

**Neutral Citation No. - 2025:AHC:174511**

**Reserved on : 23.09.2025**

**Delivered on : 25.09.2025**

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT - A No. - 8788 of 2025**

**Rajat Maurya And 41 Others**

**....Petitioner(s)**

**Versus**

**State Of U.P. And 6 Others**

**....Respondent(s)**

Counsel for Petitioner(s) : Siddharth Khare, Sr.  
Advocate

Counsel for  
Respondent(s) : C.S.C., M.N. Singh

**WITH**

**WRIT - A No. - 17604 of 2024**

**Sudhanshu Verma And 3 Others**

**...Petitioner(s)**

**Versus**

**State Of U.P. And 6 Others**

**....Respondent(s)**

Counsel for Petitioner(s) : Siddharth Khare, Sr.  
Advocate

Counsel for  
Respondent(s) : C.S.C., M.N. Singh

**AND**

**WRIT - A No. - 11404 of 2025**

**Shubham Kumar Raju And 4 Others**

**...Petitioner(s)**

**Versus**

**State Of U.P. And 6 Others**

**....Respondent(s)**

Counsel for Petitioner(s) : Siddharth Khare, Sr.  
Advocate

Counsel for  
Respondent(s) : C.S.C., M.N. Singh

**Court No. - 4**

**HON'BLE AJIT KUMAR, J.**

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Himanshu Singh, learned Advocate holding brief of Sri Siddharth Khare, learned counsel for the petitioners, Sri Anoop Trivedi, learned Senior Advocate assisted by Sri Nipun Singh, Sri Naman Agarwal and Sri Ritaj Vikram Singh, learned Advocates appearing for the Uttar Pradesh Public Service Commission and Sri P.K. Srivastava, learned Additional Chief Standing Counsel for State of Uttar Pradesh and other State respondents.

2. All these three petitions since raise common question of law, they have been heard simultaneously and are now being decided by this common judgment.

3. The subject matter of controversy arising in all these petitions relate to preparation of result of preliminary examination conducted by Uttar Pradesh Public Service Commission (*hereinafter referred to as 'Commission'*) for the purposes of selection and appointment upon different categories of posts in the Departments under the State, namely Assistant Engineer (Civil/ Mechanical) and likewise posts falling in Group-B, Grade-2 post of District Horticulture Officer/ Food Processing Officer in the department of Agriculture and Senior Technical Assistant, Group - A post in different branches of Chemistry/ Botany/ Agronomy/ Plant Protection and Development. In all 604 posts were initially advertised in total 5 groups by the Commission vide advertisement No. A-9/E-1/2024 dated 17.12.2024 inviting applications from eligible candidates.

Later on 5 posts were added totalling to 609 posts. The petitioners in these petitions have applied for the posts of Civil/ Mechanical Engineer pursuant to the advertisement and also some of the petitioners have applied for Group-B posts of District Horticulture Officer/Food Processing Officer and Group-A category posts Senior Technical Assistants in different branches, Chemistry/ Botany/ Agronomy/ Plant Protection and Development.

4. For the purpose of statement of facts, legal pleas taken and reference made to certain Rules that are applicable in connection with the matter, writ petition in the matter of Rajat Maurya & 41 others v. State of U.P. & 6 Others being Writ - A No. 8788 of 2025, is taken up as a leading petition.

5. There is no quarrel as to number of vacancies, the preliminary examination (screen test) conducted by the Commission. The dispute erupted only upon result being published on 26.05.2025 qualifying only 7358 candidates against 609 vacancies which according to the petitioners was not in consonance with clause 11(8) of the advertisement.

6. In order to appreciate the controversy and before I deal with the arguments advanced on behalf of rival parties, I consider it appropriate to refer to the important clauses of the advertisement and the U.P. Direct Recruitment through Public Service Commission Preliminary Examination Rules, 1986 (*hereinafter to be referred to as 'Rules, 1986'*) and the The Uttar Pradesh Public Services (Reservation for Scheduled Castes,

Scheduled Tribes and Other Backward Classes) Act, 1994 (*hereinafter referred to as 'Act, 1994'*). Clauses 11(8), 11(13) and 11(14) of the advertisement relevant for in the case, are reproduced hereunder:

***"11. IMPORTANT INSTRUCTIONS FOR CANDIDATES:-***

*(8). On the basis of the result of Preliminary Examination, **fifteen times candidates to the number of vacancies shall be declared successful for the Main Examination** and three times candidates to the number of vacancies shall be called for the interview.*

*(13. The **minimum efficiency standard for S.C. & S.T. candidates is fixed 35%** i.e. the Candidates of these Categories shall not be placed in the merit/select list if they have secured less than 35% marks in the Preliminary/Main examination. Similarly, **the minimum efficiency standard for the candidates of other categories is fixed 40%** i.e. such candidates shall not be placed in the merit/select list if they have secured less than 40% marks in the Preliminary/Main examination. All such candidates who have secured less marks than the marks of minimum efficiency standard as fixed by the Commission shall be treated disqualified.*

*(14). The candidates of reserved categories will be adjusted against the unreserved category in the **final selection only if he/she will not have availed any benefit/concession in qualifying standard at the stage of Preliminary/ Main Examination.**"*

*(emphasis added)*

7. Upon reading clause 11(8) as quoted above, it becomes clear that after the preliminary examination is held, fifteen times candidates *qua* the vacancies advertised shall be declared/ placed in the list of eligible candidates for the main examination and three times of the candidates *qua* the vacancies advertised shall be called for the interview finally.

8. The minimum efficiency standard for SC and ST category candidates is fixed 35% minimum marks and 40% minimum marks for the OBC and unreserved candidates vide clause 11(13).

9. Clause 11(14) which is a clause that needed interpretation and is in issue, it is provided that the reserved category candidates will be adjusted against unreserved category at the stage of final selection, provided such category candidate has not availed any benefit/ concession in qualifying standard at the stage of preliminary examination.

10. The relevant rules 2(viii), 2(ix), 3(1), 3(2), 3(3), 3(4) & 3(5) of the Rules, 1986 are reproduced hereunder:

***"2. Definitions.--(i) "Commission means Public Service Commission Uttar Pradesh.***

*(viii) "Suitable candidates" means candidate securing minimum number of marks as may be fixed by Commission in its discretion at Preliminary Examination thereby enabling him to appear in the main examination or interview as the case may be;*

*(iv) "Main Examination or Interview" means the examination or interview as per relevant Service rules and Government orders.*

***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.*

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

(4) (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/ General Studies while the other will be of one of the subjects which may be offered by the candidates out of the optional subjects allowed for the Main Examination of that Service. In case there be no optional subjects allowed for the Main Examination, the second subject to be offered may be prescribed by the Commission in its discretion from amongst the compulsory subjects allowed for the examination.*

(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.*

(5) *Question papers will be set in the language allowed for main Examination and in English and Hindi in cases where selection by interview is prescribed in Service rules and Government orders.*

(6) *The Preliminary Examination shall be held at places and on dates and time as is fixed by Commission."*

*(emphasis added)*

11. From a bare reading of the aforesaid provisions, it comes out that a candidate who qualifies the preliminary examination by obtaining minimum qualifier percentage

of marks as may be fixed under the advertisement, is termed as "Suitable Candidate" and main examination and interview are referable to the relevant service rules which provide for selection through written examination or walk-in-interview. There is no quarrel as to the conduct of main examination and interview for the purposes of recruitment against the vacancies advertised under the relevant departmental service rules. Rule 3 of the Rules, 1986 authorizes the Commission to hold preliminary examination to shortlist candidates for admission to main examination and/ or interview, as the case may be, with the prior approval of the Government and in the event preliminary examination is held, a candidate who qualifies, shall be a suitable candidate to appear in main examination or interview as the departmental service rules may provide. Rules further provide that preliminary examination is only qualifying examination for a candidate to become 'suitable candidate' for the purposes of main examination or interview as the case may be and the marks obtained and the merit secured in such preliminary examination will have no bearing as to the final merit to be determined in the main examination and/ or interview. Rule 3(iv) provides for question papers and the duration in terms of hours in the event it is to be followed by main examination and such papers will consist of General Knowledge and General Studies and also one of the optional subjects as the Commission may prescribe with the concurrence of the State Government. The ratio of marks is also prescribed under the relevant rule 4. The rules further provide for language of the paper to be the same i.e. prescribed/ allowed for main examination and

will be in English and Hindi in the event preliminary test is followed by interview under the relevant service rules or the Government Orders. The rules also provide for holding preliminary examination at place and time at the discretion of the Commission.

12. Now coming to reservation Act, 1994, I find rule 3(1), (5) and (6) to be relevant for the purposes of resolving the issue involved in the present case and are accordingly reproduced hereunder:

***“3. Reservation in favour of Scheduled Castes, Scheduled Tribes and other backward Classes.--(1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentage of vacancies to which recruitment's 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--***

<i>(a) in the case of Scheduled Castes</i>	<i>Twenty-one per cent;</i>
<i>(b) in the case of Scheduled Tribes</i>	<i>Two per cent;</i>
<i>(c) in case of Other Backward Classes of citizens</i>	<i>Twenty-seven per cent;</i>

*Provided that the reservation under clause (c) shall not apply to the category of Other Backward Classes of citizens specified in Schedule II.*

*(5). The State Government shall, for applying the reservation under sub-Section (1), by a notified order, issue a roster which shall be continuously applied till it is exhausted.*

*(6). If a person belonging to any of the categories mentioned in subsection (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).”*

13. All that aforesaid rule 3(1) provides for percentage of vacancies for the purposes of reservation *qua* direct recruitment on the post in the Government Department and provides for procedure to apply reservation as per roster provided under sub-section (5) in favour of the persons belonging to SC/ ST and OBC citizens. The percentage provided for SC candidate is 21%, for ST 2% and for OBC 27%. There are certain exceptions carved out to deny reservation to OBC candidates in respect of the persons mentioned in schedule II of the Act.

14. Now coming to the controversy raised in these petitions, I find that petitioners are basically aggrieved for the ratio as contained in clause 11(8) for it being not strictly adhered to as pleaded vide paras 23, 24 & 25 of the writ petition and for the reason that only 7358 candidates were made to qualify as 'suitable candidates' against 609 vacancies advertised and which accounts for a ratio of 1:12, whereas, according to the petitioners, as was argued before the Court, if the ratio 1:15 was made applicable then 9135 candidates would have been made to qualify for the second stage i.e. main examination.

15. Plea was taken that in view of the provisions contained under Rules, 1986, the Commission ought not to have prepared and published preliminary examination results categorywise, inasmuch as, a list ought to have been drawn of unreserved category candidates in the first instances as per the minimum efficiency standard fixed to make all successful candidates to qualify irrespective of their special reserved categories provided they met the

minimum efficiency standard as was prescribed under clause 11(13). This logic appears to be based upon principle of migration from reserved to unreserved category, the latter being open to all.

16. Thus, Sri Ashok Khare, learned Senior Advocate, in a nut shell, raised following arguments:

(i) Preparation of result categorywise was against the express provisions of Rules, 1986.

(ii) The unreserved candidates cannot be classified as a category reserved in itself to oust the entry of reserved category candidates even at the stage of preliminary examination which may be merely a screen test.

(iii) The Commission was not justified in qualifying lesser number of candidates in the preliminary examination/ screen test only for the reason that a candidate if had applied against different categories of vacancies and qualified, then such candidate being common against such different vacancies would be counted as one candidate against all such posts multiple times to form the ratio of 1:15 even though actual number may not attain the parameter of 1:15 ratio.

17. In support of his above submissions, learned Senior Advocate Mr. Khare has placed reliance upon the judgment of Supreme Court in the case of **Saurav Yadav & Others v. State of U.P. & Others, (2021) 4 SCC 542; Jitendra Kumar Singh & Another v. State of U.P. & Another, (2010) 3 SCC 119; and Deependra Yadav &**

**Others v. State of Madhya Pradesh, 2024 SCC OnLine SC 724.**

18. Meeting the arguments advanced as above on behalf of the petitioners, Sri Anoop Trivedi, learned Senior Advocate at the very threshold placed a chart after serving a copy thereof upon learned Senior Counsel appearing for the petitioners, in respect of Group1, Group-2, Group-3, Group-4 and Group-5 posts and posts under special drive selection, to demonstrate that Commission strictly adhered to clause 11(8) in preparing the list as a result of preliminary examination. The chart placed before the Court is reproduced hereunder:

***Group wise/Category wise detail of successful candidates in Combined State Engineering Services (General/Special Recruitment) (Preliminary) Examination - 2024, released on 26.05.2025 is as follows:-***

***Group - 1***

***Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)***

***Branch - Civil Engineering***

***Total Post - 468***

<i>Category</i>	<i>No. of Vacancies</i>		<i>No. of required candidates at a ratio of 1 to 15</i>	<i>No. of candidates finally available</i>
<i>Unreserved</i>	<i>187</i>		<i>187x15=2805</i>	<i>2443</i>
<i>S.C.</i>	<i>129</i>		<i>129x15=1935</i>	<i>1234</i>
<i>S.T.</i>	<i>05</i>		<i>5x15=75</i>	<i>29</i>
<i>O.B.C.</i>	<i>105</i>		<i>105x15=1575</i>	<i>1648 (1575+73)</i>
<i>E.W.S.</i>	<i>42</i>		<i>42x15=630</i>	<i>371</i>
<i>D.F.F.</i>	<i>07</i>		<i>7x15=105</i>	<i>24</i>
<i>P.H.</i>		<i>L.V.-01</i>	<i>1x15=15</i>	<i>03</i>

	18	H.H.-08	8x15=120	04
		O.A.-04	4x15=60	02
		B.-01	1x15=15	00
		D.-01	1x15=15	00
		O.L.-01	1x15=15	06
		D.W.-01	1x15=15	00
		A.A.V.-01	1x15=15	00
Ex.- Servicemen	22		22x15=330	00
Women	92		92x15=1380	459

**Group -2**

***Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)***

***Branch - Mechanical Engineering***

***Total Post - 91***

Category	No. of Vacancies		No. of required candidates at a ratio of 1 to 15	No. of candidates finally available
Unreserved	61		61x15=915	916 (915+1)
S.C.	09		9x15=135	136 (135+1)
S.T.	04		4x15=60	13
O.B.C.	09		9x15=135	137 (135+2)
E.W.S.	08		8x15=120	126 (120+6)
D.F.F.	01		1x15=15	10
P.H.	04	LV-01	1x15=15	01
		HH-01	1x15=15	01
		OA-02	2x15=30	08
Ex.-Service Man	03		3x15=45	09
Women	17		17x15=255	96

**Group-3**

***Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)***

**Branch - Electrical Engineering**

**Total Post - 07**

<i>Category</i>	<i>No. of Vacancies</i>	<i>No. of required candidates at a ratio of 1 to 15</i>	<i>No. of candidates finally available</i>
<i>Unreserved</i>	<i>04</i>	<i>4x15=60</i>	<i>63 (60+3)</i>
<i>S.C</i>	<i>02</i>	<i>2x15=30</i>	<i>32 (30+2)</i>
<i>S.T</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>O.B.C.</i>	<i>1</i>	<i>1x15=15</i>	<i>16 (15+1)</i>
<i>E.W.S.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>D.F.F.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>P.H.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>Ex-Servicemen</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>Women</i>	<i>01</i>	<i>1x15=15</i>	<i>16 (15+1)</i>

**Group-4**

**Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)**

**Branch - Electrical/Mechanical Engineering**

**Total Post -09**

<i>Category</i>	<i>No. of Vacancies</i>	<i>No. of required candidates at a ratio of 1 to 15</i>	<i>No. of candidates finally available</i>
<i>Unreserved</i>	<i>05</i>	<i>5x15=75</i>	<i>77 (75+2)</i>
<i>S.C</i>	<i>04</i>	<i>4x15=60</i>	<i>74 (60+14)</i>
<i>S.T</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>O.B.C.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>E.W.S.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>D.F.F.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>P.H.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>Ex-Servicemen</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>Women</i>	<i>01</i>	<i>1x15=15</i>	<i>16 (15+1)</i>

**Group-5**

***Detail of candidates available as per rules against Category wise Vacancies (General Recruitment)***

***Branch - Rural Engineering***

***Total Post -12***

<i>Category</i>	<i>No. of Vacancies</i>	<i>No. of required candidates at a ratio of 1 to 15</i>	<i>No. of candidates finally available</i>
<i>Unreserved</i>	<i>05</i>	<i>5x15=75</i>	<i>31</i>
<i>S.C</i>	<i>04</i>	<i>4x15=60</i>	<i>14</i>
<i>S.T</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>O.B.C.</i>	<i>02</i>	<i>2x15=30</i>	<i>26</i>
<i>E.W.S.</i>	<i>01</i>	<i>1x15=15</i>	<i>03</i>
<i>D.F.F.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>P.H.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>Ex-Servicemen</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>Women</i>	<i>02</i>	<i>2x15=30</i>	<i>07</i>

***(Special Recruitment)***

***Detail of candidates available as per rules against Category wise Vacancies***

***Branch - Civil Engineering***

***Total Post -22***

<i>Category</i>	<i>No. of Vacancies</i>	<i>No. of required candidates at a ratio of 1 to 15</i>	<i>No. of candidates finally available</i>
<i>S.C</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>S.T</i>	<i>03</i>	<i>3x15=45</i>	<i>29</i>
<i>O.B.C.</i>	<i>19</i>	<i>19x15=285</i>	<i>289 (285+4)</i>
<i>D.F.F.</i>	<i>00</i>	<i>00</i>	<i>00</i>
<i>P.H.</i>	<i>01 (H.H. - 01)</i>	<i>1x15=15</i>	<i>02</i>
<i>Ex-Servicemen</i>	<i>01</i>	<i>1x15=15</i>	<i>00</i>
<i>Women</i>	<i>04</i>	<i>4x15=60</i>	<i>67 (60+7)</i>

*Note - As per the order of the Commission dated 01.08.2019, for those examinations wherein the selection process is finally conducted through preliminary examination, main examination and interview, the marks and category wise cut off marks related to preliminary examination, main examination and final selection of those examinations are released after the final selection.*

*Sanjay Kumar Verma*

*(Section Officer)”*

19. Defending the stand of the Commission in preparing categorywise list of suitable candidates in preliminary examination and compliance of clause 11(8) of advertisement was there, Sri Trivedi firstly argued that posts were categorized as per the reservation applicable both vertical and horizontal and then in the ratio of 1:15 the candidates were made to qualify as suitable candidates for main examination. Mr. Trivedi however, added that since the results were published categorywise to meet the mandate contained under the reservation Act, 1994 and the conditions laid in the advertisement for prescribing different set of efficiency standard and office memorandum issued earlier in order to ensure representation of all the categories to invite them to compete at a level playing field, a stage of final examination, *to wit* 'open selection', that candidates were confined to their respective categories only. Hence, according to Mr. Trivedi, if in the unreserved category candidates belonging to unreserved were not able to qualify to form the ratio of 1:15, they were called in lesser number as 'suitable candidates' to qualify for main examination and this, according to Mr. Trivedi, may have happened to any of the categories. Thus, the qualifying

preliminary examination result, according to Mr. Trivedi, was bound to be category specific.

20. The second argument advanced by Mr. Trivedi is, when the advertisement itself provided that a reserved category candidate would be adjusted against unreserved category in the final selection and the petitioners accepted such an advertisement and conditions laid therein, it was not open for them to make a hue and cry now when the preliminary examination results have been declared as per the conditions prescribed under clause 11(14) of the advertisement.

21. Sri Trivedi has also placed before this Court memorandum issued by the Secretary, Public Service Commission dated 9<sup>th</sup> January, 2020 to buttress his argument that whatever was prescribed under the advertisement had the support of the memorandum/circular issued by the Public Service Commission regarding migration of the reserved category candidate to the unreserved category candidate including those falling EWS category only at the stage of final selection and in the absence of any rule governing modalities, the memorandum had the binding force.

22. Sri Trivedi placed reliance upon the very decision of Jitendra Kumar Singh (*supra*) already relied upon by learned Senior Advocate appearing for the petitioner and has placed paragraphs 75, 76 and 77 thereof that run as under:

*“75. In our opinion, the relaxation in age does not in any manner upset the “level playing field”. It is not possible*

to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. **At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination.** With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. **Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.**

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. Sections 3(1), 3(6) and Section 8 are interconnected. Expression "open competition" in Section 3(6) clearly provides that all eligible candidates have to be assessed on the same criteria.**

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 appellant-petitioners 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 Uttar Pradesh issued directions on 25-3-1994 to ensure compliance with the various provisions of the Act. Non-compliance with any officer was in fact made punishable with imprisonment which may extend to period of three months."*

(emphasis added)

23. Sri Trivedi has further placed reliance upon certain observations made by the Supreme Court in Special Leave Petition (C) No.- 1868 of 2023 Pushpendra Kumar Patel and others v. High Court of Madhya Pradesh, whereby question of law as to the applicability of principle of migration at the stage of preliminary examination was left open.

24. Sri Trivedi submitted that in the case of Pushpendra Kumar Patel (supra) vide paragraphs 41 and 42 the Madhya Pradesh High Court had taken departure from the principle laid down in the judgement by same High Court earlier in the matter of **Kishore Choudhary v. State of Madhya Pradesh and another** in Writ Petition No.- 542 of 2021, wherein migration was held to be applicable at both stages of preliminary and main examination as per the constitutional scheme flowing from the Article 14 and 16 of the Constitution.

25. Sri Trivedi submitted that in the case of Deependra Yadav and others v. State of Madhya Pradesh and others 2024 SCC Online SC 724 that arose from the same High Court, reliance was placed upon the judgment in the case of Kishore Choudhary (supra) as no SLP had been preferred against the said judgment but upon a

contradictory stand taken in the Purshpendra Kumar Patel (*supra*) and upon an SLP being preferred which though of course came to be dismissed but the Court left question of law open. Vide paragraph 41 and 42 of the judgment in the case of **Pushpendra Kumar Patel** (*supra*) the Madhya Pradesh High Court has held thus:

*“41. The concept of migration which is purely merit centric cannot be made available to be availed by reserved category candidates at the stage of Preliminary Examination in which comparative merit of the candidates is not assessed. The migration therefore can be applied in the examination where comparative merit is assessed which herein is not the Preliminary Examination.*

***42. If right to migrate is permitted to be availed by reserved category candidate at the stage of result of Preliminary Examination then that would violate the very foundation on which the concept of migration stands.** If the argument of learned counsel for the petitioners is accepted, then an anomalous situation would arise where candidates who have not been subjected to any comparative assessment on merit are allowed to invoke the principle of migration which is founded solely on merit.”*

*(emphasis added)*

26. The order passed by the Supreme Court dated 7<sup>th</sup> July, 2023 arising out of the aforesaid judgment in the matter of SLP (C) 1868 of 2023 is reproduced hereunder:

*“Upon hearing the counsel the Court made the following*

*ORDER*

*SLP (C) No. 1868/2023*

*After opening the sealed envelope, we have seen the marks obtained by one of the petitioners, namely Amit Kumar Kirar, who had appeared in the written examination. He has failed to qualify. The other petitioners did not appear in the written examination.*

***In view of the aforesaid position, the present special leave petition is rendered as infructuous and is disposed of accordingly, leaving the question of law open.***

SLP(C) No. 4843/ 2023

*This special leave petition has become infructuous as the examination has already held.*

*In view of the aforesaid position, the special leave petition is dismissed as infructuous.”*

*(emphasis added)*

27. Sri Trivedi also submitted that judgment of Punjab and Haryana High Court in the case of Haryana Public Service Commission v. Parmila and others in LPA No.- 329 of 2024 that permitted preparation for the fresh merit list of the preliminary examination test of open category by counting the marks of all candidates, be it of reserved or non reserved category, came under challenge before the Supreme Court in Special Leave to Petition No.- 38804 of 2025 and Supreme Court vide interim order dated 26<sup>th</sup> August, 2025 stayed the judgment of Division Bench of Punjab and Haryana High Court by making following observations:

*“1. Delay condoned.*

*2. The short issue which arises for our consideration is as regards migration from reserved category to unreserved category at the stage of screening.*

*3. The High Court by the impugned order has allowed such migration.*

***4. The submission on behalf of the petitioner is that such migration would be permissible only if either the rules or the advertisement permits, otherwise a screening test is not one which determines merit***

***and, therefore, general principle of merit based placement would not apply. It is submitted that advertisement does not permit such migration. In support of the above submission, the learned counsel for the petitioner has placed reliance on two clauses namely clauses 1(i) and 1(k) in the advertisement.***

*5. Matter requires consideration.*

*6. Issue notice, returnable in six weeks.*

*7. In the meantime, the effect and operation of the impugned order dated 09.04.2025 shall remain stayed.”*

*(emphasis added)*

28. Sri Trivedi has also sought to distinguish the judgment in the case of Deependra Yadav (supra) by taking a plea that the said judgment was dealing with interpretation of relevant rules framed in the State of Madhya Pradesh for applicability of migration as such even at the preliminary stage and hence came to finally conclude vide paragraph 30, 31, 32 and 33 that even at the stage of preliminary examination test, the open category will remain open for all the candidates for the purposes of preparation of list of eligible candidates for main examination.

29. Sri Trivedi has also placed reliance upon the judgment of Division Bench of Chhattishgarh at Bilaspur in the case of **Mukesh Kumar and others v. State of Chhattishgarh**, in which the Court relied upon the judgment of Pushpendra Kumar Patel (supra) and vide paragraph 9 has held thus :

*“9. Considering the fact that the selection process is already over, we are not inclined to unsettle the thing*

*which has already been settled and further considering the fact that as per clause 6 of the terms of the advertisement dated 28.06.2023, the selection process has been prescribed in three stages. First stage is preliminary examination which consists of 50 Objective type questions and the candidates have to be called in ratio of 1 : 10 and to participate in the skill test. This clause specifically provides that the marks obtained in this examination will not be added for preparation of merit list. Thereafter, in the second stage skill test has to be conducted for Assistant Grade III and the final select list as well as waiting list have to be prepared as per the marks obtained in the skill test. As such, the first stage examination is nothing but a step for shortlisting of the candidates which is the process of evaluating and selecting a candidate with aim to identify the most qualified candidates for further consideration in selection process. The first stage examination being shortlisting of the candidates therefore, it is not necessary for the answering respondent to adopt vertical reservation as submitted by the learned counsel for the petitioners and further considering the finding recorded by the learned Single Judge while dismissing the writ petition filed by the writ petitioners/appellants herein, we are of the considered opinion that the learned Single Judge has not committed any illegality, irregularity or jurisdictional error in the impugned order warranting interference by this Court.”*

30. Sri Trivedi has also placed reliance upon another Division Bench judgment of Rajasthan High Court in the case of **Gokala Ram v. The Rajasthan High Court and others** (D.B. Civil Writ Petition No. 14279 of 2024), wherein the Court held that once a candidate participated in the selection process pursuant to the advertisement agreeing to the methodology adopted therein, subsequently he cannot maintain a complaint against the procedure adopted in the selection process. He placed paragraph 9 of the said judgment before the Court which is reproduced hereunder:

*“9. It is now a well settled position in law that rule of migration under the Rules of 2010 will not have any applicability while preparation of select list at the stage of*

*screening through Preliminary Examination. **The rule of migration will only become applicable at the time of preparation of final merit list based on marks obtained by the candidates in written examination and interview. We may also add here that the Rules of 2010 and the advertisement dated 09th April 2024 both provide for preparation of a select/merit list after Preliminary Examination category-wise. The petitioners did not challenge the same before participating in the Preliminary Examination. Hon'ble Supreme Court in the case of "Rekha Sharma v. The Rajasthan High Court, Jodhpur & Anr.": Civil Appeal No.5051/2023 decided on 21st August 2024 held that **the candidates after they having found that their names do not appear in the list of successful candidates of Preliminary Examination, could not have questioned the result on the ground that the respondents had not declared the cut-off marks for their categories.*****

*(emphasis added)*

31. It is also argued by Sri Trivedi, learned Senior Advocate that petitioner being unsuccessful candidates as they have not found place in the list of suitable candidates prepared at the stage of preliminary test/ screening test, they cannot maintain this petition.

32. Sri Trivedi has thus sought to contend that petition itself is not maintainable at the instance of unsuccessful candidates. Sri Trivedi also raised a point that in the event list of unreserved candidates is prepared incorporating the names of those of reserved categories who could march to the unreserved category for having scored at par or above the last cut off of marks of unreserved category candidate, they may not match with the general category in the final examination and then they would again make a plea for being repatriated to the reserved category.

33. Thus, according to Sri Trivedi this is like a see-saw battle if argument of Mr. Khare for preparation of unreserved category result incorporating reserved category candidates is accepted and it would further render selection process not only complexed but also discriminating and impermissible on sound principle of adequate representation at a level playing field.

34. On the point of adequate representation of all the categories of the candidates to give due participation by creating equal playable field i.e. stage of final examination, Sri Trivedi has sought to distinguish the judgment of Supreme Court in the case of **Andhra Pradesh Public Service Commission v. Balaji Badhavath and others (2009) 5 SCC 1**. However, before placing the judgment, Sri Trivedi contended that Court in that case was basically dealing with the Andhra Pradesh Public Service Commission Rules and Regulations and the Government order dated 31<sup>st</sup> December, 1997 which required candidates to be called in for written examination in the ratio 1:50 without reference to category/ community vis-a-vis the earmarked reservation to their particular community. While Andhra Pradesh High Court held that Government order dated 31<sup>st</sup> December, 1997 insofar as it uses words irrespective of communities was liable to be declared irrational having no nexus with object sought to be achieved. The judgment was reversed by Supreme Court in SLP (*supra*) holding that once Public Service Commission had framed rules prescribing procedure, a Court ordinarily would not interfere with, unless it is found to be arbitrary or against

the principle of fair play. Vide paragraphs 30, 31, 32 and 35 the Court has held thus:

***“30.** The proviso appended to Article 335 of the Constitution, to which our attention has been drawn by Mr Rao, cannot be said to have any application whatsoever in this case. Lowering of marks for the candidates belonging to the reserved candidates (sic categories) is not a constitutional mandate at the threshold. It is permissible only for the purpose of promotion. Those who possess the basic eligibility would be entitled to appear at the main examination. While doing so, in regard to General English whereas the minimum qualifying marks are 40% for OCs, it would be 35% for BCs and 30% for SC/STs and physically handicapped persons. However, those marks were not to be counted for ranking.*

***31.** We have noticed hereinbefore, that candidates belonging to the reserved categories as specified in the notification are not required to pay any fee. Their age is relaxed up to five years. It is, therefore, not correct to contend that what is given by one hand is sought to be taken by another. They can, thus, appear in the examination for a number of times. Indisputably, the right conferred upon the respondent-writ petitioners in terms of Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 was to be protected. The extent of relaxation has been recognised. By reason of such a provision, the right to be considered has not been taken away.*

***32.** Judging of merit may be at several tiers. It may undergo several filtrations. Ultimately, the constitutional scheme is to have the candidates who would be able to serve the society and discharge the functions attached to the office. Vacancies are not filled up by way of charity. Emphasis has all along been made, times without number, to select candidates and/or students based upon their merit in each category. The disadvantaged group or the socially backward people may not be able to compete with the open category people but that would not mean that they would not be able to pass the basic minimum criteria laid down therefor.*

***35.** Rule 4 of the Andhra Pradesh Public Service Commission Rules of Procedure which refers to Rules 22 and 22-A of the Andhra Pradesh State and Subordinate*

*Service Rules, 1996 would apply only where shortlisting is done. The first part of the said Rule empowers the Commission to restrict the number of candidates to be called for interview to such an extent as it may deem fit. While shortlisting, however, it may hold a written test or provide for a preferential or higher qualification and experience and only for that purpose it is required to take into account the requirements with reference to Rules 22 and 22-A of the Andhra Pradesh State and Subordinate Service Rules, 1996 and the rule of reservation in favour of local candidates.”*

35. Sri Trivedi summed up his arguments by contending that there was no final conclusive authority on the contentious issue in view of the fact that a SLP had been entertained by Supreme Court staying the judgment of Punjab and Haryana High Court as to the preparation of list of suitable candidates at the stage of preliminary examination/ screening test by incorporating and taking candidates of reserved category. According to Sri Trivedi, the law is yet to be crystallized and a judgment is a precedent for the case it decides and cannot be taken as elucid theorem to make the principle enunciated thereunder as a rule of general applicability.

36. In the rejoinder argument to the submission of Sri Trivedi, as to how many times candidates of reserved category can be placed in general and then can be repatriated, Sri Ashok Khare, learned Senior Advocate appearing for the petitioner, has placed reliance upon the authority of Supreme Court in the case of **Alok Kumar Pandit v. State of Assam and others (2012) 13 SCC 516** to take a plea that migration from reserved category to unreserved category and then repatriation to reserved category for the purposes of having better post available for having secured better marks to top reserved category

candidates have been held permissible and such candidate belonging to reserved category originally, can be still permitted to opt for higher post falling in reserved category for reserved quota being applied. He has placed paragraph 17 and 18 of the judgment that are reproduced hereunder:

*“17. In Anurag Patel v. U.P. Public Service Commission [(2005) 9 SCC 742 : 2005 SCC (L&S) 563] this Court was called upon to consider whether more meritorious candidates of reserved category who were adjusted against the posts earmarked for general category were not entitled to make a choice of the post earmarked for reserved category. The facts as noticed by this Court were that the third respondent i.e. Rajesh Kumar Chaurasia in CA No. 4794 of 1998, who secured 76th place in the select list, filed Civil Miscellaneous Writ Petition No. 46029 of 1993 before the High Court of Allahabad contending that he was appointed as a Sales Tax Officer, although the appellant in CA No. 4794 of 1998 i.e. Nanku Ram (Anurag Patel) who was also a Backward Class candidate, was appointed as a Deputy Collector, who according to the third respondent, had secured 97th rank in the select list, a rank lower than him. Similarly, 8 persons, all belonging to Backward Classes, who find their names in the select list filed Writ Petition No. 22753 of 1993 alleging that they were entitled to get postings in higher cadre of service as the persons who secured lower rank in the select list were given appointment to higher posts. The first petitioner in the writ petition i.e. Shri Rama Sanker Maurya and the second petitioner i.e. Shri Abdul Samad were at Serial Nos. 13 and 14 in the select list. According to these petitioners, persons lower in rank who got appointment in the reserved category were given postings on the ground that those posts were earmarked for being appointed in Class II services.*

*18. After noticing the judgments in Ritesh R. Sah v. Y.L. Yamul [(1996) 3 SCC 253] and State of Bihar v. M. Neethi Chandra [(1996) 6 SCC 36] the Court observed: (Anurag Patel case [(2005) 9 SCC 742 : 2005 SCC (L&S) 563] , SCC pp. 746-47, para 5)*

*“5. ... In the instant case, as noticed earlier, out of 8 petitioners in Writ Petition No. 22753 of 1993, two of them who had secured Ranks 13 and 14 in the merit list,*

*were appointed as Sales Tax Officer II, whereas the persons who secured Ranks 38, 72 and 97, ranks lower to them, got appointment as Deputy Collectors and the Division Bench of the High Court held that it is a clear injustice to the persons who are more meritorious and directed that a list of all selected Backward Class candidates shall be prepared separately including those candidates selected in the general category and their appointments to the posts shall be made strictly in accordance with merit as per the select list and preference of a person higher in the select list will be seen first and appointment given accordingly, while preference of a person lower in the list will be seen only later."*

37. Besides the above, in rejoinder no additional arguments have been advanced, rather Mr. Khare gave up his first argument regarding preparation of list of suitable candidates categorywise by stating that he was not pressing the same any more.

38. I must refer here the chart reproduced above, as well. The chart shows that as against 187 unreserved vacancies of Assistant Engineer (Civil) total  $187 \times 15$  (1:15) = 2805 candidates were to be called for main examination but only 2443 candidates were called. Likewise in Group 5 Rural Engineering Branch as against 5 unreserved vacancies  $5 \times 15$  (1:15) = 75 candidates should have been placed in the list of suitable candidates for main examination but only 31 candidates were placed. This in fact is the grievance of petitioner. However, the chart shows that all those who had minimum prescribed efficiency have been placed in the list to qualify for main examination in the ratio of 1:15 and this is how in different categories candidates have been placed in the qualifying list more than the number required as per 1:15 ratio.

39. The chart further shows that in respect of Group - 3 category only one OBC post was there against which 15 candidates have been called for and so also the chart shows that in Group - 4 category there being no post in OBC quota, no candidate has been placed. The grievance of the petitioner for the reason is that those OBC candidates who might have scored better than unreserved category candidates could have been placed in the list of suitable candidates falling in unreserved open category to compete with the unreserved category candidates in main examination.

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.

41. In order to resolve the above issue as far as the preparation of preliminary examination result in question is concerned, I may clarify here that age relaxation and concession in fee for submission of application form provided to reserve category candidates is only statutory concession and not relaxation as such referred to under the circular of the Public Service Commission dated 9<sup>th</sup> January, 2020 and clause 14 of the advertisement.

42. In my above view, I find support from Division Bench judgment of this Court in the case of **Sanjeev Kumar Singh v. State of U.P. and others, 2007 (2) ADJ 150** and the judgment of Supreme Court in the case of

**Jitendra Kumar Singh** (*supra*), wherein it was held that “*With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit*”.

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 21<sup>st</sup> 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*.

45. I have further noticed the order of the Supreme Court which has been reproduced hereinabove in the matter of Pushpendra Kumar Patel, that leaves question of law open. In my considered view this would only mean that the said point will be determined by Supreme Court in appropriate case, but so long as the judgment in the case of Deependra Yadav (*supra*) stands, it would amount to a settled legal position as a binding precedent on same principle of *stare decisis*. Considering the judgment of supreme court against the judgement of Andhra Pradesh High Court and the judgment in the matter of Pushpendra Kumar Patel and the decision cited before me of the High Courts of Chhatisgarh and Rajasthan, suffice it to observe that legal position continues to be a little fluid in different states for it being dependent upon

local rules framed for the said purpose in those states. The judgments of High Courts of other states are having persuasive value and may be having sound binding principle in the event there is any grey area, but looking to the judgment in the case of Deependra Yadav, which relied upon an earlier judgment of the same Court in Saurav Yadav (*supra*) decided by a three judge bench, and which also cited the judgment of Kishore Chaudhary (*supra*) with tacit approval, it can be held that the principles discussed in paragraph 31,32, and 33 stand to be a settled legal position even in the face of the order of the two judges' bench of the Supreme Court staying the judgment of Punjab and Haryana High Court in the matter of Haryana Public Service Commission v. Parmila and Another (*supra*). I am bound to follow the judgment of the three judges bench of the Supreme Court in the matter of Saurabh Yadav (*supra*), in which vide paragraph 61 following principle has been laid down:

*“The open category is not a ‘quota’, but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria<sup>22</sup>, 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<sup>23</sup> and the Madhya Pradesh High Court in State of Madhya Pradesh & Others v. Uday Sisode, referred to in paragraph 20 of Justice Lalit’s judgement], 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.*

46. The above principle has been discussed in the case of Deependra Yadav (*supra*) to form a view that there

could not be a quota of open category candidates as unreserved category quota to bar entry of reserved category candidates even while they have scored better marks to match or for better performance to the general category candidate.

47. In the case of Deependra Yadav (supra), though Court discussed relevant rule, but if one goes to look into the principles and object behind those rules, as discussed prior to and after the amendment and then second time amendment, one would find that the position was that “firstly a list of candidate of unreserved category shall be prepared and this list will include candidate selected on the basis of another merit from Scheduled caste, Scheduled Tribes and Other Backward Caste who have taken any option/relocation given to the concerned category”, but this position changed with amendment brought on 17<sup>th</sup> February, 2020 providing for separate list of candidates applied for unreserved , Scheduled Caste, Scheduled Tribes and Other Backward Caste and Economically Weaker Sections. However This rule further came to be re-amended on 26<sup>th</sup> March, 2021 restoring the position that was prior to first amendment. The controversy arose only on account of the first amendment rules being made applicable to the examination held during the interregnum period. The Courts were considering the effect of provisions from the point of view of preparation of preliminary examination results and the controversy centred around the principle as to whether reserved category candidates should be included in the unreserved category even at the stage of preliminary

examination results. The Courts justified restoration of the old provision and so also given tacit approval to the judgment of division bench in Kishore Chaudhary applying the principle of reservation laid down in Saurabh Yadav (*supra*). Thus, even if the judgment in the case of Deependra Yadav was in connection with interpretation of local relevant rules, in principle it justified the old rules on the touchstone of Article 14 and 16 of the Constitution. Although I have discussed the above authorities to find a solution to the issue being agitated by the rival parties, but I will be failing in my duty if I do not refer to the division bench judgment of this Court in the case of **U.P. Power Corporation Ltd and Another v. Nitin Kumar and 9 Others being Special Appeal No. 310 of 2015 decided on 19.5.2015** cited before me. The intra-court appeal was filed by the U.P. Power Corporation Ltd. against the order of learned Single Judge wherein it was directed that short listing of the candidates even in respect of unreserved category should be by including merit holders of the reserved category at preliminary test stage as well and accordingly merit was directed to be redrawn. The relevant paragraphs of the judgment are reproduced hereinbelow:

*“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 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.*

*The principle of law has been laid down in the judgment of the Supreme Court in Andhra Pradesh Public Service Commission vs. Baloji Badhavath<sup>2</sup> in the following observations:*

*"One other aspect of the matter must be kept in mind. If category wise statement is prepared, as has been directed by the High Court, it may be detrimental to the interest of the meritorious candidates belonging to the reserved categories. The reserved category candidates have two options. If they are meritorious enough to compete with the open category candidates, they are recruited in that category. The candidates below them would be considered for appointment in the reserved categories. This is now a well settled principle of law as has been laid down by this Court in several decisions. (See for example, Union of India v. Satya Prakash<sup>3</sup>, SCC Paras 18 to 20; Ritesh R. Shah v. Dr. Y.L. Yamul<sup>4</sup>, SCR at pp. 700-701 and Rajesh Kumar Daria v. Rajasthan Public Service Commission<sup>5</sup>, SCC para 9.)"*

*In a decision of a Division Bench of this Court in Sanjeev Kumar Singh vs. State of U.P.<sup>6</sup>, the Division Bench held that competition commences only at the stage where all the persons who fulfill the requisite conditions are short-listed. In that context, it was also held that a concession in fee or relaxation in the upper age limit are provisions not concerned with the process of selection. The Division Bench observed in para 53 as follows:*

*"In a selection which can be termed as open competition with general category candidates, the candidature of the reserved category candidates as well as the general category candidates is to be tested on the same merit and if in that case a reserved category candidate succeeds in the open competition with general category candidates, he would be placed amongst the general category candidates."*

*The judgment in Sanjeev Kumar Singh (supra) was followed by another Division Bench of this Court in Shiv Prakash Yadav vs. State of U.P.<sup>7</sup> In that case, the learned Single Judge had held that once a reserved category candidate had exercised his option to be treated as a reserved category candidate, the provision of Section 3 (6) of the Act would not apply. This view was held to be erroneous in view of the judgment of the Division Bench in Sanjeev Kumar Singh's case (supra).*

***For these reasons, we are of the view that there was no error in the judgment of the learned Single Judge. The learned Single Judge has upheld the right of the appellants to carry out short-listing. However, the appellants have been faulted for having excluded candidates belonging to the reserved categories from the short-list of candidates for the unreserved posts which has resulted in a situation where candidates with higher marks failed to get short-listed for the unreserved posts merely because they belong to a reserved category. The view of the learned Single Judge and directions which have been issued consequently do not suffer from any error."***

*(emphasis added)*

48. The division bench judgment is equally binding upon me and no judgment has been cited of this Court or of the Supreme Court, which may have reversed the judgment of the division bench. The argument as to principle of "level playing field" to invite every category candidate to

participate in the open competition would get frustrated if adequate representation of the reserved category candidates, as argued by Mr. Trivedi, does not impress the Court either. A candidate may have applied under reserved category but if he is not benefited by any relaxation other than the age and concession in fee at the preliminary examination result, then he can always enter unreserved category not only at the stage of final selection but at the same time when preliminary examination/screening test is held which may be only to shortlist candidates to find suitable candidates.

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 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.

50. On the point of changing rules of the game while selection is on and the point that petitioners having submitted to the advertisement, they could not have raised this issue, suffice it to observe that interpretation to Clause (14) of advertisement would not amount to changing the rules of the game. Even otherwise if legal position through common law judgments has already got crystallized, more especially in the circumstances when in State of U.P. there are no rules as such, this Court may, therefore, intervene to arrest any discrimination or arbitrariness at the end of selection body. Qualifying standard for final selection to migrate a candidate to unreserved category means he must not have been placed in reserved category for any relaxation other than age and fee cancellation this does not mean preparation of unreserved category list in preliminary examination would oust meritorious reserved category candidates and so also on the principle of law laid down by Supreme Court in *Deependra Yadav (supra)* and Division Bench judgment of this Court in the case of *U.P. Power Corporation (supra)*. This would amount to discrimination as already observed in preceding paragraph.

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.

53. There will be no order as to cost.

(Ajit Kumar, J.)

September 25, 2025  
IrfanUddin/Atmesh/Sanjeev