

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7781 OF 2021
(Arising out of SLP (Civil) No.7811 of 2020)**

SADHANA SINGH DANGI & OTHERS **Appellants**

VERSUS

PINKI ASATI & OTHERS **Respondents**

WITH

**CIVIL APPEAL NO.7782 OF 2021
(Arising out of SLP(C) No.1111/2021)**

STATE OF MADHYA PRADESH **Appellant**

VERSUS

PRANJALI KEKRE & ANOTHER **Respondents**

WITH

**CIVIL APPEAL NO.7783 OF 2021
(Arising out of SLP(C) No.1283/2021)**

STATE OF MADHYA PRADESH **Appellant**

VERSUS

NEHA SAMDARIYA & ANOTHER **Respondents**

WITH

**CIVIL APPEAL NO.7784 OF 2021
(Arising out of SLP(C) No.1288/2021)**

STATE OF MADHYA PRADESH **Appellant**

VERSUS

PRABHA GHURE & ANOTHER **Respondents**

WITH

**CIVIL APPEAL NO.7785 OF 2021
(Arising out of SLP(C) No.15350/2020)**

STATE OF MADHYA PRADESH **Appellant**

VERSUS

RITU DUBEY & ANOTHER **Respondents**

WITH
CIVIL APPEAL NO.7786 OF 2021
 (Arising out of SLP(C) No.15686/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

PRAMILA & OTHERS Respondents

WITH
CIVIL APPEAL NO.7787 OF 2021
 (Arising out of SLP(C) No.15051/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

PRANEETA BHATELE & OTHERS Respondents

WITH
CIVIL APPEAL NO.7788 OF 2021
 (Arising out of SLP(C) No.14577/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

SONU PANDEY & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7789 OF 2021
 (Arising out of SLP(C) No.14891/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

DEEPA SHRIVASTAVA & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7790 OF 2021
 (Arising out of SLP(C) No.216/2021)

STATE OF MADHYA PRADESH Appellant

VERSUS

KAJAL SAXENA & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7791 OF 2021
 (Arising out of SLP(C) No.15034/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

KUSUMLATA RAJAK & OTHERS Respondents

WITH
CIVIL APPEAL NO.7792 OF 2021
 (Arising out of SLP(C) No.540/2021)

STATE OF MADHYA PRADESH Appellant

VERSUS

ARCHANA NAMDEO & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7793 OF 2021
 (Arising out of SLP(C) No.1118/2021)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

NEELOFFER KHAN & OTHERS Respondents

WITH
CIVIL APPEAL NO.7794 OF 2021
 (Arising out of SLP(C) No.14232/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

DEEPTI GUPTA & OTHERS Respondents

WITH
CIVIL APPEAL NO.7795 OF 2021
 (Arising out of SLP(C) No.15342/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

ANU THAKUR & OTHERS Respondents

WITH
CIVIL APPEAL NO.7796 OF 2021
 (Arising out of SLP(C) No.14993/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

RASHMI SHARMA & OTHERS Respondents

WITH
CIVIL APPEAL NO.7797 OF 2021
 (Arising out of SLP(C) No.14962/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

SAPNA DEVI & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7798 OF 2021
 (Arising out of SLP(C) No.15097/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

FAIZA QURESHI & ANOTHER Respondents

WITH
CIVIL APPEAL NOS.7799-7800 OF 2021
 (Arising out of SLP (C) Nos.20931-20932 of 2021
 arising out of Diary No.17593/2020)

AJAY KUMAR SAVITA & OTHERS ETC. Appellants

VERSUS

STATE OF MADHYA PRADESH & OTHERS ETC. Respondents

WITH
CIVIL APPEAL NO.7801 OF 2021
 (Arising out of SLP(C) No.12839/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

SHANTI SHARMA & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7802 OF 2021
 (Arising out of SLP(C) No.11244/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

TANU SHREE & OTHERS Respondents

WITH
CIVIL APPEAL NO.7803 OF 2021
 (Arising out of SLP(C) No.15567/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

JYOTI CHOUBEY & OTHERS Respondents

WITH
CIVIL APPEAL NO.7804 OF 2021
 (Arising out of SLP (C) No.20933 of 2021
 arising out of Diary No.25050/2020)

DEEPTI LILHARE Appellant

VERSUS

STATE OF MADHYA PRADESH & OTHERS Respondents

WITH
CIVIL APPEAL NO.7805 OF 2021
 (Arising out of SLP(C) No.14720/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

GARIMA SINGH BAGHEL & OTHERS Respondents

WITH
CIVIL APPEAL NO.7806 OF 2021
 (Arising out of SLP(C) No.16024/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

PRACHI TIWARI & OTHERS Respondents

WITH
CIVIL APPEAL NO.7807 OF 2021
 (Arising out of SLP(C) No.1275/2021)

STATE OF MADHYA PRADESH Appellant

VERSUS

AMRITA DWIVEDI & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7808 OF 2021
 (Arising out of SLP(C) No.212/2021)

STATE OF MADHYA PRADESH Appellant

VERSUS

SANDHYA MISHRA (TIWARI) & OTHERS Respondents

WITH
CIVIL APPEAL NO.7809 OF 2021
 (Arising out of SLP(C) No.15329/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

PRIYANKA DWIVEDI & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7810 OF 2021
 (Arising out of SLP(C) No.1273/2021)

STATE OF MADHYA PRADESH Appellant

VERSUS

ANUPAMA AGNIHOTRI & OTHERS Respondents

WITH
CIVIL APPEAL NO.7811 OF 2021
 (Arising out of SLP (C) No.20934 of 2021
 arising out of Diary No.15003/2020)

MEENA RATHORE Appellant

VERSUS

STATE OF MADHYA PRADESH & OTHERS Respondents

WITH

CIVIL APPEAL NOS.7812-7813 OF 2021
(Arising out of SLP(C) Nos.9701-9702/2020)

MADHYA PRADESH PUBLIC SERVICE COMMISSION Appellant

VERSUS

PINKI ASATI & OTHERS Respondents

WITH

CIVIL APPEAL NO. 7814 OF 2021
(Arising out of SLP(C) No.8771/2020)

KUSUMLATA RAJAK Appellant

VERSUS

STATE OF MADHYA PRADESH & OTHERS Respondents

WITH

CIVIL APPEAL NO.7815 OF 2021
(Arising out of SLP(C) No.8762/2020)

ANJNA BHATEWARA Appellant

VERSUS

STATE OF MADHYA PRADESH & OTHERS Respondents

WITH

CIVIL APPEAL NO.7816 OF 2021
(Arising out of SLP(C) No.8243/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

ANJU SHUKLA & OTHERS Respondents

WITH

CIVIL APPEAL NO.7817 OF 2021
(Arising out of SLP(C) No.15868/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

LAXMI TIWARI & ANOTHER Respondents

WITH
CIVIL APPEAL NO.7818 OF 2021
 (Arising out of SLP(C) No.13602/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

ARTI UPADHYAY & OTHERS Respondents

WITH
CIVIL APPEAL NO.7819 OF 2021
 (Arising out of SLP(C) No.16065/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

JYOTI GAJBHIYE & OTHERS Respondents

WITH
CIVIL APPEAL NO.7820 OF 2021
 (Arising out of SLP(C) No.550/2021)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

RAKHI DWIVEDI & OTHERS Respondents

WITH
CIVIL APPEAL NO.7821 OF 2021
 (Arising out of SLP(C) No.14567/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

ANJANA BHATEWARA & OTHERS Respondent

WITH
CIVIL APPEAL NO.7822 OF 2021
 (Arising out of SLP(C) No.14819/2020)

STATE OF MADHYA PRADESH Appellant

VERSUS

ALAKNANDA TRIPATHI & OTHERS Respondents

WITH
CIVIL APPEAL NO.7823 OF 2021
 (Arising out of SLP(C) No.15872/2020)

STATE OF MADHYA PRADESH

Appellant

VERSUS

BHAVANA SINGH BHADORIYA & ANOTHER

Respondents

WITH
CIVIL APPEAL NO.7824 OF 2021
 (Arising out of SLP(C) No.14874/2020)

STATE OF MADHYA PRADESH & ANOTHER

Appellants

VERSUS

FARHAT KHAN & OTHERS

Respondents

WITH
CIVIL APPEAL NO.7825 OF 2021
 (Arising out of SLP(C) No.14237/2020)

STATE OF MADHYA PRADESH & ANOTHER

Appellants

VERSUS

LALIMA VIJAYVARGIA & OTHERS

Respondents

WITH
CIVIL APPEAL NO.7826 OF 2021
 (Arising out of SLP(C) No.14711/2020)

STATE OF MADHYA PRADESH

Appellant

VERSUS

PRAGYA DUBEY & ANOTHER

Respondents

WITH
CIVIL APPEAL NO.7827 OF 2021
 (Arising out of SLP(C) No.210/2021)

STATE OF MADHYA PRADESH

Appellant

VERSUS

DR. EKTA JAIN & ANOTHER

Respondents

WITH
CIVIL APPEAL NO.7828 OF 2021
 (Arising out of SLP(C) No.546/2021)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

RASHMI JHA & OTHERS Respondents

WITH
CIVIL APPEAL NO.7829 OF 2021
 (Arising out of SLP(C) No.13926/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

SHALINI SHUKLA & OTHERS Respondents

WITH
CIVIL APPEAL NO.7830 OF 2021
 (Arising out of SLP(C) No.15430/2020)

STATE OF MADHYA PRADESH & ANOTHER Appellants

VERSUS

GURJEET KAUR CHAWLA & OTHERS Respondents

AND

CIVIL APPEAL NO.7831 OF 2021
 (Arising out of SLP (Civil) No.20936 of 2021
 arising out of Diary No.21542/2021)

KAMLESH KUMAR Appellant

VERSUS

STATE OF MADHYA PRADESH & OTHERS Respondents

O R D E R

1. Leave granted.
2. These appeals challenge the final judgment and order dated 29.04.2020 passed by the High Court¹ in Writ Petition No.19126 of 2019 and in other connected matters.

¹ The High Court of Madhya Pradesh, Principal Seat at Jabalpur

3. The present controversy arises out of the process of selection undertaken pursuant to Advertisement dated 12.12.2017 issued by the Madhya Pradesh Public Service Commission ("MPPSC" for short) inviting applications for the posts of Assistant Professors in various disciplines.

4. After the process of selection was over, the Select List was published by the MPPSC which gave rise to challenge by way of Writ Petition No.21091 of 2018 before the High Court. The challenge, however, stood disposed of on a statement made by the learned Advocate General for the State that a revised list would be published after considering all the issues and various objections raised by the concerned parties. Later, revised Select List for various disciplines were published on different dates during the period 20.08.2019 to 03.10.2019.

5. This led to the fresh challenges in the form of Writ Petition No.19126 of 2019 and other connected matters. The questions that arose for consideration, were set out by the High Court in the judgment under appeal as under:-

"25. In view of the aforesaid submissions, the issue which has crystallized for consideration is that - "Whether the OBC (Female) who scored more marks than the General Category woman candidates would secure a seat/post in un-reserved female category; and whether in a case of horizontal reservation, reserved-category candidates scoring higher marks than General Category candidates would be entitled to get a seat/post of un-reserved categories?"

5.1 The challenge so raised was accepted by the High Court in its judgment under appeal and it was observed that the revised Select List did not represent the correct position in law and was required to be modified. The High Court considered the matter from the standpoint of facts which were stated as under:

"39. Now we proceed to examine the facts of the present case on the anvil of the aforesaid enunciation of law. In the selection process of Assistant Professors of the year 2017, it emerges from the facts that not only in the subject of Geography, but in all subjects the merit of OBC (female) category was overflowing. As per the revised select list, a candidate who is at serial number 1 of the select list, is a candidate of the OBC(F) category and she has been allotted a UNRF seat. Like-wise, out of 12 unreserved female seats (UNRF) 10 seats have been allotted to OBC (female) on the basis of merit alone, and due to fallout, 2 seats have been allotted to unreserved female of General Category woman. Respondents have allotted 10 UNRF seats/posts to OBC (female) and then 6 seats earmarked for OBC (female) which have been further allotted to the OBC (female) candidates thereby completely destroying the allocation of seats in horizontal reservation. The distribution of 33% women reservation horizontal was 12 UNRF; 4-SC(F); 6-ST(F); and 6 - OBC (F). To elaborate, the same is reproduced in the form of chart :

"Subject : Geography

Total Seats - 36 UNR + 13 SC + 18 ST + 17 OBC =84

Unreserved UNR (36)		Scheduled Caste SC (13)		<u>Scheduled Tribe</u> ST (18)		Other Backward Class OBC (17)	
Unreserved or Open Seats	33% Women reservation as per rules of 1997	Reserved as per Act of 1994	33% women reservation as per Rules of 1997	Reserved as per Act of 1994	33% women reservation as per Rules of 1997	Reserved as per Act of 1994	33% women reservation as per Rules of 1997
Category UNR	Category UNR (F)	Category SC	Category SC(F)	Category ST	Category ST(F)	Category OBC	Category OBC(F)
24	12	9	4	12	6	11	6

Total Seats -84

Selected -83

1 post of UNR carry forwarded for PH

Total Seats -84								
Unreserved -36		SC-13			ST-18		OBC (17)	
	UNR	UNR (F)	SC	SC(F)	ST	ST(F)	OBC	OBC(F)
Seats	24	12	9	4	16	6	11	6
Selected	23	2	9	4	12	6	11	16
Short Fall	1 seat carry forwarded	10	0	0	0	0	0	Excess selection of 10 candidates
	17 UNR 2 SC 1OBC 3PH 1 Post kept vacant							6 Under OBC (F) (46, 47, 48, 52, 53, 59, 10 under UNR (F) (1, 19, 27, 30, 31, 36, 37, 38, 39, 43)

40. In the result, we cannot appreciate the procedure adopted by the respondent - MPPSC while drawing the list in respect of woman category in all subjects. As discussed hereinabove, the law relating to vertical and horizontal reservations is clear that the migration of reserved category candidate on the basis of merit for allotment of seat of General category is applicable to vertical reservation, in view of the proviso engrafted in sub-section (4) of Section 4 of the Act 1994. But, in view of the specific provisions of Rule 3 of the 1997 Rules and the law laid down by the Apex Court, the horizontal reservation is compartmentalised and watertight and there cannot be any migration on the basis of merit. At this juncture, it is also condign to appreciate another submission advanced in this regard by the learned counsel for the respondents, that the candidate who has obtained higher marks than a General category candidate, cannot be made to suffer to lose his merit position and seniority. If a candidate who is an OBC (female) and has competed against a reserved category, cannot be placed in the merit list lower than the General Category candidate, because of being a candidate of reserved category - OBC(female). We do not perceive any merit in the aforesaid submission. Placement in the merit list is one thing and the allotment of the earmarked seat/post is distinct process from placement in the merit list. A candidate who has secured higher marks, certainly gets a place in the merit list

above than the candidates having obtained less marks, but the allotment of earmarked seats would be made in stricto sensu, in a case of horizontal reservation, category-wise. For example in the present case, one of the interveners, a candidate who has scored highest marks in the subject of Geography, shall remain at serial number 1 in the overall merit list, but she will be allotted a seat against an OBC (female), being a candidate of reserved category - OBC (female) and not a seat earmarked for General/Unreserved Female (UNRF).

41. The seniority is governed by the Rules, namely, M.P. Civil Services (General Conditions of Services) Rules, 1961 and the seniority of a selected candidate shall be fixed in order of merit and in the select list and, therefore, when the seniority of Assistant Professor in the subject of Geography shall be drawn, and the same will be considered above all other candidates lower in merit and there will be no loss to his/her seniority. However, such candidate shall be allotted a seat of OBC(F) only to maintain 33% reservation to female candidates of SC/ST/OBC/General Category, being horizontal and compartment-wise under Rule 3 of the 1997 Rules. It is interlocking and watertight reservation as held by the Apex Court in the judgements discussed hereinabove. Thus, a distinction has to be made between the placement in the merit list/select list and the allotment of seats. A woman candidate of OBC category if scores higher marks than a candidate of General category, she has to be allotted a seat against an OBC (female) in her own category and not a seat against the unreserved female. The same procedure has to be adopted for drawing a merit list and allotment of earmarked seats in a case of horizontal reservation as per the judgment in the case of Rajesh Kumar Daria (supra). However, it is made clear that this procedure is applied only in the case of special reservation in favour of physically handicapped, woman etc., which are horizontal reservation. Thus, it is held that a candidate not falling in the merit list of unreserved category - UNRF cannot be brought from any other candidates belonging to OBC(F), SC(F) and ST(F) in order to accommodate against the horizontal quota of UNRF. The interveners who are OBC (F) candidates and have secured place in the merit list and have been allotted UNRF seats because of merit, will occupy a place in overall merit list, but they will be allotted seats of OBC(F) in their OBC category; and a candidate having merit lower than these interveners has to give way/passage to these interveners so that they do not suffer."

6. In sum and substance, according to the High Court:

- (a) Going by the settled principles of law, migration of reserved category candidate on the basis of merit for allotment of a seat in General Category would certainly be applicable to vertical reservation.
- (b) However, the same principle would not get attracted in case of horizontal compartmentalised reservation.
- (c) By virtue of Rule 3 of the 1997 Rules, the same principle as applicable to vertical reservations would not be applicable to horizontal reservations.
- (d) If an OBC (Female) had competed against a reserved category, she would not be eligible to be placed in the merit list for Unreserved Category at the stage of application of horizontal reservation.
- (e) Even if an OBC (Female) had secured first rank in the overall merit list, being a candidate of reserved category, that is to say OBC (Female), she would not be allocated or earmarked a seat as General Unreserved Female (UNRF).

Finally, the High Court held that a candidate not falling in Unreserved Category (UNRF) could not be brought from any of the lists of OBC (Female), SC (Female), ST (Female) in order to accommodate the horizontal quota meant for UNRF.

7. The statutes referred to in the aforesaid paragraph 40, namely, Section 4(4) of the 1994 Act and Rule 3 of the 1997 Rules, for facility are extracted hereinbelow:

Section 4(4) of the 1994 Act

"4(4) - If a person belonging to any of the categories mentioned in sub-section (2) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (2)."

Rule 3 of the 1997 (as amended in the years 2000 and 2015)

"3. Reservation of posts for women.- (1) Notwithstanding anything contained in any Service rules, there shall be reserved thirty three percent of all posts in the service under the State (except Forest Department) in favour of women at the stage of direct recruitment and the said reservation shall be horizontal and compartment-wise."

Explanation. - For the purposes of this rule "horizontal and compartmentwise reservation" means reservation in each category, namely, Scheduled Castes, Scheduled Tribes, Other Backward Classes and General.

(2) Subject to the provisions of sub-rule (1) in the said appointments preference shall be given to the widow or divorced women."

8. For arriving at the aforesaid conclusions, the High Court considered the decisions of this Court in *Indra Sawhney v. Union of India*, 1992 Suppl. (3) SCC 217; *Anil Kumar Gupta v. State of U.P.*, (1995) 5 SCC 173; *Rajesh Kumar Daria v. Rajasthan Public Service Commission & Others*, (2007) 8 SCC 785; and, *Public Service Commission, Uttaranchal v. Mamta Bisht & Others*, (2010) 12 SCC 204.

9. In conclusion, the High Court found the revised Select List to be vulnerable and, therefore, quashed the same and directed the concerned authorities to prepare a fresh list keeping in view the provisions of Rule 3 of 1997 Rules and in accordance with the principles laid down by the High Court.

10. The candidates who had secured positions in the revised Select

List being aggrieved, have preferred these appeals. The State of Madhya Pradesh being aggrieved has also preferred challenge against the very same judgment. After issuance of notice in the matters, it was observed that very same questions had arisen for consideration of this Court in the matters arising from the decision of the High Court of Judicature at Allahabad. At the initial stage, this batch of matters was, therefore, tagged with the matters coming from Allahabad. However, since service upon some of the respondents in the present matters was not complete, this batch was segregated and the matters arising from the decision of the High Court of Allahabad were heard separately.

11. It must be noted that the matters from the decision of the High Court of Judicature at Allahabad have since then been disposed of by this Court by its judgment and order dated 18.12.2020 in *Saurav Yadav & Others v. State of Uttar Pradesh & Others*, (2021) 4 SCC 542.

11.1 Some of the relevant paragraphs from the leading judgment in *Saurav Yadav & Others (supra)* are as under:

"26. The principle that candidates belonging to any of the vertical reservation categories are entitled to be selected in "Open or General Category" is well settled. It is also well accepted that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories for vertical reservation that they belong. Apart from the extracts from the decisions of this Court in *Indra Sawhney*² and *R.K. Sabharwal*³ the observations by the Constitution Bench of this Court in *V.V. Giri v. D. Susi*

² *Indra Sawhney vs. Union of India*, 1992 Supp (3) SCC 217

³ *R.K. Sabharwal vs. State of Punjab*, (1995) 2SCC 745

*Dora*⁴, though in the context of election law, are quite noteworthy: (AIR pp. 1326-27, paras 21-22)

"21. ... In our opinion, the true position is that a member of a Scheduled Caste or Tribe does not forego his right to seek election to the general seat merely because he avails himself of the additional concession of the reserved seat by making the prescribed declaration for that purpose. The claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim; and both the claims have to be decided on the basis that there is one election from the double-Member constituency.

22. In this connection we may refer by way of analogy to the provisions made in some educational institutions and universities whereby in addition to the prizes and scholarships awarded on general competition amongst all the candidates, some prizes and scholarships are reserved for candidates belonging to backward communities. In such cases, though the backward candidates may try for the reserved prizes and scholarships, they are not precluded from claiming the general prizes and scholarships by competition with the rest of the candidates."

27. The High Courts of Rajasthan, Bombay, Uttarakhand, and Gujarat have adopted the same principle while dealing with horizontal reservation whereas the High Court of Allahabad and Madhya Pradesh have taken a contrary view. These two views, for facility, are referred to as the "first view" and the "second view" respectively. The second view that weighed with the High Courts of Allahabad and Madhya Pradesh is essentially based on the premise that after the first two steps as detailed in para 18 of the decision in *Anil Kumar Gupta*⁵ and after vertical reservations are provided for, at the stage of accommodating candidates for effecting horizontal reservation, the candidates from reserved categories can be adjusted only against their own categories under the vertical reservation concerned and not against the "Open or General Category".

28. Thus, according to the second view, different principles must be adopted at two stages; in that:

4 (1960)1 SCR 426: AIR 1959 SC 1318

5 *Anil Kumar Gupta vs. State of U.P.* (1995) 5 SCC 173

(I) At the initial stage when the "Open or General Category" seats are to be filled, the claim of all reserved category candidates based on merit must be considered and if any candidates from such reserved categories, on their own merit, are entitled to be selected against Open or General Category seats, such placement of the reserved category candidate is not to affect in any manner the quota reserved for such categories in vertical reservation.

(II) However, when it comes to adjustment at the stage of horizontal reservation, even if, such reserved category candidates are entitled, on merit, to be considered and accommodated against Open or General seats, at that stage the candidates from any reserved category can be adjusted only and only if there is scope for their adjustment in their own vertical column of reservation.

Such exercise would be premised on following postulates:

(A) After the initial allocation of Open General Category seats is completed, the claim or right of reserved category candidates to be admitted in Open General Category seats on the basis of their own merit stands exhausted and they can only be considered against their respective column of vertical reservation.

(B) If there be any resultant adjustment on account of horizontal reservation in Open General Category, only those candidates who are not in any of the categories for whom vertical reservations is provided, alone are to be considered.

(C) In other words, at the stage of horizontal reservation, Open General Category is to be construed as category meant for candidates other than those coming from any of the categories for whom vertical reservation is provided.

29. The second view may lead to a situation where, while making adjustment for horizontal reservation in Open or General Category seats, less meritorious candidates may be adjusted, as has happened in the present matter. Admittedly, the last selected candidates in Open General female category while making adjustment of horizontal reservation had secured lesser marks than the applicants. The claim of the applicants was disregarded on the ground that they could claim only and only if there was a vacancy or chance for them to be accommodated in their respective column of vertical reservation.

... ..

34. The second view, based on adoption of a different principle at the stage of horizontal reservation as against the one accepted to be a settled principle for vertical reservation, may thus lead to situations where a less meritorious candidate, not belonging to any of the reserved categories, may get selected in preference to a more meritorious candidate coming from a reserved category. This incongruity, according to the second view, must be accepted because of certain observations of this Court in *Anil Kumar Gupta*⁵ and *Rajesh Kumar Daria*⁶. The following sentences from these two decisions are relied upon in support of the second view:

"18. ... 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." [from SCC p. 185, para 18 of *Anil Kumar Gupta*⁵]

9. ... But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations." [from SCC p. 792, para 9 of *Rajesh Kumar Daria*⁶]

These sentences are taken to be a mandate that at the stage of horizontal reservation the candidates must be adjusted/accommodated against their respective categories by deleting corresponding number of candidates from such categories and that the principle applicable for vertical (social reservation) will not apply to horizontal (special reservation). In our view, these sentences cannot be taken as a declaration supporting the second view and are certainly being picked out of context.

35. The observations in para 18 in *Anil Kumar Gupta*¹⁷ contemplated a situation where if "special reservation candidates" entitled to horizontal reservation are to be adjusted in a vertical column meant for "social reservation", the corresponding number of candidates from such "social reservation category" ought to be deleted. It did not postulate that at the stage of making "special or horizontal reservation" a candidate belonging to any of the "social reservation categories" cannot be considered in Open/General Category. It is true that if the consideration for accommodation at horizontal reservation stage is only with regard to the vertical reservation concerned or social reservation category, the candidates belonging to that category alone must be considered. For

example, if horizontal reservation is to be applied with regard to any of the categories of Scheduled Castes, Scheduled Tribes or Other Backward Classes, only those candidates answering that description alone can be considered at the stage of horizontal reservation. But it is completely different thing to say that if at the stage of horizontal reservation, accommodation is to be considered against Open/General seats, the candidates coming from any of the reserved categories who are more meritorious must be sidelined. That was never the intent of the observations sought to be relied upon in support of the second view.

36. Similarly, the observations in *Rajesh Kumar Daria*⁶ were in the context of emphasising a distinguishing feature between vertical and horizontal reservations; in that:

(a) At the stage of vertical reservation, the reserved category candidates selected in Open/General category are not to be counted while filling up seats earmarked for the corresponding reserved categories.

(b) But the same principle of not counting the selected candidates concerned is not to apply for horizontal reservation.

Adopting principle (a) at the stage of horizontal reservation, the respondents in *Rajesh Kumar Daria*⁶ had separately allocated 11 seats for women in General Category as part of special or horizontal reservation, though another set of 11 women candidates had got selected, according to their own merit, in General Category quota. The quota of 11 seats for women having been already satisfied, this Court negated the theory that their number be disregarded while making horizontal reservation for women. It was in that context that the distinction between vertical and horizontal reservations was highlighted by this Court in para 9 of the decision. The subsequent sentence "*thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women*" in the very same paragraph and the illustration given thereafter are absolutely clear on the point.

37. The decision of this Court in *Uttaranchal Public Service Commission v. Mamta Bisht*⁷ was also completely misunderstood. In that case one Neetu Joshi had secured a seat in General Category on her own merit and she also

answered the category of horizontal reservation earmarked for "Uttaranchal Mahila". The attempt on part of Mamta Bisht, the original writ petitioner, was to submit that said Neetu Joshi having been appointed on her own merit in General Category, the seat meant for "Uttaranchal Mahila" category had to be filled up by other candidates. In essence, what was projected was the same stand taken by the respondents in *Rajesh Kumar Daria*⁶, which was expressly rejected in that case. It is for this reason that para 15 of the decision in *Uttaranchal Public Service Commission v. Mamta Bisht*⁷ expressly returned a finding that the judgment rendered by the High Court in accepting the claim of Mamta Bisht was not in consonance with law laid down in *Rajesh Kumar Daria*⁶ and the appeal was allowed. This decision is thus not of any help or assistance in support of the second view.

38. The second view is thus neither based on any authoritative pronouncement by this Court nor does it lead to a situation where the merit is given precedence. Subject to any permissible reservations i.e. either social (vertical) or special (horizontal), opportunities to public employment and selection of candidates must purely be based on merit. Any selection which results in candidates getting selected against Open/General category with less merit than the other available candidates will certainly be opposed to principles of equality. There can be special dispensation when it comes to candidates being considered against seats or quota meant for reserved categories and in theory it is possible that a more meritorious candidate coming from Open/General category may not get selected. But the converse can never be true and will be opposed to the very basic principles which have all the while been accepted by this Court. Any view or process of interpretation which will lead to incongruity as highlighted earlier, must be rejected.

39. The second view will thus not only lead to irrational results where more meritorious candidates may possibly get sidelined as indicated above but will, of necessity, result in acceptance of a postulate that Open/General seats are reserved for candidates other than those coming from vertical reservation categories. Such view will be completely opposed to the long line of decisions of this Court.

40. We, therefore, do not approve the second view and reject it. The first view which weighed with the High Courts of Rajasthan, Bombay, Uttarakhand and Gujarat is correct and rational.

11.2 The concurring judgment authored by S. Ravindra Bhat, J. made following observations:-

"61. The open category is not a "quota", but rather available to all women and men alike. Similarly, as held in *Rajesh Kumar Daria*⁶, there is no quota for men. If we are to accept the second view [as held by the Allahabad High Court in *Ajay Kumar v. State of U.P.*⁸ and the Madhya Pradesh High Court in *State of M.P. v. Uday Sisode*⁹, referred to in paras 24 and 25 of Lalit, J.'s judgment], the result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore – perhaps unconsciously supports—but definitely results in confining the number of women in the select list to the overall numerical quota assured by the rule.

62. In my opinion, the second view collapses completely, when more than the stipulated percentage 20% (say, 40% or 50%) of women candidates figure in the most meritorious category. The said second view in *Ajay Kumar*⁸ and *Uday Sisode*⁹ thus penalises merit. The principle of mobility or migration, upheld by this Court in *Union of India v. Ramesh Ram*¹⁰ and other cases, would then have discriminatory application, as it would apply for mobility of special category men, but would not apply to the case of women in such special categories (as glaringly evident from the facts of this case) to women who score equal to or more than their counterparts in the open/general category."

12. This Court thus considered two views, one which was taken by the High Courts of Rajasthan, Bombay, Gujarat and Uttarakhand; and, the second, which had weighed with the High Courts of Allahabad and Madhya Pradesh. After considering the totality of the circumstances as well as the rival submissions, the view taken by the High Courts of Rajasthan, Bombay, Gujarat and Uttarakhand was accepted to be the correct view and the one which was taken by the High Courts of Allahabad and Madhya Pradesh was not approved.

8 2019 SCC OnLine All 2674; (2019) 5 All LJ 466

9 2019 SCC OnLine MP 5750

10 (2009) 6 SCC 619

The decision of this Court in *Sourav Yadav* had considered all the cases on the point starting from *Indra Sawhney (supra)* up to *Mamta Bisht (supra)* as well as other decisions. It was finally concluded that the candidates belonging to the category of OBC (Female) or any other reserved category (Female) were entitled as a matter of right to have their candidature considered against the category meant for Unreserved Female Candidates if their merit position demanded so. It was further held that the category of Unreserved (Female) is not a specially allocated or reserved for those candidates who did not belong to any of the categories of SC, ST or OBCs and that by very nature "unreserved category" must mean and include every person who on the strength of merit could be entitled to be considered in that category.

13. In this batch of matters, Mr. P.S. Patwalia, learned Senior Advocate has led the submissions for the candidates who are up in appeals. We have also heard some of the learned Advocates who have supported him and adopted his submissions. We have also heard Mr. Saurabh Mishra, learned AAG for the State of Madhya Pradesh, and Ms. Anuradha Mishra, learned Advocate for MPPSC assisted by Mr. R. Panchbhai, an official of the MPPSC.

On the other hand, the rival view is projected by Dr. Rajeev Dhavan, learned Senior Advocate who appeared on behalf of the writ petitioners who succeeded in the High Court. Dr. Dhavan is supported by the other learned counsel for similarly situated candidates.

We have also heard Mr. S.K. Rungta, learned Senior Advocate who presented a slightly different view on behalf of those candidates who were more meritorious than the candidates being represented by Mr. Patwalia.

14. Mr. P.S. Patwalia, learned Senior Advocate submits that the very same controversy had arisen in the matters coming from the High Court of Judicature at Allahabad and the issues in question stand completely concluded by the pronouncement of this Court in *Saurav Yadav (supra)*. It is submitted that on the strength of the law laid down by this Court, the instant appeals deserve to succeed and the revised Select List dated 19.08.2019 as published by the authorities must be accepted in toto and given effect to. It is further submitted that insofar as the candidates that he is representing, nothing further need be done as those candidates are already employed and are rendering service.

15. Dr. Rajeev Dhavan, learned Senior Advocate assisted by Mr. L.C. Patne, learned Advocate for respondent no.7 and Mr. Vardhman Kaushik, learned Advocate for respondent no.1 in the present batch of matters, submits that the view taken by the High Court in the instant cases was quite correct. It is submitted by Dr. Dhavan that the category of "Unreserved" or "General" would be open to all but at the stage of applying horizontal reservation consideration must be restricted to those persons who do not answer the description being members belonging to social reservation categories such as SCs, STs or OBCs and the migration from other vertical columns made

for social reservation should not be permitted.

16. Mr. Rungta, learned Senior Advocate, representing the cause of respondent no.6 and 90 other meritorious candidates, submits that his clients are otherwise meritorious and were part of the revised Select List; however, as a result of an interim order passed by the High Court, said candidates were restrained from being appointed whereas the other candidates, namely, those who are represented by Mr. P.S. Patwalia, learned Senior Advocate were allowed to be appointed; consequently, as against other candidates who were appointed in December 2020, his clients could be appointed only in July 2021; in the process, tremendous prejudice has been inflicted and apart from loss of seniority and emoluments, their probation will come up for consideration after a considerable length of time.

17. Mr. Saurabh Mishra, learned AAG for the State submits that the submissions advanced by Mr. Patwalia deserve to be accepted. It is also projected that unlike the case in *Saurav Yadav (supra)*, the statutory Rules in the instant matter afford another additional plank for the State to support its view. Ms. Anuradha Mishra, learned Advocate for the MPPSC instructed by Mr. R. Panchbhai, an official of the MPPSC, fairly accepts that insofar as the Commission is concerned, the candidates represented by Mr. Rungta are entitled to their seniority in terms of the revised Select List.

18. We need not separately set-out the issues which arise for consideration in the instant matters and proceed to have a threadbare discussion as, in our view, the instant matters are

fully covered by the pronouncement of this Court in *Saurav Yadav (supra)*.

It is true that the leading judgment in *Saurav Yadav (supra)* considered the matter from a general plane but the concurring judgment authored by S. Ravindra Bhat, J. did additionally consider the issue from the perspective of absence of any statutory Rules in the field. It is also true that in the instant case, there are Rules occupying the field and the case would be a fortiori, but we need not enter into that arena as, in our view, the general propositions laid down in *Saurav Yadav (supra)* by themselves are sufficient to take care of the controversy which has arisen in the instant matters.

19. The law laid down in *Saurav Yadav* is very clear that even while applying horizontal reservation, the merit must be given precedence and that if the candidates who belong to SCs, STs and OBCs have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates.

The observations made by the High Court in the instant case, in our view, do not lay down the correct law. The High Court failed to appreciate that conceptually there would be no distinction between vertical and horizontal reservations, when it comes to the basic idea that even the candidates belonging to reserved categories can as well stake a claim to seats in unreserved categories if their merit position entitles them to do so.

20. We have, therefore, no hesitation in setting aside the judgment and order under appeal and in dismissing the writ petitions and other connected matters challenging the revised Select List. Ordered accordingly.

21. We now turn to the issue presented by Mr. Rungta, learned Senior Advocate, for our consideration

It is quite clear that the candidates represented by Mr. Rungta were placed at a higher position in the Select List but unfortunately they were not given appointments along with the candidates who were at a lower level. These candidates cannot be held responsible for the anomaly which has arisen as a result of their late appointments. In order to do complete justice, we, therefore, direct:

- a. All candidates who were at higher positions in merit but were appointed later shall be deemed to have been appointed on the earliest of the dates when their juniors or candidates at lower levels were appointed.
- b. Their seniority shall be reckoned from such deemed date of appointment and not from their actual date of appointments.
- c. The issue of probation for all categories of candidates shall be considered together as one

single batch and the issue of probation shall not be segregated amongst the members of the batch.

- d. All such candidates who were at higher levels of the revised list shall be entitled to their salaries and emoluments for the period of about seven months for which they were deprived of service.

With these observations, all these appeals stand disposed of without any order as to costs.

.....J.
(UDAY UMESH LALIT)

.....J.
(S. RAVINDRA BHAT)

.....J.
(BELA M. TRIVEDI)

NEW DELHI,
DECEMBER 16, 2021