

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10103 OF 2015

Miss Rajani D/o Shaileshkumar Khobragade,
@ Mrs. Rajani W/o Sanjay Shelke,
Age : 40 Years, Occu. : Service as
Group Instructor in Govt. ITI, Jalna,
R/o C/o Mrs. S. V. Nikalje,
Plot No. 30, Kanchan Nagar,
Beside Bhagya Nagar, Jalna. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Principal Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai 400 001.
2. The Director of Vocational Educational
Training, 3 Mahapalika Marg,
M. G. Road, Mumbai.
3. The Principal Secretary,
General Administration Department,
Mantralaya, Mumbai 400 001.
4. Maharashtra Public Service Commission,
Bank of India Building, 03rd Floor,
M. G. Road, Hutatma Chowk,
Mumbai 400 001,
Through its Secretary.
5. Devidas S/o Mohan Rathod,
Age:- 48 Years, Occ:- Service,
R/o Plot No. 19, Gut No. 96,
Renuka Nagar, Devlai Parisar,

Beed By Pass Road, Aurangabad,
Pin: 431 010.

6. Parmeshwar S/o Bhagwan Khokale,
Age: 39 Years, Occ: Service,
R/o Flat No. B-3, Building 'E',
Tirupati Vihar, Garkheda,
Aurangabad 431 010.
7. Sandip S/o Chimanrao Londhe,
Age: 41 Years, Occ: Service,
R/o Row House No. B-17, Sara Rajnagar,
Behind Emrald City, Garkheda Area,
Auragabad 431 009.
8. Mangala D/o Vishwanath Pawar,
Age: 42 Years, Occ: Service,
R/o House No. G-11/02, Vitthal Nagar,
N-2, CIDCO, Aurangabad.
9. Pradip S/o Damodar Haridas,
Age: 40 Years, Occ: Service,
R/o 1923, Haridas Ves, Pandharpur,
Dist. Solapur- 413 304.
10. Manoj S/o Madhukar Bidkar,
Age: 46 Years, Occ: Service,
R/o Building No. 1/A, Donde Nagar,
Near Govindshree Market, Karyalay,
Dule Soapur 413 004.
11. Pradeep S/o Bhimrao Durge,
Age: 45 Years, Occ: Service,
R/o 201, B-Subhashilpa, Katrap
Chowk, Badlapur (East), Dist. Thane.

12. Prashant S/o Baburao Nandurkar,
Age: 41 Years, Occ: Service,
R/o Balaji Nagar, Part 2,
K.....Dist. Washim.
13. Chandrashekhar S/o Vishwanath Naikwadi,
Age: 52 Years, Occ: Service,
R/o S. No. AUSA, Ring Road, South Side of
Bhagwant High School, Sona Nagar, Latur,
Dist. Latur.
14. Santosh S/o Sahebrao Kada,
Age: 39 Years, Occ: Service,
R/o Old AUSA Road, Laxmi Colony,
Latur, Dist. Latur.
15. Sanjay S/o L. Kondawar,
Age: 33 Years, Occ: Service,
R/o C/o: Lalanna Yermenikar,
Shivaji Nagar, Dharmabad.
16. Prashant S/o Dipak Dongre,
Age: 42 Years, Occ: Service,
R/o 101, Shri Smamarth Appt.,
Ashokwan, Wada, Tal. Wada,
Dist. Palghar 421 303.
17. Suresh S/o Ramchandra Bhalchim,
Age: 42 Years, Occ: Service,
R/o S. No. 20, Bhalekar Nagar,
Pimple gurav, Pune- 411 061.
18. Satyabhushan S/o Gautamrao Gosavi,
Age: 46 Years, Occ: Service,
R/o CL- 8/62-1, 12th Scheme,
Shivajinagar, Garkheda, Aurangabad.

19. Keshav S/o Jagannath Pawar,
Age: 41 Years, Occ: Service,
R/o Plot No. 20 NSI 12th Scheme,
Shivajinagar, CIDCO, Aurangabad.
20. Deepak S/o Bhaskar Baviskar,
Age: 42 Years, Occ: Service,
R/o C/7, Richmond Hill,
Sararkar Nagar, Gangapur Road, Nashik.
21. Balu S/o Gopinath Jadhav,
Age: 46 Years, Occ: Service,
R/o Flat No. A-9, Shivtej,
50 C, In front of CITU Bhavan,
Khutwadnagar, Nashik- 422 008.
22. Sanjaykumar S/o Madhavrao Patil,
Age: 49 Years, Occ: Service,
R/o House No. 235-A, Twelve bungalow
Road, Patel Chowk, Igatpuri, Dist. Nashik.
23. Sou. Aparna W/o Dilip Kulkarni,
Age: 40 Years, Occ: Service,
R/o 21, Ramesh Apartment,
Dawkharwadi, Jaibhawani Road, Nashik.
24. Nitin S/o Keshavrao Choudhari,
Age: 37 Years, Occ: Service,
R/o Plot No. 72, Adhyapak Nagar,
Manewada, Righ Road, Nagpur, Dist. Nashik.
25. Satish S/o S. Bhamre,
Age: 40 Years, Occ: Service,
R/o 3, Sukhkarta, Murlidhar Vazare Nagar,
Govind Nagar, Nashik, Dist. Nashik.

26. Nitin S/o Pindkurwar,
Age: 33 Years, Occ: Service,
R/o Deshpande Galli, Degloor, Dist. Nanded.
27. Sanjay S/o Shriram Gore,
Age: 41 Years, Occ: Service,
R/o L/05, Building No. 12,
Heena Garden, Gundhare, Kalyan (W).
28. Rajesh S/o Shaligram Jadhav,
Age: 41 Years, Occ: Service,
R/o 480, Osmi, Dwarka Nagar,
Opp. New Water Tank,
At Post Tal. Shahapur, Dist. Thane.
29. Krishna S/o Bharat Thakur,
Age: 37 Years, Occ: Service,
Amrut Tejgri, Uttamnagari, MIDC,
Chikalthana, Aurangabad.
30. Pravin S/o J. Autade,
Age: 32 Years, Occ: Service,
R/o Opp. Venkatesh Mandir,
Renuna Nagari, Ambajogai.
31. Avinash S/o Tukaram Chindhe,
Age: 38 Years, Occ: Service,
R/o B-12, 18 Queen's Garden,
Pune-1.
32. Shashikant S/o Damodar Sabale,
Age: 36 Years, Occ: Service,
R/o B- 607, Sanskruti Darshan,
Keshav Nagar, Kasarwadi,
Pune- 34.

33. Chandrashekhar S/o Jaysing Dhekane,
Age: 43 Years, Occ: Service,
R/o Sr. No. 692/2A/112/23,
Kalyani Society Flat No. B/2,
Pune-Satara Road, Pune- 37.
34. Yogesh S/o Manik Patil,
Age: 36 Years, Occ: Service,
R/o C-2/14, Meri Quarters,
Meri Colony, Dindori Road,
Nashik 422 004.
35. Vikas S/o Vishwas Thote,
Age: 38 Years, Occ: Service,
R/o Plot No. 10, Deshpande Nagar,
Radhakrishna Mangal Karyalaya Road,
Newasa, Tal. Newasa, Dist. Ahmednagar.
36. Dattatray S/o Madhukarrao Patil,
Age: 40 Years, Occ: Service,
R/o N-11-C-5-24-1, Dwarkanagar,
HUDCO, Aurangabad.
37. Raviraj S/o Vithalrao Bothikar,
Age: 31 Years, Occ: Service,
R/o Near Adarsh College,
Jijamata Nagar, Hingoli, Dist. Hingoli.
38. Someshwar S/o Baliram Waghmare,
Age: 50 Years, Occ: Service,
R/o Doctor Colony, Pathan Nagar,
Ambejogai road, Latur.
39. Anil S/o Masaji Sadaphule,
Age: 43 Years, Occ: Service,
R/o Ravikiran Niwas, Kalpana Nagar,
BHD. S.P. Office, Latur.

40. Miss. Manisha D/o Ramchandra Borulkar,
Age: 37 Years, Occ: Service,
R/o B/H, Z.P. in front of Veternery Hospital,
Netaji Nagar, Latur.
41. Somnath S/o Vishnu Jadhav,
Age: 41 Years, Occ: Service,
R/o Plot No. 12, Patil Colony,
Kedgaon, Ahmednagar, Pin- 414 005.
42. Madhukar S/o Tulshiramji Tignare,
Age: 50 Years, Occ: Service,
R/o 22, Mhalginagar, Gajanan Mandir Road,
Near Water Tank, Nagpur-34.
43. Hemant S/o V. Aware,
Age: 45 Years, Occ: Service,
R/o Plot No. 129, Yashraj Apartment,
Main Road, Nelco Society,
Subhash Nagar, Nagpur-22.
44. Ravi S/o Parashram Mehendale,
Age: 49 Years, Occ: Service,
R/o Plot No. 14, Rambag Colony,
Medical Square, Nagpur.
45. Milind S/o Purushottam Hande,
Age: 51 Years, Occ: Service,
R/o Suyog Nagar, Near Narendra Nagar,
Nagpur.
46. Sudha W/o Baburao Rewatkar,
Age: 46 Years, Occ: Service,
R/o 17, Hanuman Nagar,
Medical Square, Mahila Science,
College Road, Nagpur- 1.

47. Mangala W/o Deepak Deshmukh,
Age: 49 Years, Occ: Service,
R/o Plot No. 20, Balaji Nagar,
East, Manewada Road, Nagpur- 24.
48. Trupti W/o Ramchandra Bhope,
Age: 39 Years, Occ: Service,
R/o B 5/2, Kasliwal Classic,
Tapadiya nagar, Darga Road, Aurangabad.
49. Anil S/o Laxman Shinde,
Age: 30 Years, Occ: Service,
R/o 134-A, Karmveer Colony,
Behind S.G.M. College, Vidyanagar,
Tal. Karad, Dist. Satara, Pin- 415 124.
50. Yogesh S/o Subhash Karanjakar,
Age: 38 Years, Occ: Service,
R/o Plot No. 24, Datta Digambar Colony,
Ambedkar Road, Shahupuri, Satara,
Tal. Satara, Dist. Satara, Pin- 415 002.
51. Nilesh S/o Baban Thakur,
Age: 33 Years, Occ: Service,
R/o Sukhkarta Karve Naka,
Vyankatesh Park, Tasgaon Road,
Dist. Satara.
52. Ajay S/o Kashinath Wagh,
Age: 40 Years, Occ: Service,
R/o Vishal Niwas, Plot No. 29,
Survey No. 36, Saideep Nagar,
Near Shirish Mala, Pipeline Road,
Ahmednagar, Dist. Ahmednagar.
53. Pratibha Pralhad Chavan
Age: 36 Years, Occ: Service,
R/o Indrayani Bunglow,

At and Post Kadegaon,
Tal. Kadegaon, Dist. Sangli,
Pin- 415 304.

54. Chandrakant Lalchand Wankhede,
Age: 53 Years, Occ: Service,
R/o Flat No. 1, Shred Ganesh Garden,
Apartment, Famous Chow, Samarth Nagar,
New Sangavi, Pune- 27.
55. Shaikh Mohd Abdul Khalique
Age: 35 Years, Occ: Service,
R/o House No. 4-12-24/86,
Wahed Colony, Roshan Gate,
Aurangabad.
56. Prakash Sumanlal Jain
Age: 40 Years, Occ: Service,
R/o 56, Shantinath Nagar, Near Jain
Mandir, Sakri Road, Dhule- 424 001. .. Respondents

Shri Ajay S. Deshpande, Advocate for the Petitioner.

Shri A. B. Girase, Govt. Pleader with Swapnil Joshi, A.G.P. for
Respondent Nos. 1 to 3.

Shri Kishor Gadve Patil, Advocate for Intervenor.

Shri Abhijit Desai, Advocate h/f Shri Swapnil Paturkar, Advocate
i/by J. P. Legal Associates, for added respondents.

**CORAM : S. V. GANGAPURWALA AND
K. L. WADANE, JJ.**

Date on which reserved for judgment : 07.03.2017

Date on which judgment pronounced : 31.03.2017

JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The principle applicable for filling in the post of horizontal

reservation (Female) is subject matter of debate amongst the parties in the instant petition.

2. Three advertisements were issued by the respondent No. 4/Maharashtra Public Service Commission (for short "M.P.S.C.") bearing Advertisement Nos. 89/2013, 90/2013 and 91/2013 for filling in various posts of Principal - ITI, District Vocational Education and Training Officer, Assistant Director Vocational Education and Training (Technical), Directorate of Vocational Educational and Training, Maharashtra Education Service Grade - A (Technical), Principal and Vice Principal I.T.I., Head Master Government Technical Secondary High School/Center/Inspector and such other posts. Pursuant to the said advertisement, the petitioner had applied. The petitioner secured 56 marks. The petitioner was declared successful candidate for two posts i. e. part of MES Group - A (Junior) and MES Group - B. The respondent No. 3 thereafter revised list probably on the basis of GAD Circular dated 13.08.2014. In the revised benchmark, the petitioner is below the benchmark for female S.C. category candidate. The petitioner had assailed the said revised benchmark fixed by the M.P.S.C. So also the GAD Circular dated 13.08.2014 by filing Original Application before the Maharashtra Administrative Tribunal (for short "Tribunal") The Tribunal dismissed the original application filed by the petitioner under judgment and order dated 23.09.2015. The said judgment is assailed in the present petition.

3. Mr. Deshpande, the learned counsel for the petitioner submits that, merit based selection is the soul of rule of law with exceptions as carved out under Article 16 of the Constitution of India. In no case merit criteria can ever be sacrificed. The spirit underlying providing reservation as postulated under Article 16(1) and Article 16(4) of the Constitution of India has to be considered. Reservation under Article 16(4) of the Constitution deals with vertical reservation and is provided for upliftment of socially backward class category, whereas reservation under Article 16(1) of the Constitution is termed as horizontal reservation which includes reservation for handicapped persons, women reservation, reservation for project affected candidates, etc. Both these reservations are independent of each others. So also those are to be maintained in such a manner so as to ensure that the merit based selection process is not altogether done away with. The learned counsel submits that, for maintaining/ensuring merit based selection process, 'interlocking' has been contemplated by the Hon'ble Apex Court, whereby the respective percentage of reservation for various socially backward class categories would be maintained. The learned counsel relies on the judgment of the Constitution Bench of the Apex Court in a case of Indira Sawhney Vs. Union of India reported in *1992 (Supplement) 3 SCC 217*. The learned counsel relying on the judgment of the Division Bench of this Court at Nagpur in a case of **Smt. Kanchan Vishwanath**

Jagtap Vs. Maharashtra Administrative Tribunal in **Writ Petition No. 1925 of 2014 with Writ Petition No. 1930 of 2014** decided on **16.12.2015** states that, even considering horizontal reservation, the beneficiaries can very well be from socially backward classes as well, with a rider that, equal number of seats for such of socially backward classes shall be reduced from the total number of seats admissible to that particular socially backward class category. To substantiate said submission, the learned counsel also relies on the judgment of the Aurangabad Bench of this Court in **Writ Petition No. 3929 of 2015 dated 30.03.2016** in a case of **Asha D/o Ramnath Golap Vs. The President, District Selection Committee, Beed**.

4. The learned counsel submits that, the Government while promulgating GAD Circular dated 13.08.2014 has perversely interpreted the decision in a case of *Irfan Mustafa Shaikh* delivered by the Maharashtra Administrative Tribunal and confirmed by the Apex Court. The judgment in a case of *Irfan Mustafa Shaikh* did not warrant or contemplate any modification in GAD Circular dated 16.03.1999. Change in the long standing policy on the pretext that the same is in compliance of the decision of the Administrative Tribunal in *Irfan Mustafa Shaikh* case is fallacy warranting interference of this Court.

5. The learned counsel submits that, the petitioner has secured 56 marks in the written test and considering merit of the other candidates, would not be eligible for any of the vacancies notified to be filled in under Advertisement No. 89/2013. The learned counsel submits that, the petitioner was not called for the interview for the posts advertised under Advertisement No. 90/2013. By taking into account the marks allotted to her for the post under Advertisement No. 91/2013, the petitioner stands to gain a position on the very second seat earmarked for S.C. Female category out of the three notified posts for S.C. female candidates. According to the learned counsel, even in Advertisement No. 91/2013, the petitioner stands to gain position in order of open merit at Sr. No. 8 and in that case, two seats remained unfilled earmarked for S.C. female category on which two candidates securing lesser marks than the petitioner can very well be given appointment.

6. The learned counsel strenuously contends that, the judgment in a case of Anil Kumar Gupta and others Vs. State of U. P. and others reported in (1995) 5 SCC 173 of the Apex Court does not lay down the correct proposition of law and is required to be overlooked in the wake of the Constitution Bench decision of the Apex Court in a case of Indira Sawhney Vs. Union of India referred to supra and in a case of R. K. Sabharwal Vs. State of Punjab reported in AIR 1995 SC 1371. The said Constitution Bench judgment even

binds lesser strength Bench of Apex Court. The learned counsel relies on the judgment of the Apex Court in a case of **Ganga Sugar Corporation Ltd. Vs. State of U. P.** reported in ***AIR 1980 SC 286***. Nobody can be prohibited from staking claim on the posts from so called open category and/or open competition. The learned counsel submits that, the claim of respondents that, the petitioner having submitted candidature from S.C. Female category is precluded from being considered for open female category is required to be rejected in view of the decision of the Hon'ble Apex Court in a case of **R. K. Sabharwal Vs. State of Punjab** referred to supra. The reliance placed by the respondents in the judgment delivered by the Apex Court in a case of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others** reported in ***(2007) 9 SCC 785*** is also of no avail as the ratio laid down therein has not been comprehended by the Government in its real earnest. The learned counsel submits that, the writ petition deserves to be allowed and the petitioner needs to be considered on merits for filling in the post of horizontal reservation (female).

7. Mr. Girase, the learned Government Pleader for respondent Nos. 1 to 3 submits that, in view of the decision of the Tribunal in the matter of Archana Kamble Vs. State in Original Application No. 437 of 2012 confirmed by the Supreme Court, the Government issued circular dated 13.08.2014 thereby clarifying the circular dated 16.03.1999 and providing guidelines for

application of horizontal reservation in the recruitment process. The revised result is prepared by the M.P.S.C. in consonance with the same. The learned Government Pleader submits that, Circular dated 16.03.1999 is issued after taking into consideration the judgment of the Apex Court in a case of Anil Kumar Gupta and others Vs. State of U. P. and others referred to supra and also pursuant to the directions given by the Aurangabad Bench of this Court in Writ Petition No. 4067 of 1998 dated 08.10.1998. In clause 4 of Circular dated 16.03.1999, it is clarified that horizontal reservation is compartmentalized reservation. The procedure to be followed for filling the post under horizontal reservation was prescribed by Clause 4 of the said circular, wherein, three steps are contemplated. Under circular dated 13.08.2014 clarification is issued and the same is in consonance with the law laid down by the Apex Court in a case of Anil Kumar Gupta and others Vs. State of U. P. and others and R. K. Sabharwal Vs. State of Punjab referred to supra and the order passed by the Apex Court dated 27.09.2001 in Irfan Mustafa Shaikh Vs. State of Maharashtra in Special Leave Petition (CC) No. 15802 of 2011.

8. According to the learned Govt. Pleader, in the present case, advertisement itself provides for the number of posts available through horizontal reservation in social category reservation. The said reservation, as such is compartmentalized horizontal reservation. The same is legal and correct. No flaw has been

committed in clarificatory circular dated 13.08.2014.

09. Mr. Desai, the learned counsel for some of the respondents submits that, the respondents are the successful candidates in the selection process, however, the said selection list despite being finalized has not been given effect, due to pendency of instant petition. The selection process carried out by the M.P.S.C. is in due compliance of different selection criteria as set out in filling in the vacancies in as much as necessary government resolutions and circulars are being adhered to and implemented in its true letter and spirit. The circular dated 13.08.2014 emanates out of circular dated 16.03.1999 pursuant to the directions given by this Court in Writ Petition No. 4067 of 2008 dated 08th October, 1998. It was obligatory on the part of the M.P.S.C. to carry out the selection process in due compliance of the said government circulars. The petitioner was aware and conscious about existence of circular dated 13.08.2014, which is revised version of circular dated 16.03.1999. After participating in the selection process, the petitioner now cannot challenge the said circular dated 13.08.2014. The preamble of circular dated 13.08.2014 itself clearly states that, the same has been issued in order to implement the decision of the Hon'ble Supreme Court and the High Court. The Apex Court in a case of State of Maharashtra Vs. Irfan Mustafa Shaikh has upheld the judgment of the Tribunal in Original Application No. 301 of 2009 on the very basis of which the circular dated 13.08.2014 had been issued

and accordingly had been applied by the M.P.S.C. to the selection process.

10. The learned counsel further submits that, the petitioner had made her application pursuant to the advertisement in S.C. Female category. The petitioner as such is barred from being considered with respect to any of the post in regard to vacancies falling under horizontal reservation. The scope of circular dated 13.08.2014 clearly envisages the consideration of only those applicants who had made the application for the category falling in horizontal reservation. Therefore, it is unjustified and unreasonable on the part of the petitioner to expect her candidature to be falling under the zone of consideration for appointment pertaining to open category female. The circulars dated 16.03.1999 and 13.08.2014 are being devised by the State Government in furtherance of the judgment of the Apex Court in the matter of Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others and Anil Kumar Gupta and others Vs. State of U. P. and others referred to supra. The very basis of the aforesaid circular contemplate the horizontal reservation to be compartmentalized reservation, wherein the respective categories in which the applicants apply on the basis of the roster reservations mentioned in the advertisement is not at all interchangeable. The said aspect finds a specific mention in clause 5 of the circular dated 16.03.1999, which is fundamental circular on the basis of which

present advertisement is issued. The horizontal reservation is compartmentalized reservation wherein no shuffling of vertical or horizontal seat is permissible. In the instant case, the posts belonging to the vertical reservation is already earmarked and, therefore, it is not possible for the petitioner having once applied for the said vertical reservation seat to claim the post belonging to the horizontal reservation, even, if it is, assumed that, she had attained higher marks, than an open category candidate, who had applied in open category for the post of horizontal reservation. The learned counsel relying on the judgment in a case of **Ashish Kumar Pandey Vs. State of U. P. dated 16th March, 2016 of Allahabad High Court in Writ Petition No. 37599 of 2015** submits that, if it is a case of compartmentalized horizontal reservation, then the process of verification and adjustment/accommodation should be applied separately to the vertical reservation. Shifting would tantamount to vertical reservation which is impermissible and alien to the concept of horizontal reservation. Horizontal reservation cuts across vertical reservation, therefore, there is no concept of merit while making adjustment/accommodation. The circular dated 13.08.2014 specifically contemplates that only those candidates belonging to open category shall be entitled for selection to fill up the open female category candidate from the wait list. The settled position cannot be unsettled and the selected candidates cannot be summarily ousted or their selection summarily cancelled, even under the assumption of

wrongful implementation of reservation policy. The learned counsel relies on the judgment of the Apex Court in a case of **Jitendra Kumar Singh and another Vs. State of U.P. and others** reported in **2010 SC 1851 (Allhabad)** and judgment in a case of **Public Service Commission, Uttaranchal Vs. Mamta Bisht and others** reported in **AIR 2010 SC 2613**. The learned counsel submits that, the petition being devoid of merits deserves to be dismissed.

11. Mr. Kishor Gadhave Patil, the learned counsel for some of the intervenors adopts the arguments of Mr. Desai, the learned counsel and further submits that, the candidates belonging to backward class under Article 16(4) of the Constitution of India may compete for non reserved post and if they are appointed to the non reserved post on their own merit, their numbers will not be counted against the quota reserved for the respective backward class, but the said principle applicable to the vertical (Social) reservation will not apply to the horizontal (special) reservations. To this extent, horizontal reservation differs from vertical reservation. The woman selected on merit within the vertical reservation quota will be counted against the horizontal reservation for woman. The learned counsel relying on the judgment of the Rajasthan High Court in a case of ***Laxmi Kanwar and others Vs. State and others*** (Civil Writ Petition No. 11119 of 2012) by judgment and order dated 15.03.2015 states that, where posts are earmarked as horizontal reservations in

corresponding vertical reservations, then said posts are to be filled in amongst the said category alone and not by migration from one social reservation to another. The learned counsel submits that, keeping posts for woman (general) without migration would not be reservation in favour of general caste, but is outcome of special provision in favour of woman in all categories, whether general, S.C., S.T. or O.B.C. The selection process conducted by M.P.S.C. is as per the well laid down procedure. The writ petition be dismissed.

12. Upon consideration of the arguments of the learned counsel for respective parties, it appears that, the moot question is, the principle to be applied while filling in the post of horizontal reservation meant for female category candidate.

13. In the instant matter, for filling in various posts three advertisements were issued that is advertisement bearing No. 89/2013, 90/2013 and 91/2013. The said advertisement laid down number of posts to be filled in by vertical as well as horizontal reservations. The respective advertisements provided the details of the number of seats meant for open competition category, the social reservation and the post meant for female category candidates of respective casts/categories.

14. In advertisement No. 89/2013 out of 26 regular posts and 6 backlog posts, 9 posts were meant for open competition category,

1 for sports category and 4 posts for female category. In S.C. category there were total 5 posts. Out of said 5 posts 2 posts were for backlog, 2 posts for general and 1 post for female category and in other backward class category 3 posts were for regular, 2 posts were for backlog and 2 posts were for female category that is total 7 posts. The advertisement No. 90/2013 was meant for filling 58 regular posts and 13 backlog posts. Out of the same for open competition/general category, there were total 31 posts. Out of the same 20 posts were meant for open competition category, 9 posts for female category and 2 posts for sports category. In S.C. category there were total 12 posts, out the same 3 posts were of backlog, 6 posts for regular and 3 posts for female category. In S.T. category there were total 7 posts. Out of the same 4 posts were for regular, 1 post of backlog and 2 posts were for female category and in other backward class category there were total 14 posts. Out of the same 7 posts were of backlog, 5 posts of regular and 2 posts were for female category. In advertisement No. 91/2013 there were total 64 posts for regular appointment and 24 posts were of backlog. Out of the said posts for general category 21 posts were available, 2 posts for sports category and 10 posts were reserved for female category. In S.C. category there were total 17 posts i. e. 6 posts for regular, 7 posts of backlog, 1 post for sports category and 3 posts for female category. In S.T. category there were total 13 posts i. e. 5 posts for regular appointment, 6 posts of backlog and 2 posts reserved for female category. In other backward class category,

there were 18 posts out of the same 7 posts for regular appointment, 8 posts of backlog, 1 post of sports category and 3 posts for female category. The details are given in respect of category, wherein posts for female category were reserved.

15. The petitioner has secured 56 marks, however, does not find place in the revised selection list. The gravamen of the grievance raised by the petitioner is that, a candidate securing less marks than the petitioner is being considered for selection in general (female) category. In the result declared by the M.P.S.C. initially the cut off marks were as under :

Adv. 89/2013		Adv. 90/2013		Adv. 91/2013	
MES GR 'A' (Tech)		MES GR 'A' (JR)		MES GR 'B' (Tech)	
Cut off (Female)		Cut off (Female)		Cut off (Female)	
Open	74	Open	64	Open	48
SC	60	SC	52	SC	36

16. Subsequently revised selection list was published. As per revised list the position is as under :

Adv. 89/2013		Adv. 90/2013		Adv. 91/2013	
Declared on 25/02/2015		Declared on 13/03/2015		Declared on 13/03/2015	
MES GR 'A' (Tech)		MES GR 'A' (JR)		MES GR 'B' (Tech)	
Cut off (Female)		Cut off (Female)		Cut off (Female)	
Open	36	Open	24	Open	24
SC	70	SC	58	SC	52

17. In the revised list published by M.P.S.C., the petitioner does not find place in the select list having secured 56 marks and applied from S.C. female category.

18. The case of the petitioner is that, as far as female category reservation is concerned, the merit would be only criteria, even if a candidate applied from female S.C. category, she would be entitled to be considered for the post meant for general female category and if the said principle is not adhered too, then the same is in contravention of the judgment of the Constitution Bench of the Apex Court in the case of Indira Sawhney Vs. Union of India referred to supra.

19. The judgment of the Constitution Bench of the Apex Court in a case of Indira Sawhney Vs. Union of India referred to supra has been considered by the Apex Court in its subsequent judgments. The case of the petitioner will have to be evaluated on the basis of the judgment delivered by the Apex Court, with regard to filling in the post of female i. e. horizontal reservation.

20. The Apex Court in a case of Indira Sawhney Vs. Union of India in para No. 812 as relied by the petitioner has observed thus :

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 reservations 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 this 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 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.

21. In **R. K. Sabharwal Vs. State of Punjab** referred to

supra and relied by the learned counsel for the petitioner, the issue in the said case before the Apex Court was with regard to interpretation as to the working of roster point. It has been observed in the said case by the Apex Court that, the object of reservation is to provide adequate representation to the Scheduled Caste/Tribe and backward classes in services and as such any mechanism provided to achieve that end must have nexus to the object sought to be achieved. The issue involved in the present case is different, which concerns with the horizontal reservation for female candidates. The judgment of the Apex Court in a case of Anil Kumar Gupta and others Vs. State of U. P. and others referred to supra is precisely on the issue involved in the present case. The Apex Court in the said case has observed as under :

17. On a careful consideration of the revised notification of December 17, 1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalised reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen

percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.Cs.; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. and S.T., 30 seats would be allocated to the O.B.C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes (O.C., O.B.C., S.C. and S.T.). As against this, what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be $56+20=76$. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C.

category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between O.C., O.B.C., S.C. and S.T. will not be altered.

19. It would have been better - and the respondents may note this for their future guidance - that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between "overall horizontal reservation", since it appears from the judgment in Swati Gupta that in the first notification issued by the Government of Uttar Pradesh on May 17, 1994, the thirty percent reservation for ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty seven percent but at the same time it was stated that thirty percent of those seats were reserved for ladies. Against every vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalised horizontal reservation". We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised in the sense explained above. In other words, the notification inviting applications should itself state

not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., S.T., S.C., O.B.C. and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone - and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year.

20. 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 percent special reservation seats to be filled up first and then take up the O.C. (merit) quota (followed by filling of O.B.C., S.C. and S.T. quotas). The proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit: then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; 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 percent 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 O.C. quota.

22. In the said judgment the Apex Court also referred to its Constitutional Bench judgment in a case of **Indira Sawhney Vs. Union of India** referred to supra. In the said case, the Apex Court specifically observed that, it would be better in future the horizontal reservations are compartmentalized. It is further observed that, against every vertical reservation, a similar provision is to be made which meant that, the horizontal reservation in favour of ladies was to be a compartmentalized horizontal reservation. The special reservation would be compartmentalized in each of the vertical reservation that is open competition, O.B.C, S.C. and S.T. In the present case, also it is a case of compartmentalized horizontal reservation, wherein in each category of vertical reservation horizontal reservation is provided.

23. In a case of **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others** referred to supra, it is observed by the Apex Court that, where a special reservation

for woman is provided within social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Caste in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-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 special reservation quota. Only, if there is any shortfall, then the requisite number of Scheduled Caste woman shall have to be taken by deleting the corresponding number of candidate from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation.

24. In a case of **Jitendra Kumar Singh and another Vs. State of U.P. and others** referred to supra, the Apex Court has observed that, horizontal reservation cuts across the vertical reservation. It further states that, the category for which a woman has been selected shall be adjusted in the same category only. In case of **Public Service Commission, Uttaranchal Vs. Mamta Bisht and others** referred to supra the Apex Court reiterated its view taken in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission and others** (supra) case. In a case of **Ashish Kumar Pandey Vs. State of U. P. dated 16th March, 2016** referred to supra, the learned Single Judge of Allahabad High Court held that, upon

adjustment/accommodation, if the special category candidate belonging to O.B.C. category scored higher marks than his/her counter part adjusted in open category, cannot be shifted to open category. In a case of **Laxmi Kanwar and others Vs. State and others** with other connected matters decided on **15th March, 2013**, the learned Single Judge of the Rajasthan High Court has observed that, "it is however, necessary to clarify that, keeping post for woman (general) without migration would not be reservation in favour of General caste, but is an outcome of special provision in favour of women in all categories looking to their vulnerable condition. The upliftment of woman is required in all categories, whether general, S.C., S.T. or O.B.C."

25. In a case of **Smt. Kanchan Vishwanath Jagtap Vs. Maharashtra Administrative Tribunal and another** in *Writ Petition No. 1925 of 2014* with other connected writ petitions decided on 16th December, 2015, this Court was dealing with a case of general reservation and not compartmentalized reservation. In the said case the Court was dealing with the matter, wherein there was general reservation of women and not compartmentalized reservation. In a case of *Asha D/o Ramnath Gholap Vs. The President District Selection Committee, Beed* in *Writ Petition No. 3929 of 2015* decided on 30th March, 2016, the Division Bench of this Court was concerned with the reservation for woman as a whole and not compartmentalized reservation for

women. This Court held that, a female candidate from the reserved category having more marks can claim her right for the post meant for female from open.

26. The circular assailed before this Court is based on the observation of the Apex Court in a case of Anil Kumar Gupta and others Vs. State of U. P. and others referred to supra. The circular dated 13.08.2014 is in fact explanation to circular dated 16.03.1999. It deals with three stages. One of the clause in the said circular which is in vernacular language reads as under :

(अ) प्रथम टप्पा :- खुल्या प्रवर्गातून समांतर आरक्षणाची पदे भरताना, गुणवत्तेच्या निकषानुसार खुल्या प्रवर्गातील उमेदवारांची निवड यादी करावी (या ठिकाणी खुल्या प्रवर्गात गुणवत्तेच्या आधारावर मागासवर्गीय उमेदवारांचाही समावेश होईल). या यादीत समांतर आरक्षणानुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त असेल तर कोणताही प्रश्न उद्भवणार नाही आणि त्यानुसार पदे भरावीत. जर या यादीत समांतर आरक्षणानुसार आवश्यक खुल्या प्रवर्गाच्या उमेदवारांची संख्या पर्याप्त नसेल तर खुल्या प्रवर्गासाठी राखीव समांतर आरक्षणाची पदे भरण्याकरीता सदर यादीतील आवश्यक पर्याप्त संख्येइतके शेवटचे उमेदवार वगळून पात्र उमेदवारांपैकी केवळ खुल्या प्रवर्गाचेच आवश्यक पर्याप्त संख्येइतके उमेदवार घेणे आवश्यक आहे."

The aforesaid circular is in tune with the judgment of the Apex Court in a case of Anil Kumar Gupta and others Vs. State of U. P. and others referred to supra and cannot be said to

be illegal.

27. Considering the above, the challenge to judgment of the Tribunal impugned in the present petition, so also the circular dated 13.08.2014 fails. The writ petition is dismissed, however, with no order as to costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

28. At this stage, the learned counsel for the petitioner seeks for continuation of the interim orders passed earlier. The learned counsel for respondents oppose the said request. However, considering the fact that, interim relief was operating during the pendency of writ petition, said interim orders are continued for a period of three (03) weeks from today. Needless to state on lapse of three (03) weeks, interim protection granted shall come to an end.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]