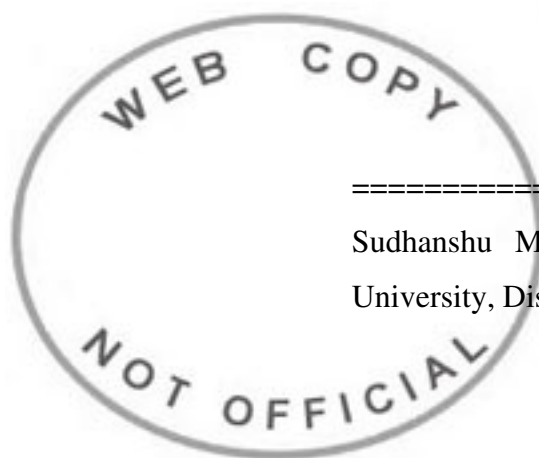




IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 1216 of 2013

IN

Civil Writ Jurisdiction Case No. 8811 of 2011

=====

Sudhanshu Moses, S/o Henry Moses, resident of Mohalla-Sahebganj, P.S.-
University, District-Bhagalpur.

.... Appellant/Petitioner

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Bihar Public Service Commission, Patna, through its Secretary, Patna.
3. The Secretary, Bihar Public Service Commission, Patna.
4. Umesh Kumar Bharti, through the Secretary, B.P.S.C., Patna.
5. Sunita Kumari, through the Secretary, B.P.S.C., Patna.
6. Raghvendra Pratap Singh, S/o Nand Kishore Singh, resident of Village-
Kulhadiya, P.O.-Karmnasha, P.S.-Durgawati, District-Kaimur (Bihar).
7. Punam Kumari, W/o Raj Kumar Thakur, resident of Bache Bigha, P.O.-Tarwa,
P.S.-Wazirganj, District-Gaya.

.... Respondents/Respondents

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Appearance :

For the Appellant : Mr. Y.V. Giri, Sr. Advocate
Mr. Pramod Misra, Advocate

For the Respondents : Mr. Lalit Kishore, P.A.A.G.
Mr. Satyabir Bharti, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

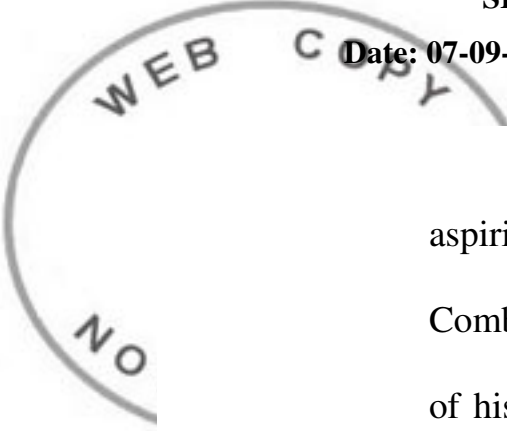
And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 07-09-2015



If a candidate belonging to one of the reserved classes aspiring for appointment against various posts through a Combined Competitive Examination gets selected on the basis of his own merit against one or more categories of post/posts, so advertised, but, for the purpose of getting appointment against category of post of his own choice, claims and is granted the benefit of reservation; such candidate can yet be treated to have been selected against open merit vacancy; for the purpose of computation of resultant reserved/unreserved vacancies, is the sole question involved, in the present appeal under Clause-10 of the Letters Patent of this High Court.

2. The appellant, herein, was the petitioner before learned Single Judge in C.W.J.C. No. 8811 of 2011 and belongs to Scheduled Tribe category. He is aggrieved by the order under appeal, dated 22/07/2013, passed by the learned Single Judge, whereby his writ application, under Article 226 of the Constitution of India, has been dismissed, by answering the question, as noted above, in negative.

3. The legal issue, as referred to in the very opening



paragraph, is no more *res integra* in view of Constitution Bench decision of Supreme Court reported in **(2010) 7 SCC 234** (*Union of India v. Ramesh Ram & Ors.*). The dispute, which is being raised in the present proceeding and was also raised before learned Single Judge on behalf of the appellant-petitioner, is that law laid down in case of **Ramesh Ram** (supra), decided on 07/05/2010, can have no application with respect to the selection process in question, which had taken place prior to the said decision of Supreme Court. It is the case of the appellant that law laid down by the Supreme Court, in case of *Union of India & Anr. v. Satya Prakash & Ors.*, reported in **(2006) 4 SCC 550**, was applicable, when the vacancies were advertised and the selection was made by the Bihar Public Service Commission for appointment to various post/s under Bihar State Services.

4. Before we deal with the issues involved in the present appeal and submissions made on behalf of the parties, it would be apt to briefly refer to undisputed facts, relevant for adjudication of the present matter.

5. The Bihar Public Service Commission (*hereinafter referred to as the "Commission"*) came out with an advertisement, bearing Advertisement No. 4 of 2007, for



holding 48th to 52nd Common Combined Competitive Examination (*hereinafter referred to as the “Competitive Examination”*) for filling-up vacancies of Class-II posts (Gazetted) in the State Cadre Services. The petitioner (appellant herein) was an applicant, as Scheduled Tribe candidate, in the said Competitive Examination. He cleared the preliminary test and the main (written) examination and was, accordingly, called for interview. He secured 807 marks, whereas cut-off marks for Scheduled Tribe Category was 816. The two candidates, namely, Umesh Kumar Bharti (respondent No. 4) and Sunita Kumari (respondent No. 5), though belonged to reserved category of Scheduled Tribe, on the basis of their merit, finally got selected against open vacancies, with their merit position at 126 and 444, respectively. However, on the basis of their merit position against open vacancies, they were not being allotted the service of their choice. The first choice of Shri Bharti was Bihar Administrative Service, which he was not getting on the basis of his merit position against general vacancy; therefore, giving benefit of reservation to him, he was allotted Bihar Administrative Service. Similarly, in case of Sunita Kumari, her first choice of service, i.e., Bihar Administrative Service, was not being offered to her on the



basis of her merit position against general vacancy nor she was getting her first choice in Scheduled Tribe category. Her second preference was Bihar Police Service, but on the basis of her merit position against general vacancy, she was not getting Bihar Police Service. She, accordingly, claimed benefit of reservation as Scheduled Tribe candidate for the purpose of getting the service of her choice, i.e., Bihar Police Service. Her name was recommended by the Commission for her appointment against the vacancy reserved for Scheduled Tribe in Bihar Police. Resultantly, only, two open merit vacancies were filled up on the basis of respective merit of the candidates.

6. The appellant has a grievance that had respondent No. 4, namely, Umesh Kumar Bharti or for that matter, respondent No. 5, namely, Sunita Kumari, been treated to have been appointed against open vacancy, on the basis of their own merit, the appellant would have been appointed against the post reserved for Scheduled Tribe candidates, he being the next in the merit list of Scheduled Tribe candidates after respondent Nos. 4 and 5. Alternatively, it is his case that the resultant open merit vacancy, arising out of shifting of respondent Nos. 4 and 5 to reserved vacancies of Bihar Administrative Service/Bihar Police Service ought to have been filled by other candidates of

the same reserved category. This is not in dispute that respondent Nos. 4 and 5 have been appointed on the basis of the recommendations made by the Commission, treating them to be reserved category candidates against the posts of their preference/choice.

7. In the backdrop of the facts, as noted above, the appellant filed writ application before this Court, giving rise to C.W.J.C. No. 8811 of 2011, seeking a direction to the official respondents to treat the appointments of respondent Nos. 4 and 5 against open vacancies, which came to be dismissed by the order under appeal, dated 22/07/2013.

8. We have heard Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the appellant and Mr. Lalit Kishore, learned Senior Counsel and Principal Additional Advocate General, appearing on behalf of the respondents.

9. Assailing the order under appeal, Mr. Y.V. Giri, learned Senior Counsel, has submitted that learned Single Judge has committed an error by applying the ratio of Constitution Bench decision of Supreme Court in case of **Ramesh Ram** (supra)) for two reasons. Firstly, according to him, the decision in case of **Ramesh Ram** (supra) was delivered after the recommendations were made by the Commission, on the basis

of the said Competitive Examination and, secondly, Rule 16 (2) of the Civil Services Examination Rules was under consideration by the Supreme Court in that case, whereas the selection, in question, is governed by Bihar Reservation of Vacancies in Posts and Services (Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (*hereinafter referred to as the “Bihar Act 3, 1992”*), with particular reference to Section 4 (3).

10. Section 4 (3) of the Bihar Act 3, 1992, on which, Mr. Giri, learned Senior Counsel, has placed heavy reliance, reads as thus:

“4. Reservation for direct recruitment. –All appointments to services and posts in an establishment which are to be filled by direct recruitment shall be regulated in the following manner, namely:-

(1) The available vacancies shall be filled up-

(a) from open merit category 50%

(b) from reserved category 50%

[X X X X X]

[(2) The vacancies from different categories of reserved candidates from amongst the 50% reserved categories shall, subject to other provisions of the Act, be as follows:-

(a) Scheduled Castes 16%



(b) Scheduled Tribes		01%
(c) Extremely Backward Class		18%
(d) Backward Class		12%
(e) Woman of Backward Classes		03%
Total		50%]

[Provided that the State Government may be notification in the Official Gazette, fix different percentage for different districts in accordance with the percentage of population of Scheduled Castes/Scheduled Tribes and other Backward Classes in such districts:

Provided further that in case of promotion, reservation shall be made only for Scheduled Castes/Scheduled Tribes in the same proportion as provided in this section.]

[X X X X X]

(3) A reserved category Candidate who is selected on the basis of his merit shall be counted against 50% vacancies of open merit category and not against the reserved category vacancies.

(4) Notwithstanding anything contained to the contrary in this Act or in any other law or rules for the time being in force, or in any judgment or decree of the Court, the provision of sub-section (3) shall apply to all such cases in which all formalities of selection have been completed before the 1st November, 1990, but the appointment letters have not been issued.

.....”



11. Mr. Giri, learned Senior Counsel, has submitted that law laid down by the Supreme Court, in case of *Satya Prakash* (supra), ought to have been applied by the learned Single Judge as that was the law operating at the time when the selection and appointment, in question, were being made. He submits that learned Single Judge has himself held in the order under appeal that respondent Nos. 4 and 5 could have been treated to have been appointed against open vacancies, had the said law laid down in case of *Satya Prakash* (supra) by Supreme Court, been applied.

12. Mr. Lalit Kishore, learned Principal Additional Advocate General, on the other hand, would submit, relying upon a Division Bench decision of this Court reported in **2014 (4) PLJR 634 (Bihar Public Service Commission through its Secretary & Ors. v. Sarvesh Chandra & Ors.)**, that similar issue had arisen with respect to 46th Competitive Examination held by the Commission, much before 48th to 52nd Competitive Examination in question, held by it. The writ application, raising similar issue, was filed before this Court in the year 2007, wherein the Division Bench of this Court, applying the law laid down in case of *Ramesh Ram & Ors. (Supra)*, held that the action of Commission in filling-up the resultant vacancy,



created by exercise of option by reserved category candidates qualifying against open vacancy, on the basis of open merit, could not said to be arbitrary or discriminatory. Mr. Lalit Kishore, learned Principal Additional Advocate General, has also placed reliance upon another Division Bench decision of this Court, reported in **2014 (2) PLJR 725 (G.V. Nutan v. The Bihar Combined Entrance Competitive Examination through the Controller of Examination Board & Ors.)**, in support of his submission that it would have amounted to extending the benefit of reservation beyond sustainable limit of 50%, if the vacancies, so created by reserved category candidates, though qualifying on the basis of their merit but opting to be treated as reserved categories for the purpose of getting the post of their choice, are filled-up by another set of reserved category candidates. He has referred to a Single Judge Bench decision of this Court, dated 01/03/2007, passed in **C.W.J.C. No. 321 of 2006 (Chandra Shekhar Azad Vs. State of Bihar & Ors.)**, which had arisen out of 42nd and 45th Competitive Examination held by the Commission, wherein similar view was taken, as has finally been taken by Constitution Bench Decision of the Supreme Court in case of **Ramesh Ram** (supra).

13. Reservation of vacancies in posts and services



under the State of Bihar including the post/s, in question, for Scheduled Castes, Scheduled Tribes and Other Backward classes, is governed by Bihar Act 3, 1992. Section 4 of the said Act provides for filling-up of the vacancies from reserved categories to the maximum limit of 50%, which is in tune with Supreme Court decision in case of *Indra Sawhney & Ors. v. Union of India & Ors., reported in 1992 Supp. (3) SCC 217*. 50% of the vacancies are mandatorily required to be filled-up on the basis of open merit. Sub-Section 3 of Section 4 of the Bihar Act 3, 1992 provides that a reserved category candidate, who is selected on the basis of his merit, shall be counted against 50% of vacancies of open merit category and not against the reserved category vacancies. In the present case, respondent Nos. 4 and 5 were selected for appointment against open vacancies on the basis of the Competitive Examination held by the Commission, but on the basis of their merit, they were not in a position to get the post of their choice, as several posts were advertised to be filled-up on the basis of the Competitive Examination. They opted and were allowed to be treated as candidates belonging to reserved category of Scheduled Tribe in order to get the post of their choice. They, thus, availed the benefit of reservation. To say it differently,



they were selected and appointed against the post of Bihar Administrative Service and Bihar Police Service against vacancies reserved for the Scheduled Tribe candidates. They ate-up the vacancies thus, which were reserved for Scheduled Tribe candidates. In our opinion, they could not be, therefore, treated to have been selected on the basis of open merit for filling-up the post of Bihar Administrative Service/Bihar Police Service. The migration, which they claimed, for the purpose of getting post of their choice was validly allowed by the Commission as, otherwise, it would have amounted to infringement of their right to be treated equally amongst the candidates of their category, i.e., Scheduled Tribe.

14. Sub-Section 3 of Section 4 of the Bihar Act 3, 1992 certainly does not contemplate that a candidate belonging to reserved category, who gets selected and appointed against the post of his/her own choice, availing the benefit of reservation, will get not be counted against reserved category vacancies, on the ground that he could have been appointed against other post, not of his/her choice, on the basis of his/her position in open merit.

15. The law on this aspect has been explicitly laid down by Constitution Bench decision in case of *Ramesh Ram*

(supra), wherein the Court held in Paragraph 72 as follows:-

“72. We sum up our answers:

(i) MRC candidates who avail the benefit of Rule 16(2) and adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will be offered to general category candidates.

(ii) By operation of Rule 16(2), the reserved status of any MRC candidate is protected so that his/her better performance does not deny him of the chance to be allotted to a more preferred service.

(iii) The amended Rule 16(2) only seeks to recognise the inter se merit between two classes of candidates i.e. (a) meritorious reserved category candidates (b) relatively lower ranked reserved category candidates, for the purpose of allocation to the various civil services with due regard for the preferences indicated by them.

(iv) The reserved category candidates “belonging to OBC, SC/ST categories” who are selected on merit and placed in the list of general/unreserved category candidates can choose to migrate to the respective reserved category at the time of allocation of services. Such migration as envisaged by Rule 16(2) is not inconsistent with Rule 16(1) of Articles 14, 16(4) and 335 of the Constitution.”

MRC in the decision of the Supreme Court refers to “Meritorious Reserved Candidates”, i.e., such candidates belonging to one of the reserved categories, who qualifying in a selection process on the basis of their merit.

16. Relying upon the said decision, the Division Bench of this Court, in case of **Sarvesh Chandra** (supra), dealing with an identical situation, has held in Paragraphs 16 - 19 as follows:-

“16. In our opinion, the scheme for reservation as it is now implemented can easily be classified into two categories. 1st half are the merit candidates and 2nd half are the reserved category candidates necessarily below the standard of selection. The merit candidates are those who have attained the standard of selection. Thus, merit candidates may be the candidates in unreserved category as well as the reserved categories. Those who are included in the 2nd half of the select list are the candidates who belong to reserved categories and who necessarily have not been able to attain the standard of selection. In other words, all vacancies earmarked for the reserved category candidates are necessarily filled in by the candidates who belong to the reserved categories and who have not attained the standard of selection.

17. If we examine the matter from another



angle, the way the reservation is implemented, the 50% of the posts are reserved for reserved category candidates while remaining 50% posts are filled in by merit candidates which may include the reserved category candidates also. Thus, the 1st 50% of the candidates on select list can be said to be merit candidates irrespective of their caste or community or class. If the vacancies have arisen in that general merit list on account of migration of the reserved category candidates, as in the present case, or for any other reason, those 50% of the slots meant for general merit candidates must be filled in by the candidates in order of merit alone. By inclusion of the reserved category candidates in general merit list, the representation of the reserved category candidates is in a way allowed to increase beyond 50% of the posts.

*18. Let us for the time being accept the claim made by the writ petitioner. In that case the petitioners who are reserved category candidates who have not been able to attain the standard of selection will be included in the general merit list. Such a situation will be contrary to the reservation policy itself. It will also be contrary to the directives issued by the Hon'ble Supreme Court in the matter of **Indra Sawhney** (supra). It will also mean more than 50% of the selection below the general standard of selection. It will also undermine the efficiency in the civil services to a greater extent.*



19. There is one more angle to examine this issue. Let us assume that in this very case the ten reserved category candidates who migrated to unreserved categories, though were at the top of the list in the concerned category, did not attain the standard of selection. In that case they would still be in the select list of the reserved category candidates. If the said ten candidates had occupied ten reserved category slots, like number of reserved category candidates would have been pushed out of the merit list of the reserved category candidates. It is a fortuitous circumstance that ten reserved category candidates were meritorious enough to attain the standard of selection which resulted into inclusion of ten more reserved category candidates. It is but a settled law that a mere selection does not give an indefeasible right to appointment to a candidate. Similarly, a fortuitous inclusion in the merit list also will not confer a right to selection and appointment unto the reserved category candidates. The writ petitioners, therefore, cannot claim their inclusion in the general merit list as of right. The slots on which they claim their inclusion were always meant for the merit candidates alone and has to be filled in by merit candidates alone.”

17. Another Division Bench of this Court, in case of **G.V. Nutan** (supra), dealing with reservation in admission to



medical colleges, held that the policy of the State government to fill-up seat, which was left vacant, in the general category pool by a meritorious reserved category candidate (who would have, on its own merit, been in general pool) by a reserved category candidate, which would have, otherwise, gone to a candidate on the basis of merit placed in the general category pool was not challenge. The Division Bench of this Court, in case of **G.V. Nutan** (supra) held in Paragraphs-54 and 55 as follows:-

“54. Thus, the impugned policy allows allotment of seats, on the basis of reservation, exceeding the permissible limit of 50 per cent of the total number of seats available, in an academic session, in a given undergraduate course, in a medical college.

55. Had such a policy of compensation not been there, the resultant effect would have been that the seat, in the general merit list, which was vacated by a candidate of the reserved category, would have gone to a candidate of the general category on the basis of his own merit and not to a member of the reserved category, who may have been, in the merit list, far below the candidate of the general category.”

18. This is to be noted that in case of **Ramesh Ram**



(supra), the Supreme Court pointed out that aggregate reservation cannot exceed, in any circumstance, permissible limit of 50% of reservation. The Supreme Court held in case of **Ramesh Ram** (supra) that if meritorious reserved category (MRC) candidates were to be adjusted against the reserved category vacancies with respect to their higher preferences and seats vacated by them in the general category are further allotted to other reserved category candidates, the aggregate reservation would exceed 50% of all the available post.

19. Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the appellant, has given much emphasis on his submission that when the selection, in question, was being carried out by the Commission, law laid down by Supreme Court in case of **Satya Prakash** (supra) held the field, which was binding on the Commission and any deviation from the law, so laid down by the Supreme Court, Commission or the State of Bihar in computing the number of posts reserved for different reserved categories candidates, would render the said selection process illegal.

20. The Supreme Court in the said case had occasioned to deal with Rule 2 and Rule 16 of Civil Services Examination Rules, 1996 (*hereinafter referred to as the “the*

Rule”), which read as follows:-

“2. A candidate shall be required to indicate in his/her application form for the main examination his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by the Union Public Service Commission.

A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application if he/she would like to be considered for allotment to the State to which he/she belongs in case he/she is appointed to IAS/IPS.

Note: The candidate is advised to be very careful while indicating preferences for various service/posts. In this connection, attention is also invited to Rule 18 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference for any service/post, it will be assumed that he/she has no specific preference for those services. If he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preferences.

X X X X X



16 (i) *After interview, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the main examination (written examination as well as interview) and in that order so may candidates as are found by the Commission to be qualified at the examination shall be recommended for appointment up to the number of unreserved vacancies decided to be filled on the result of the examination.*

(ii) *The candidates belonging to any of the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes may to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes be recommended by the Commission by a relaxed standard, subject to the fitness of these candidates for selection to the services:*

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have been recommended by the Commission without resorting to the relaxed standard referred to in this sub-rule, shall not be adjusted against the vacancies reserved for the Scheduled Castes, the Scheduled Tribes and the Other Backward Classes.

21. Rule 16 (ii) of the Rule came to be amended

subsequently through notification, dated 04/12/2004, and the following has been substituted in place of Rule 16 (ii):-

“16 (ii) While making service allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes recommended against unreserved vacancies may be adjusted against reserved vacancies by the Government, if by this process, they get a service of higher choice in the order of their preference.”

Interpreting the above, the Supreme Court laid down the law in case of **Ramesh Ram** (supra), dealing with the amended Rule 16 (ii) of the Rule.

22. The submission made on behalf of Mr. Giri, learned Senior Counsel, appearing on behalf of the appellant, is that the law laid down by Supreme Court, in case of **Ramesh Ram** (supra), was not applicable in the present set of facts, as the Supreme Court in the said case was interpreting Rule 16 (ii) of the Rule as amended with effect from 04/12/2004, whereas there is no similar provision under the Bihar Act 3, 1992, nor considered the view as placed. According to him, the Supreme Court decision in case of **Satya Prakash** (supra), was in the light of the proviso to Rule 16 (ii) of Rule, as it existed prior to 04/12/2004, which prescribed that candidates belonging to



reserved categories, who had been recommended by the Union Public Service Commission, without resorting to the relaxed standard, referred to in the said Rule, shall not be adjusted against the vacancies reserved for the reserved categories candidates. The said provision was subsequently amended, contemplating that the meritorious reserved category candidates may be adjusted against reserved vacancies and in that background in case of **Ramesh Ram** (supra), the Supreme Court has laid down that if upon migration of a meritorious reserved category candidate for his/her selection/appointment against post reserved for the category to which he/she belongs, a vacancy is created against general seat, and if such seat is slot to be filled-up by another reserved category candidate, this would amount to granting reservation beyond permissible limits as laid down by the Supreme Court in case of **Indra Sawhney** (Supra).

23. Mr. Y.V. Giri, learned Senior Counsel, appearing on behalf of the appellant, does not dispute that if there is a migration by a candidate belonging to reserved category, on the basis of his own merit, for the purpose of getting service/post of his/her first choice, resultant vacancies will have to be filled-up on the basis of open merit in view of



the law laid down by the Supreme Court in case of **Ramesh Ram** (supra). He has, however, submitted, as has been noted above, that the said decision cannot be applied retrospectively and it can have prospective effect only. It is, accordingly, his submission that the selection process in hand, having taken place prior to the said decision in case of **Ramesh Ram** (supra), the dispute arising out of such selection process cannot be decided on the basis of law laid down in that case. This submission cannot be accepted in view of consistent pronouncement of Supreme Court in series of cases. It is well settled that law declared by the Supreme Court will have a retrospective effect, unless otherwise stated to be so, specifically. In case of **Ravi S. Naik v. Union of India, reported in 1994 Supp. (2) SCC 641**, it has been held by the Apex Court that there is retrospective operation of the decision of the Supreme Court. In case of **M.A. Murthy v. State of Karnataka, reported in (2003) 7 SCC 517**, the Supreme Court laid down that the law declared by the Apex Court is normally assumed to be law from inception and prospective operation is only exception to the normal rule. In case of **M.A. Murthy** (supra), the Supreme Court held in Paragraph-8 as follows:-

“8. The learned counsel for the appellant



submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in Golak Nath v. State of Punjab. In ECIL v. B. Karunakar the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. and Baburam v. C.C. Jacob). It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in



a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma Case. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.”

24. Similar view has also been taken in a recent decision of the Supreme Court reported in **(2015) 4 SCC 515 (B.A. Linga Reddy and Ors. v. Karnataka State Transport Authority and Ors.)**.

25. In view of the Supreme Court decision in case



of **Ramesh Ram** (supra) and Division Bench decisions of this Court in cases of **Sarvesh Chandra** (supra) and **G.V. Nutan** (supra), we are of the considered view that if a meritorious reserved category (MRC) candidate, claims and is granted benefit of reservation for the purpose of his/her selection and appointment against post/vacancy of his/her own choice, such candidate would be treated to have been selected on the basis of granting him the benefit of reservation, despite the fact that on the basis of open merit position, he/she could have been selected and appointed against unreserved post, not of his/her choice. The resultant vacancy occurring because of shifting of such candidate from open merit to merit list, prepared for the reserved category candidates to which he/she belongs, will be required to be filled-up on the basis of open merit list. If the resultant vacancy, caused by shifting of such candidate/s from open merit category to reserved category because of his/her choice is slot to be filled-up by another reserved category candidate/s, it would amount to granting more percentage of reservation than permissible under Section 4 of Bihar Act 3, 1992 and would also be in breach of Constitution Bench decision of Supreme Court in case of **Indra Sawhney** (supra).

26. We do not find any infirmity in the order under

appeal, dated 22/07/2013. There is no merit in this present appeal, which is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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