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2026:AHC:240139

**A.F.R.**

**Reserved On: 28.09.2026**
**Delivered On: 25.11.2026**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT - A No. - 9155 of 2026**

Pankaj Verma and 2 others

…..Petitioner(s)

Versus

State of U.P. and another

…..Respondent(s)

| | | |
|---|---|---|
| Counsel for Petitioner(s) | : | Anurag Tripathi |
| Counsel for Respondent(s) | : | Avneesh Tripathi, C.S.C., Mahendra Narain Singh |

**Court No. - 33**

**HON'BLE MANISH KUMAR NIGAM, J.**

**1.** The petitioners herein have challenged the result of the APO Examination, 2025 (preliminary) held in pursuance of Advertisement No. A-8/E-1/2025 declared on 30.04.2026 as well as the Office Memorandum dated 09.01.2020 issued by respondent No. 2. They have also prayed that respondent No. 2 be directed to declare result of the preliminary examination afresh.

**2.** Brief facts of the case are that respondent No. 2 i.e. Uttar Pradesh Public Service Commission, issued an Advertisement No. A-8/E-1/2025, published on 16.09.2025, inviting applications from the eligible candidates for APO Examination, 2025. The total number of vacancies were approximately 182 for which applications were invited. Out of 182 vacancies, 27 posts were unreserved, 67 posts were reserved for Scheduled Castes, 9 posts were reserved for Scheduled Tribes, 61 posts

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were reserved for OBC category and 18 posts were for EWS category candidates. As per the advertisement, examination for APO, 2025 was to be conducted by respondent No. 2 in three stages: (i) Preliminary Examination (objective type and multiple-choice); (ii) Mains Examination i.e. written examination; and (iii) Viva Voce/Personal Interview. Number of candidates to be called for mains examination after the preliminary examination were to be 15 times of the post advertised. Similarly, for interview, three times candidates were to be called for interview after mains examination. All the petitioners applied in pursuance of the advertisement under the OBC category, without seeking benefit of age relaxation. The preliminary examination was held on 22.03.2026, in which all the petitioners appeared. The result of the preliminary examination was declared on 30.04.2026, declaring that 2,856 candidates have qualified the preliminary examination. The petitioners could not qualify the preliminary examination. The mains examination was held from 28.06.2026 to 30.06.2026. However, the result of the mains examination was not declared at the time of filing writ petition. Thereafter, mains examinations were also held in June, 2026, and the interviews were going on in the month of October, 2026. This Court, by interim order dated 28.09.2026, directed that interview may go on but has stayed the declaration of result till delivery of judgment.

**3.** Petitioners are aggrieved by the fact that, at the stage of preliminary examination, while preparing the category-wise list, i.e., unreserved category, SC, ST, OBC and EWS category, the respondent No. 2 has taken the “unreserved category” to be a category to be filled up by candidates, who have not claimed any reservation, and the persons belonging to reserved category have been excluded from being placed in the list of unreserved category, irrespective of the fact that they have obtained more marks than the last selected candidate for the unreserved category. The petitioners have also challenged the Office Memorandum dated 9.01.2020, which provided that the candidates belonging to various reserved categories, who have not taken any relaxation with

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regard to the essential condition, will be accommodated in the unreserved category at the time of final selection, in case they have secured more marks than the cut-off marks fixed for the unreserved category, otherwise, they will remain in their respective category. According to the petitioners, the Office Memorandum dated 9.01.2020 is beyond the legislative competence of the Commission, as the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (hereinafter referred to as the 'Act of 1994'), does not contemplate any such condition.

**4.** Shri Anoop Trivedi, learned Senior Advocate assisted by Shri Avneesh Tripathi, learned counsel for the Commission as well as Shri Manish Goel, learned Additional Advocate General assisted by Shri Gaurav Singh learned Standing Counsel for the State vehemently contended that the reservation cannot be applied at the stage of preliminary examination, and the preparation of the list category-wise is permissible under the law and is approved by the Supreme Court as well as this Court and other High Courts in various judgments. There is nothing wrong in preparing the list as prepared by the Commission for each category.

**5.** Learned counsel appearing for the respondents also contended that the Commission was well within its jurisdiction to issue the Office Memorandum dated 9.01.2020, as the same does not contravene any provision of any statute or the Constitution. The Commission has competence to issue such an Office Memorandum for the purpose of carrying the legislative intent providing for reservation and also for the smooth conduct of the examination to be held by the Commission.

**6.** Before proceeding with the matter, it would be appropriate to consider the relevant statutes, rules, office memorandum, as well as the relevant portion of the advertisements issued.

**7.** Uttar Pradesh has promulgated Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, which has come into force from

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December 11, 1993. Section 3 (1) of Act of 1994 Act provides for reservation in public services at the stage of direct recruitment in following percentage of vacancies to which recruitments are to be made. Relevant extract of Section 3 of Act of 1994, is quoted as under:-

> *"3. (1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentages of vacancies to which recruitments are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and other backward classes of citizens,-*
>
> | | |
> |---|---|
> | *(a) in the case of Scheduled Caste* | *Twenty one Percent;* |
> | *(b) in the case of Scheduled Tribe* | *Two percent* |
> | *(c) in the case of other backward classes of citizens* | *Twenty seven percent* |
>
> *(5) The State Government shall, for applying the reservation under sub-section (1), by a notified order, issue a roster comprising the total cadre strength of the public service or post indicating therein the reserve points, and the roster so issued shall be implemented in the form of a running account from year to year until the reservation for various categories of persons mentioned in sub-section (1) is achieved and the operation of the roster and the running account shall, thereafter, come to an end, and when a vacancy arises thereafter in public service or post the same shall be filled from amongst the persons belonging to the category to which the post belongs in the roster.*
>
> *(6) If a person belonging to any of the categories mentioned in sub-section (1) 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 (1).*
>
> *(7) If, on the date of commencement of this Act, reservation was in force under Government Orders for appointment to posts to be filled by promotion, such Government Orders shall continue to be applicable till they are modified or revoked."*

**8.** Uttar Pradesh Direct Recruitment through Public Service Commission Preliminary Examination Rules, 1986 (hereinafter referred to as 'Rules of 1986') provides that these rules shall apply to all the recruitment made directly by selection through Commission, either on the basis of written examination or interview or both (Rule 1(3)).

**9.** Rule 3 provides for holding of preliminary examination, relevant portion of Rule 3 of Rules of 1986 is quoted as under:-

> ***"Rule 3. Holding of preliminary examination.-***
>
> *(1) Notwithstanding anything to the contrary contained in relevant service rules or Government orders regarding recruitment, the Commission may, with the prior approval of Government hold preliminary examination for selection of suitable candidates for admission to main examination or interview, as the case may be.*
>
> *(2) Where a preliminary examination is held only such candidates as qualify in the preliminary examination will be entitled for admission to Main Examination or Interview, as the case may be.*

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*(3) The marks obtained in the preliminary examination will not be counted for determining the final orders of merit.*

*(i) [Preliminary examination will consist of two question papers of two hours' duration each in cases where it is to be followed by main examination. Out of the two question papers one will be the compulsory paper of General Knowledge and General Studies, while the other will be of one of the optional subjects which may be prescribed by the Commission with the concurrence of the Government; The ratio between the marks allotted for the compulsory and optional question papers shall be 1: 2.]*

*(ii) In cases where selection by interview alone is prescribed the preliminary examination will be of one paper of two hours duration in such subjects as may be prescribed by the Commission in its discretion covering mainly questions on General Knowledge, General Studies and subjects relevant to the nature of job of the post...."*

**10.** Commission has also promulgated Uttar Pradesh Public Service Commission (Procedure and Conduct of Business) Rules, 2011 (hereinafter referred to as 'Rules of 2011') in exercise of powers under Section 11(1) of Uttar Pradesh State Public Service Commission (Regulation of Procedure) Act, 1985. Rule 33 has been relied upon by the Commission, relevant portion of Rule 33 of Rules of 2011 is also quoted as under:-

*"33.* ***Programme:-***

*(i) Notwithstanding anything to the contrary contained in relevant service rules or Government Orders regarding recruitment, the Commission may hold preliminary examination/screening test for finding out suitable candidates for admission to main examination or interview, as the case may be;*

*(ii) Preliminary examination shall mean screening test to be conducted by the Commission with the purpose of finding out suitable candidates in required proportion as fixed by the Commission in each category, reserved and unreserved, for admission to the main examination or interview, as the case may be;*

*(iii) Preliminary examination shall be conducted in the manner prescribed by the Uttar Pradesh Direct Recruitment through Public Service Commission Preliminary Examination Rule, 1986 as amended from time to time. The marks obtained by the candidates in the preliminary examination/ screening test shall not be counted for determining final order of merit....."*

**11.** It would also be relevant to quote the Office Memorandum dated 09.01.2020 issued by Uttar Pradesh Public Service Commission, which is under challenge:-

"कार्यालय उत्तर प्रदेश लोक सेवा आयोग

संख्या--343/20/01/एस-10/आ०नि०परि०/2019-20

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दिनांक : प्रयागराज : 09 जनवरी, 2020

कार्यालय-ज्ञाप

मा० आयोग की असाधारण बैठक दिनांक 09.01.2020 को पत्रावली संख्या--27/ मिस/एस-10/2019-20 में मा० आयोग की असाधारण बैठक दिनांक 18.12.2019 में निम्नलिखित निर्णय लिया गया था-- "किसी भी परीक्षा में जिसमें प्रारम्भिक परीक्षा, मुख्य परीक्षा एवं साक्षात्कार तथा स्क्रीनिंग परीक्षा सम्मिलित है, में आरक्षित वर्ग (अनुसूचित जातियों, अनुसूचित जनजातियों, अन्य पिछड़े वर्ग एवं ई०डब्लू०एस०) के अभ्यर्थियों द्वारा यदि किसी स्तर पर चयन प्रक्रिया में खुली प्रतियोगिता के आधार पर किसी अर्हकारी मानक में शिथिलीकरण/छूट का लाभ न लिया हो तो उन्हें ही अन्तिम रूप से अनारक्षित श्रेणी में समायोजित किया जाय यदि वे अन्तिम चयन में अनारक्षित श्रेणी के न्यूनतम कट ऑफ से अधिक अंक प्राप्त करते हैं, अन्यथा वे अन्तिम चयन तक अपनी सम्बन्धित (Respective) श्रेणी में ही रहेंगे। "

उक्त निर्णय के सम्बन्ध में निम्नलिखित निर्णय लिया जाता है-- "मा० आयोग का उक्त निर्णय तत्काल प्रभाव से लागू होगा तथा ऐसे सभी पूर्व विज्ञापनों पर भी लागू होगा, जिनके परिणाम अभी घोषित नहीं किये गये हैं।"

2. मा० आयोग की उक्त असाधारण बैठक दिनांक 09.01.2020 में लिये गये निर्णय की प्रतियां सूचनार्थ/अनुपालनार्थ एतद्द्वारा परिचालित की जा रही हैं।

संलग्नक : यथोक्त

(सत्य प्रकाश)

उप सचिव।

पृष्ठांकन संख्या--343(I)/20/01/एस-10/आ०नि०परि०/2019-20, तद्दिनांक।

प्रतिलिपि :- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषितः-

1- निजी सचिव ग्रेड-। को मा० अध्यक्ष महोदय के सूचनार्थ।
2- समस्त निजी सचिवगण को मा० सदस्यगण के सूचनार्थ।
3- सचिव महोदय के अपर निजी सचिव।
4- समस्त प्रभारी अधिकारी/अपर प्रभारी/उप/अपर सचिव(वित्त)/सिस्टम एनालिस्ट।

5- समस्त अनुभाग अधिकारी।
6- वरिष्ठ शोध अधिकारी/पुस्तकालयाध्यक्ष।

(सत्य प्रकाश)
उप सचिव।

मा० आयोग की असाधारण बैठक दि०- 09/01/2020 में लिए गए निर्णय :- "पत्रावली संख्या-27/मिस/एस-10/2019-20 में मा० आयोग की असाधारण बैठक दिनांक 18.12.2019 में निम्नलिखित निर्णय लिया गया था-- किसी भी परीक्षा में जिसमें प्रारम्भिक परीक्षा, मुख्य परीक्षा एवं साक्षात्कार तथा स्क्रीनिंग परीक्षा सम्मिलित है, में आरक्षित वर्ग (अनुसूचित जातियों, अनुसूचित जनजातियों, अन्य पिछड़े वर्ग एवं

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ई०डब्लू०एस०) के अभ्यर्थियों द्वारा यदि किसी स्तर पर चयन प्रक्रिया में खुली प्रतियोगिता के आधार पर किसी अर्हकारी मानक में शिथिलीकरण/छूट का लाभ न लिया हो तो उन्हें ही अन्तिम रूप से अनारक्षित श्रेणी में समायोजित किया जाय यदि वे अन्तिम चयन में अनारक्षित श्रेणी के न्यूनतम कट ऑफ से अधिक अंक प्राप्त करते हैं, अन्यथा वे अन्तिम चयन तक अपनी संबंधित (Respective) श्रेणी में ही रहेंगे।" उक्त निर्णय के सम्बन्ध में निम्नलिखित निर्णय लिया जाता है- "मा० आयोग का उक्त निर्णय तत्काल प्रभाव से लागू होगा तथा ऐसे सभी पूर्व विज्ञापनों पर भी लागू होगा, जिनके परिणाम अभी घोषित नहीं किये गये हैं।"

| | | |
|---|---|---|
| ह०प्रेम कुमार सिंह<br>सदस्य | ह०आलोक प्रसाद | ह० सुशीला सिंह<br>सदस्य |
| ह० डा० रामजी मौर्य<br>सदस्य | ह० डा. जयराम प्रसाद वैद्य<br>प्रभात कुमार<br>अध्यक्ष | ह० डा०<br>सदस्य |

**12.** Advertisement No. A-8 /E - 1/2025 relating to APO Examination, 2025 impugned in Writ A No. 9155 of 2026, in paragraph No. 5, provides for reservation. Paragraph No. 10 of the advertisement provides general information about the examination. Paragraph No. 15 provides for minimum efficiency standard for the candidates and paragraph No. 16 provides that candidates of reserved category will be adjusted against unreserved category in the final selection only if he/she has not availed any benefit concession in qualifying standards at any stage of preliminary exam or mains examination. Relevant portion of paragraph Nos. 5, 10, 15 and 16 of the advertisement are quoted as under:-

*"5.* आरक्षण*:* उ०प्र० की अनुसूचित जातियों/उ०प्र० की अनुसूचित जनजातियों / उ०प्र० के अन्य पिछड़े वर्गों / उ०प्र० के आर्थिक रूप से कमजोर वर्गों के अभ्यर्थियों के लिए आरक्षण विद्यमान शासकीय नियमों के अनुसार दिया जायेगा। इसी प्रकार क्षैतिज आरक्षण के अन्तर्गत आने वाली श्रेणियों यथा उ०प्र० के स्वतन्त्रता संग्राम सेनानियों के आश्रित/महिला अभ्यर्थियों / उ०प्र० के भूतपूर्व सैनिकों और उ०प्र० के समाज के दिव्यांग अभ्यर्थियों को भी विद्यमान शासकीय नियमों के अनुसार रिक्तियां बनने पर आरक्षण अनुमन्य होगा। उ०प्र० के समाज के दिव्यांग अभ्यर्थियों के लिए शासन द्वारा अधिसूचित *(*चिन्हित*)* किये पदों पर आरक्षण अनुमन्य होगा।.....

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*10.* सहायक अभियोजन अधिकारी पद की मुख्य *(*लिखित*)* परीक्षा एवं साक्षात्कार के संबंध में कतिपय सूचनायें-*(1)* प्रारम्भिक परीक्षा में सफल होने वाले अभ्यर्थी ही मुख्य *(*लिखित परीक्षा*)* में सम्मिलित किये जायेंगे, जिसके लिए आयोग के निर्देशानुसार सफल अभ्यर्थियों को पुनः आवेदन करना होगा .....केवल वही अभ्यर्थी साक्षात्कार के लिए आहूत किये जायेंगे जो मुख्य *(*लिखित*)* परीक्षा के आधार पर सफल घोषित होंगे। *(5)* अभ्यर्थियों को साक्षात्कार के पूर्व आवेदन पत्रादि भरना होगा। .....

*15.* अनुसूचित जाति तथा अनुसूचित जनजाति अभ्यर्थियों के लिए न्यूनतम दक्षता मानक *(Minimum Efficiency Standard) 35%* निर्धारित है अर्थात इन श्रेणियों के अभ्भार्थी यदि *(*प्रारम्भिक / मुख्य*)* परीक्षा में *35%* से कम अंक प्राप्त करते हैं तो वे श्रेष्ठता/चयन सूची में सम्मिलित नहीं किये जायेंगे। इसी प्रकार, अन्य श्रेणियों के अभ्यर्थियों के लिए न्यूनतम दक्षता मानक *(Minimum Efficiency Standard) 40%* निर्धारित है अर्थात् ऐसे अभ्यर्थी यदि *(*प्रारम्भिक /मुख्य*)* परीक्षा में *40%* से कम अंक प्राप्त करते हैं तो वे श्रेष्ठता / चयन सूची में सम्मिलित नहीं किये जायेंगे। ऐसे सभी अभ्यर्थी आयोग द्वारा निर्धारित न्यूनतम दक्षता मानक *(Minimum Efficiency Standard)* से कम अंक पाने पर अनर्ह माने जायेंगे।

*16.* आरक्षित श्रेणियों के उम्मीदवारों / अभ्यर्थियों को अन्तिम चयन में अनारक्षित श्रेणी के पदों पर तभी समायोजित किया जायेगा जब उनके द्वारा परीक्षा के किसी स्तर पर योग्यता मानक में कोई लाभ / रियायत न लिया गया हो।"

**13.** By order dated 18.06.2026, Sri Anoop Trivedi, Senior Advocate, appearing for the Commission, prayed for three weeks' time to file detailed counter affidavit. On 17.07.2026, a counter affidavit was filed on behalf of Commission, which was taken on record. By order dated 22.07.2026, this Court directed the counsel appearing for the Commission to inform this Court as to the cutoff marks of each category, i.e. open category and all other reserved category. The Commission was also directed to inform the Court as to the fact whether there is any candidate in reserved category, who has secured more marks than the person lastly selected in the open category, in a sealed cover within a week. On 28.07.2026, in compliance of order dated order dated 22.07.2026, cutoff marks of each category has been provided by the Public Service Commission in a sealed cover, which was taken on record. On 31.07.2026, the Commission was also directed to file a counter affidavit disclosing how the list of various categories have been prepared. On 10.08.2026, counter affidavit was filed by the Commission.

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By order dated 11.08.2026, the counsel for the Commission was directed to file an affidavit to the effect as to whether open category is filled up only on the basis of merit irrespective of category whether reserved or unreserved or the open category has been filled up only with unreserved candidates. This Court has also directed the Commission to disclose the number of candidates who have secured more marks than the last open category candidate without disclosing their marks. In response to the order dated 11.08.2026, an affidavit was filed on behalf of the Commission. In paragraph No. 6 of the affidavit, it was mentioned that 321 OBC category candidates and 43 SC category candidates have secured more marks than the last selected open category candidate. It was also stated in the affidavit that all these candidates will be migrated to unreserved category at the time of final selection according to the advertisement and relevant rules. In the aforesaid affidavit, it was not disclosed whether these candidates, who have secured more marks than the last selected open category candidates are placed in open pool or have been placed in their respective category. Counsel for the Commission was directed to file a better affidavit as to whether the candidates who have secured more marks (321 O.B.C. and 43 S.C.), have been placed in open category or in their respective reserved category. Thereafter, second supplementary affidavit dated 20.08.2026 was filed by the respondent Commission, wherein though in paragraph No. 4 of the affidavit it has been stated that open /unreserved category is filled up purely on the basis of merit, irrespective of category, whether reserved or unreserved, at the time of final selection. In paragraph No. 6 it has been admitted by the Commission that the candidates, who have secured more marks (321 O.B.C. and 43 S.C.), have been placed in their respective category. When the attention of the counsel was brought to paragraph No. 4 of the second supplementary affidavit, then it was submitted that recital in the aforesaid paragraph was incorrect. Thereafter, another supplementary affidavit was filed by the Commission dated 24.09.2026 annexing all the relevant rules, regulation made by the Commission in this behalf.

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**14.** Relying upon the supplementary affidavit filed by the Commission, Sri Anurag Tripathi, learned counsel for the petitioners contended that 321 OBC and 43 SC candidates, who have secured more marks than the last selected general category candidate have been placed in their respective reserved category, i.e., OBC and Scheduled Caste. In case all these persons if had been placed in the open category, 321 OBC candidates and 43 SC candidates below them would have found place in their respective reserve category, i.e., OBC and SC. The act of the respondents not placing 321 OBC candidates and 43 SC candidates in open category, who have secured more marks than the last selected general category candidate resulted in exclusion of 321 OBC candidates and 43 SC candidates from the list of reserved category.

**15.** Petitioners are hopeful that they would have found place in OBC category, in case, 321 OBC candidates would have been placed in general category. The argument of learned counsel for the petitioners is that “unreserved category” is not a category to which reservation applies and, as a matter of fact, unreserved category is an open category open for all.

**16.** Learned counsel for the petitioners submitted they are not prejudiced by the preparation of category-wise list as prepared by the Commission, but they are aggrieved by manner in which unreserved category list has been prepared and the act of the respondents treating “unreserved category” as a category reserved for candidates, who have not claimed any reservation, is arbitrary. According to the petitioners, the “unreserved category” has to be filled up only on the basis of merits, irrespective of the fact whether the persons coming within the unreserved category, belong to reserved category or persons who have not claimed any reservation. Non-placement of more meritorious reserved candidate in the list of unreserved category amounts to discrimination and will result in violation of Articles 14 and 16 of the Constitution of India.

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**17.** It has been further contended by the counsel for the petitioners that the respondents were obliged under law to prepare unreserved category list on the basis of the marks obtained in the preliminary examination, irrespective of their category, being fifteen times (as decided by the Commission) the total number of the vacancies advertised by the respondents.

**18.** It has also been submitted by learned counsel for the petitioners that purpose of preparation of list of meritorious candidates (category-wise) after the preliminary examination was to select the candidates eligible to appear in the next stage of examination, i.e. mains examination, which is permissible in law.

**19.** Learned counsel for the petitioners further submitted that recruitment process initiated pursuant to the advertisement in question suffered from a fundamental illegality, inasmuch as general/open category was treated as an exclusive compartment reserved for non-reserved candidates. Such an approach, it was argued, has the effect of converting the selection into a form of communal reservation, a concept expressly prohibited by the constitutional scheme. Open category is not a quota, but remains accessible to all the candidates irrespective of social classification.

**20.** According to learned counsel for the petitioners, a candidate belonging to reserved category was entitled to be placed in the general/open category having secured marks well above the cutoff marks for the general/open category, and that denial of such placement resulted in displacement of reserved category candidate in their own category and then their wrongful exclusion from the next stage of selection process, namely, the written examination. The exclusion of meritorious reserved category candidates at the shortlisting stage itself defeats the very principle of equality based on merit and renders the subsequent stages of selection constitutionally infirm.

**21.** Lastly, it was submitted that placement of meritorious reserved category candidates to the open/general category cannot be confined

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only at the final stage of appointment, but must necessarily operate at every stage where merit is assessed and shortlisting is undertaken, otherwise, the primacy of merit which underlines Article 14 and 16 of the Constitution of India would stand diluted by procedural stratification.

**22.** Challenging the Office Memorandum dated 09.01.2020, learned counsel for the petitioners submitted that the said Office Memorandum is without jurisdiction. There is no legislative mandate or authority for issuing such an office memorandum to the Commission. The question of reservation in public services is within the domain of the legislature or the Government, whether State or Union. Every action of the Commission is subject to the provisions of the statute relating to reservation made by the legislature or the Government by executive decisions reflected in Government Orders or in Office Memorandum issued by the Government. The Government can take policy decisions in respect of the applicability of the reservation policy of the State.

**23.** Learned counsel further submitted that Article 320, which provides for the functions of the Commission, does not authorise the Commission to make any rule or to issue any Office Memorandum, which is either contrary to the statutory provisions, rules, or Government Orders issued from time to time by the State. The Commission has to abide by the provisions relating to statute conferring reservation or the rules or Government Orders issued by the Government in this regard.

**24.** Office memorandum dated 09.01.2020 suffers from irrationality and violates doctrine of proportionality by providing the highest percentage of reservation precisely 50% in preliminary examination as well as mains written examination to a class that is not claiming any reservation.

**25.** Office memorandum dated 09.01.2020 is an administrative instruction. It deserves a strict judicial scrutiny because it does not hold a strong presumption of validity enjoyed by a legislative enactment. It does not disclose the source of power/legal/constitutional provisions. Its

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language suffers from ambiguity and vagueness, therefore, it is not tenable in the court of law.

**26.** Learned Senior Advocate appearing on behalf of Commission, submitted that a preliminary examination is being held under Rule 3 of Rules of 1986 which specifically provides only such candidates as qualified in the preliminary examination will be entitled for admission to the main examination and marks obtained in the preliminary examination will not be counted for determining the final list of merit. Rule 33 of Rules of 2011, prescribes that the preliminary examination would be merely a screening test conducted by the Commission in order to identify suitable candidates in required proportions as fixed by the Commission in each category reserved or unreserved for admission to the main examination, which in the present case is fifteen times of vacancies.

**27.** It has been further submitted that power to fix the required proportion in each category clearly intended to declare that the preliminary examination result would be declared category wise and in this regard the Commission has taken its decision vide Office Memorandum dated 09.01.2020 in accordance with the policy decision of the State Government as well as the law declared by this Court in case of **Sanjeev Kumar Singh Vs. State of U.P. and others, 2006 SCC Online All 1322** and judgment of the Supreme Court in case of **Jitendra Kumar Singh and others Vs. State of U.P. and others; 2010 (3) SCC 119**. Vide Office Memorandum dated 09.01.2020. Commission has taken a decision that such reserved category candidates who have not taken any relaxation in merit at any stage of selection process would be adjusted in the open category, at the final stage of selection if they are selected in the open competition and obtain more marks than the cut off marks of open category and shall not be adjusted in their respective category.

**28.** It has been further submitted by learned counsel for the Commission that the only reservoir for implementing reservation is

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provided by Act of 1994. The State Government has issued a Government Order dated 25.03.1994. Clause 4 of the aforesaid Government Order, is the source from which the procedure aforesaid has to be regulated.

**29.** It has been further submitted by learned counsel for the Commission that in compliance of the judgments in case of Sanjeev Kumar Singh v. State of U.P. (supra) and Jitendra Kumar Singh v. State of U.P. (supra), the State Government has issued a Government Order dated 31.07.2007 and had taken decision to implement the said judgment. Copy of the said Government Order has been annexed as SA-6 to the third supplementary affidavit dated 24.09.2026.

**30.** Relying upon judgment of the Supreme Court in case of Jitendra Kumar Singh v. State of U.P. (supra) it has been submitted by learned counsel for the Commission that the Supreme Court has held that provision of Section 3(6) of the Act of 1994 would be applicable at the time of final selection and if the reserve category candidate have secured more marks than a last general category candidate will be entitled to be selected against an unreserved seat without being adjusted against a reserved seat.

**31.** It has been further submitted by learned counsel for the Commission that the petitioners are claiming merit induced shifting to the open category at the preliminary stage, is nothing but change of category in accordance with merit position on the basis of open competition. In paragraph no. 14 of the supplementary affidavit, the stand taken by the Commission is that preliminary examination is meant only for entry in the main examination and there is absolutely no rule providing for preparation of a list of suitable candidates at the stage of preliminary stage as suggested by the petitioners that the Commission has to shift all the reserve category candidates who have obtained more marks than the cut off of the open category, to the open category. There is absolutely no statutory provision or rule for preparing the list of suitable candidates in the manner suggested by the petitioners.

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**32.** Learned counsel for the Commission further submitted that this matter has been considered by the Division Bench of this Court in Special Appeal No. 763 of 2026 (Pankaj Verma v. State of U.P. and others), decided on 24.06.2026.

**33.** Learned counsel for the Commission has submitted that merit induced shifting of reserve category candidate to open category has to be governed by provision of statute/rule prescribing in the manner and mechanism for such shifting. Merit induced shifting has to be permitted only after selection in open competition i.e. after the interview when the final list is being prepared as required by 3(6) of Act of 1994.

**34.** Learned counsel for the Commission also submitted that the Court has to consider whether the preliminary examination is an open competition or not and if preliminary examination is not an open competition then whether the candidates who have been selected, a category wise list of suitable candidates of each category in the required proportion has to be prepared or not.

**35.** It is also submitted by learned counsel for the Commission that even if assuming though not admitting that a preliminary examination is an open competition and the candidates qualifying the preliminary examination are treated to have been declared selected at that stage then again the same will require a consideration as to whether the candidates who have to be shifted because of merit induced shifting will be counted in reserve category or not.

**36.** Learned counsel for the Commission has also submitted that prayer of the petitioners for merit induced migration cannot be allowed at the preliminary examination in view of the judgment of the Apex Court in case of **Chattar Singh and others Vs. State of Rajasthan and others (1996) 11 SCC 742** and **Rajasthan High Court & another Vs. Rajat Yadav & others (Civil Appeal No. 14112 of 2024, decided December 19, 2025; 2025 INSC 1503),**which has reinforced the view taken by the Supreme Court in case of Chhatar Singh and others (Supra).

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**37.** It has been further submitted by learned counsel for the Commission that recently in several judgments, it has been held by the Apex Court that in case reserved category candidate has availed the concession, permissible under the law, will not be entitled to be shifted to open category and will remain in his own category even though he may secure more marks than the last selected candidate.

**38.** Learned counsel for the Commission further submitted that the selected candidates at the main examination have not been impleaded as party to the writ petition and as their interest might get affected because of this writ petition, no relief can be granted to the petitioners.

**39.** It has been further submitted by learned counsel for the Commission that the petitioners have appeared in the preliminary examination, without raising any question as to the conditions referred above, which has been made absolutely clear in the advertisement itself and after being unsuccessful they cannot be permitted to take a u-turn and challenge the same. In this regard, learned counsel for the commission has relied upon the judgment of the Division Bench of Rajasthan High Court in case of **Gokala Ram Vs. The Rajasthan High Court and others; 2024:RJ-JD:38139-DB.** Learned counsel for the Commission also brought on record the actual marks of A.P.O. Examination-2022 and submitted that in case, the argument of the petitioners are accepted, then that will lead of ousting of many selected candidates in the reserve category.

**40.** It has also been submitted by learned counsel for the Commission that none of the petitioners has secured marks more marks than the last selected candidate for the open category. The entire claim of the petitioners is based on the fact that in case the persons, who have secured more marks than the last selected candidate in the open category (which in the present case is 321 candidates) are shifted to the unreserved category, they may find place in the reserved category. Their claim is hypothetical and therefore cannot be considered.

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**41.** Shri Manish Goel, learned Senior Advocate, appearing for the State of Uttar Pradesh, though, in principle, adopted all the arguments made by the learned counsel appearing for the Commission, but has submitted further arguments in addition to what has been submitted by the Commission.

**42.** Shri Manish Goel, learned Senior Advocate submitted that the fulcrum of the arguments advanced on behalf of the petitioners has its genesis in Article 16(4) of the Constitution of India. By its very nature, Article 16(4) has its application on appointments or on posts. Therefore, it implies that either reservation is applied on the post or the guarantee is given for providing reservation on appointment. Article 16(4) of the Constitution of India is silent about selection. It is the post that stands reserved and not the selection or vacancy. Reservation is applied at the stage of appointment, and it is not applied at the stage of selection. Selection is conceptually distinct from appointment. Selection is based on merit, and appointment is to be given for adequate representation in the service. It is the posts that are available in the cadre strength, as per the roster, and have fallen vacant that have to be advertised.

**43.** It has been further contended by learned counsel for the State that, insofar as services are concerned, the concept is of adequate representation and not of proportional representation. The Constitution itself makes a distinction between adequate representation and proportional representation. In services, it has to be ensured that there is an adequate representation of the reserved class.

**44.** It has been further submitted by learned Senior Advocate appearing for the State that direct recruitment is a process of selection attained through examination by competition or as per the procedure prescribed by the service rules and Government Orders. In the process of recruitment, the Commission is governed by the relevant service rules. There is a distinction between the terms selection and examination. The direct recruitment is a process by which candidates are selected through a process of competitive examination. The examination is only a step for

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selection. In the present matter, the applicable service rules are the U.P. Prosecuting Officers Services Rules, 1991 (hereinafter referred to as "Rules, 1991"). A perusal of Rule 15 discloses that the process of selection consists of two stages of examination, namely, written examination and interview and hence, it is a two-stage examination that will consist of selection. Therefore, selection will be part of direct recruitment, and examination is part of selection. Learned Senior Advocate further submitted that preliminary examination is not selection. A perusal of Rule 3 of the Rules of 1986 discloses that the Commission has the authority to hold preliminary examination for admission of suitable candidates to the mains examination or interview.

**45.** The preliminary examination is a screening test, and the marks obtained are not to be counted at any stage, hence, the marks are of no consequence. The result of the preliminary examination does not create any right in the candidate. The result, therefore, is for the own consumption of the Public Service Commission, and there is no right available to the candidate merely because some marks are awarded in the preliminary examination to a candidate.

**46.** It has also been submitted by learned Senior Advocate that it is only at the final stage that the marks that have been obtained are ultimately deciding the merit, and accordingly, on the basis of merit, the selection has to be conducted. It is a settled principle of law that selection is solely on the basis of merit. Selection on the basis of merit creates a right. It has also been contended by learned Senior Advocate that there may be multiple other stages of examination, like in police recruitment, namely, that of document verification, physical standard test and physical efficiency test. The direct recruitment starts with the advertisement of the selection, and thereafter, it is a step-by-step process which ends up with drawing the merit list and declaration of result by the recruiting agency.

**47.** It has also been submitted by learned Senior Advocate that condition No. 16 of the advertisement provides that a candidate of the

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reserved category will be absorbed in the unreserved category when such candidate has not provided the benefit of relaxation at any stage of examination relating to the qualifying standard. The aforesaid provision, when read in its entirety, only saves the consequence of providing double benefit to a reserved category candidate. It has the consequence of ensuring that, on two occasions, benefits are not being extended to a reserved category candidate.

**48.** Learned Senior Advocate submitted that the unreserved category is a common pool, and the candidates who compete and are found to be highest in merit find their seats in the unreserved category. The unreserved category is a caste-less category. It is only and only concerned with merit. However, it has been submitted that merit is determined only when the stage of examination is over, at the time of preparing the final select list. No selection is involved at the stage of preliminary examination. Preliminary examination is merely a screening to ascertain, who will be eligible to sit for the purpose of selection.

**49.** Before considering the rival submissions made by the respective parties, this Court pointedly asked a question from both the counsel appearing for the Commission as well as the State as to whether, at the time of preparing the list after the Mains Examination, for calling the candidates in a ratio of 1:3 for the purpose of interview, whether the list is being prepared category-wise or on the basis of merit.

**50.** The counsel for the Commission categorically submitted that, both at the stage of preliminary examination as well as at the stage of Mains Examination, the lists are prepared category-wise.

**51.** However, learned counsel appearing for the State, though submitted that, at the time of preliminary examination, the list has to be prepared category-wise, but has some reservations with the stand taken by the Commission as to whether the category-wise list, which has to be prepared after the Mains Examination, has to be category-wise, i.e., whether an unreserved category candidate, even though he has secured more marks than the last selected unreserved category candidate in the

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Mains Examination, has to be kept in his respective category. He further submitted that it is noteworthy that the marks of mains examination are counted while preparing the final select list as against the marks of a preliminary examination which are not to be added at the time of preparation of final select list.

**52.** In my view, the following questions arise for determination in the present case:

a. First, whether the unreserved category has to be filled up only on the basis of merit at every stage of examination, or whether it is permissible to prepare a category-wise list after the preliminary as well as Mains Examination.

b. Second, whether the reservation as provided by sub-section (6) of Section 3 of the Act of 1994 has to be applied at every stage of examination, or whether the same has to be applied only after the preparation of the final select list.

c. Third, whether the Office Memorandum dated 09.01.2020 issued by the UPPSC has any legal basis, and the Commission has the competence to issue such an Office Memorandum.

d. Fourth, whether the objection of the respondents that the petitioners, who were aware of the condition as given in the advertisement, are precluded from challenging the same after participation in the selection, i.e., the preliminary examination, without raising any question.

e. Fifth, whether the challenge to the select list made by the petitioners is hypothetical, as they had already failed in the preliminary examination and it cannot be said that they have secured more marks than the last selected general category candidate.

f. Sixth, whether the writ petition is maintainable without impleading the persons who have been declared selected in the Mains Examination, as their rights are likely to be prejudiced in case the writ petition is allowed.

g. Seventh, in the facts and circumstances of the case, what relief, if any, can be granted to the petitioners.

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**Question Nos. (a) and (b)**

**53.** Core question involved in the present writ petition as to the nature of unreserved category. According to the learned counsel for the petitioners, unreserved category means category open to all irrespective of the fact whether the applicant has applied under the reserve category i.e. reserved for Scheduled Castes, Scheduled Tribes, Other Backward Classes or any other reserved category.

**54.** Learned counsel for the petitioners has assailed the preparation of list after preliminary examination category-wise, treating the unreserved category to be a category reserved for applicants who have not claimed any reservation. It has also been submitted by learned counsel for the petitioners that at every stage of the examination, whether preliminary examination, mains examination, or interview stage, category-wise list has to be prepared, treating the unreserved category open for all and not treating the same as reserved for applicants who have not applied under any of the reserved category.

**55.** *Per contra,* learned counsel for appearing for the Commission and learned counsel appearing for the State-respondents, have submitted that in view of Section 3(6) of the Act of 1994, the reservation in case of various reserved categories has to be applied only at the time of final selection and not at any intermediate stage, such as preliminary examination, mains examination, or the interview stage.

**56.** The counsel for the Commission has relied upon Rule 33 of the Uttar Pradesh Public Service Commission (Procedure and Conduct of Business) Rules, 2011, and submitted that preliminary examination means a screening test conducted by the Commission with the purpose of finding out suitable candidates in the requisite number, as fixed by the Commission in each category, reserved and unreserved, for admission to the mains examination or interview, as the case may be. Marks obtained by the candidates in the preliminary examination/screening test are not counted for determining the final order of merit. Further, it has been submitted by learned counsel for the Commission that according to the

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rules framed by the Commission, preliminary examination is not part of the examination, as the same is only for the purpose of short-listing the candidates to appear in the mains examination and interview and it is only at the time of preparation of the final list, after completing the stage of mains examination and interview, in case any candidate belonging to reserved category who has not availed any relaxation has secured more marks than the marks obtained by a general category candidate, has to be placed in the unreserved category, and his candidature will be considered only under the unreserved category and will not be treated as a reserved category candidate.

**57.** It has also been submitted by learned counsel for the Commission that there is no element of selection in the preliminary examination and the same is conducted only for the purposes of short-listing the candidates to appear in the main examination. Rule of reservation cannot be applied at that stage.

**58.** Learned counsel appearing for the Commission submitted that category-wise preparation of list has been approved by the Supreme Court as well as this Court in various judgments, and it is only when the final result is prepared after completing the examination, i.e. mains examination and interview, overall merit list is declared, considering the merits of the candidates who have passed the mains examination as well as the interview, prior to this stage, the category-wise preparation of list, is approved by the courts in various judgments.

**59.** It has also been submitted by learned counsel appearing for the Commission that preliminary examinations are being held as per the Rules of 1986. Learned counsel for the Commission has relied upon Rule 3 of 1986 Rules and submitted that where a preliminary examination is held, only such candidates as qualified in the preliminary examination, will be entitled for mains examination or interview as the case may be. The marks obtained in the preliminary examination will not be counted for determining the final order of merit.

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**60.** Learned counsel for the petitioners reiterated their stand and submitted that it is incorrect to say that at the stage of preliminary examination, no selection is involved at all, merely because of marks of the preliminary examination are not added at the time of preparing the final result. It has further been submitted that at the time of preliminary examination, all the eligible candidates have to appear in a written test as prescribed by the Commission, and the candidates who have qualified the said examination are permitted to appear in the main examination. The selection in the preliminary examination is a gate pass to appear in the main examination, and as all the applicants have to qualify the preliminary examination for appearing in the written test conducted by the Commission, it cannot be said that there is no selection involved.

**61.** According to learned counsel for the petitioners, because of the Office Memorandum dated 09.01.2020 issued by the Uttar Pradesh Public Service Commission, any candidate belonging to a reserved category, who has not taken any relaxation in the eligibility criteria at any stage of examination, whether preliminary examination, mains Examination or interview, will only be entitled to be placed in the unreserved category, at the stage of final selection, in case such candidate has obtained marks more than the cut-off marks of the unreserved category, otherwise, such a candidate will be considered in his own respective category. Learned counsel further submitted that sub-section (6) of Section 3 of the Act of 1994 does not provide for such a condition and has also submitted that Office Memorandum dated 09.01.2020 has no statutory backing.

**62.** Before considering the rival submission as advanced, it would be appropriate to consider the fact that the normal rule for any competitive examination for selection to a particular post for which a competitive examination is held, is that any person who fulfils the eligibility condition as required by the service rules given in advertisement, is eligible to apply for the said post and appear in the competitive examination. Initially, this was the position and has continued for a long time. With the passage of time, when number of applicants became more

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and more, than the post advertised, it was not possible for the examining body to call all the candidates who have applied in pursuance to the advertisement as the same will require lot of energy and time for selecting suitable person among all the candidates having the eligibility criteria who have applied for the post.

**63.** For the first time, the Kothari Committee on Recruitment Policy and Selection Methods (1976), introduced the preliminary examination as a screening stage for the Civil Services Examination in India. The purpose for such preliminary examination was designed as a qualifying and screening filter to reduce the massive pool of applicants down to a manageable number of roughly 12 to 13 times the number of available vacancies before the Mains Examination. Marks obtained in the preliminary examination were not to be counted towards the candidate's final merit ranking, passing it only make candidate eligible for the Mains Examination. The three-stage structure recommended by the Committee, namely, preliminary/screening, descriptive mains examination and personality test/interview, was for the first time officially implemented by the Union Public Service Commission in Civil Services Examination in 1979. Similarly, in the State of U.P., the said concept was introduced by enacting the Uttar Pradesh Direct Recruitment through Public Service Commission Preliminary Examination Rules, 1986.

**64.** The Courts in India have also permitted the screening of candidates, who possess the eligibility criteria to find out more suitable candidates for the purpose of open competition in examination to be held. The Courts have recognised and permitted such screening by the examining body even in the absence of statutory provisions providing for the same. The only restriction imposed by the Court in this regard was that the criteria applied for screening must be reasonable, and the same has to be for the object to achieve for the purpose of selection.

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**65.** In the case of **B. Ramakichenin @ Balagandhi vs Union Of India And Others, (2008) 1 SCC 362**, the Hon'ble Supreme Court, in paragraph Nos. 16 and 17 has held as under:

> *"16. Even if there is no rule providing for shortlisting nor any mention of it in the advertisement calling for applications for the post, the selection body can resort to a shortlisting procedure if there are a large number of eligible candidates who apply and it is not possible for the authority to interview all of them. For example, if for one or two posts there are more than 1000 applications received from eligible candidates, it may not be possible to interview all of them. In this situation, the procedure of shortlisting can be resorted to by the selection body, even though there is no mention of shortlisting in the rules or in the advertisement.*
>
> *17. However, for valid shortlisting there have to be two requirements*
>
> *(i) it has to be on some rational and objective basis. For instance, if selection has to be done on some post for which the minimum essential requirement is a B.Sc. degree, and if there are a large number of eligible applicants, the selection body can resort to shortlisting by prescribing certain minimum marks in B.Sc. and only those who have got such marks may be called for the interview. This can be done even if the rule or advertisement does not mention only those who have the aforementioned minimum marks, will be considered or appointed on the post. Thus the procedure of shortlisting is only a practical via-media which has been followed by the courts in various decisions since otherwise there may be great difficulties for the selecting and appointing authorities as they may not be able to interview hundreds and thousands of eligible candidates;*
>
> *(ii) If a prescribed method of shortlisting has been mentioned in the rule or advertisement then that method alone has to be followed"*

**66.** In the case of **Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, (1994) 6 SCC 293,** the Hon'ble Supreme Court held that it need not be pointed out that this decision regarding short-listing the number of candidates who have applied for the post must be based not on any extraneous consideration, but only to aid and help the process of selection of the best candidates among the applicants for the post in question. This process of short-listing shall not amount to altering or substituting the eligibility criteria given in statutory rules or prospectus. In substance and reality, this process of short-listing is part of the process of selection. Once the applications are received and the Selection Board or the Commission applies its mind to evolve any rational and reasonable basis, on which the list of applicants should be short-listed, the process of selection commences. (paragraph No. 9 of the judgment).

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**67.** The main object of the screening test or preliminary examination was for the convenience of the examining body in conducting the examination, otherwise, all eligible persons having the requisite qualifications were entitled to appear in the examination but because of the large number of applicants, such screening tests were approved by the courts as well as the legislature for the convenience of the examining body.

**68.** Normally, the number of candidates to be called against the number of posts is to be determined by the examining body, and only thereafter, the number of persons, as determined by the examining body, are to be called on the basis of merit determined after the screening test to any other stage of examination. But it was realised by the legislature and the Courts that, while preparing such a list only on the basis of merit, it might be possible that a sufficient number of candidates belonging to the reserved category may not find place within the said list of persons prepared by the examining body in relation to total number of posts, only on the basis of merit. Therefore, the concept of preparation of category-wise lists was considered and approved by the Courts as well as by legislature and governments so that a sufficient number of persons belonging to the reserved category may also be available for the purpose of selection. This problem can be understood by taking a hypothetical example. Suppose 100 posts are advertised to be filled up, out of which 50 posts are under the unreserved category and the remaining 50 posts are for the reserved category, in proportion to the reservation applicable to the respective category. The examining body, for example, decides that 10 persons are to be called against one post, and therefore, as against 100 posts, 1,000 candidates have to be called for the next tier of examination. Normally, the top 1,000 candidates selected, on the basis of merit after screening, have to be called for the next tier of examination, irrespective of their category, whether reserved or unreserved. In such a situation, it was possible that, out of the 1,000 most meritorious candidates called by the examining body for the next tier of examination, the majority of candidates belonging to the unreserved category may

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come within the 1,000 candidates, and persons claiming reservation may not find a place in the said list of 1,000 persons. To avoid this situation, the concept of preparing category-wise lists was visualised so that adequate number of persons (in the ratio of 1:10) may be available under each reserved category, who may otherwise not find a place if the category-wise list is not prepared.

**69.** In certain States provision has been made for preparation of category wise list by legislature by providing the same in the statues or rules governing the conduct of examination. In certain cases provision has been made for providing the same by the governments by issuing Government Orders or Office Memorandum having force of law. Such power has been recognised by the Courts even in absence of any rule, government order etc.

**70.** In case of **Chattar Singh and others Vs. State of Rajasthan and others (1996) 11 SCC 742,** in paragraph No. 20, the Hon'ble Supreme Court has held as under:-

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

**71.** In the present case, there is no dispute as to the preparation of category-wise lists after each stage of the selection. The petitioners are only aggrieved by the fact that the respondents are treating the unreserved category as a separate category reserved for unreserved candidate while preparing the list for the unreserved category.

**72.** The argument advanced on behalf of the petitioners is that the 'general category', is not a category to which reservation applies, thus, against the non-reserved vacancies, the candidature of all persons, including persons belonging to the reserved categories, should be

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considered as per their merit, and then, only from amongst the remaining candidates, the reserved category-wise list should be prepared. The cut-off marks for the reserved categories should also be determined accordingly and after preparing the list of unreserved category list the other reserved category has to be prepared.

**73.** It is further contended by learned counsel for the petitioners that in the present case, the category-wise list has been prepared by the Commission with an assumption that 'general/ unreserved' vacancies form an independent vertical category and the issue which deserves to be determined is whether 'general/unreserved' vacancies, can be treated as an independent vertical category.'

**74.** The other issue which requires consideration of this Court is whether the grievance of the petitioners regarding proper implementation of the reservation for OBCs and other categories can be considered at the stage of preliminary examination. According to the learned counsel for the Commission, the result of the preliminary examination was declared category wise and in each category 15 times candidates of approximate actual number of existing vacancies are included, as such the apprehension for improper application of reservation to OBCs or even to any other category to which reservation applies is ill-founded. The question of proper application of the reservation policy shall be on scene only on preparation of list at the time of final selection.

**75.** As per Article 16 (4) of the Constitution of India, if the State makes any provision for reservation of appointments in favour of any backward class citizens, which in the opinion of the State are not adequately represented in the services under the State, that shall be a reasonable classification. The reservation as per Clause (4) of Article 16 of the Constitution of India, as a matter of fact, is a minimum relief extended by the Indian State to those sections of society who have historically and socially suffered the worst oppression over the centuries. It is constitutionally possible in India to discriminate in recruitment on

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the basis of castes or class to a reasonable extent, even by militating against merit. The merit, while making an effort to uplift the backward categories, must be seen in the context of achieving of real equalities of opportunities and social environment to ensure social justice. The reservation is an effort to provide real equality to depressed sections who have suffered discrimination in choice of occupation, social mobility and control over the means of production. If any interpretation of law is made, that adversely affect the aforesaid effort of the State, then that shall be against the will of the framers of the Constitution and also against the wishes of the legislature. In general, the statistics available shows that a thin stratum of Scheduled Castes and Scheduled Tribes have actually benefited from the reservation. The Other Backward Classes, who are mainly share-croppers, small tenants, poor presents or are in occupation, which are based on traditional caste hierarchy, also have reservation being socially and educationally backward. In the present matter, what appears is that the number of successful candidates of OBCs is quite high and their non-inclusion in "general category" despite merit is affecting cut off marks for the category of OBCs and also for "general category".

**76.** In the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **Indra Sawhney and Others Versus Union of India and Others; AIR 1993 SC 477**, it was propounded as below:-

> *"811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."*

**77.** In a later decision of the Hon'ble Supreme Court in the case of **R.K. Sabharwal and Others Versus State of Punjab and Others, (1995) 2 Supreme Court Cases 745** also, the same principle was reiterated. Since then, the aforesaid principle has been succinctly stated and has been affirmed and re-affirmed.

**78.** A three Judge Bench of the Hon'ble Supreme Court in the case of **Saurav Yadav and Others Versus State of Uttar Pradesh and Others,**

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**(2021) 4 Supreme Court Cases 542,** was dealing with an aspect of migration of reserve category candidate to Open category based on merit. The principle which was authoritatively pronounced was as below:-

> *"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 (Supra) and R. K. Sabharwal (Supra) the observations by the Constitution Bench of this Court in Shri V. V. Giri vs. D. Susi Dora and Others, AIR 1959 SC 1318, though in the context of election law, are quite noteworthy: (AIR p.p. 1326-27, para 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."*
>
> *x.....x.....x.....x.....x.....x.....x.....x*
>
> *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*

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> *coming from vertical reservation categories. Such view will be completely opposed to the long line of decisions of this Court.*
>
> *x.....x.....x.....x.....x.....x.....x.....x.....x*
>
> *61. The open category is not a 'quota', but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria v. Rajasthan Public Service Commission, (2007) 8 SCC 785, 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 UP, 2019 SCC OnLine All 2674 and the Madhya Pradesh High Court in State of M.P. v. Uday Sisode, 2019 SCC OnLine MP 5750, referred to in paras 24 & 25 of Lalit, J.' 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.*
> *x.....x.....x.....x.....x.....x.....x.....x.....x*
>
> *66. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him."*

**79.** The view in case of Saurav Yadav (supra) has been reiterated by the Hon'ble Supreme Court in case of **Sadhana Singh Dangi and others Vs. Pinki Asati; 2022 (12) SCC 401.** Paragraph Nos. 14, 23 and 24 of the judgment in case of Sadhana Singh Dangi (supra) is quoted as under:-

> *"14. 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.*
> *23. 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*

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*are more meritorious, they must be considered against the seats meant for unreserved candidates.*

*24. 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."*

**80.** In case of **Deependra Yadav and others Vs. State of Madhya Pradesh and others reported in 2024 SCC Online Supreme Court 724**, the Supreme Court was considering a case where the relevant service rule i.e. Rule 4 of Madhya Pradesh State Service Examination Rules, 2015 provided that on the basis of marks obtained in preliminary examination, candidates numbering 15 times of the vacancy as advertised will be declared successful for mains examination subject to the condition that candidates having secured minimum passing marks as may be specified by the Commission. The rule also provided firstly, a list of candidates of unreserved category shall be prepared. The said list will include candidates selected on the basis of common merit including reserved categories, who have not taken any advantage/ relaxation given to them and thereafter, separate select list for reserved category will be prepared and only thereafter a common list of successful candidates shall be published after the preparation of four lists, and examination result will be declared thereafter. During ongoing process of examination, Rule 4(3)(d)(III) was amended by the State of Madhya Pradesh and it was provided that on the basis of marks obtained in the preliminary examination, category wise candidates numbering fifteen times of the vacancies as advertised will be declared successful for the mains examination subject to the condition that candidates have secured minimum passing marks as may be specified my the Commission. Separate list of candidates i.e. unreserved scheduled castes, scheduled tribes, other backward classes and economically weaker section shall be prepared. Amended Rule 4(3)(d)(III) provided that adjustment and segregation of meritorious reserved category candidates with meritorious unreserved category candidates will be only at the stage of final selections and not at the time of preliminary/ mains examination. The

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amended provision was applied to ongoing selection process which led to filing of number of petitions in the High Court of Madhya Pradesh but subsequently amended Rule 4(3)(d)(III) was rescinded by the State and original position was restored. In matters filed because of amendment and subsequent thereto finally reached the Supreme Court in case Deependra Yadav (supra). In this background of fact, Supreme Court has held in paragraph Nos. 30 to 32 of the judgment as under:-

> *"30. We may also note that Rule 4(3)(d)(III) of the Rules of 2015 patently harmed the interests of the reservation category candidates, as even meritorious candidates from such categories, who had not availed any reservation benefit/relaxation, were to be treated as belonging to those reservation categories and they were not to be segregated with meritorious unreserved category candidates at the preliminary examination result stage. As a result, they continued to occupy the reservation category slots which would have otherwise gone to deserving reservation category candidates lower down in the merit list of that category, had they been included with meritorious unreserved category candidates on the strength of their marks.*
>
> *31.In Saurav Yadav and others v. State of U.P. and others , a 3-Judge Bench of this Court affirmed the principle that candidates belonging to any of the vertical reservation categories would be entitled to be selected in the 'open category' and if such candidates belonging to reservation 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 of vertical reservation that they belong to. It was further observed that reservations, both vertical and horizontal, are methods of ensuring representation in public services and these are not to be seen as rigid 'slots', where a candidate's merit, which otherwise entitles him to be shown in the open general category, is foreclosed. The Bench further observed that the 'open category' is open to all and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type was available to him or her.*
>
> *32. This being the settled legal position, it appears that the State of Madhya Pradesh itself realized the harm that it was doing to the reservation category candidates and chose to restore Rule 4, as it stood earlier, which enabled drawing up the result of the preliminary examination by segregating deserving meritorious reservation category candidates with meritorious unreserved category candidates at the preliminary examination stage itself. As this was the process that was undertaken after the judgment in Kishor Choudhary (supra), whereby a greater number of reservation category candidates cleared the preliminary examination and were held eligible to appear in the main examination, there can be no dispute with the legality and validity of such process."*

**81.** In case of **Ramnaresh @ Rinku Kushwah Vs. State of Madhya Pradesh and Others, 2024 INSC 611**, the Supreme Court has set aside

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the judgment passed by a High Court of Madhya Pradesh relating to admissions and has held in paragraph No. 16 as under:-

> *16. In view of the settled position of law as laid down by this Court in the case of Saurav Yadav (supra) and reiterated in the case of Sadhana Singh Dangi (supra), the methodology adopted by the respondents in compartmentalizing the different categories in the horizontal reservation and restricting the migration of the meritorious reserved category candidates to the unreserved seats is totally unsustainable. In view of the law laid down by this Court, the meritorious candidates belonging to SC/ST/OBC, who on their own merit, were entitled to be selected against the UR-GS quota, have been denied the seats against the open seats in the GS quota."*

**82.** Hon'ble Supreme Court in case of **Chaya and others Vs. State of Maharashtra and others and another; 2026 SCC OnLine SC 457** held in paragraph Nos. 32 and 33 as under:-

> *"32. The appellants who admittedly are more meritorious than the last selected candidate under the general category, cannot be excluded from consideration under the general category, in the absence of any express prohibition in the Recruitment Rules/notification. The relaxation in qualifying criteria only affects eligibility and not merit and migration is permissible in the absence of any prohibition. The decisions of this Court in Pradeep Kumar (supra), Union of India & Ors. v. Sajib Roy (supra) and Union of India v. G. Kiran & Ors. (supra) have no application to the obtaining factual matrix of these appeals, whereas, decisions of this Court in Jitendra Kumar Singh (supra) and Vikas Sankhala (supra) apply to the facts of these appeals. The appellants are entitled to migrate to general category.*
>
> *33. For the foregoing reasons, impugned judgment dated 14.02.2025, is quashed and set aside. The respondents shall include in the merit list, those appellants who have secured marks higher than the last selected candidate in the general category. "*

**83.** This Court in case of **State of U.P. and 2 others Vs. Aruna Chaudhary in Special Appeal No. 184 of 2022; 2026: AHC:215252-DB** in paragraph Nos. 24 and 25 has held as under:-

> *"24. Thus, if the correct principle in law as laid down by the Supreme Court in Saurabh Yadav (supra) had been applied at the relevant time, there is absolutely no doubt that most of the petitioners would have been declared successful at the selection and would have availed the opportunity to be appointed as Constables. Accordingly, the issue of delay is also answered against the State-appellant.*
>
> *25. As discussed above as to the correct law of principle there is no doubt, order of learned single judge assailed in Special Appeals is wholly correct. It calls for no serious consideration, on merits."*

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**84.** The law declared is that reservations are method of ensuring representation and not to be seen rigid "slots", where a candidate's merit, which otherwise entitles him/her to be shown in the Open/General category is foreclosed by confining candidate of a reserve category to his rigid "slots", even though, he is more meritorious, that would result in a communal reservation. This would negate merit. It has been reiterated as a settle principle laid down by the Hon'ble Supreme Court in the cases of Indra Sawhney and Others Versus Union of India and Others (Supra), R.K. Sabharwal and Others Versus State of Punjab and Others (Supra) and several decisions thereafter that the Open category is open to all, and only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type, i.e., Vertical or Horizontal, is available to her/him.

**85.** Reservation is a process by which a certain number of posts, or seats is carved out for stipulated categories such as SC/ST, OBC or any other category and further that unreserved seats do not constitute a reservation for candidates belonging to categories other than the reserved categories. An unreserved post or seat is one in which every individual irrespective of the category to which the person belongs can compete in open merit. The principle which is embodied in the recruitment rules applicable in any case that if a person belonging to any of the reserved category is selected on the basis of merit in open competition of the General candidate, he shall not be adjusted against the vacancies reserved for reserved categories, is not confined in its application only at the stage when the final merit list is to be drawn up as that would result in seriously absurd consequences.

**86.** An Open/General category is open to all and is not reserved only for General category candidates. A candidate belonging to a reserved category who obtains more marks than the General category candidate is entitled to be placed in the General category list while shortlisting the candidates for the second stage of examination. If a reserved category candidate, even though he has obtained more marks than the cut-off marks of the General category candidate, is excluded and ousted from

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the process of selection at the stage merely for the reason that he belongs to a reserved category, in my considered opinion, would be the worst form of discrimination, wholly impermissible under Articles 14 and 16 of the Constitution. The right of a candidate belonging to a reserved category, who has proved to be more meritorious to be placed in the Open category list, is not a rule of reservation, but a postulate of equality based on merit. Shortlisting the candidates category-wise in various reserved categories is intended to ensure selection of reserved category candidates and appointment against the posts reserved for them, even if, they are less meritorious, to advance the constitutional mandate enshrined under Article 16(4) of the Constitution of India.

**87.** In the case of **Janki Prasad Parimoo and Others Versus State of Jammu & Kashmir and Others, AIR 1973 Supreme Court 930,** it was observed: “It is implicit in the idea of reservation that a less meritorious person is to be preferred to another who is more meritorious.” However, that does not mean that a candidate belonging to a reserved category, even if, more meritorious than a General category candidate, has to remain in his own category, as that would result in discrimination neither constitutionally mandated nor permissible, having no nexus with the objective of reservation to the disadvantageous class of society.

**88.** From the facts of the present case and the stand of the Commission that a reserved category candidate obtaining more marks than a General category candidate will only be placed in the Open category at the time of preparation of the final select list and not before that, i.e., at the intermediate level of examination. On a pointed query being made by this Court to the counsel for the Commission as to whether the Commission is applying this procedure even at the stage of the Mains Examination, the marks of which are to be counted for the final select list, the answer of the counsel for the Commission was categorical that even at the stage of the Mains Examination, the category-wise list was prepared and it is only after the interview, when a combined merit list, i.e. merit list prepared after considering the marks

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obtained by a candidate in the Mains Examination plus interview, is prepared, and any candidate belonging to a reserved category is found to have obtained more marks than the last General category candidate, in such a situation, the said reserved category candidate will be placed in the Open category.

**89.** Thus, from the stand taken by the Commission, which is not being denied by the State, clearly shows that the respondents, while preparing the list category-wise, have treated the Open/General category as a category reserved exclusively for candidates belonging to the General/ unreserved category.

**90.** The objective of providing reservation to certain class, according to constitutional mandate enshrined under Article 16(4) of the Constitution of India, is to ensure that equality for unequal is secured by treating them equally through positive discrimination or affirmative action. Therefore, certain percentage of posts in public employment are reserved for various disadvantageous class as affirmative action. But where a reserved category candidate secures equal or higher merit, he cannot be denied equality of treatment merely on the basis that he belongs to a reserved category. Such a classification is not with the objective of providing reservation, but results in excluding a more meritorious reserved category candidate only for the reason that he belongs to a reserved category. Such a classification is neither intended to fulfill the objective of reservation, nor the rule of equality based on merit. Thus, the very foundation is unconstitutional. Though, the Articles 14 and 16 of the Constitution of India recognises the affirmative action by reserving certain percentage of posts in public employment to be reserved for various disadvantageous class, and while providing for an affirmative action, it may result in the exclusion of certain General category candidates because of this affirmative action, though they may be more meritorious than the candidates selected because of the affirmative action of the State, but the converse of the same is not correct or constitutionally mandated. An affirmative action cannot act as a prejudice to be disadvantageous to a class of persons, i.e. reserved class,

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thereby excluding a more meritorious reserved category candidate from being considered by preparing the list category-wise. An affirmative action can never be intended to apply adversely to the interests of reserved category candidates.

**91.** The exercise of preparing list of Open category candidates in the present case at the stage of preliminary examination as well as mains examination is violative of law laid down by the Hon'ble Supreme Court in the cases of **Indra Sawhney and Others Versus Union of India and Others (supra), R.K. Sabharwal and Others Versus State of Punjab and Others (supra) & Saurav Yadav and Others Versus State of Uttar Pradesh and Others (supra), Rajat Yadav Vs. State of Rajasthan (supra).**

**92.** So far as the contention of learned counsel for the respondents that since the Preliminary Examination is nothing but a screening test and the marks are not added at the final stage, therefore the list has to be prepared category-wise, is erroneous. The further contention of learned counsel for the respondents that there is no selection involved at the time of screening and, therefore, there is no question of applying reservation at that point of time, is also erroneous.

**93.** It is to be noted that under the present set of rules, as framed by the State of U.P., a written examination is conducted, known as the Preliminary Examination (screening test) as and when there are candidates more than fifteen times the number of posts. The marks obtained in the said Preliminary Examination are not to be counted for the purpose of main selection. However, at the screening test/Preliminary Examination level, *inter se* merit of candidates is prepared so as to assess how many candidates would be allowed to participate in the Mains Examination.

**94.** In my opinion, even though the marks in the screening test may not be part of the selection process, still there is an element of selection, as only those candidates who fall in the said list, can be allowed to participate in the Mains Examination and in case any more meritorious

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candidate belonging to a reserved category is left out because of this method of selection, the same cannot be justified for the reason that the Open category is open to all candidates, irrespective of whether they have claimed any reservation or not. Further, I have already noted that the normal rule was that all the applicants, who possess the minimum qualification as prescribed by in the Service Rules, are entitled to participate in the selection process. But since, in the later years, the number of applicants became so high then for the first time, the Kothari Committee conceived the concept of screening, which was applied by the Union Public Service Commission in the year 1979 by providing Preliminary Examination for the examinations conducted by the UPSC, which was later on extended in the State of U.P. by enacting the Rules of 1986, providing for a Preliminary Examination.

**95.** The concept of Preliminary Examination was a result of a larger number of candidates applying to the post, and it was found to be not feasible to call all the candidates for final selection. But this exercise was done for only one reason, i.e the convenience of the examining body, and so that more meritorious persons may be shortlisted at the screening level to appear in the final examination. But such an exercise cannot be done in a manner to prevent more meritorious reserved category candidate from participating in the next tier of examination, which will be nothing but an arbitrary exercise, violative of Articles 14 and 16 of the Constitution of India. Even for the screening/Preliminary Examination merit has to be the main criteria and the procedure cannot be such which may hamper the merit itself, excluding more meritorious candidates cannot be sustained.

**96.** In the present case, the Commission, in preparing the list category-wise, had treated the General/Open category as if it was a compartment reserved exclusively for general candidates. Had the list been prepared purely on the basis of merit across categories, several reserved category candidates (321 OBC and 43 SC in the present selection) would have displaced General category candidates, thereby preserving the constitutional principle of equality.

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**97.** In Indra Sawhney Vs. Union of India (supra) and R.K. Sabharwal Vs. State of Punjab (supra), it has been held by the Hon'ble Supreme Court that a reserved category candidate who secures equal or higher merit cannot be denied equality of treatment merely on account of his caste or community. Any such exclusion, would amount to rejecting a more meritorious candidate solely because of the category to which he belongs.

**98.** The Supreme Court, in the case of Saurav Yadav Vs. State of U.P. (supra) has clarified that the reservation, vertical or horizontal, secure representation but are not 'rigid slots'. The open category is open to all solely on merit, and to confine candidates within quotas would negate merit and amount to communal reservation. The same view has been reiterated by this Court in the case of **U.P. Power Corporation Ltd. & Another Versus Nitin Kumar and Others, 2015 Supreme Court Cases Online Allahabad 8611.**

**99.** In the case of **U.P. Power Corporation Ltd and Another Vs. Nitin Kumar and 9 Others (supra),** the Division Bench of this Court has held as under:-

> *"Section 3 (6) is a statutory recognition of the principle that if a candidate belonging to a reserved category is selected on the basis of merit in open competition with general candidates, such a candidate is to be adjusted not against the vacancies reserved for the reserved category to which the candidate belongs but against the unreserved seats. This proceeds on the foundation that where a candidate is meritorious enough to be placed within the zone of selected candidates independent of any claim of reservation and purely on the basis of the merit of the candidate, the candidate ought not to be relegated to a seat against the reserved category. The simple reason for this principle is that reservation is a process by which a certain number of posts or seats is carved out for stipulated categories such as OBC, Scheduled Castes and Scheduled Tribes. Unreserved seats do not constitute a reservation for candidates belonging to categories other than the reserved categories. An unreserved post or seat is one in which every individual irrespective of the category to which the person belongs can compete in open merit. Hence, the principle which is embodied in Section 3 (6) is not confined in its application only at the stage when the final select list is to be drawn up. If the submission of the appellants were to be accepted, that would result in seriously absurd consequences. As the learned Single Judge noted, in the present case itself, the petitioners who belong to the OBC category had in fact secured higher marks in the written test than the last short-listed candidate from the unreserved category. However, they were sought to be excluded from short-listing for the unreserved posts only on the ground that*

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*as a candidate who had declared himself or herself to be of a reserved category, that candidate would have to be excluded from shortlisting from the unreserved category even if on the basis of the position in merit, such a candidate would otherwise fall in the list of short-listed candidates in the open or unreserved category. Such a consequence would not be permissible in law..."*

**100.** So far as the contention of learned Senior Advocate appearing on behalf of the Commission as well as the State that, in case reserved category candidates, who have obtained more marks than the last selected unreserved category candidate are placed in the open category, as argued by the petitioners, would result in the benefit of migration being given more than once, i.e., first, at the stage of declaration of the result of the Preliminary Examination, thereafter, at the stage of the Mains Examination and, finally, at the stage after the Interview. Law regarding migration is well settled. Without any doubt, the rule of migration of a reserved category candidate (from the category to which he or she belongs) to the General Category is attracted at the stage of preparing the final merit list, after all tiers of examination have been successfully cleared, and not at any intermediate tier of the selection process, i.e. when the exercise of shortlisting of candidates within the respective categories is undertaken.

**101.** Learned counsel appearing for the Commission also contended, in case a reserved category candidate is permitted to be kept in open category on the basis of his merit at the Preliminary Examination/Screening and thereafter he or she fails in the open category at the second tier of examination, i.e., Mains Examination or at the time of Interview, then the same will be to his prejudice, as he or she will lose his character as a reserved category candidate. He also submitted that this will also result to the prejudice of reserved category candidates, who have competed within their category and, in case such candidate, who at the some other stage of examination is permitted to come back to his own category, being unsuccessful in the open category at the later stage of examination, will result in ouster of at least one or

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more candidates belonging to reserved category to which such candidate returns. Such an interpretation is not permissible and, therefore, the Commission has rightly applied the reservation/migration only at the final stage, as mandated by Section 3(6) of Act of 1994 as well as Office Memorandum dated 09.01.2020.

**102.** The contention of learned counsel for the respondent is misconceived and erroneous.

**103.** A reserved category candidate, howsoever meritorious he/she might be, in present times has to face stiff competition from other equally meritorious candidates having regard to dearth of jobs in our country. It is out of an anxiety to obtain an employment that such a reserved category candidate typically indicates the category to which he/she belongs for being considered for appointment on a reserved vacancy. Certainly, mere indication of one's reserved category in the application form does not automatically qualify the candidate for appointment on a reserved vacant post but only enables him/her to stake a claim amongst all reserved candidates based on the inter se merit position. Equally, for a deserving reserved category candidate to be appointed on an unreserved vacant post, it is merit and merit alone that must determine suitability. In other words, for the unreserved vacant posts, the inter se merit among all the competing candidates serves as the benchmark for appointment in public service.

**104.** The premise underlying the argument of potentially conferring 'multiple benefit' to the candidates of the reserved category proceeds on an erroneous assumption that a reserved category candidate is necessarily availing the benefit of reservation at more than one/every stage of a multi-tier process. It is entirely conceivable that a candidate belonging to a reserved category may, on his or her own merit, secure marks in the preliminary stage exceeding the cut-off for the unreserved category and may, likewise, on cumulative assessment, surpass the unreserved cut-off in the final stage as well. In such a situation, the reserved candidate does not draw upon the benefit of reservation at any

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stage and is entitled to be considered and appointed against an unreserved vacant post purely on merit. The apprehension of a 'multiple benefit', therefore, is misconceived, since the availability of reservation does not operate as a bar for a reserved category candidate from being considered on merit against the unreserved category, placement therein depending solely on merit demonstrably sufficient at the particular stage.

**105.** The Hon'ble Supreme Court in case of State of Rajasthan Vs. Rajat Yadav (supra) has considered the question of migration and its applicability. Paragraphs Nos. 58 to 72 are quoted as under:-

> *"58. We begin our observations, analysis and ruling on migration by refreshing our memory with certain well-established principles in relation to affirmative action under our Constitution. It is well-settled that the concept of 'equality before law' ingrained in Article 14 of the Constitution of India contemplates, inter alia, elimination of inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people and is aimed at securing the educational and economic interests of the weaker sections of the society and to protect them from social injustice and exploitation. The equal protection clause urges affirmative action for those who are placed unequally. Affirmative action is also recognised by Article 16. Then again, Article 335 thereof provides for special consideration in the matter of claims of the Scheduled Castes/Scheduled Tribes for public employment. The entire field of law relating to affirmative action is so well occupied by authoritative decisions that we consider it unnecessary to burden this judgment by referring to the same. What particularly concerns us in these appeals is not a sterile invocation of formal legal equality, but an assessment of the real-world consequences flowing from the principle of equality. The focus, therefore, must be on outcomes as much as on rules.*
>
> *59. Indra Sawhney (supra) explained the principles of reservation. Hon'ble B.P. Jeevan Reddy, J. (as His Lordship then was) declared, inter alia, that where a vertical reservation is made in favour of a backward class, the candidates in this category may compete for open or general category and that if they are appointed on merit in the open or general category, their number will not be counted against the backward class category and, as such, it cannot be considered that the vertical reservations have been filled up to the extent candidates of this category have migrated to the open category on merit.*
>
> *60. In Saurav Yadav (supra), Hon'ble S. Ravindra Bhat, J. in His Lordship's supplementing opinion outlined the features of vertical and horizontal reservation as follows:*
>
> > *59. The features of vertical reservations are:*
> >
> > *59.1. They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the social category concerned only (SC/ST/OBC). 59.2. Mobility ("migration") from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance.*

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> *59.3. In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in rank.*
>
> *59.4. If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be "carried forward" or dealt with appropriately by rules.*
>
> *60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are "interlocking" reservations49. As a sequel, they are to be calculated concurrently and along with the inviolate "vertical" (or "social") reservation quotas, by application of the various steps laid out with clarity in para 21.3 of Lalit, J.'s judgment. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation.*
>
> *61. The open category is not a "quota", but rather available to all women and men alike. ...".*

*61. The above observations were followed by His Lordship's observation, found almost at the end of the opinion, that the "open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.". The same have a profound meaning, and needs to be translated into action without being unnecessarily bothered by a term like 'migration'.*

*62. Drawing inspiration from the guiding light provided by Indra Sawhney (supra) and Saurav Yadav (supra), we hold that the word 'open' connotes nothing but 'open', meaning thereby that vacant posts which are sought to be filled by earmarking it as 'open' do not fall in any category. One does find categories like 'open' or 'unreserved' or 'general' being widely used in course of recruitment drives but they are meant to signify the open/unreserved vacant posts on which any suitable candidate can be appointed, regardless of the caste/tribe/class/gender of such candidate. For all intents and purposes, the vacancies on posts which are notified/advertised as open or unreserved or general, as the terms suggest, are not reserved for any caste/tribe/class/gender and are, thus, open to all notwithstanding that a cross-section of society can also compete for appointment on vacant posts which are 'reserved' – vertical or horizontal – as mentioned in the notification/advertisement.*

*63. Now, turning to the dictionary meaning of the word 'migration', what we find is that the same typically refers to the act of moving from one place to another, often involving a change of residence or location. This can apply to various contexts like human migration, animal migration, data migration, etc. In general, migration involves a change of location, often with the intention of settling or establishing a new presence in the new location.*

*64. In the context of reservation in public employment, the word 'migration' refers to a candidate claiming benefits or entitlements. The word is used in, at least, two scenarios.*

*65. Scenario 1 is "Inter-State Reservation Migration" envisaging a portability of reservation benefits. Since we are not concerned with a*

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*scenario 1 case, we make no observation except noting two decisions of this Court. The first is Action Committee v. Union of India where it has been held by a Constitution Bench that a person belonging to Scheduled Caste/Scheduled Tribe in relation to his original State, of which he is a permanent or ordinary resident, cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education, etc. The second is Uttar Pradesh Public Service Commission v. Sanjay Kumar Singh holding that if a person certified as Scheduled Caste/Scheduled Tribe in one State migrates to another State, then he would not be entitled to the benefit available to Scheduled Caste/Scheduled Tribe in the State to which he has migrated unless he belongs to the Scheduled Caste/Scheduled Tribe in that State.*

*66. Scenario 2, with which we are concerned, occurs when there is a "Merit Induced Shift". Although this shift is largely referred to as migration, we find in Saurav Yadav (supra) Hon'ble Ravindra Bhat, J. explaining the term as adjustment of a reserve category candidate in the unreserved category based on his/her merit.*

*67. Here, we do not see reason to agree with Mr. Gupta that any shift or adjustment, or even migration as he contends, as such is required where a candidate, who is also otherwise entitled to compete and be selected for a reserved vacant post, happens to outscore, outperform and outshine not only reserved candidates but also general candidates and figures at the top of the list of successful candidates prepared after a qualifying/preliminary examination (for screening/shortlisting) solely by dint of the marks secured by him/her in such examination (without availing any concession/relaxation) thereby entitling him/her to participate in the second tier of a further suitability test. Such a meritorious candidate, notwithstanding that he/she belongs to a reserved category, be it Scheduled Caste or Scheduled Tribe or Other Backward Class, must of necessity (arising out of the concept of equality before law and equal protection of the laws in Article 14, and extended to Article 16 in matters of public employment) be treated as a candidate who has competed for the 'unreserved' category and not the 'reserved' category, thereby obviating the need for any 'migration' or, so to say, shift or adjustment.*

*68. In a two-tier process, as in the present case, we wish to illustrate how, generally, the exercise of screening/short-listing of candidates (belonging to General/Open, Scheduled Caste or Scheduled Tribe or Other Backward Class, etc., categories) with five times the number of vacancies in each category, who would literally be gaining the 'pass' to reach the second tier to participate in the typewriting test on computer can be conducted without complaints of unfairness and non- transparency in the process. Say, 100 vacancies in the General/Open category are notified and a similar number for the reserved categories is also notified. Five times the number of vacancies would mean not more than 500 candidates can be screened/shortlisted for the General/Open category. At the outset, based on the performance of the candidates who take the written test, the recruiting authority has to screen/short-list the candidates to be included in the General/Open category and subsequently for reserved categories. Judicial notice can be taken that this exercise is often facilitated by preparing a broad- sheet, also called a short-list, containing names of all the candidates (who acquit themselves successfully in the written test). For the preparation of the short-list for the General/Open category, candidates are first arranged strictly in descending order of merit and, thereafter, candidates falling short of the cut-off for such category figure in descending order of merit according to their respective reservation category in separate short-lists. If any candidate, say 'C', being the member of a Scheduled Caste or Scheduled Tribe or Other Backward Class, outscores the candidates not*

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*belonging to any reserved category in the written test, he/she shall be included in the short-list for the General/Open category. At this stage, there is no question of any migration; merit is the only criterion amongst all candidates who have to be seen as belonging to General/Open category. Once 'C' gains the 'pass' for the second-tier process and qualifies in the typewriting test on computer obtaining marks in excess of the requisite marks, his/her marks obtained in such test would be required to be added to the marks obtained in the written test. Once again, a broad-sheet has to be prepared based on cumulative scores containing names of all the candidates in order of highest to lowest marks with the more meritorious candidates, obviously, figuring at the top. Preparation of this broad-sheet is a handy tool for drawing up the final merit list of candidates. From the broad-sheet, names of candidates drawn up in order of merit with candidates ranked according to their marks in descending order, commonly called the Combined Merit List, ought to reflect where each one of the aspiring candidates stand on merit. If 'C' figures within the first 100 candidates in order of merit, i.e., the number of vacant posts for the General/Open category, he/she shall be counted as a General/Open candidate for the purpose of appointment. Here too, there is no question of migration for the reason we have already indicated above, i.e., merit being the only criterion and not caste/tribe/gender, etc. If 'C' does not figure in the first 100 candidates and whilst preparing the merit list of reserved category candidates it is found that he/she figures within the specified number of vacancies in the reserved category to which he/she belongs and which can be filled up by appointing him/her, he/she ought to be counted as a candidate of such reserved category for appointment. If'C' fails to figure in the merit list for the reserved category list as well, question of his/her appointment would not arise.*

*69. We, however, sound a note of caution that our observations above are relatable to the selection process of the kind under consideration. It has not been shown with reference to the recruitment rules that the same ordain otherwise. If, at all, the recruitment rules governing any selection process ordain otherwise than what is observed above, obviously the recruitment rules would have precedence subject to the condition that such rule passes the test of constitutionality.*

*70. Reverting to the appeals under consideration, we see no reason to say that there has been a 'migration', in the sense of either an adjustment or a shift being made. At the time of screening/short-listing of candidates based on their performance in the qualifying examination and even thereafter, initially all the aspiring candidates including the reserved candidates should be seen as General/Open candidates. If such a candidate, notwithstanding that he/she belongs to a reserved category maintains excellence in standard even in the second tier of examination (typewriting test, in this case), he/she would cease to be treated as a candidate belonging to any category and entitled to treatment as a candidate seeking appointment on a vacant post which is categorised as General/Open. Should there be a decline in performance in the second tier test pushing out the candidate from the zone of consideration for appointment on posts which are open or unreserved or general but not beyond the zone for the reserved vacant posts, it is necessary to regard him/her as a candidate belonging to the reserved category to which he/she belongs, thereby paving the way for him/her to stake a claim for consideration for appointment on an appropriate reserved vacant post.*

*71. In the milieu of facts, none of the petitioning candidates has been shown to have availed of any concession/relaxation. No law – either rule or executive instruction – has been shown which prevented the High Court from treating the reserved candidates as General/Open candidates once it*

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*transpired that they outshone the latter. Question of any migration or deriving twin benefits of migration did not and could not arise in the circumstances.*

*72. If we accept the proposition advanced by the appellants, it would not only have a detrimental impact on candidates from the disadvantaged sections but also erode the principles enshrined in the Constitution."*

**106.** In case where the examinations are held for various cadre or post, it might be possible that at the stage of final preparation of list, a reserved category candidate who has secured a position in the open category because of merit may be placed in a disadvantageous situation, because of his position in the general category list, he might be offered a cadre or service not of his choice, and a person belonging to reserved category, because being placed at a higher position of reserved category, might get a better post or service. In such a situation, a reserved category candidate, who is placed in unreserved category might opt to revert back to his reserved category in order to claim better service, which may result in displacement of reserved category candidate to be out of list, and similarly, because of this shift, one unreserved category candidate, purely on the basis of merit, may get included in unreserved category. Such a shift may be termed as migration and has been recognized and upheld by Supreme Court in case of **Alok Kumar Pandit Vs. State of Assam and others, (2012) 13 SCC 516.**

**107.** In a single cadre examination, there is no question of any migration or merit-induced shift in case category-wise list of unreserved category is prepared solely on the basis of merit, irrespective of the fact whether the person has claimed any reservation or not, because an unreserved category cannot be classified as a category reserved for unreserved category candidates to oust the entry of reserved category candidates even at any stage of examination, whether preliminary, mains or final.

**108.** The inclusion of reserved category candidate in open category list at the time of short-listing cannot be equated with 'migration', for no benefit or concession is availed. Such placement is purely merit-based

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and, therefore, stands on a plane distinct from the concept of 'migration' as submitted by counsel for the respondents.

**109.** In case of **Rajat Maurya and 41 others Vs. State of U.P. and 6 others (Writ A No. 8788 of 2025) decided on 25.09.2025** along with connected writ petition, learned Single Judge of this Court has held in paragraph Nos. 40, 43, 44, 49, 51, 52 of the judgment as under:-

> *"40. Having heard learned counsel for the respective parties and having perused the records, in long and short of it, the issue I find to be arising is, how to prepare a list of 'suitable candidates' of unreserved category in preliminary examination/ screening test to make them qualify for final examination.*
>
> *43. With the above perspective in mind as to the legal position regarding reserved category marching to the unreserved category for the purposes of final selection on merit, I proceed to examine the issue. It is true that judgment in the case of Deependra Yadav (supra) was considering the relevant rules framed by the State Government of Madhya Pradesh, the subsequent amendments made therein and then withdrawal of amendment restoring the previous unamended rule and further that, judgment in the case of Kishore Choudhary (supra) by Madhya Pradesh High court was contradicted to in another judgment of the bench of same strength of the said High Court in the case of Pushpendra Kumar Patel, but still relying upon the judgment in Deependra Yadav's case, to hold that preparation of list of unreserved category would include reserved category candidates as well if they score at par with general category in efficiency test, another division bench presided over by the then Chief Justice Vide paragraph 10 in the matter of Anushuchit Jati, Evam Jan Jati Adhikari Karmchari Sangh (AJJAKS) v. M.P. High Court of Madhya Pradesh and Others, decided on 21st November, 2024 held thus:*
>
> *"In view of the above, we direct that henceforth in all future recruitment exams conducted by Examination Cell of High Court of Madhya Pradesh benefit of migration shall be extended to meritorious reserved category candidates in unreserved category in all the stages of selection process. It is however clarified that ongoing recruitment examination conducted by the Examination Cell wherein examination (preliminary or mains as the case may be) has already been conducted shall not be affected by this order."*
>
> *44. Nothing has been placed before me to even infer that this above judgment was further appealed against before the Supreme Court. In so far as the judgment of Punjab and Haryana High Court in the matter of Haryana Public Service Commission v. Parmila and Another (supra) is concerned, the said judgment of course, has been stayed by Supreme Court but this interim order cannot be taken to have watered down or in any manner diluted the legal position emerging out from the judgment in the case of Deependra Yadav on principle of stare decisis.*
>
> *49. In my considered view whoever performs better/equal to a candidate of unreserved category would automatically fall in unreserved category, it being open to all as has been held in Saurav Yadav (supra), an earlier decision of Supreme Court to Deependra Yadav. There cannot be a bar to entry of such candidates even while holding preliminary examination/screening test. The open category means open and when it comes to be a matter of adequate representation qua reserved category candidates, if a reserved category*

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*candidates matching cut off marks of candidates of unreserved category candidate, are permitted to march to the unreserved category, then it will be more a case of level playing field to invite all equals to participate in open competition. One must not forget that equality before law and equal protection of laws means "likes to be treated alike" and hence whoever competes with the candidates of open category and falls within the cutoff of that category as may be prescribed, would constitute a class for limited purposes to from suitable candidates' group within the meaning of Article 14 of the Constitution. Confining such a candidate to the reserved category only for the reason that list has been published category-wise, would definitely amount to discrimination.*

*51. However, I may hasten to add here that there is no rule framed as such in the State of U.P. for preparation of result by the selecting body by drawing list of unreserved category first bringing within its hold those reserved category candidates who have attained marks matching or above unreserved category candidates but it is a matter of interpretation of existing circulars and memorandum and the conditions given under advertisement, in consonance with principle and object behind reservation and of course, in the light of common law through judgments that have made this above principle of preparation list of suitable candidates permissible even in preliminary examination.*

*52. In view of above, all these petitions succeed and are allowed to the extent that respondent U.P. Public Service Commission shall re-draw the merit list of the preliminary examination result of suitable candidates to qualify for next stage of final examination for the purposes of selection and appointment against vacancies advertised vide advertisement No. A-3/E-1/2024 dated 10.4.2024 and thereafter only Commission shall be holding main examination on the basis of such revised preliminary examination result."*

**110.** Considering the law as laid down by Hon'ble Supreme Court in State of Rajasthan Vs. Rajat Yadav (supra) and this Court in Rajat Maurya (supra), I am of the opinion that while preparing the list category-wise, a uniform standard has to be applied at every stage of examination, meaning thereby, firstly, open category list has to be prepared in requisite number as decided by the examining body only on the basis of merit, and the said list will include all the persons, who are on the top of the merit, irrespective of the fact whether they have claimed reservation or not. Only after preparation of list of unreserved category candidates, a list of reserved category candidates i.e. OBC, SC, ST or any other category, has to be made. This exercise has to be followed at every stage of examination, whether it is mains examination or a list prepared after interview. In case such process is adopted, there is no question of migration of any candidate belonging to reserved

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category to another category, especially in case of examinations relating to single cadre.

**111.** Learned Counsel for the Commission vehemently submitted that in paragraph No. 69 of the judgment in the case of State of Rajasthan versus Rajat Yadav (supra), the Supreme Court has cautioned the Courts that if the recruitment rules governing any selection process ordain otherwise than what is observed above, obviously, the recruitment rules would have precedence, subject to the condition that such rule passes the test of constitutionality. In the facts of the present case, neither Act of 1994 nor service rules i.e. Rules, 1991 nor the Rules or Government Orders framed by State of U.P. do provide otherwise what has been held by the Supreme Court.

**112.** Further, there cannot be an interpretation of unreserved/open category that the same has to be interpreted differently at different stages of examination for the selection of post of one examination, i.e., at the stage of Preliminary Examination and Mains Examination the open category will be filled up only by the candidates, who have not claimed reservation, but at the stage of final, the open category will include the meritorious reserved category candidates also. Such an interpretation is not permissible. A category will remain a category throughout the selection, and it cannot be held that at first two tiers of examination, the open category is a category reserved only for unreserved candidates, but at the final stage of selection, the open category will be a category open to all.

**113.** In the present case, the stand of the State as well as Commission that at the stage of Preliminary Examination as well as at the Mains Examination, the category-wise list has been prepared treating open category to be a category reserved for unreserved categories, and only at the stage of final selection the migration will be permitted, meaning thereby at the final selection, an open category list will be prepared only on the basis of merit, irrespective of the fact whether any candidate has taken reservation or not.

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**114.** Learned counsel for the petitioners relied upon judgment of Punjab and Haryana High Court in case of **Haryana Public Service Commission Vs. Parmila and others, LPA No. 329 of 2024 decided on 09.04.2024** wherein the Division Bench of Punjab and Haryana High Court in paragraph Nos. 30 and 31 of the judgment has held as under:-

> *"30. In our opinion, such could not have been the view of the law makers. While obtaining marks in the screening test may not be part of the selection process, still there is an element of selection as only those candidates, who fall in the said list, can be allowed to participate in the main examination. In our opinion, therefore, the view taken by the Apex Court in Chattar Singh's case (supra), cannot be said to lay down good law in light of the law as laid down in Saurav Yadav's case (supra). We, therefore, find that the judgment passed by the learned Single Judge holding the writ petitioner entitled for consideration of participation in the main examination on the basis of her marks higher than the candidates, who did not belong to reserved category, cannot be said to be unjustified. The writ petitioner would, therefore, be entitled to participate in the main examination and the respondents would be required to prepare a fresh merit list at the stage of screening test, firstly of Open Category by counting the marks of all the candidates, be it of reserved category or non-reserved category. This list would be of four times the number of open category posts. The other lists of reserved categories would thereafter follow on the basis of their marks in the screening test. The aforesaid exercise may, of course, result in higher number of reserved category candidates being called to participate in the main examination i.e. Special Knowledge Test but such factual aspect is logical and in consonance with the Constitution Bench Judgment in R. K. Sabharwal vs State of Punjab 1995 (2) SCC 745, wherein it was held as under:-*
>
> *"5. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non- reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation... ..... ..... ..... Despite any number of appointment/ promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition....."*
>
> *31. In view of the above discussions and directions, the appeal is dismissed. The judgment passed by the learned Single Judge is modified, and the results of candidates at the screening test level shall be prepared in accordance with the above directions. The Subject Knowledge Test shall be conducted accordingly where too the lists would be prepared in accordance with the observations made hereinabove"*

**115.** Learned counsel for the respondents submitted that in an appeal filed by the Haryana Public Service Commission against the judgment in case of Haryana Public Service Commission Vs. Parmila (supra), Special Leave Petition No. 24552 of 2025, the judgment passed by Punjab and Haryana High Court has been stayed.

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**116.** Learned counsel for the respondents relied upon the judgment of the Rajasthan High Court in case of **State Of Rajasthan and anothers vs Hanuman Jat &Ors ; 2016 SCC Online Raj 1942** and several other judgments such as **Sunita Meena Vs. Rajasthan High Court, Jodhpur and anothers; 2022 SCC Online Raj 3224, Khushi Ram Gurjar Vs. Rajasthan High Court, Jodhpur and another; 2021 SCC Online Raj 1674, Rajasthan Public Service Commission Vs. Megha Sharma and others; 2020 SCC OnLine Raj 385, Dharamveer Tholia Vs. State of Rajasthan; 2000 SCC Online Raj 680, Mahesh Kumar and others Vs. State of Chattisgarh; 2025 SCC Online Chh 4800, Pushpendra Kumar Patel Vs. M.P. High Court and others; 2023 SCC Online MP 12, Avinash Yadav Vs. Haryana Public Service Commission and another, 2024:PHHC: 038811: DB** to contend that in all these cases, Rajasthan High Court, Punjab and Haryana High Court and Chattisgarh High Court have taken a view that the accommodation of reserved category candidates in the open category is constitutionally mandated only when the final merit list for the purpose of making appointment is prepared and not at the screening stage.

**117.** The common thread of reasoning in all above decision is that the claim of reserved category candidate to be accommodated in the open category on the basis of marks obtained at preliminary examination stage, is not tenable in law as the marks secured are not added for the purpose of preparation of final merit list and that preparation of category wise list after preliminary examination is essential to ensure participation of the candidates belonging to reserved category in the mains examination. In all these cases cited by learned counsel for the respondent, Courts have not considered the question as to the nature of unreserved seats and also that unreserved seats are whether to be reserved for candidates not claiming reservation or to be filled only on the basis of merits. In my considered view, the judgments cited by learned counsel for the respondents are of no help to the respondents. Addition or non addition of marks of preliminary examination is of no consequence. In State of U.P., Act of 1994 does not provide for the same or direct otherwise.

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**118.** Learned counsel for the petitioners submitted that in case of State of Rajasthan Vs. Hanuman Jat (supra), the Hon'ble Supreme Court on an appeal filed by the petitioners, who were reserved category candidates and were excluded for being considered for the mains examination though they have secured more marks in the preliminary examination than the last selected general category candidate, has permitted the appellants/ petitioners to appear in the final examination without prejudice to the rights of the parties and the various question of law arising in appeal.

**119.** It has also been submitted by learned counsel for the petitioners that in an appeal arising from the judgment in case of Pushpendra Kumar Patel Vs. M.P. High Court (supra), the Supreme Court though dismissed the special leave petition as infructuous but has left the question of law open.

**120.** Learned counsel for the respondents relied upon judgment of this Court in case of **Abhishek Kumar Yadav and 14 others Vs. State of U.P. Thru. Prin. Secy. (Personnel), Lko. and 2 others (Writ A No. 217 of 2026); Neutral Citation No. - 2026:AHC-LKO:65545** wherein the writ petitioners have claimed that they may be permitted to appear in main written examination for the post of Combined State/ Upper Subordinate Services (PCS) Examination, 2025 and Conservator of Forest (A.C.F.)/ Range Forest Officer (R.F.O.) of U.P. Public Service Commission in pursuance to Advertisement No. A-7/E-1/2-2-5 this Court has held in paragraph No. 8 as under and dismissed the writ petition:-

> *"8. I have considered the submissions of learned counsel for the parties and gone through the contents of the petitions, judgments cited by both the parties and Rules relied upon by learned counsel for the parties as well as other relevant materials.*
> *8.1. Evidently, in the present case, shortlisting of the candidates in the ratio of 1:15 in each category, had been conducted in the preliminary examination held against the Advertisement dated 20.02.2025. The sole controversy before this Court in the present case, is that 'whether the candidates belonging to reserved category, who obtained more marks than the cut-off marks of unreserved category, can be migrated to the unreserved category for the next stage of the selection in question, or not?'*
> *8.2. Hon'ble Supreme Court, in the case of Chaya and Others etc. (supra), has categorically held that migration at the qualifying examination stage, is*

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*permissible only if the recruitment Rules or the Notification so provide. It is evident from the record that the preliminary examination conducted by the Commission in the selection in question, is in consonance with the Rules, 1986, which clearly provide that the preliminary examination is conducted only for the purpose of selecting suitable candidates for the next phase of recruitment process. It is further evident that the preliminary examination is the qualifying examination for admission to the mains examination. Further, Rule 3(3) of the Rules, 1986 categorically provides that the marks obtained in the preliminary examination will not be counted for determining the final orders of merit. Moreover, Section 3(6) of the Act, 1994 provides that if a person, belonging to any of the reserved category, is finally selected on the basis of merit in an open competition along with the general category candidates, such person shall be migrated to the Unreserved category. Therefore, Section 3(6) of the Act, 1994 will not apply in the present case, at this stage.*

*8.3. The judgment relied upon by learned counsel for the petitioners in the case of Bhawna Yadav (supra) is not applicable in the present case for the reason that the said case is entirely different to the present case, as the same is based on the Screening Rules, 2025, which provide that it shall apply to all the recruitment made directly by selection through Commission either on the basis of Screening examination and interview. Rule 3 (f) defines the 'Screening Examination' as screening test to be conducted by the Commission with the purpose of finding out suitable candidates for admission to the interview. 'Suitable candidates' is defined in Rule 3(h) as the candidate securing minimum number of marks as fixed by Commission at Screening Examination thereby enabling him to appear in the interview, as the case may be.*

*8.4. Moreover, the advertisement in question is based on the Resolution of the Commission dated 09.01.2020 as well as the provisions of the Rules, 1986. Even if, the submission of learned counsel for the petitioners is accepted and the candidates belonging to reserved category, who obtained more marks than the cut-off marks of the Unreserved category, are permitted to be migrated to open category for the next stage of examination, then as has been held in various decisions by Hon'ble Supreme Court, they will not be given the benefit of reservation in further stage of examination/interview. This prayer of the petitioners may, at the first instance, seems to them beneficiary for appearing in the Mains written examination for the selection in question, but this step of the Commission, if compelled to be taken, will debar the public at large in claiming reservation in all the stages of the examinations to be held in future for different posts."*

**121.** In case of Abhishek Kumar Yadav (supra), this Court has considered the judgment of Supreme Court in case of Chaya and Others etc. (supra), and has held in paragraph No. 8.2 of the judgment that migration at the qualifying examination stage, is permissible only if the recruitment Rules or the Notification so provide. It is evident from the record that the preliminary examination conducted by the Commission in the selection in question, is in consonance with the Rules of 1986, which clearly provide that the preliminary examination is conducted only for the purpose of selecting suitable candidates for the next phase of recruitment

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process. It is further evident that the preliminary examination is the qualifying examination for admission to the mains examination. Further, Rule 3(3) of the Rules, 1986 categorically provides that the marks obtained in the preliminary examination will not be counted for determining the final orders of merit. Moreover, Section 3(6) of the Act of 1994 provides that if a person, belonging to any of the reserved category, is finally selected on the basis of merit in an open competition along with the general category candidates, such person shall be migrated to the Unreserved category. Therefore, Section 3(6) of the Act of 1994 will not apply in the present case, at this stage.

**122.** With profound respect, I am unable to persuade myself with the law laid down by this Court in case of Abhishek Kumar Yadav (supra) for the reason that in case of Chaya and Others etc. (supra), the Supreme Court has held otherwise. In paragraph No. 32 of Chaya and Others etc. (supra), already quoted above, it has been held by the Supreme Court that appellants who admittedly are more meritorious than the last selected candidate under the general category, cannot be excluded from consideration under the general category, in the absence of any express prohibition in the Recruitment Rules/notification. The relaxation in qualifying criteria only affects eligibility and not merit and migration is permissible in the absence of any prohibition.

**123.** Thus, the Supreme Court was of the view that merit induced shifting or migration, whatsoever name may be given, is permitted in case a person belonging to reserved category obtains more marks than the general category unless the same is prohibited by the statute or rules applicable in the case and not otherwise as held by this Court that migration is only permitted if the recruitment rules or notification so provide.

**124.** While considering this question, as to whether more meritorious reserved category candidate can be shifted to unreserved category at the preliminary examination stage, this Court in case of Rajat Maurya (supra) held that "In my considered view whoever performs better/equal

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to a candidate of unreserved category would automatically fall in unreserved category, it being open to all as has been held in Saurav Yadav (supra), an earlier decision of Supreme Court to Deependra Yadav. There cannot be a bar to entry of such candidates even while holding preliminary examination/screening test. The open category means open and when it comes to be a matter of adequate representation qua reserved category candidates, if a reserved category candidates matching cut off marks of candidates of unreserved category candidate, are permitted to march to the unreserved category, then it will be more a case of level playing field to invite all equals to participate in open competition. One must not forget that equality before law and equal protection of laws means "likes to be treated alike" and hence whoever competes with the candidates of open category and falls within the cutoff of that category as may be prescribed, would constitute a class for limited purposes to from suitable candidates group within the meaning of Article 14 of the Constitution. Confining such a candidate to the reserved category only for the reason that list has been published category-wise, would definitely amount to discrimination."

**125.** I have also pointed out, as has been pointed out by this Court in the case of Rajat Maurya (supra), that no Rule or Government Order was produced before me prohibiting such merit-induced shift at the time of preliminary examination or mains examination.

**126.** It appears that authoritative pronouncement of this Court in case of Rajat Maurya (supra) was not brought to the knowledge of this Court while deciding Abhishek Kumar Yadav (supra). In view of the discussions made above, I am unable to persuade myself to follow the dictum in case of Abhishek Kumar Yadav (supra).

**127.** Learned counsel for the respondents also relied upon the judgment in the case of **Pankaj Verma and 2 Others Vs. State of U.P. and Another, Special Appeal No. 763 of 2026, decided on 24.06.2026, Neutral Citation No. 2026:AHC: 128845-DB**, in an appeal which was filed against the order dated 18.06.2026 passed by this Court in this writ

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petition, to contend that in Special Appeal, this Court has held that Section 3(6) of the Act of 1994 employs the expression “selected on the basis of merit”. Prima facie, the provision appears to operate at the stage of final selection rather than at any intermediate screening stage intended merely to shortlist candidates for the next phase of the recruitment process.

**128.** I have perused the judgment of the Division Bench in the case of Pankaj Verma (supra). In paragraph Nos. 19 and 21, the Division Bench has held as under:

> *“19. Even otherwise, and without expressing any concluded opinion on the merits of the controversy pending before the learned Single Judge, we find that the submission advanced on behalf of the Commission cannot be said to be devoid of substance. Section 3(6) of the Act of 1994 employs the expression "selected on the basis of merit". Prima facie, the provision appears to operate at the stage of final selection rather than at an intermediate screening stage intended merely to shortlist candidates for the next phase of the recruitment process.*
>
> *21. We also find substance in the objection that candidates who may be adversely affected by any re-determination of the result have not been impleaded in the proceedings. Since the appeal is liable to fail on the ground of maintainability itself, we leave that issue open for consideration by the learned Single Judge at the appropriate stage.”*

**129.** While deciding the special appeal arising from this writ petition, the appellate court has left open for the Single Judge to have considered the issue on merits and has not expressed any final opinion on the merits of the case and, therefore, this judgment does not help the respondents.

**130.** Learned counsel for the respondents relied upon judgment in case of **Sanjeev Kumar Singh Vs. State of U.P. and others, (supra)** (paragraph Nos. 51, 53 and 55) and the judgment in case of **Jitendra Kumar Singh and others Vs. State of U.P. and others; (supra)** (paragraph Nos. 45 to 49) and submitted that in view of the law as laid down by this Court as well as Supreme Court, the provisions of Section 3(6) of the Act of 1994 would be applicable at the time of final selection and if the reserved category candidate has secured more marks than the last general category candidate and has not claimed any relaxation, will be entitled to be selected against unreserved seat without being adjusted to a reserved seat.

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**131.** Learned counsel for the respondents also relied upon Government Order dated 31.07.2007, issued in compliance of the order passed by this Court in the case of Sanjeev Kumar Singh (supra). The relevant extract of Government Order dated 31.07.2007 is annexed as Annexure No. 6 of the third supplementary affidavit and is quoted as under:

> "(1)अनारक्षित श्रेणी की रिक्तियों पर आरक्षित श्रेणी के अभ्यर्थियों की पात्रता के संबंध में:-
>
> "When certain seats are reserved, it would not result in making unreserved seats compartmentalized for general category candidate i.e. unreserved candidate. there is no reservation for general category candidates. In other words, we can say when certain seat are reserved, reserved category candidate in addition to reserved seats can always compete for unreserved seat. The unreserved seats are available to all the candidates who participate in the selection irrespective of category for which they belong. But reserve seat reserved seat is available only to the category of the candidate to which such reserved seat is meant for."
>
> (2) आरिक्षित श्रेणी के अभ्यर्थियों का वर्णन अनारक्षित श्रेणी की रिक्ति के सापेक्ष किए जाने पर आरक्षण की अधिकतम सीमा के संबंध में:-
>
> "Recruitment of reserve category candidates against unreserved seats, therefore, would not be material for the purpose of applying the principle of 50% reservation, since the candidates selected against unreserved seats are not to be counted for the purpose of applying the 50% limit of reservation."
>
> (3) आरक्षित श्रेणी के अभ्यर्थियों को आयु सीमा में शिथिलीकरण तथा फीस में छूट के संबंध में:-
>
> "We are of the view that relaxation in age and fee can not be treated to be a relaxation in standard of selection and shall not deny a reserve category candidate's selection in open competition with general category candidates. As we have observed, the term "reservation" comprises various kinds of concession, relaxation etc. but Section 8(1) of Act of 1994 is confined to only two kinds of relaxation/concession namely "concession in fee" and "relaxation in upper age limit". Sub-section (2) of Section 8 however provides that if any Government order is in force on the date of commencement of the Act, providing any concession, relaxation including concession in fee for any competitive examination, interview and relaxation in upper age limit relating to reservation in direct recruitment or promotion which are not inconsistent with the pro-visions of the Act, shall continue to be applicable till they are modified or revoked as the case may be.
>
> Concession in respect to age, fee etc. are the provisions pertaining to eligibility of a candidate to find out as to whether he can appear in the competitive test or not and by itself do not provide any indicia of open competition. The competition would start only at the stage when all the persons who fulfill the requisite eligibility conditions namely qualification, age etc. are short listed. The candidates in the zone of consideration entering the list on the basis of the aforesaid qualifications would thereafter participate in competition and open competition would commence therefrom. In other words we can say that concession in fee or relaxation in upper age limit are the provision not concerned with the process of selection, i.e open competition itself but are the provisions pertaining to eligibility, i.e to bring in a candidate in the zone of consideration. Once a person is included in the zone of consideration, he is entitled to participate

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> in the open competition irrespective of difference in the eligibility qualification. Further, if on account of his identity belonging to particular category, any procedural difference is observed in the selection itself, in that case only, such an adjustment under Section 3(6) of Act of 1994 would not be applicable and not otherwise.
>
> Thus, in our view, ex-facie and undoubtedly, at the time of final select list, Section 3(6) of Act of 1994 would be applicable and if a reserve category candidate has secured marks more than a last gen-eral category candidate, he is entitled to be selected against unreserved seat without being adjusted against a reserved seat."

**132.** I have perused the judgment in case of Sanjeev Kumar Singh (supra) as well as Jitendra Kumar Singh (supra). Judgement in case of Jitendra Kumar Singh (supra) of the Supreme Court is in an appeal filed against the judgment passed in case of Sanjeev Kumar Singh (supra).

**133.** In both the cases, this Court as well as the Supreme Court was considering the question whether the concession of age and examination fees, as provided by Section 8 of the Act of 1994, would amount to a relaxation and whether any candidate, who has availed such concessions cannot be permitted to migrate/shift from his category to open category in case such a person obtained more marks than the last selected general category candidate, in view of Section 3(6) of the Act of 1994 and the question was answered by this Court and, in appeal, by the Supreme Court, that concessions contemplated under Section 8 regarding examination fees and age cannot be taken to be relaxation, therefore, there is no prohibition in case a candidate who has availed the concession as provided by Section 8 regarding examination fees and relaxation of age for shifting a more meritorious reserved category candidate to open category.

**134.** In paragraph Nos. 76 and 77 of the judgment in case of Jitendra Kumar Singh (supra), the Supreme Court has held as under:-

> *"76. Mr. Rao had suggested that Section 3 (6) ensures that there is a level playing field in open competition. However, Section 8 lowers the level playing field, by providing concessions in respect of fees for any competitive examination or interview and relaxation in upper age limit. We are unable to accept the aforesaid submission. Section 3 (6) is clear and unambiguous. It clearly provides that a reserved category candidate who gets selected on the basis of merit in open competition with general category candidates shall not be adjusted against the reserved vacancies. Section 3(1), 3(6) and Section 8 are inter-connected. Expression "open competition" in Section 3 (6) clearly provides that all eligible candidates have to be assessed on the same criteria.*

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> *77. We have already noticed earlier that all the candidates irrespective of the category they belong to have been subjected to the uniform selection criteria. All of them have participated in the Preliminary Written Test and the Physical Test followed by the Main Written Test and the Interview. Such being the position, we are unable to accept the submissions of the learned counsel for the petitioners/appellants that the reserved category candidates having availed relaxation of age are disqualified to be adjusted against the Open Category seats. It was perhaps to avoid any further confusion that the State of UP issued directions on 25.3.1994 to ensure compliance of the various provisions of the Act. Non-compliance by any Officer was in fact made punishable with imprisonment which may extend to period of three months."*

**135.** In paragraph No. 3 of Government Order dated 31.07.2007 (quoted above), observations made by this Court in the case of Sanjeev Kumar Singh (supra) have been quoted. Relying upon those observations, the aforementioned contention has been raised by learned counsel for the respondents.

**136.** This Court, as well as the Supreme Court, was not considering the questions involved herein that whether an open category is open to all at all the stage of examination and there cannot be any exception to the rule that an unreserved category cannot be treated to be a category reserved for unreserved candidates. I am of the view that the judgment of this Court in Sanjeev Kumar Singh (supra) and the Supreme Court in case of Jitendra Kumar Singh (supra) is not of any help to the respondents and the submission of learned counsel for the respondents is misconceived.

**137.** Even otherwise, paragraphs Nos. 1 and 2 of the Government Order dated 31.07.2007 (quoted above), the principle as made applicable by the State Government is that when certain seats are reserved, it would not result in making unreserved seats compartmentalized for general category candidates, that is unreserved candidates. There is no reservation for general category candidates. In paragraph No. 2 of the Government Order quoted above, the Government has provided recruitment of reserved category candidates against unreserved seats, therefore, would not be material for the purpose of applying the principle of 50% reservation, since the candidates selected against unreserved seats are not to be counted for the purpose of applying the 50% limit of reservation.

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**138.** In my view, the Government Order dated 31.07.2007 relied upon by the counsel for the respondents does not support their case rather, it supports the contention made by learned counsel for the petitioners.

**139.** Learned counsel for the respondents relied upon judgment in case of **Deepa E.V. Vs. Union of India and Others, (Civil Appeal 3609 of 2017); (2017) 12 SCC 680, Union of India and Others Vs. G. Kiran and Others, SLP No. 4743 of 2020; 2026 SCC Online SCC 22** and **Union of India and others Vs. Sajib Roy, 2025 INSC 1084; 2025 SCC Online SC 1943** to contend that once reserved category candidate has availed certain concessions at any stage of examination, he has to remain in his own category and cannot be permitted to migrate to open pool.

**140.** It has also been contended by learned counsel for the respondents that even the judgment in the case of Jitendra Kumar Singh (supra) has not been followed by the Supreme Court in the aforementioned judgments, and now the position of law is that a reserved category person, if he has availed any concession, cannot be considered for the open category.

**141.** In case of Deepa E.V. (supra), the Supreme Court was considering the proceedings dated 1.07.1998, i.e., Office Memorandum issued by Department of Personnel and Training Number being OM No.36011/1/98-Estt., and has held:

> *"In the light of the express bar provided under the proceedings dated 1.7.1998 the principle laid down in Jitendra Kumar Singh (supra) cannot be applied to the case in hand….. Having regard to the observations in paragraphs 65 and 72, in our view, the principles laid down in Jitendra Kumar Singh (supra) cannot be applied to the case in hand. As rightly pointed out by the High Court that judgment in Jitendra Kumar Singh (supra) was based on the statutory interpretation of the U.P. Act, 1994 and Government order dated 25.3.1994 which provides for entirely a different scheme."*

**142.** The said judgment has been followed in cases of **Union of India and Others Vs. G. Kiran and Others, (supra)**, and **Union of India and others Vs. Sajib Roy (supra)** and the judgment in case of Jitendra Kumar Singh (supra) was not followed for the reason there were statutory rules or Office Memorandum issued by the State Government i.e., the appointing authority providing differently than the rules as

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applicable in U.P. and interpreted by the Supreme Court in case of Jitendra Kumar Singh (supra).

**143.** In the present case, none of the petitioners have taken benefit of any concession provided under Section 8 of the Act of 1994. Further, neither Section 3(6) of Act of 1994 nor the Government Order of 1994 provides for such a prohibition. Except for the Office Memorandum dated 09.01.2020 issued by the UPPSC, there is no provision prohibiting the shift of more meritorious reserved category candidate to the open category. No other statutory rule or Office Memorandum issued by the State Government has been brought to my knowledge.

**144.** The Supreme Court, in the case of Chaya and Others etc. (supra), after considering the judgments relied upon by the respondents above, held that a more meritorious reserved category candidate cannot be excluded from consideration under the unreserved category in the absence of any express prohibition in the recruitment rules/notification. The relaxation in qualifying criteria only affects eligibility and not merit, and migration is permissible in the absence of any prohibition. It was also held that the judgments in the cases of Pradeep Kumar (supra), Union of India and others Vs. Sajib Roy (supra), and Union of India Vs. G. Kiran and others (supra) have no application to the factual matrix of these appeals.

**145.** In the present case also, firstly, no such condition as required by the Office Memorandum dated 09.01.2020 is there in the statute or in the Government Order and secondly, in the absence of any such prohibition, the judgment in the cases of Jitendra Kumar Singh (supra) and Chaya and Others etc. (supra) are fully applicable, and there is no bar in shifting a more meritorious reserved category candidate to the open category, as the open category is open for all at any stage of the examination.

**146.** Sri Manish Goel, learned counsel appearing for the State, has relied upon the Constitutional Bench judgment in case of **Dr. Jaishri Laxmanrao Patil Vs. Chief Minister and others; (2021) 8 SCC 1** and referred to certain paragraphs of the judgment. The Supreme Court was

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considering the reference made to it by order dated 08.03.2021 and referred the following points for decision:

> *"7. The five-judge bench, by its order dated 08.03.2021, referred the following points, for decision:*
>
> *(1) Whether judgment in case of Indra Sawhney v. Union of India needs to be referred to larger bench or require re-look by the larger bench in the light of subsequent constitutional Amendments, judgments and changed social dynamics of the society etc.?*
>
> *(2) Whether Maharashtra State Reservation (of seats for admission in educational institutions in the State and for appointments in the public services and posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 as amended in 2019 granting 12% and 13% reservation for Maratha community in addition to 50% social reservation is covered by exceptional circumstances as contemplated by Constitution Bench in Indra Sawhney's case?*
>
> *(3) Whether the State Government on the strength of Maharashtra State Backward Commission Report chaired by M.C. Gaikwad has made out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in the judgment of Indra Sawhney?*
>
> *(4) Whether the Constitution One Hundred and Second Amendment deprives the State Legislature of its power to enact a legislation determining the socially and economically backward classes and conferring the benefits on the said community under its enabling power?*
>
> *(5) Whether, States' power to legislate in relation to "any backward class" under Articles 15(4) and 16(4) is anyway abridged by Article 342(A) read with Article 366 (26c) of the Constitution of India?*
>
> *(6) Whether Article 342A of the Constitution abrogates States' power to legislate or classify in respect of "any backward class of citizens" and thereby affects the federal policy / structure of the Constitution of India?"*

**147.** In the case of Dr. Jaishri Laxmanrao Patil (supra), the Court was not considering the questions which are being considered by me in this case, as they were not involved there. Therefore, the said judgment does not help the State respondents in any manner.

**148.** Sri Manish Goel also relied upon the judgment in the case of **State of Punjab and others Vs. Davinder Singh and others; (2025) 1 SCC 1.** The Larger Bench was considering the reference made on 27.08.2020 because a Constitutional Bench held that the judgment in the case of **E.V. Chinnaiah Vs. State of Andhra Pradesh, (2005) 1 SCC 394,** requires to be revisited by a larger Bench of seven judges because it

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failed to consider significant aspects bearing on the issue. The reference is quoted as under:

> *" 20. On 27 August 2020, in State of Punjab v. Davinder Singh, a Constitution Bench held that the judgment in Chinnaiah (supra) requires to be revisited by a larger Bench of seven Judges because it failed to consider significant aspects bearing on the issue. These aspects have been formulated thus:*
> *20.1 In Indra Sawhney (supra), this Court held that it is constitutional to classify the backward class into the 'backward' and the 'more backward' class of citizens. The provisions of Articles 341, 342, and 342A are pari materia. That being the case, this Court has to analyse how a contrary conclusion to the effect that sub-classification is permissible within the Backward Class but not within the Scheduled Castes, could be reached. In Indra Sawhney (supra) the phrase "Backward Classes" in Article 16(4) was interpreted to include both socially and educationally backward classes and the Scheduled Castes and Scheduled Tribes;*
>
> *20.2 The Scheduled Castes are not a homogenous class. Preferential treatment can be given to the most downtrodden of the class who are not adequately represented. Such a sub-classification is made to provide equality of opportunity, so as to achieve the purpose of reservation;*
>
> *20.3 It would be open to the State, under Article 16(4), to grant the benefits of reservation on a rational basis to certain castes within the Scheduled Castes by fixing a reasonable quota of the reserved seats for them if they are inadequately represented; and*
>
> *20.4. Preferential treatment to certain castes would not lead to the exclusion of other castes from the list prepared under Article 341. In Jarnail Singh v. Lachhmi Narain Gupta, this Court observed that the exclusion of the "creamy layer" from the Scheduled Castes for securing the benefit of reservation does not tinker with the Presidential List under Article 341. All the castes included in the list of Scheduled Castes are given the benefit of reservation even if they are sub-classified."*

**149.** In this case also, the questions involved in the present case were not considered by the Supreme Court and, therefore, I am of the view that the said judgment is also of no help to the respondents.

**150.** It is inescapable conclusion that while preparing category wise list at every stage of examination whether preliminary, mains or interview, the reserved category candidates, who had obtained more marks than the cut-off marks arrived at for General category, were required to be included in the Open category list. The law requires that the respondents should first draw list of General/Open category based on merit. Those reserved category candidates, who were able to compete on the basis of merit, at any stage of examination were required to be placed in the Open/General category list. The reserved category list was required to be drawn only thereafter on the basis of merit of reserved category

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candidates, of course, by excluding those reserved category candidates, who had already been included in the Open/General category list. The action of the respondents in preparing category wise list without adjusting more meritorious reserved category candidates in the Open/General category list and thereby restricting inclusion of the candidates in the Open/General category list only to General category candidates, is in violation of principles laid down in Indra Sawhney and Others Versus Union of India and Others (Supra), R.K. Sabharwal and Others Versus State of Punjab and Others (Supra) & Saurav Yadav and Others Versus State of Uttar Pradesh and Others (Supra) & Rajasthan High Court and another Vs. Rajat Yadav & others (supra).

**151.** In the present case there are 321 OBC candidates, who have admittedly secured more marks than the last selected general category candidate, and 43 candidates belonging to Scheduled Castes, who have obtained more marks than the last general category candidates were kept in their respective category without placing them in the Open/General category. As a result of preparation of list ( in this way which is admitted to the respondents) of various categories is in violation of law. All those reserved category candidates, who have obtained marks more than last General category candidates, have remained in their respective list, even though, they obtained higher marks as compared to many General category candidates. Had those more meritorious reserved candidates been included in the Open/General category, it would have paved way for the inclusion of the petitioners or similarly situated candidates lower in order of merit in their respective reserved category. In that case, the petitioners or similarly situated reserved category candidates if included in their respective reserved category on account of shifting 321 OBC and 43 SC candidates (which is admitted position as mentioned in second supplementary affidavit filed by the Commission) to open category, the petitioners or similarly situated candidates were entitled to appear in the Mains Examination. In the present case, same illegality has been perpetuated by the Commission while preparing the category-wise list even after the Mains Examination, by placing the candidates in their

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respective categories without shifting the more meritorious candidates belonging to reserved categories to the Open category is also in the teeth of the judgment passed by Hon'ble Supreme Court in State of Rajasthan Vs. Rajat Yadav (supra). In the present case also, the marks obtained in the Mains Examination are to be clubbed with the marks obtained in the interview for preparing the combined merit list, as per Section 3(6) of the Act of 1994.

**152.** Even the marks of the Preliminary Examination are not to be included while preparing the final merit list but same would result in the exclusion of more meritorious reserved category candidates from appearing in the next tier of examination, is arbitrary. The action of the respondents preparing the list category-wise treating the Open/Unreserved category to be reserved only for candidates who do not come within the reserved category cannot be upheld as the same is violative of mandate of Articles 14 and 16 of the Constitution. There is no question of application of reservation at the intermediate stage of examination. It is only as to how the Open/Unreserved category list is to be prepared, is in question. The Open/Unreserved category is not reserved for any category. It is open to all, who are able to come within the same on the basis of their merit, irrespective of the fact whether they claimed reservation or not. This exercise has to be done at all stages of examination. It is only while preparing the final merit list after the interview, if any reserved category candidate is found to have qualified on his own merit in the Open category, his candidature will not be counted towards the reserved seats and will be treated as that of a General category, without affecting the number of seats reserved for the reserved category, which is the constitutional mandate as well as in line with the law as made by the State of U.P. in the Act of 1994. Admittedly, in the present case, this is not being done. Both at the preliminary stage as well as at the stage of the Mains Examination, the lists are prepared category-wise, treating the Unreserved category to be reserved for candidates, who have not claimed reservation, which is not permissible.

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The question that the marks of the Preliminary Examination are not added at the time of preparation of the final list is of no consequence.

**153.** Accordingly, I am of the considered opinion that the act of the respondents in confining the reserved category candidates at the stage of preliminary examination as well as Mains Examination to their respective reserved categories, irrespective of the fact that the candidates have secured more marks than the last unreserved category candidate, is arbitrary and violative of Article 16(4) of the Constitution of India and cannot be sustained.

**154.** Open category is open for all at every stage of the examination and cannot be treated as a category reserved for unreserved candidates. More meritorious reserved category candidates at every stage of examination, if they secure more marks than the last selected unreserved category candidate, have to be placed in the open category.

**Question No. (c)**

*"Whether the Office Memorandum dated 09.01.2020 issued by the UPPSC has any legal basis, and whether the Commission has the competence to issue such an Office Memorandum."*

**155.** Challenging the Office Memorandum dated 09.01.2020, learned counsel for the petitioners submitted that the said Office Memorandum is without jurisdiction. There is no legislative mandate or authority for issuing such a mandate to the Commission. The question of reservation in public services is within the domain of the legislature or the Government, whether State or Union. Every action of the Commission is subject to the provisions of the Act relating to reservation made by the legislature or the Government, by executive decisions reflected in Government Orders or in Office Memorandum issued by the Government. It is only the government can take policy decisions in respect of the applicability of the reservation policy of the State.

**156.** Learned counsel further submitted that Article 320, which provides for the functions of the Commission, does not authorise the Commission to make any rule or to issue any Office Memorandum, which is either contrary to the statutory provisions, rules, or Government

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Orders issued from time to time by the State. The Commission has to abide by the provisions relating to statute conferring reservation or the rules or Government Orders issued by the Government in this regard.

**157.** Learned counsel relied upon the judgment of the Division Bench of this Court in **Special Appeal No. 233 of 2026, Bhavna Yadav and six others Vs. State of U.P. Thru. Prin. Secy. Deptt. Appointment and Personnel Lko. and 2 others**, decided by the Lucknow Bench of this Court on 29.09.2026. Learned counsel, in this regard, referred to paragraph Nos. 67, 68, 69 and 70 of the judgment in the case of Bhavna Yadav (supra) which are quoted as under:-

> *"67. We may in this very context point out that so far as reservation policy applicable to public services and posts in the State of U.P. is concerned, the same is governed and determined by a legislative enactment as already referred of the year 1994 and Government Orders issued by the State of U.P. These are matters purely within the domain of the 'State' and are referable to Article 16(4) and 16(4-A), apart from relevant entries in the relevant List of the Seventh Schedule of the Constitution of India. Conditions of recruitment and conditions of service are the domain of the employer under Article 309 of the Constitution, which in this case is the State of U.P. The policy of reservation is applied in the context of the services and the posts under the 'State', therefore, it is part of the conditions of recruitment/conditions of service which are to be determined by the State Government. The Commission is not the employer under Article 320 (1) of the Constitution, it has the duty to conduct examinations for appointments to the services of the 'State'. It has no authority to decide the conditions of service, including the policy of reservation and its modalities. It is required to be consulted only on matters referred in Article 320 (3) of the Constitution of India.*
>
> *68. The functions of the Commission are enumerated in Article 320 of the Constitution of India. Article 320 reads as under:*
>
> *"**320. Functions of Public Service Commissions:** (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.*
>
> *(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.*
>
> *(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted--*
>
> *(a) on all matters relating to methods of recruitment to civil services and for civil posts;*
>
> *(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;*

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*(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;*

*(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by hi m in defending legal proceedings instituted against hi m in respect of acts done or purporting to be done in the execution of hi s duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State;*

*(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award,and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor of the State, may refer to them:Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.*

*(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.*

*(5) All regulations made under the proviso to clause (3) by the President or the Governor of a State shall be laid for not less than fourteen days before each House of Parliament or the House or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."*

*69. Article 320 (4) specifically prohibits the Public Service Commission from being consulted as respects the manner in which any provision referred to in Article 16(4) may be made or as respects the manner in which effect may be given to the provisions of Article 335 i.e., it is prohibited from being consulted in respect of matter pertaining to reservation in public services and maintenance of efficiency in this regard. This provision itself indicates that these are matters purely in the domain of the 'State' and the Commission has not jurisdiction or role in this regard. It is the policy of the State in this regard which has to be followed by the Commission.*

*70. It has the power to decide the 'procedure or method of recruitment', that too, subject to the enactments, rules and Government Orders issued by the Government in this regard, if any, which may be applicable to the specific public service or post in question, as, there are specific service rules for separate services and cadres in different departments of the State of U.P. prescribing the conditions of recruitment also, including reservation, therefore, whatever procedure for recruitment is to be determined by the Commission, of course, it has authority in this regard under the relevant Act i.e. U.P. State Public Service Commission (Regulation of Procedure) Act, 1985, Rules and Regulations made by it, but*

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*they are subject to the enactments, Rules and Government Orders referred hereinabove, and, there is no way that the Commission can encroach upon the domain of the State Government to frame the conditions of service and recruitment, including the reservation policy as applicable in the State in this context.*

**158.** The Division Bench in case of Bhavna Yadav (supra) also considered the judgment of the Supreme Court in case of **State of Punjab and others Vs. Manjit Singh and others; (2003) 11 SCC 559.** Relevant extract of the judgment in case of State of Punjab and others Vs. Manjit Singh (supra) is quoted as under:-

*"9. In the present case, the stand of the appellant Commission is that for medical services where the members of service have to deal with the health and life of the people, they must have some minimum standard of efficiency and it is the bounden duty of the Commission to ensure the same. It is perhaps with this view in mind that the Commission fixed 45% minimum qualifying cut-off marks for general category candidates and 40% cut-off marks for Scheduled Caste candidates. We feel, here lies the fallacy in the whole reasoning of the Commission. It is no doubt true that the Commission is an independent and autonomous body and has to work without influence of any authority or the Government. It is rather under duty to act independently. But at the same time the fact cannot be lost sight of that the State Government is competent to lay down the qualifications for different posts, and frame rules for the purpose or take policy decisions which may of course not be against the law. In this context, we may refer to the provisions contained under Article 320 of the Constitution.*

Provisions of Article 320 have already been quoted above, therefore, they are not being reproduced.

*.....It is to be noted that under clause (3), the Union Public Service Commission or the State Public Service Commission, has to be consulted by the Government relating to methods of recruitment in civil services and for civil posts, promotions and transfers as well as about suitability of candidates etc. The consultation may also be in regard to disciplinary matters affecting a person serving under the Government. We then find that clause (4) particularly provides that nothing in clause (3) shall require consultation of the Commission in respect to the manner in which any provision referred to in Article 16(4) may be made or the manner in which the effect may be given to the provisions of Article 335. We may peruse clause (4) of Article 16 and Article 335. They read as follows:*

*"16.(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 opinion of the State, is not adequately represented in the services under the State.*

*335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.—The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:*

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*Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State."*

*Article 16(4) deals with reservations and Article 335 pertains to consideration of reservation consistent with the maintenance of efficiency of the administration. As indicated earlier, clause (4) of Article 320 clearly provides that consultation of the Commission would not be necessary in the matters relating to Articles 16(4) and 335. Therefore, it would be a matter of policy to be decided by the State Government as to what measures, if necessary, may be provided regarding reservations vis-à-vis maintenance of efficiency in services. Where no special qualification or any prescribed standard of efficiency over and above the eligibility criteria is provided by the Rules or the State, it would not be for the Commission to impose any extra qualification/standard supposedly for maintaining minimum efficiency which, it thinks, may be necessary. No consultation with the Commission, in such matters, is envisaged in view of clause (4) of Article 320 of the Constitution.*

*12…….. Therefore, the stand of the appellant Commission in this case that, it being an independent body, is not subservient to any authority or the State Government, hence it is competent for it to lay down the minimum efficiency standards including in the matters which may fall within the purview of Article 335 of the Constitution, is erroneous."*

**159.** Learned Additional Advocate General Shri Manish Goel, appearing for the State, filed written submissions, wherein stand has been taken by the State that Public Service Commission acts as an independent body and has an independent authority to frame its own Act and follow the mechanism and be guided by rules under enactment. These rules and enactments have remained valid and have guided the recruitment process, generally thereby maintaining transparency in the recruitment process, and this has been a continuous benchmark in all the recruitments held for last 52 years. Learned counsel further submitted, in view of clause (3) of Article 315 of the Constitution of India, the Public Service Commission is empowered to frame law as may be necessary or desirable for giving effect to the functions, is supposed to discharge under the Constitution of India, as well as for effecting the constitutional mandate, subject to provisions under the Constitution.

**160.** The submission of learned Additional Advocate General appearing for the State, is wholly misconceived. Clause (3) of Article 315 does not provide any legislative competence to the Commission to make law. It would be appropriate to quote Article 315 of the Constitution of India in

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order to understand it. Article 315 of the Constitution of India is reproduced as under:-

> ***" 315. Public Service Commissions for the Union and for the States*** *(1)Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.*
>
> *(2)Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two Houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint State Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States,*
>
> *(3)Any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law.*
> *(4)The Public Service Commission for the Union, if requested so to do by the Governor of a State, may, with the approval of the President, agree to serve all or any of the needs of the State.*
>
> *(5)References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, the State as respects the particular matter in question."*

**161.** Clause (2) of Article 315 provides that two or more States may agree that there shall be one Public Service Commission for that group of States, and if the resolution to that effect is passed by the House, or where there are two Houses, by each House of the legislature of each of those States, Parliament, by law, may provide for appointment of a Joint State Public Service Commission (referred to in this chapter as Joint Commission), to serve the needs of those States. Clause (3) of Article 315 provides any such law as aforesaid may contain such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of the law. Clause (3) of Article 315 refers to a law as mentioned in clause (2) of Article 315. While enacting a law for the purposes of constituting a Joint State Public Service Commission, the Parliament may provide such incidental and consequential provisions as may be necessary or desirable for giving effect to the purposes of law.

**162.** By any stretch of imagination, it cannot be held that clause (3) of Article 315 provides a legislative competence to the Public Service Commission to enact any law. The reference of law in clause (3) of Article 315 is the law as referred in clause (2) of Article 315 to be

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promulgated by the Parliament for the purposes of constituting a Joint Public Service Commission.

**163.** The Supreme Court in case of State of Punjab Vs. Manjit Singh (supra) held that the stand of the appellant Commission in this case that, it being an independent body, is not subservient to any authority or the State Government, hence it is competent for it to lay down the minimum efficiency standard including the matters which may fall within the purview of Article 335 of the Constitution, is erroneous. (paragraph No. 12 of the judgment)

**164.** Division Bench of Mysore High Court in case of **B.S. Kesava Iyengar Vs. State of Mysore and others; 1956 AIR Mysore 20,** in paragraph Nos. 11 and 12 of the B.S. Kesava Iyengar (supra), Mysore High Court held as under:-

> *"11. The functions of the Public Service Commission have been enumerated in Art. 320 of the Constitution. According to that Article, (as quoted earlier), it shall be the duty of the Public Service Commission to conduct examinations for appointments to the services. Thus it is seen that the Commission has got a right to be consulted on all matters relating to the method of recruitment to civil services and civil posts and also on the principles to be followed in making the appointments, promotions and transfers and other matters mentioned therein.*
>
> *In this case, the State has not requested the Public Service Commission to allot a particular percentage of appointments to any single community. Rule 7(2) provides that backward classes of citizens who are not adequately represented in the Judicial Service shall be given due representation from among the qualified candidates. This direction in the Rules to the Commission does not amount to a delegation of power for reservation of seats to any particular community and is in accordance with the principle underlying Article 16(4) of the Constitution*
>
> *In this connection, it has also to be remembered that the word of the Commission is not final in such matters; under the Constitution, the status of the Public Service Commission is only advisory and consultative. Mandatory powers have not been conferred on the Commission, and the Constitution goes to the extent of saying that it is not obligatory on the President, Governor or Rajpramukh of a State to accept the recommendation of the Commission.*
>
> *The final word rests with the State and therefore the direction in the Rules to the Public Service Commission as provided in Rule 7(2) does not amount to a delegation of power in its true sense.*

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*12. It was contended by the learned Advocate-General that even the Public Service Commission can make provision for reservation under Article 16(4) of the Constitution irrespective of the State Government or the Rajpramukh inasmuch as the State, as defined under Ant. 12 of the Constitution includes 'Public Service Commission'. I am of opinion that there is no force in this contention. Article 12 of the Constitution runs as under:*

*"In this Part, unless the context otherwise requires, 'the State', includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*

*The contention of the learned Advocate-General was that the Public Service Commission comes within the category of other authorities' appearing in Art. 12, with which contention I am unable to agree. 'Authority' means 'power to make laws, orders, regulations and bye-laws' etc., and also the power to enforce laws.*

*The word 'authority' literally means 'a body exercising power'. Under the Constitution, the Public Service Commission has no such authority and it has not got even the power to implement its own decisions without reference to the State Government. Article 320(4) provides:*

*"Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as respects the manner in which effect may be given to the provisions of Article 335."*

*In other words, what that clause says is that the Public Service Commission need not be consulted with respect to the manner in which the provision referred to in clause (4) of Article 16 may be made or with respect to the manner in which effect may be given to the provisions of Article 335.*

*When the Article says that the State Government need not even consult the Public Service Commission with respect to the matter covered under Article 16(4) i.e, with respect to the making of provisions for reservation of appointments in favour of backward classes of citizens, there is no substance in the contention that the Public Service Commission is an authority within the meaning of that word in Article 12 and that it can make provision for reservation of appointments without reference to the State Government.*

*Article 320(4) would have had no place in the Constitution if the Public Service Commission was intended to be an authority within the meaning of that word appearing in Article 12 of the Constitution and if it was intended to possess the power to make provision for reservation. At any rate, it cannot be disputed in view of the above provisions that the Public Service Commission is not an authority within the meaning of Article 12 of the Constitution at least for purposes of Art. 16(4) thereof."*

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**165.** In paragraph No. 73 of the judgment in case of Bhavna Yadav (supra) this Court held as under:-

> *"73. Learned counsel for the Commission referred to Section 11 of the U.P. Public Service Commission (Regulation or Procedure) Act, 1985 to defend the said OM as being referable to the power vested under it. Section 11 empowers the Commission only to make Rules not inconsistent with the provisions of the Act, 1985 for regulation of its procedure. The Act, 1985, as is evident from its long title, has been enacted to provide for certain matters relating to the procedure of the Commission and the conduct of its business. The Act, 1985, for the reasons already given above especially in view of Article 320 (4) and the decision in Manjit Singh (supra), can not be given meaning beyond the scope of Article 320 and other relevant provision of the Constitution of India and cannot be interpreted to confer jurisdiction which the Constitution does not confer upon it, certainly not by encroaching upon the domain of the 'State' as already discussed.……."*

**166.** The contention of learned counsel for the State that Public Service Commission acts as an independent body and has an independent authority to frame its own Act and to follow the mechanism, is misconceived. The Public Service Commission can only frame rules for the purposes of providing procedure for recruitment. Commission has no such power in view of the judgment of Division Bench of Mysore High Court in case of **B.S. Kesava Iyengar Vs. State of Mysore (supra)**.

**167.** The argument of learned counsel for the Commission that the Public Service Commission comes within the category of 'other authorities' appearing in Article 12, has been repelled by Mysore High Court. I am in full agreement with the view taken by Mysore High Court. The Division Bench of this Court in case of Bhavna Yadav (supra) has also taken the same view.

**168.** Learned counsel appearing for the State and the Commission has submitted that in the case of Bhavna Yadav (supra) this Court was considering a two-tier examination, i.e., a written test and an interview, and also that the marks of the screening in the aforesaid examination were to be added at the time of preparation of the final result wherein in the present case, the examination in question is three-tier examination, i.e., preliminary examination, mains and interview. The marks obtained in the preliminary examination are not to be counted while preparing the final merit list, and only marks obtained in mains and interview are taken into consideration. The preliminary examination, which is in question in

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the present petition, is merely a screening process permissible under law and, therefore, the judgment in the case of Bhavna Yadav (supra) will not apply to the facts of the case.

**169.** Learned counsel for the Commission as well as the State further submitted that in the case of Bhavna Yadav (supra) the Division Bench of this Court has not held the Office Memorandum dated 09.01.2020 to be ultra vires, but has merely recommended the Commission to consider the same as to whether it has the authority to decide matters pertaining to reservation and has also directed the State Government to come up with a specific and comprehensive policy with regard to reservation. Learned counsel appearing for the State relied upon paragraph Nos. 71 and 74 of the judgment in the case of Bhavna Yadav (supra) which are quoted as under:-

> *"71. Thus, the Commission should have first of all considered whether it has the authority to decide on matters pertaining to reservation in view of the law discussed hereinabove.*
>
> *74. It would be better if the State Government comes up with a specific and comprehensive policy in this regard, as it is competent to do so under Article 16(4) of the Constitution and the Act, 1994, so that such issues do not arise in future."*

**170.** In paragraph Nos. 67 and 69 of the judgment in case of Bhavna Yadav (supra), quoted above, it has been held by this Court that the reservation policy applicable to public services is governed and determined by legislative enactment, i.e. Act of 1994 and the relevant Government Orders issued by the State of U.P. These matters are purely within the domain of the State and are referable to Article 16(4) and 16(4-A) of the Constitution of India. Conditions of recruitment and conditions of service are the domain of the employer under Article 309 of the Constitution of India, which in this case is the State of U.P. The Commission is not the employer under Article 320 (1) of the Constitution, it has the duty to conduct examinations for appointments to the services of the State. Article 320 (4) specifically prohibits the Public Service Commission is to be consulted as respects the manner in which any provision referred to in clause (4) of Article 16 may be made or as

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respect the manner in which effect may be given to the provisions of Article 335. It is prohibited from being consulted in respect of matters pertaining to reservation in public services and maintenance of efficiency in this regard. It has been further held by this Court in the case of Bhavna Yadav (supra) that the Commission has the power to decide the 'procedure or method of recruitment', that too, subject to the enactments, rules and Government Orders issued by the Government in this regard, if any, which may be applicable to the specific public service or post in question.

**171.** It is correct that in case of Bhavna Yadav (supra) the Division Bench has not quashed the impugned Office Memorandum dated 09.01.2020 issued by the Commission, though it has held that the said office memorandum is beyond competence of the Commission as the matter relating to reservation is to be taken care of by the Government and not by the Commission. Office memorandum dated 09.01.2020 was not set aside by the Division Bench for the reason that the Commission has taken categorical stand that Office Memorandum dated 09.01.2020 has no application to the recruitment in question in Bhavna Yadav's case (supra). The stand of the Commission as noted in paragraph No. 62 and relevant extract of paragraph No. 73 of the judgment of Division Bench in case of Bhavna Yadav (supra) are quoted as under:-

> *"62. Shri R.K. Upadhyaya further stated that this O.M. dated 09.01.2020, even otherwise, applies only in a case where recruitment which is held on the basis of preliminary examination, main examination, interview and screening test, all four, and not to other examinations such as the one at hand, where there are only two stages of examination. He categorically stated that O.M. dated 09.01.2020 has no application to the recruitment in question. We asked Shri Upadhyaya whether this statement has been made on affidavit filed by the Commission, he could not point out any such averment in the counter affidavit of the Commission.*
>
> *73……..We have already held the O.M. dated 09.01.2020 and the decision contained therein to be inapplicable to the facts of this case and certain situations as mentioned earlier, therefore, we are not conclusively pronouncing any judgment on the jurisdiction of the Commission in this regard, but such a blanket decision as contained in the O.M. dated 09.01.2020 ignoring the fact situations and Rule position as discussed is clearly unreasonable and can lead to unnecessary litigation. Whether Commission has power to impose such conditions vide O.M. dated 18.12.2009 and 09.01.2020 regarding reservation policy and its application or not? Whether such an omnibus O.M. dated 09.01.2020 containing a blanket decision is otherwise sustainable? Whether it can be applied to all*

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*recruitments mechanically without reference to specific condition of recruitment prescribed in Rules of the concerned Department? These issues are required to be considered and answered by the Commission as per law, at the earliest, keeping in mind what has been discussed herein."*

**172.** I am of the considered view that the Office Memorandum dated 9.01.2020 issued by the Commission on the basis of its meeting dated 9.01.2020 lacks legislative competence and is not supported by any law made by the State Government or any of the Government Orders issued by the State Government and, therefore, is liable to be struck down.

**Question No. (d)**

*"Whether the objection of the respondents that the petitioners, who were aware of the condition as given in the advertisement, are precluded from challenging the same after participation in the selection, i.e., the preliminary examination, without raising any question."*

**173.** So far as contention of learned counsel for the Commission as well as State that the condition that migration will only be permitted at the final stage of selection was specifically mentioned in the advertisement. Knowing fully well the petitioners participated in the selection and have not challenged the aforesaid condition before participating in the selection, therefore, cannot later challenge the procedure adopted merely because the result is not palatable to them. It has been further contended that the principle of estoppel will operate against such candidates who, have taken calculated risk by participating in the selection process and failed to secure selection. Petitioners cannot challenge the process of selection on the ground of flawed procedure being adopted by the recruiting/selecting authority.

**174.** Learned counsel for the respondents relied upon the judgments in case of **DR. G. Sarana Vs. University of Lucknow & others; (1976) 3 SCC 585, Om Prakash Shukla Vs. Akhilesh Kumar Shukla and others; 1986 Supp SCC 285, Madan Lal and others Vs. State of Jammu and Kashmir and others; (1995) 3 SCC 486, K.A. Nagamani Vs. Indian Airlines and others; (2009) 5 SCC 515, Manish Kumar Shahi Vs. State of Bihar and others, (2010) 12 SCC 576, Ramesh Chandra Shah and others Vs. Anil Joshi and others; (2013) 11 SCC**

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**309; and Ramjit Singh Kardam and others Vs. Sanjeev Kumar and others (2020) 20 SCC 209.**

**175.** Learned counsel for the petitioners, refuting the submissions made by learned counsel for the Commission as well as State, submitted the rule of estoppel is not absolute. Mere participation of a candidate in the selection process implies acceptance of prescribed procedure, but not of any illegality in the conduct of such procedure or constitutional infirmity underlying it.

**176.** In this very context, I may refer to decision of the Supreme Court of India reported in **1997 (9) SCC 527; Raj Kumar & Ors. vs Shakti Raj & Ors.** wherein Hon'ble the Supreme Court after considering the earlier judgment reported in **Madan Lal vs. State of J&K and others; 1995 (3) SCC 486** observed that principles of estoppel, acquiescence and waiver do not apply where the recruitment has been held de hors the Rules. Para 16 of the said report reads as under:

> *"16. Yet another circumstance is that the Government had not taken out the post from the purview of the Board, but after the examinations were conducted under the 1955 Rule and after the results were announced, it exercised the power under the proviso to para 6 of 1970 notification and the post were taken out from the purview thereof. thereafter the Selection Committee was constituted for selection of the candidates. The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in Madan Lal vs. State of J & K [(1995) 3 SCC 486] and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the selection Board or the method of Selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to get the candidates for examination under 1955 Rules, So also in the method of selection and exercise of the power in taking out from the purview of the and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case, thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action take by the Government are not correct in law."*

**177.** Learned counsel for the petitioners relied upon the judgment in case of **Dr. (Major) Meeta Sahai vs. State of Bihar and others; (2019) 20 SCC 17** as well as judgment in case of Rajasthan High Court and another Vs. Rajat Yadav and others (supra) to support his contention.

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**178.** In case of Dr. (Major) Meeta Sahai (supra), the Supreme Court of India has held in paragraphs 16 and 17 thereof as under:

> *"16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgements including Manish Kumar Shahi v. State of Bihar, observing as follows:*
>
> *"16.We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The appellant invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."5 The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the 4 (2010) 12 SCC 576 5 See also: Madan Lal v. State of J&K [(1995) 3 SCC], Marripati Nagaraja v. State of A.P.[(2007) 11 SCC 522], Dhananjay Malik v. State of Uttaranchal [(2008) 4 SCC 171] and K.A. Nagamani v. Indian Airlines [(2009) 5 SCC 515] Page | 11 hope of getting a second chance.*
>
> *17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."*

**179.** In case of Rajasthan High Court and another Vs. Rajat Yadav and other (supra), Hon'ble Supreme Court in paragraph Nos. 43, 45 and 46 has held as under:-

> *"43. However, this rule is not absolute. As elucidated in Meeta Sahai v.State of Bihar, participation of a candidate in a selection process implies acceptance of the prescribed procedure, but not of any illegality in the conduct of the said procedure or constitutional infirmity underlying it. Where the challenge pertains to a misconstruction of statutory rules or violation of constitutional principles, the plea of estoppel cannot operate as a bar.*
>
> *45. Having considered the precedents in the field, to our mind, a candidate would be estopped from challenging a selection process post- participation, unless he can show that despite due diligence, he could not have known earlier of the illegality in the procedure that came to be adopted or that the procedural flaw striking at the root of the selection process was hidden and surfaced only after completion of the process of selection; hence, no*

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*challenge could have been laid by him prior to his participation in the process.*

*46. In the present case, the advertisement was a representation to the aspirants for public employment that category-wise lists would be prepared. None would question such a condition. There was, however, no indication that meritorious reserved category candidates would not be treated as General/Open category candidates even if they outscore the latter. The illegality lies in the action of the appellants in not treating the meritorious reserved category candidates as General/Open category candidates, despite noticing that the former had outperformed and outshone the latter. Since the petitioning candidates could not have possibly visualised such an approach on the part of the recruiters by projecting their own imagination and discover all facts and circumstances that might be in their contemplation to be adopted while drawing up the merit lists at the time they participated in the preliminary written examination, the question of such candidates being estopped from mounting a challenge to the legality of the process does not and cannot arise. The petitioning candidates paid a price for their merit and having challenged the very legality of the process alleging violation of constitutional norms and legal principles, the plea of estoppel could not have defeated such a challenge"*

**180.** In my view, considering the facts and circumstances of the case, observations made by the Supreme Court in paragraph No. 46 of the judgment in case of State of Rajasthan Vs. Rajat Yadav (supra) are fully applicable.

**181.** In view of the discussions made above, since the preparation of list category-wise both at preliminary and mains examination, treating the unreserved category as a separate category reserved for unreserved candidates, is against the constitutional mandate, and that could have never been perceived by the petitioners or any person participating in the examination therefore, the petitioners are not stopped from challenging the act of the respondents as they are not challenging the condition i.e. preparation of list category-wise, but are challenging the manner in which the unreserved category list is being prepared by the respondents.

**182.** I am of the considered opinion that there is no impediment in the maintainability of the writ petition at the behest of the petitioners on this score.

**Question No. (e)**

*“Whether the challenge to the select list made by the petitioners is hypothetical, as they had already failed in the preliminary examination and it*

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*cannot be said that they have secured more marks than the last selected general category candidate."*

**183.** The contention of learned counsel for the respondents is that the petitioners could not qualify the preliminary examination and, therefore, it cannot be said that they have secured more marks than the last selected general category candidate, and their argument is based on a hypothetical situation. Therefore, they have no locus to file the present petition and challenge the selection.

**184.** *Per contra*, learned counsel for the petitioners submitted that had the respondents prepared the list as per the law, i.e. treating the unreserved category to be a category open for all and without reserving the same for the candidates who have not claimed any reservation i.e. general category, the reserved category candidates, who have secured more marks, would have been placed in the general category leaving space in their reserved category to be filled by other reserved category candidates below them, who have been left or could not find place in their category because of preparation of category wise list by the Commission. The result of such merit induced shift would be that there would be a place available in the reserved category for the persons who have been left out from the unreserved category. In case such a procedure is followed by the respondents, which is in accordance with the law laid down by the Apex Court as well as this Court, the petitioners and other similarly situated candidates would have a chance to be placed in the reserved category to which they belong and would have a chance to appear in the next stage of examination, i.e. the Mains Examination. Because of the act of the respondents, the petitioners and similarly situated candidates have been deprived of appearing in the Mains Examination as list prepared by the respondents is faulty.

**185.** Considering the rival submissions of the parties and also considering the factual aspect as has come before this Court, it is an admitted position that 321 OBC candidates and 43 SC candidates have secured more marks than the last selected general category candidate. In case the respondents had followed the law, that would have resulted in

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the displacement of 364 candidates from the reserved category, leaving space for 321 OBC candidates and 43 SC candidates in their respective categories. Had the procedure as mentioned above would have been followed by the respondents, the cut-off marks for all the categories would have been different from what have been fixed by the Commission.

**186.** It is true that the petitioners could not qualify the preliminary examination but, since the respondents have not declared the marks obtained by the candidates at the preliminary examination level, which, according to the respondents, have to be declared after the declaration of the final result, it cannot be said with certainty as to whether the petitioners could not have found a place in their reserved category, but there are fair chances of their being placed in the reserved category after shifting 321 OBC candidates to the unreserved category.

**187.** Apart from this, the entire exercise conducted by the respondents is against the settled law and judgments of the Apex Court as well as this Court, wherein it has been held that the open category cannot be treated to be a category reserved for unreserved candidates. Here, in the present case, at both the stages, i.e., the preliminary examination as well as the Mains Examination, the Commission has prepared the list as per the category, ignoring the marks obtained by the candidates and their *inter se* merit. Such a faulty procedure has come to the knowledge of this Court, and the same cannot be ignored in the matter of selection to a public post.

**188.** The act of the respondents in applying the same procedure for the Mains Examination is even more damaging, as the marks obtained in the Mains Examination are to be counted at the time of preparing the final list by adding the marks of the interview, and such an exercise of power cannot be permitted in view of the judgment of the Supreme Court in the case of State of Rajasthan Vs. Rajat Yadav (supra), wherein, in a similar situation, the Supreme Court has upheld the judgment of High Court setting aside the merit list prepared by the Commission.

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**189.** The procedure adopted by the Commission led to compartmentalization right from the initial stage, which has resulted 50% posts reserved for the unreserved/forward community both at the preliminary as well as the written examination stage. The reserved category has been confined to the percentage to which they are entitled as per the law, i.e., in the case of OBC, only 27%; SC, 21%; and ST, 2% and the remaining 50% has been exclusively reserved for the unreserved/ forward community.

**190.** The Public Service Commission has fixed an upper ceiling on the percentage of candidates to be sent for the Mains Examination as well as for interview for each reserved category. The law is settled that the legislature has provided a minimum reservation and not the maximum reservation. By confining the candidates to their maximum limit, in case of reserved candidate, has resulted in reservation for the unreserved category, which is not provided either by the Constitution or by the statute.

**191.** The Public Service Commission should have adopted a procedure that the reserved category candidate who has secured more marks than the last selected unreserved category candidate should be placed in the unreserved category at all stages of examination, which would have extended the field of unreserved candidates to the persons who could not find a place in the reserved category because of the wrong placement of candidates, who have secured more marks than the last unreserved category candidate in their own category. The result of the procedure as followed by the Commission is that the field of unreserved category has been extended instead of the field of reserved category, which is not permissible. Unreserved seats cannot be treated to be reserved only for candidates who have not claimed any reservation. The entire selection made at the preliminary as well as Mains Examination is vitiated on this account and cannot be sustained. Therefore, it could not be held that the writ petition at the behest of the petitioners is not maintainable.

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**Question No. (f)**

*"Whether the writ petition is maintainable without impleading the persons who have been declared succesful in the Mains Examination, as their rights are likely to be prejudiced in case the writ petition is allowed."*

**192.** The objection raised by the respondents that the petitioners have not impleaded the candidates who were selected after the Mains Examination to appear in the interview and in case, the present writ petition is allowed, their rights are likely to be affected and, therefore, the present writ petition is not maintainable on this score. Learned counsel for the petitioners submitted that the petition was filed immediately after declaration of the result of the preliminary examination and, at that point of time, the written examinations were not held and, therefore, there was no question of impleading those candidates who have been declared successful in the Mains Examination during the pendency of the writ petition. Further, learned counsel for the petitioners submitted that no rights of the persons, who are declared successful in the Mains Examination have been infringed, as they are not selected candidates. A candidate becomes eligible for appointment only after he successfully clears the interview stage and his name appears in the final select list prepared after adding the marks of the Mains Examination as well as the interview and before that no legal right accrues in favour of the persons who are merely selected in the Mains Examination.

**193.** Since the candidates have to be called for interview in the ratio of 1:3, therefore, it cannot be said that all the persons who have been selected in the Mains Examination were to be offered appointment after the interview. Even otherwise, it has been submitted by learned counsel for the petitioners that by mere inclusion of the name in the select list, no right can be said to have accrued to the selected candidates for appointment, and by inclusion or securing a place in the select list, the selected candidates are entitled to consideration for appointment.

**194.** In case of **Shankarsan Dash Vs. Union of India; (1991) 3 SCC 47,** in paragraph No. 7, the Hon'ble Supreme Court has held as under:-

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> *"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, [1974] 1 SCR 165; Miss Neelima Shangla v. State of Haryana and Others, [1986] 4 SCC 268 and Jitendra Kumar and Others v. State of Punjab and Others, [1985] 1 SCR 899."*

**195.** Though the observations made by the Supreme Court in case of Shankarsan Dash (supra) were in a different context i.e. in case where the Government decided not to fill up the vacancies after the selection, the principle enunciated is that merely because one person found place in the select list, will not have an indefeasible right to be appointed.

**196.** This Court, by interim order dated 28.09.2026, has stayed the declaration of the result of the interview and, therefore, there is no final select list prepared in the case. Further, in the Mains Examination, only the roll numbers have been declared and not the names of the persons, who have qualified. The persons who have been selected in the Mains Examination do not get a right of appointment, therefore, this petition cannot be thrown out on the ground of non-impleadment of necessary parties, as such persons are not the necessary parties to be impleaded in the writ petition.

**Question No. (g)**

> *"In the facts and circumstances of the case, what relief, if any, can be granted to the petitioners."*

**197.** While considering the question No. (c), as I have already held that the Uttar Pradesh Public Service Commission, respondent No. 2, lacked the legislative competence to issue the Office Memorandum dated

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9.01.2020, impugned in the present writ petition, the same is liable to be struck down and accordingly, the Office Memorandum dated 09.01.2020, issued by respondent No. 2, is quashed.

**198.** In view of the discussions made above, I am of the considered opinion that the respondents have wrongly applied the law as laid down by the Hon'ble Supreme Court as well as by this Court in preparing the list category-wise, both at the stage of Preliminary Examination as well as Mains Examination, treating unreserved category to be a category reserved for candidates, who have not claimed any reservation and thereby excluding the more meritorious reserved category candidates from the said list. The result of this exercise was that the meritorious reserved category candidates were confined to their respective categories, both at the stage of Preliminary Examination as well as Mains Examination, depriving the reserved category candidates below them to get a chance to enter into their respective reserved categories. If such meritorious reserved candidates would have been placed in unreserved category then the reserved category candidates below them would have been placed in their reserved category, getting a chance to appear in the next tier of examination.

**199.** In view of the fact that respondents have wrongly prepared the category-wise list both at the stage of Preliminary Examination as well as Mains Examination (in case of Mains Examination, marks of the candidates obtained were to be added at the time of preparing the final select list after the interview), the writ petition has to be **allowed** and the preliminary examination result declared by Uttar Pradesh Public Service Commission, respondent No. 2 on 30.04.2026 has to be quashed and is quashed.

**200.** In view of the above, this writ petition succeeds and is allowed to the extent that respondent No. 2-Uttar Pradesh Public Service Commission shall redraw the merit list of Preliminary Examination result of suitable candidates to qualify for the next stage of examination for the purposes of selection and appointment against vacancies

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advertised vide Advertisement No. A-8/E-1/2025, and thereafter, only the Commission shall hold Mains Examination afresh on the basis of such revised Preliminary Examination result and proceed further with the selection.

**(Manish Kumar Nigam,J.)**

**November 25, 2026**
Nitika Sri./ Ved Prakash