

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 14323 of 2022

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1. Vindeshwar Paswan, son of Rajendra Paswan, resident of Village- Mangurahah, Post- Rampur, P.S.- Chiraiya, District- East Champaran.
 2. Arjun Kumar, son of Sitaram Singh, resident of Village- Chainpur Dhaka, P.O. and P.S.- Dhaka, District- East Champaran.
 3. Ram Ayaodhya Yadav, son of Gaya Yadav, resident of Village and P.O.- Mathlohiyar Chhatwaniya Tola, P.S.- Harsidhi, District- East Champaran.
 4. Hari Shankar Kumar, son of Shaligram Rai, resident of Village- Chaknasiba, P.O.- Ibrahimpur Parsauni, P.S.- Fenhara, District- East Champaran.
 5. Upendra Paswan, son of Jagarnath Paswan, resident of Village- Majhi, P.O.- Barwa, P.S.- Adapur, District- East Champaran.
 6. Sanjay Kumar, son of Lakhindra Yadav, resident of Village- Fazilpur, P.O.- Tetariya, P.S.- Rajopur, District- East Champaran.
 7. Shambhu Kumar, son of Late Rajmangal Prasad Yadav, resident of Village and P.O.- Tetariya, P.S.- Rajopur, District- East Champaran.
 8. Pritesh Ranjan, son of Vijay Shankar Yadav, resident of Village and P.O.- Chahaha, P.S.- Bajaria, District- East Champaran.
 9. Rupesh Kumar, son of Shambhu Ray, resident of Village- Katkenwa, P.O. and P.S.- Mahuawa, District- East Champaran.
 10. Bikash Kumar, son of Jagdeo Das, resident of Village- Pachgachiya, P.O. and P.S.- Patahi, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Principal Secretary, General Administrative Department, Government of Bihar, Patna.
4. The Deputy Secretary, General Administrative Department, Government of Bihar, Patna.
5. The Commissioner, Tirhut Division, Muzaffarpur.
6. The District Magistrate, East Champaran, Motihari.



7. The Selection Committee, represented through the District Magistrate, East Champaran, Motihari pursuant to Advertisement No. 01/2017.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13304 of 2022

Suman Kumar, Son of Anirudh Rai, resident of Village - Dihu Tola, P.S. - Madhuban, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Principal Secretary, Home (Police) Department, Bihar, Patna.
3. The Principal Secretary General Administrative Department Bihar, Patna.
4. The Deputy Secretary Government of Bihar, General Administrative Department, Bihar, Patna.
5. The Commissioner, Tirhut Division Muzaffarpur, Bihar.
6. The District Magistrate, East Champaran, Motihari.
7. The In-Charge Officer District General Section East Champaran.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16667 of 2022

Gulab Patel, son of Bhirgunath Patel, resident of Village- Karmawa, P.S. Dhaka, District- East Champaran, at Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Home (Police) Department, Govt. of Bihar, Patna.



4. The Additional Chief Secretary, Home (Police) Department, Govt. of Bihar, Patna.
5. The Commissioner, Tirhut Division, Muzaffarpur.
6. The District Magistrate, East Champaran, Motihari.
7. The District Employment Officer, East Champaran, Motihari.
8. The Officer, In-charge, General Administration Department, East Champaran, Motihari.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 14323 of 2022)

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar, Advocate Ms. Riya Giri, Advocate
For the Respondent/s	:	Mr. Manish Kumar, GP-4 Mr. Ajay Kumar, AC to GP-4

(In Civil Writ Jurisdiction Case No. 13304 of 2022)

For the Petitioner/s	:	Mr. Vijay Shankar Shrivastava, Advocate
For the Respondent/s	:	Mr. Md. N.H. Khan (SC1)

(In Civil Writ Jurisdiction Case No. 16667 of 2022)

For the Petitioner/s	:	Ms. Rashmi Jha, Advocate
For the Respondent/s	:	Mr. Manish Kumar (GP 4)

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 14-08-2024

1. The above-mentioned three writ petitions arising out of identical facts and questions of law have been heard and disposed of by the following common judgment.

2. The petitioners have invoked extraordinary Constitutional Jurisdiction of this Court for following reliefs:-

i. To issue writ/order or direction in the nature of Certiorari for quashing the publication of the result dated 09.09.2022 by which the Committee in relation to appointment to the post of Chowkidar in



district of East Champaran, Motihari pursuant to advertisement no. 01 of 2017, wherein the vacancies of Scheduled Caste and Backward Class have been left out and the seats / vacancies against the unreserved category have also been wrongly reduced.

ii. To issue writ/order or direction in the nature of Certiorari for quashing the order dated 11.09.2022 issued by the District Magistrate, East Champaran, Motihari, by which the publication of result dated 09.09.2022 has been approved and order given for issuance of appointment letter.

iii. To issue writ/order or direction in the nature of Certiorari for quashing the merit list published on 10.09.2022 pursuant to the recommendation by the District Selection Committee, East Champaran, Motihari vide decision dated 09.09.2022.

iv. To issue writ/order or direction in the nature of Certiorari for quashing the letter dated 28.07.2022 issued by the District Magistrate, East Champaran, Motihari in terms of which the vacant seats as against the Scheduled Caste and Backward Class has been illegally and wrongly reduced to nil and the appointment being shown already in excess to the total number of vacant seats and also as against the vacancy of unreserved category has been wrongly



reduced from 77 (male and female inclusive) to 63 seats.

v. To issue writ/order or direction in the nature of Certiorari for quashing the letter dated 01.08.2022 issued under the signature of Deputy Secretary, by which the recommendation made in the vacancy in terms of letter dated 28.07.2021 has been approved and accordingly direction was given to proceed further after making necessary amendments in terms of the said roster.

vi. To hold and declare that non-inclusion of vacancies against the Scheduled Caste and Backward Class while publishing the merit list of appointment is violative of Articles 14 and 16 of the Constitution of India and also reduction of seats under unreserved category amounts to reducing the reservation below 50% which is constitutionally impermissible.

vii. To hold and declare that the action of Respondent Authorities is also violative of Article 16(4) of the Constitution of India and against the roster reservation policy of the State of Bihar.

viii. To hold and declare that any unlawful and illegal / excess appointment made contrary to the provisions of law without compliance of Article 14 of the



Constitution of India and in excess of the vacancies advertised cannot be a ground for reducing vacancies so advertised and subsequently modified by adjusting such illegal appointment as against the current advertised vacancy under the Scheduled Caste and Backward Class category.

ix. To issue writ/order or direction in the nature of mandamus directing the Respondent to issue fresh merit list after including the vacancies under the Scheduled Caste and Backward Class category as was earlier notified in terms of letter dated 02.07.2018 i.e., 12 and 06 number of seats respectively and also 77 seats as against unreserved category instead of 63 seats.

x. To pass an ex parte interim order staying the order dated 11.09.2022 by which the provisional list has been confirmed and treated as final and directed for issuance of appointment letter and/or the respondents be prevented from issuing any appointment letter and/or 10 seats may be kept vacant against which no final appointment will be made.

xi. To any other relief or reliefs for which the petitioners are found to be entitled in the facts and circumstances of the case.

3. The petitioners, belong to the category of Scheduled



Caste, Backward Class and unreserved category, had participated in the selection process on the post of Chowkidar, pursuant to Advertisement No. 01 of 2017 as against the vacancies notified as per the advertisement which was subsequently revised by another notification, dated 2nd of July, 2018. As per the subsequent notification of 2018, number of seats reserved for Scheduled Caste was 21, for Backward Class 10 and for unreserved category 77. The petitioners were initially selected in respect of their respective categories. They were called upon to take part in counselling process and finally merit-list was prepared on 9th of September, 2022. In the final merit-list, the number of Scheduled Caste and Backward Class candidates were reduced to nil. Accordingly, no candidate from the Scheduled Caste and Backward Class category was appointed as Chowkidar. It is also mentioned that the number of candidates in unreserved category has been reduced from 77 to 63. The said reduction was done in terms of impugned letter, dated 28th of July, 2022, as per which there was previously excess appointment to the post of Chowkidar in Scheduled Caste and Backward Class category and, therefore, at the time of final result, the vacancies have been adjusted against the said excess appointment in the Scheduled Caste and Backward Class



category. Even after adjustment, excess recruitment on the post of Chowkidar was adjusted against unreserved category as well. The aforesaid act of the Respondents has been challenged by the petitioners being violative of Articles 14, 16 and 16(4) of the Constitution of India as well as contrary to the Reservation Act in Bihar. It was also challenged being *de hors* the Rules of roster.

4. It is contended by the petitioners that the excess appointees were illegally appointed from backdoor and they are not appointed in terms of the relevant rules pursuant to any advertisement against the vacancies accrued at the relevant point of time. So it is urged by the petitioners that these illegal appointments cannot be adjusted against the vacancies declared in the year 2017. The petitioners participated on the basis of vacancy notification in the year 2017. Therefore, subsequent reduction of number of posts in the cadre of Chowkidar violates the principle of reservation policy and roster rule. Further case of the petitioners is that, the action on the part of the Respondents is *ultra vires* for not including the vacancy of Scheduled Caste and Backward Class while publishing the merit-list of Chowkidar pursuant to Advertisement No. 1 of 2017 under Article 14 and 16 of the Constitution of India and,



therefore, reduction of the number of candidates on the post of Chowkidar under the category of Scheduled Caste and Backward Class deprives the petitioners of like opportunity of employment.

5. The petitioners also stated that this Court in *Shambhu Thakur v. State of Bihar & Ors.*, reported in *2003 (4) PLJR 470* has categorically held that the appointments of Chowkidar and Dafadar can only be made in accordance with rules / procedure adopted in case of appointment of government servants. It was categorically held that the vacancy has to be notified and advertised and due opportunity of competition be granted to the candidates. It is also held by this Court that appointment of Chowkidar and Dafadar can only be made on the basis of the Circular, dated 17th of January, 1990, which govern the scheme of appointment and no authority is entitled to appoint any person as Chowkidar, contrary to the Circular. Thereafter, the State Government in exercise of its power conferred under Article 309 of the Constitution of India *vide* notification dated 25th of August, 2006 made detailed provisions in respect of appointment, service condition and promotion rule for Chowkidar. In terms of Clause 5(vii), the appointment to the post of Chowkidar was to be made on the basis of advertisement



district-wise from the office of District Magistrate.

6. The said 2006 Rule repealed the earlier notification, dated 17th of January, 1990. In terms of the said Rule, the post of Chowkidar was declared to be treated as Class-IV post. In spite of the notification dated 17th of January, 1990 and subsequently dated 25th of August, 2006, in some cases, recruitment on the post of Chowkidar was not made in accordance with law and the aggrieved persons were compelled to file another writ petition bearing C.W.J.C. No. 1024 of 2014 (Hazari Lal Prasad v. State of Bihar & Ors.). The said writ petition was disposed of *vide* order dated 10th of March, 2014, relying on the judgement of Shambhu Thakur (*supra*) and the District Magistrate was directed to proceed with the appointment of Chowkidar strictly in accordance with law.

7. In the year 2017, an advertisement was published bearing No. 01 of 2017, dated 11th of October, 2017, for appointment to the post of Chowkidar in East Champaran by the office of the District Collectorate under the signature of the District Magistrate, East Champaran. The said advertisement was notified in accordance with Service Rules, dated 25th of August, 2006 and the vacancy position was declared as hereunder: -



Total Seats	Scheduled Caste		Backward Class		Unreserved	
	Male	Female	Male	Female	Male	Female
249	25	16	16	08	80	44

8. It is also disclosed that the vacancy position may subsequently be changed since in terms of compliance of the order of this Court in C.W.J.C. No. 1024 of 2014, services of 92 Chowkidars were terminated. The petitioners submitted their application for the post of Chowkidar in their respective category. That on 2nd of July, 2018, a fresh roster was published under the signature of the Secretary to the Commissioner, Tirhut Division, Muzaffarpur, in terms of which the revised roster vacancy was as follows:-

Total Seats	Scheduled Caste		Backward Class		Unreserved	
	Male	Female	Male	Female	Male	Female
141	12	09	06	04	53	24

9. On the said revised roster, counselling of the petitioners had taken place sometimes in July, 2008. However, the Respondents were not finalizing the selection to the post of Chowkidars which prompted the Petitioner Nos. 1 and 2 to approach this Court by filing a writ petition bearing C.W.J.C. No. 7454 of 2019. The said writ petition was disposed of by



this Court *vide* order dated 2nd of May, 2019, directing the writ petitioners to submit representation before the District Magistrate, East Champaran requesting for publication of result and the District Magistrate was directed to publish the result if the selection process was completed within a period of three months or even before. In spite of the said order, the District Magistrate, East Champaran did not publish the final result. The above-named petitioners then filed a contempt petition bearing M.J.C. No. 1336 of 2020. In M.J.C. No. 1336 of 2020, the District Magistrate, East Champaran, for the first time, informed that in Scheduled Caste quota there was 61 excess appointment shown against the available vacancy of 128, in Backward Class quota there was 183 excess appointment shown against the vacancy of 96 and in unreserved category 63 vacancies were shown by reducing a total excess appointees of Scheduled Caste and Backward Class from the total vacancies of unreserved category. It is alleged by the petitioners that reduction of vacancies by the District Magistrate, East Champaran was wholly illegal because of the fact that excess appointment against the reserved category of Scheduled Caste and Backward Class could not have been adjusted in the unreserved category and secondly the said excess appointment has not been shown as



to whether those were made following 2006 Rules or contrary to the Rules and, therefore, illegal appointments. Subsequently, however, the Selection Committee under the Chairmanship of District Magistrate, East Champaran published subsequent roster on 28th of July, 2022 wherein the unreserved category post was reduced and Scheduled Caste and Backward Class category was shown to be nil and from total available vacancy of 141, the provisional merit-list was published wherein Scheduled Caste and Backward Class was totally excluded and unreserved was reduced from 77 to 63. The provisional merit-list was published on 9th of September, 2022 and within two days, the District Magistrate, East Champaran accepted the provisional merit-list as final list and decided to issue appointment letters in favour of the candidates.

10. It is the grievance of the petitioners that non-inclusion of vacancy in Scheduled Caste and Backward Class category in the list of vacancies of Chowkidars discriminates the candidates belonging to the reserved category as well as Articles 14 and 16 of the Constitution of India. It is also contended by the petitioners that the excess appointment shown against the said category of Scheduled Caste and Backward Class are all illegal appointments, contrary to the rules, as no details of such



appointments have been provided. Vacancies declared under 2017 advertisement cannot be allowed to be filled up by such illegal appointments made earlier and as such the Respondents are wrongly approved the recommendations and published the final list, declaring vacancies in the reserved post of Scheduled Caste and Backward Class as nil on the ground that there were excess appointments previously of 61 Chowkidars in the category of Scheduled Caste and 183 excess appointments were made in the category of the Backward Class. The petitioners, further, contend that after promulgation of 2006 Rules, in the year 2008, 77 Chowkidars were appointed maintaining reservation policy. Therefore, the plea taken by the Respondents that there was excess appointment of Chowkidars in the category of Scheduled Caste and Backward Class are false to the knowledge of the Respondents. The impugned selection process is also violative of Section 4 of the Bihar Reservation of Vacancies in the Post and Services (for Scheduled Caste and Scheduled Tribes and Other Backward Classes), Act, 1991.

11. On 24th of March, 2023, a counter affidavit has been filed on behalf of Respondent Nos. 6 and 7. It is contended on behalf of the contesting Respondents that at the time of fulfilling the vacancies, the roster of reservation was prepared, which was



approved also by the General Administration Department, Government of Bihar, *vide* letter No. 13277, dated 11.08.2022. The total number of sanctioned post in East Champaran district is 801, out of which 660 posts were already filled up and 141 posts were vacant. In respect of the said 141 vacant posts, the contesting Respondents have stated the roster of reservation as hereunder: -

Sl. No.	Category	Admissible Post	Working	Vacancy
1	S.C	$801 \times 16\% = 128$	189 (61 Excess)	0
2	S.T	$801 \times 1\% = 08$	01	07
3	MBC (EBC)	$801 \times 18\% = 144$	93	51
4	BC	$801 \times 12\% = 96$	279 (183 Excess)	0
5	WBC	$801 \times 3\% = 24$	04	20
6	Gen. (UR)	$801 \times 50\% = 401$	94	$(307-244) = 63$
Total		801	660	141

12. Thus, as on the date of appointment of Chowkidar, the reserved posts under Scheduled Caste and Backward Class were found exhausted as excess candidates were working in those categories. Those excess candidates were adjusted from the admissible vacancies of unreserved category. Thus, rule of reservation had not been flouted and no irregularity has been done in the process of filling up of vacancies.

13. On 6th of April, 2023, the petitioners have filed a



rejoinder to the counter affidavit filed by the Respondent Nos. 6 and 7.

14. In the rejoinder, it is submitted that the stand taken by the Respondents while filling up the vacancies in respect of the post of Chowkidars, is blatantly violative of Articles 14 and 16 of the Constitution of India and against the reservation policy as enunciated in 1991 Act. The Respondents did not state as to how the excess appointment was made. It is reiterated by the petitioners that on the basis of the advertisement dated 9th of March, 2008, 77 numbers of Chowkidar were appointed. Subsequent to the said recruitment, advertisement was published on 11th of October, 2017. Therefore, there was no scope to induct Chowkidars without following the rules during the time between 2007-2008. If such appointment is made, those appointments are illegal and liable to be cancelled. The petitioners also mentioned that they received details of appointments under the Right to Information Act and from the details of advertisements for selection of Chowkidars, they came to know that out of 801 sanctioned posts of Chowkidar in the district of East Champaran, total working strength was 660, out of which 279 Chowkidar belong to Backward Class and 189 Chowkidar belong to Scheduled Caste.



15. A separate counter affidavit has been filed on behalf of Respondent Nos. 3 and 4. It is specifically stated on behalf of the Respondent Nos. 3 and 4 that Home Department, Government of Bihar has sanctioned 801 posts of Chowkidar in the district of East Champaran. Earlier in the process of appointment to the post of Chowkidar, the reservation rule were not followed. Therefore, the ratio of reservation was not maintained. Later on, Chowkidars were treated as a Class-IV employee and accordingly it was incumbent upon the State Government to follow the reservation rule. At that time, the total working strength was found to be 724 of which, 285 number of Chowkidars were of unreserved category, 139 Chowkidars were of Scheduled Caste, 49 were of Extremely Backward Class, 245 were of Backward Class and 6 were Backward Class (Woman) Chowkidars, total being 724. In M.J.C. No. 1979 of 2005 (Arjun Singh v. State of Bihar), the District Administration, East Champaran decided to fill up $(801 - 724 = 77)$ posts of Chowkidar and with the approval of the Divisional Commissioner and the General Administration Department, the said 77 posts of Chowkidars were filled up, maintaining reservation roster. Subsequently, it was reported by the Circle Officers of the district that working strength of Chowkidar was



found to be 539. Therefore, it was decided that 262 number of vacant posts would be filled up following the reservation policy. Subsequently, out of the said 262 posts, 13 posts were filled up by giving appointment to the persons on compassionate ground. Therefore, advertisement was issued for appointment of 249 posts of Chowkidars in the year 2017. After issuance of advertisement and before initiation of selection process, 92 appointments were made by the District Administration as per the instruction of Home Department, Government of Bihar including 18 compassionate appointments. All the appointments in this category were made by the candidates of General category. In the light of the order passed in C.W.J.C. No. 1024 of 2014, all the said 92 appointments were cancelled. But again by virtue of the order passed in C.W.J.C. No. 9756 of 2017, the said 92 appointments have been kept intact and the said Chowkidar are presently working. As a result, the clear vacancy was subsequently found to be 141 only. Therefore, new roster was prepared by the District Selection Committee and the proposal was approved by the District Magistrate, East Champaran on 21st of July, 2022 and the Divisional Commissioner, Muzaffarpur on 27th of July, 2022. The General Administration Department had also issued the same direction



for filling up of 141 vacant posts of Chowkidar on the basis of advertisement of 2017.

16. The challenge put-forth by the petitioners to the method adopted by the State-Respondents in fixing and advertising number of posts to be filled up in respect of the Chowkidars has the following facets:-

(i) The Respondent No. 6 did not follow the reservation policy as per the provisions contained in Bihar Reservation Act, 1991 and straightway deducted excess number of posts working as Chowkidars from reserved category, declaring the number of reserved posts in the category of Scheduled Castes and Backward Class as nil.

(ii) The respondents did not follow the settled principle of law to the effect that the vacancies are required to be filled up year to year, taking a particular year as a unit. Thus, the respondents' action was in violation of the decisions of the Hon'ble Supreme Court in Indra Sawhney's case as well as R.K. Sabharwal's case.

(iii) If the vacancies, whatever may be the calculation, either 249 posts, as stated in the advertisement or 141 posts, as subsequently found by the Respondents to be vacant actually, were declared following the roster points, number of posts in the category of Scheduled



Castes and Backward Classes would not have been nil.

17. Mr. Ashish Giri, learned Advocate on behalf of the petitioners submits that Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991 (hereinafter referred to as the “1991 Act” for short) in Section 4 declares that 50% of the posts are to be filled up from the reserved category and remaining 50% from open merit category. Sub-Section (2) of Section 4 of 1991 Act speaks of respective percentage to be reserved amongst the reserved category to the extent as follows :-

- (a) Scheduled Castes 16%
- (b) Scheduled Tribes 01%
- (c) EBC 18%
- (d) Backward Classes 12%
- (e) Women of Backward Class 3%

18. Section 6 of 1991 Act states that if the required number of posts is not filled up in a particular year, the said posts shall not be filled up by unreserved candidates, but the unfilled up posts shall be carried forward for the recruitment in the same category for the next year.

19. Mr. Giri next refers to the decision of the Hon’ble



Supreme Court in the case of ***R. K. Sabharwal & Ors. v. State of Punjab & Ors.***, reported in ***(1995) 2 SCC 745***. The Constitution Bench of the Hon'ble Supreme Court held in paragraph no. 6 and following paragraphs as hereunder:-

“6. The expressions ‘posts’ and ‘vacancies’, often used in the executive instructions providing for reservations, are rather problematical. The word ‘post’ means an appointment, job, office or employment. A position to which a person is appointed. ‘Vacancy’ means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a ‘post’ in existence to enable the ‘vacancy’ to occur. The cadre-strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of ‘vacancy’ has no relevance in operating the percentage of reservation.

7. When all the roster points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Castes/Tribes and Backward Classes in



accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in Indra Sawhney v. Union of India [1992 Supp (3) SCC 217 observed as under: (SCC p. 737, para 814)

“Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and Other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e. 270 by Other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say, the number of members of OBCs in the unit/service/category is only 50, a shortfall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all Backward Classes reaches 500, i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many.



Meanwhile, the members of open competition category would become age-barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit as the case may be.”

8. The quoted observations clearly illustrate that the rule of 50% a year as a unit and not the entire strength of the cadre has been adopted to protect the rights of the general category under clause (1) of Article 16 of the Constitution of India. These observations in Indra Sawhney case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993 SC 477] are only in relation to posts which are filled initially in a cadre. The operation of a roster, for filling the cadre-strength, by itself ensures that the reservation remains within the 50% limit. Indra Sawhney case [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385 : AIR 1993



SC 477] is not the authority for the point that the roster survives after the cadre-strength is full and the percentage of reservation is achieved.

9. A Division Bench of the Allahabad High Court in J.C. Malik v. Union of India [(1978) 1 SLR 844 (All)] interpreted Railway Board's circular dated 20-4-1970 providing 15% reservations for the Scheduled Castes. The High Court held that the percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in a cadre are filled then serious consequences would ensue and the general category is likely to suffer considerably. We see no infirmity in the view taken by the High Court.

10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100-point roster, 14 posts at various roster points are filled from amongst the Scheduled Caste/Scheduled Tribe candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the



roster by 31-12-1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner.”

20. What is important for the purpose of this case is that reservation as per the roster indicating reserved points is required to be implemented in the form of running account from year to year.

21. Subsequent to R.K. Sabharwal's case, the learned



Advocate on behalf of the petitioners refers to another decision of the Hon'ble Supreme Court in *State of U.P & Ors. v. Sangam Nath Pandey & Ors.* reported in (2011) 2 SCC 105. In this report, U.P. Public Service Commission initiated a recruitment drive under the provision of U.P. Public Services (Reservation for Scheduled Castes and Scheduled Tribes and Other Backward Classes) Act, 1994 to fill up backlog vacancies meant for reserved categories. The Government wrongly included 367 backlog reserved vacancies in general recruitment but after selection process had been trying to rectify its mistake by segregating the same for special recruitment. General category candidates, who were not selected in earlier wrong recruitment process, challenging rectification measure and segregation of posts for special recruitment. It was held by the Hon'ble Supreme that the said segregation for special recruitment is justified and valid. It was in tune with reservation policy of the Government posts, which are meant for reserved category would be offered only to reserve categories so long as reserved roster points are not occupied by reserved categories.

22. On similar issue, the learned Advocate for the petitioners refers to a decision of this Court in *Sudhir Kumar (Dr.) & Ors. v. State of Bihar & Ors.*, reported in 2018 (2)



PLJR 609. It is held in Dr. Sudhir Kumar (supra) that the extent of reservation cannot be changed by any reason whatsoever and Rule of 50% ceiling could be relaxed only to the extent it is permissible in accordance with Article 16 (4-B) of the Constitution of India.

23. Clause (4-B) of Article 16 of the Constitution of India was inserted by the Constitution (81st Amendment) Act, 2000 w.e.f. 9th of June 2000. The provision runs thus:-

“16 (4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent, reservation on total number of vacancies of that year.”

24. A plain reading of Article 16 (4-B) takes us to the conclusion that the Rule of carry forward as enunciated in R.K. Sabharwal’s case (supra) was given Constitutional recognition in Article 16 (4-B).

25. Learned Advocate on behalf of the petitioners refers



to another decision of this Court in the case of ***Dr. Amod Prabodhi & Ors. v. The State of Bihar through the Principal Secretary, Department of Education & Ors.***, reported in **2023 (2) BLJ 513**. The case relates to non-fulfillment of reserved category posts in EWS and Disabled candidates. This Court on due consideration of various judgments of the Apex Court as well this Court was pleased to direct that the respondents shall revise the bifurcation of post on the principle of calculation of backlog posts as observed as given hereinabove. The said backlog posts shall be treated as a separate class. The post of current vacancies can be bifurcated in different categories strictly in accordance with the provisions of the Act of 1991 and by treating all the post in various Universities together subject-wise. Backlog posts have to be mentioned separately and current posts separately in the advertisement. After conducting the aforesaid exercise, the University shall call candidates for the posts, which are found to have been filled from the respective category, for interview and recommend their selections accordingly.

26. Lastly, the learned Advocate on behalf of the petitioners refers to another decision of the Hon'ble Supreme Court in the ***State of Punjab & Ors. v. Davinder Singh & Ors.***



(Civil Appeal No. 2317 of 2011) decided on 1st of August, 2024.

In this decision, the scope of Article 16 (4-B) of the Constitution of India came up for consideration. In paragraph nos. 185 and 186 of the judgement, the Hon'ble Supreme Court was pleased to state as hereunder:-

185. Article 16(4-B) provides that the State can consider carrying forward the unfilled vacancies of the year, which were reserved to be filled by classes under Article 16(4) and 16(4-A), to the subsequent year or years. The provision further provides that the unfilled vacancies shall not be considered together with the vacancies of the subsequent year for determining the ceiling of fifty percent reservation on total vacancies for that year.

186. Article 16(4-B) does not make any distinction between a class and sub-classified classes. The provision stipulates that the State can carry forward vacancies of unfilled seats which were reserved to be filled under Articles 16(4) and 16(4-A) of the Constitution. As held in the preceding section, the power of the State to sub-classify within the Scheduled Castes is traceable to Article 16(4). Further, the seats that remain unfilled will not in any manner reduce the seats which are available to the other sub-categories of the Scheduled Castes. The Constitutional validity of



Article 16(4-B) was upheld in Nagaraj (supra). Thus, there is no reason to prevent the State from exercising its power under Article 16(4-B) of carrying forward the vacancies which are reserved for a specific sub-category. Such an exercise will be legal and valid.”

27. Subsequently, in paragraph no. 202 of this report, the Hon’ble Supreme Court held, relying on R.K. Sabharwal’s case that reservations must operate in accordance with the roster maintained in the department which will be a running account every year to ensure that there is no excessive reservation.

28. For better understanding of the issue in hand, I may refer to the observation of the Hon’ble Supreme Court in paragraph no. 202 of the above-mentioned judgement.

“202. At this juncture, it is important that we clarify the observations in Nagaraj (supra) extracted above. In Nagaraj (supra), this Court referred to the judgment in RK Sabharwal while observing that the cadre must be taken as a unit to determine the inadequacy of representation. However, the context in which RK Sabharwal (supra) held cadre must be considered as a unit was different. In that case, two issues were considered. First, whether appointments of the backward classes in the general category must be counted while



working out the percentage of reservation for the backward classes. Second, whether the reservation is complete when the posts earmarked for the Scheduled Castes or Scheduled Tribes are filled. It is while answering the second of the issues that this Court held that reservations must operate in accordance with the roster maintained in the Department which will be a running account every year to ensure that there is no excessive reservation. This Court explained the working of the calculation of cadre-based vacancy as follows: posts falling in specific serial numbers would be reserved seats allotted to each class and when a reserved seat falls vacant, it must be filled by the person of the same category:

“5. [...] concept of “running account” in the impugned instructions has to be so interpreted that it does not result in excessive reservation. “16% of the posts ...” are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30, 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the



members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The “running account” is to operate only till the quota provided under the impugned instructions is reached and not thereafter.

[...] As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation.”



29. Learned Advocate on behalf of the State-Respondents refers to the statement made in paragraph nos. 9 to 13 of the counter affidavit in course of his argument. It is ascertained from his argument that cadre of Chowkidar consists of 801 posts. Out of the said 801 posts, working strength sometimes in the year 2005 was 724 Chowkidars. Out of the said 724 Chowkidars, 285 posts were filled up by unreserved candidates, 139 posts were manned by candidates of Scheduled Castes, 49 posts by EBC, 245 posts by Backward Class and 6 posts by Women Backward Class.

30. Subsequently, by virtue of a direction in M.J.C. No. 1979 of 2005 (Arjun Singh & Ors. v. State of Bihar & Ors.), 77 posts of Chowkidars were directed to be filled up out of the said posts 74 posts were filled up maintaining the reservation policy as per 1991 Act.

31. It is contended on behalf of the respondents that during the present selection process, circle officers of East Champaran District submitted an information that the working strength of Chowkidars was 539. Thus, it was decided that 262 posts would be filled up as per the reservation policy. However, in the meantime, 30 posts were filled up by compassionate appointment reducing the number of vacancies to 249.



Advertisement was published in the year 2017 for appointment of 249 posts. However, during the continuation of the process as per specific direction of the Home Department, 92 appointments were made by the District Administration to the posts of Chowkidars. Amongst them, 18 posts were filled up on compassionate ground and 74 posts were filled up from the dependents of Chowkidars.

32. Challenging the said appointment of 92 candidates, a writ petition being C.W.J.C. No. 1024 of 2014 was filed and all the 92 appointments were cancelled. Again on the basis of the decision passed subsequently in C.W.J.C. No. 9756 of 2017, the said 92 appointments were declared to be valid and they were included in the working strength. Thus, final vacancy position has been reduced to 141. The department while calculating the number of reserved posts found that the working strength in the category of Scheduled Castes and Backward Classes were more than their respective quota. Therefore, the department held that no appointment would be made in the quota of Scheduled Castes and Backward Classes in order to fill up 141 posts. Therefore, there was no violation of reservation policy provided in 1991 Act.

33. Therefore, learned Advocate on behalf of the State



submits that the petitioners' case does not have any merit and his reply to be dismissed.

34. I have heard the learned counsels of the petitioners and the State-Respondents.

35. Having heard the learned Advocates and on careful perusal of the entire materials on record, this Court finds that the office of the District Magistrate, East Champaran does not maintain any roster of the Group D post of Chowkidars. As no roster on the basis of reservation in respect of the cadre is prepared and maintained by the District Administration, there were illegal appointments indiscriminately to fill up the vacant posts. The Home Department never considered the importance of maintaining roster of the cadre of Chowkidars district wise. Therefore, there were appointments of Chowkidars violating the quota and rota rules.

36. It is needless to say that where posts in a particular cadre are required to be filled up as per reserved points or quotas applicable for reserved candidates, a roster of the cadre is required to be made by the department. Number of candidates belonging to each category against which posts/vacancies have occurred, is to be filled up by the member of the said category. As for example, if out of 141 posts, 70 posts fall vacant in the



category of unreserved candidates, in reserved category 23 posts were to be filled up from Scheduled Castes, 1 post from Scheduled Tribes, 25 posts from EBC, 17 posts from Backward Class and 4 posts from Women Backward Class.

37. Again, it is specifically directed in R.K. Sabharwal's decision that vacancies are to be filled up taking a year as a unit. As for example, since the advertisement was published in the year 2017 for recruitment on the post of Chowkidars and 141 posts were found to be vacant, total number of 141 posts did not surely fall vacant in the year 2016-17. The posts of reserved category are to be assessed taking into account a particular year as a unit. After having such exercise, the vacant post of a particular category is to be decided on the basis of roster points. In other words, if a post in the roster falls vacant belonging to the category of Extremely Backward Class, the said post will be filled up by the candidate of Extremely Backward Class only and not by any other class.

38. If the recruitment process is done following this exercise, there will be gradually deduction of excess appointees in various categories and the roster points shall ultimately be maintained. It may take, say 5 years to fill up the vacant post as per roster points, but this will end arbitrary action of the



Superior Officers in the Home Department as for example by recruiting 92 Chowkidars in a particular year violating the norms.

39. If such exercise is carried out, the direction issued by the Hon'ble Supreme Court in various cases relating to reservation and the constitutional policy contained in Article 16 of the Constitution shall be achieved.

40. For the reasons stated above, the writ petitions are disposed of with following directions:-

(a) The District Administration, East Champaran shall prepare the cadre of Chowkidars on the basis of reservation and roster points and such roster shall be revised year to year, i.e., every year as on 31st December of the previous year.

(b) Vacancy in Group D post of Chowkidar shall be declared year to year in respect of the vacancies of each category of posts that falls vacant at the end of a particular year, i.e., on 31st December of the previous year.

(c) Vacancy shall be declared on the basis of roster point taking into consideration the reservation policy declared in 1991 Act. The newly appointed candidates shall acquire the vacant post in the roster on the basis of their selection, meaning thereby they cannot be put below the candidates, who are



working en bloc.

(d) In respect of the 141 vacancies, the District Administration shall take the similar exercise as mentioned in Points No. (a), (b) and (c) and declare the vacancy taking into account 50% of unreserved candidate and 50% of reserved category of the vacancy and rewrite the vacancy position as per their percentage of reservation and they shall consider as to whether the petitioners will come within the zone of consideration or not. Such exercise shall be done within three (03) months from the date communication of the order.

41. With the above directions, the above-mentioned three writ petitions are disposed of.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
CAV DATE	18.07.2024/19.07.2024
Uploading Date	14.08.2024
Transmission Date	N/A

