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W.P.No.6201 of 2013 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.08.2022 &
25.08.2022

DELIVERED ON : 07.09.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.6201 of 2013; 1309, 11254, 11714, 20897, 23330, 28518
of 2021; 97, 734, 5098, 5105, 16631 and 22405 of 2022

and

W.M.P.Nos.24607, 30137, 12471, 12472, 1455, 21112, 22164,
22165, 22166, 30138, 30139 of 2021; 5221, 89, 806, 91, 11836,
11915, 11917, 11920, 5213, 5216, 5222, 805, 15916, 21462 and
21463 of 2022

W.P.No.6201 of 2013:

M.Satheesh Kumar

.. Petitioner

Vs

1.State of Tamil Nadu,
rep. by its Secretary to Government,
Personnel and Administrative Reforms Dept.,
Secretariat, Fort St. George,
Chennai - 600 009.



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2.The Secretary to Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.

3.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003.

4.Narmada

.. Respondents

[Respondent No.1 deleted from the array of party as per the order dated 11.08.2014 made in M.P.No.2 of 2014]

Prayer : W.P.No.6201 of 2013 filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the third respondent Commission to implement the rule of reservation with regard to women in a horizontal manner by counting the number of women who are selected on their own merit for the purposes of satisfaction of reservation for women as explained by the Hon'ble Supreme Court in Rajesh Kumar Daria's case reported in 2007 and consequently direct the third respondent to cancel the selection of the fourth respondent to the post of Deputy Collector at the counseling held on 14.02.2013 and consequently direct the respondents 1 to 3 to select and appoint the petitioner in her position with all consequential benefits.



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For the Petitioner : Mrs.Dakshayani Reddy

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent No.2

Mr.R.Shunmugasundaram
Advocate-General
assisted by
Mr.Alagu Goutham
Ms.A.G.Shakeenaa
Mr.B.Thiyagarajan
Government Advocates
and
Mr.V.Govardhanan
Standing Counsel
for respondent No.3

: Mr.N.Umapathi
for respondent No.4

and batch cases.

COMMON ORDER

THE CHIEF JUSTICE

A batch of writ petitions has been filed to seek a direction on the respondents to implement the rule of reservation for women horizontally and not vertically.



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2. The prayer aforesaid has been made by referring to the arrangement made by the Tamil Nadu Public Service Commission (TNPSC) so as the State while filling up various posts in the State service. The batch of writ petitions refers to different posts to which selections were made or are under process. We would be addressing the basic question raised by the petitioners on the application of the rule of reservation for women to all the selections to different posts in the State service.

3. For convenience, we would be referring the facts giving rise to the filing of W.P.No.6201 of 2013. The said writ petition pertains to a notification issued by the TNPSC on 29.12.2010, pursuant to which the selection was to be made after holding preliminary examination, followed by the main examination and, lastly, the oral interview.

4. The issue raised in the aforesaid writ petition is the arrangement of reservation for women candidates. It is after giving



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reference to Sections 26 and 27 of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 [for brevity, "*the Act of 2016*"]. The provisions aforesaid stipulate that a minimum 30% of all the vacancies to be filled through direct recruitment shall be set apart for women candidates, irrespective of the fact whether the rule of reservation of appointment applies to the posts or not, and in respect of the posts to which the rule of reservation applies, 30% of vacancies shall be set apart for female candidates following the reservation for Scheduled Castes and Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes or Denotified communities and General Turn. The women candidates shall also be entitled to compete for the remaining 70% of vacancies along with male candidates.

5. While a challenge to the constitutional validity of Sections 26 and 27 of the Act of 2016 has also been made in few writ petitions, in other writ petitions a challenge is made qua the manner in which reservation has been arranged for female candidates.

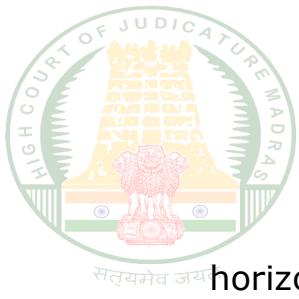


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6. Learned counsel for the petitioners submit that the respondents have given erroneous interpretation of Sections 26 and 27 of the Act of 2016 while arranging the reservation in favour of women candidates. By virtue of the interpretation given by them, women were given vertical reservation, while reservation for women is to be arranged horizontally. The interpretation given by the respondents has resulted in setting apart *en bloc* 30% of all the vacancies for women and thereafter to provide and arrange social reservation. Such provision not only offends Article 16(2) of the Constitution of India, but the judgment of a Constitution Bench of the Apex Court in the case of ***Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217.***

7. Learned counsel for the petitioners submit that it is now the settled law of the land that reservation for women is horizontal, while social reservation is vertical. It is with a further arrangement that horizontal reservation cuts across the vertical reservation by applying interlocking reservation system. The difference between



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horizontal and vertical reservations could not be understood by the respondents while arranging reservation in favour of women candidates. By virtue of which, they *en bloc* set apart 30% of the vacancies for women and arranged it at the first stance as if they have to be given vertical reservation. Elaborate reference of the judgments on the issue was made by learned counsel for the petitioners and they would be referred while dealing with the rival submissions of the parties.

8. Mr.R.Shunmugasundaram, learned Advocate General appearing on behalf of the State Government and Mr.P.S.Raman, learned Senior Counsel appearing on behalf of the TNPSC, submit that reservation for women has not been arranged vertically, but it is arranged horizontally in all the selections conducted by the TNPSC. The allegation of vertical reservation for women is far from true and in ignorance of Sections 26 and 27 of the Act of 2016 in vogue.

9. Learned Advocate General submits that Section 26 of the

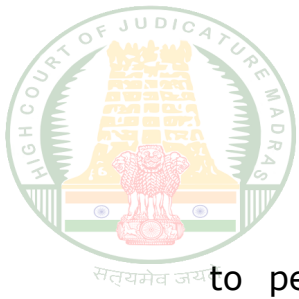


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Act of 2016 provides that a minimum 30% of all the vacancies to be filled through direct recruitment shall be set apart for women candidates irrespective of the fact whether the rule of reservation of appointment applies to the posts or not and if the rule of reservation applies, then the first 30% of the vacancies are to be set apart for female candidates, followed by the social reservation and the provision aforesaid has been applied in the same manner as postulated under the Act of 2016.

10. Arguing the issue, learned Advocate General further submits that Sections 26 and 27 do not offend any of the constitutional provisions, rather it is in consonance with it. It is submitted that while Article 16(4) of the Constitution of India talks about the reservation for backward class of citizens, Article 15(3) of the Constitution provides a special provision for women and, accordingly, Section 26 of the Act of 2016 is in consonance with Article 15(3) of the Constitution of India. In view of the above, the State of Tamil Nadu has rightly framed Section 26 of the Act of 2016 to set apart 30% of the seats for women candidates and then



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to permit them to further compete for the remaining 70% of vacancies along with the male candidates.

11. To buttress the argument aforesaid, learned Advocate General referred to the Apex Court judgment in the case of **Saurav Yadav and others v. State of Uttar Pradesh and others, (2021) 4 SCC 542**. In the said case, the Apex Court has referred to horizontal reservation under Articles 16(1) and 15(3) of the Constitution of India. Therefore, the special provision for reservation for women in public employment being under Article 15(3) of the Constitution of India, it would save Section 26 of the Act of 2016 under challenge.

12. Learned Advocate General and learned Senior Counsel appearing for the TNPSC have submitted an affidavit referring to the number of vacancies so advertised for different posts and how the reservation was arranged for the female candidates.

13. The aforesaid exercise would be undertaken by this court

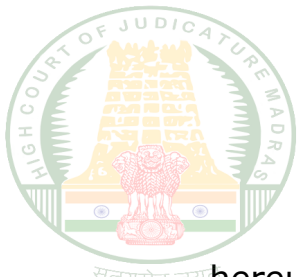


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to find out whether the respondents have rightly applied the judgments of the Apex Court in regard to horizontal and vertical reservations, as it is stated by the respondents that for giving reservation, they first arranged the list of female candidates to the extent of 30% of the vacancies and then arranged social reservation and thereupon the list of Open Category (OC) was drawn. The arrangement aforesaid has been questioned by learned counsel for the petitioners, as it offends the judgment of the Apex Court in the case of **Rajesh Kumar Daria v. Rajasthan Public Service Commission and others, (2007) 8 SCC 785.**

14. To avoid repetition of the statement of facts and legal issues, we would cover the respective arguments of learned counsel for the parties in our finding and, accordingly, for proper interpretation, we would be referring to the provisions in question to find out whether they are constitutionally sustainable or not. Further, if they are sustainable, whether the reservation in favour of the female candidates has been properly arranged by the respondents. Sections 26 and 27 of the Act of 2016 are reproduced



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सत्यमेव जयते hereunder:

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"26. Appointment of women.

(1) Women alone shall be appointed to a post in any institution or establishment specially provided for them:

Provided that men may be appointed, if suitable and qualified women are not available for such appointment.

(2) A minimum of thirty per cent of all vacancies which are to be filled through direct recruitment shall be set apart for women candidates irrespective of the fact whether the rule of reservation of appointment applies to the posts or not. In respect of the posts to which the rule of reservation of appointment applies, thirty per cent of vacancies shall be set apart for female candidates following the reservation for Scheduled Castes and Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes or Denotified communities and General Turn. Women candidates shall also be entitled to compete for the remaining seventy per cent of



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vacancies along with male candidates:

Provided that in the case of direct recruitment to the posts with Grade Pay which does not exceed rupees two thousand and eight hundred, ten per cent of vacancies out of the thirty per cent vacancies set apart for women shall be set apart for destitute widows and the first vacancy in every ten vacancies set apart for destitute widows and the first vacancy in every ten vacancies set apart for women in each category, namely, the General Turn, Backward Class Muslims, Backward Classes, Most Backward Classes or Denotified Communities, Scheduled Castes or Scheduled Tribes shall be set apart for destitute widows. If no qualified and suitable destitute widow is available, then, the turn so set apart for destitute widow shall go to the women (other than destitute widow) belonging to the respective category.

Explanation.— In this section, "destitute widow" shall have the same meaning as in Explanation-I under sub-section (8) of section 20.

(3) Every candidate claiming to be a "destitute widow" shall produce a certificate in the form



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specified in Schedule-X from the Revenue Divisional Officer or the Assistant Collector or the Sub-Collector concerned.

(4) Selection for appointment under this section shall be made in the order of rotation specified in Schedule-VIII.

(5) If a qualified and suitable woman candidate belonging to Scheduled Castes, Scheduled Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes or Denotified Communities or General Turn is not available for selection for appointment in the turn allotted for women in the cycle, then, the turn so allotted shall go to a male candidate within the respective category. In respect of the posts to which the rule of reservation of appointments does not apply, then, the turn so allotted shall go to the next male candidate

27. Reservation of appointments.

Where the special rules lay down that the principle of reservation of appointments shall apply to any service, class or category, selection for appointment



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thereto shall be made on the following basis:—

(a) The unit of selection for appointment, for the purpose of this section, shall be two hundred, of which thirty six shall be reserved for the Scheduled Castes including six offered to Arunthathiyars on preferential basis amongst the Scheduled Castes, two for the Scheduled Tribes, fifty three for the Backward Classes (other than Backward Class Muslims, Most Backward Classes and Denotified Communities), seven for the Backward Class Muslims, forty for the Most Backward Classes and the Denotified Communities and sixty two shall be filled on the basis of merit:

Provided that if even after filling up of the required appointments or posts reserved for Arunthathiyars amongst the Scheduled Castes in Schedule-V, if more number of qualified Arunthathiyars are available, such excess number of candidates of Arunthathiyars shall be entitled to compete with the other Scheduled Castes in the inter-se-merit among them and if any appointment or post reserved for Arunthathiyars remain unfilled for want of adequate number of qualified candidates, it shall be filled up by Scheduled Castes other than Arunthathiyars.



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(b) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment, one per cent in each such category shall be separately reserved for the blind, deaf and orthopaedically challenged candidates and the appointment shall be made in the turn and in the order of rotation specified in Schedule-VI:

Provided that the appointment of Differently abled candidates, against the reserved turns shall be subject to availability of such candidates:

Provided further that if no qualified and suitable candidate is available from a particular category of differently abled, namely, the blind, the deaf or the orthopaedically challenged, the vacancy shall be filled up by candidates belonging to any of the other two categories. This shall, however, be subject to the third proviso to this clause:

Provided also that in the teaching posts of School Education Department, Adi Dravidar and Tribal Welfare Department, Social Welfare Department and



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Backward Classes and Most Backward Classes Department, besides orthopaedically challenged, the reservation for the blind shall be two per cent, and there shall be no reservation for the deaf. In the non-teaching posts in the above Departments, besides orthopaedically challenged, the reservation for the deaf shall be two per cent, and there shall be no reservation for the blind:

Provided also that if no qualified and suitable differently abled candidate belonging to Scheduled Caste or Scheduled Tribe or Most Backward Class/Denotified Community is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than differently abled belonging to that category and if no such candidate is available in that category for selection for appointment against the reserved turn, then, such turn shall be carried forward as provided in clause (d):

Provided also that in the case of appointment of candidates belonging to Backward Classes (other than Most Backward Classes/Denotified Communities), Backward Class Muslims or in the



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case of appointment of candidates on the basis of merit, if no qualified and suitable differently abled candidate is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than Differently abled belonging to that category and if no such candidate is available in that category for selection for appointment against the reserved turn, such turn shall be allowed to lapse:

Provided also that in so far as the Executive Posts are concerned, the reservation for Differently abled candidates shall be made applicable in respect of suitable posts in Groups 'A' and 'B' as identified in the list approved by the Government and to all posts in Groups 'C' and 'D' , subject to the condition that the Differently abled candidate shall, before appointment, produce a certificate of physical fitness from the Medical Board to the effect that his handicap will not affect the performance of the job to which he has been selected:

Provided also that if the vacancies notified are identified suitable for only any two of the three categories of the differently abled, namely, blind and



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deaf or deaf and orthopeadically challenged or blind and orthopeadically challenged and if the total number of vacancies meant for the ineligible category of the differently abled is even, it shall be distributed equally between the other two eligible categories, or if the said total number of vacancies is odd, the extra vacancy shall be allotted to either of the two eligible category of differently abled, which has higher population as per the latest census:

Provided also that if the vacancies notified or identified suitable for only one category of Differently abled, then, the entire three per cent vacancy shall be allotted to that particular category of differently abled.

(c) Out of the total number of appointments reserved in the categories referred to in clause (a), in the case of appointment made by direct recruitment to Group 'C' posts, five per cent in each such category shall be reserved for Ex-servicemen and subject to availability of such candidates, the appointment shall be made in turn and in the order of rotation as specified in Schedule-VII:



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Provided that if no qualified and suitable Ex-serviceman belonging to a particular category is available for selection for appointment against the reserved turn, such turn shall be filled up by a candidate other than an Ex-serviceman but belonging to the particular category and if no such candidates is available even in that category for selection for appointment against the reserved turn, such turn shall be carried forward as provided in clause (d).

(d) The claims of members of the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/Denotified Communities), Backward Class Muslims and the Most Backward Classes/Denotified Communities shall also be considered for the thirty one appointments, which shall be filled on the basis of merit and where a candidate belonging to a Scheduled Caste, Scheduled Tribe, Backward Class (Other than Most Backward Class/Denotified Community) Backward Class Muslims or Most Backward Class/Denotified Community is selected on the basis of merit, the number of posts reserved for the Scheduled Castes, the Scheduled Tribes, the Backward Classes (other than Most Backward Classes/ Denotified



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Communities), Backward Class Muslims or the Most Backward Classes/ Denotified Communities, as the case may be, shall not in any way be affected.

(e) Selection for appointment under this section shall be made in the order of rotation specified in Schedule-V.

Explanation.—The vacancies arising on and from the 29th April 2009 shall be filled up as per Schedule-V and all selections for appointment shall be started afresh from serial number one in the said Schedule-V with effect on and from the said date.

(f) If qualified and suitable candidates belonging to any of the Backward Classes, Backward Class Muslims including the Most Backward Classes and Denotified Communities are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them, the turns so allotted shall lapse and the selection for appointment for the vacancies shall be made by the next turn in the order of rotation:

Provided that if qualified and suitable candidates



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belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion in the turns allotted to them in the cycle, the turns so allotted to them shall not lapse and the number of candidates to be selected in that recruitment shall be reduced by the number of candidates belonging to Scheduled Castes and Scheduled Tribes not available for selection against the turn allotted to them. The unfilled vacancies reserved for the Scheduled Castes and Scheduled Tribes to be filled by recruitment by transfer or by promotion shall be carried over to four consecutive recruitment years, namely, year of recruitment plus three subsequent recruitment years. The selection for appointment to the vacancies in the next recruitment shall be made first for the carried over turns and then the normal rotation shall be followed. If qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes are not available for selection for appointment by recruitment by transfer or by promotion even thereafter, the vacancies reserved for those categories shall first be dereserved by obtaining the orders of the Government before filling them by



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candidates in the next turn in the order of rotation:

Provided further that the normal number of vacancies reserved for the candidates belonging to the Scheduled Castes and Scheduled Tribes and the carried forward vacancies as specified in the first proviso shall not exceed fifty per cent of the total number of vacancies for a particular recruitment. If there be two vacancies only, one of them shall be treated as a reserved vacancy. If there be one vacancy only, it shall be treated as unreserved. The surplus of the fifty per cent shall be carried forward to the subsequent recruitment, subject to the condition that the vacancies carried forward do not become time barred due to their continued existence for more than three years. Selection for appointment to the earliest carried forward vacancies shall be made first:

Provided also that in the case of selection for appointment by direct recruitment, with effect on and from the 1st April 1989, there shall be a ban on dereservation of vacancies reserved for the candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and



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Denotified Communities to be appointed by direct recruitment. But, the above ban on dereservation of vacancies shall not be applicable to the vacancies reserved for the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims and, therefore, if qualified and suitable candidates belonging to any of the Backward Classes (other than Most Backward Classes and Denotified Communities), Backward Class Muslims are not available for appointment, the turn so allotted to them shall lapse and the vacancy shall be filled by the next turn in the order of rotation. If sufficient number of qualified and suitable candidates belonging to any of the Scheduled Castes and Scheduled Tribes, Most Backward Classes and Denotified Communities are not available for selection for appointment for the vacancies reserved for them by direct recruitment in the first attempt of recruitment, then, a second attempt shall be made for selection of the candidates belonging to the respective communities by direct recruitment in the same recruitment year or as early as possible before the next direct recruitment for selection of candidates against such vacancies. If the required number of candidates belonging to such communities are not



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available even then, the vacancies for which selection could not be made shall remain unfilled until the next recruitment year treating them as "backlog" vacancies. In the subsequent year, when direct recruitment is made for the vacancies of that year, namely, the current vacancies, the "backlog" vacancies shall also be announced for direct recruitment, keeping the vacancies of the particular recruitment year, namely, the current year vacancies and the "backlog" vacancies as two distinct groups as illustrated in Schedule-IX. The selection for appointment for the next direct recruitment shall be made first for the "backlog" vacancies and then the normal rotation shall be followed:

Provided also that, in exceptional cases, for posts in Groups A and B for which suitable candidates belonging to the Scheduled Castes, Scheduled Tribes, Most Backward Classes or Denotified Communities are not available against the respective reserved vacancies and the non-filling up of posts causes hardship for running the administration, the Government may grant exemption from carrying forward of such vacancies and the procedure therefor shall be as specified in Schedule-IX:



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Provided also that when a candidate selected for appointment against a vacancy for Scheduled Castes, Scheduled Tribes, Most Backward Classes / Denotified Communities, Backward Classes, Backward Class Muslims or General Turn, does not join duty in the post for which he is appointed or his provisional selection for that post is cancelled for any reason, a candidate in his place shall be appointed from the respective category and in accordance with the ranking from the reserve list:

Provided also that the candidates appointed from the reserve list shall be placed below all the candidates appointed from the regular list in the same order in which the vacancies have arisen:

Provided also that the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty, but left thereafter while the reserve list is in force.

(g) Notwithstanding anything contained in this section and in the Special Rules for various State and Subordinate Services, the rule of reservation shall



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not apply to the appointments on compassionate grounds.

(h) Notwithstanding anything contained in this section, in order to restore the representation of Scheduled Castes and Scheduled Tribes in a service, where their representation is less than eighteen per cent and one per cent, respectively, each department shall furnish such vacancies treating them as shortfall vacancies of Scheduled Castes and Scheduled Tribes in the lowest level of posts in each of the Groups A,B,C and D, besides the posts of Junior Assistants, Typist and Steno-Typist Grade III in the Tamil Nadu Ministerial Service and the Tamil Nadu Judicial Ministerial Service, to the Government and the Government, in turn, shall inform the same to the recruiting agencies for notifying the vacancies for direct recruitment as a one time measure:

Provided that reservation for Women, Differently abled person and Ex-servicemen shall not apply to the said recruitment."

[emphasis supplied]

15. Section 26(2) of the Act of 2016 has been assailed



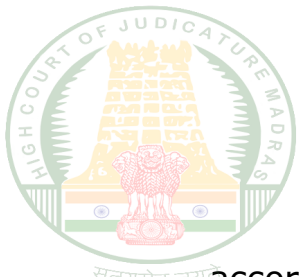
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alleging it to be ultra vires the Constitution of India. In view of the above, we would be first examining the validity of the said provision and at the same time discussing as to how reservation for women is to be arranged.

16. Section 26(2) of the Act of 2016 provides that a minimum of 30% of all vacancies in direct recruitment shall be set apart for women candidates irrespective of the fact whether the rule of reservation applies to the posts or not. If there exists provision for reservation, then 30% of the vacancies is to be set apart for women candidates, following the reservation for Scheduled Castes and Scheduled Tribes, Backward Class Muslims, Backward Classes, etc. It is with the further arrangement that women candidates shall be entitled to compete for the remaining 70% of the vacancies along with male candidates.

17. Learned Advocate General submits that since the provision aforesaid postulates setting apart of 30% of the vacancies, they applied the provision aforesaid while arranging the reservation and,



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accordingly, before providing social reservation, they arranged the list to fill up 30% vacancies by female candidates and then arranged the social reservation and thereafter the open category, which is considered to be General Turn and, therefore, while filing the posts, they have not committed any illegality.

18. In response to the submission of the respondents in making appointments, the first question raised by learned counsel for the petitioners is that it resulted in vertical reservation in favour of women candidates.

19. Pursuant to the direction of the court, affidavits have been submitted by the Government as well as the TNPSC, which would reveal that first 30% of the vacancies were given to female candidates and thereafter list was arranged to provide social reservation. The aforesaid has been illustrated by the respondents as under:

"Written Submissions of the first respondent dated 24.8.2022:"



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7. On applying the provisions of Section 26 of TNGS Act the total vacancies matrix is elucidated below:

S. No.	Category	Women Reservation (30%)	Merit Based
1.	Open Category	9	22
2.	Backward Classes	8	19
3.	Backward Classes (Muslim)	1	2
4.	Most Backward Classes & Denotified Communities	6	14
5.	Scheduled Caste	5	13
6.	Scheduled Tribe	1 (Based on Turn)	
	Total	100	

8. It is submitted that amongst the 'Open Category' candidates, 22 candidates are appointed based on merit constituting the top 22 ranks in the merit list. Furthermore, the 9 vacancies reserved for women are filled by the next meritorious women candidate in the merit list. Thus, the benefit is made available only to meritorious women. As such, merit is and continues to be the paramount criteria while filling up vacancies even while applying the 30% reservation for women under Section 26 of the TNGS Act."

Affidavit filed on behalf of the petitioners in W.P.No.734 of 2022:



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"As per the selection list prepared by the petitioners according to the communal reservation Section 27 of the Act of 2016 and the procedure set out by the Hon'ble Supreme Court and this Hon'ble Court the total number of 1141 vacancies should be divided as follows:

Turn	Vacancies	Reservation
GT Turn	354/1141	31%
BC Turn	302/1141	26.5%
BC (M) Turn	41/1141	3.5%
MBC/DC Turn	228/1141	20%
SC (G) Turn	171/1141	15%
SC (A) Turn	34/1141	3%
ST Turn	11/1141	1%

6. The Petitioners have prepared a selection list as per the procedure set out by the Hon'ble Supreme Court in the case of Rajesh Kumar Daria reported in (2007) 8 SCC 785 and Saurav Yadav case reported in (2021) 4 SCC 542. As per the said selection list prepared by the petitioners the following number of women have been included in the selection list based on merit.

GT - 108
OBC - 141
BCM - 17



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MBC -	78
SCG -	65
SCA -	10
ST -	5
=====	
Total -	424
=====	

7. Thus even though 30% horizontal reservation for women out of 1141 vacancies is 342, it is seen that 424 women by their own merit have been selected under the GT Turn, OBC, BCM, MBC, SC, SCA and ST categories. Thus the 30% reservation for women has been satisfied. There is no need for further reservation for women. As per the counter affidavit filed by the TNPSC 538 women (+6 women selected during the Phase - II counselling) have been selected for the 1141 vacancies in the post of Veterinary Assistant Surgeons. Thus 120 (544-424) women have been selected in excess because of treating 30% women reservation erroneously as Vertical reservation instead of Horizontal reservation.



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8. The TNPSC has not only treated 30% reservation for women as Vertical reservation but has also treated 20% reservation for PSTM (when there is no PSTM candidates with B.V.Sc. and AH) as Vertical reservation resulting in an illegal selection list.

...

11. The details of 21 Writ Petitioners along with their marks and category is given below:-

Sl.No.	Name	Marks	Category
1	S.Thirunavukkarasu (010004163)	330.75	BC
2	C.Velladurai (010005023)	334.00	BC
3	M.Sedhumadhavan (010007246)	335.25	BC
4	M.Abishek (010008067)	335.00	BC
5	M.Bojiraj (010008105)	334.00	BC
6	V.Arul (010005045)	335.00	BC
7	M.Dhinakaran (010008138)	329.25	BC
8	S.Nallathambi (010006145)	337.00	BC
9	M.Maragathamani (010002027)	327.75	BC
10	B.Sasikumar (010006221)	336.25	BC
11	N.Sathiyamoorthy	327.25	BC



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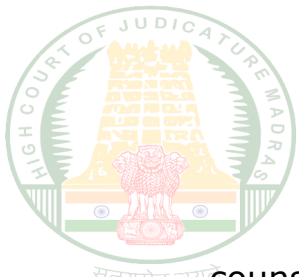
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Sl.No.	Name	Marks	Category
	(010007068)		
12	N.Madhu (010007122)	320.50	MBC
13	C.Ezhilarasan (010006208)	326.00	MBC
14	N.Kathiravan (010002139)	327.25	MBC
15	S.Thesinguraja (010002207)	319.75	MBC
16	M.Dhilipan (010002025)	324.50	MBC
17	J.Selvamani (010008038)	326.00	MBC
18	S.Satheeshkumar (010006178)	314.25	SC
19.	S.Sundharesan (010007023)	315.00	SC
20	P.Vignesh (010004153)	316.50	SC
21	R.Kavinilavan (010006268)	316.50	SC

The minimum marks secured by the women candidates who have been erroneously included in the select is

BC	-	312.75
MBC	-	290.00
SC	-	279.25"

Despite the specific averments made in the affidavit filed by learned



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counsel for the petitioners in W.P.No.734 of 2002 alleging that 120 women have been selected in excess of their quota by erroneously applying reservation vertically instead of horizontally for them, the respondent authorities did not file any affidavit controverting the same. It is settled proposition of law that if a woman candidate is selected in her own category of SC, ST, MBC, etc. then she would be counted to satisfy their own quota of reservation.

20. It is stated by the respondents that by taking the provision to set apart 30% of the vacancies for women candidates, the reservation was made *en bloc* in favour of the female candidates and thereupon list of remaining 70% candidates was arranged and therein also female candidates were given appointment. The arrangement aforesaid was never envisaged by the framers of the Constitution and even the Apex Court.

21. At this stage, we would be analyzing the issue of reservation for women for the purpose of clarity, though a challenge to their reservation is not made.



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

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.—

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.



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(3) Nothing in this article shall prevent the State from making any special provision for women and children.

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

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

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—



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- (a) *any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and*
- (b) *any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.*

Explanation.—For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.



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16. Equality of opportunity in matters of public employment.—

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

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

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

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the



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opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of



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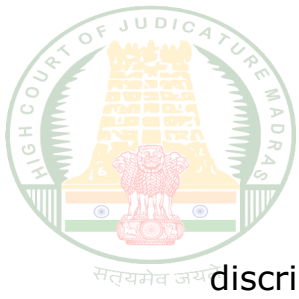
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any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

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

[emphasis supplied]

23. Article 16(2) of the Constitution provides for equality of opportunity in matters of public employment and governs the specialised subject of public employment. Article 16(2) of the constitution prohibits discrimination on the grounds of religion, race, caste, sex, descent, place of birth, etc. The word "sex" used in Article 16(2) of the Constitution is required to be noted because



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discrimination on the ground of sex cannot be made as per Article 16(2) of the Constitution. Article 16(4) of the Constitution provides for reservation for backward class of citizens and it is to be read along with Article 16(2) of the Constitution of India and thereby no discrimination on the ground of "sex" can be made.

24. The next issue that arises would be under which provision reservation to female candidates is given. A reference of Article 15(3) of the Constitution is given to save the reservation in favour of the female candidates in public employment. Article 15(3) of the Constitution, at the outset, does not refer to reservation in public employment, rather the words used are "*special provision*" for women. That apart, the question would be that when there is a specific Article under the Constitution to govern public employment, whether it can be ruled by any other constitutional provision in conflict or otherwise. The answer to the aforesaid issue was summarized and given by the Constitution Bench of the Apex Court in the case of **Indra Sawhney**, supra, in paragraph 514, which is quoted hereunder:



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"514. It is necessary to add here a word about reservations for women. Clause (2) of Article 16 bars reservation in services on the ground of sex. Article 15(3) cannot save the situation since all reservations in the services under the State can only be made under Article 16. Further, women come from both backward and forward classes. If reservations are kept for women as a class under Article 16(1), the same inequitous phenomenon will emerge. The women from the advanced classes will secure all the posts, leaving those from the backward classes without any. It will amount to indirectly providing statutory reservations for the advanced classes as such, which is impermissible under any of the provisions of Article 16. However, there is no doubt that women are a vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. Hence reservations for them on that ground would be fully justified, if they are kept in the quota of the respective class, as for other categories of persons, as explained above. If that is done, there is no need to keep a



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special quota for women as such and whatever the percentage-limit on the reservations under Article 16, need not be exceeded.”

[emphasis supplied]

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



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provision in the Constitution to provide reservation. The judgment of the Constitution Bench makes it clear that Article 15(3) of the Constitution would not save the aforesaid. It must be for the obvious reason that when public employment is governed by Article 16 of the Constitution, it cannot be ruled by Article 15 of the Constitution, which is of general application to the field not occupied by other Articles guaranteeing fundamental rights, otherwise there would be conflict between Articles 15 and 16 of the Constitution of India.

26. The aforesaid can be illustrated by referring to Article 16(2) of the Constitution which prohibits discrimination in public employment on the ground of "sex" and in contrast, if we hold that Article 15(3) of the Constitution allows reservation for women and, accordingly, it can be provided in public employment, such an interpretation of Article 15(3) of the Constitution would be nothing but to nullify the main provision of public employment under Article 16(2) of the Constitution prohibiting discrimination on the basis of "sex". The aforesaid issue has not been analyzed in detail, but



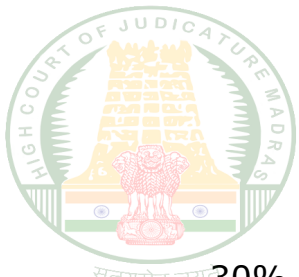
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needs to be analyzed to avoid conflict between two Articles of the Constitution. However, in view of the judgment of the Constitution Bench of the Apex Court in the case of **Indra Sawhney**, supra, it may not be so required, because reservation for women in public employment is not saved by Article 15(3) of the Constitution of India.

27. The finding aforesaid has been recorded only for the purpose of clarity, otherwise it should not be construed to mean nullifying reservation for women, when it is not so challenged in these writ petitions. The issue can be raised and deliberated in an appropriate case.

28. In the background of the discussion made in the preceding paragraphs, the issue that now needs consideration would be that if at all reservation in favour of women candidates is provided, then how it is to be arranged. As per the judgment of the Constitution Bench in the case of **Indra Sawhney**, supra, and paragraph 514 quoted earlier, it can be in respective class and not *en bloc* against



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30% of the posts and, therefore, only it is considered to be horizontal reservation.

29. The issue in regard to horizontal and vertical reservation in public employment was elaborately discussed and clarified by the Apex Court in the case of **Rajesh Kumar Daria**, supra. Paragraphs 7, 9, 10 and 11 of the said judgment are quoted hereunder for ready reference:

"7. A provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta v. State of U.P. [(1995) 5 SCC 173] thus: (SCC p. 185, para 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



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above basis. If the quota fixed for horizontal reservations is already satisfied—in case it is an overall 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 per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)”

...

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are “vertical



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reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 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 number will not be counted against the quota reserved for 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 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. (Vide *Indra Sawhney* [1992 Supp (3) SCC 217], *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**



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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 Caste 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 the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first



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listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.)



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10. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 woman candidates, which was equal to the quota for "general category women". There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven woman candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 and 41 of the selection list) and another eleven (candidates at Sl. Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 and 80 of the selection list) included under reservation quota for "general category women". This is clearly



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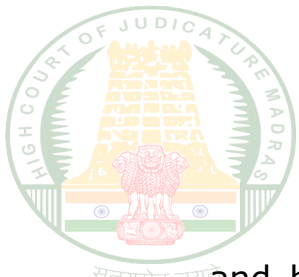
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impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of "OBC women", instead of adding only two which was the shortfall. Thus there were in all 8 women candidates among the 24 OBC candidates found in the selection list. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for women."

[emphasis supplied]

30. The paragraphs quoted above not only make it clear that reservation for women is to be arranged horizontally cutting across the vertical reservation, but even differentiates between the vertical



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and horizontal reservations. The Apex Court has even illustrated about how the Commission should make arrangement for filling up the posts while applying the social and even the special reservation.

31. At this stage, it would be necessary for us to clarify that similar arrangements are made even while making admission to medical courses, apart from other courses and, therefore, judgments of the Apex Court exist regarding application of reservation while giving admissions to medical courses and also appointment in the State service. The clarification aforesaid has been made for the reason that while giving admission to the medical courses under different statutes, the issue of compartmentalizing the reservation has also been discussed by the Apex Court and a reference of it has been given in the recent judgment of the Supreme Court in the case of **Saurav Yadav and others**, supra. In the case of **Saurav Yadav and others**, supra, the Apex Court has referred to the judgments in the case of **Indra Sawhney**, supra, and **Swati Gupta v. State of Uttar Pradesh, (1995) 2 SCC 560**, apart from the judgment in the case of **State**



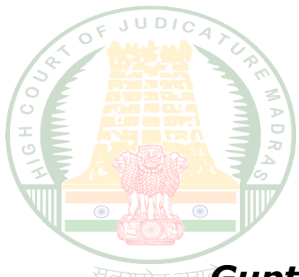
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of **A.P. v. P.B.Vijayakumar, (1995) 4 SCC 520**, which is subsequent to the Constitution Bench judgment of the Apex Court in the case of **Indra Sawhney**, supra.

32. A reference of the judgment in the case of **P.B.Vijayakumar**, supra, has been given, where it was held that special provision for women in public employment is an integral part of Article 15(3) of the Constitution of India and such powers are not whittled down in any way by Article 16 of the Constitution of India. The finding aforesaid may be in conflict with the earlier judgment of the Constitution Bench in the case of **Indra Sawhney**, supra. Paragraph 514 of the said judgment has been quoted specifically for the aforesaid purpose. In any case, even in the case of **Saurav Yadav and others**, supra, the Apex Court has followed the earlier judgments on the issue and held that the reservation in favour of women candidates is to be arranged horizontally, while social reservation would be arranged vertically.

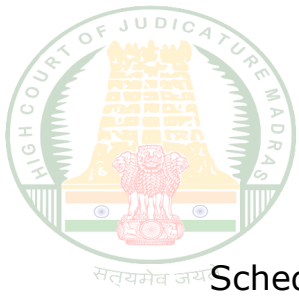
33. A reference of the judgment in the case of **Anil Kumar**



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Gupta v. State of U.P., (1995) 5 SCC 173, has been given in the case of **Rajesh Kumar Daria**, supra, to simplify and illustrate how the reservation is to be arranged. In the State of Tamil Nadu, reservation exists for different categories to the extent of 69% and thereby Open Category addresses 31% posts. As per the judgment of the Apex Court in the case of **Rajesh Kumar Daria**, supra, the Public Service Commission and even the State should have first arranged the list strictly in the order of merit of the open category. The list therein would be strictly in the order of merit, irrespective of the caste, category or whether one is entitled to vertical or horizontal reservation. After arranging the said list in the manner illustrated by the Apex Court in the cases of **Anil Kumar Gupta** and **Rajesh Kumar Daria**, supra, the respondents were then to arrange vertical reservation. While arranging the social reservation vertically, the female candidates falling in the category of Scheduled Castes and Scheduled Tribes, Backward Classes, etc., finding place in the first list of Open Category arranged as per merit would not be counted towards the social reservation. To illustrate the aforesaid, assuming while arranging the first list of Open Category, three



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Scheduled Caste female candidates find place in the said list as per their own merit, then they would not be counted towards the reservation provided for the Scheduled Caste candidates, while arranging the vertical reservation. Therefore, vertical reservation eliminates the counting of the heads finding place in the Open Category (OC) list in the order of merit.

34. The judgment of the Apex Court in the case of **Anil Kumar Gupta**, supra, further refers how the horizontal reservation is to be arranged thereafter. It shows that after arranging the two lists first for the Open Category (General Category list) and thereupon of social reservation vertically, the horizontal reservation would be arranged cutting across the vertical reservation. While arranging the horizontal reservation, the number of candidates entitled to such reservation pursuant to the quota meant for them would be after counting of those candidates finding place in the list of Open Category as well as the social reservation list. If the two lists satisfy the reservation quota of women, then no further reservation would be given to them. It is, however, with a clarity

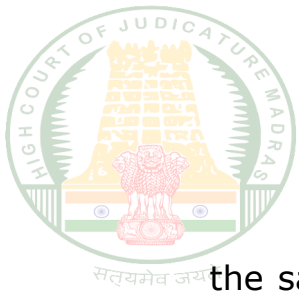


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that if there is shortfall of candidates falling under the special category like women or persons with disability, then the shortfall would be made good while arranging the horizontal reservation in their favour.

35. It is unfortunate that the TNPSC and the State Government have not applied the proposition of law laid down by the Apex Court in all the cases clarifying the vertical and horizontal reservations. It is despite a clear illustration given by the Apex Court for arrangement of the merit list for filling up the posts by applying vertical and horizontal reservations in the case of **Anil Kumar Gupta**, supra. The action of the TNSPC and the State Government to first arrange the list of female candidates to the extent of 30% of the posts in compliance of Section 26 of the Act of 2016 and then to proceed further to arrange social reservation is opposed to the judgments of the Apex Court and even the constitutional framework. If the interpretation of Section 26 of the Act of 2016 is to *en bloc* reserve 30% of posts for the female candidates at the first stance and thereafter to proceed further, then

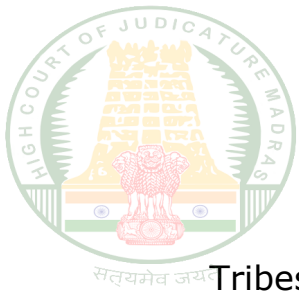


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the said provision is not constitutionally valid and thus needs to be struck down. It can be saved only when it is given interpretation to arrange reservation for women in the manner required and explained by the Apex Court in the judgments referred above and not in the manner interpreted by the respondents.

36. The procedure adopted by the respondents in arranging the reservation for female candidates is even ignoring the illustration given by the Apex Court which requires accounting for the female candidates even who find place in the Open Category to address the list of Open Category. It is, however, with a clarification that if a female candidate of reserved category finds place in the order of merit, while arranging the list of Open Category, it would not be counted towards her reservation for social reservation, but if a female candidate finds place in the list arranged while giving social reservation, then she would be counted towards the reservation meant for the female candidates in her own category of social reservation, as it is now arranged for each category, i.e., Open Category, Scheduled Castes and Scheduled



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Tribes, Backward Class Muslims, Backward Classes, Most Backward Classes, etc.

37. The aforesaid exercise has not been undertaken by the respondents while making appointment to various posts, rather they have virtually arranged reservation for women vertically, which is not permissible under law and has been illustrated by the petitioners showing 120 excess appointments to women candidates. The affidavit given by the respondents also shows that they did not account those number of female candidates who could find place in the list of Open Category, SC, ST, MBC, etc., though as per the judgment of the Apex Court, they should have been taken into account to find out the shortfall of female candidates, if any, to extend the benefit of reservation only to the extent of shortfall.

38. It is informed that appointments to the posts have already been made with the aforesaid arrangement. In view of the above, it would not be appropriate for us to nullify the appointments already made, but, at the same time, it would not be appropriate to



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deny the right of appointment to those who were entitled to such appointment in the order of merit. Therefore, the respondents are directed to re-arrange the entire list as per the illustration given by the Apex Court in the case of **Anil Kumar Gupta**, supra. The illustration given therein is quoted hereunder:

"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 overall 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



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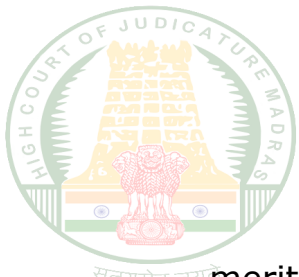


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reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.”

[emphasis supplied]

39. The respondents would first arrange the candidates in the Open Category strictly in the order of merit, which would be 31% of the total vacancies for the selection in question. The list aforesaid would be arranged irrespective of the caste or the category, but going strictly by the merit, i.e., whoever has obtained more marks would find place in the first list. After preparing the first list of Open Category, the respondents would come out with the second list to provide social reservation to the reserved category vertically. While arranging reservation for the socially backward classes, the respondents would not take into account the number of candidates who find place in the first list of open category in order of their own

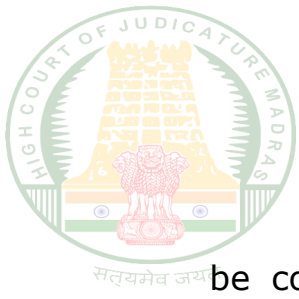


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merit, rather the vertical reservation would be from the candidates next in the queue in the order of merit of their own social reservation category, ignoring those candidates finding place in the first list of Open category. After arranging the second list for giving social reservation, the respondents would then provide horizontal reservation, which may be to female candidates, disabled person, etc. The horizontal reservation would be arranged after counting the women candidates finding place in the vertical list of her own category, for illustration a Scheduled Caste female candidate. For arranging horizontal reservation for Scheduled Caste women, a female candidate finding place in the list of Scheduled Caste would be counted towards their reservation and only in case of shortfall, they would be given benefit of female reservation in the manner illustrated by the Apex Court.

40. To illustrate further, if there are four posts meant for scheduled caste female candidates and while arranging the vertical reservation for Scheduled Caste, two scheduled caste female candidates find place in the said list, then those candidates would



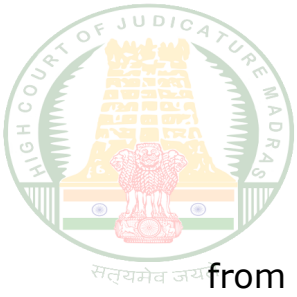
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be counted towards the posts reserved for the Scheduled Caste Women and thereby remaining two vacancies for the Scheduled Caste female candidates would be filled in the order of next candidate in merit from their own category after deleting the last two male candidates from the bottom of the list of Scheduled Caste candidates.

41. The difference between horizontal and vertical reservation is that while arranging horizontal reservation, there would be counting of heads finding place in the list of vertical reservation and even in the list of Open Category, if it pertains to reservation for female open category, while it would be not so for giving vertical reservation.

42. The exercise aforesaid would be undertaken after further taking care of the position that assuming if the scheduled caste category of the candidates arranged in the vertical reservation are all male, then to give reservation to females of that category, the male candidates from the list arranged vertically would be removed

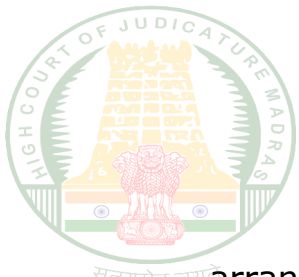


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from the bottom to give place to the female candidate of scheduled caste category to the extent of their reserved post. The same proposition would apply even for the Open Category female candidates. If in the Open Category list, the female candidates of Open Category could not find representation to the extent of their quota of reservation, then the elimination of the appropriate number of male open category candidates would be made to make room for the female candidates of Open Category to make good the shortfall of posts of their reservation. However, if open category female candidates find place appropriate to the extent of reservation meant for them while arranging the Open Category list, then no further reservation would be provided to them.

43. The exercise aforesaid would be undertaken in reference to all the selections under challenge and if any of the petitioners find place in the merit based on the said arrangement, then they would be given appointment in service to the post concerned. However, it is with a clarification that the petitioners would be entitled to the appointment only if they fall in the merit after



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arranging the lists in the manner given above and not otherwise.

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44. In those cases where appointments are yet to be made, the arrangement given by us would be applied and if the respondents find it to be offending Section 26 of the Act of 2016, then the same is declared ultra vires the Constitution, because the Constitution and the judgments of the Apex Court do not provide setting apart of the posts for female candidates to be arranged vertically.

45. The respondents are advised to amend the provisions appropriately so that in future selections there remains no misconception in drawing the lists in the manner postulated by the Apex Court. At this stage, we may further clarify that the judgment of the Apex Court in the case of **Saurav Yadav and others**, supra, is not opposed to the ratio propounded by the Apex Court in the earlier judgments in the cases of **Anil Kumar Gupta**, supra, or **Rajesh Kumar Daria**, supra, and the Constitution Bench judgment in the case of **Indra Sawhney**, supra. Therefore, the respondents



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should not get confused by the said judgment and otherwise we have further clarified that the judgments in the case of **P.B.Vijayakumar** and **Saurav Yadav and others**, supra, referring to Article 15(3) of the Constitution would be read along with the Constitution Bench judgment in the case of **Indra Sawhney**, supra, where it has been held that reservation in favour of female candidates is not saved by Article 15(3) of the Constitution. It may be that the judgment of **Indra Sawhney**, supra, in reference to the relevant paragraph quoted above was not cited before the Apex Court by learned counsel for the respective parties in those cases and in any case what will prevail on this court is the judgment of the Constitution Bench, if there exists conflict between judgments of the Constitution Bench and the subsequent judgments of a Bench of lesser quorum.

46. With the aforesaid direction and clarification, all the writ petitions are disposed of. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.



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(M.N.B., C.J.) (N.M., J.)
07.09.2022

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Index : Yes
sasi

To:

- 1.The Secretary to Government,
Revenue Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
VOC Nagar, Park Town,
Chennai-600 003.



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W.P.No.6201 of 2013 etc.

THE HON'BLE CHIEF JUSTICE
AND
N.MALA, J.

(sasi)

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