

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

2025:PHHC:049244-DB



Reserved on : 19th February, 2025
Date of Pronouncement: 9th April, 2025

1. **LPA No. 329 of 2024 (O&M)**

Haryana Public Service Commission ... Appellant
Versus
Parmila and another ... Respondents

2. **CWP No. 17188 of 2024 (O&M)**

Sanjay Saini and others ... Petitioners
Versus
State of Haryana and others ... Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MS. JUSTICE KIRTI SINGH**

Present: Mr. Sanjay Kaushal, Senior Advocate assisted by
Mr. Kanwal Goyal, Advocate,
Mr. Arushi Dubey, Advocate and
Mr. Arjun Kaushal, Advocate, for the appellant/Commission.

Mr. R. S. Dhull, Advocate and
Mr. Navnit Sharma, Advocate, for the petitioners
In CWP No. 17188 of 2024.

Mr. Vivek Salathia, Advocate, for respondent no.1
In LPA no. 329 of 2024.

Mr. Saurabh Mohanta, Deputy Advocate General, Haryana.

SANJEEV PRAKASH SHARMA, J.

This order will dispose of two cases i.e. LPA No. 329 of 2024 and CWP No. 17188 of 2024, as common questions of law and facts are involved therein.

2. By way of present LPA No. 329 of 2024, the appellant-Commission has assailed the judgment dated 08.01.2024 whereby the learned Single Judge has allowed the writ petition and directed to revise the screening test result and proceed with the process of selection for the

advertised posts in accordance with law without categorizing the candidates till the final merit list is drawn.

3. CWP No. 17188 of 2024 has been filed for issuance of direction to the respondents to re-conduct the examination after following due process of reservation at all levels including at the level of screening test and at the level of skill test. Further prayer is for directing the Commission to re-conduct the interviews for the vacant posts lying in the Mewat cadre.

4. While issuing notice of motion, the operation and effect of the judgment passed by the learned Single Judge was stayed, whereafter the appellant has preferred CM No. 1282-LPA of 2025 placing the correct judgment of the Single Bench before the Court. Writ petitioner/respondent no.1 has moved application for vacation of stay. Considering the nature of the case, we decided to hear the case finally and heard learned counsel for the parties on merits.

5. Brief facts which need to be noticed before adverting to the respective submissions are that Haryana Public Service Commission (hereinafter to be referred as 'the Commission') issued an advertisement no.29 of 2023 on 24.06.2023 inviting online applications from eligible candidates for filling up of 250 posts of PGT (Maths) for rest of Haryana cadre. Another advertisement no. 44 of 2023 was issued on the same date inviting applications for filling up 65 posts of PGT (Maths) in Mewat cadre alone. The scheme for examination consisting of three stages, (1) **Screening Test**, as under:-

“i) Candidates four times the numbers of advertised posts, including bracketed candidates, if any, category-wise, will be called for the next stage of selection process, provided that they

have secured the minimum cut-off marks of 25% in the screening test.

j) In cases, where the total number of applicants is less or nearly four times the number of advertised posts, the Commission reserves its right to call the candidates directly for the subject knowledge test.

k) The marks obtained by the candidates in the screening test will not be counted for final selection because it is only for short listing of category-wise candidates, for the subject knowledge test.

(2) The second stage is the **Subject Knowledge Test**, which provides as under:-

“e) The numbers of the candidates to be called for interview will be two times, including bracketed candidates, if any, of the number of category-wise advertised posts provided that they have secured the minimum cut-off marks of 35%.

f) The weightage of the subject knowledge test will be 87.5%.

(3) The third stage is the **Interview/ Viva-Voce**, which provided as under:-

“The weightage of the interview will be 12.5%.

The final merit list will be prepared by adding the marks of the subject knowledge test and interview/viva-voce.”

The aforesaid conditions laid down in the advertisement were applicable to all.

6. The writ petitioner set up the case that she was from BC (B) Category and when the screening test result was declared, her roll number was not figured in the list of BC(B) category. The candidates, who were selected in the screening test category-wise, were called for subject

knowledge test and thereafter, the result was declared. She, therefore, claimed that though she has secured higher marks in screening test, which were 41.85, she was not called for participating in the subject knowledge test while the General Category candidates, who secured between 41.58 to 38.04 marks in the screening test were allowed to participate. She, therefore, submitted that as she had secured more marks than those of General Category/unreserved category candidates, she has a right to be considered against General Category/ unreserved posts and the same cannot be denied by not selecting her. The writ petitioner/ respondent, therefore, claimed benefit of reservation claiming migration to General category at the stage of screening test examination. The learned Single Judge has accepted the contention and held, as above.

7. Learned counsel for the writ petitioner has placed reliance on the judgments passed by the Supreme Court in *Indra Sawhney vs Union of India* 1992 Suppl.(3) SCC 217; *Andhra Pradesh Public Service Commission vs Baloji Badhavath* 2009 (5) SCC 1; *Saurav Yadav vs State of U.P. and others* 2021 (4) SCC 542; and *Deependra Yadav and others vs State of Madhya Pradesh and others* 2024 INSC 362, to contend that the judgment passed by the learned Single Judge does not warrant interference and submits that the present case is similar to that of *Deependra Yadav's* case (supra) wherein Hon'ble the Supreme Court after relying on *Saurav Yadav's* (supra), held as under:-

“31. In *Saurav Yadav and others v. State of U.P. and others* (2021) 4 SCC 542 , a 3-Judge Bench of this Court affirmed the principle that candidates belonging to any of the vertical

reservation categories would be entitled to be selected in the 'open category' and if such candidates belonging to reservation categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories of vertical reservation that they belong to. It was further observed that reservations, both vertical and horizontal, are methods of ensuring representation in public services and these are not to be seen as rigid 'slots', where a candidate's merit, which otherwise entitles him to be shown in the open general category, is foreclosed. The Bench further observed that the 'open category' is open to all and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type was available to him or her.

32. *This being the settled legal position, it appears that the State of Madhya Pradesh itself realized the harm that it was doing to the reservation category candidates and chose to restore Rule 4, as it stood earlier, which enabled drawing up the result of the preliminary examination by segregating deserving meritorious reservation category candidates with meritorious unreserved category candidates at the preliminary examination stage itself. As this was the process that was undertaken after the judgment in Kishor Choudhary (supra), whereby a greater number of reservation category candidates cleared the preliminary examination and were held eligible to appear in the main examination, there can be no dispute with the legality and validity of such process.*

33. *We may also note that the judgment in Kishor Choudhary (supra) was not subjected to challenge before this Court after the dismissal of the review petitions. The direction therein was to conduct and complete the examination process in accordance with the unamended Rules of the 2015. It was the*

later judgment in Harshit Jain (supra) that advocated the methodology of holding a special main examination for the reservation category candidates who were found eligible after revising the preliminary examination result in keeping with the unamended Rules of 2015. This direction was found to be justified by the Division Bench, which dismissed the writ appeal by way of the impugned judgment and, in our considered opinion, rightly so.

34. On the above analysis, we find that the impugned judgment dated 25.01.2023 passed by the Division Bench of the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No. 1706 of 2022 does not brook interference on any ground, be it on facts or in law.”

8. Learned counsel submits that thus, even at the stage of screening test, a candidate from reserved category will migrate to the open category if he/ she has secured higher marks in the screening test and would be considered under the open category and would be eligible to participate in the subject knowledge test. He further submits that the learned Single Judge has rightly held that denying a person from reserved category to be treated over and above the open category candidate having lesser merit would result in compromising the merit, which could not be the intention of the rule.

9. Learned counsel for the Commission has, however, relied on the judgment passed by the Division Bench of this Court in CWP No. 3144 of 2019- **Naveen Rao vs State of Haryana and others**, decided on 11.02.2019, wherein candidates were not allowed to migrate to the open category and it was held as under:-

“It is an admitted fact that the petitioner had only qualified the preliminary examination which is a test meant for

short-listing of the candidates to take the main written examination and the marks obtained in the Preliminary Examination are not to be counted towards the marks to be obtained in the Main Written Examination. It is only a process of short-listing of the candidates to be called upon for taking the main written examination. Thus, the judgements relied upon by the petitioner in the case of Bhupinder Kaur and others (Supra) and Rajneesh Kumar (Supra) are distinguishable because these judgements do not deal with the question involved in the present case rather the judgments relied upon by the respondents in the cases of Paramveer Singh and others (Supra) and Deepak Kumar (Supra) are squarely on the issue involved as in the case of Paramveer Singh and others (Supra) the question, posed hereinabove, has been answered in favour of the respondent against the petitioner holding that the principle that the reserved category candidates who secured higher merit in the process of selection for appointment are to be considered for appointment against the general category vacancies in spite of the fact that they have applied under the reserved categories and the slot vacated by them has to be given to the next candidate in the reserved category would apply at the time of making appointment on the completion of selection process and not at the stage of qualifying examination/short-listing/screening test. The said judgement i.e. Paramveer Singh and Others (Supra) has been followed in the case of Deepak Kumar (Supra). Therefore, we do not find any error on the part of the respondents in restricting the candidates in their own category though they have secured more marks than the general category candidates and were not shifted to the General category, making a slot for the reserved category candidates.”

10. Learned counsel for the Commission further relied on Division

Bench judgment of this Court in LPA No. 1053 of 2011 – **Gur Jai Pal**

Singh vs Punjab Public Service Commission and another, decided on 08.09.2011, wherein it was held as under:-

“In view of the judgments referred to above, we find that the policy of reservation for the purposes of short-listing of candidates for the purpose of main examination is not applicable, it being an eligibility test. Therefore, the action of the Commission in not applying the principle of reservation at the stage of preliminary examination cannot be said to be illegal, arbitrary or unjust in any manner, which may warrant any interference in appeal.”

11. Learned counsel for the Commission also relied on another Division Bench judgment of this Court in Civil Writ Petition No. 6478 of 2024-**Avinash Yadav vs HPSC and another**, decided on 18.03.2024, wherein the question which arose for consideration was as under:-

“9. Question sought to be agitated in this writ petition is as to whether the concept of reservation applies to all stages of the selection process leading to final recruitment or is to be applied at the stage of filling up the vacancy at the time of making appointment.”

12. Learned counsel for the Commission further relied on the judgment passed by the Jabalpur Bench of Madhya Pradesh High Court in WP No. 8750 of 2022 – **Pushpendra Kumar Patel and others vs High Court of M.P. and others**, decided on 02.01.2023, observed as under:-

“15. The tenability of the right of reserved category candidate to migrate at the stage of Preliminary Examination where merit is not assessed, needs to be looked at from a different angle in the following terms.

15.1 The concept of migration or mobility of a reserved category candidate to unreserved category list is exclusively

found on the concept of merit. It is an undeniable fact that Preliminary Examination in question are meant to shortlist larger number of candidates down to a manageable number to be then subjected to Main Examination. Thus, the object and purpose of Preliminary Examination is not to assess the comparative merit of the candidates, but merely to shortlist/screen them to be subjected to Main Examination where alone comparative merit is assessed. The clauses of the advertisement in question, as reproduced supra, expressly reveal this intention of the Examining body. In none of these petitions said clauses have been challenged. The Main Examination is the one where comparative merit of candidates is assessed and the select list prepared thereafter is the one where right to migrate can be claimed by reserved category candidates securing equal or more marks than the last unreserved category qualified candidate.

15.2 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.

15.3. 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 found solely on merit.

16. *In view of above discussion, what comes out loud and clear is that merit centric concept of migration cannot be invoked at the stage of Preliminary Examination in which comparative merit of the candidates is not assessed/tested. In the instant case, as prescribed in the terms and conditions of advertisement in question, right to migration will certainly be available to reserved category candidates on the declaration of result of Main Examination and not at the declaration of Preliminary Examination result.*”

13. Learned counsel for the Commission has also pointed out that similar consistent view has been taken by the High Court in **Dharamveer Tholia vs State of Rajasthan** 2000 (3) WLC 399, following the judgment passed by Hon’ble the Supreme Court in **Chattar Singh vs State of Rajasthan** AIR 1997 SC 303. The same was reiterated in **State of Rajasthan vs Hanuman Jat** 2017 (1) RLW 525.

14. Learned counsel for the Commission has also taken to this Court to a Division Bench Judgment of Rajasthan High Court in **Sunita Meena vs Rajasthan High Court, Jodhpur through its Registrar General and others** 2023 (1) SLR 119, wherein the similar view has been taken holding that the rule of migration as laid down in **Saurav Yadav**’s case (supra) would not have any applicability at the stage of preparation of list of screening through preliminary examination.

15. We have carefully considered the submissions and the law as cited at bar.

16. In **Union of India vs Dalbir Singh** AIR 2009 SC 2438, a similar issue arose where the Government of India invited applications for selection for the posts of Mazdoor in General and Reserved Categories.

Those candidates, who participated were placed in two separate proceedings, one for General Category candidates and another for reserved category candidates. Several reserved category candidates secured more marks than the General Category candidates but were placed only in reserved category. Some of the said reserved category candidates, who have secured more marks than the General category candidates, approached the Central Administrative Tribunal, Chandigarh, seeking shifting to General Category for further selection. The Tribunal allowed their application and this Court also allowed the same. However, Hon'ble the Supreme Court set aside the order and held as under:-

“10. From the pleadings, it appears to us, that the appellants had prepared two sets of lists. The first one being the list of those candidates who had staked their claim in the general merit and the second list contains those candidates who had opted for consideration of their case under OBC category. The respondent at no point of time had taken exception to the procedure adopted by the appellants in preparing the select list. In our opinion, having opted to consider his case only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because, he has scored better percentage of marks than the last selected candidate in the general merit. In our considered view, the Administrative Tribunal having found that the appellants were justified in not considering the respondent's case for appointment under OBC category, ought not to have directed the appellants to consider his claim under general category.

11) For the foregoing reasons, we allow this appeal and set aside the impugned orders.”

17. In Chattar Singh's case (supra), Hon'ble the Supreme Court held as under:-

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

18. With regard to selection process, where there is a stage of screening or preliminary examination or short listing, the principle of reservation has been held to be not applicable as the element of selection is absent at that stage. Considering the Rule, as above, we noticed that a candidate applying under the reserved category, participates in the screening test for the purpose of his/her eligibility for participating in the regular selection, the marks obtained in the screening test are not to be counted for the purpose of selection. The list is to be prepared category-wise, which is **four times** the number of posts available in that category.

19. In other words, if there are, say, 100 posts available for filling up from one particular category, namely the BC(B) category, four times, i.e.,

400 persons belonging to that category would be allowed to participate in the selection process, i.e., in the General Knowledge test. The screening test, thus, is not a stage where reservation is to be applied. It is when they have cleared the screening test category-wise that they come to the same level to participate in the selection process, and it is at that stage where the reservation would be applicable.

20. Thus, at the stage of short listing of screening test, the principle of migration was not acceptable.

21. We find that a view has been taken that the preliminary examination for short listing is not a selection process, since the marks are not being counted for the purpose of final selection although a written examination is conducted. Short listing of candidates at that stage is undertaken category-wise. Thus, if there are 100 posts for a particular category, 4 times the number of candidates of that category would be called. It is in this fashion, the Courts have taken a view that even for General Category candidates, 4 times the General Category candidates are to be called. Obviously, the view of the Court is that the General Category would not be included for the purpose of screening at that stage. The General Category would be of candidates who are not belonging to any of the reserved category. Migration is, therefore, not to be applied as per the aforesaid view of the Courts when short-listing of candidates for the main examination/interview, as the element of selection, where the principle of migration is to be applied, is absent at the short-listing stage.

22. The Courts have explained that the stage of short listing is where we pick up the best candidates from that particular category. The migration has, therefore, to be essentially applied only at the subsequent stage i.e. at the main examination or in this case the Subject Knowledge Test or whatever term may be used.

23. In Chattar Singh's case (supra), the aforesaid view was explained; however, we find that there is a change in the interpretation relating to reservation which we need to examine.

24. In Saurav Yadav's case (supra), Hon'ble the Supreme Court laid down the method and manner in which any merit list is to be prepared. It lays down ambiguous terms that the first list which is to be prepared is of an Open Category. The so called General Category is essentially an open category where all the candidates, who may be from any of the caste, have to be exhausted. Thus, if a candidate belonging to SC Category or from BC(B) Category, has scored higher marks he would be placed in the open category at number one. The view as taken in Saurav Yadav's case (supra) was followed again by Hon'ble the Supreme Court in Sadhana Singh Dangi vs Pinki Asati 2022 (12) SCC 401 and held as under:-

“13. This Court thus considered two views, one which was taken by the High Courts of Rajasthan, Bombay, Gujarat and Uttarakhand; and, the second, which had weighed with the High Courts of Allahabad and Madhya Pradesh. After considering the totality of the circumstances as well as the rival submissions, the view taken by the High Courts of Rajasthan, Bombay, Gujarat and Uttarakhand was accepted to be the

correct view and the one which was taken by the High Courts of Allahabad and Madhya Pradesh was not approved.

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

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

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

Again Hon'ble the Supreme Court in recent judgment of **Ramnaresh @ Rinku Kushwah and others vs State of Madhya Pradesh and others** 2024 INSC 611, has set aside the judgment passed by the High Court of Madhya Pradesh and others relating to admissions and has held as under:-

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

17. It is to be noted that, in the present case, the cut-off for UR candidates was much less as compared to the cut-off for SC/ST/OBC/EWS candidates. As such, the respondents ought to have admitted the present appellants against the UR- GS categories. It is further to be noted that many seats from UR-GS category were required to be transferred to the General category.”

25. Having noticed the aforesaid judgments, we find that even at the preliminary examination stage a candidate from reserved category may score higher percentage of marks than the person who is not from reserved category and it is an admitted position that a separate merit list is prepared even at the preliminary stage of different categories. However, before preparing the merit list of different categories, open category list is required

to be exhausted, which may include candidates, who come from various other categories also based on their merit.

26. In the present case, we find that the private respondent was possessing higher merit than the candidate who has been placed in the General Category list at the screening test level, but since in her own category she was below the cut off, which apparently was higher than the cut off for the General Category, she was ousted. It is with such situations that the law as laid down in Saurav Yadav's case (supra) was required to be followed i.e. first list even at the screening test level, should have been prepared which would include the other category candidates. The view in the concurring judgment of Saurav Yadav's case (supra) of Hon'ble Mr. Justice S. Ravindra Bhat needs to be noticed, which is as under:-

“11. The open category is not a ‘quota’, but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria, 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 and the Madhya Pradesh High Court in State of M.P. v. Uday Sisode, referred to in paras 24 and 25 of Lalit, J.’s judgment], the result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore – perhaps unconsciously supports- but definitely results in confining the number of women in the select list to the overall numerical quota assured by the rule.”

27. Keeping in view the above, we find that the law as laid down by this Court in Naveen Rao vs State of Haryana and others 2019

PHHC:019757-D, cannot be said to be in conformity with the principles as laid down by Hon'ble the Supreme Court in Saurav Yadav, Sadhana Singh Dangi and Ramnaresh @ Rinku Kushwah's cases (supra). Similarly, the law laid down by the Jabalpur Bench of Madhya Pradesh High Court in WP No. 8750 of 2022 - Pushpendra Kumar Patel and others vs High Court of M.P. and others decided on 02.01.2023; Avinash Yadav's case (supra) and Gur Jai Pal Singh's case (supra) are also not in conformity with the judgment of Saurav Yadav's case (supra).

28. It is to be noticed that a written examination is conducted known as Screening Test or as a Preliminary Examination or by different names as and when there are candidates more than five times or more the number of posts. The marks obtained in the said preliminary examination are not to be counted for the purpose of the main selection. However, at the screening test/ preliminary examination level, inter-se merit of candidates is prepared so as to assess how many candidates would be allowed to participate in the main examination.

29. We find that in Sunita Meena and Dharamveer Tholia's cases (supra), the examining body has put the reserved category person in one slot and those who are found to be five times number of the vacancies as per their merit, were called to participate in the main examination. At the same time so far as merit list of General Category candidate is prepared at the screening test level, the State has understood the said list to contain names of those candidates who do not belong to the reserved category. This has resulted in cut off marks for General Category list to be lower than the cut

off marks of BC (B) category. In other words, while a person who does not belong to reserved category, may be called for participating in the main examination even though he possesses lesser marks than a reserved category candidate in the screening test.

30. In our opinion, such could not have been the view of the law makers. While obtaining marks in the screening test may not be part of the selection process, still there is an element of selection as only those candidates, who fall in the said list, can be allowed to participate in the main examination. In our opinion, therefore, the view taken by the Apex Court in *Chattar Singh*'s case (supra), cannot be said to lay down good law in light of the law as laid down in *Saurav Yadav*'s case (supra). We, therefore, find that the judgment passed by the learned Single Judge holding the writ petitioner entitled for consideration of participation in the main examination on the basis of her marks higher than the candidates, who did not belong to reserved category, cannot be said to be unjustified. The writ petitioner would, therefore, be entitled to participate in the main examination and the respondents would be required to prepare a fresh merit list at the stage of screening test, firstly of Open Category by counting the marks of all the candidates, be it of reserved category or non-reserved category. This list would be of four times the number of open category posts. The other lists of reserved categories would thereafter follow on the basis of their marks in the screening test. The aforesaid exercise may, of course, result in higher number of reserved category candidates being called to participate in the main examination i.e. Special Knowledge Test but such factual aspect is logical and in consonance with the Constitution Bench Judgment in *R. K.*

Sabharwal vs State of Punjab 1995 (2) SCC 745, wherein it was held as under:-

“5. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserve posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation... .. Despite any number of appointment/ promotees belonging to the backward classes against the general category posts the given percentage has to be provided in addition.....”

31. In view of the above discussions and directions, **the appeal is dismissed**. The judgment passed by the learned Single Judge is modified, and the results of candidates at the screening test level shall be prepared in accordance with the above directions. The Subject Knowledge Test shall be conducted accordingly where too the lists would be prepared in accordance with the observations made hereinabove.

CWP No. 17188 of 2024

32. The writ petition was filed, which was placed before the Division Bench by the learned Single Judge on account of pendency of the aforesaid appeal. Since we have dismissed the appeal, we refrain from passing any order and direct that the writ petition be placed before the learned Single Judge, who would examine the issue in view of the

observations made hereinabove. More so, no reply has been filed by the respondents in the writ petition till date.

33. All interim orders shall stand vacated.
34. All pending applications shall stand disposed of.
35. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

9th April, 2025
vs

(KIRTI SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No