

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 433 of 2000

IN

Civil Writ Jurisdiction Case No. 10561 of 1999

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The Controller of Examination, Bihar Combined Entrance
Competitive Examination, 1999, I.A.S. Association Building, near
Patna Airport, P.O.-Veterinary College, Patna.

.... Respondent No.2/Appellant

Versus

1. Nidhi Sinha, D/o Surendra Nath Sinha, Sinha Lab; Nala Road,
near B.K. Mission, Patna.

.... Petitioner/Respondent 1st Set

2. The State of Bihar.

.... Respondent/Respondent 2nd Set

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Appearance :

For the Appellant : Mr. Vikash Kumar, Adv.

For the Respondent/s :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE NAVANITI PRASAD
SINGH**

And

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH)**

Date: 24-06-2016



What would be the impact of migration of a Meritorious Reserved Category (MRC) candidate, if for the purpose of getting admission to a medical course/institution, he/she opts and is treated to be a reserved category candidate for the limited purpose of allotment of a medical course/institution, on a candidate, who has been placed at the bottom in the merit list of reserved category to which the said MRC candidate belongs, is the primary issue, which requires consideration in the present case, which been referred to Full Bench by a Division Bench of this Court, expressing inability to agree with the conclusions arrived at in the case of ***G.V. Nutan Vs. Bihar Combined Entrance Competitive Exam, Board***, reported in ***2014 (2) PLJR 725***, by a Division Bench of this Court.

2. A Division Bench of this Court, in case of ***G.V. Nutan*** (supra), relying on Supreme Court's decision in the case of ***Union of India Vs. Ramesh Ram and Ors.***, reported in ***(2010) 7 SCC 234***, has, in substance, held that when an MRC candidate vacates a seat in general category and prefers to opt for a seat, in his own category, for better preference of institution, the general category seat, so vacated, cannot be filled up from the bottom of the list of selected candidates in that particular reserved category. The dispute, in case of ***G.V. Nutan*** (supra), related to admission

to medical courses/institutions.

3. The Supreme Court, in case of **Ramesh Ram** (supra), had occasion to deal with selection for appointment to central services, through Union Public Service Commission (**hereinafter referred to as the "UPSC"**). Noticing the fact that the Division Bench of this Court, in case of **G.V. Nutan** (supra), missed to notice distinction pointed out by the Supreme Court in the case of **Ramesh Ram** (supra), in the matter of appointment to a civil service, through examinations conducted by the UPSC, *vis-à-vis* admission in medical colleges, the matter has been referred to Full Bench for consideration.

4. It happens oftentimes that in a competitive examination, held for the purpose of admission to technical or other institutions or for employment in public service, the candidates, belonging to reserved category/categories, qualify on the basis of their own merit and are placed in general merit list. It is settled law and there is no controversy over the preposition that such candidates are not treated to be occupying reserved seats/posts till the selection process relates to admission to one institution or appointment one class of posts. For the benefit of precision and brevity, the class of candidates, who belong to different reserved categories and qualify on the basis of their own



merit, irrespective of reservation policy in their favour, have been described as Meritorious Reserved Category (MRC), in the present judgment, following the said nomenclature given to such class of candidates in various judicial pronouncements. Controversies, however, arise, when a common competitive examination is held for admission to more than one institutions or for the purpose of filling up of different categories of posts. An MRC candidate, in such circumstance, may not be getting the institution or post, as the case may be, of his choice, on the basis of his own merit position in the general merit list. He, in such circumstances, may opt to be treated as a candidate belonging to his reserved category, as naturally, if placed in the reserved merit list of his category, he would be ranking high and may get better choice of institution or post. An MRC candidate naturally cannot be placed to a disadvantageous situation by not permitting him to be treated as reserved category, as that would amount to allowing him to suffer for his better performance in the competitive examination. In consequence of movement or migration of an MRC from general merit list to the merit list of his reserved category, a candidate placed at the bottom of merit list of the reserved category may have to be moved or adjusted somewhere else. If as a result of such migration, an MRC is to be



counted against reserved number of seats/posts, a candidate of reserved merit list will have to go out from the list of selected candidates. Otherwise, the consequence may be something else, which are dealt with in the present judgment. The dispute, thus, starts once a MRC candidate is allowed to move from general merit list to the merit list of his reserved category, on the question as to how the slot in the general merit list, left vacated by him, is to be filled up, i.e., to say, as to whether the said seat is to be filled up by a candidate from general merit list only or by a candidate, belonging to the reserved category, who came to be displaced because of movement of the said MRC candidate to the reserved category.

5. The question, as to whether in relation to admission in medical colleges, an MRC candidate, who opts to be treated as reserved category candidate for the purpose of getting better choice of institution, has to be counted against quota, meant for the reserved category or he should be treated as general candidate, had arisen before Supreme Court in case of **Ritesh R. Sah Vs. Dr. Y.L. Yamul and Ors.**, reported in **(1996) 3 SCC 253**, paragraph 17 of which is relevant and is being extracted hereinbelow:-

"17. X X X X X X. In view of the legal position enunciated by this Court in the aforesaid cases the



conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission in the colleges where a specified number of seats have been kept reserved for reserved category

but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate. X X X X X X.

(Emphasis supplied)

It has to be kept in mind that the decision, in case of **Ritesh R. Sah** (supra), related to admission to medical institutions.

6. A Constitution Bench of the Supreme Court, in case of **Ramesh Ram** (supra), had the occasion to deal with almost similar issue in the matter of selection through Union Public Service Commission, including Indian Administrative Service, Indian Revenue Service and Indian Police Service etc. As the dispute had arisen on the consequence of migration of a MRC candidate to the reserved category to which he belonged, the Constitution Bench of the Supreme Court, in case of **Ramesh Ram** (supra), framed following questions for consideration, in paragraph 20, which are as follows:-

"20. X X X X X X X

I. Whether the reserved category candidates who were selected on merit (i.e. MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of "service

allocation”?

II. Whether Rules 16(2), (3), (4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14, 16(4) and 335 of the Constitution of India?

III. Whether the order of the Central Administrative Tribunal was valid to the extent that it relied on Anurag Patel v. U.P. Public Service Commission (which in turn had referred to the judgment in Ritesh R. Sah v. Dr. Y.L. Yamul, which dealt with reservations for the purpose of admission to postgraduate medical courses); and whether the principles followed for reservations in admissions to educational institutions can be applied to examine the constitutionality of a policy that deals with reservation in civil services.”

7. Dealing with a contention based on law laid down in case of **Ritesh R. Sah** (supra), the Supreme Court held that there was an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in UPSC examinations, since the latter is conducted for filling up vacancies in the various civil services. Paragraph 32 of the Supreme Court’s decision, in case of **Ramesh Ram** (supra), is being extracted

hereinbelow for the benefit of quick reference:-

"32. *There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates received the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice. For example, most candidates opt for at least one of the first three services [i.e. Administrative Service (IAS), Indian Foreign Service (IFS) and Indian Police Service (IPS)] when they are asked for preferences. A majority of the candidates prefer IAS as the first option. In this respect, a reserved category candidate who has qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the general category especially because if he had availed the benefit of this reserved category status, he would*

have got a service of a higher preference. With the obvious intention of preventing such an anomaly, Rule 16(2) provides that an MRC candidate is at liberty to choose between the general quota or the respective reserved category quota.

8. The Supreme Court, in case of **Ramesh Ram** (supra), lucidly laid down the law, in paragraphs 69 and 70, which reads thus:-

"69. *The proviso to Rule 16 (1) and Rule 16 (2) operate in different dimensions and it is untenable to argue that these provisions are contradictory or inconsistent with each other. As mentioned earlier, in the examination for the year 2005, 32 reserved candidates (31 OBC candidates and 1 SC candidate) qualified as per the general qualifying standard [Rule 16 (1)]. These MRC candidates did not avail of any of the concessions and relaxations in the eligibility criteria at any stage of the examination, and further they secured enough marks to place them above the general qualifying standard. MRC candidates are entitled to one of the two posts - one depending on their performance in the General list and other depending*



on their position in the Reserved List. When MRC candidates are put in the General list on their own merit they do not automatically relinquish their reserved status. By the operation of Rule 16 (2), the reserved status of an MRC candidate is protected so that his/her better performance does not deny such candidate the chance to be allotted to a more preferred service. Where, however, an MRC is able to obtain his preferred post by virtue of his /her ranking in the General List, he/she is not counted as a Reserved Candidate and is certainly not counted amongst the respective reservation quota.

70. *We must also remember that affirmative action measures should be scrutinized as per the standard of proportionality. This means that the criteria for any form of differential treatment should bear a rational correlation with a legitimate governmental objective. In this case a distinction has been made between Meritorious Reserved Category candidates and relatively lower ranked Reserved Category candidates. The amended Rule 16(2) only seeks to recognize the inter-se merit between these two classes of candidates for the*

purpose of allocation to the various civil services with due regard for the preferences indicated by the candidates.”

(Emphasis supplied)

9. It is easily evincible that in case of **Ritesh R. Sah** (supra), the Supreme Court, while dealing with selection for admission to medical institutions, held that whereas an MRC is entitled to admission on the basis of his merit, he will have the option of taking admission in the colleges, where specified number of seats have been kept reserved for reserved categories, but while computing the percentage of reservation, he will be deemed to have been admitted as open category candidate and not reserved category. In case of **Ramesh Ram** (supra), the Supreme Court did consider the *ratio*, laid down in case of **Ritesh R. Sah** (supra), and drew a clear distinction between selection for admission to medical courses and selection through examination, conducted by the Union Public Service Commission. Paragraphs 66 and 67 of the said decision are relevant for the present purpose and, therefore, being extracted hereinbelow:-

"66. The decision in Anurag Patel in turn referred to the earlier decision in Ritesh R. Sah v. Dr. Y.L. Yamul..



However, we have already distinguished the judgment in Ritesh R. Sah. That decision was given in relation to reservation for admission to postgraduate medical courses and the same cannot be readily applied in the present circumstances where we are dealing with the examinations conducted by the UPSC. The ultimate aim of Civil Services aspirants is to qualify for the most coveted services and each of the services have quotas for reserved classes, the benefits of which are availed by MRC candidates for preferred service. As highlighted earlier, the benefit accrued by different candidates who secure admission in a particular educational institution is of a homogeneous nature. However, the benefits accruing from successfully qualifying in UPSC examination are of a varying nature since some services are coveted more than others.

67. The order of the CAT is valid to the extent that it relied on the ratio propounded by this Court in Anurag Patel v. U.P. Public Service Commission. Even though that decision had in turn relied on the verdict of this Court in Ritesh R. Sah v. Dr. Y.L. Yamul, the latter case is distinguishable from the present case

with respect to the facts in issue. However, we cannot approve of the conclusions arrived at in the Central Administrative Tribunal order as it failed to take note of the unique characteristics of the UPSC examinations."

(Emphasis supplied)

10. In case of **G.V. Nutan** (supra), a Division Bench of this Court has dealt with the mode of allotment of seats in various disciplines of medical sciences, in undergraduate courses, in the State of Bihar. Placing reliance on Supreme Court's decision in case of **Ramesh Ram** (supra), the Division Bench of this Court held in paragraph 37 as follows:-

"37. *Thus, in our considered opinion, both the respondents and the learned Single Judge erred in taking the view that filling up general seats, which have not been opted by the reserved category candidates competing in general category merit list, from candidates placed at the bottom of the reserved category, would be valid as it would provide for compensation for maintaining the reservation percentage of the concerned reserved category. Para 3*

of 1995 Scheme of Health Department as well as order of the learned Single Judge are clearly, in the teeth of decision in M. Neethi Chandra (supra) and Ramesh Ram (supra), not sustainable."

The reference may also be made to paragraph 56, 57 and 58 of the said Division Bench decision, in case of **G.V. Nutan** (supra), which reads thus:-

"57. *In the case of Ramesh Kumar (supra), the Constitution Bench has clearly pointed out, at paragraph 39, that aggregate reservation should not exceed 50 per cent of all the available vacancies. Having so indicated the permissible limit of reservation, the Constitution Bench has also observed, in Ramesh Kumar (supra), that if an MRC (meritorious reserved category) candidate is adjusted against the reserved category vacancy, and if the seat, vacated by him, in the general category, is further allotted to a candidate of reserved category, then, the aggregate reservation could possibly exceed 50 per cent of all available seats and, therefore, when an MRC (meritorious reserved category) candidate is adjusted against the reserved*



category, he should be counted as a part of the reservation pool for the purpose of computing the aggregate reservation pool and the seat, which such an MRC (meritorious reserved category) candidate vacates in the general pool, would have to, therefore, be offered, on the basis of merit, to the candidate of the general category and this is the viable solution, because allotment of seats, meant for general category candidates vacated by MRC (meritorious reserved category) candidate, to a relatively lower ranked reserved category candidate, would result in the aggregate reservation exceeding 50 per cent of the total number of available seats.

58. *The relevant observations, appearing, in this regard, in the decision of Ramesh Kumar (supra), may be found in paragraphs 39, 42 and 46 of the report.*

59. *Situated thus, it becomes clear that the impugned policy does not withstand the test of the Constitution and is ex facie violative of Article 14 of the Constitution of India. The impugned policy cannot, therefore, be sustained and has been accordingly set aside and struck down*

in this appeal.”

11. In case of **G.V. Nutan** (supra), placing reliance on the decision of the Supreme Court in case of **Ramesh Ram** (supra), the Division Bench of this Court struck down Para 3 of the State Government policy, as contained in memo No.225 (26), dated 14.11.1995, issued by the Department of Health and Medical Welfare which prescribes that when an MRC candidate vacates a seat in general category and prefers to opt for a seat in his own reserved category, for better preference of institution, then general category seats can still be available to reserved category candidate from the bottom of the list of selected reserved category candidates, as compensation, for maintaining the reservation percentage of the optee being violative of Articles 14 and 16 of the Constitution of India. While, holding so, evidently, the Division Bench of this Court did not notice the distinction laid down by the Supreme Court, in case of **Ramesh Ram** (supra), as has been quoted hereinabove, in relation to selection for admission to medical institutions and selection for appointment to various categories of posts through combined competitive examination.

12. I am, therefore, of the view that law, laid down in case of **G.V. Nutan** (supra), cannot be held to be correctly decided.



13. Situated thus, paragraph 3 of the resolution of the State Government, dated 14.11.1995, cannot, in the teeth of the decision in case of **Ramesh Ram** (supra), be held to be violative of Articles 14 and 16 of the Constitution of India. The law, laid down by the Supreme Court in case of **Ritesh R. Sah** (supra), has been specifically affirmed by a Constitution Bench of Supreme Court in case of **Ramesh Ram** (supra) as has been noticed above.

14. Considered, thus, in our opinion, the law, laid down by the Supreme Court, in case of **Ritesh R. Sah** (supra), still holds the field in relation to admissions in medical institutions. Following the said decision, it is held that while an MRC candidate is entitled to admission on the basis of his merit, he will have the option of taking admission in the colleges, where a specified number of seats have been kept reserved for reserved category candidates; but while computing the percentage of reservation, he will be deemed to have been admitted as an open category candidate and not as a reserved category candidate. Accordingly, the law, laid down in Division Bench decision, in case of **G.V. Nutan**, cannot be said to be correct.

15. In view of the discussions above and what has been held by Supreme Court in cases of **Ramesh Ram** (supra) and **Ritesh R. Sah** (supra), we arrive at the

following conclusion(s):-

- 
- (i) There is an obvious distinction between qualifying through a common entrance test for securing admission to a medical courses in various institutions *vis-à-vis* a common competitive examination held for filling up vacancies in various services.
 - (ii) This distinction arises because all candidates receive, in a case of common entrance test held for securing admission in medical institutions, the same benefits of securing admission in one of the medical institutions, in a particular course, whereas in the case common selection process adopted for filling up vacancies in various services, there are variations, which accrue to the successful candidates, because the services may differ in terms of status and conditions of service including pay scale, promotional avenues, etc. Consequence of migration of an MRC to the concerned reserved category shall be, therefore, different in case of the admission to various medical institutions *vis-à-vis* selection to various posts.
 - (iii) In case of admission to medical institutions, an MRC can have in, for the purpose of allotment of institutions of his choice, the option of taking admission in a college, where a seat in his category is reserved. Though admitted against a reserved seat, for the purpose of computation of percentage of reservation, he will be deemed to have been admitted as an open category candidate. This process, in fact, does not result into migration of an MRC into reserved category, rather he remains an



MRC. He cannot be treated to have occupied a seat reserved for the category of reservation he belongs to. Resultantly, this movement will not lead to ouster of the reserved candidate at the bottom on the list of that reserved category. While his/her selection as reserved category candidate shall remain intact, he/she will have to adjusted against remaining seats, because of movement of an MRC against reserved seats, only for the purpose of allotment of seats.

- (iv) In the case of filling up of posts based on common competitive selection process in different services, situation will be entirely different, when an MRC opts to move to the reserved category, which he belongs to, for getting a service/post of his choice. In such a situation, the candidate, at the bottom of list of the concerned category, will have to move out and the slot, in the general merit list, will stand vacated, because of migration of the MRC will have to be filled up from general merit list. Otherwise, if the open seats are allowed to be filled up by candidates of reserved categories, it will result into extending the benefit of reservation beyond fifty percent, which is constitutionally impermissible."

16. The reference is answered accordingly.

17. After having answered the reference, instead of sending the matter back to the Division Bench for disposal, I have considered it fit do dispose of the appeal after dealing with the question of vertical and horizontal

reservation which has apparently been overlooked by learned single judge while considering the claim of the Respondent No.2 as an RCG (Reserved Category Girl) candidate.

18. The present appeal has been preferred by the Controller of Examination, Bihar Combined Entrance Competitive Examination, 1999, questioning the correctness of common judgment and order, dated 11.02.2000, passed by a learned single Judge of this Court, in C.W.J.C. No.10561 of 1999 (Nidhi Sinha Vs. The State of Bihar & Ors.) and C.W.J.C. No.10587 of 1999 (Anju Kumari Vs. The State of Bihar & Ors.). It transpires from the records that two separate appeals were filed by the appellants, giving rise to the present appeal, i.e., L.P.A. No.433 of 2000 and L.P.A. No.447 of 2000. Both these appeals were initially taken up together. However, by an order, dated 02.01.2000, both the appeals came to be dismissed for want of prosecution. The appeals were, thereafter, restored to their original records. L.P.A. No.447 of 2000 was taken separately and it came to be disposed of by an order, dated 16.04.2013, in the following terms:-

"This Appeal under Clause 10 of the Letters Patent is preferred by the Controller of Examination, Bihar Combined Entrance Competitive Examination against the common

judgment and order dated 11th February 2000 passed by the learned single Judge insofar as CWJC No. 10587 of 1999 is allowed.

Under the impugned order, the learned single Judge has allowed the claim of the writ petitioner for admission to MBBS course in the reserved category.

The matter being that of admission to MBBS course as early as in 1999, in view of passage of time, the cause of action shall not survive. Appeal is accordingly disposed of."

19. When the present appeal (L.P.A. No.433 of 2000) was taken up by a Division Bench of this Court, despite the fact that the matter related to admission for the year 1999, it was argued on behalf of the appellant that considering the importance of the issue involved touching policy of reservation for admission to medical institutions in a case where an MRC candidate moves from general merit list for being considered as candidate of his reserved category, the question of law needs to be decided and the appeal be disposed of on merits. It was pointed out to the Division Bench that the decision of learned single Judge, under appeal, was contrary to the Division Bench decision of this Court in case of **G.V. Nutan** (supra). The Division Bench of

this Court having considered the ratio laid down in case of **G.V. Nutan** (supra) referred the matter to a Full Bench for consideration, as has been mentioned above. The reference has already been answered.

20. I would not have gone any further into the question of validity of the order of learned single Judge, under appeal, in the present proceeding, in the background of the fact that the matter relates to admission in medical courses for the academic year 1999-2000. However, as indicated above, considering the significance of the issue it would apt to settle it finally, for the future so that there remains no scope of confusion or doubt in this regard.

21. Respondent No.1 of the present appeal belonged to a backward class. She had applied for taking part in Bihar Combined Competitive Examination, 1999, with a view of securing admission into various medical courses, including MBBS course and other allied courses in various colleges in the State of Bihar. In the brochure/advertisement for admission, nine seats were kept reserved for reserved category girl (RCG) candidates. Being a female, she claimed her admission on the basis of being backward class, which is a reserved category, girl. It seems that few reserved category girls, on the basis of their merit, found their place in the merit list reserved category (BC). They could have been



offered admission on the basis of their position in the merit list of reserved category. However, in order to get admission in a course/institution of their choice, some of them opted to be treated as reserved category girls (RCG) instead of reserved categories. Out of nine RCG seats, six came to be filled up with girl candidates, who had competed in backward class category.

22. With a grievance that she could not have been denied admission against RCG seats, as a consequence of six girl candidates, who had competed in backward class category, being given benefit of RCG status to allow their admission in course/institution of their choice, the respondent No.1 filed a writ petition before this court which gave rise to C.W.J.C. No. 10561 of 1991. Relying on Supreme Court decision in case of **Ritesh R. Sah** (supra), the respondent claimed that she should have been adjusted against the slot becoming vacant because of migration of backward class category candidates to RCG. The learned single Judge, applying the ratio laid down in case of **Ritesh R. Sah** (supra), and reasoning, assigned therein, held as follows:-

"X X X X X X X Keeping in view all the facts and the relevant case law cited on behalf of the petitioners and on behalf of the respondents I am of the considered view that the



principle laid down by the Apex Court in the case of Ritesh R. Sah (supra) as well as in the case of State of Bihar V. M. Neethi Chandra (supra) must be held to be applicable even in the present cases although in these cases the question of adjustment of seats is not between open category and reserved category but between BC category which is a larger reserved category and between yet another smaller reserved category i.e. RCG category which is meant exclusively for reserved category girls. There is no reason as to why the percentage of reservation fixed for RCG category should be allowed to be diluted because some more meritorious girl students have competed on merit in the BC category. For the purpose of choice of better institutions such more meritorious girl students have to be given only the option which would have been available to them according to their position in the RCG list but the respondents cannot be heard to say that only by giving the options to such more meritorious girl students they have also maintained the required percentage of reservation meant exclusively for reserved category girls. For this purpose, they must make

available all the 9 seats reserved for RCG category to such girl students who compete for MBBS course only on the basis of their merit and placement in the RCG list. This will satisfy the percentage of reservation for such category as well as equity. X X X X.

23. I am afraid the reasoning assigned by the learned single Judge can be upheld, in the light of law laid down by Supreme Court's decision in case of ***Rajesh Kumar Daria V. Rajasthan Public Service Commission (AIR 2007 SC 3127)***. The Supreme Court referring to decisions in case of ***Indra Sawhney V. Union of India (AIR 1993 SC 477)***, ***R.K. Sabharwal V. State of Punjab (1995) 2 SCC 745***, ***Union of India Vs. Virpal Singh Chauhan (1995) 6 SCC 684*** and ***Ritesh R. Sah V. Dr. Y.L. Yamul (1996) 3 SCC 253***, held that those cases relate to vertical reservation, i.e. reservation in favour of Scheduled caste and Scheduled Tribe and other backward classes under Article 16(4) of the Constitution of India, whereas special reservation in favour of physically handicapped, women etc under Article 15(3) of the Constitution of India are horizontal reservation. In case of vertical reservation contemplated under Article 16(4) of the Constitution of India, the candidates belonging to such backward classes may compete



for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. The Supreme Court clearly laid down in paragraph 7 of the said decision that principle laid down in case of Ritesh R. Sah (supra), applicable to vertical (social) reservations will not apply to horizontal (special) reservations. The Supreme Court in the said case held that where a special reservation for women is provided within the social reservation for Backward class, the proper procedure would be to first fill up the quota for the backward class in order of merit and then find out the number of candidates among them who belong to the special reservation group of backward class-women. It further laid down that if the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Backward class/Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to the concerned backward class/Scheduled Caste and Scheduled Tribe.

24. The Supreme Court, in case of Rajesh **Kumar Daria** (supra), held that to this extent, the horizontal

(special) reservation differs from vertical (social) reservation. The Supreme Court specifically held that women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women.

25. The Supreme Court, by way of illustrations, gave an example which clinches the issue involved:-

"If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two women candidates, then the next two SC women candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidate. (But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of

deleting the excess women candidate on the ground that 'SC women' have been selected in excess of the prescribed internal quota of four)."

26. Reference may also be made in this regard to Supreme Court decision in case of **Anil Kumar Gupta and others vs. State of U.P. and others (1995) 5 SCC 173**), dealing with similar issue, which has been referred to and relied upon by Supreme Court in case of **Rajesh Kumar Daria** (supra).

27. With the lapse of time, I do not consider it fit to interfere with the impugned decision of the learned single Judge, particularly in view of the fact that another appeal preferred by the appellant vide LPA No. 447 of 2000 has been disposed of on the ground of lapse of time. It is, however, directed that in future, while extending special reservation for women, the respondents shall first fill up the quota of reserved category in order of merit and then they will find out the number of candidates among them who belong to the special reservation group, viz. women handicapped etc. Once the number of special reservation is found to be equal to or more than the special reservation quota, no further selection of candidates on the basis of special reservation shall be required. Only in case of shortfall, the requisite number of

candidates in the category of special reservation shall be taken up by deleting the corresponding number of candidates from the bottom of the concerned list.

28. It is also held that law laid down by Supreme Court in case of **Ritesh R. Sah** (supra), cannot be applied in case of special reservation (horizontal reservation),i.e., reservation for women/handicapped etc. within the vertical reservation (reservation for backward class etc.).

29. However, in the facts and circumstances of the case as noticed above, this appeal stands disposed of with the observations and direction, as above without interfering with the order under appeal.

30. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

(I. A. Ansari, ACJ.)

(Navaniti Prasad Singh, J.)

Praveen-II/-

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