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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.869 of 2015

Dwarika Prasad Patel, S/o Girdhari Lal Patel, aged about 31 years, Rural Medical Assistant (R.M.A.), Primary Health Centre Bhithidih, Block Pithora, District Mahasamund, R/o Village Turidih, PO Jhalap, PS Patewa, District Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Director, The Directorate of Health Services, Chhattisgarh, Raipur, Block-1, IIIrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Joint Director (Establishment), Directorate of Health Services, Block-1, IIIrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
4. R. Prasanna, Presently posted as Director, The Directorate of Health Services Chhattisgarh, Raipur, Block-1, 3<sup>rd</sup> Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
5. Smt. Triveni Patil, W/o Dr. Yuvraj Patil, aged about 35 years, presently posted as Rural Medical Assistant, at Primary Health Centre Chhiraha, District Bemetara, R/o Village Sankari, PP Pairi, PS & Tahsil Gunderdehi, District Balod (C.G.)
6. Smt. Kiran Patel, W/o P.K. Patel, aged about 28 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bonda, District Raigarh, R/o Village Bahaya, PO, PS & Tashil Lailunga, District Raigarh (C.G.)
7. Smt. Sunita Verma, W/o Dr. Salik Ram Verma, aged about 27 years, presently posted as Rural Medical Assistant, at Primary Health Centre Mardapal, District Kondagaon, R/o Qtr. No. 4, Bahigaon, PO Bahigaon, PS Kondagaon, District Kondagaon (C.G.)
8. Smt. Rukhmani, aged about 32 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bamhani, District Kondagaon (C.G.)

---- Respondents

Writ Petition (S) No.870 of 2015

Debar Singh Malakar, S/o Goutam Prasad Malakar, aged about 34 years, Rural Medical Assistant (R.M.A.), at Primary Health Centre Lundra, District Surguja; R/o Village Pendaruwan, PS Chandrapur, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Director, The Directorate of Health Services, Chhattisgarh, Raipur, Block-1, Illrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Joint Director (Establishment), Directorate of Health Services, Block-1, Illrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
4. R. Prasanna, Presently posted as Director, The Directorate of Health Services Chhattisgarh, Raipur, Block-1, 3<sup>rd</sup> Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
5. Smt. Triveni Patil, W/o Dr. Yuvraj Patil, aged about 35 years, presently posted as Rural Medical Assistant, at Primary Health Centre Chhiraha, District Bemetara, R/o Village Sankari, PP Pairi, PS & Tahsil Gunderdehi, District Balod (C.G.)
6. Smt. Kiran Patel, W/o P.K. Patel, aged about 28 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bonda, District Raigarh, R/o Village Bahaya, PO, PS & Tashil Lailunga, District Raigarh (C.G.)
7. Smt. Sunita Verma, W/o Dr. Salik Ram Verma, aged about 27 years, presently posted as Rural Medical Assistant, at Primary Health Centre Mardapal, District Kondagaon, R/o Qtr. No. 4, Bahigaon, PO Bahigaon, PS Kondagaon, District Kondagaon (C.G.)
8. Smt. Rukhmani, aged about 32 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bamhani, District Kondagaon (C.G.)

---- Respondents

Writ Petition (S) No.871 of 2015

Satnarayan Karsh, S/o Resham Lal Karsh, aged about 33 years, presently posted as Rural Medical Assistant, at Primary Health Centre Kurda, Block Sakti, District Janjgir-Champa; R/o Village Mukta, PS Malkharouda, District Janjgir-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur (C.G.)
2. The Director, The Directorate of Health Services, Chhattisgarh, Raipur, Block-1, Illrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
3. The Joint Director (Establishment), Directorate of Health Services, Block-1, Illrd Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
4. R. Prasanna, Presently posted as Director, The Directorate of Health Services Chhattisgarh, Raipur, Block-1, 3<sup>rd</sup> Floor, Indrawati Bhawan, Naya Raipur, District Raipur (C.G.)
5. Smt. Triveni Patil, W/o Dr. Yuvraj Patil, aged about 35 years, presently posted as Rural Medical Assistant, at Primary Health Centre Chhiraha, District Bemetara, R/o Village Sankari, PP Pairi, PS & Tahsil Gunderdehi, District Balod (C.G.)
6. Smt. Kiran Patel, W/o P.K. Patel, aged about 28 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bonda, District Raigarh, R/o Village Bahaya, PO, PS & Tashil Lailunga, District Raigarh (C.G.)
7. Smt. Sunita Verma, W/o Dr. Salik Ram Verma, aged about 27 years, presently posted as Rural Medical Assistant, at Primary Health Centre Mardapal, District Kondagaon, R/o Qtr. No. 4, Bahigaon, PO Bahigaon, PS Kondagaon, District Kondagaon (C.G.)
8. Smt. Rukhmani, aged about 32 years, presently posted as Rural Medical Assistant, at Primary Health Centre Bamhani, District Kondagaon (C.G.)

---- Respondents

AND

Writ Petition (S) No.1477 of 2015

Yuwraj Kumar Sahu, S/o Shri Chain Singh Sahu, aged about 32 years, Occupation Rural Medical Assistant, Primary Health Center, Benur, P.S. Benur, Distt. Narayanpur (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Health & Family Welfare Department, Mantralaya at Mahanadi Bhawan, Naya Raipur (C.G.) Pin Code – 492002
2. Commissioner/ Director, Health & Family Welfare Department, Head of the Department, Block-1, Third Floor, Indravati Bhawan, Naya Raipur (C.G.) Pin Code 492002

---- Respondents

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For Petitioners in W.P.(S)Nos.869/2015, 870/2015 & 871/2015: -  
Mr. Mateen Siddiqui, Advocate.

For Petitioner in W.P.(S)No.1477/2015: -  
Mr. Rakesh Anthony, Advocate.

For State: Mr. Y.S. Thakur, Deputy Advocate General.

For respondent No.4 in W.P.(S)Nos.869/2015, 870/2015 & 871/2015: - Mr. Rakesh Kumar Jha, Advocate.

For respondents No.5 to 7 in W.P.(S)Nos.869/2015, 870/2015 & 871/2015: - Mr. Somkant Verma, Advocate.

For respondent No.8 in W.P.(S)Nos.869/2015, 870/2015 & 871/2015: - None present though served.

Amicus Curiae: Mr. Varun Sharma, Advocate.

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Hon'ble Shri Justice Sanjay K. Agrawal

CAV Order

13/01/2016

1. Since common question of law and fact is involved in the above four writ petitions, they are being disposed of by this common order.

2. In this batch of writ petitions, the petitioners herein have questioned legality, validity and correctness of the order dated 5-2-2015 by which their services from the post of Rural Medical Assistant (RMA) have been terminated by the Director, Health Services, Chhattisgarh, Raipur, and respondents No.5 to 8 have been appointed in place of the petitioners on the post of Rural Medical Assistant.
3. The above-stated challenge has been made in the following factual matrix of the case incorporated herein-after: -
4. The Directorate of Health Services, Chhattisgarh issued an advertisement on 19-8-2013 for appointment on 741 posts of Rural Medical Assistant (for short 'the RMA'). Total 104 posts were reserved for Other Backward Classes (OBC) out of which 31 posts were reserved for women on the basis of 30% horizontal and compartment-wise reservation. On 24-9-2013, selection list was issued and present petitioners were appointed as RMAs under the OBC category. Three writ petitions were filed by the aggrieved women candidates being W.P.Nos.3687/2013, 3688/2013 & 837/2014 stating inter alia that women quota particularly in OBC category i.e. quota of 30% as provided in the Rules has not been fulfilled while calculating the said quota. This Court by its orders dated 7-3-2014 & 14-2-2014 (Annexure P-9) directed the State Government and its authorities to decide the

representation of the petitioners within a period of three months. The State Government after consideration, issued notices to the petitioners herein holding that sufficient and adequate number of women candidates have not been appointed against their quota as per rules to which one of the petitioners herein namely Dwarika Prasad Patel replied on 14-1-2015 (Annexure P-10) to the State Government. Thereafter, all the petitioners herein filed writ petitions before this Court and this Court directed the petitioners to file their reply to the show cause notice and the State Government was directed to take decision in accordance with law on its own merit. The petitioners' representations were rejected by the State Government vide Annexure R-1 dated 8-4-2015 and in the meanwhile, by order dated 5-2-2015, the petitioners' services were terminated by respondent No.2 and respondents No.5 to 8 were appointed on the said post in place of the petitioners.

5. This batch of writ petitions has been filed questioning the termination of the petitioners from service and the consequent appointment of respondents No.5 to 8 on the post of RMA principally on the ground that the procedure applied by respondent No.2 for granting reservation to the extent of 30% horizontal reservation to women candidates in OBC category is very much erroneous and contrary to the

law laid down by the Supreme Court in the matter of **Rajesh Kumar Daria v. Rajasthan Public Service Commission and others**<sup>1</sup> and, therefore, the order of respondent No.2 terminating the petitioners' services and appointing respondents No.5 to 8 deserves to be set aside.

6. Return has been filed by the State Government stating inter alia that for recruitment of total 741 posts, 104 posts were reserved for OBC category under which 30% posts were earmarked for women OBC which comes to 31 posts, but in the originally issued select list, only 27 women OBC candidates were appointed and, therefore, upon review of the matter, it was found that women candidates have not been appointed to the extent of 30% quota consistent with the Rules of Reservation. Thereafter, the petitioners' services have been terminated after giving them due opportunity of hearing and four OBC women candidates have been appointed to complete the quota of 30% women reservation in OBC category.

7. Other private respondents have filed their return in line of return filed by the State, but no rejoinder has been filed by the petitioners.

8. Mr. Mateen Siddiqui, learned counsel appearing for the petitioners, opening the arguments on behalf of the writ petitioners, would submit that out of 741 posts of RMA, 104

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<sup>1</sup> (2007) 8 SCC 785

posts were reserved for OBC and eight women candidates belonging to OBC category were given appointment against the unreserved open category, and thereafter, only 27 women candidates were also given reservation in OBC category, thus, total OBC candidates become 35 which is in excess of 30% quota i.e. more than 31 posts and, therefore, the procedure followed by the State and its authorities is in breach of the decision rendered by Their Lordships of the Supreme Court in **Rajesh Kumar Daria** (supra). Elaborating his submission, he would further submit that earlier, correct and proper procedure as held in **Rajesh Kumar Daria** (supra) was applied, but in the writ petitions filed by the private respondents herein, this Court only directed to consider the representation, but respondent No.2 without considering the binding decision rendered by the Supreme Court in **Rajesh Kumar Daria** (supra), hastily terminated the services of the petitioners and appointed the private respondents in their place which is per se illegal and without authority of law and, therefore, the respondents be directed to follow the proper procedure while calculating 30% reservation to be made in the OBC category and the impugned orders Annexures P-1 & P-2 be set aside.

9. Mr. Y.S. Thakur, learned Deputy Advocate General appearing for the State, would submit that 104 posts were

reserved for OBC and 30% of women reservation would come to 31 posts, but in the original select list prepared for OBC category, only 27 women candidates were selected which was short of four candidates as 30% of 104 posts reserved for OBC comes to 31 and, therefore, reviewing the earlier reservation made for OBC candidates (women), the petitioners' services were terminated as they were occupying the posts reserved for OBC women candidates and four women candidates (OBC) respondents No.5 to 8 were appointed, as such, eight OBC women candidates having been appointed against the unreserved category cannot be counted for the purpose of reservation to be applied for OBC category. Therefore, the impugned orders Annexures P-1 & P-2 passed by respondent No.2 are strictly in accordance with law and no interference is called for.

10.Mr. Varun Sharma, learned counsel, appearing as *amicus curiae*, would submit that in the matter of **Indra Sawhney and others v. Union of India**<sup>2</sup>, the Supreme Court has pointed out distinction between vertical and horizontal reservation. He would further submit that distribution of posts in horizontal reservation has been indicated by the Supreme Court in the matter of **Anil Kumar Gupta v. State of U.P.**<sup>3</sup> which has been followed in **Rajesh Kumar Daria**

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<sup>2</sup> 1992 Supp (3) SCC 217

<sup>3</sup> (1995) 5 SCC 173

(supra) and which would clearly indicate that even if the OBC candidates (women) come on their own merit and are selected against unreserved category, those candidates will not be counted in 30% reservation available for women candidates in OBC category, because once a OBC woman candidate is selected on her own merit, she will be out of the OBC category and the person included in unreserved category cannot be counted by any stretch of imagination in OBC category. Therefore, 30% reservation provided in the Rules must be in the compartment of OBC category and as such, in light of law laid down by the Supreme Court regarding procedure to be followed for making reservation, facts of the present case have to be scrutinized. He has brought to the notice of this Court, two decisions rendered by Division Bench of this Court in **Pawan Kumar Agrawal and another v. Govt. of Chhattisgarh and others**<sup>4</sup> and **Suresh Patel v. State of Chhattisgarh and others**<sup>5</sup> to buttress his submission that OBC women candidates selected on their own merit in unreserved category shall not be counted against the horizontal reservation for women candidates in OBC category.

11. Private respondents have made submissions in line with the submissions made by the learned Deputy Advocate General

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4 2012 (4) BLJ 169 : Manu/CG/0407/2012

5 2013(2) SCT 486 : Manu/CG/0112/2012

and adopted the submissions made by the Deputy Advocate General.

12. I have heard learned counsel for the parties and considered their rival submissions made therein and also gone through the record with utmost circumspection.

13. Short question for consideration in order to judge the correctness of the order of termination of the petitioners and appointment of respondents No.5 to 8 would be whether in computing horizontal reservation for women in OBC category in accordance with the provisions of Article 15 (3) of the Constitution of India read with the Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rules, 1997 providing for 30% horizontal and compartment-wise reservation, proper procedure has been followed by respondent No.2.

14. In order to judge the plea raised at the Bar, it would be appropriate to notice Articles 15 (3) and 16 (4) of the Constitution of India which provide as under: -

**“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**

—(3) Nothing in this article shall prevent the State from making any special provision for women and children.”

**“16. Equality of opportunity in matters of public employment.—(4)** Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not

adequately represented in the services under the State.”

15. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Chhattisgarh has framed rules relating to reservation of posts in direct recruitment for women in public service and posts in connection with the affairs of the State. Rule 3 of the Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rules, 1997 provides for reservation of posts for women. It reads as follows: -

**“3. Reservation of posts for women.—**Notwithstanding anything contained in any service Rules, there shall be reserved thirty percent of all posts in the service under the State in favour of women at the stage of direct recruitment and the said reservation shall be horizontal and compartmentwise.

*Explanation.—*For the purpose of this rule “horizontal and compartmentwise reservation” means reservation in each category, namely, Scheduled Castes, Scheduled Tribes, Other Backward Classes and General.”

16. Thus, a careful reading of the aforesaid Rule would show that in the service under the State in favour of women, horizontal and compartment-wise reservation has to be made to the extent of 30% for all the posts in direct recruitment and that reservation has to be horizontal and compartment-wise.

17. Way back in the year 1990, in the celebrated judgment of **Indra Sawhney** (supra), the Constitution Bench of the Supreme Court has pointed out distinction between social

vertical and social horizontal reservations in the following manner: -

“812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservation in favour of scheduled castes, scheduled tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations – what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against his quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of the reservations in favour of backward class of citizens remains – and should remain – the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

18. Thereafter, in the matter of **S. Sathyapriya and others v.**

**State of A.P. and others**<sup>6</sup>, the Supreme Court has followed

the judgment rendered in **Indra Sawhney** (supra) with approval.

19. Similar is the proposition of law laid down in **Anil Kumar**

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<sup>6</sup> (1996) 9 SCC 466

**Gupta** (supra) in which Their Lordships of the Supreme Court have held in no uncertain terms the manner of distribution of seats for horizontal reservation and proper procedure for making horizontal reservation has clearly been laid down in paragraph 18 as under: -

“18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied – in case it is an overall horizontal reservation – no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.

20. The law laid down by the Supreme Court with regard to reckoning of horizontally reserved category persons in

**Rajesh Kumar Daria** (supra) has been followed with approval by Their Lordships of the Supreme Court in the matter of **Public Service Commission, Uttaranchal v. Mamta Bisht and others**<sup>7</sup>.

21. The judgment of **Anil Kumar Gupta** (supra) has been followed with approval in **Rajesh Kumar Daria** (supra) in which Their Lordships of the Supreme Court have held that persons belonging to reserved category appointed to non-reserved posts on their own merit shall not be counted against the reserved quota in case of vertical reservation but that principle would not be applicable in case of horizontal social reservation and observed as under in paragraph 9: -

“9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under [Article 16\(4\)](#) are “vertical reservations”. Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are “horizontal reservations”. Where a vertical reservation is made in favour of a backward class under [Article 16\(4\)](#), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category.

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<sup>7</sup> (2010) 12 SCC 204

(Vide Indra Sawhney (supra), R.K. Sabharwal v. State of Punjab<sup>8</sup>, [Union of India v. Virpal Singh Chauhan](#)<sup>9</sup> and [Ritesh R. Sah v. Dr. Y.L. Yamul](#)<sup>10</sup>). But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". 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 scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

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 woman candidates, then the next two SC woman 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 candidates. (But if the list of 19 SC candidates contains more than four

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8 1995 (2) SCC 745

9 1995 (6) SCC 684

10 1996 (3) SCC 253

women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidates on the ground that “SC women” have been selected in excess of the prescribed internal quota of four.)”

22. Similarly, a Division Bench of this Court in **Pawan Kumar Agrawal** (supra) following the law laid down in **Rajesh Kumar Daria's** case (supra) has held that women selected within the vertical reservation quota will be counted against the horizontal reservation for women.

23. Again, another Division Bench of this Court in **Suresh Patel** (supra) while relying upon the **Rajesh Kumar Daria's** case (supra) has clearly held that even if any candidate belonging to backward class (OBC) is adjusted against the non-reserved post, the seats reserved for such backward classes would not get reduced in number and will remain the same as already fixed for being filled amongst the said class, and held as under in paragraphs 8 and 9 as under: -

“8. So far as his first grievance is concerned, it stands answered against the appellant in the light of law laid down by the Supreme Court in the case of **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others** reported in [MANU/SC/7813/2007 : (2007) 8 SCC 785]. It is in this case their Lordship while explaining the scope, ambit and distinction of what is known as “vertical reservation” and “horizontal reservation” held that if candidates belonging to reserved category compete for non-reserved posts and are appointed to such non-reserved posts on their own merit, yet their number already fixed will not get reduced to that extent and would not be counted against the quota reserved for such respective class. It will remain intact.

9. In the light of such clear pronouncement on the issue, it is now clear that even if any candidate belonging to backward class is adjusted against the non-reserved post due to his merit, the seats reserved for such backward classes would not get reduced in number and will remain the same as already fixed for being filled amongst the said class. If is for this reason, in our opinion, the appellant can not raise any objection that some candidates from backward classes could not have been adjusted in non-reserved list due to their merits and if adjusted then their seats must be offered to candidates coming from the general quota or to that extent, the seats gets reduced in their quota. It is not permissible.”

24. This Court in **Ashish Sharma and others v. State of Chhattisgarh**<sup>11</sup> has held that if 30% special reservation made for women candidates is satisfied, further reservation cannot be made for women candidates, and held in paragraph 15 as under: -

“15. As has been mentioned above, in the present case, 30% special reservation for women has been made as compartmentalised horizontal reservation i.e. 13 female candidates are to be given admission out of 42 open category candidates. As per this principle, first, respondents 2 and 3 were required to prepare a full list of open category candidates and if in that list of 42 candidates of open category, 13 seats fixed for female candidates on the basis of horizontal reservation quota was already satisfied then there was no need to go further. In this case, it appears from the perusal of merit list that number of general category female candidates have already secured their position in the merit list and the quota of 13 female candidates was already completed within first 39 seats as 39th candidate as per the merit list is a female candidate namely, Poornima Dhandale. Thus, 30% horizontal reservation made for female candidates in open category,

compartment-wise, was already satisfied. Therefore, there was no occasion for the respondents to further set apart 13 seats for female candidates as their quota was already satisfied.”

25.Conspectus of the aforesaid authoritative pronouncements rendered by Their Lordships of the Supreme Court, it is quite vivid that reservation made in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes is vertical reservation under Article 16(4) of the Constitution of India whereas, reservation made in favour of physically handicapped persons under clause (1) of Article 16 of the Constitution of India and reservation made in favour of women under clause (3) of Article 15 of the Constitution of India are horizontal reservation which is called as interlocking reservation. It is further vivid that even after making horizontal reservation, percentage of reservation in favour of reserved class should not exceed percentage of reservation which has been held by the Supreme Court in **Indra Sawhney** (supra). It is also vivid that candidates admitted against horizontal reservation must be adjusted against the respective vertical social reservation quota under Article 16 (4) of the Constitution of India.

26.Proper procedure for distribution of horizontal reservation seats has been indicated in **Anil Kumar Gupta** (supra) which has been further illuminatingly held in **Rajesh Kumar Daria** (supra). The principle applicable to vertical

reservation is that the candidates belonging to backward class, may compete for non-reserved posts and if they are appointed to non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective backward class and the entire reserved quota will remain available in addition to those selected under the competitive category, but that will not applicable to horizontal special reservation. Where a special horizontal reservation for women is provided, the OBC woman selected within vertical reservation quota shall be counted against the horizontal reservation contemplated under the Rules for woman. The object of making such a provision is that the percentage of reservation should not exceed as held in **Indra Sawhney** (supra) and if in the list of OBC category, 30% special reservation made for women candidates in the Rules is already satisfied, further reservation is not to be made in favour of women candidates as laid down in the above-stated authoritative decisions.

27. Following the decisions of Their Lordships in afore-cited judgments authoritatively laying down the law and procedure to be followed while applying horizontal compartment-wise reservation and to distribute the seats of horizontal reservation in a particular category would bring me to advert to the manner of distribution of posts adopted

by respondent No.2 in the case in hand. It is admitted position on record that out of 741 posts of RMA, 104 posts were reserved for OBC. The Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rules, 1997 clearly provide 30% horizontal and compartment-wise reservation of posts in favour of women at the stage of direct recruitment. The explanation attached to it clearly provides that horizontal and compartment-wise reservation means reservation in each category i.e. SC, ST, OBC and General (unreserved). Thus, 30% of special reservation in favour of women would come to 31 posts. Initially, 77 male candidates were recruited against OBC category and only 27 OBC women candidates were given reservation against the said OBC category. Eight OBC women candidates who competed and were appointed on their merit against unreserved quota were also reckoned against the reservation envisaged for women candidates in OBC category which led to filing of three writ petitions by the private respondents herein in which this Court directed for consideration of representation pursuant to which the State Government reconsidered the manner of distribution of seats against horizontal reservation and held that 30% special horizontal reservation in favour of OBC women would come to 31 posts whereas, initially only 27 women candidates were given reservation and eight women

candidates who were selected on their own merit in unreserved category were wrongly taken note of and the petitioners were given appointment, therefore, the last four candidates in the earlier select list who are the present petitioners were deleted from the list of selected candidates and their appointment was cancelled by terminating their services and respondents No.5 to 8 herein were appointed in their places to satisfy the 30% special horizontal and compartment-wise reservation envisaged under the Rules of 1997 for women in OBC category.

28. Thus, procedure adopted by the State Government on review is proper and correct, as out of 104 posts of RMA, 30% horizontal and compartment-wise reservation would come to 31 posts and earlier in the list of OBC category, only 27 women were selected as such, the 30% special reservation quota was not satisfied and, therefore, the State Government reconsidered the same and in order to make the quota of 30% special horizontal reservation to be satisfied making it 31, terminated the services of the petitioners who were appointed in place of four reserved women and appointed respondents No.5 to 8 in their place making thereby the quota of 30% special reservation in favour of women OBC satisfied. Thus, I am unhesitatingly of the opinion that the procedure adopted by the State

Government upon reconsideration of the matter in order to comply Rule 3 of the Chhattisgarh Civil Services (Special Provision for Appointment of Women) Rules, 1997 providing for horizontal and compartment-wise reservation to the extent of 30% in favour of women is now satisfied in line with law laid down and procedure indicated for distribution of seats for horizontal reservation by Their Lordships of the Supreme Court in **Indra Sawhney** (supra), **Rajesh Kumar Daria** (supra) and **Mamta Bisht's** case (supra), as also the decisions rendered by this Court in **Pawan Kumar Agrawal** (supra), **Suresh Patel** (supra) and **Ashish Sharma** (supra), as such, the procedure followed by respondent No.2 now is in line with the above-said decisions and the procedure indicated therein in which I do not find any jurisdictional error / illegality requiring interference by this Court.

29. As a fall out and consequence of aforesaid discussion, termination of services of the petitioners is in accordance with law and based on reconsideration of the procedure to be followed for reservation in favour of women to satisfy the Rules. No other point was raised or argued on behalf of the petitioners.

30. Consequently, all the writ petitions being merit-less and substance-less deserve to be and are accordingly dismissed. No order as to costs.

31. Before parting with the record, this Court appreciates the assistance rendered by Mr. Varun Sharma, Advocate and *amicus curiae*, who in short notice appeared and ably assisted the Court and also appreciates the excellence of his written submission.

Sd/-  
(Sanjay K. Agrawal)  
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.869 of 2015

Dwarika Prasad Patel

Versus

State of Chhattisgarh and others

and three other connected cases

HEAD NOTE

Distinction between social vertical reservation and social horizontal reservation and manner of distribution of horizontal reservation posts pointed out.

सामाजिक ऊर्ध्व आरक्षण एवं सामाजिक क्षैतिज आरक्षण के मध्य अंतर और क्षैतिज आरक्षित पद के वितरण के तरीके को इंगित किया गया।