

**Court No. - 10**

**AFR**

Case :- WRIT - A No. - 40695 of 2005

**Petitioner :-** Ajay Kumar

**Respondent :-** State of U.P. and Others

**Counsel for Petitioner :-** Anil Tiwari,Dharmendra Shukla

**Counsel for Respondent :-** C.S.C.,Ashok Khare,Hitesh Pachori,M.A. Qadeer,Nisheeth Yadav,R.B.Saxena,Rohit Upadhyay

**Hon'ble Kshitij Shailendra,J.**

1. Heard Shri Anil Tiwari, learned Senior Counsel assisted by Shri Ramesh and Sri Dharmendra Shukla, learned counsel for the petitioner, Shri Bharat Pratap Singh, the Additional Chief Standing Counsel along with Shri Neeraj Tripathi, Additional Advocate General on behalf of respondent no. 1 and Shri Nisheeth Yadav, learned counsel representing the respondent - U.P. Public Service Commission and perused the records.

2. After hearing the learned counsel for the parties, I find that the controversy involved in this matter with regard to horizontal reservation admissible to women candidates is covered in terms of the judgment of the Apex Court in the case of ***Saurav Yadav and Others Vs. State of U.P. and Others (2021) 4 SCC 542***. Relevant portions of the said judgment shall be referred at appropriate place in this judgment.

3. The present writ petition has been filed by one Ajay Kumar challenging the impugned selection list published on 22.07.2004 insofar as it recommended selection in favour of Smt. Archana Jauhary and Km. Anshu Lata Sarkar, respondent nos. 4 and 5, respectively to the writ petition. Further prayer has been made for commanding the respondents to arrange the select list afresh strictly in accordance with the eligibility

criteria and without giving any reservation to the women as a class and with further mandamus commanding the respondents not to make any appointment pursuant to the recommendations made by the respondent - Commission on the post of Assistant Registrar pursuant to the advertisement in question.

**4.** The submission of Shri Anil Tiwari is to the effect that the U.P. Public Service Commission advertised 14 vacancies of Assistant Registrars in the year 2000 and insofar as horizontal reservation is concerned, it was provided that two posts shall remain reserved for women category candidates as per the Government Orders applicable which provided 20% reservation in that regard. He submits that out of 14 posts, 7 posts were of open category candidates and, therefore, if 20% reservation is applied for women, the said calculation would go to 1.4 which, when rounded off, would go to 1 (one). He further submits that only one post out of 7 could have been filled up by offering selection / appointment to a single woman whereas, the respondents have finalized selection in favour of respondent nos. 4 and 5, i.e., 2 women by making wrong calculation of 20% of 14 vacancies, i.e., 2.8 which would come to 2 (two) and, therefore, instead of applying reservation on the basis of compartmentalization, two posts have been wrongly filled up.

**5.** In support of his contention, reference to various authorities has been made by Sri Anil Tiwari and it has been contended that after the Full Bench of this Court decided the issue of reservation vide its judgement dated 16.07.2019 in this very petition, the matter reached up to Supreme Court

where, not only the judgment rendered by the Full Bench of this Court was considered but also the judgments on the same issue pronounced by the High Courts of Rajasthan, Bombay, Uttrakhand and Gujarat were discussed at length and final judgment was passed in the case of *Saurav Yadav (supra)*.

**6.** Shri Anil Tiwari has placed reliance upon paragraph nos. 24, 27, 28, 40 and 43 of the said judgment which are reproduced herein below:-

*"24. The view taken by the High Courts of Rajasthan, Bombay, Uttarakhand and Gujarat is thus contrary to the one that weighed with the High Court of Allahabad. Apart from the orders referred to in paras 11 to 13 hereinabove, the Full Bench of the High Court of Allahabad in Ajay Kumar v. State of U.P. held:-*

*"94. For the aforesaid, to our mind, inter se merit of women has no role to play in the implementation of horizontal reservation as the socially reserved candidate (SC, ST, & OBC) seeking benefit of reservation of special category (women) cannot claim adjustment in open category."*

*27. The High Courts of Rajasthan, Bombay, Uttarakhand, and Gujarat have adopted the same principle while dealing with horizontal reservation whereas the High Court of Allahabad and Madhya Pradesh have taken a contrary view. These two views, for facility, are referred to as the "first view" and the "second view" respectively. The second view that weighed with the High Courts of Allahabad and Madhya Pradesh is essentially based on the premise that after the first two steps as detailed in para 18 of the decision in Anil Kumar Gupta and after vertical reservations are provided for, at the stage of accommodating candidates for effecting horizontal reservation, the candidates from reserved categories can be adjusted only against their own categories under*

*the vertical reservation concerned and not against the "Open or General Category".*

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

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

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

*Such exercise would be premised on following postulates:*

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

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

**(C)** *In other words, at the stage of horizontal reservation, Open General Category is to be construed as category meant for candidates other*

*than those coming from any of the categories for whom vertical reservation is provided.*

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

**43. Finally, we must say that the steps indicated by the High Court of Gujarat in para 69 of its judgment in Tamannaben Ashokbhai Desai contemplate the correct and appropriate procedure for considering and giving effect to both vertical and horizontal reservations.** The illustration given by us deals with only one possible dimension. There could be multiple such possibilities. Even going by the present illustration, the first female candidate allocated in the vertical column for Scheduled Tribes may have secured higher position than the candidate at Serial No. 64. In that event said candidate must be shifted from the category of Scheduled Tribes to Open / General category causing a resultant vacancy in the vertical column of Scheduled Tribes. Such vacancy must then enure to the benefit of the candidate in the waiting list for Scheduled Tribes – Female. The steps indicated by the Gujarat High Court will take care of every such possibility. It is true that the exercise of laying down a procedure must necessarily be left to the authorities concerned but we may observe that one set out in said judgment will certainly satisfy all claims and will not lead to any incongruity as highlighted by us in the preceding paragraphs."

7. By referring to the aforesaid paragraphs, it has been argued that the Supreme Court has approved the view taken by the Gujarat High Court and, insofar as calculation part is concerned, method of calculation described in paragraph no. 69 of the judgment of the Gujarat High Court in the case of ***Tamannaben Ashokbhai Desai vs. Shital Amrutlal Nishar (2020) SCC OnLine Guj 2592*** has been approved. The said

paragraph no. 69 has been reproduced by the Supreme Court in Paragraph No. 23.11 of the judgment in the case of *Saurav Yadav (supra)* which reads as follows :-

*"69. For the future guidance of the State Government, we would like to explain the proper and correct method of implementing horizontal reservation for women in a more lucid manner.*

**'PROPER AND CORRECT METHOD OF IMPLEMENTING HORIZONTAL RESERVATION FOR WOMEN.**

No. of posts available for recruitment. .... 100

Social Reservation Quota (49%)

Open Competition (OC) ..... 51

Scheduled Castes (SC) ..... 12

Scheduled Tribes (ST) ..... 17

Socially and Educationally Backward Classes (SEBC) ... 20

Horizontal Reservation for Women (33% in each of the above categories)

OC ..... 17

SC ..... 04

ST ..... 06

SEBC ... 07

*Step 1: Draw up a list of at least 100 candidates (usually a list of more than 100 candidates is prepared so that there is no shortfall of appointees when some candidates don't join after offer) qualified to be selected in the order of merit. This list will contain the candidates belonging to all the aforesaid categories.*

*Step 2: From the aforesaid Step 1 List, draw up a list of the first 51 candidates to fill up the OC quota (51) on the basis of merit. This list of 51 candidates may include the candidates belonging to SC, ST and SEBC.*

*Step 3: Do a check for horizontal reservation in OC quota. In the Step 2 List of OC category, if there are 17 women (category does not matter), women's quota of 33% is fulfilled. Nothing more is to be done. If there is a shortfall of women (say, only 10 women are available in the Step 2 List of OC category), 7 more women have to be added. The way to do this is to, first, delete the last 7 male candidates of the Step 2 List. Thereafter, go down the Step 1 List after Item 51, and pick the first 7 women (category does not matter). As soon as 7 such women from Step 1 List are found, they are to be brought up and added to the Step 2 List to make up for the shortfall of 7 women. Now, the 33% quota for OC women is fulfilled. List of OC category is to be locked. Step 2 List becomes final.*

*Step 4: Move over to SCs. From the Step 1 List, after Item 51, draw up a list of 12 SC candidates (male or female). These 12 would also include all male SC candidates who got deleted from the Step 2 List to make up for the shortfall of women.*

*Step 5: Do a check for horizontal reservation in the Step 4 List of SCs. If there are 4 SC women, the quota of 33% is complete. Nothing more is to be done. If there is a shortfall of SC women (say, only 2 women are available), 2 more women have to be added. The way to do this is to, first, delete the last 2 male SC candidates of the Step 4 List and then to go down the Step 1 List after Item 51, and pick the first 2 SC women. As soon as 2 such SC women in Step 1 List are found, they are to be brought up and added to the Step 4 List of SCs to make up for the shortfall of SC women. Now, the 33% quota for SC women is fulfilled. List of SCs is to be locked. Step 4 List becomes final. If 2 SC women cannot be found till the last number in the Step 1 List, these 2 vacancies are to be filled up by SC men. If in case,*

*SC men are also wanting, the social reservation quota of SC is to be carried forward to the next recruitment unless there is a rule which permits conversion of SC quota to OC.*

*Step 6: Repeat steps 4 and 5 for preparing list of STs.*

*Step 7: Repeat steps 4 and 5 for preparing list of SEBCs."*

**8.** While explaining the calculation, it has been argued that before the Gujarat High Court, 33% horizontal reservation was applicable for women candidates and it was calculated on the basis of compartmentalization, that is to say that out of 100 posts available, upon computation, Open Competition category posts were described as 51 and, accordingly, 17 posts (33% of 51) were calculated for women category candidates. Identical calculations for remaining categories, i.e., Scheduled Castes and Scheduled Tribes and Socially and Educationally Backward Classes category candidates were also made.

**9.** Further, it has been argued that in the present case, 20% horizontal reservation would be calculated in respect of 07 posts in open category, and that would work out to be 01 post only and, therefore, filling up of 02 posts of women category candidates is contrary to the decision of the Apex Court.

**10.** Shri Nisheeth Yadav and Shri Neeraj Tripathi, learned counsel for the respondents side have argued that the concerned advertisement was issued in the year 2000 and horizontal reservation was to be applied as per the law applicable at that time and the Commission had rightly applied the same in the present case also. It has been

submitted that the calculation of horizontal reservation as laid down by the Apex Court in paragraph no. 23.11 of judgment of ***Saurav Yadav (supra)*** is correct position of law.

**11.** This Court had, by interim order dated 24.05.2005, initially restrained joining of posts by the respondent nos. 4 and 5. However, later on, by way of order dated 27.05.2009, the interim order dated 24.05.2005 was modified and it was directed as follows : -

*"To protect interest of the petitioner and to balance equities during the period the writ petition is pending, we modify the interim order dated 24.05.2005 and we direct that if the respondent nos. 4 and 5 are appointed, their appointment would be the subject to the result of the writ petition."*

**12.** It is contented that the respondent nos. 4 and 5 were appointed pursuant to the modification of the interim order and after completing their entire tenure of service, they have superannuated.

**13.** In view of the above discussions, in so far as appointment of respondent nos. 4 and 5 is concerned, the same cannot be quashed nor can any order be passed in this writ petition to the detriment of the interest of the respondent nos. 4 and 5.

**14.** The issue which remains to be decided in the present case is as to what kind of relief, the petitioner would get in the present set of facts and circumstances, particularly when this Court is taking a view in consonance with the law laid down by Apex Court in ***Saurav Yadav (supra)***.

**15** Admittedly, the petitioner is working in the office of Accountants Comptroller General of India. While Shri Anil Tiwari submits that once it is held that only 01 post could have been filled up by woman candidate, the petitioner being next candidate in the order of merit, was entitled for filling up the second post which was erroneously filled up by according reservation to another woman candidate who was not entitled for the same. He, therefore, submits that the petitioner should be offered appointment on any vacancy in the said cadre as he could not have been removed and, therefore, was entitled to get the appointment at that very time.

**16.** In support of his contention, in this regard, Shri Anil Tiwari has referred to paragraph no. 44 of the judgment of *Saurav Yadav (supra)* which reads as under : -

**"44.** Having come to the conclusion that Appellant 1 and similarly situated candidates had secured more marks than the last candidates selected in "Open / General Category", the logical consequence must be to annul said selection and direct the authorities to do the exercise de novo in the light of conclusions arrived at by us. However, considering the facts that those selected candidates have actually undergone training and are presently in employment and that there are adequate number of vacancies available, **we mould the relief and direct as under** :

***44.1. All candidates coming from "OBC Female Category" who had secured more marks than 274.8928 i.e. the marks secured by the last candidate appointed in "General Category-Female" must be offered employment as Constables in Uttar Pradesh Police.***

**44.2. Appropriate letters in that behalf shall be sent to the candidates concerned within four weeks.**

**44.3. If the candidates concerned exercise their option and accept the offer of employment, communications in that behalf shall be sent by the candidates concerned within two weeks.**

**44.4. On receipt of such acceptance, the codal and other formalities shall be completed within three weeks.**

**44.5. Letters of appointment shall thereafter be issued within a week and the candidates concerned shall be given appropriate postings.**

**44.6. For all purposes, including seniority, pay fixation and other issues, the employment of such candidates shall be reckoned from the date the appointment orders are issued."**

**17.** Shri Anil Tiwari has further placed reliance upon a Division Bench judgement of this Court in case of Pawan Kumar Tiwari Vs. Hon'ble High Court of Judicature at Allahabad reported in 2003 (4) ESC 2097 and has argued that by clearly applying the principle of rounding off, the Division Bench had decided the said case in almost identical circumstances and held that the petitioner shall not be entitled to back wages etc. However, he will be treated notionally appointed w.e.f. the date his batch mates had been given appointment and the notional period would count for the purposes of fixing salary, annual increments etc., and post retiral benefits in favour. He further submits that the said judgment of the Division Bench has been upheld by the Supreme Court in the case of *State of U.P. and Anr. Vs.*

**Pawan Kumar Tiwari and others, (2005) 2 SCC 10.** He further submitted that even in the subsequent round of litigation initiated by the said Pawan Kumar Tiwari, reliefs were granted to him by Division Bench of this Court in its order dated 22.01.2021 passed in Writ A No. 6981 of 2020 (Pawan Kumar Tiwari Vs. State of U.P. and 4 Ors.) in which a direction was issued to the State to take appropriate steps for correct placement of the said petitioner in the list of selectees.

**18.** On the other hand, the contention of Shri Neeraj Tripathi and Shri Nisheeth Yadav is that once the Supreme Court in the case of **Saurav Yadav (supra)** declined to issue any mandamus in favour of the concerned petitioners who had claimed absorption against unfilled vacancies, no relief can be granted to the petitioner, even if it is held that instead of one post, two posts were filled up by horizontal reservation accorded to the women category candidates.

**19.** Shri Nisheeth Yadav and Shri Neeraj Tiwari have also relied upon paragraph no. 49 of the judgment which reads as under:-

**"49. If there are unfilled vacancies, it is up to the authorities to act purely in terms of the statutory provisions concerned. Neither any case for issuance of mandamus, as prayed for, has been made out nor do we think it appropriate to pass any orders directing the authorities concerned to absorb the petitioners against unfilled vacancies.**

**20.** Shri Nisheeth Yadav has vehemently argued that as on today, despite the aforesaid legal position settled by the Apex Court in the case of **Saurav Yadav (supra)**, the petitioner cannot get any relief. He has argued that it is a case where the

legal position was not clear at the time when the writ petition was filed and the matter was ultimately referred to the larger Bench in the year 2015 and the larger Bench (Full Bench) decided this writ petition on 16.07.2019, but even thereafter, the matter went to the Apex Court and, ultimately, has been settled in terms of the judgment rendered in the case of *Saurav Yadav (supra)*. Elaborating his arguments based upon the concept of "prospective overruling", Shri Nisheeth Yadav has placed reliance upon following authorities -

- i. **Ashika Prasad Shukla vs. Dist. Inspector of Schools, Allahabad & Ors. (1998) 3 AWC 2150.**
- ii. **Somaiya Organics (India) Ltd. & Anr. vs. State of U.P. & Anr. (2001) 5 SCC 519.**
- iii. **Kailash Chand Sharma vs. State of Rajasthan & Ors. (2002) 6 SCC 562.**
- iv. **Employees' State Insurance Corp. & Ors. vs. Jardine Henderson Staff Association & Ors. (2006) 6 SCC 581.**
- v. **Union of India & Ors. vs. Chaman Rana with Union of India & Ors. vs. Gulshan Kumar Sharma (2018) 5 SCC 798.**

**21.** After carefully examining the authorities cited by Shri Nisheeth Yadav, it would be pertinent to observe that Golak Nath was overruled in *Keshwanand Bharti v. State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461, but the principle laid down in Golak Nath in respect of prospective overruling has not been touched in *Keshwanand Bharti* rather in its subsequent decisions, the Supreme Court has reiterated the

principle of prospective overruling as laid down in Golak Nath. In Managing Director E.C.I.L., Hyderabad v. B. Karunakar, JT 1993 (6) SC 1 at p. 46 para 73 : ((1993) 4 SCC 727 : AIR 1994 SC 1074), it was held as under :

*"As a matter of constitutional law retrospective operation of overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose of the particular overruling decision seeks to serve. The Court would look into the justifiable reliance on the overruled case by the administration ; ability to effectuate the new rule adopted in the overruling case without doing injustice ; likelihood of its operation whether substantially burdens the administration of justice or retard the purpose..... This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane to give effect to prospective or retrospective operation."*

**22.** When the Apex Court decided in Golak Nath case that the power of amendment under Article 368 of the Constitution did not allow Parliament to abridge the fundamental rights in Part III of the Constitution, it made the decision operative with prospective effect. This was done in recognition of the fact that between the coming into force of the Constitution on 26-1-1950 and the date of the judgment, Parliament had in fact exercised the power of amendment in a way which, according to the decision in Golak Nath was void. If retrospectivity were to be given to the decision, "it would

introduce chaos and unsettled conditions in our country". On the other hand it also recognised that such possibility of chaos might be preferable to the alternative of a totalitarian rule. The Court, therefore, sought to evolve "some reasonable principle to meet this extraordinary situation". The reasonable principle which was evolved was the doctrine of prospective overruling.

**23.** Although the doctrine of "prospective overruling" was drawn from American jurisprudence, it has/had, of necessity, to develop indigenous characteristics, the parameters of the power, as far as this country is concerned, were sought to be laid down in Golak Nath itself when it was said: (SCR p. 814 B-D)

*"As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."*

The parameters have not been adhered to in practice.

**24.** The word "prospective overruling" implies an earlier judicial decision on the same issue which was otherwise final. That is how it was understood in Golak Nath. However, the Supreme Court has used the power even when deciding

on an issue for the first time. Thus in *India Cement Ltd. v. State of T.N.* when Apex Court held that the cess sought to be levied under Section 115 of the Madras Panchayats Act, 1958 as amended by Madras Act 18 of 1964, was unconstitutional, not only did it restrain the State of Tamil Nadu from enforcing the same any further, it also directed that the State would not be liable for any refund of cess already paid or collected.

**25.** The maxim of equity which is founded upon justice and good sense was applied as well as other maxim *lex non cogit ad impossibilia* - the law does not compel a man to do what he cannot possibly perform. The applicability of the aforesaid maxim has been approved by this Court in *Raj Kumar Dey v. Tarapada Dey and Gursharan Singh v. New Delhi Municipal Committee*.

**26.** It is well settled that declaration of law can be made prospective i.e. operative from the date of the judgment. Apex Court in several decisions has laid down the law and declared it to be operative only prospectively. The Constitution Bench of Supreme Court in *Somaiya Organics (India) Ltd. v. State of U.P.* has discussed at length the principles of prospective overruling.

**27.** Ultimately, it is a question of Court's discretion and is, for this reason, relatable directly to the words of the Court granting the relief."

**28.** In ***Harsh Dhingra v. State of Harayana (2001) 9 SCC 550***, the Supreme Court held that Prospective declaration of law is a device innovated by this Court to avoid reopening of

settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest.

**29.** In the case of *Union of India & Ors. vs. Chaman Rana (supra)*, the Supreme Court was dealing with a case where belated claim was made by the concerned employee seeking promotion and the Apex Court held that direction for retrospective consideration for promotion after 17 to 20 years in the light of belated claim was wholly untenable.

**30.** There is no dispute regarding the law laid down as explained by the Supreme Court in the aforesaid authorities. However, in the present case, the concept of prospective overruling or granting any relief to the petitioner has to be examined in light of the fact that the impugned selection was made in 2004, the writ petition was immediately filed in 2005, affidavits were exchanged during the course of time and the matter was referred to the larger Bench in 2015. The larger Bench, i.e., the Full Bench, decided the case in 2019 and the Apex Court settled the controversy in 2021 and, thereafter, this writ petition has been heard in the year 2023.

**31.** Further, an interim order was passed in the present case in 2005 which was modified in 2009 protecting the services of the respondent nos. 4 and 5 who have already retired after getting benefits of the interim order. This Court in order to

balance equities during the pendency of the writ petition passed in the modification order dated 27.05.2009.

**32.** The Maxim "Actus Curiae Neminem Gravabit" means that **nobody should be allowed to suffer for the fault of the court**. This is an important Latin Maxim of Equity, which has wide application in the subordinate as well as higher judiciary of India. It would be relevant to refer to *Inderchand Jain (Dead) through LRs. Vs. Motilal (Dead) through LRs.*, (2009) 14 SCC 663, wherein the Apex Court observed that the said maxim is founded upon equity & justice and helpful in the administration of law.

**33.** In the aforesaid factual background of the case, if, merely delay in disposal of the writ petition for the aforesaid reasons, is taken as a ground to deny relief to the petitioner, that would be a mockery of the legal system and the institution of justice for which it has been established. In the considered opinion of this Court, particularly taking light from the paragraph no. 44 and its various sub-paragraphs in the judgment of *Saurav Yadav (supra)*, I proceed to consider the question on grant of relief to the petitioner and I find that different category candidates were petitioners before the Apex Court and denying relief to one set of petitioners in paragraph no. 49 and granting some relief to other set of petitioners in paragraph no. 44 is a matter of concern in the present set of facts and circumstances.

**34.** The Supreme Court, in paragraph no. 42, had ordered for issuance of letter of appointment to the concerned candidates and it was made clear in paragraph no. 44.6 that for all

purpose, including seniority, pay-fixation and other issues, employment of such candidates shall be reckoned from the date of appointment orders are issued.

**35.** In this regard, Anil Tiwari submits that the petitioner is entitled not only for appointment on any post lying vacant, his seniority and other benefits should also be computed and adjusted according to the seniority which the petitioner would have got, had the impugned action not been taken to the detriment of his interest. The learned counsel for the respondents however submit that the petitioner being candidate of a different cadre, cannot be accorded any benefit of seniority or otherwise as the issue involved relates to a different cadre altogether.

**36.** While concluding the judgment, I find that the Commission was not justified in filling up two posts by according horizontal reservation to women candidates but it could fill up only a single post and, therefore, the petitioner, being next in the order of merit, should have been appointed on the vacant post.

**37.** In view of the above, the writ petition succeeds and is *partly allowed*.

**38.** Without disturbing any aspect of the services rendered by respondent nos. 4 and 5 during the pendency of the writ petition, a direction is issued to the respondent nos. 1 and 2 to offer appointment to the petitioner on any vacant post in the cadre. In case, the petitioner accepts the offer of appointment, the respondents shall be at liberty to take a decision in accordance with law with regard to the benefits that

petitioner would be entitled to as per para 44.6 of the judgment of *Saurav Yadav (supra)*.

**Order Date :-** 27.7.2023  
Vipasha