



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JAIPUR BENCH, JAIPUR**

D.B. Civil Writ Petition No. 1244/2022

Sunita Meena

----Petitioner

Versus

1. Rajasthan High Court, Jodhpur through its Registrar General.

2. Registrar (Examination), Rajasthan High Court, Jodhpur.

----Respondents



For Petitioner(s) : Mr. Girraj P. Sharma

For Respondent(s) : Mr. A.K. Sharma, Sr. Adv. assisted by  
Mr. Vishnu Kant Sharma

**HON'BLE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA**

**HON'BLE MR. JUSTICE SAMEER JAIN**

**Judgment**

**Reportable**

**Judgment pronounced on: 20.04.2022**

**By the Court (Per M.M. Shrivastava, ACJ):**

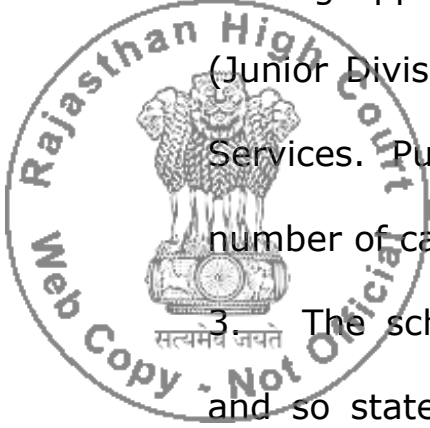
1. By this petition under Article 226 of the Constitution of India, the petitioner, an aspiring candidate for appointment on the post of Civil Judge (Junior Division) and Judicial Magistrate in the Rajasthan Judicial Services, has challenged the legality and validity of the merit list prepared categorywise after preliminary examinations and published vide notice dated 11.01.2022, as also her non-inclusion by giving benefit of horizontal reservation as widow in ST category. The alternative ground, on which the petition rests, is that as the marks obtained by the petitioner are



higher than the cut-off marks in the general category by operating horizontal reservation for widow, applying the rule of migration of the reserved category candidate by virtue of merit into general category, the petitioner was entitled to be placed in the merit list of the general (widow).

2. An advertisement was issued on 22.07.2021 by respondents inviting applications for appointment on 120 posts of Civil Judge (Junior Division) and Judicial Magistrate in the Rajasthan Judicial Services. Pursuant to that advertisement, the petitioner and large number of candidates applied.

3. The scheme of examination, as envisaged under the rules and so stated in the advertisement, comprised of a preliminary examination for the purpose of screening and preparing merit list (categorywise) being 15 times the number of vacancies in the category. The second stage of the examination comprised of written test followed by interview. The rule as well as the advertisement make it clear that the marks obtained by the candidates in the preliminary examination shall not be counted for the purposes of preparation of final select list. The advertisement dated 22.07.2021, while providing reservation both vertical as well as horizontal, though provided for horizontal reservation for widow categorywise, no such reservation for widow was provided in the ST, EWS and MBC. The petitioner admittedly belongs to ST category, for which no horizontal reservation for the category of widow was provided, though there was horizontal reservation for women. The petitioner, without any demur or protest to such a scheme providing for no reservation for widows in ST category, participated in the preliminary examination. The petitioner, while



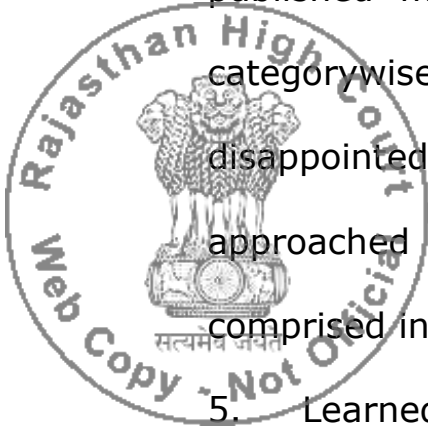


subjecting herself to the process of selection, did not challenge the prescription contained in clause 15 of the advertisement, which provided that the number of candidates to be admitted to the main examination will be 15 times the total number of vacancies (categorywise).

4. After conducting preliminary examination, the respondents published merit list being 15 times the number of vacancies categorywise vide notice dated 11.01.2022. The petitioner, being disappointed as she was not placed in any of the lists, has now approached this Court challenging the process of selection as comprised in the scheme of the rules and advertisement.

5. Learned counsel for the petitioner made twofold submissions.

The first submission of the learned counsel for the petitioner is that the respondents, while providing horizontal reservation in different categories provided for benefit of reservation for widow as a class by itself, as far as the General, SC and OBC are concerned, but no such benefit of horizontal reservation for women belonging to ST category was provided, which is *per se* arbitrary, discriminatory and violative of Article 14 of the Constitution. According to learned counsel for the petitioner, the respondents have not identified and recognized widows as category by themselves, for the purposes of grant of horizontal reservation categorywise, provided by the constitutional mandate to apply the policy of reservation uniformly to all the categories. Exclusion of some of the categories like ST, EWS and MBC has resulted in hostile discrimination which is impermissible under the Constitutional mandate under Article 14 of the Constitution as it is not based on any reasonable classification and bereft of any

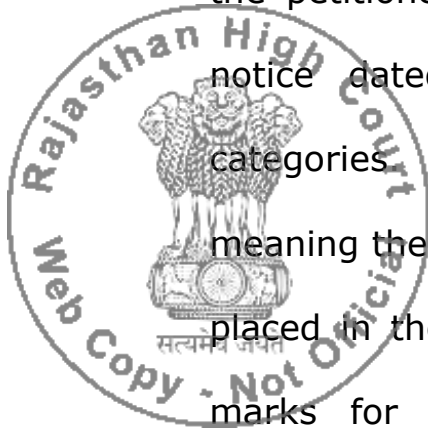




rationality. Therefore, the petitioner prayed that the respondents be directed to prepare proper list giving benefit of horizontal reservation to widows in the ST category in the same manner as it has been given to other categories while preparing merit list categorywise after the results of the preliminary examination.

6. The other alternative submission of the learned counsel for the petitioner is that in any case, the merit list published vide notice dated 11.01.2022 provides cut-off marks of various categories. The cut-off marks for general (widow) is 45 marks; meaning thereby the general (widow), who secured 45 marks, was placed in the merit list of general category, whereas the cut-off marks for ST category is 53. The petitioner downloaded marksheet, which shows that she has secured 50 marks. Thus, the marks obtained by the petitioner being more than 45, which is the cut-off marks for general (widow) category candidate, the petitioner is entitled to be placed in the merit list of general (widow) by applying the principle of migration. It is argued that the principle of migration will not only apply at the time of preparation of final merit list which comprised of marks obtained in the written test and interview, but that principle of migration would be equally applicable even at the stage of screening through preliminary examination while preparing merit list categorywise.

7. On the other hand, learned senior counsel appearing for the respondents argued that the challenge to the process of selection by the petitioner, after she participated in the process, is not permissible under the law in view of the settled legal position in that regard. He would highlight that the examination comprised of preliminary examination for the purposes of short-listing



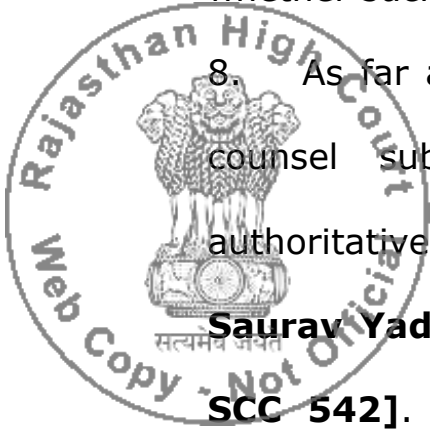


candidates belonging to different categories, as reflected from the scheme of the rules and the advertisement which contemplated preparation of list being 15 times the number of vacancies categorywise, the petitioner never challenged. The petitioner having participated and having not been succeeded now turned around to challenge the process of selection, irrespective of whether such a procedure was correct or not.

8. As far as the rule of migration is concerned, learned senior counsel submitted that the rule of migration has been authoritatively pronounced by the Supreme Court in the case of

**Saurav Yadav & Ors. vs. State of Uttar Pradesh [2021 (4) SCC 542]**. The rule of migration as laid down in the said

judgment will not have any applicability at the stage of preparation of list at the stage of screening through preliminary examination. Learned senior counsel for the respondents further advanced his arguments and contended before us that the purpose of the first stage of the examination is to short-list candidates categorywise under the scheme of the rules with clear stipulation that the marks obtained in the preliminary examination shall not be counted for the purposes of final merit list. At this stage the rule of migration will not apply but at a later stage of preparation of final merit list. As pronounced by the Supreme Court in the case of Saurav Yadav (supra) the rule of migration will become applicable at the time of preparation of final merit select list based on the marks obtained by the candidates in the written examination and interview. Additional submission raised by learned senior counsel is that as the rules and advertisement both provided for preparation of merit list categorywise, which

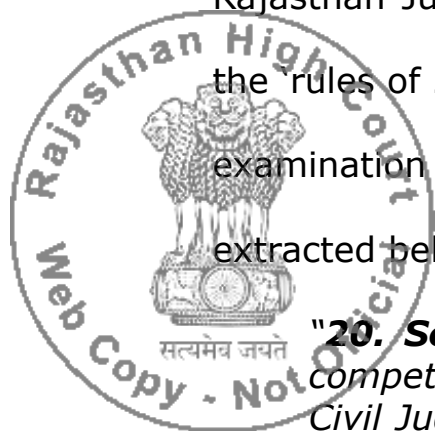




remained unchallenged by the petitioner despite her participation, therefore, at her instance, the validity of list on the alleged ground of violation of rule of migration is not susceptible to challenge.

9. We have heard learned counsel for the parties.

10. The process of selection for appointment to the post of Civil Judge (Junior Division) and Judicial Magistrate is governed by the Rajasthan Judicial Service Rules, 2010 (hereinafter referred to as the rules of 2010'). Rule 20 thereof provides for holding of examination at different stages and the same being relevant is extracted below:



**"20. Scheme of Examination and Syllabus** - (1) *The competitive examination for the recruitment to the post of Civil Judge shall be conducted by the Recruiting Authority in two stages i.e. preliminary examination and Main examination as per the Scheme specified in Schedule-IV. The marks obtained in the preliminary Examination by the candidate who are declared qualified for admission to the main examination will not be counted for determining their final merit.*

(2) *The number of candidate to be admitted to the main examination will be fifteen times the total number of vacancies (Category wise) to be filled in the year but in the said range all those candidates who secure the same percentage of marks as may be fixed by the Recruiting Authority for any lower range will be admitted to the Main Examination.*

(3) *On the basis of marks secured in Main Examination, candidates to the extent of three times of total number of vacancies (Category wise) shall be declared qualified to be called for interview.*

(3-A).....

(4) .....

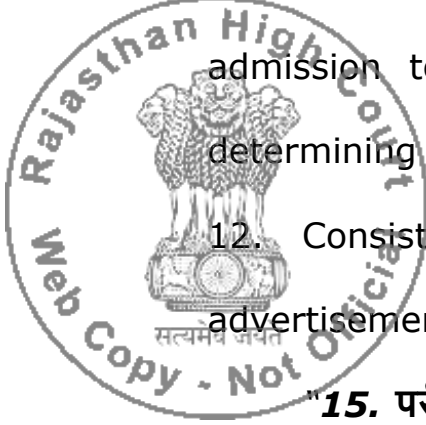
(5) ....."

11. A bare reading of the aforesaid provision clearly shows that the process of selection comprises of two stages; the first stage is of screening as large number of applications are received and the screening has to be done by holding preliminary examination based on multiple choice objective questions. As the rules explicitly reads, at the stage of preliminary examination, merit list



would be prepared. Number of candidates to be admitted to the main examination will be 15 times the total number of vacancies (categorywise), but in the said range all those candidates who secured the same percentage of marks on the last cut-off will be admitted to the main examination. Further the provision is unequivocal that the marks obtained in the preliminary examination by the candidates, who were declared qualified for admission to the main examination, will not be counted for determining the final merit list.

12. Consistent with the scheme of rules, clause-15 of the advertisement also provided as below:



**15. परीक्षा की स्कीम और पाठ्यक्रम (Scheme & Syllabus of Examination):-**

(1) *The competitive examination for the recruitment to the post of Civil Judge shall be conducted in two stages i.e. Preliminary Examination and Main Examination. The marks obtained in the Preliminary Examination by the candidate who are declared qualified for admission to the Main Examination will not be counted for determining final merit.*

(2) *The number of candidate to be admitted to the Main Examination will be fifteen times the total number of vacancies (category-wise) but in the said range all those candidates who secure the same percentage of marks on the last cut-off will be admitted to the Main Examination.*

**Note:-** *To qualify for Main Examination, the candidates of SC/ST category shall have to secure minimum 40% marks and candidates of all other categories shall have to secure 45% minimum marks in the Preliminary Examination.*

(3) .....

(4) .....

(5) ....."

13. The process of selection as declared to all the candidates vide advertisement dated 22.07.2021 is strictly in accordance with the prescription made in the governing rules, referred to hereinabove. The advertisement provided for the number of posts and reservations as below:



"4. रिक्त पदों की संख्या एवं आरक्षण (*Number of Vacant Posts and Reservation*):-

Total Number of Vacancies	Year	General	Reserved					Persons with Benchmark Disabilities
			SC	ST	OBC	EWS	MBC	
89	2020 (up to Dec. 2020)	35 Out of which, 10 posts for women Out of 10 posts 02 posts reserved for Widow	14 Out of which, 04 posts for women Out of 04 posts 01 post for widow	10 Out of which 03 posts for women	18 Out of which 05 posts for women Out of 05 posts 01 post for widow	08 Out of which 02 posts for women	04 Out of which 01 posts for woman	Out of 89 vacancies, 04 posts for persons with Benchmark Disabilities*
31	2021 (up to Dec. 2021)	14 Out of which, 04 posts for women Out of 4 posts 01 post reserved for Widow	04 Out of which 01 post for woman	03	06 Out of which 01 post for women	03	01	Out of 31 vacancies, 01 post for persons with Benchmark Disabilities*

\*Out of 05 posts reserved for persons with Benchmark Disabilities, 01 (One) post is reserved for blindness and low vision, 01 (One) for deaf and hard of hearing, 01 (one) for locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy and 02 (two) for autism, intellectual disability, specific learning disability and mental illness and multiple disabilities from the amongst persons under clauses (a) and (d) including deaf-blindness in the posts identified for each disabilities.

**नोट:-** उपरोक्त रिक्त पदों की संख्या में नियमानुसार कमी या बढ़ोतरी की जा सकती है, जिसके लिए पुनः विज्ञापन/शुद्धिपत्र जारी नहीं किया जायेगा। ”

14. Reservation both vertical and horizontal was provided against vacancies of the year 2020 and 2021. As far as vacancies of the year 2020 (upto December, 2020) are concerned, while providing vertical reservations for various categories, horizontal reservation for women and other categories including category of widow was provided.

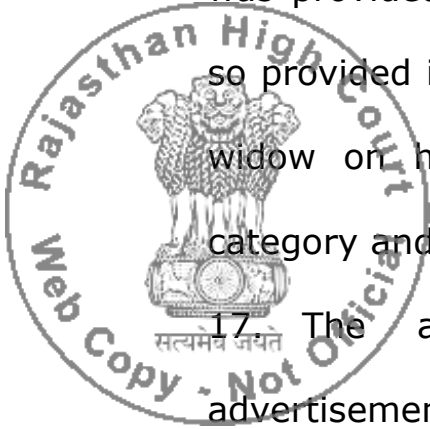
15. Similarly for the vacancies of the year 2021 also vertical and horizontal reservation was provided. As far as horizontal reservation for women is concerned, such reservation was provided for SC, ST, OBC, EWS, MBC as also for General category.





However, reservation for widow on horizontal basis was provided only in SC, OBC and General category, excluding ST, EWS and MBC categories.

16. As against vacancies of the year 2021 (upto December, 2021), a different scheme of reservation was provided. While horizontal reservation for women in SC, OBC and General category was provided, no horizontal reservation was provided for women so provided in ST, EWS and MBC category. Further reservation for widow on horizontal basis was provided only in the General category and no other category.

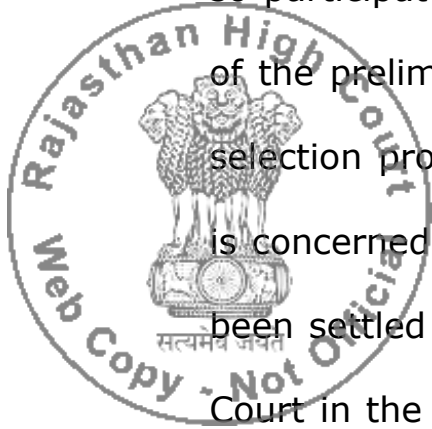


17. The aforesaid two important prescriptions in the advertisement laying down the scheme of reservation both vertical and horizontal basis as also scheme of examination comprised of more than one stages and stipulation of preparation of list of the candidates to be called for main examination being 15 times the number of vacancies (categorywise) was never subjected to challenge by the petitioner. Without any demur or protest, the petitioner participated in the process of selection. It was only when the results of preliminary examination were published, declaring candidates qualified for being called for main examination comprising of written test and interview, which was prepared categorywise as per the prescription in the rules and the advertisement, which did not include the petitioner, that the petitioner now turned around and challenged the action of the respondents on both counts.

18. As far as no horizontal reservation provided for widow in the ST category is concerned, we find that in respect of vacancies of the year 2020 as well as 2021 both, no such reservation for ST



women was provided. The petitioner, therefore, if not satisfied with this reservation policy, was required to challenge the rule or the advertisement in the beginning of the process of selection when the advertisement was issued on 22.07.2021. The petitioner, however, did not challenge the said prescription of rule and advertisement but participated in the process of selection. Having so participated, now the petitioner after declaration of the results of the preliminary examination, is precluded from challenging the selection process insofar as policy and prescription of reservation is concerned. This legal position is no longer *res integra* and has been settled by series of judicial pronouncements of the Supreme Court in the case of **K.A. Nagamani vs. Indian Airlines & Ors.**



**[2009 (5) SC 515], Manish Kumar Shahi vs. State of Bihar & Ors. [2010 (12) SCC 576], Ramjit Singh Kardam Vs. Sanjeev Kumar [AIR 2020 SC 2060] and Ramesh Chandra Shah & Ors. vs. Anil Joshi & Ors. [2013 (11) SCC 309].** It has been stated and re-affirmed time and again that those, who had submitted applications and participated in the selection process without challenging the process of selection, have no *locus* to challenge the advertisement and the selection process after they have been declared unsuccessful.

19. In the case of Ramjit Singh Kardam (*supra*), it was held as below:

*"In Madan Lal and Ors. vs. State of J and K & Ors., (1995) 3 SCC 486, this Court laid down following in paragraph 9:-*

*"9. ....It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om*



*Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285: (AIR 1986 SC 1043) : (1986 Lab IC 796, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."*

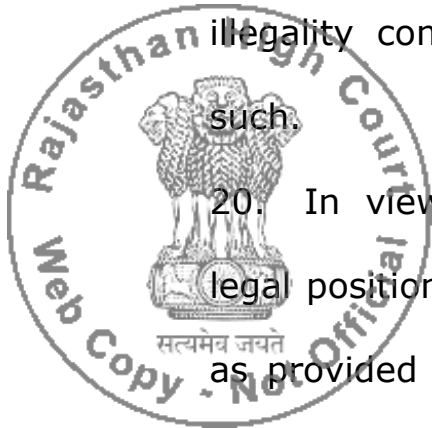
The present is not a case of some very glaring and serious illegality committed vitiating the entire process of selection as

such.

20. In view of the authoritative pronouncements and settled legal position, challenge to the reservation policy and prescription as provided under the advertisement cannot be permitted to be challenged at the instance of unsuccessful candidates after the candidate has been declared unsuccessful.

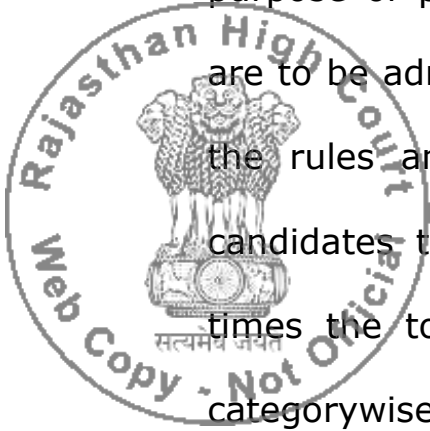
21. Though number of arguments have been raised, irrespective of merits of such submissions and the correctness and validity of providing no reservation for widow belonging to Scheduled Tribe category, at the instance of the petitioner, the process of selection cannot be allowed to be challenged.

22. This takes us to the other important submission regarding petitioner's claim of inclusion in the list prepared for general category wherein there is a provision for horizontal reservation to women belonging to widow category. We shall again revert to the provisions contained in the rules as already been quoted herein above which lays down the scheme of examination. The examination as per the rule and the provision contained in clause 15 of the advertisement, which is in accordance with the rules, comprises of two stages. The first stage is of the preliminary examination. A perusal of the rule and the terms of the





advertisement clearly shows that the purpose of preliminary examination is to only screen the candidates for main examination. This is reflected from the provision itself which declares that the marks obtained by the candidates in the preliminary examination shall not be counted for the purposes of determination of final merit list. This clearly means that the purpose of preliminary examination is to screen candidates who are to be admitted to the main examination and for that purpose, the rules and the advertisement provide that the number of candidates to be admitted to the main examination will be 15 times the total number of vacancies, which is to be prepared categorywise.



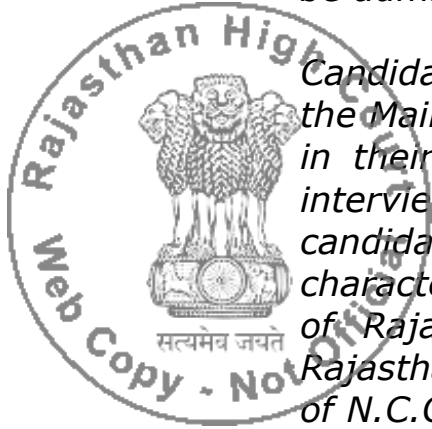
23. Whether at this stage the rule of migration on the basis of merit from one category to the other category would be permissible was considered by this Court in the cases of **Rajasthan Public Service Commission and Ors. vs. Megha Sharma and Ors. [2020 (3) RLW 2203(Raj.)]**, **Dharamveer Tholia and Ors. vs. State of Rajasthan and Ors. [2000 (3) WLC 399]** and **Khushi Ram Gurjar vs. Rajasthan High Court, Jodhpur [DBCWP No. 10274/2021, decided on 28.10.2021 at Jodhpur]**.

24. In the case of Dharamveer Tholia (supra), correctness and validity of preparation of the result of screening test by adopting categorywise cut-off method, under Rule 15 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1999, was considered. Rule 15 as referred to above reads as under:

*"15. Scheme of Examination, Personality and Viva-voce Test: The Competitive Examination shall be conducted by*



*the Commission in two stage i.e. Preliminary Examination and Main Examination as per the scheme specified in Schedule-III. The marks obtained in the Preliminary Examination by the candidates, are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit. The number of candidates to be admitted to the Main Examination will be 15 times the total approximate number of vacancies (category wise) to be filled in the year in the various services and posts but in the said range all those candidates who secure the same percentage of marks as may be fixed by the Commission for any lower range will be admitted to the Main Examination.*



*Candidates who obtain such minimum qualifying marks in the Main Examination as may be fixed by the Commission in their discretion shall be summoned by them for an interview. The Commission shall award marks to each candidate interviewed by them, having regard to their character, personality, address, physique and knowledge of Rajasthani Culture. However, for selection to the Rajasthan Police Service candidates having "C" Certificate of N.C.C. will be given preference. The marks so awarded shall be added to the marks obtained in the Main Examination by each such candidate.*

*Provided that the commission, on intimation being received from the Government before declaration of the result of the Preliminary Examination, may increase or decrease the number of vacancies advertised."*

25. In the light of the scheme under the rules providing for preparation of the result of the screening test by adopting categorywise cut-off method, this Court upheld the action and turned down the challenge on the claim that candidates in the reserved category securing higher marks would be entitled to migrate to the general category. Reliance was placed by the Bench on the decision of the Supreme Court in the case of **Chattar Singh & Ors. Vs. State of Rajasthan & Ors. [AIR 1997 SC 303]** wherein the effect of Rule 13 of the Rajasthan State and Subordinate Services (Direct Recruitment by Combined Competitive Examinations) Rules, 1962 was examined and it was held thus:



"18. The State had evolved the principle of reservation to an office of the State or post as an affirmative action to accord socio-economic justice guaranteed in the Preamble of the Constitution; the fundamental rights and the directive principles which are the trinity of the Constitution to remove social education and economic backwardness as a constitutional policy to accord equality of opportunity, social status or dignity of person as is enjoined in Articles 14, 15, 16, 21, 38, 39, 39A, 46 etc. Article 335 enjoins the State to take the claims of Dalits and Tribes into consideration for appointment to an office/post in the services of the State consistently with efficiency of administration. Though OBCs are socially and educationally not forward, they do not suffer the same social handicaps inflicted upon Scheduled Castes and Scheduled Tribes. Articles 15(2) and 17 furnish historical and social dissatisfaction inflicted on them. The object of reservation for the Scheduled Castes and Scheduled Tribes is to bring them into the mainstream of national life, while the objective in respect of the backward classes is to remove their social and educational handicaps. Therefore, they are always treated dissimilar and they do not form an integrated class with Dalits and Tribes for the purpose of Article 16(4) or 15(4). Obviously, therefore, proviso to Rule 13 confines the 5% further cut off marks in the preliminary examination from the lowest range fixed for general candidates. So, it is confined only to the Scheduled Castes and Scheduled Tribes who could not secure total aggregate marks on par with the general candidates. The Rule expressly confines the benefit of the proviso to Scheduled Castes and Scheduled Tribes. By process of interpretation, OBCs. cannot be declared alike the Scheduled Castes and Scheduled Tribes. Therefore, the contention that the doctrine of fusing "any backward class of citizen" in Article 16(4), further classification of Scheduled Castes and Scheduled Tribes and OBCs. as distinct classes for the purpose of reservation and omission to extend the same benefits to OBCs violates Article 14 is devoid of substance. If the logic of equality, as propounded by minority Judge is given acceptance, logically they are also entitled to reservation of seats in the House, of the People or in the Legislative Assemblies of States, though confined to Scheduled Tribes and Scheduled Castes, by operation of Article 334(a) of the Constitution with a non obstante clause engrafted therein. The founding fathers of the Constitution, having been alive to the dissimilarities of the socio-economic and educational conditions of the Scheduled Castes and Scheduled Tribes and other segments of the society have given them separate treatment in the Constitution. The Constitution has not expressly provided such benefits to the OBCs except by way of specific orders and public notifications by the appropriate Government. It would, therefore, be illogical and unrealistic to think that omission to provide same benefits to OBCs, as was

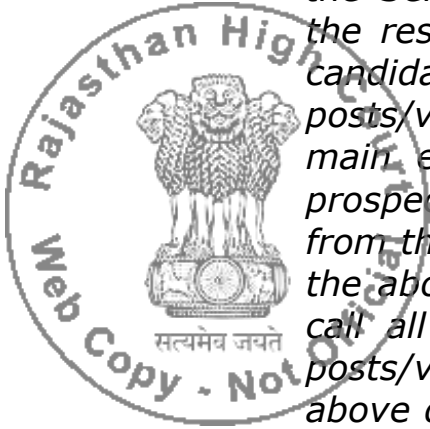




*provided to Scheduled Castes and Scheduled Tribes, was void under Article 16(1) and 14 of the Constitution.*

*19. Accordingly we are of the view that the OBCs. are not entitled to 5% cut off marks in the preliminary examination as provided under proviso to Rule 13.*

*20. As regards the preparation of separate list of General, OBCs, SCs STs and physically handicapped, in view of the fact that the latest amendment has been made explicit what was implicit in Rule 13, we are of the view that separate lists are required to be published by the Service Commission in respect of the candidates in the respective categories so as to make up number of candidates 15 times the notified or anticipated posts/vacancies so as to enable them to appear in the main examination. It is true that the amendment is prospective in operation. However, it does not detract from the efficiency of Rule 13 originally made. In view of the above, the Public Service Commission is directed to call all those candidates that constitute 15 times the posts/vacancies notified or anticipated in terms of the above declaration of law so as to enable them to appear in the main examination."*



26. In yet another decision in the case of Megha Sharma (supra), relying upon the decision of the Supreme Court in the case of Chattar Singh (supra) as also in the case of Dharamveer Tholia (supra), it was held that migration is not to be applied while short-listing the candidates for interview/main examination after subjecting them to screening test. It was held that rule of migration will be applicable only at the time of final selection for preparation of final merit list and not before that. The observations made by the Division Bench at para 12 of the said judgment in this regard is reproduced as below:

*"12. The upshot of the aforesaid judgments of the Hon'ble Apex Court and division benches of this Court is that migration is not to be applied while shortlisting the candidates for interview/main exam after subjecting them to screening test and it has to be applied at the time of final selection i.e. preparing the final merit list only. Since, there was no categorywise interview, the judgment dated 8.5.2019 qua its findings recorded in paragraph 2 at internal page 8, suffers from the error apparent on its face. Therefore, the review petitions are*



*allowed, the judgment dated 8.5.2019 is recalled and set aside to the extent directions contained therein requiring the RPSC to subject all the candidates declared successful in the screening process together for interview, prepare a combined merit list and thereafter work out the revise merit list giving due weightage to the rule of migration. Resultantly, the special appeals are allowed in terms that the select list dated 18.5.2019 is held to be valid."*

27. The view taken in the case of Dharamveer Tholia (supra) was

again followed by the Division Bench of this Court in the case of

**State of Rajasthan and Ors. Vs. Hanuman Jat and Ors.**

**[MANU/RH/0225/2016]**. In that case also, on facts the scheme

of examination comprised of two stages, one of screening test for

shortlisting number of candidates to be admitted to the main

examination followed by the second stage of main examination.

The Division Bench addressed to itself the issue arising for

consideration, the factual backdrop and the relevant scheme of

shortlisting through screening test as below:

*"3. In the batch of writ petitions, the procedure, which has been adopted by the Board in holding the preliminary examination for short-listing the candidates and preparing the list of candidates 15 times the number of vacancies category-wise to be admitted to the main examination is assailed being illegal and violative of Article 14 of the Constitution. The facts and circumstances that emerged the group of writ petitions are as under:*

*The selection for the post of Patwari is being held in accordance with the Rajasthan Land Revenue (Land Record) Rules, 1957 (for short, hereinafter referred to as "the Rules of 1957") read with Rajasthan Schedule Area Subordinate, Ministerial, Class-IV Service (Recruitment And Other Service Conditions) Rules, 2014 (for short, hereinafter referred to as "the Rules of 2014") and as per the Scheme of the Rules, the final select list is prepared on the basis of written examination. The posts of Patwari came to be advertised by the Board vide advertisement no.5 dated 4.11.2015 indicating the vacancies available in various districts category-wise in non-scheduled areas and scheduled areas separately of General, SC, ST, OBC, SBC and all*





other horizontal reservation. It may be noticed that for non-scheduled areas, in respect of 31 districts, there were 3979 vacancies, whereas in scheduled areas, 421 vacancies were advertised in respect of 5 districts and thus, in all total 4400 vacancies were advertised. The applications were invited on-line from the candidates, who intended to participate in the selection process against the vacancies notified for non-scheduled and scheduled areas separately. In all 8,18,719 applications were received and considering the sizeable number of candidates, who intended to participate in the selection process, the Board decided to hold Screening Test for short-listing the number of candidates to be admitted to the main examination. Notices were published for holding the Screening Test for short-listing the candidates 15 times the number of vacancies category-wise and the condition was incorporated in the Scheme of examination and syllabus that after preliminary examination, candidates 15 times the number of vacancies category-wise will be held eligible to appear in the main examination. The relevant portion of the Scheme of examination and syllabus is quoted below:-



"3. प्रारंभिक परीक्षा के उपरांत मुख्य परीक्षा के लिए कुल रिक्तियों के वर्गवार 15 गुना अभ्यर्थियों को योग्य घोषित किया जायेगा। मुख्य परीक्षा के लिए योग्य घोषित करते समय बोर्ड द्वारा निर्धारित योग्यता सूची के अंतिम प्राप्तांक पर समान अंक पाने वाले सभी अभ्यर्थियों को योग्य माना जायेगा।"

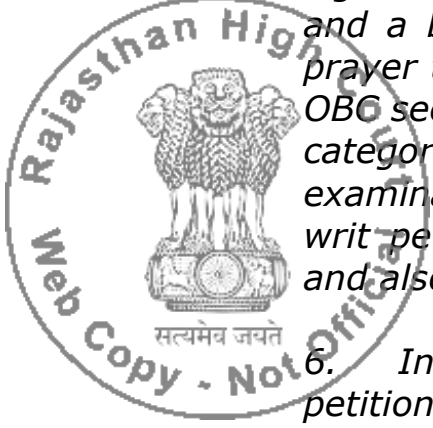
28. Factual position obtaining on record in that case that the cut-off marks for shortlisting the candidates categorywise indicated that candidates belonging to the Scheduled Caste, Scheduled Tribe and OBC had obtained higher marks and thus, it being the case of higher cut-off marks for reserved category as compared to cut-off marks prescribed for general category was also noticed as below:

"4. The preliminary examination was held on 13.2.2016, in which 6,45,071 candidates appeared and result was declared on 17.3.2016 and accordingly, a list of candidates 15 times the number of vacancies category-wise to be admitted to main examination scheduled to be held on 7th May, 2016, was prepared and published by the Board. The cut-off marks for short-listing the candidates to be called for main examination category-wise are as follows:-



General	:-	104.51
Scheduled Caste	:-	112.78
Scheduled Tribe	:-	106.58
Other Backward Classes	:-	147.45

5. Obviously, the candidates belonging to the reserved categories SC/ST/OBC raised grievance that when in the general category, the candidates securing 104.51 marks are being considered to be admitted in the main examination, the candidates of reserved categories SC/ST/OBC securing 104.51 marks atleast have a legitimate right to be admitted in the main examination and a batch of writ petitions came to be filed with the prayer that the candidates of reserved categories SC/ST/OBC securing 104.51 marks (last cut-off marks in general category candidates) may be admitted to the main examination. The learned Single Judge in the batch of writ petitions passed such interim orders on 27.4.2016 and also thereafter.



6. In sum and substance, the grievance of the petitioners is that they are members of SC/ST/OBC categories and submitted their applications for participating in the selection process for the post of Patwari initiated by the Board vide advertisement dated 4<sup>th</sup> November, 2015. They appeared in the preliminary examination held by the Board for short-listing the candidates to be called for main examination. But, their main grievance is that the Board has mis-interpreted the Scheme of holding preliminary examination and preparing the list of candidates 15 times the number of vacancies category-wise to be admitted to the main examination and the procedure followed by the Board has turned out to be oppressive to the interest of the candidates belonging to reserved categories of SC/ST/OBC. It is further stated that while the general category candidates, who secured lesser marks, have been admitted to the main examination, the persons belonging to SC/ST/OBC categories securing higher marks, have not been admitted to the main examination and the Board has prepared the list category-wise in the manner that the list of candidates of general category has been prepared excluding the entire reserved category candidates notwithstanding the fact that reserved category candidates on account of their merit standing can be positioned in the general category. A direct consequence of this is that the Board has brought about a positive reservation in favour of the unreserved category. Such reservation amounts to massive affirmative action in favour of general category, which is constitutionally impermissible and is violative of the mandate of Article 14 of the Constitution of India."



29. Relying upon the verdict in the case of Dharamveer Tholia (supra), in almost similar rule and scheme of examination and following the verdict of the Supreme Court in the case of Chatter Singh (supra), it was held in the case of Hanuman Ram (supra) as below:

*"17. After examining the judgment of the Apex Court in the case of Chatter Singh (supra), the Division Bench of this Court in Dharamveer Tholia (supra) finally observed as follows:-*



*"49. Rule 15 of the Rules of 1999 provides the procedure to prepare the list of candidates for appearing in the main examination, therefore, the result of the preliminary examination cannot be considered to be a final result. In regard to the submission made by the Senior Counsel for the petitioner about the reservation policy provided under Article 16 (4) of the Constitution as well as the judgments cited are not in dispute but the same in our view, will not be of any help or assistance to the petitioners at this stage of short listing. The judgment of the Hon'ble Supreme Court relied on by the petitioner in Sabharwal's case (supra) pertains to the promotion policy and also of the vacancies based on roster system which in our opinion, will be applicable only at the time of preparing the final select list. As per Rule 15, the RPSC shall permit the candidates 15 times the total approximate number of vacancies in each category in the main examination and this Rule has been upheld by the Supreme Court in Chatter Singh's case (supra). The reservation policy is meant for recruitment only and there is no other reservation policy for short listing in examination. As such, the actions of the RPSC are within the mandate of Article 16(4) of the Constitution of India as well as the Rules of 1999. If the contention of the learned Counsel for the petitioners is accepted, the thousands of meritorious candidates who have been selected as per the preliminary examination will be affected and their interest will be jeopardized.*

*50. It is seen from the additional affidavit filed by the Service Commission that the Commission has declared the result of the preliminary examination on 27th May, 2000- and the list of successful candidates coming with the range of 15 times the number of vacancies set apart for that category was also published and the list of candidates who were*



not able to come within that range was also published. It is useful to reproduce the details furnished in Paragraphs 3, 4, 5 and 6 of the additional affidavit:

3. That in general category, there are in all 252 vacancies meant for male candidates and 105 vacancies are meant for female candidates. Thus, combined vacancies in general category comes to 357 and the Commission has admitted 5412 candidates for the main examination in terms of Rule 15 of the Rules.

4. That similarly, the combined vacancies reserved in OBC category are 140 and the Commission has admitted 2109 candidates for the main examination, which constitute 15 times the number of vacancies/posts reserved in the OBC category. 5. That similarly, there are 102 combined vacancies reserved in the SC category for male and female both and the Commission has admitted 1538 candidates for the main examination, which also constitute 15 times the number of vacancies reserved in that category.

6. That in ST category, 78 combined vacancies meant for both male and female have been reserved and the Commission has admitted 1190 candidates for the main examination, which constitutes 15 times the number of vacancies reserved in that category.



51. As held by the Supreme Court, the list of candidates belonging to one category cannot be shifted to another category on the basis of their merit as the list of successful candidates in the preliminary examination is meant only for short-listing the candidates for the main examination and it does not constitute merit of the candidates which is done at the time of preparation of final merit Under Rule 17 of the Rules. If the contention of the petitioners is accepted that instead of preparing separate list for each category, a list should be prepared on the basis of over-all merit attained by the candidates appearing in the preliminary examination, it would result in exclusion of 1498 candidates from the general category and in their place 1051 candidates from OBC category will be shifted to the general category; 137 candidates from SC category will also be shifted to the general category and similarly, 175 from the ST category shall have to be shifted to the general category. In addition to that, in general category, the female candidates who have secured higher cut-off marks fixed for the general category (male) shall also be shifted to the general category (male) in the number of 157. It is also seen from Para 9 that if the revision is to take place in accordance with the



*interpretation put forward by the petitioners, the cut-off marks in each category shall have to be revised in the following manner:*

**CUT-OFF MARKS**

Revised:

	Male	Female
1. General	216	139
2. SCs.	158	90
3. STs.	166	72
4. OBCs	185	132

Existing:

1. General	203	144
2. SCs	163	91
3. STs	174	72
4. OBCs	204	136.

52. We are of the opinion that such an exercise is not warranted in view of the Supreme Court decision in *Chattar Singh's case (supra)*."

18. The Division Bench of this Court is clear in its view that the list of candidates 15 times the number of vacancies category-wise belonging to one category cannot be shifted to another category on the basis of their merit as the list of successful candidates in the preliminary examination is meant only for short-listing the candidates for the main examination and that does not constitute the merit of the candidates, which is done at the time of preparation of final merits of the candidates.

19. It cannot be disputed that the purpose of holding 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. Reservation for applicants is also not permissible under Article 16(4) of the Constitution.

20. This has been recognised by the existence of legal authority to conduct the preliminary examination whenever unmanageable and large number of applications are received for filling up the limited number of posts. Indisputably, in the selection process, the preliminary examination, which was held for short listing the candidates to be admitted to the main examination, is not a part of the main examination. The merit of the candidates is not judged thereby and only eligibility criteria is fixed. Such a test is being held for the purpose of judging the basic eligibility of the candidates. How and in what manner the State or Recruiting Authority would comply with the constitutional mandate of law is ordinarily not allowed to be questioned.

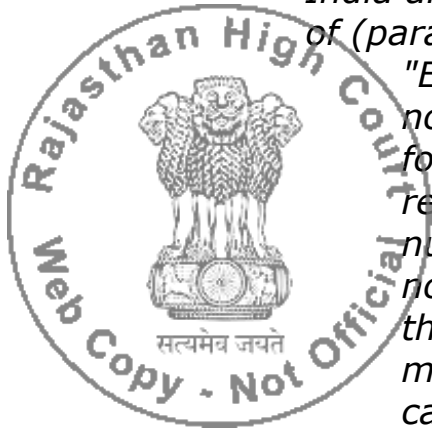
21. It is always open for the Recruiting Authority to adopt a mode for short-listing the candidates if the





applications received are large in number for limited posts, but criteria for short listing has to be reasonable based on rational and intelligible differentia, which has nexus with the object sought to be achieved and which will depend upon the facts and circumstances of each case. At the same time, it has also become clear that whenever there is a particular provision for short listing of the candidates in the Rules or selection process, then those rules or instructions have to be followed. Even in the absence of Rules/Regulations, short listing of number of candidates has always been approved by the Apex Court in *B. Ramakichenin alia Balagandhi v. Union of India and ors.* (2008) 1 SCC 362, relevant portion where of (para 16) reads ad infra:-

"Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of short-listing can be resorted to by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement."



22. The short listing of candidates if figures are large and unmanageable, is permissible by law and there can be different mode, which can be adopted for short listing the candidates, but the criteria must have rational basis and in conformity with the mandate of Articles 14 and 16 of the Constitution. If the recruiting authority takes a decision to short list the candidates based on their academic record, higher qualification than the minimum qualification prescribed for the post or by holding written examination etc, being time tested still the criteria has to be reasonable, rational and permissible by law.

23. The decision regarding short listing the number of candidates, who have applied for the post, shall not be based on any extraneous consideration but at the same time to aid and help the process of selection of the best candidates amongst the applicants for the post in question. The short listing of the candidates to be admitted to the main examination is by adopting the method of holding preliminary examination, which is one of the mode to judge the eligibility of the candidates, the rule of reservation of posts or even the reservation for applicants is not acknowledged or permissible under Article 16(4) of the Constitution. The marks obtained in the preliminary examination is neither a part of the main examination nor added while preparing the final merit list of the candidates for giving appointments.



24. *In our considered view, the reservation is applied at the time of recruitment and not at the time of preliminary examination for short listing the number of candidates and it is the duty of the recruiting authority to ensure fair and competitive examination. There is a distinction between the holding of preliminary examination and the main examination. The preliminary examination is held to short list the candidates and marks obtained in such examination are not added while determining the final merit of the candidates and thus, reservation of applicants is not applied at the stage of preliminary examination, as settled by the Apex Court in the case of Chattar Singh (supra) and also by the coordinate Division Bench of this Court in the case of Dharamveer Tholia (supra). We are clear in our view that the rule of reservation is not applied at the time of short listing the candidates and Article 16(4) for reservation is not applied in every stage of selection process as being envisaged in the facts and circumstances of the case and we are in full agreement with the view expressed by the Division Bench of this Court in the case of Dharamveer Tholia (supra).*



25. *The issue is always cropped in as & when the reserved category qualify with the better marks in comparison to general category and despite the members of the reserved category are within 15 times, the candidates in excess from reserved category, if are permitted to admit in the Main Examination, the very purpose of shortlisting the number of candidates shall be frustrated and interpretation for shortlisting the candidates remain dependent on the procedure prescribed or as per the Rules, if so provided but we find that whenever the cut-off of general category is lower than the cut-off of reserved category, this question is always being raised. But, in our considered view, the legal proposition of shortlisting and publishing the list of candidates to be admitted to the Main Examination will remain dependent on the settled proposition of law and not on the facts of each case as and when came for scrutiny.*

26. *In our view, after the judgment of the Division Bench of this Court in the case of Dharamveer Tholia (supra) examining the issuance of list of candidates 15 times the number of vacancies category-wise as per Rule 15, relying upon the decision of the Apex Court in the case of Chattar Singh (supra) and upholding the list relating to General, SC, ST, OBC categories to be in consonance with law and in conformity with the mandate of the Constitution, the issue is now no more res integra and open for consideration, unless we differ from the view expressed by the coordinate Division Bench of this Court."*



30. In another decision in the case of **Garima Sharma Vs. State of Rajasthan & Ors. [D.B. S.A.W. No. 1448/2016, decided on 08.05.2018]**, the Division Bench of this Court, while relying upon the decision in the case of Dharamveer Tholia (supra), held as below:

*"We appreciate the aforesaid issue. The answer of the question was given by this Court in the case of Dharmveer Tholia (supra). The principal of vertical reservation for migration of meritorious reserve caste candidates to open category would not be applicable for short-listing. The list should only of general caste candidates. In fact, framers of the Constitution never visualized that reservation would be arranged vertically or horizontally. The theory aforesaid has been developed by the Court while adjudicating the issue. So far as the present matter is concerned, the judgment of the Apex Court in the case of Anil Kumar Gupta Vs. State of UP, (1995) 5 SCC 173 also supports the case. If vertical reservation is applied at the stage of short-listing also then virtually it would amount to grant of reservation at every stage of selection, though, is meant to apply at the final stage of recruitment and while giving appointment.*

*A reference of the judgment of Division Bench of this Court in bunch of special appeals led by State of Rajasthan & Anr. Vs. Hanuman Jat & Ors., D.B. Civil Special Appeal (W) No.635/2016 decided vide order dated 13th May, 2016 would also be relevant. The controversy therein was not only in pursuance of the Rules of 1999 but on the same issue. Therein, the RPSC had arranged the list for admitting the candidates for Main Examination strictly fifteen times to each category. Therein, migration of the candidates from one category to another was not made. The aforesaid was challenged by reserve caste candidates alleging that on account of denial of migration of candidates from reserve caste category to open category, their rights have been affected. The plea taken therein was not accepted....."*

31. In one of the recent judicial pronouncement in the case of Khushi Ram Gurjar (supra), this Court while considering the legality and validity of preparation of list on the basis of screening examination of the candidates to be admitted to main examination under the scheme of examination provided in that case also re-





affirmed the aforesaid legal position. In the aforesaid case, the scheme of examination contained in clause 12 of the advertisement provided as below:

"The examination of the candidates shall be conducted in the following stages :-

**Stage (1) Screening Test**

If, number of applications received are more than 10 times of the total vacancies, in respect of advertised vacancies, an objective type written test may be conducted to shortlist the candidates. The Objective type written test will be conducted only for short listing the candidates and the marks obtained in the said examination will not be considered while preparing the final merit list.

(i) The Written Test will be of total 100 marks, duration thereof will be 2 hours consisting of multiple choice questions from the following subjects :-

(a) Traffic instructions written in Hindi and English language, sign boards related to traffic and the knowledge regarding reading of road instructions.

(b) Related to technical knowledge of vehicle and roadside repair.

(c) Related to knowledge of traffic rules.

(d) Related to knowledge of traffic signs.

(ii) Out of the above subjects, there would be questions of 20 marks from first subject, 20 marks from second subject, 30 marks from third subject and 30 marks from fourth subject.

(iii) There will be a total of 100 questions (each of 1 mark) in the Written Test.

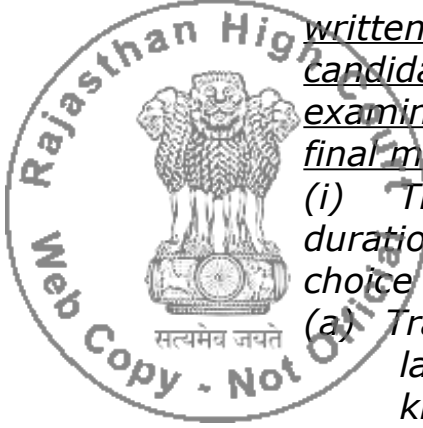
(iv) There will be no negative marking for wrong answer.

(v) The Written Test shall be conducted through OMR Answer Sheet.

(vi) Candidates up to the extent of 10 times (category-wise) of the total number of vacancies shall be declared qualified for the Job Test and Personal Interview on the basis of marks obtained in the Written Test. Such candidates, who obtain equal marks on the last cut-off (category-wise), shall also be declared qualified for the Job Test and Personal Interview.

(vii) In order to qualify for the JOB Test and Personal Interview, the candidates of SC/ST category shall have to obtain 40 marks in the Written Test and candidates of all other category shall have to obtain 45 marks.

(viii) Model answer key to the question paper of Written Test shall be published on the official website i.e. <http://www.hcraj.nic.in> of this Court forthwith after holding of the Written Test. The objections from candidates against the model answer key shall be sent within such time limit and such manner prescribed by Rajasthan High Court. Any objection received after the stipulated time period shall not be considered. The objections received





*accordingly, shall be considered by a competent Committee and if needed, after modifying the answer key, the Final Answer Key may be published and along with this, the result of the Written Test may also be declared.*

*[Emphasis supplied]"*

32. Dealing with the similar challenge of claim of applicability of rule of migration in the matter of preparation of list of candidates for being admitted to main examination, relying upon the decision in the case of Chattar Singh (supra), Megha Sharma (supra), Dharamveer Tholia (supra) as also Garima Sharma (supra), the legal position has been re-affirmed in Kushi Ram Gurjar (supra) as below:



*"Considering the view expounded by Division Benches of this Court in the above cases while placing reliance on the judgment of Hon'ble the Supreme Court in the case of Chattar Singh (supra), it is clear that the concept of vertical reservation and migration to the higher category cannot be applied in a shortlisting exercise which is provided under Rule 25 of the Rajasthan Subordinate Courts (Driver and Class IV Employees) Service Rules, 2017....."*

33. The Division Bench of this Court in the case of Khushi Ram Gurjar (supra) noticed that the judgment of this Court in the case of Hanuman Jat (supra) has been challenged in the Supreme Court but the argument that the judgment of the High Court has been stayed by the Supreme Court was not accepted taking into consideration that an interim arrangement was made by the Supreme Court.

34. The decision of the Supreme Court in the case of Saurav Yadav (supra) has now settled the controversy with regard to principles applicable in the matter of vertical and horizontal migration while preparing merit list, that being a case specific to claim of OBC (female) securing higher marks than the last



candidate appointed in general category of general (female). In the light of consistent view by this Court in series of decisions cited hereinabove, the rule of migration of reserved category candidate from his/her own category to general category to be placed in the merit list would be applicable while preparing final merit list and not when the exercise of shortlisting of candidates categorywise is done at the stage of screening by way of preliminary examinations, as has been done in the present case. Issue whether the principle of migration would apply even at the stage of shortlisting the candidates for being admitted to main examination was neither raised nor decided in the case of Saurav Yadav (supra). Learned counsel for the petitioner could not bring to our notice any authoritative pronouncement of the Supreme Court in this regard. Therefore, we have no reason to take a different view than what has been taken in the cases of Dharamveer Tholia (supra), Hanuman Jat (supra), Megha Sharma (supra), Khushi Ram Gurjar (supra) and Garima Sharma (supra) which are the judgments rendered by taking into consideration the scheme of examination and governing rules of recruitment analogous to those applicable in the case in hand.

35. Resultantly, the petition being *sans substratum* is liable to be and is accordingly dismissed.

**(SAMEER JAIN),J**

**(MANINDRA MOHAN SHRIVASTAVA), ACJ**

MohitTak/-