shall be held in the following manner, namely (I) Physical Test (Physical Efficiency Test and Physical Standard Test) (II) Preliminary Examination (III) Main Examination*

*(b) The Board shall, after receiving the applications from the candidates, scrutinize the applications with respect to eligibility of the candidates in accordance with these rules and shall allow the eligible candidates to appear in the Physical Test.*

*(c) Physical Test shall be conducted as specified in*

## Appendix II.

(d) *The candidates who pass the Physical Test shall be called for Preliminary Examination Provided that the number of candidates called for the Preliminary Examination shall be about fifteen times the number of vacancies requisitioned or the number of all the candidates who have passed the Physical Test, whichever is lower.*

(e) *The Preliminary Examination shall be conducted as specified in Appendix III.*

(f) *The candidates who pass the Preliminary Examination shall be called for Main Examination Provided that the number of candidates to be called for Main Examination shall be about three times the number of vacancies requisitioned or the number of all the candidates who pass the Preliminary Examination, whichever is lower.*

(g) *The Main Examination shall be conducted as specified in Appendix IV.*

(h) *The candidates who appear in the Main Examination shall be called for document verification based on the aggregate marks obtained by the candidates in the Physical Efficiency Test, Main Examination and the marks obtained as per Appendix V. Provided that the number of candidates called for document verification shall be about twice the number of vacancies requisitioned.*

### **Rule 8(f). Stages and Mode of examination :-**

(f) *The candidates who pass the Preliminary Examination shall be called for Main Examination Provided that the number of candidates to be called for Main Examination shall be about three times the number of vacancies requisitioned or the number of all the candidates who pass the Preliminary Examination, whichever is lower.*

### **12. Qualifying Standard and marks :-**

*The Board shall fix the qualifying standard for Preliminary Examination and Main Examination for the candidates of non-reserved categories and separately for candidates belonging to reserved*

categories. However, the minimum qualifying standard that may be determined by the Board shall not in any case be less than 40 per cent of marks in Preliminary Examination and Main Examination.

**17. Procedure for preparation of select list and order of preference :-**

(1) The final result shall be prepared by the Board in the order of merit on the basis of aggregate marks finally awarded to the candidate in the Physical Test, Main Examination and weightage of additional marks as specified in Appendix V, specifying their names, seat numbers and total marks obtained by the candidates and the same shall be caused to be published on the notice board and/or on the official website of the Board. The copy of the result so published shall be sent to the Government in Home Department, and to the Director General and Inspector General of Police.

(2) The Board shall call the candidates individually as per their merit in the manner as decided by the Board.

(3) The candidate shall be required to give, at the time of document verification in his own handwriting, the order of preferences for the posts as specified in Appendix I to which he desires to be considered for appointment, in the manner as may be prescribed by the Board:

Provided that, the preferences once given by the candidate shall be treated as final and no request for revision, or change in the preference shall be entertained by the Board.

(4) The candidate who belongs to the reserved category and selected on his own merit but does not get the concerned post of his choice/preference according to merit order and if the post of concerned reserved category is available of his choice as a reserved candidate, then such candidate shall be



*allocated to that post against such reserved post. Such reserved post shall be treated as filled up post against the reservation quota of such category.*

*(5) The Board shall in the first instance, prepare the list for general category candidates and then, prepare a list for the candidates belonging to reserved category of Scheduled Castes, Scheduled Tribes, Socially and Educationally Backward Classes(Including Nomadic Tribes and Denotified Tribes) and Economically Weaker Sections, to the extent of the number of vacancies requisitioned.*

*(6) Where the candidate has not given preference for any post, or the candidate has given preference only for a few posts and the number of posts for which he has given preference are not available to accommodate the candidate as per his preference, such candidate shall be considered for appointment to any of the remaining posts after the process of appointment to the other candidates, who have given their preference for all the posts specified in Appendix I, is completed.*

*(7) The appointment of the candidate to a particular post shall be subject to the fulfilment of the provisions of recruitment rules as in force relating to that post.*

*(8) Where the candidate has been appointed to a particular post, no request shall be entertained by the Controlling authority for a change of appointment to another post.*

*(9) The board shall prepare the list on meritorious basis, according to reservation policy of the Government prevailing in time.*

### **18. Preparation of select list :-**

*(1) The Board shall prepare a select list in accordance with rule 17 in the order of merit on the basis of aggregate marks finally awarded to each candidate*

*to the extent of the number of vacancies requisitioned.*

*(2) The Board shall also prepare a list of successful candidates belonging to the Scheduled Castes, Scheduled Tribes, Socially and Educationally Backward Classes(Including Nomadic Tribes and Denotified Tribes), Economically Weaker Sections, Women, Disabled Persons (as per the Government orders) and Ex-Servicemen, to the extent of the number of vacancies reserved for such categories and requisitioned.”*

16. Reading Rule 8 would indicate that the stages of the examination are physical tests, preliminary examinations and main examinations. Rule 8(f) provides that the candidates who passed the preliminary examinations shall be called for the main examinations. The number of candidates to be called for the main examinations shall be about three times the number of vacancies or all the candidates who passed the preliminary examinations whichever is lower. Apparently and unduly large number of candidates have appeared for the physical tests and the preliminary examinations. By virtue of the operation of Rule 8(f) therefore of the notified 1382 vacancies, three times that number, being 4146 candidates need to be called for the main examinations. True it is that on a conjoint reading of Rule 12, 17 and 18 it is evident that the final merit is

prepared based on the marks awarded for the physical test and the main examination, but what needs to be seen is whether the respondents in preparing the merit list of candidates who appeared in the preliminary examinations have done so in consonance with clause 16 read with Rule 8(f). Essentially, what needs to be engaging the Court in its quest to elicit an answer is whether in preparing the list of 4146 candidates to be called for the main examinations, have the respondents misinterpreted the rules and / or whether the Rule of Migration is applied in the context of preliminary examinations contrary to the position of law.

17. It is at this stage that, at the cost of repetition, the tabular statement produced by the State needs to be reproduced as under:

Sr. No.	Category	No. of Advertised Post	3 Times to Select	SCENARIO-1 (As Claimed by the Petitioners)			
				Cut-off	Revised Cut-off	No. of Additional Candidates	Total Candidates to be called for mains exam
1	General Male	424	1272	51.25	51.25	12	1284
2	General Female	191	573	40.00	40.00	7	580
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Note:

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<b>SCENARIO-2 (Consideration of meritorious candidates irrespective of category)</b>	
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(2) Thus, this would breach the requirement of 3 times the no. of advertised posts.

(3) In this scenario, only 173 female candidates as against 1293, would be called for main examination.

<b>SCENARIO-3 (As per the result published by the Recruitment board)</b>			
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71.00	741	37	778
56.50	330	8	338
68.50	147	13	160
55.25	66	0	66
56.25	411	9	420
47.25	195	0	195
	<b>4146</b>	<b>106</b>	<b>4252</b>

**Note:**

(1) In general category, all meritorious candidates are considered having not obtained any relaxation in terms of age & physical measurement standards

(2) Candidates from respective reserved categories have been selected three times the no. of advertised posts of respective categories.

(3) Additional candidates having equal marks at cut-off standard are also included in the result

18. For instance, for the category of general male, the number of posts advertised is 424. The number of candidates to be called for the mains, at three times, would come to 1272. As

pointed out by the learned Advocate General Shri Kamal Trivedi, in comparison to the “scenario 3” as per the result published by the Recruitment Board in the category of General Male, 1272 candidates called for the mains is in accordance with the provisions of Rule 8(f).

18.1. Rule 8(f) provides clearly that when it comes to choosing the number of candidates to be called for the preliminary examinations, especially when a large number of candidates have appeared, the number lower in the present case i.e. only a figure three times the number of vacancies have to be called. If all general category male candidates three times the number have to be called, as suggested by the petitioners i.e. 1272 general male, the cut off marks in this category would be 51.25 marks. Considering the category of SC male, 147 top SC male would have to be considered making the cut off marks in this category to 71.25 marks. Since the cut off marks for general male category would be 51.25 lower than 71.25 for the SC male, the cut off for SC male would have to be lowered to 51.25. What is demonstrated from the “scenario 1” as claimed by the petitioners once the cut off is revised

in all categories with the benchmark of 51.25 of the General male, the number of additional candidates to be called for the main examinations would be 19637 and, therefore, in all 23788 candidates will have to be called for main examinations for a total posts of 1382 which would be against the mandate of Rule 8(f) of the examination Rules.

19. When the chart showing the perception and the result of the Recruitment Board is seen, it is apparent that the category wise three times the number as canvassed by the petitioners when read in consonance with Rule 8(f) is maintained. The defence of the State is that while calling 1272 meritorious male candidates it has considered merit with a cut off fixed at 75 marks. Those candidates who have equal cut off marks are also considered and called. Hence, 1286 are called for the main examinations. So also in the SC male category for the 49 seats to be filled in, 147 SC male candidates are requested to be called. The cut off marks of the last SC male was 68.50, hence, based on the cut off 160 candidates are called for the main examinations.

19.1. Whether calling for three times the number in each



category as worked out by the Board is contrary to law is the question that needs to be answered.

20. Apparently from the Chart, if the working out of the Board is considered than the mandate of the Rule is complied with, inasmuch as, demonstrated three times the number category wise has been called based on the number of vacancies in each category. From the submissions of the learned Advocate General and the context of how the Board has worked out the working of such number in each category would indicate the raving of the Bar. The cut off as worked out on the basis of the petitioners (scenario 1) would show the cut off as 51.25 for general male which has substantially gone upto 75 as per the working of the State. The apprehension of the petitioners that this has resulting in hiking up the merits standard and the inclusion of the meritorious reserved candidates in the figure of 1272 cuts into the seats of general candidates and amounts to clubbing of the two categories and, therefore, double reservations needs to be considered based on the law laid down by the Courts, especially the Apex Court.

20.1. Obviously also a fact needs to be noted that with an unduly large number of candidates appearing for the preliminary examinations and keeping in mind the object of the screening test which is to eliminate unduly large number of persons to appear for the main examinations if more candidates are called by declaring the results as conceived by the petitioners, the object of Rule 8(f) would be frustrated. The argument on behalf of the State is that policy of reservation has not been given a go-bye and the concept of reservation in tandem with merit has been followed keeping in mind that as per the Rules when qualifying standards are same for the preliminary examinations and the main examinations, then, there is no separate category like General Category and Reserved Category and persons belonging to all categories as Open Category candidates are called and find their place on the list who are otherwise qualified.

20.2. The Apex Court in the case of ***Bihari Lal Rada (Supra)***, albeit, in the context of elections, however, has explained the concept of “Open Categories.” Para 40 and 41 of the decision read as under:

*“40. Be that as it may, neither Article 243T of the Constitution nor Section 10(5) of the Haryana Municipal Act provide for any reservation to the office of the President in favour of any candidate who does not belong to Scheduled Caste or Backward Class. Obviously there cannot be any such reservation of seats in Municipalities nor to the office of Chairperson in favour of candidates belonging to general category. There is no separate category like general category. The expression belonging to the general category wherever employed means the seats or offices earmarked for persons belonging to all categories irrespective of their caste, class or community or tribe. The unreserved seats euphemistically described as general category seats are open seats available for all candidates who are otherwise qualified to contest to that office.*

*41. The word `General' derived from Latin word genus.*

*It relates to the whole kind, class, order. Pertaining to or designating the genus or class, as distinguished from that which characterizes the species or individual; universal, not particularized, as opposed to special; principal or central, as opposed to local; open or available to all, as opposed to select; obtaining commonly, or recognized universally, as opposed to particular; universal or unbounded, as opposed to limited; comprehending the whole or directed to the whole, as distinguished from anything applying to or designed for a portion only. Extensive or common to many.*

*(See Black's Law Dictionary, Sixth Edition).”*

20.3. Keeping merit as the foremost principle in mind and also the mandate of the Rules, all meritorious candidates regardless of the fact that they belong to reserved categories or non-reserved categories have been called. In the case of **Nirav Kumar Makwana (Supra)**, the question for consideration before the Hon'ble Supreme Court was whether a candidate who has availed of any age relaxation in the selection process as a result of belonging to a reserved category can thereafter seek to be accommodated in / or migrated to the general category seat?

21. Learned counsels for the petitioners would want this Court to overlook the question of law decided in it on the ground that the question therein was regarding the State's policy by Circulars which stated that those reserved category candidates who had not availed of any relaxation in age, experience, qualification, number of chances etc. will be adjusted in open category and, therefore, the reliance by the State on the decision was misplaced. Though the reference was in context of age relaxation, the Apex Court held that

the distinction sought to be drawn between the preliminary and the main examinations was totally misconceived. Para 34 of the decision in the case of **Nirav Makwana (Supra)** reads as under:

*“34. There is also no merit in the submission of the learned counsel for the appellant that relaxation in age at the initial qualifying stage would not fall foul of the circulars dated 29.01.2000 and 23.07.2004. The distinction sought to be drawn between the preliminary and final examination is totally misconceived. It is evident from the advertisement that a person who avails of an age relaxation at the initial stage will necessarily avail of the same relaxation even at the final stage. We are of the view that the age relaxation granted to the candidates belonging to SC/ST and SEBC category in the instant case is an incident of reservation under [Article 16\(4\)](#) of the Constitution of India.”*

21.1. Rule 12 of the Rules under consideration before this Court permits the Board to fix the qualifying standard for the preliminary examinations and the main examinations for the candidates of the respective categories but it further specifies that the minimum qualifying standard that may be determined shall not in any case be less than 40% of the marks in the preliminary examinations and main examinations. Therefore, there cannot be two different meanings of the term “General

Category,” one at the time of preliminary examinations and a different meaning at the time of main examinations.

21.2. The decision of this Court in the case of **Tammanna Ben (Supra)**, as referred to and confirmed by the Apex Court in the case of **Saurav Yadav (Supra)** dealing with the concept of horizontal and vertical reservations and adjustment of meritorious reserved candidates deals with the concept of “Open Category” as led down in the case of **Bihari Lal Rada (Supra)**.

22. The decision dated 7.4.2022 of the Madhya Pradesh High Court of the Division Bench in the case of **Kishor Chaudhary v. State of Madhya Pradesh** passed in Writ Petition No.542 of 2022 was filed by the petitioners for declaration that the amendment to Rule 4(3)(ii) in the Madhya Pradesh State Examination Rules be declared as ultravires to Articles 14, 15 and 16 of the Constitution of India as well as against the aims and object of the reservation policy. In the ongoing recruitment process, after the preliminary examinations were held on 12.1.2020, the State, on 17.2.2020 brought out an amendment. The Rules

provided that candidates of the reserved categories would get selected like general category candidates without any relaxation shall not be adjusted against the posts reserved for those reserved categories. They shall be adjusted against vacancies of unreserved categories. An amendment brought in stipulated that such adjustment will only be at the time of final selection, not at the time of preliminary / main examinations.

22.1. The contention was that this became a hurdle for the reserved category candidates as it is well settled that if a reserved category candidates received more or equal marks qua an unreserved category candidate, he will secure berth in unreserved category and he cannot be treated as a reserved category candidate. The impugned amendment will therefore prevent this settled principle of law in preliminary examination and main examination. The Division Bench of the Madhya Pradesh considering the law laid down by the Apex Court set aside the amendment holding that the principles enunciated by the Hon'ble Supreme Court can be translated into reality only when reserved category candidate secured equal mark or more

can be given berth in unreserved category at all stages of selection including preliminary and the main examination. Any other interpretation will repeat the purpose and the constitutional scheme flowing from Articles 14 and 16 of the Constitution of India. The relevant paras of the decision of the Madhya Pradesh High Court **Kishor Chaudhary (Supra)** reads as under:

*“6. Thus, sub-section (4) of Section 4 became a hurdle for the reserved category candidates. This is well settled that if a reserved category candidate received more or equal marks qua UR category candidate, he will secure birth in UR category and he cannot be treated to be a reserve category candidate. The respondents in preliminary examination and main examination are not implementing this settled principle in view of the impugned amendment in Examination Rules dated 17.2.2020.*

*33. Constitutionality of Rule 4(3)(d)(III) of Examination Rules, 2015:-*

*As noticed, this amended Rule became part of statute book w.e.f. 17.02.2020. Before dealing with this amended Rule, it is profitable to consider the unamended Rule, the impugned Rule amended w.e.f. 17.02.2020 and another amendment dated 20.12.2021. The relevant provisions are reproduced hereinunder in tabular form to examine the provisions in juxtaposition.*

*Unamended Rules 2015    Amendment 17.2.2020  
Amendment 20.12.2021*

*4. Mode of preparation of*



*select list -*

*(1) (a) (i) On the basis of marks obtained in Preliminary Examination, candidates numbering 15 times the vacancies as advertised categorywise will be declared successful for Main examination subject to the condition that candidates have scored minimum passing marks as may be specified by the Commission. In addition to this, all the other candidates who get marks equal to "Cut Off Marks" will also be declared successful for the main examination.*

*(ii) Firstly, a list of Candidates of unreserved category shall be prepared. This list will include the candidates selected on the basis of the common merit from Scheduled Castes,*

*(d) (I) Results of Preliminary/Main Examination, the candidates shall be declared in the category mentioned as their category in their online application form.*

*(II) Candidates of reserved category ( Scheduled caste/ Scheduled Tribe ? Other Banckwards Classes/ Economically Weaker Section) who get selected like general category cadidates without any relaxation shall not be adjusted against the posts reserved for those reserved categories. They shall be adjusted against vacancies of unreserved category.*

*(III) But above adjusment will only be at the time of final sleection, not at the time of preliminary/ main examination.*

*4. In Rule 4 sub rule (3) for clause (a) the following clause shall be substituted, namely :-*

*(3) (a) (i) After the interview, the merit list of the candidates shall be prepared by the Commission on the basis of the total marks obtained by them in the main examination and interview. The order of merit of the candidates securing equal marks shall be*

*determined as per the criteria prescribed by the order of the Commission.*

*(ii) First of all, a list of unreserved category (which includes Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections) shall be prepared. After this, those candidates belonging to the reserved category (Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections) included in the unreserved category (which also includes Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections) who have taken the benefit of relaxations from time to time, shall be included in the respective category by separating them from the list of unreserved category.*

*Scheduled Tribes and Other Backward Classes, who have not taken any advantage/relaxation given to the concerned category.*

*(iii) Secondly, separate lists of Scheduled Castes, Scheduled Tribes and Other Backward Classes will be prepared.*

*(iii) Secondly, separate lists of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes and Economically Weaker Sections shall be prepared.*

*A comparative reading of main Rule and two subsequent amendments above makes it clear that as per main unamended Rule, the meritorious reserved category candidate was entitled to compete with U.R. category candidates and get his position in Open/UR Category. By impugned amendment dated 17.2.2020, this right was taken away by confining the benefit at the time of final selection only. By subsequent amendment, dated 20.12.2021, the earlier position prevailing at the time of unamended Rules was restored. Thus, impugned amendment*

became a hurdle for the meritorious reserved category candidates to be treated as U.R./Open Category Candidate.

34. The impugned amendment dated 17.02.2020, as per the argument of Shri Bernard, learned Additional Advocate General was necessitated in view of Division Bench order passed in the case of Vishal Jain (supra). On a minute scrutiny, we do not find any merit in this contention that the judgment of Vishal Jain (supra) can become a reason for amendment in the Rules with effect from 17.02.2020. A careful reading of order of Vishal Jain (supra) leaves no room for any doubt that this matter was decided after commencement of Rules of 2015. The Court did not consider the impact of the Rules, if read with Sub-section (4) of Section 4 of the Adhinyam. In other words, Examination Rules of 2015 were not brought to the notice of the Division Bench in the case of Vishal Jain (supra). In absence thereof, principle of Hemraj Rana's case was followed by the subsequent Bench. We find substance in the argument of Shri Vinayak Shah, learned counsel for the petitioner that in absence of considering the statutory Rules (Examination Rules of 2015), the judgment of Vishal Jain (supra) cannot become reason for introducing the impugned amendment. For yet another reason, we are unable to accept the reason assigned for amendment w.e.f. 17.02.2020. The Apex Court in the case of Indra Sawhney (supra) ruled that:-

'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 not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.'

**[Emphasis Supplied]**

*The ratio decidendi of Indra Sawhney (supra) is followed in R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745, Union of India and others v. Virpal Singh Chauhan and others (1995) 6 SCC 684 and recently in Saurav Yadav v. State of U.P., (2021) 4 SCC 542 it is held as under:*

*“I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state’s argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. 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.”*

**(Emphasis Supplied)**

*35. Needless to emphasize that law laid down by Apex Court in the case of Indra Sawhney (9 Judges Bench) is binding on all the Courts and Authorities throughout India. This binding judgment was consistently followed by the Supreme Court in catena of judgments.*

*45. The respondents could not assign any justifiable reason or establish any rationale object/purpose for bringing impugned amendment dated 17.02.2020. Similarly, they could not establish the nexus between the object sought to be achieved and the impugned amendment. Thus, the impugned amendment dated 17.02.2020 cannot be given a stamp of approval. Since, it runs contrary to the binding precedent of Indra Sawhney (supra) consistently followed till*

*Saurav Yadav (supra), the impugned amendment cannot sustain judicial scrutiny. By no stretch of imagination, withstanding a Nine Judges Bench judgment of Supreme Court in Indra Sawhney (supra), it was open to the Government to amend the Examination Rules contrary to the principles laid down in Indra Sawhney (supra) under the garb of order of Division Bench of this court in Vishal Jain (supra). Moreso when in Vishal Jain (supra), the Examination Rules of 2015 were not brought to the notice of this Court.*

*We are of the considered view that the principles laid down by the Supreme Court in Indra Sawhney (supra) can be translated into reality only when reserved category candidate secured equal or more marks with U.R. category candidate is given birth in U.R. category in all stages of selection including preliminary and the main examination. Any other interpretation will defeat the purpose and the constitutional scheme flowing from Article 14 and 16 of the Constitution of the India. There is no justifiable reason for depriving a meritorious reserved category candidate who has competed with UR category candidate and secured same or more marks than him from being treated as U.R. candidate.*

*The matter may be examined through a different magnifying glass.*

*As per the judgment of Indra Sawhney (supra), the reserve category candidate equal / more meritorious qua UR category candidate deserves a birth in UR category. Thus, such reserved category meritorious candidate merges in the class of UR category because of his own merits. Depriving such candidate from the fruits of securing a birth in UR category results into dividing a homogeneous class of meritorious candidates. The Artificial classification which is outcome of impugned rule is arbitrary, discriminatory and violative of equality clause enshrined in Article 14 of the Constitution. The*

*meritorious reserve category candidates cannot be put to a comparative disadvantageous position because of their birth mark if they are otherwise equal or more meritorious than the last UR category candidate. The impugned Amended Rule, for no valid reasons deprives such reserved category candidate and, therefore, the impugned Rule deserves to be declared as ultra vires. We accordingly declare Rule 4 (3) (d) (III) of the Amended Rules as unconstitutional.”*

23. As far as the decision of the Division Bench of the Rajasthan High Court in the case of **Sunita Meena (Supra)** is concerned, it has been decided on the basis of the decision of Division Bench of the Rajasthan High Court, of the past including that of **Garima Sharma (Supra)** which is stayed by the Apex Court. Even otherwise, the Division Bench of the Madhya Pradesh High Court keeping in line with the law laid down by the Apex Court has taken the view that the principle of merit would apply at all stages of selection and therefore in the opinion of this Court, the same is applicable and binding.

23.1. The Division Bench of the Rajasthan High Court in the case of **Sunita Meena (Supra)** considered the decision of the Hon'ble Supreme Court in the case of **Chhatar Singh and others v. State of Rajasthan and**

**others** reported in **(1996) 11 SCC 742**. The case before the Hon'ble Supreme Court was a case where the Scheme of providing for relaxation of the percentage of cut off marks for SC / ST candidates made unavailable to OBC candidates was under consideration and was held to be valid and, therefore, did not deal with the rule of migration as canvassed by the learned counsel for the petitioners.

24. For the aforesaid reasons, all these petitions stand dismissed. Rule is discharged. No costs.

**ORDER IN CIVIL APPLICATION (FOR JOINING PARTY)**  
**NO. 1 OF 2022 IN SPECIAL CIVIL APPLICATION**  
**NO.9048 OF 2022:**

25. Heard learned Senior Advocate Mr. G.M. Joshi assisted by Mr. N.P. Chaudhary, learned advocate for the applicant for joining the party and perused the present application.

26. For the reasons stated in the application, the present application is allowed in terms of paragraph No.14(B).

**SCA Nos. 9608 and 9082 of 2022:**

27. *Rule*, returnable forthwith. Mr. Vinay Bairagra, learned AGP and Ms. Shruti Pathak, learned Assistant Government Pleaders waive service of notice of Rule for the respondent - State.
28. With the consent of the learned advocates appearing for the respective parties, both these petitions are taken up for its final disposal.
29. These petitions also have been filed by the category of ex-servicemen for a direction to the respondents to include the petitioners in the list of successful candidates to the posts of PSI pursuant to the advertisement issued by the respondent - Board.
30. The short issue as argued by Mr. R.O. Gidiya, learned counsel for the petitioners is that the advertisement provided for 10% reservation for ex-servicemen in consonance with the Gujarat Civil Services (Reservation of Vacancies for ex-servicemen in Class-III and Class-IV Posts



and Service) Rules, 1975. He would submit that in accordance with the Rules of the 1382 vacancies notified 138 ex-servicemen ought to have been called for the main examination and calling only 59 candidates is contrary to the provisions of law.

31. Learned counsel for the petitioners placed reliance on the decision of the Division Bench of this Court in the case of ***Alpesh Surendrasinh Rathod v. State of Gujarat reported in 2021(2) GLR 881***. He would submit that it is laid down by the Division Bench of this Court that non-granting of reservation to the extent of 10% for ex-servicemen would be contrary to the Rules and rather than called 59 candidates, 138 candidates be called for.
32. Ms. Manisha L. Shah, learned Government Pleader assisted by Ms. Shruti Pathak, learned AGP for the respondent - State would draw the attention of the Court to the affidavit-in-reply filed on behalf of the State. She would submit that the challenge by the petitioners to the exclusion of the names of candidates beyond the number 59 is misconceived. She would rely on Rule 6(A) of the Recruitment Rules which

stipulates that in the case of direct recruitment, if sufficient number of candidates belonging to the ex-servicemen is not available on the basis of general standard to fill all the vacancies reserved for them, candidates belonging to the category of ex-servicemen may be selected under the relaxed standard of selection to make up the deficiency in the reserved quota subject to the condition that such relaxation will not affect the level of performance of such candidates.

33. Reiterating the submissions made on behalf of the Government in the aforesaid group of petitions and considering the pattern of examination, she would demonstrate that the qualifying marks for each category, the cut off marks was as under:

	<b>General</b>	<b>EWS</b>	<b>SC</b>	<b>ST</b>	<b>SEBC</b>	<b>Total</b>
<b>Cut-off for Male Candidate</b>	75.00	90.50	68.50	56.25	71.00	-
<b>Cut-off for Female candidate</b>	61.25	54.25	55.25	47.25	56.50	-
<b>Cut-off for Ex-servicemen</b>	60.00	56.40	54.80	45.00	56.80	-
<b>No. of Ex-servicemen</b>	34	4	3	2	16	59

She would, therefore, submit that sufficient relaxation by reducing the cut off marks has been granted and the petitioners do not fall within the merit and, therefore, there is no breach of the Reservation Rules. Even otherwise, as far as the decision of the Division Bench is concerned even that was at the stage of document verification.

34. This Court, in the earlier part of this judgment has extensively considered the concept of "Open Category" in the context of "Reserved Category" and the preparation of the merit list for the preliminary examination in accordance with the Scheme of the Rules, particularly, Rule 8(f) in light of the decisions referred too in the aforesaid judgment.

35. From the perusal of the chart reproduced hereinabove, what therefore is indicative is that even on the relaxation of cut off marks for the purposes of ex-servicemen, only 34 General category, 4 EWS, 3 SC, 2 ST and 16 of SEBC ex-servicemen obtained qualifying marks.

36. As has been held by this Court hereinabove, the State has evolved the concept of merit while considering the policy of

reservation in context of the law laid down by the Apex Court in the case of **Saurav Yadav (Supra)** as considered by the Madhya Pradesh High Court for the reasons in addition thereto as set out in the decision of the group of petitions in earlier part of this judgment, both these petitions stand dismissed. Rule is discharged. No order as to costs.

VATSAL S. KOTECHEA

**Sd/-**  
**[ BIREN VAISHNAV, J. ]**