

THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH,
AT JABALPUR

(DIVISION BENCH)

WP-22358-2019

Saroj Dehariya Petitioner

Vs.

The State of Madhya Pradesh and others Respondents

Coram :

Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice

Hon'ble Mr. Justice Vijay Kumar Shukla, Judge

Presence :

Mr. Sankalp Kochar, Advocate for the petitioner.

Mr. Ashish Anand Barnard, Deputy Advocate General for the respondents No.1 & 2/State.

Mr. Piyush Dharmadhikar, Advocate for the respondent No.3 & 4/High Court of M.P.

Whether approved for reporting: Yes.

Law Laid Down:

- ➔ The intention behind enacting the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 as well as the Rights of Persons with Disabilities Act, 2016 is to give a succour to those upon whom the destiny has inflicted various kinds of disabilities and to provide them an opportunity to participate in the social milieu like any other able bodied person.
- ➔ Despite progressive steps taken by the Courts and the initiatives taken by the Government, the implementation of the Act of 2016 is far from satisfactory. The disabled are victims of discrimination inspite of the beneficial provisions of the Act. The entire struggle of this class of

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citizens is that they have to fight at two fronts, first is the disablement which the destiny has thrust upon them to override the difficulties in their life and second is the mindset of the society in which they live and their bias that this class would not be able to discharge duties as effectively as the other able bodied persons can do.

- ➔ Vertical reservation can be granted in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes with reference to Article 16(4) of the Constitution of India and the reservation in favour of physically handicapped with reference to Article 16(1) of the Constitution of India shall be considered as horizontal reservation. The reservation provided to the physically handicapped person relatable to Article 16(1) of the Constitution would be, for the purpose of computation of vertical reservation, adjusted/ counted against their respective categories. If, for example, a physically handicapped person selected for appointment happens to belong to Scheduled Caste category, he will be taken to have exhausted one seat of Scheduled Caste category. If however he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. The purpose of this is to ensure that horizontal reservation provided within the vertical reservation may not result in exceeding the percentage of the prescribed quota.
- ➔ The proper and correct course for applying the policy of reservation is to first fill up the Open Competition quota (50%) on the basis of merit and second step would be to fill up each of the social reservation quotas i.e. SC, ST and OBC and then the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis and if that quota is already satisfied, no further question of providing reservation arises. If not so satisfied, the requisite number of special reservation candidates i.e. horizontal reservation shall have to be pushed up and adjusted against their respective social reservation categories by deleting the corresponding number of candidates therefrom.

→ The Court referred:

Justice Sunanda Bhandare Foundation vs. Union of India reported in (2017) 14 SCC 1;

Union of India (UOI) and others vs. National Federation of the Blind and others reported in (2013) 10 SCC 772;

Rajeev Kumar Gupta and others vs. Union of India and others reported in (2016) 13 SCC 153;

Anil Kumar Gupta vs. State of U.P. reported in (1995) 5 SCC 173;

Rajesh Kumar Daria vs. Rajasthan Public Service Commission reported in (2007) 8 SCC 785;

Indian Banks' Association, Bombay and others vs. Devkala Consultancy Service and others reported in (2004) 11 SCC 1;

Indra Sawhney and other vs. Union of India and others reported in 1992 Supp (3) SCC 217;

Introductory, Statement of Objects & Reasons and Preamble of the Act of 1995 as well as the Act of 2016.

Significant paragraphs: 8 to 17.

Heard on : 13.07.2021 (Hearing Convened through Video Conferencing)

ORDER

(Passed on this 23rd day of July, 2021)

Per: Mohammad Rafiq, Chief Justice

This writ petition filed by Saroj Dehariya seeks to challenge the final result of Civil Judge Class-II (Entry Level) Examination, 2018 declared by the Registrar (Exam), High Court of Madhya Pradesh, Jabalpur (respondent No.4) vide notification dated 21.08.2019 (Annexure-P/6) to the extent of

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non-selection and consequential denial of appointment to the petitioner on the post of Civil Judge Class-II (Entry Level) in the Physically Handicapped quota (Scheduled Caste category).

2. The facts of the case, in brief, are that the respondents No.3 & 4 floated advertisement dated 17.12.2018 (Annexure-P/1) notifying total 190 posts for appointment of Civil Judge Class-II (Entry Level). The category-wise break-up of such posts is as follow:

(a)	Un-reserved (UR)	-	95
(b)	Other Backward Classes (OBC)	-	27
(c)	Scheduled Caste (SC)	-	30
(e)	Scheduled Tribe (ST)	-	38
	Total		190

The advertisement stipulated that reservation of 6% shall be given to the Specially Abled candidates as per the provisions of Section 34 of the Rights of Persons with Disabilities Act, 2016 (for short the “Act of 2016”) and selection of that category shall be made on the basis of their *inter-se* merit, however their seats shall be counted against any of the aforementioned quota to which they belonged. According to the petitioner, he secured 224 marks out of total 450 marks. He has submitted his application form for appointment against the vacant post under the Scheduled Caste (Physically Handicapped) Category. The petitioner has placed on record copy of his disability certificate (Annexure-P/4), according to which he has 68% permanent locomotor disablement. It is contended that out of 474 candidates declared successful in the main written examination,

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the petitioner was the only physically handicapped candidate who was called for interview. Four seats were reserved for physically handicapped persons under Un-reserved/Open Category, one seat was reserved for physically handicapped person in Scheduled Caste Category and two seats were reserved for physically handicapped persons in Scheduled Tribe Category. When however the result declared by the respondents No.3 & 4 vide notification dated 21.08.2019 (Annexure-P/6) the petitioner was shocked and surprised to know that he has not been selected despite being the only eligible candidate in his category.

3. Mr. Sankalp Kochar, learned counsel for the petitioner submitted that the respondents No. 3 & 4 in the previous examination for appointment on the post of Civil Judge Class-II (Entry Level) had selected one Chetna Dashora under the Physically Handicapped quota in Open/General Category even though she had secured only 261 marks as against cut off marks of 288 in that category. It is thus clear that she had scored much lesser marks than the last general category candidate, yet she was appointed by extending her the benefit of horizontal reservation. In the preset case, the petitioner acquired 189 out of 400 marks in the main written examination and his final score after interview was 224 marks out of 450 marks, which was more than 45% of total marks, prescribed as the minimum qualifying marks for Scheduled Caste Category as per the advertisement. Learned counsel for the petitioner further contended that the explanation given by the respondents for not applying the same principle to the case of the petitioner is wholly untenable. What the respondents have contended that at the time when

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Chetna Dashora was selected, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short the “Act of 1995”) was in force and therein there was no method of inter-exchange of unfilled seats of one category of physically handicapped candidates with another category and for carrying forward of the unfilled vacancy to the next year. It is argued that such interpretation placed by the respondents on the provisions of the Act of 1995 is not only contrary to the intention of the legislature but is also defeating the very purpose of the Act of 2016, which being a piece of social welfare legislation conferring rights on physically handicapped persons, shall have to be given purposive interpretation and must be implemented in its letter and spirit.

4. Mr. Sankalp Kochar, learned counsel in support of his arguments has placed reliance on judgment of the Supreme Court in the case of *Justice Sunanda Bhandare Foundation vs. Union of India* reported in (2017) 14 SCC 1. Relying on the judgment of this Court in the case of *Rashmi Thakur vs. High Court of Madhya Pradesh and other (WP-19833-2017)* dated 03.05.2018, learned counsel for the petitioner argued that it was held therein that the Act of 2016 has made a departure from the provisions of the Act of 1995, when the reservation for the physically disabled candidates is not dependent on any condition. In fact, this Court held that the reservation can be denied only if any government establishment is exempted from the provisions of the Act by the Chief Commissioner or the State Commissioner. This Court therefore held that in absence of any decision to exempt the High Court from the provisions of the reservation, the High Court was bound to

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reserve post for the visually handicapped candidates. Reliance is also placed on judgment of the Supreme Court in the case of *Union of India (UOI) and others vs. National Federation of the Blind and others* reported in (2013) 10 SCC 772 wherein it was held that non-observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience. Reliance is also placed on judgment of the Supreme Court in *Rajeev Kumar Gupta and others vs. Union of India and others* reported in (2016) 13 SCC 153 wherein it was held that it is disheartening to note that low number of PWD (Persons with Disability), much below 3%, are in government employment long years after the Act of 1995 was in force. Barriers to their entry in government service must therefore be scrutinized by rigorous standards within the legal framework of the Act of 1995. Learned counsel for the petitioner has also relied on judgment of the Supreme Court in the case of *Anil Kumar Gupta vs. State of U.P.* reported in (1995) 5 SCC 173 wherein proper and correct course for applying the policy of reservation has been lucidly explained. Learned counsel for the petitioner in support of his argument also relied on the judgment of Supreme Court in the case of *Rajesh Kumar Daria vs. Rajasthan Public Service Commission* reported in (2007) 8 SCC 785. Last but not the least, Mr. Sankalp Kochar, learned counsel for the petitioner argued that even as per the additional return filed by the respondents themselves, it is self-evident and axiomatic that till this date, 2 posts in physically handicapped (SC) category in regard to selection of the year in question, are still lying vacant and no suitable candidate was found even in the examination held in the subsequent years.

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5. *Per-contra*, Mr. Piyush Dharmadhikar, learned counsel for the High Court of Madhya Pradesh submitted that the petitioner in the present case is only entitled to reservation vis-a-vis Section 34 of the Act of 2016, but he is erroneously seeking to extend the scope of his right by contending that as per Section 34 of the said Act, he is entitled for automatic relaxation at the sacrifice of the rule of merit. Since the petitioner does not fulfill the prescribed criteria as determined by the examining body i.e. having not secured more or equal to cut off marks of Scheduled Caste category i.e., 228 marks, he cannot automatically claim relaxation from the merit of that category. While the cut off marks for Scheduled Caste category was 228 and the petitioner could only secured 224 marks. It is contended that petitioner failed to make a distinction between 'reservation' and 'relaxation' which are two separate benefits and have different legal implications, which cannot be interlinked. Even according to Section 34 of the Act of 2016 there is no provision for fixing a different criteria for physically handicapped category nor is there any prescription to the effect that they are in any manner entitled for relaxation of eligibility criteria as prescribed by the examining body. Mr. Piyush Dharmadhikar, learned counsel argued that relaxation as per law has to be expressly provided and cannot be applied merely by presumption. The only relaxation which has been given in Section 34(3) of the Act of 2016 is regarding age but there is no relaxation qua eligibility criteria prescribed by the examining body. It is further argued that if two candidates are having equal merit/eligibility in the examination then the preference will be given to physically handicapped candidate as per the settled proposition of law. It is trite that horizontal reservation will cut across the vertical reservation and

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for illustration, the facts of the present case can be referred to wherein last three candidates under the Scheduled Caste category have scored 228 marks and if for the sake of assumption, though not admitted, the petitioner would have scored equal marks to those of the last Scheduled Caste candidate, he would have replaced him to claim appointment by virtue of being physically handicapped as he has reservation on twin consideration, namely, vertical as well as horizontal. Since he failed to fulfill the benchmark as prescribed by the examining body, the application of horizontal reservation will not come into play.

6. Mr. Piyush Dharmadhikar, learned counsel for the respondent further argued that horizontal reservation cannot be claimed as a matter of right since it is subject to the overall merit position in the respective category. Even in horizontal reservation, the minimum prescribed standards have to be fulfilled and the merit cannot be given a complete go-bye. He argued that petitioner cannot claim parity with Chetna Dashora because she was granted benefit of horizontal reservation when the old Act of 1995 was in force, which provided reservation to physically handicapped candidate under Section 33 wherein there was no provision to carry forward of seats which could not be filled up from a candidate having different kind of disablement for want of suitable person or any other sufficient reasons, but now the Act of 2016 has provided so in Section 34(2). The examining body therefore rightly considered the matter as there was no provision for carrying forward the quota reserved for physically handicapped candidate under the old Act of 1995 and has selected Chetna Dashora. Such is however not the position in

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the Act of 2016, which in Section 34 (2) clearly prescribes that if suitable person is not available or for any sufficient reason, the vacancy can be carried forward. In the opinion of the leaned counsel for the respondents, non-securing the cut off marks by the petitioner would be construed as sufficient reason for the respondents not to select him for appointment. Learned counsel in support of his arguments relied on the judgment of this Court in *Mayanka Saket vs. State of M.P. and others* reported in **2017 (2) MPLJ 134** and submitted that this Court while dealing with the method of implementation of horizontal reservation/special reservation in the context of reservation for woman candidate categorically held that if vacancies are not available and the quota of Scheduled Caste category candidate in order of merit is full and no further vacancy is left in the said category which could have been filled by applying horizontal reservation for Scheduled Caste woman, no error can be found in the action of the appointing authority by not applying the horizontal reservation. Reliance is also placed on the Division Bench judgment of Delhi High Court in the case of *Manish Sharma vs. Lt. Governor and others* reported in **(2019) SCC Online Delhi 9852**, wherein it was held that there is clear cut distinction between grant of reservation vis-a-vis grant of relaxation since both aspects lie in separate domain. While reservation for physically handicapped candidate is statutorily mandated under the PWD Act, grant of relaxation to such candidate would be for the employer to examine after taking into consideration the nature of duties required to be discharged on the post as also the number of candidates from the said category who may be found eligible. The said judgment was also passed in the context of appointment of

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a judicial officer keeping in view the nature of duties attached to the post and the role expected to be performed by such judicial officer. The Court in that case categorically held in Para-40 that there is no provision for granting relaxation to physically handicapped candidate and a physically handicapped candidate having failed to fulfill the mandatory requirement of securing the qualifying marks, cannot be granted any relaxation.

7. We have given our anxious consideration to the rival submissions made by the parties, studied the cited precedents and perused the material available on record.

8. The object behind enacting the Act of 1995 and thereafter the Act of 2016, would be evident from the introductory part of the Acts as well as from statement of objects and reasons and their preamble. Both the enactments were intended to give a succour to those upon whom the destiny has inflicted various kinds of disabilities and to provide them an opportunity to participate in the social milieu like any other able bodied person. The Act of 1995 was enacted with a view to implementing proclamation on the full participation and equality of the people with disabilities in the Asian and Pacific region, in which India was one of the signatories. This proclamation was adopted by the Economic and Social Commission for Asian and Pacific region in its meeting at Beijing in December, 1992 to launch the Asian and Pacific Decade of Disabled Persons, 1993-2002. Apart from numerous other countries from Asian and Pacific regions, the Republic of India was one of the participants in the said meeting. The successor act of the Act of 1995 is the Act of 2016. This enactment was result of the rectification of the United

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Nations Convention on the Rights of Persons with Disabilities (UNCRPD) by the Republic of India in 2007. The convention laid down certain principles to be followed by the signatory States for empowerment of persons with disabilities, which required the signatory States to make appropriate changes in law as well as in policy to give effect to the principles of the Convention. Consequently, the Ministry of Social Justice and Empowerment constituted an expert committee in 2010, which prepared a draft bill relating to the rights of persons with disabilities, which was introduced in Rajya Sabha in 2014. This bill was referred to the Standing Committee of Social Justice and Empowerment, which submitted its report in 2015. This is how the Act of 2016 replaced the Act of 1995. Preamble of the Act of 2016 shows that this has been enacted “to give effect to the United Nations Convention on the Rights of Persons with Disabilities and for matters connected therewith or incidental thereto”. Referring to the adoption of Convention on the Rights of Persons with Disabilities by the United Nations General Assembly on the 13th day of December, 2006, the preamble enumerates the following principles for empowerment of persons with disabilities:

- “(a) respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;

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- (e) equality and opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;”

9. The Supreme Court in *Justice Sunanda Bhandare Foundation (supra)* while highlighting the intention of the Parliament in drafting the new and more elaborated provision for advancing the policy of reservation in favour of disabled person in Para-24 of the report held thus:

“24. We have referred to certain provisions only to highlight that the 2016 Act has been enacted and it has many salient features. As we find, more rights have been conferred on the disabled persons and more categories have been added. That apart, access to justice, free education, role of local authorities, National fund and the State fund for persons with disabilities have been created. The 2016 Act is noticeably a sea change in the perception and requires a march forward look with regard to the persons with disabilities and the role of the States, local authorities, educational institutions and the companies. The statute operates in a broad spectrum and the stress is laid to protect the rights and provide punishment for their violation.”

10. The Supreme Court in *National Federation of the Blind (supra)* taking very serious view of non-implementation of the provisions of the reservation policy of the state manifest in the Act of 1995, lamented those responsible for these in Para-53(3) of the report in the following words:-

“53.3 The appellant herein shall issue instructions to all the departments/public sector undertakings/Government

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companies declaring that the non observance of the scheme of reservation for persons with disabilities should be considered as an act of non-obedience and Nodal Officer in department/public sector undertakings/Government companies, responsible for the proper strict implementation of reservation for person with disabilities, be departmentally proceeded against for the default.”

11. In *Rajeev Kumar Gupta (supra)* the Supreme Court categorically held that it was disheartening to note that even after number of years have passed since the enactment of PWD Act of 1995, much low number of employees than the prescribed 3% of the reservation for this category are there in the services. His Lordship observed that the barriers to their entry must be scrutinized by standards within the legal framework of the Act of 1995. The relevant observations made by His Lordship in Para-21 to 25 of the report are reproduced hereunder:

“**21.** The principle laid down in *Indra Sawhney Vs. Union of India*, 1992 Supp.(3) SCC 2017 is applicable only when the State seeks to give preferential treatment in the matter of employment under State to certain classes of citizens identified to be a backward class. Article 16(4) does not disable the State from providing differential treatment (reservations) to other classes of citizens under Article 16(1) if they otherwise deserve such treatment. However, for creating such preferential treatment under law, consistent with the mandate of Article 16(1), the State cannot choose any one of the factors such as caste, religion etc. mentioned in Article 16(1) as the basis. The basis for providing reservation for PWD is physical disability and not any of the criteria forbidden under Article 16(1). Therefore, the rule of no reservation in promotions as laid down in *Indra*

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Sawhney (supra) has clearly and normatively no application to the PWD.

22. The 1995 Act was enacted to fulfill India's obligations under the 'Proclamation on the Full Participation and Equality of the People with Disabilities in the Asia and Pacific Region'. The objective behind the 1995 Act is to integrate PWD into the society and to ensure their economic progress. The intent is to turn PWD into 'agents of their own destiny'. PWD are not and cannot be equated with backward classes contemplated under Article 16(4). May be, certain factors are common to both backward classes and PWD such as social attitudes and historical neglect etc.

23. It is disheartening to note that (admittedly) low numbers of PWD (much below three per cent) are in government employment long years after the 1995 Act. Barriers to their entry must, therefore, be scrutinized by rigorous standards within the legal framework of the 1995 Act.

24. A combined reading of Sections 32 and 33 of the 1995 Act explicates a fine and designed balance between requirements of administration and the imperative to provide greater opportunities to PWD. Therefore, as detailed in the first part of our analysis, the identification exercise under Section 32 is crucial. Once a post is identified, it means that a PWD is fully capable of discharging the functions associated with the identified post. Once found to be so capable, reservation under Section 33 to an extent of not less than three per cent must follow. Once the post is identified, it must be reserved for PWD irrespective of the mode of recruitment adopted by the State for filling up of the said post.

25. In light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the

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1995 Act. We further direct the Government to extend three percent reservation to PWD in all identified posts in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed.”

12. The Supreme Court in *Indian Banks' Association, Bombay and others vs. Devkala Consultancy Service and others* reported in (2004) 11 SCC 1 observed that despite progressive steps taken by the Courts and the initiatives taken by the Government, the implementation of the Act of 1995 is far from satisfactory. The disabled are victims of discrimination inspite of the beneficial provisions of the Act. The entire struggle of this class of citizens is that they have to fight at two fronts, first is the disablement which the destiny has thrust upon them to override the difficulties in their life and second is the mindset of the society in which they live and their bias that this class would not be able to discharge duties as effectively as the other able bodied persons can do.

13. Adverting now merits of the case, let us now first examine the ratio of the Constitution Bench judgment of the Supreme Court in *Indra Sawhney and other vs. Union of India and others* reported in 1992 Supp (3) SCC 217, which is till now the last word with regard to manner of providing reservation, while dealing with this aspect of the matter, in Para-812 of the report held as under:

“812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake

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of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

What the Supreme Court in the above quoted observations held was that while the vertical reservation can be granted in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes with reference to Article 16(4) of the Constitution of India, the reservation in favour of physically handicapped with reference to Article 16(1) of the Constitution of India shall be considered as horizontal reservation. The reservation provided to the physically handicapped person relatable to Article 16(1) of the Constitution would be, for the purpose of computation of vertical

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reservation, adjusted/counted against their respective categories. If, for example, a physically handicapped person selected for appointment happens to belong to Schedule Caste category, he will be taken to have exhausted one seat of Scheduled Caste category. If however he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. The purpose of this is to ensure that horizontal reservation provided within the vertical reservation may not result in exceeding the percentage of the prescribed quota. The manner in which reservation, both vertical as well as horizontal, should be applied has been lucidly explained by the Supreme Court in later judgment in **Anil Kumar Gupta (supra)**, wherein in Para-18 of the report it has been held as under:

“18.The proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit: then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an over-all horizontal reservation - no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.).....”

14. This very principle of applying rule of reservation was elaborately deliberated upon by the Supreme Court in *Rajesh Kumar Dharia (supra)* in the context of horizontal reservation given to woman. The supreme court in that case held that where special reservation is provided to woman within social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. The relevant discussion made by the Supreme Court in Para-9 of the report is reproduced hereunder:

“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 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

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exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. 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 listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only

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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 women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]”

15. What the respondents therefore in the present case were required to do while applying the rule of reservation as per the method indicated above is that they should have first applied the vertical reservation. Like in this case, they should have as the first step, arranged 50% candidates in open/general category on merit and thereafter should have proceeded to prepare merit of social reservation quota i.e., SC/ST/OBC. Here in the present case, we are concerned with Scheduled Caste category. According to the *dicta* of Supreme Court in the aforementioned case, the respondents were obliged to, as second step, prepare a merit of 30 candidates of Scheduled Caste category available after preparation of merit of open category candidates. The third step for the respondents would be to then find out as to how many candidates belonging to physically handicapped category were already selected within the list of 30 candidates of Scheduled Caste. If it was found, like in this case, that there was no candidate belonging to physically handicapped category, the respondents were then obliged in law to delete the last candidate in the merit of Scheduled Caste category to accommodate the petitioner regardless of his merit, subject of course to minimum benchmark

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prescribed. For the purpose of applying and giving horizontal reservation to the physically handicapped person, cut off marks of the category to which they otherwise belong, would hardly be material. Conversely, however it is also true that if sufficient number of physically handicapped persons were already selected in the list of 30 candidates prepared by the examining body, there was no need for them to further go downwards and find out more candidates to push them up for the purpose of selection. However, if no physically handicapped candidate is selected within the merit/cut off marks fixed by the examining body, they shall have to go downwards to find out physically handicapped candidates and push them up for appointment subject to the rider that no such candidate can claim appointment on the mere basis of his being disabled candidate if he has otherwise failed to secure the minimum pass marks fixed for the purpose by the examining body.

16. The Division Bench judgment of Delhi High, in the case of *Manish Sharma (supra)*, which the learned counsel for the respondents has heavily relied is precisely on this point. The Delhi High Court in the advertisement dated 23.12.2015 had reserved one vacancy for physically handicapped persons. In that selection, there was no relaxation provided for physically handicapped candidate. Every candidate, whether or not he was physically handicapped, had to necessarily secured 50% pass mark. Even though the respondent No.3 in that case, who was physically handicapped candidate, failed to secure minimum 50% qualifying marks in the written examination for being called for interview, yet he was called for interview by granting

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relaxation. In those facts, the High Court in Para-39 of the report held as under:

“39. In the light of the aforesaid authoritative judicial pronouncements, we have no hesitation in accepting the submission made by Mr.Chadha, Senior Advocate appearing for the petitioner that in the present case, relaxation in the minimum qualifying marks for the written examination was granted to the respondent no.3 without any application of mind and without the respondent no.2 conducting any deliberations prior to the issuance of the advertisement. Therefore, there was no occasion for the respondent no.2 to extend relaxation to physically handicapped candidates belonging to the General category, that too when the scope of the unamended Rule 22, did not encompass physically handicapped candidates under reserved category.”

It is however another matter that the Delhi High Court in the aforesaid judgment finally saved the appointment of respondent No.3, who was physically handicapped candidate, by diverting unfilled vacancy of Scheduled Tribe belonging to previous years. Therefore, the ratio of aforesaid judgment cannot be applied to the facts of the present case because as per the rules applicable for selection in the present case, a candidate belonging to Scheduled Caste category was required to secured 45% of total marks. The petitioner secured total 189 marks out of 400 marks which is more the benchmark prescribed by the examining body (i.e. 45%), making him entitled to be called for interview. Moreover, in the final score after interview, the petitioner has acquired 224 marks out of 450 marks, which means that he has secured 35 marks out of 50 in the interview. Obviously,

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the petitioner has been the victim of wrong application of law of reservation and should have been immediately selected for appointment.

17. In view of above the discussions, the present writ petition deserves to succeed and is allowed. Action of the respondents in not selecting the petitioner for appointment on the post of Civil Judge Class-II (Entry Level) is declared illegal. The impugned notification dated 21.08.2019 (Annexure-P/6) issued by the Registrar (Exam), High Court of Madhya Pradesh, Jabalpur (respondent No.4), declaring result of the said examination, to the extent of non-selection of the present petitioner, is set aside. The respondents are directed to consider the case of the petitioner for appointment on the post of Civil Judge Class-II (Entry Level) in accordance with law. The petitioner will be entitled to only notional benefits for the intervening period, with however bottom seniority in his batch, but shall not be entitled to any actual benefit. Compliance of this order shall be made by the respondents within a period of two months from the date copy of this order is produced before them.

18. The writ petition is accordingly **allowed**, with no order as to cost.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE