

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 1910 of 2019
In
R/SPECIAL CIVIL APPLICATION NO. 18968 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2019
In
R/LETTERS PATENT APPEAL NO. 1910 of 2019
With
F/LETTERS PATENT APPEAL NO. 42492 of 2019
In
SPECIAL CIVIL APPLICATION NO. 18654 of 2018

FOR APPROVAL AND SIGNATURE:**HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH Sd/-****and****HONOURABLE MR. JUSTICE J. B. PARDIWALA Sd/-**

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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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TAMANNABEN ASHOKBHAI DESAI**Versus****SHITAL AMRUTLAL NISHAR**

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Appearance:**MR. SHALIN MEHTA, LD. SR. COUNSEL with MS. ADITI S RAOL(8128) for the Appellant(s) No. 1,2,3**

MR. KAMAL TRIVEDI, LD. ADVOCATE GENERAL for the Respondent(s) No. 4

MR SHIVANG J SHUKLA(2515) for the Respondent(s) No. 5

NOTICE SERVED BY DS(5) for the Respondent(s) No. 4,6,7,8

MR. GAUTAM JOSHI, LD. SR. COUNSEL with MR. VYOM H SHAH(9387) for the Respondent(s) No. 1,2,3

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH
and
HONOURABLE MR. JUSTICE J.B.PARDIWALA

Date : 05/08/2020

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. As the issues raised in both the captioned appeals are the same and the challenge is also to the selfsame judgment and order passed by the learned Single Judge, those were heard analogously and are being disposed of by this common judgment and order.

2. For the sake of convenience, the Letters Patent Appeal No.1910 of 2019 is treated as the lead matter.

3. This appeal under Clause 15 of the Letters Patent is at the instance of the original Respondents Nos.3,4, and 5 respectively of a writ application and is directed against the judgment and order passed by a learned Single Judge of this Court dated 29.11.2019 in the Special Civil Application No.18654 of 2018 and allied petitions, by which, the learned Single Judge allowed the writ applications and issued directions to the Gujarat Public Service Commission.

4. The facts, giving rise to this litigation, may be summarized as under;

4.1 The respondent No.5 herein-Gujarat Public Service Commission came up with a public advertisement dated 15th July, 2017 for the recruitment to the 115 posts of the Police Inspector (Unarmed). It appears that the State Government has framed rules called the Gujarat Civil Services (Reservation of Posts for Women) Rules, 1997 (for short "the Rules, 1997"), providing for reservation for women in the public services and posts in connection with the affairs of the State. The relevant Rule 2 provides as under;

"RULE 2 : Reservation of posts for women -

Notwithstanding anything contained in any rules or orders relating to recruitment to public services and posts in connection with the affairs of the State :

(a) there shall be reserved in favour of women belonging to the Scheduled Castes thirty percent of the posts reserved in favour of such Castes;

(b) there shall be reserved in favour of women belonging to the Scheduled Tribes thirty percent of the posts reserved in favour of such Tribes;

(c) there shall be reserved in favour of women belonging to the Socially and Educationally Backward Classes thirty percent of the posts reserved in favour of such Classes;

(d) there shall be reserved in favour of women thirty percent of the posts not being posts reserved in favour of the Scheduled Castes; Scheduled Tribes and Socially and Educationally Backward Classes.

Explanation. For the purposes of these rules.

(a) "Scheduled Castes" means such castes , races or tribes or parts of groups within such castes, races or tribes as are deemed to be

Scheduled Castes , in relation to the State of Gujarat under Article 341 of the Constitution of India.

(b) "Scheduled Tribes" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under Article 342 of the Constitution.

(c) "Socially and Educationally Backward Class" means such castes, classes or groups as are determined by the State Government as Socially and Educationally Backward Class under Government Resolution, Labour, Social Welfare and Tribal Development Department No. BCR10734H, dated the 1st April, 1978, as amended from time to time."

4.2 The materials on record further indicates that the State Government, by the Gujarat Civil Services (Reservation of Posts for Women) (Amendment) Rules, 2012, amended the Rules, 1997 by inserting Rule 3 therein. The newly added Rule 3 provides for the method of the application of the reservation for women. The newly added Rule 3 reads as under;

"3. Manner of applying reservation of posts for women:-

(1) The reservation of posts for women shall be horizontal and compartmentalized and women selected on merit within the vertical reservation quota in any category mentioned in clause (a) to (d) of rule 2 shall be counted against the horizontal reservation for women within that category.

Explanation:

(I) Horizontal and compartmentalized reservation means respective quota of posts reserved in favour of women under clause (3) of article 15 of the Constitution of India made in public services and posts in connection with the affairs of the state that interlocks with the vertical reservation.

(ii) Vertical reservation means reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes under clause (4) of article 16 of the Constitution of India.

(2) The reservation of posts for women mentioned in rule 2 shall be applied -

(i) By first filling up the quota of the categories mentioned in clauses (a) to (d) of rule 2 in order of merit; and then

(ii) Finding out the number of candidates among them who belong to the respective reservation category and If the number of candidates in such lists is equal to or more than the number of special reservation quota of women, then it shall not be necessary for further selection towards the reservation quota of women. Only If there is any shortfall of the women candidates in any such category, the requisite number of women belonging to such category shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to such category.”

4.3 It appears on plain reading of the newly added Rule 3, referred to above, that if women belonging to any of the reserved categories, on their own merit, get selected to the open competition vacancies, they would be counted or considered as the open competition candidates (General Candidates) even for the purpose of Horizontal (Special Reservation). The General Administration Department (GAD) of the Government of Gujarat issued the Government Resolution dated 01.08.2018, clarifying certain issues/doubts that arose in the matter of application of Special (Horizontal) Reservation for women in public service and posts in connection with the affairs of the State.

4.4 For ready reference, the two Clauses Nos.12 and 13 of the Government Resolution dated 01.08.2018 are reproduced hereunder;

“12.	If a woman candidate belonging to SC/ST/SEBC gets selected in general quota, whether she should be considered for reservation in <u>General quota</u> for women or as a woman candidate of the <u>relevant category</u> ?	<u>If a woman candidate belonging to SC/ST/SEBC gets selected in general quota, she should be considered as a woman candidate of the relevant category.</u> But in roster numbers, she shall be considered as a General candidate and in the register for women’s reservation, she will be treated as a woman candidate of relevant category (SC/ST/SEBC), which means her representation shall be as a woman of the relevant (SC/ST/SEBC) category. (emphasis supplied)
13.	If according to (12) above, a woman selected on merits is to be treated as the woman of the relevant category, whether the post reserved for the relevant category are to be filled-up in proportionately <u>lesser number</u> ?	No. <u>The woman selected on merit shall be treated as a woman of the relevant category</u> (SC/ST/SEBC) but the post of the relevant category (SC/ST/SEBC) shall be treated as vacant (For example, in an advertisement of a particular post; total posts reserved for SC is 17, the posts to be allocated will be 5 and if two SC women are available on common merit, 3 SC candidates remain to be selected.) For this, a total merit list of SCs should

		<p>be first prepared and if 3 women candidates are available in the list, representation of SC women candidates shall be considered as complete. But only two women are available and there is shortfall of one, one woman candidate should be placed in the place of the last male SC candidate by relaxing the norms fixed for marks. Calculation for other categories shall be made accordingly. <u>Besides, two SC women are available / selected on merit and they have been included in the representation of SC women candidates.</u> But because in total representation of SCs, the number of candidates available selected on merit are to be treated as candidates of general category, <u>only the deficit number</u> from among the total 17 SC Candidates are to be selected by relaxing the norms prescribed for marks.”(emphasis supplied)</p>
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4.5 The above referred two clauses Nos.12 and 13 of the Government Resolution dated 01.08.2018 are the root cause for this litigation.

4.6 On 18.09.2018, the GPSC published its final result of the competitive examination for the posts of Police Inspector (Unarmed), Class-II. This final result consists of Part-I-List of

candidates to be recommended to the Government for appointment and Part-II-Marks obtained by the unsuccessful candidates.

4.7 At this stage, we may now look into the reliefs prayed for by the original writ applicants in the Special Civil Application No.18968 of 2018. The reliefs, prayed for, are as under;

“(A) This Hon’ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the form of Mandamus or any other appropriate writ, order or direction quashing and setting aside the action of the respondent No.2 Commission in including the name of respondent No. 3 to 8 in their respective category and excluding the name of the petitioners by showing them to be unsuccessful as contrary to the provisions of Government Resolution dated 1st August, 2018 and be pleased to direct the respondent Commission to include the name of the petitioner in the list of successful candidates and remit the same to be respondent Home Department for the purpose of appointment on the same date on which other selected candidates are to be appointed on the basis of their placement in the select list with all consequences flowing therefrom.

(B) During the admission, final hearing and pendency of the petition, be pleased to restrain the respondents from offering appointment to the party respondents No.3 to 8 in their respective category and in the alternative be pleased to direct the respondents to keep three posts in the General Female category vacant.

(C) Be pleased to award the cost of this petition.

(D) Any other and/or further relief/s that may deem fit looking to the facts and circumstances of the case may be granted to the petitioner.”

4.8 It appears that the original writ applicants had to come before this Court by filing the Special Civil Application No.18968

of 2018 as the cut-off marks for the general female category were 363.00, whereas the writ applicant No.1 at Serial No.35 secured 354.00, the writ applicant No.2 at Serial No.6 secured 348.00 and the writ applicant No.3 at Serial No.64 secured 346.50. It was pointed out to the learned Single Judge that in the category of General Female, the writ applicants would rank 2nd, 6th, and 7th respectively in the list of unsuccessful candidates. It was further pointed out that the advertisement had prescribed a reservation of 33 posts across all categories for the female candidates. Thus, out of the 60 seats available for the General Category, 20 were reserved for the General Female candidates. In the final result, the following female candidates, belonging to the SEBC categories, were shown as GF (General Female) selected on their own merits.

*“Sr. No.43-Kum. Ansuja Laxmanbhai Varchand
Sr. No.46-Kum. Priyankaben Ramjibhai Chaudhari (GF 08)
Sr. No.71-Kum. Hina Kiritbhai Humbal (GF 14)
Sr. No.78-Kum. Hinalben Ghemarbhai Rabari (GF 16)
Sr. No.82-Kum. Jinal Ghemarbhai Desai (GF 19)
Sr. No.83-Kum. Shilpaben Mahadevbhai Desai (GF 20)”*

4.9 It was pointed out to the learned Single Judge that, in all, 13 female candidates found place in the General Category as the commission treated six female candidates belonging to the SEBC category selected on their own merits as the female representatives of the General Category. This, according to the original writ applicants, was contrary to the policy decision of the State Government. It was also pointed out that one female candidate belonging to the SC Category selected on her own merit was considered as a female representative of the General Category. In this manner, seven female candidates came to be

excluded from the select list.

4.10 The learned Single Judge, laying much stress on the Government Resolution dated 01.08.2018, more particularly, Clauses 12 and 13, referred to above, took the view that the original writ applicants could not have been excluded from the select list and the appellants herein could not have been included in the select list. The learned Single Judge took the view that such action was contrary to the Government Resolution dated 01.08.2018.

4.11 While allowing all the three writ applications, the learned Single Judge observed as under;

“6.9 In considered Mamta Bisht whether (supra), horizontally the Apex reserved Court category persons could be adjusted against the non-reserved seats. Answering should be to reckoned, reservation persons, as in women how it favour etc. was of are the horizontal held that physically horizontal quota special handicapped in nature as contrasted from vertical reservation. It was stated that in category case of candidates vertical may reservation, compete for reserved non-reserved posts and if they are appointed to non-reserved posts on their own merit, their number will not be counted against the reserved quota. However, the said principle will not apply to horizontal reservation. Swati Gupta (Ms) v. State of U.P. [(1995) 2 SCC 560] it was referred to and followed by the Supreme Court in its own other decision in Shiv Prasad v. Government of India [(2008) 10 SCC 382] propounded and reiterated method of similar applying the principles vertical as and regards the horizontal reservation.

7. The horizontal reservation is the category-wise compartmentalized reservation. In that way, it is not an Conceptually horizontal overall and in horizontal reservation. it reservation operational is distinct mode,

than the vertical reservation. The horizontal reservation cuts across the vertical reservation. They are provided with reference to and in respect of each compartment of category to the extent they are provided, by maintaining such extent of percentage thereof. The special reservation, such as the reservation for women's category, has a representative character.

7.1 This representative character has to be ensured in each category or compartment to the fullest percentage provided for that category. An even representation in the quota of women will have to be given, which would be true for each category, in each category or compartment. In other words, 33% women's reservation would cut across all the categories including the reserved categories provided by way of special reservation, to the benefit of women to ensure that 33% representation is maintained in each category for women candidates. Unless this method is applied, the object of providing 33% reservation to women in each category or compartment may go haywire or become illusory in a given exercise.

7.2 Gujarat Civil Services (Reservation of Posts for Women) Rules, 1997 read with Amendment Rules of 2012 and the providence in General Administration Department's Resolution dated 01st August, 2018 stand in consonance and congruity with the principles propounded by the Supreme Court in *Rajesh Kumar Daria (supra)* and other decisions regarding mode of applying the horizontal reservation to the specially reserved category. As per clause 12 of Government Resolution dated 1st August, 2019 any female candidate belonging to any reserved category if selected on her own merit would be treated as general category candidate, however such a female candidate would be treated as female representative in the special reserved category, that is the category of 33% women for the purpose of considering and applying the horizontally concept.

8. Having highlighted the principles of law relating to application of horizontal reservation as above, revisiting the facts of the instant petitions would indicate that the

principles and the position of law were erroneously applied by respondent GPSC.

9. The petitioner of first petition was SEBC candidate who obtained 366 marks who appeared at Serial No.85 in the list of unsuccessful list. The petitioners of second petition belong to open or General category. They are (i) Shital A. Nishar having obtained 354 marks and whose name appears at Serial No.35 in the list of unsuccessful candidates; (ii) Ms.Bhoomika T. Akabari having obtained 348 and whose name appears at Serial No.6 in the list of unsuccessful candidates; and (iii) Ms.Hardi J. Patel having obtained 346.50 marks and appearing at Serial No.64 in the list of unsuccessful candidates. The petitioner of third petition happens female candidate belonging to Open Category who is Birjuben Bhatt having obtained 361.50 marks and whose name appeared at Serial No.20 in the list of unsuccessful candidates.

9.1 As per the principles to apply to horizontal reservation and as per the contemplation in Resolution dated 01st August, 2018 which reflects the correct principle, in the SEBC Female Category, 10 seats were reserved. 06 SEBC candidates at Serial Nos.43, 46, 71, 78, 82 and 83 were available against the 10 seats. Consequently, 04 more SEBC women candidates were needed. In other words, in order to meet the shortfall, only 04 female candidates were required to be picked up. However respondent GPSC selected 10 more female candidates at Serial Nos.84, 86, 88, 91, 92, 96, 98, 99, 100 and 101. What was done by GPSC was incorrect for applying the horizontal reservation. The course adopted was illegally impermissible. The petitioners' contention has to be accepted that 06 SEBC Female candidates at Serial Nos.92, 96, 98, 99, 100 and 101 should have been taken out from the list of 115 candidates prepared and declared by GPSC on 14.09.2018, so as to pave way for inclusion of the respective petitioners.

9.2 On the basis of the correct application of principles regarding horizontal reservation, following position would emerge, was rightly stated by learned Advocate General on

behalf of the State Government.

(a) 06 SEBC candidates at Serial Nos.43, 46, 71, 78, 82 and 83 in the select list have been treated by the GPSC as the General Female candidates, since they have been accommodated on the basis of their merit;

(b) However, for the purpose of compartmentalized Horizontal Reservation, the said 06 female candidates are required to be treated as SEBC Female candidates against the requirement of in all 10 SEBC female candidates;

(c) In view of the above, 04 more SEBC female candidates at Serial Nos.84, 86, 88 and 91 are required as against the requirement of 10 SEBC female candidates;

(d) While retaining the 04 SEBC female candidates at Serial Nos.84, 86, 88 and 91, remaining 06 SEBC female candidates shown at Serial Nos.92, 96, 98, 99, 100 and 101 are required to be deleted from the select list;

(e) Similarly, 01 SC female candidate at Serial No.79 – Kumar Anjali Sondarva having obtained 366.50 marks, has Category been and candidate, included treated which is not by GPSC correct the General General towards in Female and the said candidate has to be treated under the category of SC Female candidate, while taking care of required number of 02 SC Female candidates .”

4.12 The operative part of the order passed by the learned Single Judge, containing directions reads thus;

'10.As a consequence of above discussion and the reasons,

(I) Special Civil Application No.18654 of 2018 is allowed by providing and directing that the action of respondent No.2

Commission in respondent No.3 – Gujarat including in the the Public name category of concerned Service private is set aside;

(ii) Special Civil Application No.18968 of 2018 is allowed by providing and directing that the action of respondent Commission in No.2 – Gujarat including the Public name of Service private respondent Nos.3 to 8 in the category concerned is set aside;

(iii) Special Civil Application No.12292 of 2018 is allowed by providing and directing that the action of respondent Commission in No.2 – Gujarat including the Public name of Service private respondent Nos.3 and 4 in the category concerned is set aside;

(iv) The respondent No.2 is directed to prepare the list categories of the on the candidates basis of in the the respective decision of the Supreme Court in Rajesh Kumar Daria (supra) as well as in Mamta Bisht (supra), consequentially in consonance with the Rules notified in Notification dated 14th June, 2012 and Resolution dated 01st August, 2018 of the General Administration Department of the Government as highlighted above by applying the mode of compartmentalized horizontal reservation. The name of the petitioner may be included in accordance with the exercise to be undertaken as above;

(v) The list which may be prepared upon undertaking the exercise as above in respect of the petitioners in each of the three petitions shall be forwarded by respondent No.2 – Gujarat Public Service Commission to respondent No.1 – Home Department for the purpose of appointment to the post of Police Inspector, Unarmed in the same date with other successful candidates are to be appointed. The consequential benefits shall be allowed to the petitioners;

(vi) The aforesaid sending list by exercise respondent No.2 of – Gujarat Public Service Commission to the State Government shall be carried out expeditiously and in any

case within 10 weeks from the date of receipt of the present order;

(vii) The State Government shall pass necessary consequential order within three weeks from the date of receipt of such list from Gujarat Public Service Commission.”

4.13 Being dissatisfied with the impugned judgment and order passed by the learned Single Judge, the appellants herein, original respondents Nos.3, 4 and 5 respectively are here before this Court with the present appeal.

Submissions on behalf of the appellants;

5. Mr. Shalin Mehta, the learned senior counsel assisted by Ms. Aditi S. Raol appearing for the appellants vehemently submitted that the learned Single Judge committed a serious error in allowing the writ applications and directing the names of the three appellants herein to be deleted from the select list. Mr. Mehta would submit that the impugned judgment of the learned Single Judge suffers from the mistake of both, law and facts apparent on the face of the record. Mr. Mehta would submit that the learned Single Judge erred in law in reaching the conclusion that the Rules, 1997 read with Amendment Rules, 2012 and the Clauses 12 and 13 respectively of the Resolution dated 01..08.2018 stand in consonance and congruity with the principles propounded by the Supreme Court in **Rajesh Kumar Daria vs. Rajasthan Public Service Commission**, (2007) 8 SCC 785.

6. Mr. Mehta would submit that the reading on the part of the

learned Single Judge of the Government Resolution dated 01.08.2018 as regards the mode of applying the horizontal reservation of the special reservation category could be termed as erroneous and not tenable in law. Mr. Mehta, in other words, would submit that it was the wrong understanding of law on the part of the GPSC that has led to all this confusion.

7. Mr. Mehta invited the attention of this Court to the decision of the Supreme Court in ***Indra Sawhney vs. Union of India***, 1992 (Supp.) 3 SCC 217 to explain the concept of horizontal reservations (Special Reservations) as distinguished from the vertical reservations (Social Reservations). Mr. Mehta would submit that the open competition category (OC) is not restricted to the non-reserved category candidates. According to him, it is open to all the categories of candidates, i.e., the candidates belonging to the SC, ST, SEBC etc. In other words, according to Mr. Mehta, a candidate belonging to the SC, ST or SEBC, if selected in the open competition (OC), he or she has to be adjusted against the open competition category only for the purpose of horizontal reservation.

8. Mr. Mehta would submit that the learned Single Judge has referred to and relied upon the decision of the Supreme Court in the case of Rajesh Kumar Daria (supra), however, the ratio therein has been misinterpreted because of the absurdity in the two clauses of the Resolution dated 01.08.2018.

9. Mr. Mehta, referring to Rajesh Kumar (supra) submitted that the women selected on merit within the vertical reservation

quota would be counted against the horizontal reservation for women. In other words, the women selected on merit within the vertical reservation quota for the SC, ST and SEBC would be counted against the horizontal reservation for women in the respective category. In the same manner, the women selected on merit in the open category (OC) would be counted against the horizontal reservation for women in the open category (OC) irrespective of whether they belong to the ST, SC or SEBC category.

10. Mr. Mehta pointed out that it is the principles of law explained in *Rajesh Kumar Daria* (supra) that led to adding the Rule 3 by way of the Amendment Rules, 2012. Mr. Mehta invited the attention of this Court to Sub-rule (2) of Rule 3, which reads as under;

“(2) The reservation of posts for women mentioned in rule 2 shall be applied:-

(i) By first filling up the quota of the categories mentioned in clauses (a) to (d) of rule 2 in order of merit; and then

(ii) Finding out the number of candidates among them who belong to the respective reservation category and If the number of candidates in such lists is equal to or more than the number of special reservation quota of women, then it shall not be necessary for further selection towards the reservation quota of women. Only If there is any shortfall of the women candidates in any such category, the requisite number of women belonging to such category shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to such category.”

11. Mr. Mehta would submit that the above referred rule is very much in consonance with the principles explained by the Supreme Court in *Rajesh Kumar Daria* (supra). However, the General Administration Department issued the Government Resolution dated 01.08.2018 providing in Clause 12 that any female candidate belonging to any reserved category, if selected in the general category on her own merit, would be treated as a general category candidate for the purpose of roster but would be treated as a female representative of that category in the register of female reservation.

12. Mr. Mehta vehemently submitted that the executive instructions are in direct conflict with Rule 3 of the Rules, 1997, referred to above, and contrary to the principles of law explained by the Supreme Court in its various decisions.

13. Mr. Mehta would submit that the learned Single Judge has committed a serious error, resulting in miscarriage of justice in reaching the conclusion that the Rules, 1997 read with the Amendment Rules of 2012 and Clauses 12 and 13 respectively of the Resolution dated 01.08.2018 stand in consonance with the principles propounded by the Supreme Court in *Rajesh Kumar Daria* (supra).

14. According to Mr. Mehta, the reading of the ratio of the decision of the Supreme Court in ***Public Service Commission, Uttranchal vs. Mamta Bisht***, (2010) 12 SCC 204 by the learned Single Judge is also not correct. He would submit that in the said case, the last selected candidate who was given the benefit

of horizontal reservation for Uttranchal women was claiming to be considered against the general category, i.e the open category. It is in such set of facts that the Supreme Court observed that the High Court failed to consider the principle that if a reserved category candidate secured more marks than the last selected candidate in the general category, then he is to be appointed against the general category vacancy. The Supreme Court observed that the said principle does not apply while giving the benefit of horizontal reservation.

15. Mr. Mehta would submit that in the entire recruitment process and even while drawing up the final select list, the Commission scrupulously followed the Gujarat Civil Services (Reservation of Posts for Women) Rules, 1997 as amended by the Amendment Rules, 2012 and also the principles laid down by the Supreme Court in a catena of decisions in the matter of horizontal reservation for women. Mr. Mehta pointed out that the Commission was justified in taking the stance that the clarifications issued in the Government Resolution dated 01.08.2018 were not in consonance with the settled position of law. Mr. Mehta would submit that for some reason or the other, the Commission filed an affidavit stating that the principles explained by the Supreme Court in Rajesh Kumar (supra) were incorporated in the Resolution dated 01.08.2018. Ultimately, the Commission decided to follow the method indicated in the resolution to avoid the stalemate.

16. In such circumstances, referred to above, Mr. Mehta would submit that there being merit in his appeal, the same be

allowed and the impugned order passed by the learned Single Judge be quashed and set aside.

Submissions on behalf of the State of Gujarat:-

17. Mr. Kamal Trivedi, the learned Advocate General appearing for the State, at the outset, fairly pointed out that in view of the various decisions of the Supreme Court, explaining the concept of horizontal reservation and vertical reservation, more particularly, in the cases of special reservation under Article 16 of the Constitution, the Clauses 12 and 13 respectively of the Government Resolution dated 01.08.2018 deserves to be quashed and set aside. In other words, according to Mr. Trivedi, the Government Resolution dated 01.08.2018 runs diametrically opposite to the well settled legal position discernible from the various judgments of the Supreme Court. Mr. Trivedi would submit that this Court may direct the GPSC to complete the exercise of preparing the remainder list with reference to the vacant posts vis-a-vis the supernumerary posts, if created after quashing and setting aside the Government Resolution dated 01.08.2018.

18. Mr. Trivedi would submit that Rule 2(d) of the Rules, 1997 framed under Article 309 of the Constitution of India and published vide notification dated 09.04.1997, deserves to be interpreted in light of its Rule 3(1).

19. Mr. Trivedi very fairly pointed out that in the event of the Government Resolution dated 01.08.2018 of the GAD being

quashed and set aside by this Court in the present appeal, and if GPSC is asked not to follow the Government Resolution dated 01.08.2018, then in such circumstances, the appellants in both the captioned appeals who were otherwise there in the select list dated 18.09.2018 and have been removed pursuant to the impugned judgment of the learned Single Judge, shall continue to remain in the select list in question.

20. Mr. Trivedi further submitted that at the relevant time when the proceedings were going on before the learned Single Judge, the GPSC had recommended to the State Government 108 candidates out of the select list of 115 in such a manner that they may not be affected by any outcome of the pending proceedings before the learned Single Judge, and consequently, the appointment orders were issued to the said 108 candidates. Mr. Trivedi would submit that in the event this Court quashes and set asides the Government Resolution dated 01.08.2018, the State Government may have to give appointments to the remaining seven candidates out of the select list of the GPSC dated 18.09.2018 of 115 candidates and, thereafter, with a view to put an end to the entire controversy as regards the recruitment of female candidates of respective categories by way of implementation of horizontal reservation, the State would do the needful for creation of, in all, seven supernumerary posts as a special case only for accommodating the general female candidates who are to be recommended by the GPSC as per their respective placement in the original select list.

21. Mr. Trivedi also brought to our notice the relevant

averments made in the affidavit-in-reply dated 18.07.2020 filed on behalf of the State, duly affirmed by the Under Secretary, Home Department. The relevant observations reads thus;

“2.7 On 08.07.2019, a decision was taken by the Respondent State to appoint 108 candidates out of 115 candidates recommended by GPSC, vide its Final Select List dated 18.09.2018, who were never affected in any way if the decision in any of the pending writ petitions would come in favour of either side. Pertinently, these 108 candidates included the names of all the Petitioners of SCA No.6374 of 2019, except for 3 petitioners, namely (i) Ms. Gitaben Motibhai Chaudhary, (ii) Ms. Mital Hardas Bhetariya and (iii) Mr. Chirag Somabhai Dhokadiya.

*2.8 On 16.07.2019, another writ petition being **SCA No.12292 of 2019**, came to be filed, by the Petitioner called Ms. Bijurben Amitkumar Bhatt, belonging to Open (General) Category in this Hon'ble Court, inter-alia, challenging the action of GPSC in showing her name at Sr.No.20 in the list of unsuccessful candidates despite having obtained 361.50 marks, which was against the provisions contained in Clause-12 of GR dated 01.08.2018 referred to above. The main contentions of the abovenamed Petitioner in her above referred writ petition were as under:*

- (a) According to the above named petitioner, as per Clause 12 of the GR dated 01.08.2018, any female candidate belonging to any reserved category, if selected on her own merit, would be treated as a general category candidate. However, such a female candidate would be treated as female representative of the reserved category, for the purpose of Horizontal Reservation.*
- (b) In view of the above, according to the said petitioner, against 10 seats reserved for SEBC female candidates, there were 6 SEBC candidates at Sr. Nos. 43, 46, 71, 78, 82 and 83 and hence, there was a need for only 4 more SEBC female candidates. However, GPSC*

selected 10 more SEBC female candidates at Sr. Nos. 84, 86, 88, 91, 92, 96, 98, 99, 100 and 101, which is not legally correct.

(c) In other words, according to the said petitioner, in view of the availability of 6 SEBC female candidates as mentioned above, GPSC should have taken into account only 4 more SEBC female candidates at serial Nos. 84, 86, 88 and 91 to meet with the shortfall.

(d) In view of the above, the abovenamed petitioner's contention was to the effect that 6 SEBC female candidates at Sr. Nos. 92, 96, 98, 99, 100 and 101 should have been taken out from the list of 115 candidates prepared and declared by GPSC on 18.09.2018, which would pave way for inclusion of the petitioner.

(e) Similarly, 01 SC female candidate at Sr. No. 79 is treated as representative of General female category and 02 other SC female candidates were selected at Sr. No. 85 and 87 as a female representative of SC category. Therefore, in view of the above, according to the said petitioner, against 02 seats reserved for SC female candidates, there was 01 SC candidate at Sr. No. 79 and hence there was a need for only 01 more SC female candidate. However, GPSC selected 02 more SC female candidates at Sr. Nos. 85 and 87 which is not legally correct.

(f) In other words, according to the said petitioner, in view of the availability of 01 SC female candidate as mentioned above, GPSC should have taken into account only 01 more SC female candidates to meet with the shortfall.

2.9 On 29.11.2019, all the above referred writ petitions i.e. SCA No.18654 of 2018, SCA No.18968 of 2018 and SCA No.12292 of 2019, came to be disposed of by the impugned CAV Judgment by the learned single Judge of this Hon'ble Court, affording the principle followed in the Recruitment in regard to the horizontal reservation, as being in consonance

with GR dated 01.08.2018, whereas another Writ petition being SCA No.6374 of 2019, came to be disposed of on 12.12.2019, in view of the aforesaid common CAV Judgment dated 29.11.2019, which is under challenge in the present proceedings.

2.10 On 21.12.2019, two sets of Letters Patent Appeals have been preferred against the aforesaid common CAV judgment dated 29.11.2019, viz. (i) the captioned appeal i.e. LPA No.1910 of 2019 in SCA No.18968 of 2018, and (ii) LPA (Filing) No.42492 of 2019 in SCA No.18654 of 2018, by (a) Ms. Gitaben Motibhai Chaudhary, (b) Ms. Mital Hardas Bhetariya and (c) Mr. Chirag Somabhai Dhokadiya, who were not parties in the aforesaid SCA No.18654 of 2018 before the learned single Judge and therefore, they approached this Hon'ble Court by way of filing a Civil Application (For Leave to Appeal) No.453 of 2020, wherein order dated 28.01.2020, this Hon'ble Court has issued notice to all the respondents therein.

3. I respectfully state that Appellants herein (i.e. original Respondent Nos.3 to 5) are female candidates belonging to SEBC category namely, (i) **Ms. Tammana Ashokbhai Desai**, having obtained **336 marks** and whose name appeared at **Sr.No.98** in the list of successful candidates; (ii) **Ms. Manju Arshibhai Ambaliya**, having obtained **335.50 marks** and whose name appeared at **Sr.No.99** in the list of successful candidates; and (iii) **Ms. Jalpa Nathubhai Goriya**, having obtained **335 marks** and whose name appeared at **Sr.No.100** in the list of successful candidates. The main contention of the Appellants herein is to the effect that GR dated 01.08.2018 seeks to defeat the very purpose of smooth implementation of reservation policy and that the views expressed at Clause Nos.12 and 13 thereof by way of clarification are not supported by any authoritative orders and that, therefore, reliance placed thereon is not appropriate and not in accordance with law. According to the Appellants herein, the list of successful candidates originally prepared by the Commission was in accordance with the settled principles of law laid down by the Hon'ble Supreme Court as well as this Hon'ble Court for reservation of post for different categories. According to them, the candidates belonging to reserved categories, having competed against the open / general seats and

having been selected on the basis of their own merit, are to be accordingly placed in the open / general list as per the principles applicable in case of vertical reservation, and that they can never be taken into account while applying the principles of horizontal reservation in each of the categories. According to the Appellants, clarification offered by the Respondent State at Clause Nos.12 and 13 of GR dated 01.08.2018 runs diametrically opposite to the aforesaid constitutional provision in the matter of implementing the policy of reservation. For ready reference, true English Translation of the said GR dated 01.08.2018 is annexed herewith and marked as **Annexure-R2**.

4. As against the above, it is stated that the Respondent Nos.1 to 3 herein (i.e. original Petitioner Nos.1 to 3) are female candidates belonging to Open / General category namely, (i) **Ms. Shital Amrutlal Nishar**, having obtained **354 marks** and whose name appeared at **Sr.No.35** in the list of unsuccessful candidates; (ii) **Ms. Bhoomika Tulsibhai Akbari**, having obtained **348 marks** and whose name appeared at **Sr.No.6** in the list of unsuccessful candidates; and (iii) **Ms. Hardi Jayantibhai Patel**, having obtained **346.50 marks** and whose name appeared at **Sr.No.64** in the list of unsuccessful candidates. According to them, as per Clause 12 of the GR dated 01.08.2018, any female candidate belonging to any reserved category, if selected on her own merit, would be treated as a general category candidate, and would be treated as female representative of the reserved category, for the purpose of Horizontal Reservation. In view of the above, according to the original Petitioners, against 10 seats reserved for SEBC female candidates, there were 6 SEBC female candidates at Sr. Nos. 43, 46, 71, 78, 82 and 83 and hence, there was a need for only 4 more SEBC female candidates, but GPSC selected 10 more SEBC female candidates at Sr. Nos. 84, 86, 88, 91, 92, 96, 98, 99, 100 and 101, which is not legally correct. Likewise, according to the original Petitioners, against 02 seats reserved for SC female candidates, there was 01 SC female candidate at Sr. No. 79, and hence there was a need for only 01 more SC female candidate, but GPSC selected 02 more SC female candidates at Sr. Nos. 85 and 87, which is not legally correct. Thus, the original Petitioners wanted that 3 SEBC female candidates at Sr. Nos. 98, 99, 100 and 3 General

male candidates at Sr. Nos. 41, 42 and 48, should have been taken out from the list of 115 candidates prepared and declared by GPSC on 18.09.2018, which would pave way for their inclusion.

5. Lastly, I most respectfully request this Hon'ble Court to kindly take into account the aforesaid factual aspect, while deciding the issue involved in the captioned appeal."

22. Mr. Trivedi very fairly submitted that the aforesaid affidavit filed in the present appeal runs contrary to the affidavit filed before the learned Single Judge in the Special Civil Application No.18654 of 2018. However, the State has realized that Clauses 12 and 13 of the Government Resolution dated 01.08.2018 are not sustainable in law being contrary to the various decisions of the Supreme Court.

23. In such circumstances, referred to above, Mr. Trivedi prays that appropriate orders may be passed by this Court.

Submissions on behalf of the Respondents Nos.6,7 and 8 (Original writ applicants):-

24. Mr. Gautam Joshi, the learned senior counsel assisted by Mr. Vyom H. Shah the learned advocate appearing for the original writ applicants would submit that in view of the specific stance of the State Government before this Court in the present appeal, the interest of his clients is being protected. Mr. Joshi would submit that the stance of the State Government may help the appellants herein in finding place in the select list, but at the same time, his clients would also be included and offered appointment. In such circumstances, Mr. Joshi prays that

appropriate orders may be passed, protecting the interest of one and all.

Submissions on behalf of the Gujarat Public Service Commission:-

25. Mr. Shivang J. Shukila, the learned advocate appearing for the Commission also fairly submitted that Clauses 12 and 13 respectively of the Government Resolution dated 01.08.2018 runs contrary to the principles of law explained by the Supreme Court in its various decisions. According to Mr. Shukla, the submissions made by the learned Advocate General makes the picture abundantly clear, and the suggestions as put forward by the learned Advocate General, if accepted by this Court, may put an end to the entire litigation.

ANALYSIS

26. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the learned Single Judge committed any error in passing the impugned judgment and order.

27. The learned Single Judge posed the following question to be decided in the writ application. We may quote the same;

“From the facts pleaded by the petitioners and the rival stand and the contentions raised by the parties in that regard, the question posed for consideration is whether the

principles of reservation for reserved category of women for which the horizontal concept of the reservation is to be applied, are properly acted upon in consonance with the true concept, import and purpose of the horizontal reservation and as per the principles laid down on that score by the Apex Court.”

28. There is no doubt in our mind that this litigation is nothing but a result of two erroneous clauses in the Government Resolution dated 01.08.2018.

29. At the cost of repetition, we, once again, incorporate the Clauses 12 and 13 respectively of the Government Resolution dated 01.08.2018;

“12.	If a woman candidate belonging to SC/ST/SEBC gets selected in general quota, whether she should be considered for reservation in <u>General quota</u> for women or as a woman candidate of the <u>relevant category</u> ?	<u>If a woman candidate belonging to SC/ST/SEBC gets selected in general quota, she should be considered as a woman candidate of the relevant category.</u> But in roster numbers, she shall be considered as a General candidate and in the register for women’s reservation, she will be treated as a woman candidate of relevant category (SC/ST/SEBC), which means her representation shall be as a woman of the relevant (SC/ST/SEBC) category. (emphasis supplied)
13.	If according to (12) above, a woman selected on merits is to be treated as the woman of the relevant category, whether the	<u>No. The woman selected on merit shall be treated as a woman of the relevant category (SC/ST/SEBC) but</u>

	<p>post reserved for the relevant category are to be filled-up in proportionately <u>lesser number</u>?</p>	<p>the post of the relevant category (SC/ST/SEBC) shall be treated as vacant (For example, in an advertisement of a particular post; total posts reserved for SC is 17, the posts to be allocated will be 5 and if two SC women are available on common merit, 3 SC candidates remain to be selected.) For this, a total merit list of SCs should be first prepared and if 3 women candidates are available in the list, representation of SC women candidates shall be considered as complete. But only two women are available and there is shortfall of one, one woman candidate should be placed in the place of the last male SC candidate by relaxing the norms fixed for marks. Calculation for other categories shall be made accordingly. <u>Besides, two SC women are available / selected on merit and they have been included in the representation of SC women candidates.</u> But because in total representation of SCs, the number of candidates available selected on merit are to be treated as candidates of general category, <u>only the deficit number</u> from among the total 17 SC Candidates are to be selected by relaxing the norms prescribed for</p>
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	marks.”(emphasis supplied)
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30. The challenge in both the captioned appeals is not only to the impugned judgment and order passed by the learned Single Judge dated 29.11.2019 but also to the Government Resolution dated 01.08.2018 of the General Administrative Department. The learned Single Judge substantially relying on the basis of Clauses 12 and 13 of the Government Resolution dated 01.08.2018 quashed and set aside the select list dated 18.09.2018 of the Gujarat Public Service Commission with a further direction to the Commission to prepare the select list on the basis of the decisions of the Supreme Court in the cases of **Rajesh Kumar Darai (supra)** and **Mamta Bisht (supra)** as well as in consonance with the Rules, 2012 and the Government Resolution dated 01.08.2018.

31. The Supreme Court in the case of **Indra Sawhney (supra)** has held in Paras-811 and 812 respectively as under:

*“811. ... 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**.*

*812. ... Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. **The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category, he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open***

competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

(emphasis supplied)

32. The Supreme Court in the case of **Bihari Lal Rada vs. Anil Jain**, reported in (2009) 4 SCC 1 (rel. paras 40 and 41), has held as under:

“40. ... **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.**”

(emphasis supplied)

33. The Supreme Court in the case of **Anil Kumar Gupta vs. State of U.P.**, reported in (1995) 5 SCC 173 (rel. paras 17 and 18), has held as under:

“18. ... **The proper and correct course is to first fill up the OC quota (50%) on the basis of merit:** then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an over-all horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective

social reservation categories by deleting the corresponding number of candidates therefrom. **(If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations.** In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota. ...”
(emphasis supplied)

34. The Supreme Court in the case of **Rajesh Kumar Daria** (supra) has held in paras 7, 9 to 11 as under:

“9. ... Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of “Scheduled Castes women”. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from

vertical (social) reservation. Thus women selected on merit within vertical reservation quota will be counted against the horizontal reservation for women. ...”

(emphasis supplied)

35. The Supreme Court in the case of **Public Service Commission, Uttaranchal vs. Mamta Bisht**, reported in (2010) 12 SCC 204 - rel. paras. 3, 11 to 15, was dealing with the special reservation/horizontal reservation relating to the Uttaranchal Women General Category. Out of 42 posts, 26 posts were to be filled up by the general category and 16 posts were to be filled up by the reserved category candidates, whereas, 5 Uttaranchal women general candidates were to be accommodated within the said 26 posts of the general category, by way of horizontal reservation. Admittedly, a woman candidate of Uttaranchal, Ms. Neetu Joshi came to be selected on her own merit within the 26 posts of general category, fulfilling the requirement of 5 Uttaranchal women candidates within 26 posts of the general category. However, the Respondent No.1, Ms. Mamta Bisht contended that Ms. Neetu Joshi having been selected on the basis of her own merit, should not have been considered towards the 5 posts reserved for the Uttaranchal Women General candidate, and that Ms. Mamta Bisht being the Uttaranchal Woman General candidate, ought to have been included as the 5th Uttaranchal Woman candidate in the said 26 posts of the general category. The High Court allowed her petition while holding as under, which is reproduced in para 13 of the aforesaid judgment:

“13. In view of the above, Neetu Joshi... has wrongly

been counted by Respondent 3/Commission against five seats reserved for Uttaranchal Women General Category as she has competed on her own merit as general candidate and as the fifth candidate the petitioner should have been counted for Uttaranchal Women General Category seats”

36. The High Court while misinterpreting the ratio of the judgment of the Supreme Court in the case of *Rajesh Daria (supra)*, directed the implementation of Horizontal reservation of Uttaranchal Women Category as Vertical Reservation, where the meritorious candidates are to be considered without looking at their source of category i.e. SC, ST and SEBC. However, in Horizontal reservation, the source of category under the reservation could not have been lost sight of. It was owing to such reason that the Supreme Court while setting aside the aforesaid judgment, observed as under:

“15. In view of the above, it is evident that the judgment and order of the High Court is not in consonance with the law laid down by this Court in Rajesh Kumar Daria. The judgment and order impugned herein is liable to be set aside ...”

37. As such, this judgment of the Supreme Court cannot be made applicable to the facts of the present case and hence, the consideration thereof in the present matter is out of question.

38. The High Court of Rajasthan in the case of *Megha Shetty vs. State of Rajasthan*, reported in **2013 (4) RLW 3227** (rel. paras. 9, 21, 23 and 25), has held as under:

“21. ... Once the horizontal reservation in favour of woman in general/open category is to be

applied, the candidates belonging to all categories, including SC, ST and OBC, are also entitled to be considered against the said posts reserved for General Category (Woman)."

(emphasis supplied)

"23. In the present case, it is evident from a bare look at the part of Advertisement (Annexure-3) that 13 posts were reserved for OBC category. From the result-sheet (Annexure-4) it is seen that out of 42 unserved seats, 4 women candidates found place and, therefore, they were counted against the horizontal reservation provided for woman and thereafter, 9 more women candidates in order of their merit were selected which included candidates belonging to General as well as OBC Category. **It is also noticed that in the main list, 3 women candidates belonging to OBC (Woman) found place on their own merits and after taking 9 candidates against General (Woman) Category which included OBC (Woman) also, further reservation has not been provided qua 2 posts despite the fact that 5 posts were reserved for OBC (Woman), which clearly shows that the horizontal reservation was correctly applied.**

24. The plea sought to be raised by the appellant regarding impermissibility for migration from OBC (Woman) to General (Woman) in case of special reservation under Article 15(3) of the Constitution of India also apparently has no applicability in the present case, inasmuch as, **once the candidate belonging to OBC (Woman) category has obtained more marks than a candidate belonging to the General (Woman) category and, therefore, finds place in the select list meant for General (Woman), the same cannot even be termed as migration and, therefore, the plea raised in this regard is without any substance. ..."**

(emphasis supplied)

39. The High Court of Rajasthan in the case of **Neelam Sharma vs. State of Rajasthan**, reported in *2015 SCC OnLine Raj 1391* (rel. paras 2 and 6), has held as under:

“6. The Division Bench of this High Court at Jodhpur in Smt. Megha Shetty vs. State of Rajasthan 2015 Volume (1) WLC (Rajasthan) 761 has already dealt with exactly the same issue raised in the present bunch of appeals. The Division Bench relying upon the above-referred decisions of the Supreme Court has held that in the event of woman candidate belonging to OBC category on securing more marks than the woman candidate of general category finds a position in the select list of candidates of general category, the same cannot be treated as migration. **And this decision of the Division Bench is binding on us with which we also fully agree.** It is also to be noted that none of the writ petitioners/respondents herein who are women of general category has secured more marks than the women candidate of OBC category selected in open category. The select list of women candidates prepared by the Rajasthan Public Service Commission is strictly in accordance with the law explained by the Supreme Court. ...”

(emphasis supplied)

40. The aforesaid judgment of the High Court of Rajasthan was affirmed by the Apex Court in the SLP No. 4312/2016 vide Order dated 13.05.2016. The content of the said Order dated 13.05.2016 is reproduced hereunder:

“Application seeking exemption from filing official translation is allowed. We find no infirmity in the order impugned herein. The Special Leave Petition is dismissed.”

41. The Bombay High Court in the case of **Asha Ramnath Gholap vs. The President, District Selection Committee / Collector**, reported in 2016 SCC OnLine Bom 1623 (rel. paras 4, 29 to 34), has held as under:

*“30. ... Once it is held that general category or open category takes in its sweep all candidates belonging to all categories irrespective of their caste, class or community or tribe, **it is irrelevant whether the reservation provided is vertical or horizontal. There cannot be two interpretations of the words ‘open category’; one applicable for vertical reservation and other for horizontal reservation.** Reservation prescribed may be ‘vertical’ or ‘horizontal’ if it relates to open category, the candidate belonging to backward class cannot be precluded from competing for the said posts on their own merit with rest of the candidates. ...”*

(emphasis supplied)

*“32 ... It is thus evident that when three posts were notified to be filled in by the female candidates belonging to open category, it was open for the petitioner to compete for the said post irrespective of the fact that she belongs to the reserved category and when she had secured meritorious position amongst the female candidates and had secured 2nd highest marks, **her selection could not have been denied by the respondents on the ground that she belongs to scheduled caste and does not fall in the open category.***

(emphasis supplied)

42. The High Court of **Uttarakhand in the case of Uttarakhand Subordinate Service Selection Commission vs.**

Ranjita Rana, reported in 2019 SCC OnLine Utt 481 (rel. paras. 11 and 12), has held as under:

“11. The effect of horizontal reservation, being provided under each category, is that it is only women, who belong to the Other Backward Classes, who can compete for posts reserved for Other Backward Classes (Women) and not women who belong to the Scheduled Castes, the Scheduled Tribes and the unreserved category. Likewise, it is only women belonging to the Scheduled Castes and the Scheduled Tribes who can compete for posts horizontally reserved in favour of Scheduled Castes (Women) and Scheduled Tribes (Women). A woman, not belonging to the reserved category (OBC, SC and ST), is not entitled to compete for posts reserved in favour of Other Backward Classes (Women), Scheduled Castes (Women) and Scheduled Tribes (Women).

*12. The converse, however, is not true. **All women, irrespective of whether they belong, or do not belong, to the reserved category are entitled to compete for posts earmarked in favour of women under the General Category. There is no reservation for posts in the General Category, and horizontal reservation in favour of women in the General Category is available to be filled up from amongst all women irrespective of their caste status.** Posts, reserved in favour of General Category (Women), are available for all women from the State of Uttarakhand, and that would include women belonging to the reserved categories such as OBCs, SCs and STs, and women who do not. Holding otherwise, would result in surreptitious introduction of reservation in favour of those who do not belong to the socially and educationally backward classes, and a disguised attempt at communal reservation frowned upon by the Supreme Court in *The State of Madras Vs. Sm. Champakam Dorairajan* and another : AIR 1951 SC 226. This question is no longer res integra and has, in fact, been answered by a Division Bench of this Court in *Sudhir Kumar Vs. State of Uttarakhand* and*

others (order in Writ Petition (S/B) No. 392 of 2017 dated 11.12.2018), which order was affirmed by the Supreme Court in its order in Special Leave to Appeal (C) No. 7801 of 2019 dated 15.04.2019. ...”

(emphasis supplied)

43. The High Court of Bombay in the case of **Charushila vs. State of Maharashtra**, reported in 2019 SCC OnLine Bom 1519 (rel. paras. 3, 5, 32, 33, 39 and 49), has held as under:

“32. It is, thus, clear that the candidates belonging to backward class may compete for non reserved post and if they are appointed to non reserved posts on the basis of their own merit, their number will not be counted against the quota reserved for the respective Backward class.

*33. So far as the horizontal reservation is concerned, a different procedure has been prescribed, which is recorded in the above noted paragraph. In the event of shortfall only, after perusal of the merit list, such shortfall in horizontal reservation category shall be met by deleting requisite number of candidates from the respective reserved categories and by substituting them from the same category. **Thus, the horizontal reservation category candidate selected on the basis of merit within the vertical reservation quote, will have to be counted against the horizontal reservation category.**”*

(emphasis supplied)

44. Thus, Social reservations in favour of SC, ST and OBC under [Art. 16\(4\)](#) are 'vertical reservations.' Special reservations in favour of physically handicapped, women etc., under [Art. 16\(1\)](#) or 15(3) are 'horizontal reservations.' Where a vertical reservation is made in favour of a backward class under [Art. 16\(4\)](#), the candidates belonging to such backward class, may

compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. (Vide *Indira Sawhney* (supra); [R. K. Sabharwal v. State of Punjab](#) (1995 (2) SCC 745); [Union of India v. Virpal Singh Chauhan](#) (1995 (6) SCC 684) and [Ritesh R. Sah v. Dr. Y. L. Yamul](#) (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women.' If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation

45. The above referred case law can be better explained by way of the following illustration based on the factual position

obtaining in the present case.

46. There are 115 posts of Police Inspector (unarmed), out of which 55 posts are reserved for the SC, ST and SEBC and remaining 60 posts for open/general category. Out of the said posts, 33% are reserved for women under each category, meaning thereby, out of 60 posts in the open category, 20 posts are reserved for women. Thus, the first step would be that of preparing the entire list on the basis of merit and out of the same, selecting first 60 candidates, irrespective of their caste and sex, in open category. The second step would be then of evaluating as to whether 20 women, irrespective of their caste, are there within those 60 candidates, so as to meet with the requirement of horizontal reservation. If 20 women are already there, then there is no need to select any more woman in that category, but if not, then in the third step, the remaining number of women have to be included on the basis of the merit from the aforesaid list, irrespective of their caste, while deleting the corresponding number of male candidates from the bottom of the list of first 60 candidates. Thereafter, identical exercise is required to be undertaken for implementing vertical reservation, followed by horizontal reservation, with respect to the posts belonging to the SEBC, SC and ST categories.

47. Unfortunately, before the learned single Judge, at the time of hearing of the original writ petitions, a larger canvas of various aforesaid judgments of the Supreme Court as well as other High Courts, was not availed of. Further, the judgments of the Supreme Court in case of *Rajesh Daria (supra)* and *Mamta Bisht (supra)*, were read and understood in a particular manner, and

accordingly, the arguments were advanced on behalf of the State in favour of the aforesaid GR dated 01.08.2018.

48. The Rule 2(d) of **the Gujarat Civil Services (Reservation of Posts for Women) Rules, 1997**, framed under Article 309 of the Constitution of India and published vide notification dated 09.04.1997, deserves to be interpreted in light of its Rule 3(1). Both the said Rules are set out hereunder:

“2(d) there shall be reserved in favour of women thirty percent of the posts **not being posts reserved** in favour of the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes.”

(emphasis supplied)

“3(1) The reservation of posts for women shall be horizontal and compartmentalized and women selected on merit within the vertical reservation quota in any category mentioned in clause (a) to (d) of rule 2 shall be counted against the horizontal reservation for women **within that category**”

(emphasis supplied)

49. It is pertinent to note that Rule 2(d) seeks to carve out a fourth category of posts, not being posts reserved in favour of the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes. In other words, this fourth category is nothing but an Open category of posts, excluding the posts reserved in favour of the above referred classes i.e. the posts reserved for women in open category would be over and above the posts reserved for women in SC, ST and SEBC quota, as referred to in Rule 2(a), 2(b) and 2(c) of the said Rules. Thus, all the meritorious candidates, whether belonging to the reserved category or unreserved category, will be covered by the Open

category, irrespective of their caste, community or tribe where merit alone will be taken into account, while implementing vertical reservation as well as horizontal reservation within the same. It may be noted that by virtue of the Gujarat Civil Services (Reservation of Posts for Women) (Amendment) Rules, 2014, the requirement of reservation in favour of women came to be enhanced from 30% to 33%.

50. In view of the aforesaid discussion, we have no hesitation in arriving to the conclusion that the Government Resolution dated 01.08.2018 of the GAD deserves to be quashed and set aside, and is hereby quashed and set aside.

51. In view of the aforesaid, the findings recorded by the learned Single Judge in its impugned judgment from Paras 6.7 to 9.2 are quashed and set aside. Consequently, the directions issued in para-10 of the impugned judgment are also quashed and set aside.

52. In view of the aforesaid, (i) Ms. Tamanna A. Desai (SEBC-F), (ii) Ms. Manju Ambaliya (SEBC-F), (iii) Ms. Jalpa M. Gorla (SEBC-F), (iv) Ms. Gita M. Chowdhary (SEBC-F), (v) Ms. Mital H. Bhetariya (SEBC-F), (vi) Mr. Chirag S. Dhokadia (SC-M), who were otherwise there in the select list dated 18.09.2018 and ordered to be removed pursuant to the impugned judgment of the learned single Judge in question, shall continue to remain in the select list in question.

53. As pointed out by Mr. Trivedi, the learned Advocate General, the GPSC had recommended to the State Government 108 candidates out of the said select list of 115 in such a

manner that they were not likely to be affected by any outcome of the pending writ petitions before the learned single Judge and consequently, appointment orders were issued to the said 108 candidates. As we have quashed and set aside the Government Resolution dated 01.08.2018, the State Government is directed to give appointment to the remaining seven candidates out of the select list of the GPSC dated 18.09.2018 of 115 candidates.

54. In view of the statement made by Mr. Trivedi, the learned Advocate General, the State Government shall create, in all, seven supernumerary posts as a special case only for accommodating the general female candidates who were to be recommended by the GPSC as per their respective placement in the original select list.

55. The aforesaid would take care and protect the interest of the clients of Mr. Joshi.

56. For the future guidance of the State Government, we would like to explain the proper and correct method of implementing horizontal reservation for women in a more lucid manner.

“PROPER AND CORRECT METHOD OF IMPLEMENTING HORIZONTAL RESERVATION FOR WOMEN.

No. of posts available for recruitment. 100

Social Reservation quota (50%)

Open Competition (OC)	... 51
Scheduled Caste (SC)	... 12
Scheduled Tribe (ST)	... 17

Socially and Educationally
Backward Classes (SEBC) ... 20

**Horizontal Reservation for Women
(33% in each of the above categories)**

OC ... 17
SC ... 04
ST ... 06
SEBC ... 07

Step 1: Draw up a list of at least 100 candidates (usually a list of more than 100 candidates is prepared so that there is no shortfall of appointees when some candidates don't join after offer) qualified to be selected in the order of merit. This list will contain the candidates belonging to all the aforesaid categories.

Step 2: From the aforesaid **Step 1 List**, draw up a list of the first 51 candidates to fill up the OC quota (51) on the basis of merit. This list of 51 candidates may include the candidates belonging to SC, ST and SEBC.

Step 3: Do a check for horizontal reservation in OC quota. In the **Step 2 List** of OC category, if there are 17 women (category does not matter), women's quota of 33% is fulfilled. Nothing more is to be done. If there is a shortfall of women (say, only 10 women are available in the **Step 2 List** of OC category), 7 more women have to be added. The way to do this is to, first, delete the last 7 male candidates of the **Step 2 List**. Thereafter, go down the **Step 1 List** after item no. 51, and pick the first 7 women (category does not matter). As soon as 7 such women from **Step 1 List** are found, they are to be

brought up and added to the **Step 2 List** to make up for the shortfall of 7 women. Now, the 33% quota for OC women is fulfilled. List of OC category is to be locked. **Step 2 List** list becomes final.

Step 4: Move over to SCs. From the **Step 1 List**, after item no. 51, draw up a list of 12 SC candidates (male or female). These 12 would also include all male SC candidates who got deleted from the **Step 2 List** to make up for the shortfall of women.

Step 5: Do a check for horizontal reservation in the **Step 4 List** of SCs. If there are 4 SC women, the quota of 33% is complete. Nothing more is to be done. If there is a shortfall of SC women (say, only 2 women are available), 2 more women have to be added. The way to do this is to, first, delete the last 2 male SC candidates of the **Step 4 List** and then to go down the **Step 1 List** after item no. 51, and pick the first 2 SC women. As soon as 2 such SC women in **Step 1 List** are found, they are to be brought up and added to the **Step 4 List** of SCs to make up for the shortfall of SC women. Now, the 33% quota for SC women is fulfilled. List of SCs is to be locked. **Step 4 List** becomes final. If 2 SC women cannot be found till the last number in the **Step 1 List**, these 2 vacancies are to be filled up by SC men. If in case, SC men are also wanting, the social reservation quota of SC is to be carried forward to the next recruitment unless there is a rule which permits conversion of SC quota to OC.

Step 6: Repeat steps 4 and 5 for preparing list of STs.

Step 7 Repeat steps 4 and 5 for preparing list of SEBCs.”

57. The State Government as well as the GPSC shall, for all times to come, bear in mind that the effect of horizontal reservation, being provided under each category, is that it is only women, who belong to the Other Backward Classes, who can compete for the posts reserved for Other Backward Classes (Women) and not women who belong to the Scheduled Castes, the Scheduled Tribes and the unreserved category. Likewise, it is only women belonging to the Scheduled Castes and the Scheduled Tribes who can compete for the posts horizontally reserved in favour of Scheduled Castes (Women) and Scheduled Tribes (Women). A woman, not belonging to the reserved category (OBC, SC and ST), is not entitled to compete for posts reserved in favour of Other Backward Classes (Women), Scheduled Castes (Women) and Scheduled Tribes (Women).

58. The converse, however, is not true. All women, irrespective of whether they belong, or do not belong, to the reserved category are entitled to compete for posts earmarked in favour of women under the General Category. There is no reservation for posts in the General Category, and horizontal reservation in favour of women in the General Category is available to be filled up from amongst all women irrespective of their caste status. The posts, reserved in favour of General Category (Women), are available for all women from the State of Gujarat, and that would include women belonging to the reserved categories such as OBCs, SCs and STs, and women who do not. Holding otherwise, would result in surreptitious introduction of reservation in favour of those who do not belong to the socially and educationally backward classes, and a disguised attempt at communal reservation has been frowned upon by the Supreme

Court in The State of Madras Vs. Sm. Champakam Dorairajan and another : AIR 1951 SC 226.

59. With the above, both the appeals stand disposed of. The civil application filed in the Letters Patent Appeal (Stamp) No.42492 of 2019, seeking leave to appeal, also stands disposed of.

60. In view of the order passed in the main matter, i.e, the Letters Patent Appeal No.1910 of 2019, the civil application for stay also does not survive and is disposed of accordingly.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

Vahid