

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.519 of 2023
In
CIVIL REVIEW No.21 of 2020

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1. Kumar Gaurav Singh, Son of Kaushal Kishore Singh Resident of Village-Sahjahanpur, Police Station Sahjahanpur, District Patna, Roll No. 21506672.
 2. Arvind Kumar, Son of Gulshan Rai, Resident of Village- Panchbhiriya, Police Station Garkha, District Saran at Chapra, Roll No. 21508143.
 3. Surya Prakash Nirala, Son of Dinesh Prasad Resident of Village-Abdalpur, Police Station Warisaliganj, District Nawada, Roll No. 21502278.
 4. Vikash Kumar, Son of Umesh Prasad Resident of Raxaul, Police Station Raxaul, District East Champaran, Roll No. 21510979.
 5. Abhinandan Kumar, Son of Shambhu Prasad Resident of Village Mathiyan, Police Station Lauriya, District West Champaran, Roll No. 21503774.
 6. Rajnikant Saxena, S/o Saroj Kumar R/o Village-Gaurav Nagar, P.S.-Parwalpur, District-Nalanda, Roll No. 21505864.
 7. Sanjeev Kumar, Son of Raj Kumar Sah Resident of Village Maniyarpur, Police Station Barish Nagar, District Samastipur, Roll No. 21500802.
 8. Rakesh Kumar Singh, Son of Late Rajendra Prasad, Resident of Village-Navtoila, Jamalpur Road, Police Station-Kashim Bazar, Dist-Munger, Roll No.-21511817.
 9. Shyam Babu Kumar, Son of Rajendra Prasad, Resident of Village-Mushasniya, Police Station-Sonwarsha, Dist-Sitamarhi, Roll No-21511662.
 10. Nitish Kumar, Son of Gyan Chand Bhagat, Resident of Village-Parwata, Police Station-Parwata, Dist-Khagariya, Roll No-2150914.
 11. Sudhir Kumar, Son of Sadhusharan Prasad, Resident of Village-Samabad, P.S.-Rahui, District-Nalanda, Roll No. 21510431.

... .. Appellant/s

Versus

1. The Bihar Staff Selection Commission Patna through its Secretary.
2. The Chairman of the Bihar Staff Selection Commission, Patna.
3. The Secretary of the Bihar Staff Selection Commission, Patna.
4. Shashi Bhushan Singh, Son of Shyam Mohan Singh Resident of Village-Sakari, Police Station- Kudra, District- Kaimur at Bhabhua, Roll No.-21514540.
5. Santosh Kumar, Son of Krishnadeo Prasad Resident of Village- Pansalwa, Police Station- Beldour, District- Khagaria, Roll No.- 21511091.
6. Chandra Kishore Kumar, Son of Suresh Mehta Resident of Village- Depura, Police Station- Gwalpara, District- Madhepura, Roll No.- 21514166.
7. Vijai Shankar Kumar, Son of Shiv Nath Yadav Resident of Village-Telkathu, Police Station- M.H. Nagar, Hasanpura, District- Siwan, Roll No.-21511298.



8. The State of Bihar.
9. The Director, Agriculture Department, Government of Bihar, Patna.
10. The Director (Administration)- Cum- Additional Secretary, Department of Agriculture, Patna.
11. The Agriculture Production Commissioner, Bihar, Patna.

... .. Respondent/s

with
Letters Patent Appeal No. 520 of 2023
In
CIVIL REVIEW No.19 of 2020

1. Navnit Kumar, Son of Late Bhagwat Prasad Resident of Village- Ratanpura, Police Station- Ishlampur, District- Nalanda, Roll No. 21508391.
2. Chandan Kumar Son of Hiralal Prasad Resident of Mohalla- Pusa Bazar, Pusa, Police Station- Pusa, District Samastipur, 21504788.
3. Suresh Kumar Son of Ganesh Singh Resident of Village- Bhup Bhairo, Police Station- Sitamarhi, District- Sitamarhi, Roll No. 21503865.
4. Vijay Kumar Son of Asharphi Ray, Resident of Vill-Khapura, Post and Police Station-Khanpur Pakri, Dist-Vaishali, Roll No. 21511011.
5. Bipin Kumar Son of Mathura Prasad Resident of Village- Khakhra, Police Station- Sheikhpura, District- Sheikhpura, Roll No. 21512292.
6. Lalan Kumar Son of Mundrika Prasad Yadav Resident of at Jainagar Bari Kawaiga, Police Station- Lakhisarai, District-Lakhisarai, Roll No.21504710.
7. Shashi Bhushan Kumar Son of Madhav Prasad Yadav Resident of Village- Rahi Jagatpur, Police Station- Laxmipur Lalchand, District- Madhepura, Roll No. 21502683.
8. Ravindar Kumar Son of Vakil Singh, Resident of Village-Rajpur, Police Station-Rajpur, Dist-Rohtas, Roll No.-21505435.
9. Sanjay Kumar Son of Late Shyam Kishor Singh Resident of Village- Mahathin Tola, Post and Police Station-Baligirwn, District Bhojpur, Roll No. 21504660
10. Nandan Singh Son of Jawahar Singh Resident of Village- Jamuraha, Police Station- Ramgarh, District Kaimur , Roll No. 21502502.
11. Deepak Kumar Son of Sushil Kumar Yadav Resident of Village- Kushaha ,P.O. Kamaldaha, P.S. Kishanpur, District Supaul, Roll No. 21506290
12. Anshu Kumar Anand Son of Shiv Narayan Singh Resident of Village- Ratanpur, Police Station- Bariarpur, District Munger, Roll No. 21503758.
13. Kumar Birendra Singh Son of Naval Kishore Singh Resident of Village- Sherpur, P.O. Nehusa, Police Station- Harnaut, District Nalanda, Roll No.21508055.
14. Umesh Prasad Singh Son of Late Bhagwat Singh Resident of Village- Bishunpur Bedauliya, Police Station- Jandaha, District - Vaishali , Roll No.21509314.
15. Dhananjay Kumar Yadav Son of Suresh Yadav, Resident of Azad Nagar,



Road No. 3, Police Station- Kankarbagh, District Patna, Roll No. 21510343.

... .. Appellant/s

Versus

1. The Bihar Staff Selection Commission Patna through its Secretary.
2. The Chairman of the Bihar Staff Selection Commission Patna.
3. The Secretary of the Bihar Staff Selection Commission Patna.
4. Hans Raj Hans, Son of Ramsevak Singh, Resident of Village- Somnaha Math, Police Station- Pusa, District- Samastipur, Roll No. 21513082
5. Manoj Kumar Son of Ram Badan Chaudhary Resident of Village Gamhariyan, Police Station- Nokha, District-Rohtas, Roll No. 21512974.
6. Amit Kumar, Son of Ashok Kumar Chakarwari Resident of Village Ramdiha, Police Station- Rahui, District Nalanda, Roll No. 21510622
7. Manoj Kumar Akela, Son of Rajendra Prasad Akela Resident of Village Nanand, Police Station- Silaw, District Nalanda, Roll No. 21509910.
8. Abhishek Prasad, Son of Pradeep Kumar Sah Resident of Village- Hafla Ganj, P.O. P.S. Sirnea, District Katihar, Roll No. 21504108
9. Amit Kumar, Son of Late Bharat Bhushan Prasad Resident of Village Jalalpur, Police station- Sohsarai, District Nalanda, Roll No. 21500334.
10. Anand Kumar Son of Ram Badan Prasad Resident of Central Revenue Colony, Type-III, Q.No. 49, Police Station- Digha, District Patna, Roll No. 21513795
11. Bipu Kumar Prasad, Son of Harhangi Prasad Resident of Village Tiwari Chapra, P.O. P.S. Bhathwa.. District Gopalganj, Roll No. 21500029
12. Swran Kiran Kumar, Son of Nawal Kishor Prasad Resident of Village Kewal Bigha, Ghangh. P.O. P.S. Saistapur, District Patna, Roll No. 21501110
13. Ravi Kumar, Son of Shankar Lal Sah Resident at Durga Asthan Kasba, Police Station- Kasba, District - Purnea, Roll No. 21502813.
14. Nishant Kumar, Son of Mathura Prasad Keshri Resident of Village Madhubani Bazar, Prema Electrical, Police Station- K.Hatt, District-Purnea, East Roll No. 21510378
15. Suresh Giri Son of Late Bindeshwari Giri Resident of Village- Khushara, Police Station- Kalyanpur, District- East Champaran, Roll No. 21510495
16. Chandra Shekhar Kumar Son of Bhikhari Mahto Resident of Village Rajwara Birta, P.O. Mushamia, Via Sonbarsa, P.S. Musharnia, District Sitamarhi
17. The State of Bihar Through the Director, Agriculture, Bihar, Patna.
18. The Director, Agriculture Department, Government of Bihar, Patna.
19. The Director (Administration)- Cum- Additional Secretary, Department of Agriculture, Patna.
20. The Agriculture Production Commissioner, Bihar, Patna.

... .. Respondent/s



Appearance :

(In Letters Patent Appeal No. 519 of 2023)

For the Appellant/s : Mr. Mrigank Mauli, Sr. Advocate
Mr.Prince Kumar Mishra, Advocate
For the State : Mr. Sarvesh Kumar Singh, AAG-13
For the BSSC : Mr. Satyabir Bharti, Advocate
Mr. Abhishek Anand, Advocate
Ms. Kanupriya, Advocate
Ms. Sushmita Sharma, Advocate

(In Letters Patent Appeal No. 520 of 2023)

For the Appellant/s : Mr. Mrigank Mauli, Sr. Advocate
Mr.Prince Kumar Mishra, Advocate
For the State : Mr. Sarvesh Kumar Singh, AAG-13
For the BSSC : Mr. Satyabir Bharti, Advocate
Mr. Abhishek Anand, Advocate
Ms. Kanupriya, Advocate
Ms. Sushmita Sharma, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

CAV JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-01-2024

The tricky question of reservation and the mandate to confine it to 50%; so as to not compromise merit is the subject matter agitated herein. The application of the principle, on the facts of the case resulted in meritorious reserved candidates (for brevity, 'the MRC') being given their choice districts; enabled only by reason of their higher merit, leading to ouster of reserved candidates to accommodate the meritorious general candidates in the resultant vacancies.

2. Two line of decisions of the Hon'ble Supreme Court, one in the matter of recruitment in public employment and the other in the matter of admissions to academic institutions were relied on by the appellant and the



respondents respectively, to support their rival contentions. The appellant, the Bihar Staff Selection Commission (for brevity, 'the BSSC') asserts the distinction insofar as admission to academic institutions and appointment to service; while the respondents- the candidates from the reserved category, who were ousted from the select list by reason of 'the MRC' candidates having occupied reservation posts, assert that the principle applied in admission to academic institutions squarely applies here though it is an appointment to public service.

3. The two separate line of decisions relied on by both parties are *Ritesh R. Sah v. Y.L. Yamul (Dr)*, (1996) 3 SCC 253, *Tripurari Sharan v. Ranjit Kumar Yadav*, (2018) 2 SCC 656, *Dega Venkata Harsha Vardhan v. Akula Ventaka Harshavardhan*, (2019) 12 SCC 735 which relate to admission to academic institutions and *Union of India v. Ramesh Ram*, (2010) 7 SCC 234, a Constitution Bench decision followed by *Alok Kumar Pandit v. State of Assam*, (2012) 13 SCC 516, with respect to appointment to civil services.

4. In the writ petition filed by the 93 ousted candidates, the petitioners brought on record a letter written



by the Director of Agriculture addressed to the Secretary of 'the BSSC' seeking recommendation of the 93 candidates for district wise allotment and consequential appointment. This was based on a letter of the General Administration Department, (for brevity, 'the GAD') which found that when 'the MRC' candidates are adjusted to their optional districts, the resultant vacancy should be given to the reserved candidate who would have got the post to which 'the MRC' candidate is appointed, which was the practice employed in medical education. The agricultural department was chastised for taking a different path and was directed to follow the same principle. The learned Single Judge noticed this communication; which appeared to have redressed the grievances of the petitioners and directed the recommendations to be made to the vacant posts. An appeal was filed from the judgment in the writ petition, in which there was a direction to file a review if necessary.

5. Based on a legal opinion from the office of the learned Advocate General, 'the GAD' changed its stance, by reason of which 'the BSSC' filed a review, leading to the impugned order in the Civil Review cases. The review sought was on the ground that when a MRC candidate is



recommended to the unreserved category by virtue of his overall merit, but has exercised an option for getting a choice post or posting, based on the merit within the reserved category candidates, then the reservation vacancy has to be adjusted on the basis of the choice made, conceding the resultant vacancy to general merit. Thus, on an option exercised by a MRC candidate, if he is moved to a choice posting, set apart for the reserved category, then such reservation post is occupied by 'the MRC' candidate. However, if such an option is not exercised by 'the MRC' candidate and he is posted on the basis of his merit alone, then a reserved category candidate with a lesser merit would be entitled to occupy the reservation post. This would also be in consonance with the mandate of reservation at one time not exceeding 50% as laid down by a Constitution Bench of the Hon'ble Supreme Court in ***Indra Sawhney v. Union of India; 1992 Supp(3) SCC 217.***

6. In the review relying on ***Ramesh Ram*** (supra), the principle as asserted by 'the GAD' subsequently, was upheld. The learned Single Judge observed that a review may not lie, specifically looking at the contours of the review jurisdiction, but since what was sought was only in the nature



of a clarification, it was held that the earlier order only directed recommendation of the candidates, which does not necessarily mean recommendation of the 93 candidates of the reserved category, who were ousted from consideration for appointment, were to be carried out. It is against the said order that the appeal has been filed by the 93 ousted reserved candidates.

7. Shri Mrigank Mauli, learned Senior Counsel appearing for the petitioners after pointing out the facts arising in the case contended that the Agricultural Coordinators post, which is the post to which the subject selection was initiated, was advertised on the basis of the state-wise vacancy. Options were given to the candidates for choosing specific districts, since the vacancies were notified on the basis of that arising from each district. A general merit list was drawn up wherein the reserved candidates who were higher up in merit were accommodated in the general merit itself. However, insofar as the choices made for districts, when an MRC candidate was entitled to a reserved vacancy in a district, in which he had exercised an option, he was shifted to such reserved vacancy. This conflicts with the dictum as coming out from ***Ritesh R. Sah*** (supra) and ***Tripurari Sharan***



(supra). The dictum in ***Ramesh Ram*** (supra) is on a totally different circumstance. The distinction is not so much, on the admission to educational institutions and appointment to public employment; but more insofar as the principle applied in ***Ramesh Ram*** (supra) of there being no identity of status with respect to the various services to which appointments were made.

8. In ***Tripurari Sharan*** (supra) there was an identity of status insofar as the admissions being made to a medical course and the choices being applied only insofar as the institutions to which such admissions are made. In the former case, considering the disparity in status, insofar as the different services are concerned, it was held that a movement from MRC to a reserved vacancy in a higher service in a reservation post would result in such reserved vacancy being occupied. Whereas, when there is an identity of status, the choice of a favoured institution can only lead to 'the MRC' candidate being considered to be in the MRC itself, based on the merit and not divesting the right of a reserved category candidate from being appointed in another institution. The principle applied in academic institutions ensures the correct reservation principle and this does not lead to violation of the



50% rule in any manner. There is no compromising on merit by shifting of an MRC candidate to a reserved vacancy and he remains to be a candidate admitted/appointed on general merit, while the reserved candidate would be appointed in another vacancy. This only removes the illegality in a reserved candidate of lesser merit getting the favored posting/institution than that of an MRC candidate. It is pointed out that otherwise there would be a frustration of the affirmative action.

9. The learned Senior Counsel took us through the communication of the agricultural department produced as Annexure-4, which was said to be also on the basis of the decision arrived at in a joint meeting of the Agricultural Department and 'the GAD' which is produced as Annexure-7. The decision taken was to carry out the appointment based on ***Tripurari Sharan*** (supra). The writ petition was also disposed of on the basis of such decision which was upset only on the legal opinion given from the office of the Advocate General, which is also produced along with Annexure-7. It is pointed out that the legal opinion is erroneous.

10. Shri Satyabir Bharti, learned counsel appearing for 'the BSSC' at the outset argues that there is a



district cadre insofar as post of Agricultural Coordinators are concerned. He relied on the cadre rules and also the specific option provided for choice of districts to be exercised by the candidates which also emanates from the cadre rules. It is pointed out that if 'the MRC' candidates are shifted to reserved vacancies by reason of their merit, then necessarily, they would occupy reservation posts and if there is another reserved candidate appointed in the vacancy to which 'the MRC' candidate was eligible, it would result in compromising the merit and denying a general candidate, having merit, from getting a deserving appointment. This would also violate the 50% rule as laid down in *Indra Sawhney* (supra) another Constitution Bench decision. The distinction in the line of decisions as relied on is asserted to be, of admission to academic institutions and appointment to public services. In the present case, the decisions with respect to appointment to public services would squarely apply and there can be no digression from the principle as laid down by the Constitution Bench of the Hon'ble Supreme Court in *Ramesh Ram* (supra).

11. The advertisement dated 29.04.2015, produced as Annexure-1 in C.Rev no. 21 of 2020 called for



recruitment to the vacant posts of Agricultural Coordinators under the Directorate of Agriculture, Bihar, Patna. The total vacancies notified were 4391 and there was also specified the number of vacancies entitled for each of the reservation categories; being Scheduled Caste/Scheduled Tribe/Extremely Backward Class/Backward Class and Backward Class Women. We have to immediately notice that in the present case the only issue raised is with respect to BC candidates. Out of 4391 vacancies, 3507 have been appointed. A tabulation of the reservation applied to posts is seen from paragraph no. 5 of the C.Rev no. 21 of 2020. We need not refer to the candidates in the other reservation categories and look at only the figures insofar as the general and backward community candidates. In the general category, there were 2205 vacancies and 2169 candidates were in the zone of consideration. The final recommendation made, which was district-wise, was 1955 out of which 214 candidates were 'the MRC' candidates. Based on the choice districts opted by them, they were shifted to favoured districts which shifting could be done only to the reserved vacancies of such districts.

12. Out of the 214 MRC candidates, thus shifted to opted districts, 103 were BC category candidates.



There were 10 vacancies in the BC category remaining unfilled, in which 'the MRC' candidates were posted as per the exercise of options. The remaining 93 MRC candidates were also posted in the reserved vacancies as per their options, which were deemed to be filling up of reserved posts, thus conceding the said 93 posts to the general category so as to not violate the 50% rule. As a consequence, 93 persons in the reserved category of BC, were ousted from consideration for appointment, for reason of adjustment of 'the MRC' candidates in reserved vacancies in the various districts to which 'the MRC' candidates opted.

13. We have gone through the decisions placed before us. The facts indicate that the two set of decisions, on facts, were with reference to the admissions for professional courses and appointments to government services; but the distinction is not on the said facts alone. The underlying principle can be distinguished on the basis of the status conferred by such admissions or services; whether there is an identity of status in the appointments/admissions or there is disparity in the services or courses to which appointments & admissions are made. When 'the MRC' candidates are adjusted in the reserved vacancies based on their options,



which options do not materially alter the status of the service to which they are appointed; they cannot be deemed to have occupied reservation vacancies, thus depriving the lesser meritorious candidates in the reservation category from occupying the post vacated by such MRC candidate. However, when there is a disparity in status, necessarily 'the MRC' candidate admitted or appointed to the reserved vacancy would be deemed to be a reservation candidate, thus dislodging a lesser meritorious candidate in the reservation category and conceding the resultant vacancy to a general merit candidate.

14. In our opinion, this is the distinction that emanates from the cited decisions placed before us. **Ritesh R. Sah** (supra) was a case in which the question arose as to whether an MRC candidate, who is adjusted in a reserved vacancy in a college of his or her choice, should be counted against the quota meant for the reserved category or should be treated as a general candidate. It was held that when a candidate is admitted to an educational institution on his or her own merit such admission is not to be counted against the reservation quota. This decision was given in the context of admissions to medical colleges and the principle was stated so



in paragraph 17; the portion of which as extracted in **Ramesh Ram** (supra) is as follows : -

“17. ... 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 an open category candidate and not as a reserved



category candidate.”

15. After extracting the above portion, **Ramesh Ram** (supra) held so in paragraph-32 :-

“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 receive 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. Indian 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 his 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.”

16. **Ramesh Ram** (supra) was a case in which the challenge was to the selection to three All India Services, fifteen Group-A Services and three Group-B Services in various government departments, carried out by the Union Public Service Commission (UPSC). The rules specifically provided that while making allocation, the candidates belonging to the Scheduled Castes, the Scheduled Tribes or Other Backward Classes (ST, SC and OBC respectively hereinafter) recommended against unreserved vacancies may be adjusted against reserved vacancies by the Government, if by this process they get a service of higher choice in the order of their preference. Thus, Rule 16(2) enabled the meritorious candidate in any of the reserved categories to get a service of higher preference so that he or she may not be placed at a disadvantageous position vis-a-vis other candidates of the same reserved category. The rule in the said form was one amended on 04.12.2004 prior to which such adjustments would not deprive the reserved category candidate of lesser merit from being considered for selection in a service of lesser status; if an adjustment is made of ‘the MRC’ candidate to a



reserved vacancy.

17. As has been noticed in the above extract [paragraph-32 of **Ramesh Ram** (supra)] the distinction on facts from **Ritesh R.Sah** (supra) was that the earlier case being concerned with admissions in a medical college and the latter for filling up vacancies in the various civil services. It was emphasized that in the former case, all successful candidates receive the same benefit of securing admission in an educational institution which leads to a qualification, enabling practice in medicine; where there is an identity of status and the adjustment made is only in the nature of the option exercised by ‘the MRC’ candidate to a particular college. This option could be based on various factors, as we see; of domicile in the locality, easy access from hometown and even to obtain more prestigious institutions; but all leading to the very same qualification of MBBS.

18. The Hon’ble Supreme Court, while taking a different path with respect to the appointments in various civil services, specifically noticed that in the selection by the UPSC to Group-A & Group B posts, there is disparity in the benefits that accrue to the successful candidates who are also competing amongst themselves to secure the service of their



choice. The Hon'ble Supreme Court specifically noticed that an MRC candidate would, on the basis of his merit, be enabled appointment to the Indian Police Service, while based on his option to the Indian Administrative Service, he could be adjusted in that service in a reserved vacancy. The rule permits such adjustments but resulting in 'the MRC' candidate being deemed to be appointed in the reserved vacancy in the IAS. Otherwise, if merit-based allotment, based on option of service exercised is not made; 'the MRC' candidate would be appointed in the IPS though his first option was IAS, while another reserved category candidate who had made identical option would be enabled appointment to the reserved vacancy in the IAS, despite he having lesser merit than 'the MRC' candidate. It is to efface such an anomaly and unnecessary heart-burn, especially in the context of the different services having different benefits and different status, that the rule was framed in such a way, to enable an adjustment to a reserved vacancy; of an MRC candidate, in a higher or better service, being deemed to be one of the reserved-category itself. It is on the projection of disparity in status of appointment and subsequent absorption in a particular service that the above rule was framed.



19. It was held so in paragraph-35 of **Ramesh**

Ram (supra): -

“35. The learned counsel for the respondent questioned the rationale of declaring CSE results in two phases in order to support the proposition that even if MRC candidates are given a service of a higher preference, they should not oust lower-ranked reserved category candidates. However, Rule 16(2) should not be interpreted in an isolated manner since it was designed to protect the interests of MRC candidates. MRC candidates having indicated their status as SC/ST/OBC at the time of application, begin their participation in the examination process as reserved candidates. Having qualified as per the general qualifying standard, they have the additional option of opting out of the reserved category and occupying a general post. Where, however, they are able to secure a better post in the reserved list their placement in the general list should not deprive them of the same. In that respect, the adjustment referred to in Rule 16(2) does not, in fact, denote any change in the status of MRC from general to reserved. To the contrary, it is an affirmation of the reserved status of MRC candidate. Rule 16(2) exists to protect this reserved status of the MRC candidates.

20. It is true that **Dega Venkata Harsha**

Vardhan and **Tripurari Sharan** (both supra) were again with



respect to admission to medical courses, however, we have to specifically notice paragraph-16 in ***Tripurari Sharan*** (supra) where the Court specifically referred to ***Ramesh Ram*** (supra) wherein seemingly a diametrically opposite decision from ***Ritesh R.Sah*** (supra) was arrived at. The distinction was said to be between selection and appointment of PG candidates and selection and appointment of UPSC candidates. It was specifically held : “*while in postgraduate admissions, the results will grant all the candidates the same benefit irrespective of rank (i.e. admission in medical colleges), the results in UPSC selection give varying benefits to varying rank-holders, as the allocation of services is based on rank*”(sic). The learned Judges also held so in paragraph-17:-

“17. It is also pertinent to note that the Constitution Bench has virtually but impliedly approved *Ritesh R. Sah* [*Ritesh R. Sah v. Y.L. Yamul*, (1996) 3 SCC 253] insofar as the procedure to be adopted in cases of admissions to medical colleges through a common competitive examination is concerned. In view of the above, the principles laid down in *Ramesh Ram* [*Union of India v. Ramesh Ram*, (2010) 7 SCC 234 : (2010) 2 SCC (L&S) 412] may not be applicable to the facts of this case, inasmuch as this is a case pertaining to admission in medical colleges and whereas *Ramesh Ram* [*Union of India v. Ramesh Ram*, (2010) 7



SCC 234 : (2010) 2 SCC (L&S) 412]
pertains to selections to the posts for
services through the UPSC examination.”

21. *Alok Kumar Pandit* (supra) was again a selection and appointment to the different State services, which is similar to that carried out by the UPSC, which was the subject of consideration in *Ramesh Ram* (supra).

22. It is in the above context and the specific distinction on principle and not on distinction between admissions and appointments, that the instant case has to be considered.

23. The instant selection was to the post of Agricultural Coordinator under the Directorate of Agriculture, Bihar, Patna. A copy of the advertisement is produced as Annexure-1 in the Civil Review cases from which the appeals arise. A translated copy was also produced across the Bar. The advertisement indicates the number of vacancies and the reservation quota as eligible to the various categories entitled to such reservation. Enumerating the details of vacancies in different districts, the advertisement indicates the total sanctioned posts in each district from which the reservation quota and the general quota were segregated and shown separately. This is the context in which the candidates were



required to give their option with respect to the 38 districts. It was also specified in the advertisement that those candidates who failed to give their option would be allotted the district as per their merit. Hence, as in **Ramesh Ram** (supra), there is no disparity in benefits in the services to which the applications are called for. The option to be exercised is also not with respect to the service; which in the present case is only one cadre post, and is exercised specifically for the purpose of allotment of district. There is no district cadre insofar as the posts are concerned and the modalities for reservation as provided in the advertisement does not indicate any adjustments being made of 'the MRC' candidates in the opted districts, in the reservation post and thus, dis-entitling the less meritorious reserved candidates from being considered for appointment in the reserved vacancies.

24. We have also been supplied with the Cadre Rules, brought out under Article 309 of the Constitution of India; The Agriculture Coordinator Cadre (Recruitment & Service Conditions) Rules, 2014. The Agriculture Coordinator is defined as such personnel giving technical and administrative cooperation in implementing various schemes of the Agriculture Department, below Block level; which



makes it a State Cadre. The vacancies are determined district wise and the rules itself provide for an option to be exercised, the recommendation for appointment being made on the basis of merit-cum-option. What is glaringly absent is a rule similar to Rule 16(2), which was noticed in the case of ***Ramesh Ram*** (supra). In fact, there is no necessity for such a rule since, there is an identity insofar as the post to which the appointment is made, similar to the admission made to a medical course. The district wise option does not give any additional benefit to the appointee other than he being accommodated in the home district or a district nearby to his district of domicile.

25. The merit list was prepared and a list of candidates entitled to be accommodated in the reservation post was also prepared, and then the options were considered. A person having higher merit would be considered for his or her optional district first and it is in that context that ‘the MRC’ candidates who would be appointed as an Agricultural Coordinator on merit would be shifted to his optional district in a reserved vacancy, which does not give him any additional benefit or a perceived higher status in the service of the State. It is more a rule of convenience so as to enable the



meritorious candidate to get a district of his/her option, than one resulting in divergence of status, when a meritorious candidate is allotted to a higher service having a different status based on the option exercised. If, in the event of identity of status in the service to which appointment is made, the reserved vacancy is deemed to have been filled up by a MRC candidate allotted to a district of his choice, then it would be effacing the merit of 'the MRC' candidate belonging to the reserved category. Hence, when a notional adjustment is made on the basis of the option exercised insofar as the district to which the appointment is to be made, the shifting of the appointment is only as against 'the MRC' candidate and the reserved category candidate having a lesser merit, in which circumstance, the reserved candidate having a lesser merit will have to be considered to the vacancy created by the shifting made of 'the MRC' candidate. On the above reasoning, in the facts and circumstances of the instant case, we are of the opinion that the principle in **Ramesh Ram** (supra) would not apply and that in **Ritesh R.Sah** and **Tripurari Sharan** (both supra) would squarely apply.

26. We hold that the 93 vacancies created by shifting of 'the MRC' candidates to the districts which they



opted should be filled up by those reserved candidates, they would unsettle in the optional districts to which they were appointed. Though reference was made to Annexure-7, the initial opinion of the General Administration Department and the opinion of the Advocate General, we are of the view that this does not regulate the adjudication of the issue agitated herein, which is also governed by decisions of the Hon’ble Supreme Court. Our interpretation would prevail over that of the department and the Learned Advocate General.

27. The appeals are allowed with the aforesaid directions leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Rajiv Roy, J: I agree

(Rajiv Roy, J)

Aditya/Sujit/Anushka

AFR/NAFR	AFR
CAV DATE	08.12.2023.
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