

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT
THE HONOURABLE SMT JUSTICE V.SUJATHA

WRIT PETITION NO: 30879 OF 2024



BETWEEN:

1. Naga Visweswara Rao Katta, S/o.Chinnabbai, Regd.No:4488697, Aged about 38 years, Occ: Home Guard No.666, R/o.D.No.15/207/2/3/A, Anandapeta, Devenucheruvu, Machilipatnam, Krishna District.
2. BuchupatiChandrudu, S/o.Munaiah, Regd.No:4219890, Aged about 31 years, Occ:Home Guard No.18, R/o.D.No.1/3988, Syadapuram, Thondur, Kadapa, YSR District.
3. Gubili Raja, S/o.Sreeramulu, Regd.No:4484682, Aged about 36 years, Occ:Home Guard No.16, R/o.D.No.1/910, Yeramukapalli, Kadapa, YSR District.
4. Jada Chinna Reddeiah, S/o.Seetharamaiah, Regd.No:4215695, Aged about 35 years, Occ:Home Guard No.383, R/o.D.No.01/09, Kalpanayunicheruvu, Ramapuram, Kadapa, YSR District.
5. N.Sreenivasulu, S/o.Ramulu, Regd.No:4455366, Aged about 41 years, Occ:Home Guard No.268, R/o.D.No.5-172-A, Ulavalapalle, Pendlimarri, Kadapa, YSR District.
6. Ambati Malleswari, D/o.Eswara Reddy, Regd.No:4076035, Aged about 36 years, Occ:Women Home Guard No.532, R/o.D.No.6-2-89, Geetha Street, Allagadda, Kurnool District.
7. Putta Naga Subba Reddy, S/o.Krishna Reddy, Regd.No:4511339, Aged about 39 years, Occ: Home Guard No.528, R/o.Karnapuvandlapalli, Nallaguttapalli, Kadapa, YSR District.
8. Manneti Shankar Reddy, S/o.Narayana Reddy, Regd.No:4304117, Aged about 27 years, Occ:Home Guard No.1016, R/o.Chennamrajupalle, Pendlimarri, Kadapa, YSR District.

9. Venkata Subbbarao Miriyala, S/o.Venkata Surya Rao, Regd.No:4435343,
Aged about 40 years, Occ:Home Guard No.722,
R/o.D.No.6-187/1, Arthamuru Village,
Bantumilli Mandal, Krishna District.
10. Kethavathu Naga Raju, S/o.Srinivasa Rao, Regd.No:4152414,
Aged about 34 years, Occ:Home Guard No.119,
R/o.D.No.3-5-72/17, New Sugali Colony, 2nd Ward,
Sattenapalli, Guntur District.
11. Chintha Lakshman Deep, S/o.Mallikharjuna Rao, Regd.No:4317878,
Aged about 31 years, Occ:Home Guard No.1413,
R/o.D.No.57-8-30, Mallikharjuna Nagar,
Rajahmundry, East Godavari District.
12. Hamsavath Veera Brahmam, S/o.Devaja Naik, Regd.No:4140936,
Aged about 36 years, Occ:Home Guard No.69,
R/o.D.No.5-226, Chakalikunta, Rompicharla, Guntur District.
13. Sadala Adi Reddy, S/o.Kommi Reddy, Regd.No:4071767,
Aged about 35 years, Occ:Home Guard No.1175,
R/o.D.No.7-7, Gudisa, Maredumilli, East Godavari District.
14. Atchanna Dora Kurusam, S/o.Lachanna Dora, Regd.No:4339413,
Aged about 39 years, Occ:Home Guard No.930,
R/o.D.No.7-58, Chinavulempadu, Y.Ramavaram,East Godavari District.
15. Saramanda Lakshmi, D/o.Peddabbai, Regd.No:4214906,
Aged about 39 years, Occ:Women Home Guard No.1206,
R/o.D.No.6-56, Jalluru, Addateegala, East Godavari District.
16. MurlaPentamma, S/o.Nookareddy, Regd.No:4019365,
Aged about 34 years, Occ:Home Guard No.1213,
R/o.D.No.1-44, Vanakarai Village, Rajavommangi, East Godavari District
17. Gummidi Rama Kishore, S/o.Appa Rao, Regd.No:4075129,
Aged about 37 years, Occ:Home Guard No.1194,
R/o.D.No.1-155, Rajavommangi, East Godavari District.
18. Samartha V N Reddy, S/o.Nagaraju, Regd.No:4213587,
Aged about 36 years, Occ:Home Guard No.1159,
R/o.D.No.1-133, Rayapalli Village, Addateegala, East Godavari District.

- 19. MurlaAdhiyamma, S/o.Chinnareddy, Regd.No:4469450,
Aged about 38 years, Occ:Home Guard No.1212,
R/o.D.No.3-169, Rampachodavaram Village, East Godavari District.
- 20. Inthiaz Shaik, S/o.Tajuddin, Regd.No:4036828,
Aged about 38 years, Occ:Home Guard No.201,
R/o.D.No.11-1-2/1, Macherla, Guntur District.
- 21. V.Athmananda Swamy, S/o.MVeerakyathappa, Regd.No:4022846,
Aged about 34 years, Occ:Home Guard No.926,
R/o.D.No.10-107, Maddanakunta Village,
Amarapuram, Ananthapur District.
- 22. KopuriSimhachalam, S/o.Raja Babu, Regd.No:4167185,
Aged about 34 years, Occ:Home Guard No.1165,
R/o.D.No.7-96, Chinnayyapalem, Rajavommangi, East Godavari
District.
- 23. Dunna Raju, S/o.Bhyrawa Swamy, Regd.No:4424763,
Aged about 34 years, Occ:Home Guard No.1148,
R/o.D.No.3-87, Ramannapalem, Tallarevu, East Godavari District.
- 24. Tamadi Subrahmanyam, S/o.Sathibabu, Regd.No:4311534,
Aged about 34 years, Occ:Home Guard No.217,
R/o.D.No.2-21/1, Kothuru, Tallarevu, East Godavari District.
- 25. Kande Vamsi Krishna, S/o.Srinivasulu, Regd.No:4299384,
Aged about 32 years, Occ:Home Guard No.335,
R/o.Althurthi Village, Podalakuru, SPSR Nellore District.
- 26. Bommidi Eswara Rao, S/o.Krishna Murthy, Regd.No:4216104,
Aged about 33 years, Occ:Home Guard No.477,
R/o.D.No.47-4-99, Yetimoga, Kakinada, East Godavari District.
- 27. VaralammaKanchu, S/o.Krishna Murthy, Regd.No:4127071,
Aged about 35 years, Occ:Home Guard No.1219,
R/o.D.No.5-80, Barrimamidi Village, Gangavaram, East Godavari District.
- 28. Mude Jayanaik, S/o.Navalanaiak, Regd.No:4261240,
Aged about 38 years, Occ:Home Guard No.269,
R/o.D.No.9-12, Sugalithanda, Ramapuram, Kadapa, YSR District.
- 29. Lingamsetty Dhanunjaya, S/o.Ramanjaneyulu, Regd.No:4121451,
Aged about 32 years, Occ:Home Guard No.968,
R/o.D.No.2-108, Rapthadu, Ananthapuram District.

30. Peddeti Bhargav, S/o.Narasimhulu, Regd.No:4207198,
Aged about 39 years, Occ:Home Guard No.733,
R/o.D.No.28-282, Tanakallu, Ananthapuram District.

...PETITIONERS

AND

1. The State of Andhra Pradesh,
Rep.by its Principal Secretary – Home,
Secretariat, Velagapudi, Guntur District.
2. The State Level Police Recruitment Board,
Rep by its Chairman, Mangalagiri, Guntur District.
3. The Director General of Police,
Mangalagiri, Guntur District, Andhra Pradesh.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in disqualifying the petitioners/Home Guards for not securing the qualifying marks in the preliminary test on par with the direct recruit candidates by applying social or communal reservations like i.e., 80 marks for OC, 70 marks for BC and 60 marks for SC/ST and Ex-service men and in applying horizontal reservation to the special category of Home Guards pursuant to the notification issued in Rc.No.16 1/SLPRB/Rect.2/2022, dated 28-11-2022 by the 2nd respondent is illegal, arbitrary, unjust and contrary to Rule 3(C)(D) of the Rules issued in G.O.Ms.No.315 Home (Police C) Department, dated 13-10-1999 and as amended by G.O.Ms.No.97, dated 01-05-2006 and further direct the respondents to prepare a separate merit list among the Home Guards against the vacancies/percentage of quota meant for Home Guards by treating the petitioners as special category without reference to the social/communal reservations and then consider their cases by allowing the petitioners for further process of selection like Physical test and final test for appointment as Police Constable (Civil/APSP) pursuant to the notification issued in Rc.No. 161/SLPRB/Rect.2/2022, dated 28-11-2022.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to allow the petitioners to appear for further process of selection i.e., to attend the physical measurement test and final written test treating the petitioners as separate category for the vacancies meant for Home Guards pursuant to the notification issued in Rc.No.161/SLPRB/Rect.2/2022, dated 28-11-2022 by the 2nd respondent for appointment as police constables against the quota meant for Home Guards, pending disposal of the above writ petition.

Counsel for the Petitioner: SRI B V ANJANEYULU

Counsel for the Respondents: GP FOR SERVICES - I

The Court made the following order:



1
**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

FRIDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

WRIT PETITION NO: 30879/2024

Between:

Naga Visweswara Rao Katta, and 29 others

...PETITIONER(S)

AND

The State of Andhra Pradesh and 2 others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1. B V ANJANEYULU

Counsel for the Respondent(S):

1. GP FOR SERVICES I

The Court made the following:

ORDER :

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

"... to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in disqualifying the petitioners/Home Guards for not securing the qualifying marks in the preliminary test on par with the direct recruit candidates by applying social or communal reservations i.e., 80 marks for OC, 70 marks for BC and 60 marks for SC/ST and ex-service men and in applying horizontal reservation to the special category of Home Guards pursuant to the Notification issued in Rc.No.161/SLPRB/Rect.2/2022 dated 28.11.2022 by the 2nd respondent is illegal, arbitrary, unjust and contrary to Rule 3(C) (D) of the rules issued in G.O.Ms.No.315 Home (Police-C) Department dated 13.10.1999 and as amended by G.O.Ms.No.97, Dated 01.05.2006 and further direct the respondents to prepare a separate merit list among the Home Guards against the Vacancies / percentage of quota meant for Home Guards by treating the petitioners as special category without reference to the social/communal reservations and then consider their cases by allowing the petitioners for further process of selection like Physical test and final test for appointment as Police constable (Civil/APSP pursuant to the notification issued in Rc.No.161/SLPRB/Rect.2/2022, dated 28.11.2022, on par with the other candidates in W.P.No.6631 of 2023 and batch, dated 18.12.2024....."

2. Heard learned counsel for the petitioners and learned Government Pleader for Services-I appearing for the respondents.

3. During the course of hearing, learned counsel for the petitioners would submit that the issue involved in this Writ Petition is squarely covered by the common order, dated 18.12.2024 passed by this Court in W.P.Nos.6631 of 2023 and batch and requested to pass a similar order in this Writ Petition also. The same is not disputed by the learned Government Pleader for Services-I appearing for the respondents. The operative portion of the said order, reads as under:

42. Given the discussion *supra*, all the Writ Petitions are disposed of with the following directions:

a) The 2nd respondent shall prepare a separate inter-se merit list in respect of Home Guards being a special category.

b) Amendment to Rule 3 (C) of A.P. Police (Stipendiary Cadet Trainee) Rules, by G.O.Ms.No.87 dated 15.07.2016, will not come in the way of the 2nd respondent in preparing a separate inter-se merit list among the Home Guards.

c) After preparation of the said list, the 2nd respondent shall apply compartmentalized horizontal reservation in respect of each category as per the notification.

d) Regarding the local candidate issue, the 2nd respondent shall follow the ratio in W.P.No.21715 of 2017 and batch dated 15.11.2017.

e) The 2nd respondent shall complete the exercise as expeditiously as possible preferably within six weeks from the date of receipt of the copy of the order.

f) The petitioners in the above writ petitions shall not claim any vested right because of interim directions granted pending the writ petitions. Those interim directions or protections are granted enabling the petitioners to participate in the 2nd level examination only, of course, subject to the preparation of a separate inter-se merit list.

4. In view of the same, for the reasons alike in the aforesaid order, this Writ Petition is also disposed of, in terms of the common order, dated 18.12.2024 passed by this Court in W.P.Nos.6631 of 2023 and batch. There shall be no order as to costs.

5. Registry is directed to attach the copy of the order, dated 18.12.2024 passed by this Court in W.P.No.6631 of 2023 and batch to this order. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

//TRUE COPY//

SD/- P. VINOD KUMAR
ASSISTANT REGISTRAR
Per *St*
SECTION OFFICER

To,

1. The Principal Secretary - Home, State of Andhra Pradesh, Secretariat, Velagapudi, Guntur District.
 2. The Chairman, State Level Police Recruitment Board, Mangalagiri, Guntur District.
 3. The Director General of Police, Mangalagiri, Guntur District, Andhra Pradesh.
 4. One CC to Sri B V Anjaneyulu, Advocate [OPUC]
 5. Two CCs to GP for Services - I, High Court of Andhra Pradesh. [OUT]
 6. Two CD Copies
- (Along with a copy of the order dated 18.12.2024 in WP.No.6631 of 2023 & Batch)
RAM

HIGH COURT

DATED:27/12/2024

ORDER

WP.No.30879 of 2024



**DISPOSING OF THE WP
WITHOUT COSTS**



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3331]

WEDNESDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

W.P.Nos.6631, 5184, 5292, 5760, 5911, 5943, 6060, 6318, 6964, 8914 and
10286 of 2023 & W.P.Nos.17955, 24480, 25097, 25913, 26215, 26226,
26325, 26371, 26372, 26389, 26547, 26553, 26616, 26617, 26641, 26648,
26650, 26655, 26660, 26716, 26727, 26736, 26762, 26782, 26783, 26829,
26886, 26905, 26913, 26920, 26926, 26929, 27028, 27050, 27055, 27060,
27156, 27164, 27198, 27202, 27206, 27209, 27213, 27216, 27265, 27339,
27346, 27347, 27354, 27359, 27485, 27488, 27489, 27505, 27511, 27513,
27521, 27528, 27574, 27621, 27649, 27652, 27653, 27666, 27691, 27797,
27815, 27827, 27847, 28145, 28305, 28313, 28326, 28327, 28340, 28342,
28347, 28448, 28449, 28455, 28467, 28470, 28473, 28477, 28482, 28641,
28659, 28660 and 28692 of 2024

WRIT PETITION NO: 6631/2023

Between:

Dabbada Gopi and Others

...PETITIONER(S)

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.G SEENA KUMAR

Counsel for the Respondent(S):

1. GP FOR SERVICES I

ALONG WITH W.P.Nos.5184, 5292, 5760, 5911, 5943, 6060, 6318, 6964, 8914 and 10286 of 2023 & W.P.Nos.17955, 24480, 25097, 25913, 26215, 26226, 26325, 26371, 26372, 26389, 26547, 26553, 26616, 26617, 26641, 26648, 26650, 26655, 26660, 26716, 26727, 26736, 26762, 26782, 26783, 26829, 26886, 26905, 26913, 26920, 26926, 26929, 27028, 27050, 27055, 27060, 27156, 27164, 27198, 27202, 27206, 27209, 27213, 27216, 27265, 27339, 27346, 27347, 27354, 27359, 27485, 27488, 27489, 27505, 27511, 27513, 27521, 27528, 27574, 27621, 27649, 27652, 27653, 27666, 27691, 27797, 27815, 27827, 27847, 28145, 28305, 28313, 28326, 28327, 28340, 28342, 28347, 28448, 28449, 28455, 28467, 28470, 28473, 28477, 28482, 28641, 28659, 28660 and 28692 of 2024

The Court made the following:

COMMON ORDER

Since the issue involved in all the writ petitions is the same, all the writ petitions are disposed of by way of this common order.

2. Heard Sri G.Seena Kumar and Sri N.Pramod, Sri Mojjada Hari Krishna, Sri Narra Srinivasa Rao, Sri S.V.S.S. Siva Ram, learned counsel for petitioners and Sri Dammalapati Srinivas, learned Advocate General for respondents.

3. The batch of writ petitions was filed to declare the action of respondents in disqualifying the petitioners/Home Guards for not securing the qualifying marks in the Preliminary Written Test on par with the direct recruit candidates by applying social or communal reservations i.e., 80 marks for OC (40%), 70

marks for BC(35%) and 60 marks for SC/ST and ex-servicemen (30%) and in applying horizontal reservation to the special category of Home Guards in pursuance of the notification issued in Rc.No.161/SLPRB/Rect.2/2022 dated 28.11.2022 by the 2nd respondent and also not extending the benefit of the orders of this Court in W.P.No.21715 of 2017 and batch dated 15.11.2017, as illegal, arbitrary and contrary to Rule (C) (D) of the Rules issued in G.O.Ms.No.315 HOME (Police.C) Department dated 13.11.1999 as amended by G.O.Ms.No.97 dated 01.05.2006.

4. The averments in the W.P.No.10286 of 2023 and counter affidavit lead to the entire batch of writ petitions.

5. W.P.No.10286 of 2023 was filed to declare the action of respondents in not allowing the petitioners 1 to 3 herein to appear for the Physical Measurement Test / Physical Efficiency Test by treating them as non-local candidates and in not extending the benefit in terms of the judgment of this Court in W.P.No.21715 of 2017 and batch dated 15.11.2017; not fixing a separate merit list for home guards being a special category, disqualifying the home guards on the ground of not securing marks prescribed in the notification i.e. 40%, 35% and 30% without fixing a separate cut off mark to them etc., as illegal, irrational and arbitrary.

6. a) A notification *vide* Rc.No.161/SLPRB/Rect.2/2022 dated 28.11.2022, was issued by the 2nd respondent inviting applications online for Stipendiary Cadet Trainee (SCT) Police Constables (Civil) and Stipendiary Cadet Trainee (SCT) Police Constables (APSP) in the police department. Clause 2 of the notification prescribes that a preliminary written test will be held on 22.01.2023. The total number of vacancies notified for SCT Police Constables (Civil) for Post Code No.21 is 3580 and for SCT Police Constables (APSP) for Post Code No.23 is 2520.

b) Clause-7 prescribes Reservation for Special Categories i.e. Meritorious Sports Personnel (MSP); National Cadet Corps (NCC); Children of Police Personnel (CPP); Children of deceased and Incapacitated Police Personnel (CDI) and Home Guard (HG). It was further prescribed that the vacancies be adjusted horizontally on a compartmentalised basis i.e., the reservation of Special Category candidates shall be adjusted proportionately in the respective communal category to which the candidate belongs. Vacancies that remain unfilled in any of the special categories for want of eligible candidates shall be added to the vacancies to be filled by direct recruitment.

c) Clause 13 of the notification prescribes eligibility conditions. Clause 13-B(a)(i) prescribes an age limit, in respect of Home Guards, one should attain 18 years and must not have attained the age of 32 years as of 01.07.2022 i.e., must have been born not earlier than 02.07.1990 and not later than 01.07.2004. Clause 13-B (a)(ii) prescribes an age limit in respect of all other candidates. Age relaxations are also indicated in the respective communal categories.

d) Clause 20 prescribes a selection procedure/scheme. As per Note-1, the minimum marks to be secured by the candidates to qualify in the Preliminary Written Test is 40% for OCs (including those claiming EWS reservation); 35% for BCs; and 30% for SCs/STs/Ex-Servicemen. Note-3 makes it clear that marks obtained in the Preliminary Written Test will have no relevance in the final selection. The candidates who qualified in the Preliminary Written Test are eligible for the Physical Measurement Test. The candidate, who qualified in the Physical Measurement Test will be required to undergo the Physical Efficiency Test (PET). Thereafter, a final written examination will be conducted. The final selection of the candidates would be

made strictly on relative merit, as per marks obtained by them based on their score in the Final Written Examination for 200 marks, for the candidates who qualified in Physical Efficiency Test and as per the provisions of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 and G.O. (P) No.763, General Administration (SPF.A) Department dated 15.11.1975, as amended from time to time. Clause 21 prescribes reservation to local candidates.

e) Clause-22 prescribes Special Representation for Special Categories, wherein it was mentioned that as per G.O.Ms.No.87 HOME (Legal-II) dated 15.07.2016, the vacancies reserved for special categories referred to in rule 3(D) shall be adjusted horizontally on compartmental basis i.e., the reservation of special category candidates shall be adjusted proportionately in the respective communal category to which the candidate belongs. (emphasis is mine)

f) Clause-22 (A) speaks about the Percentage of Quota in the Special Categories. 15% for Home Guards (HG) in Post Code No.21 and 25% for Home Guards (HG) (APSP) in Post Code No.23. Clause-22 (B) (iii) makes it clear that to claim benefit under Home Guard category, the persons, who, as on the date of notification, have been on duty as Home Guard in the State of Andhra Pradesh for a minimum duration of 360 days within two years and who are continuing their service as Home Guards come under the category.

g) Clause 33 of the notification prescribes general instructions. Clause-33 (x) prescribes that the Board reserves the right to issue corrigendum/supplementary notifications from time to time in case there is any modification in rules or in the recruitment process.

7. All the petitioners, working as Home Guards, applied for the posts. Except for the petitioners 1 to 3 in W.P.No.10286 of 2023 and some other candidates, all the other petitioners were not qualified in the Preliminary Written Test i.e. failed to secure a minimum 40% for OCs (including those claiming EWS reservation); 35% for BCs; and 30% for SCs/STs/Ex-Servicemen. When the 2nd respondent Board intended to proceed further with the recruitment process i.e. Physical Measurement Test, all these writ petitions were filed. Interim protection was granted.

8. The main grounds on which these writ petitions were filed are as follows:

8 (a). Home Guards are to be treated as a special category and the minimum marks prescribed as per Clause-20 do not apply to that category. The 2nd respondent should have prescribed separate cut-off marks for Home Guards being a special category by itself. No cut-off/minimum marks are prescribed to the Home Guards in the notification. After the results were declared, the petitioners came to know that they were equated with direct recruits. Since the Home Guards are treated as a special category and posts were reserved, taking away that privilege without indicating the cutoff marks is arbitrary. Even if Rule 22 of A.P.State and Subordinate Service Rule is made applicable, as per the notification, the Rule of Reservation needs to be followed horizontally on a compartmental basis by adjusting the selected candidates in the respective category from out of the Home Guards separately. The 2nd respondent failed to extend the ratio in W.P.No.21715 of 2017 and batch dated 15.11.2017 regarding local candidates. The ratio in judgments earlier to the notification, to prepare a separate merit list treating the Home Guards as a special category, was not adhered to. Even after the declaration of the Preliminary Written Test, the State now can change or relax the Rules.

9. A counter affidavit was filed on behalf of 2nd respondent. Learned Advocate General made the following submission while reiterating the averments in the counter affidavit.

9 (a). In respect of special representation for special categories, an amendment was brought in by G.O.Ms.No.87 HOME (Legal-II) Department dated 15.07.2016. The vacancies reserved for special categories referred to in Rule 3 (D) of G.O.Ms.No.97 Home (Legal-II) Department dated 01.05.2006, shall be adjusted horizontally on a compartmental basis i.e. the reservation of Special Category candidates shall be adjusted proportionately in the respective communal category to which the candidate belongs. The reservations for special categories, as per the notification are not vertical, but it is horizontal on a compartmental basis. If a separate merit list, among the Home Guards against the vacancies/percentage of quota, is prepared, the overall reservation will cross 50% and hence, the same will be hit by the judgment of Hon'ble Apex Court in **Indra Sawhney Vs. Union of India**¹.

b) The Andhra Pradesh State and Subordinate Service Rules provide for 50% reservation to the Scheduled Castes, Scheduled Tribes and Backward Classes i.e. 15% for SCs, 6% for STs and 29% for BCs. Thus, the reservation for Special Category in Clause-7 of the notification must be applied horizontally on a compartmentalised basis, as any vertical reservation in addition to the reservation provided for in Rule 22 of the Andhra Pradesh State and Subordinate Service Rules, would be in violation of the ruling in **Indra Sawhney's** case.

c) A separate *inter se* merit list among the Home Guards against the vacancies/percentage of quota meant for Home Guards without reference to

¹ 1992 Supp (3) SCC 217

their category of rule of reservation comes under the vertical reservation. After amendment to G.O.Ms.No.315 dated 13.10.1999 by G.O.Ms.No.87 dated 15.07.2016, two notifications were issued and the process was completed successfully. None challenged the notifications. The petitioners having consciously participated in the notification, after the declaration of Preliminary Written Test results on 05.03.2023, filed the writ petitions. The petitioners, having known the conditions in the notification, attended the written test having unsuccessful, cannot turn around and challenge the notification.

d) The petitioners, who participated in the selection process are estopped and acquiesced from questioning the process. The Home Guards should get qualifying marks as per their category under the rule of reservation and there is no necessity to prescribe separate qualifying marks in the Written Test exclusively under the Special Category including Home Guards. Under the special category, the Home Guards have provisions such as relaxation of age as well as social reservation. Many Home Guards became eligible for participating in this recruitment claiming the age relaxation under social reservation.

e) There cannot be two types of cut-off marks for a single selection i.e. one for social reservations and another for special categories. The special category of Home Guards was increased from 8% to 15% in PC (Civil) and from 10% to 25% in PC (APSP) from the year 2022 onwards.

f) The Home Guard is a voluntary post and it cannot be compared with the ex-servicemen on providing qualifying marks as the quota for ex-servicemen is found in the Andhra Pradesh State and Subordinate Service Rules, 1996 (for short "**Rules 1996**").

g) The judgments relating to special categories rendered by the Andhra Pradesh Administrative Tribunal, confirmed by the Division Bench of this Court were related to notifications issued prior to amendment i.e. G.O.Ms.No.87 dated 15.07.2016 (Horizontal reservation on the compartmental basis for special categories) and hence, those judgment have no application and eventually, prayed to dismiss the writ petition.

CONSIDERATION:

10. There is no dispute about the notification issued by the 2nd respondent *vide* Rc.No.161/SLPRB/Rect.2/2022 dated 28.11.2022 inviting applications for the posts of (SCT) Police Constables (Civil) and (SCT) Police Constables (APSP) in the police department. As noted *supra*, the total number of posts notified is 6,100. The Home Guards come under a special category as per Rule 3 (D)(v) of A.P. Police (Stipendary Cadet Trainee) Rules, 1999. Posts reserved in Civil is 15% for Post Code No.21 and in APSP is 25% for Post Code No.23. Out of total posts, 1167 vacancies are meant for Home Guards. In the notification, no separate cut-off marks were prescribed. Clause 20 prescribes a selection procedure. Clause 20 (A) speaks about the Preliminary Written Test. As per the notification, the minimum marks to be secured by the candidate to qualify in the Preliminary Written Test is 40% for OCs (including those claiming EWS reservation); 35% for BCs; and 30% for SCs/STs/Ex-Servicemen. Thus, a person belonging to the respective social communal category should secure minimum marks of 80, 70 and 60 respectively.

11. Some of the aspirants approached the Andhra Pradesh Administrative Tribunal, in the year 2012 to direct the respondents to prepare a separate inter-se merit list for home guards in each unit of appointment etc., No doubt, as rightly pointed out by the learned counsel for petitioners that the Andhra Pradesh Administrative Tribunal in O.A.No.7802 of 2012 and Batch dated

24.01.2013 held that a separate quota was reserved for Home Guards in the selection and hence, the Home Guards can compete both for general vacancies and exclusive vacancies reserved for them under the Home Guard quota. If the Home Guards want to get selected under the general quota, then they have to fulfill the norms mentioned in the notification. However, when they compete among themselves for the posts reserved for Home Guards, they have to be considered as a separate class or category. In the absence of a condition indicating that the Home Guards shall also secure minimum marks prescribed for various communities under general vacancies, the authorities are not justified in insisting the Home Guards, to get qualified marks in the written examination. The Home Guards must be treated as a separate class and a separate *inter-se* seniority list must be prepared under that quota. Against the said orders, W.P.No.19566 of 2013 and the batch were filed. A Division Bench of this Court by order dated 02.03.2023, dismissed the writ petitions. The order became final. The Division Bench observed that a certain percentage of posts are reserved for special categories including home guards. The direction given by the Tribunal to create a merit list in the examination without linking it to the specified marks prescribed to different communities and categories was approved. The Home Guards are a special class. The minimum qualification marks are not prescribed in the notification and hence, the relief granted by the tribunal, they are entitled to. Since Home Guards are a separate class and no minimum marks are prescribed for this class, they are entitled to a separate merit list. The Division Bench relied on the order passed by another Division Bench in W.P.No.21604 of 2016. After the order by the A.P Administrative Tribunal and before the Division Bench order, the present notification was issued by the 2nd respondent.

12. The Government of Andhra Pradesh issued G.O.Ms.No.315 Home (Police-C) Department dated 13.10.1999 framing the Andhra Pradesh Police

(Stipendiary Cadet Trainee) Rules, 1999. These rules were issued under Article 309 of the Constitution of India and in supersession of all the relevant provisions in various ad-hoc Rules and Special Rules. These Rules came into effect from 03.12.1997. Later, G.O.Ms.No.97 Home (Legal-II) Department dated 01.05.2006 was issued amending certain the Rules in G.O.Ms.No.315 dated 13.10.1999. Rule 3 in G.O.Ms.No.315 dated 13.10.1999 was substituted. Clauses 3 (A) to (G) were added. Clauses 3 (C) and (D) of G.O.Ms.N.97 dated 01.05.2006, which are relevant are extracted below:

Clause 3(C) states that special representation (reservation) provided in Rule-22 of the A.P. State and Subordinate Service Rules, 1996 shall be applicable except in case of Special Categories referred to in Rule 3 (D).

Clause 3(D): Special Categories: The various special categories and the eligibility criteria to be included in each of them are as follows:

- (i) ...
- (ii) ...
- (iii) ...
- (iv) ...
- (v) Home Guard, the persons, who, as on the date of notification, have been on duty as Home Guard in the State of Andhra Pradesh for a minimum duration of 360 days within a period of two years and who are still continuing their service as Home Guards

13. The minimum marks, to be secured by the candidates to qualify in the written examination were also prescribed as 40% for OCs (including those claiming EWS reservation); 35% for BCs; and 30% for SCs/STs/Ex-Servicemen. Later, G.O.Ms.No.87 Home (Legal-II) Department dated 15.07.2016 was issued making an amendment to G.O.Ms.No.315 dated 13.10.1999.

14. Rule 3 (C) was substituted as indicated below:

(b) for Rule 3 (C), the following shall be substituted namely: -

(C) (i) (a) The Rule of Special Representation (Reservation) provided in Rule 22 of the Andhra Pradesh State & Subordinate Service Rules, 1996 shall be applicable to all the classes and categories constituted in Rule -2.

(b) The vacancies reserved for special categories referred to in Rule – 3 (D) shall be adjusted in a horizontal manner on compartmental basis i.e., the Reservation of Special Category candidates shall be adjusted proportionately in the respective communal category to which the candidate belongs.

(ii) The rule of Special Representation (Reservation) provided in Rule 22 of the Andhra Pradesh State & Subordinate Service Rules, 1996 shall not be applicable for 75% vacancies in the Scheduled Areas of the State of Andhra Pradesh for Stipendiary Cadet Trainee Police Constable (Civil).

(iii) The vacancies which remain unfilled in any of the above special categories for want of eligible candidates shall be added to the vacancies to be filled by the Director Recruitment.”

15. The present notification was issued strictly in consonance with the Andhra Pradesh Police (Stipendiary Cadet Trainee) Rules, 1999 as amended from time to time. However, the minimum marks to be secured by the candidate to qualify for the Preliminary Written Test were not modified as per the Ratio in the order in O.A. later confirmed by the Division Bench of this Court.

16. Thus, by amending G.O.Ms.No.315 dated 13.10.1999 by G.O.Ms.No.87 dated 15.07.2016, the Rule of special representation (reservation) provided under Rule 22 of the Andhra Pradesh State & Subordinate Service Rules, 1996 made applicable to the special categories also.

17. For better clarification and differentiation, Rule 3, Rule 3 (C) & (D) in G.O.Ms.No.315 dated 13.10.1999, G.O.Ms.No.97 dated 01.05.2006 and G.O.Ms.No.87 dated 15.07.2016 are extracted below:

Rule 3 in G.O.Ms.No.315 dated 13.10.1999	Rule 3 (C) (D) as amended in G.O.Ms.No.97 dated 01.05.2006	Rule 3 (C) (D) as amended in G.O.Ms.No.87 dated 15.07.2016
<p>3. <u>Qualifications:</u> The qualifications (Academic, age and Physical Standards) for various categories included in these rules shall be as specified in the Annexure appended to these rules.</p>	<p>(C) The rule of special representation (reservation) provided in Rule 22 of A.P. State & Subordinate Service Rules, 1996 shall be applicable except in case of special categories referred to in rule 3 (D) of these rules:-</p> <p>(D) <u>Special Categories:</u> The various special categories and the eligibility criteria to be included in each of them are as below: (i) ... (ii) ... (iii) ... (iv) ... (v) <u>Home Guards</u>:- Persons who, as on the date of notification, have been on duty as Home Guards for a minimum duration of 360 days within a period of two years and who are still continuing their service as Home Guards.</p>	<p>(b) for Rule 3 (C), the following shall be substituted namely: - (C) (i) (a) The Rule of Special Representation (Reservation) provided in Rule 22 of the Andhra Pradesh State & Subordinate Service Rules, 1996 shall be applicable to all the classes and categories constituted in Rule -2.</p> <p>(b) The vacancies reserved for special categories referred to in Rule - 3 (D) shall be adjusted in a horizontal manner on compartmental basis i.e., the Reservation of Special Category candidates shall be adjusted proportionately in the respective communal category to which the candidate belongs.</p> <p>(ii) The rule of Special Representation (Reservation) provided in Rule 22 of the Andhra Pradesh State & Subordinate Service Rules, 1996 shall not be applicable for 75% vacancies in the Scheduled Areas of the State of Andhra Pradesh for Stipendiary Cadet</p>

		<p>Trainee Police Constable (Civil)</p> <p>(iii) The vacancies which remain unfilled in any of the above special categories for want of eligible candidates shall be added to the vacancies to be filled by the Direct Recruitment."</p>
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18. Whether substitution of Rule 3(C) of the Rules by G.O.Ms.No.87 dated 15.07.2016 takes away the ratio in the order passed in O.A.No.7799 of 2012, 7901 of 2012 and batch and the order in W.P.No.19566 of 2013 and batch etc?

19. Earlier, the rule of special representation (reservation) provided in Rule 22 of the Rules 1996 was not made applicable to special categories, however, by amendment *vide* G.O.Ms.No.87 dated 15.07.2016 the rule of special representation (reservation) provided in Rule 22 of the Rules shall be made applicable to all classes contained in Rule 2. The vacancies reserved for special categories referred to in Rule 3 (D) shall be adjusted horizontally on a compartmentalized basis.

20. To understand the concept of horizontal reservation, it is profitable to refer to the judgments in **Indra Sawhney's** case and **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission**². In Para-812 of **Indra Swahney's** case, it was 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

² (2007) 8 SCC 785

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 relating 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 **Rajesh Kumar Daria's** case, the Apex Court observed in Paragraphs 8 to 11 thus:

8. We may also refer to two related aspects before considering the facts of this case. The first is about the description of horizontal reservation. For example, if there are 200 vacancies and 15% is the vertical reservation for SC and 30% is the horizontal reservation for women, the proper description of the number of posts reserved for SC, should be: "For SC: 30 posts, of which 9 posts are for women." We find that many a time this is wrongly described thus: "For SC: 21 posts for men and 9 posts for women, in all 30 posts." Obviously, there is, and there can be, no reservation category of "male" or "men".

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are

"horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said that the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under open competition category. (Vide Indra Sawhney [1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] , Union of India v. Virpal Singh Chauhan [(1995) 6 SCC 684 : 1996 SCC (L&S) 1 : (1995) 31 ATC 813] and Ritesh R. Sah v. Dr. Y.L. Yamul [(1996) 3 SCC 253] .) But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of "Scheduled Caste women". If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. **Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes.** To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19

SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates. (But if the list of 19 SC candidates contains more than four woman candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that "SC women" have been selected in excess of the prescribed internal quota of four.) (emphasis is mine)

10. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 woman candidates, which was equal to the quota for "general category women". There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven woman candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 and 41 of the selection list) and another eleven (candidates at Sl. Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 and 80 of the selection list) included under reservation quota for "general category women". This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of "OBC women", instead of adding only two which was the shortfall. Thus there were in all 8 women candidates among the 24 OBC candidates found in the selection list. The proper course was to list 24 OBC

candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for women.”

22. The Hon'ble Apex Court explained the compartmentalised horizontal reservation concept in **Anil Kumar Gupta v. State of U.P.**³ and observed thus:

“15. On a careful consideration of the revised notification of 17.12.1994 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 intertransferable, 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 per cent) 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 OBCs; if the 112 special reservation seats are also divided proportionately as between OC, OBC, SC and ST, 30 seats would be allocated to the OBC category; in other words, thirty special category students can be accommodated in the OBC category; but say only ten special reservation candidates belonging to OBC are available, then these ten candidates will, of course, be allocated among OBC quota but the remaining twenty seats cannot be transferred to OC category (they will be available for OBC 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 OC category or not; the special reservation would be a watertight compartment in each of the vertical reservation classes (OC, OBC, SC and ST). *As against this*, what happens in the overall reservation is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of

³ (1995) 5 SCC 173

special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to OC category which means that the number of special reservation candidates in OC category would be $56+20=76$. Further, if no special reservation candidate belonging to SC and ST is available then the proportionate number of seats meant for special reservation candidates in SC and ST also get transferred to OC category. The result would be that 102 special reservation candidates have to be accommodated in the OC 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 OC, OBC, SC and ST will not be altered.

16. Now coming to the revised notification of 17-12-1994, it says that "*horizontal reservation* be granted in all medical colleges *on total seats* of all the courses...". These words are being interpreted in two different ways by the parties; one says it is overall reservation while the other says it is compartmentalised. Para 2 says that the candidates selected under the aforesaid special categories "would be kept under the categories of Scheduled Castes/Scheduled Tribes/Other Backward Classes/General to which they belong. For example, if a candidate dependent on a freedom fighter selected on the basis of reservation belongs to a Scheduled Caste, he will be adjusted against the seat reserved for Scheduled Castes". This is sought to be read by the petitioners as affirming that it is a case of compartmentalised reservation. May be or may not be. It appears that while issuing the said notification, the Government was not conscious of the distinction between overall horizontal reservation and compartmentalised horizontal reservation. At any rate, it may not have had in its contemplation the situation like the one which has arisen now. This is probably the reason that this aspect has not been stated in clear terms.

17. 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" and "compartmentalised horizontal reservation", since it

appears from the judgment in *Swati Gupta* [(1995) 2 SCC 560] that in the first notification issued by the Government of Uttar Pradesh on 17-5-1994, the thirty per cent 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 per cent but at the same time it was stated that thirty per cent 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., ST, SC, OBC and OC.** 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 OC category alone — and none from the OBC or for that matter, from SC or ST. It can well happen the other way also in a given year. **(emphasis is mine)**

18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied — in case it is an overall horizontal reservation — no further question arises. **But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of**

compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota." (emphasis added)

23. A compartmentalized horizontal reservation refers to a type of reservation policy, where a specific percentage of seats or positions, is allocated to a particular group or category within each category or group. A fixed percentage of seats or positions is allocated to reserved groups within each category. For example, in an institution that has a horizontal reservation for women with 30% of seats reserved for women in each category (General, OBC, SC, ST etc.) within each category 30% of seats would be reserved for women, ensuring representation of women across all categories. In fact, compartmentalized horizontal reservation ensures the representation of the reserved group within each category. It also ensures fairness by providing equal opportunity to the reserved groups within each category.

24. Out of 1167 posts reserved for Home Guards in Civil and APSP, at the hearing it was brought to the Court's notice that only 150 or 160 candidates are qualified in Preliminary Written Test based upon the qualifying marks prescribed. This court presumes that the substitution of Rule 3 C by incorporating the words horizontally compartmentalized is a result of the order in O.As batch. The Tribunal directed the authorities to prepare a separate *inter-se* seniority among Home Guards. To meet such a contingency, the legislature thought it fit to amend the Rule and accordingly amended the Rule. Having amended the Rule, the authorities should have prepared a separate

inter-se merit list among the Home Guards it being a special category. In all fairness, the 2nd respondent should have prepared a separate merit list for Home Guards keeping in view the ratio in aforementioned orders.

25. It is apt to extract the observation of the Hon'ble Apex Court in **Union of India Vs. K.M. Shankarappa**,⁴, which reads thus:

"7. We are unable to accept the submission of the learned counsel. The Government has chosen to establish a quasi-judicial body which has been given the powers, inter alia, to decide the effect of the film on the public. Once a quasi-judicial body like the Appellate Tribunal, consisting of a retired Judge of a High Court or a person qualified to be a Judge of a High Court and other experts in the field, gives its decision that decision would be final and binding so far as the executive and the Government is concerned. To permit the executive to review and/or revise that decision would amount to interference with the exercise of judicial functions by a quasi-judicial Board. It would amount to subjecting the decision of a quasi-judicial body to the scrutiny of the executive. Under our Constitution the position is reverse. The executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The legislature may, in certain cases, overrule or nullify a judicial or executive decision by enacting an appropriate legislation. However, without enacting an appropriate legislation, the executive or the legislature cannot set at naught a judicial order. The executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consisting of experts decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal."

26. In the case at hand, in the notification the cut-off marks for the Home Guards category are not prescribed. The petitioners having noticed proceeded

⁴ (2001) 1 SCC 582

with the examination, without challenging the notification, whether participation in the process would amount to acquiescence?

27. Learned Advocate General would contend that having participated and was unsuccessful in the selection process, the petitioner cannot turn around and complain about the infringement, if any. Learned Advocate General placed reliance upon the judgments in **State of U.P. Vs. Karunesh Kumar**⁵.

28. The Apex Court held that a candidate who has participated in the selection process adopted under the 2015 Rules is estopped and has acquiesced himself from questioning thereafter.

29. For the same proposition, **Sadanda Halo Vs. Mompadz Ali Sheik**⁶, was also relied upon, wherein the Apex Court held that it is a settled position that the unsuccessful candidates cannot turn back and assail the selection process.

30. Learned Advocate General would also submit that the vacancies remained unfilled in any of the special categories for want of eligible candidates shall be added to the vacancies to be filled by the direct recruitment and thus, the rules of the game now cannot be changed by relaxing the Rules and relied upon **Anupal Singh Vs State of U.P. through the Principal Secretary, Personnel Department and others**⁷. In Para-56 of the Judgment, the Apex Court observed as follows:

Unfilled vacancies of horizontal reservation filled by candidates of vertical reservation

62. The contention of the private respondents is that as per the statutory requirement, the horizontal reserved vacancies were unfilled and those unfilled vacancies of horizontal category were filled by vertical reservation

⁵ AIR 2023 SC 52

⁶ (2008) 4 SCC 619

⁷ (2020) 2 SCC 173

candidates/other category candidates, which is in violation of the statutory provisions vitiating the selection process. On behalf of the U.P. Public Service Commission, Mr Shrish Kumar Misra, learned counsel has furnished the details as to the number of vacancies reserved for horizontal category and the number of candidates found suitable and placed in the respective categories. The said details are as under:

Category	No. of vacancies	No. of selected candidates
Women	1325	156
Dependents of Freedom Fighters	132	45
Ex-Servicemen	330	NIL
Partially blind	84	84
Partially deaf	84	57
One-arm	42	42
One-leg	42	42

On behalf of the U.P. Public Service Commission, it was submitted that one of the policies of the State Government regarding horizontal reservation is that, if the suitable candidates for filling the vacancies reserved for such posts of horizontal reservation are not available and the same are not carried forward; they are filled up by other suitable candidates from amongst the candidates belonging to vertically reserved categories according to their merit. It was submitted that unfilled horizontal reservation vacancies were thus filled up by suitable candidates of respective vertical categories according to their merit which is as per the policy of the Government. The High Court was not right in finding fault with the filling up of vacancies reserved for horizontal reservation with other candidates of respective vertical reservation.

31. However, in the above judgment if a suitable candidate for filling up the vacancy reserved for such post of horizontal reservation, is not available, the same will not be carried forward and the same will be filled up by another suitable candidate amongst the candidates belonging to vertically reserved categories according to their merit.

32. In the case at hand, in the absence of any suitable candidate in a special category, it will be filled up by direct recruitment as per notification. As

discussed *supra*; out of 1167 posts reserved for special category, only 110 or 120 candidates from Home Guards are qualified in Preliminary Written Test. Thus, by creating a right on one hand and taking away their right on the other hand, the Government has taken a calculated risk.

33. In **Rajesh Kumar Varma Vs. State of M.P.**⁸, the Hon'ble Apex Court dealt with the relaxation of minimum qualifying marks for the persons belonging to SC/ST/OBC categories, when the posts reserved were not filled up and observed as follows:

"6. The question at issue in the present case in our opinion is concluded by three decisions of this Court, viz., (1) *State of M.P. v. Kumari Nivedita Jain* [(1981) 4 SCC 296 : (1982) 1 SCR 759] , (2) *Aarti Gupta v. State of Punjab* [(1988) 1 SCC 258 : 1988 SCC (L&S) 322 : (1988) 2 SCR 244] and (3) *Ombir Singh v. State of U.P.* [1993 Supp (2) SCC 64 : AIR 1993 SC 975] In *Nivedita case* [(1981) 4 SCC 296 : (1982) 1 SCR 759] the factual situation was more or less similar. In that case 9400 candidates sought admission to the Medical Colleges for the academic year 1980-81. Out of these, 623 candidates belonged to the Scheduled Castes and 145 belonged to the Scheduled Tribes. On the result of the pre-medical examination, only 18 seats in the category of Scheduled Castes and 2 seats in the category of Scheduled Tribes could be filled up; others belonging to these categories having failed to secure the minimum qualifying marks prescribed by Rule 20. The Selection Board, in exercise of power under note (I) to that rule, gave relaxation of 5 per cent, whereupon 7 more candidates belonging to the Scheduled Castes, one more candidate belonging to the Scheduled Tribes, secured admission, still leaving a balance of 83 seats under SC quota and 105 seats under ST quota to be filled as per Rule 9. But the State Government intervened and by its order dated 9-9-1980 removed the condition relating to minimum qualifying marks in favour of candidates from SC/ST categories. Those belonging to the general category who had secured the minimum qualifying marks but had failed to secure admission challenged the Government order *inter alia* on the grounds that it contravened

⁸ 1995 (2) SCC 129

Regulation 2 of the Medical Council of India and was therefore, hit by Section 19 of the Indian Medical Council Act, 1956 thereby exposing the Medical Colleges to the risk of being de-recognised and that the order of the Government lowered the standard of education, in that, less qualified and less deserving candidates would fill up the vacancies thereby violating the equality clause in Articles 14 and 15 of the Constitution and that even otherwise the order contravened Ordinance 94 of the University of Jabalpur. Repelling of these contentions this Court held that the executive order of 9-9-1980 completely relaxing the condition relating to minimum qualifying marks for entry into Medical Colleges **in the State with respect to SC/ST candidates did not violate either Article 14 or Article 15 of the Constitution, since the relaxation could not be said to be unreasonable. That is because of the constitutional philosophy for the upliftment of the people belonging to the SC/ST/OBC category. It was pointed out that in the absence of any law to the contrary it was open to the State Government to relax the rule prescribing the minimum qualifying marks to ensure that the interests of these category of students was protected and they received State protection to the extent it was necessary for their upliftment.**

7. In the case of *Aarti Gupta* [(1988) 1 SCC 258 : 1988 SCC (L&S) 322 : (1988) 2 SCR 244] 100 seats were reserved for the SC/ST candidates for admission to the MBBS/BDS courses for whom the Indian Medical Council had prescribed by its Regulation 2 a minimum of 40 per cent marks for admission eligibility. Government of Punjab lowered the percentage of pass marks to 35 per cent as against the minimum of 50 per cent for the general category candidates. On the basis of the selection test, only 32 candidates qualified for admission under the reserved category. Ordinarily, the remaining seats would have reverted to the general category but the State Government intervened by an order dated 28-7-1987 whereby the minimum qualifying marks for SC/ST candidates was lowered to 25 per cent. This order of the State Government was put in issue in a writ petition filed by *Aarti Gupta* [(1988) 1 SCC 258 : 1988 SCC (L&S) 322 : (1988) 2 SCR 244]. This Court reiterated that Regulation 2 of the Indian Medical Council was merely recommendatory in nature. In taking this view reliance was placed on the decision in *Nivedita Jain case* [(1981) 4 SCC 296 : (1982) 1 SCR

759] . While upholding the order of the State Government this Court observed as under:

"The standard of medical profession should not be compromised in the national interest. There has been a perceptible fall in the national standards and general efficiency of the professional men. While it is not necessary for us to say anything against reservation, we approve of the concern shown by the Indian Medical Council that high standards of efficiency should be maintained, and that can only be possible if the State and the Council cooperate to maintain a high standard. This aspect should be kept in view when the guidelines are prescribed for the selection of the students for the medical courses."

8. In *Ombir Singh case* [1993 Supp (2) SCC 64 : AIR 1993 SC 975] the question was concerning admission to post-graduate medical course, wherein also it was conceded that it is open to the State Government to relax the requirement of minimum marks and the Court cannot issue a mandamus or direction against it to the State Government."

34. In **State of Orissa Vs. Mohammad Yunus⁹**, the Hon'ble Apex Court while dealing with the posts reserved for ex-service men and fixing eligibility of securing minimum marks observed as follows:

"The fixation of the general standard marks prescribed for the general candidates would undoubtedly be a handicap to the ex-service personnel who are made to compete with youngsters after several years of service put in the defence service. The State Government and the Public Service Commission are directed to consider the desirability to fix a lesser standard than that of the general candidates as ex- servicemen have served the nation in its defence and in the process they may not come on a par with the general candidates. Therefore, some relaxation in their behalf would be necessary to meet the exigencies of coping up with the reservation given to them. Otherwise, reservation would be illusory."

35. In the recent judgment in Civil Appeal No.10434-10438 of 2024 dated 04.09.2024, the Hon'ble Apex Court considered whether an individual who

⁹ 1994 Supp 2 SCC 55

applied against the quota reserved for ex-servicemen is entitled to the benefit of relaxation in qualifying marks in the main examination available to candidates to belonged to SC/ST and other reserved categories. The Apex Court answered the question negatively and held that there was no right vested in an applicant to claim relaxation in qualifying marks on par with the candidates who have applied against reserved categories.

36. Thus, considering the various expressions of the Hon'ble Apex Court, this Court is of the opinion that mere participation in the preliminary written test will not amount to acquiescence, in the facts of these cases.

37. The petitioners are not asking the 2nd respondent to relax the marks. The petitioners being a special category, in view of the order in O.A.No.7802 of 2012 and Batch dated 24.01.2013 and confirmed by the Division Bench in W.P.No.19566 of 2013 and batch dated 02.03.2023 are canvassing to prepare a separate *inter se* seniority merit list among themselves and thereafter apply compartmentalized horizontal reservation.

38. Given the discussion *supra*, substitution of Rule 3 (C) by G.O.Ms.No.87 dated 15.07.2016 will not create any restrictions on the 2nd respondent to prepare a separate *inter se* seniority merit list among the special categories. The 2nd respondent thoughtfully applied the compartmentalized horizontal reservation to the special representation i.e. special category. By doing so, the reservation will not exceed 50%.

39. Concerning the local candidate issue, the learned Advocate General would fairly concede that the ratio of Division Bench judgment of the composite High Court in W.P.No.21715 of 2017 and batch dated 15.11.2017 would squarely apply to the facts of this case.

40. In W.P.No.21715 of 2017 and batch dated 15.11.2017, in pursuance of the notification issued by State Police Recruitment Board for recruitment of Police Constable (Civil), Police Constable (Armed Reserve), Warders (Male) in Prisons and Warders (Female) in Prisons, some of the applicants filed the writ petitions aggrieved by the order of the A.P. Administrative Tribunal, when the APAT directed the Board to consider their cases under General category and not extending the benefit under the special category for Home Guards. The Division Bench of the composite High Court held thus:

15. On facts, there is no dispute about the fact that the writ petitioners hailed from the composite State of Andhra Pradesh and were enrolled as Home Guards in the composite State of Andhra Pradesh. The petitioners have pleaded in both rounds of litigation that they hailed from the Districts which now form part of the State of Andhra Pradesh. In other words the petitioners claim to be the natives of the State of Andhra Pradesh, appointed as Home Guards in the composite State of Andhra Pradesh, and who continued as Home Guards in the Districts which now form part of the State of Telangana after bifurcation on 02.06.2014.

16. In the light of the above circumstances, it has to be seen whether the petitioners fulfill the eligibility criteria for being considered under the special quota reserved for Home Guards. For finding an answer to this question, we have to refer to (1) the amended Presidential Order; and (2) paragraph-20 of the notification. While the amended Presidential Order will throw light upon who qualifies as a local candidate, the recruitment notification will throw light upon the conditions to be fulfilled for claiming the benefit of special reservation.

17. We have already extracted the definition of the expression "local candidate" under the Presidential Order and we have also extracted the newly inserted sub-paragraph (3) of paragraph-7 of the Presidential Order. There is no dispute on facts that the petitioners herein satisfy the definition of the expression "local candidate", within the meaning of the expression, by virtue of their study. Therefore, we take it that no controversy has been particularly raised by the respondents with respect to the eligibility of the petitioners to be treated as local candidates.

18. What is focused by the respondents is only paragraph-20 (B)(iii) of the recruitment notification. We have already extracted the above paragraph. The above paragraph stipulates that persons who, as on the date of notification, have been on duty as Home Guards in the State of Andhra Pradesh for a minimum duration of 360 days, within a period of two years, and who are still continuing their service as Home Guards, come under this category. As we have pointed out earlier, paragraph-20 (B) (iii) does not use the words "within a period of two years immediately preceding the date of notification". Today, the respondents want to read something more into paragraph-20 (B) (iii) to deprive the petitioners of the benefit of this special reservation.

21. In view of the above we are of the considered view that the petitioners satisfy the criteria of local candidates as well as the conditions prescribed by the paragraph-20 (B) (iii) of the recruitment notification, dated 22.07.2016 and their cases deserve to be considered under special reservation."

41. Thus, those petitioners who satisfied the ratio in W.P.No.21715 of 2017 and batch dated 15.11.2017, are to be treated as local candidates.

42. Given the discussion *supra*, all the Writ Petitions are disposed of with the following directions:

- a) The 2nd respondent shall prepare a separate *inter-se* merit list in respect of Home Guards being a special category.
- b) Amendment to Rule 3 (C) of A.P. Police (Stipendiary Cadet Trainee) Rules, by G.O.Ms.No.87 dated 15.07.2016, will not come in the way of the 2nd respondent in preparing a separate *inter-se* merit list among the Home Guards.

- c) After preparation of the said list, the 2nd respondent shall apply compartmentalized horizontal reservation in respect of each category as per the notification.
- d) Regarding the local candidate issue, the 2nd respondent shall follow the ratio in W.P.No.21715 of 2017 and batch dated 15.11.2017.
- e) The 2nd respondent shall complete the exercise as expeditiously as possible preferably within six weeks from the date of receipt of the copy of the order.
- f) The petitioners in the above writ petitions shall not claim any vested right because of interim directions granted pending the writ petitions. Those interim directions or protections are granted enabling the petitioners to participate in the 2nd level examination only, of course, subject to the preparation of a separate inter-se merit list.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE SUBBA REDDY SATTI