



CWP-4264-2021 and connected cases

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1.

CWP-4264-2021 (O&M)

Sikander Singh and ors.

.....Petitioners

vs.

State of Punjab and others

.....Respondents
2.

CWP-9229-2021 (O&M)

Satgur Singh and ors.

.....Petitioners

vs.

State of Punjab and others

.....Respondents
3.

CWP-11305-2021 (O&M)

Neha Manroy and ors.

.....Petitioners

vs.

State of Punjab and others

.....Respondents
4.

CWP-22094-2021 (O&M)

Meenu

.....Petitioner

vs.

State of Punjab and others

.....Respondents
5.

CWP-4883-2021 (O&M)

Simardeep Singh and anr.

.....Petitioners

vs.

State of Punjab and others

.....Respondents
6.

CWP-5198-2021 (O&M)

Bhawna Rani and ors.

.....Petitioners

vs.

State of Punjab and others

.....Respondents
7.

CWP-5796-2021 (O&M)

Deepika Khanna and ors.

.....Petitioners

vs.

State of Punjab and others

.....Respondents



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8. CWP-5811-2021 (O&M)

Davinder Singh and ors.Petitioners

vs.

State of Punjab and othersRespondents

9. CWP-14988-2023 (O&M)

Rajo Bai and ors.Petitioners

vs.

State of Punjab and othersRespondents

10. CWP-16999-2023 (O&M)

Amandeep Singh and ors.Petitioners

vs.

State of Punjab and othersRespondents

11. CWP-25474-2023 (O&M)

Vishaljeet Singh and ors.Petitioners

vs.

State of Punjab and othersRespondents

12. CWP-19201-2024 (O&M)

Gagandeep Kaur and ors.Petitioners

vs.

State of Punjab and othersRespondents

Reserved on 30.09.2024
Pronounced on:14.10.2024

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. D.S. Patwalia, Sr. Advocate, assisted by
Mr. Gaurav Rana, Ms. Alisha Sharda, Advocates
for the petitioners in CWP No. 4264-2021

Mr. Gaurav Rana, Advocate
for the petitioners in CWP No. 25474-2023

Mr. H.S. Saini, Advocate
for the petitioners in CWP No. 16999-2023

Ms. Sunaina, Advocate for Mr. H.C. Arora, Advocate



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for the petitioners in CWP No. 4883, 5198 and 22098-2021
Mr. Abhishek K. Premi, Advocate
for the petitioners in CWP No. 19201-2024

Mr. Pravesh K. Saini, Advocate
for the petitioners in CWP No. 9229-2021

Mr. R.K. Chaudhary, Advocate
for the petitioners in CWP No. 11305, 5796 & 5811-2021

Mr. Sandeep Singh, Advocate
for the petitioners in CWP No. 14988-2023

Mr. B.S. Sewak, Advocate
for the petitioner No. 2 in CWP No. 4883-2021

Ms. Alka Chatrath, Mr. Ratik Kapur and
Mr Nikhil Singh, Advocates
for respondent Nos. 6 and 14 in CWP No. 4264-2021

Mr. Sarabjit Singh Cheema, Advocate
for respondent No. 10

Mr. Vikas Chatrath, Advocate
for respondent Nos, 7, 8, 9 and 13 in CWP No. 4264-2021

Ms. Anu Chatrath, Addl.A.G, Punjab

Mr. Satya Pal Jain, Addl. Solicitor General of India with
Mr. Shobhit Phutela, Sr. Panel counsel
for respondent No. 15/UOI

SUDEEPTI SHARMA J.

1. This judgment shall dispose of the above referred twelve writ petitions. The challenge made in the above petitions are as under:-

CHALLENGE MADE IN ALL THE PETITIONS

CWP No. 4264-2021

2. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing the category-wise merit lists dated 17.07.2020 with respect to General Category (Code No. 71) and Economically Weaker Section Category (Category Code No. 88)

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respectively issued by respondent No. 2-Punjab Public Service Commission, for appointment to the post of Agriculture Development Officer, in pursuance to advertisement No. 2 dated 30.01.2020.

3. It is further prayed to quash the merit list with respect to the General Category and EWS Category, as issued by respondent-department on 18.02.2021. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit list.

CWP No. 9229-2021

4. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020 and clarification/instructions dated 18.03.2021, issued by respondent No. 5.

5. It is further prayed that the final merit lists be quashed of General Category as well as that of EWS Category dated 25.02.2021. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit lists for Open/General Category/EWS Category, for the subject of English/Maths/Science/Social Studies dated 25.02.2021.

CWP No. 11305-2021

6. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020 and clarification/instructions dated 18.03.2021, issued by respondent No. 5.

7. It is further prayed that the final merit lists be quashed of General Category as well as that of EWS Category dated 25.02.2021. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit lists

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for Open/General Category/EWS Category, for the subject of English/maths/Science/Social Studies dated 25.02.2021.

CWP No. 22094-2021

8. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020 and clarification/instructions dated 18.03.2021, issued by respondent No. 5.

9. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit lists for Open/General Category/EWS Category, for the subject of English.

CWP No. 4883-2021

10. The present petition under Articles 226/227 of the Constitution of India is filed, seeking writ in the nature of Certiorari for quashing the category-wise merit lists i.e list of open category notified on 21.02.2021 (code 71) and category wise merit lists dated 20.02.2021 with respect to the General (LDESM) Category (Code No. 73) and SC (LDESM) Category (Code No. 79) issued by respondent No. 4, for appointment to the post of Agriculture Development Officer, in pursuance to advertisement No. 2 dated 30.01.2020.

11. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit list.

CWP No. 5198-2021

12. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020, issued by respondent No. 5.

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13. It is further prayed that the final merit lists be quashed of General Category as well as that of EWS Category dated 25.02.2021. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit lists for Open/General Category/EWS Category, for the subject of English/Maths/Science/Social Studies dated 25.02.2021.

CWP No. 5796-2021

14. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020, issued by respondent No. 5.

15. It is further prayed that the final merit lists be quashed of General Category as well as that of EWS Category dated 25.02.2021. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit lists for Open/General Category/EWS Category, for the subject of English/Maths/Science/Social Studies dated 25.02.2021.

CWP No. 5811-2021

16. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020, issued by respondent-department.

17. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit lists for Open/General Category/EWS Category, for the subject of English/Maths/Science/Social Studies dated 25.02.2021.

CWP No. 14988-2023

18. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020, issued by respondent-department.

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19. It is further prayed to issue a direction to the respondents to re-frame/re-cast the merit lists for Open/General Category/EWS Category, for the subject of English/Maths/Science/Social Studies dated 25.02.2021.

CWP No. 16999-2023

20. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the office memorandum dated 30.10.2020 and subsequent clarification dated 18.03.2021, issued by respondent-department.

CWP No. 25474-2023

21. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing the notification dated 18.03.2021, issued by respondent-department.

CWP No. 19201-2023

22. The present petition under Articles 226/227 of the Constitution of India is filed seeking writ in the nature of Certiorari for quashing Clause (8) of the notification dated 30.10.2020 and subsequent clarification dated 18.03.2021, issued by respondent-department.

23. Further prayer is for setting aside the impugned provisional selection list dated 25.02.2021.

BRIEF FACTS OF THE CASE

24. Brief facts of the case are that respondent No. 2-Punjab Public Service Commission issued an advertisement bearing Advertisement No. 2 dated 30.01.2020 whereby 141 posts of Agriculture Development Officer in the respondent-department were advertised. Out of 141 posts, 55 posts were earmarked for General Category and 14 posts were earmarked for

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Economically Weaker Section (EWS). The essential qualification required for the above posts reads as under:-

“Essential Qualifications:-

4.1) Should possess degree in B. Sc (Agriculture) (with minimum sixty percent marks) from a recognized University or Institution.

Provided that preference shall be given to a person, who possess a degree in M.Sc (Agriculture) from a recognized University or Institution.

4.2) Punjabi or Matric or its equivalent standard.”

The candidate must possess the requisite qualification before or by 31.03.2020.”

25. As per the above advertisement, the selection to the post of Agriculture Development Officer was to be made on the basis of a written competitive examination, which were 300 marks followed by an interview of 40 marks. Further the Economically Weaker Section (EWS) was issued Code No. 88. It has further been mentioned that a candidate would be considered to be belonging to Economically Weaker Section (EWS) if his or her family income is less than Rs.8 lacs per annum.

26. The petitioners in all the writ petitions belong to Economically Weaker Section (EWS) category and they duly submitted their online applications under Economically Weaker Section (EWS) category, which were duly accepted. Consequently, they were issued roll numbers to appear in the examination and they appeared in the written examination followed by the interview. Consequently, respondent No. 2 issued a combined merit list as well as category-wise merit list of the candidates held to be eligible. The

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necessary details of the petitioners, who belong to the EWS category reads as under:-

Name	Roll No.	Subject	Rank		Marks
Sikander Singh	123485		74		260.20
Himanshu Goyal	121807		76		259.80
Abhinav Girdhar	122822		77		259.40
Arjun Sharma	120526		80		258.90
Diljeet Kaur	122074		84		258.10
Sukhveer Singh	120181		86		257.83
Rohan Kumar	122617		92		256.63
Harish Siag	121741		96		256.00
Taranjeet Singh	122836		97		255.50
Dalvir Singh	123156		101		254.50
Satgur Singh	2038800	English	98		107
Mamta Rani	204329	Hindi	4		129
Jaswinder Kaur	2022387	Math	161		103
Sheenam	2050154	Math	149		104
Mehak	2058470	English	74		115
Mehak Kathpal	2040686	Hindi	158		103
Sandeep Kumar	2042488	English	86		113
Aayush tinna	2036224	Science	137		77
Sukhdeep Kaur	2037401	English	96		112
Alisha	2046179	Math	107		106
Kuldeep Singh	2024393	English	105		111



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Neha Manroy	2078164	Science			72
Priyanka Verma	2028629	Science			69
Bir Balla Singh	2011283	Science			73
Deepika Khanna	173650	English	-	-	111
Alka Rani	363849	Math	-	-	108
Renu Bala	364012	Math	-	-	102
Arona Rani	370631	Math			108
Radhika	382669	Science			80
Akriti	381981	Science			78
Amandeep Kaur	382354	Science			79
Simran Goyal	387263	Science			78
Seema	170877	English			115
Renu Bala	170976	English			115
Nirmala Rani	118250	Hindi			130
Lalit Kumari	170985	English			116
Babli Singla	175597	English			109
Harpreet Kaur	173800	English			111
Harpreet Singh	384827	Science			75
Chetan Sharma	381694	Science			75
Ravinder Kumar	363357	Math			92
Mamta Rani	383044	Science			77
Shaifaly Rani	175646	English			113
Anchal Verma	171655	English			112
Kirandeep Kaur	170727	English			109
Manpreet Kaur	175278	English			116



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Harjot Singh	172312	English			115
Nishma	172270	English			114
Varinder Singh	360908	Math			105
Rahul Bajaj	367822	Math			94
Satinder Kaur	173750	English			98
Mansi	384968	Science			76
Harminder Kaur	384533	Science			118
Bhawna Rani	364932	Math	97		107
Sonia Rani	370543	Math	102		106
Drishty Goyal	364789	Math	96		107
Renu Bala	369715	Math	103		106
Gurmeet Kaur	349678	Social Studies	01		116
Bhupinder Kaur	171175	English	70		115
Sukhwinder Kaur	174981	English	104		111
Pawan Kumar	171375	English	80		114
Sonia Handa	173808	English	84		114
Poonam Devi	173531	English	121		107
Hardeep Sharma	172278	English	78		114
Payal Singla	170921	English	103		111
Sandeep Kumar	362193	Math	80		109
Mamta Rani	362916	Math	92		107
Rama Kant Gautam	383870	Science	95		79
Gagandeep	381875	Science	132		77



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Kumar					
Gaurav Sharma	385699	Science	113		78
Monika	381634	Science	101		79
Lakhveer Kaur	172193	English	109		110
Ashu Bala	376378	Math	91		107
Parteek Kumar	367299	Math	95		107
Harpreet Singh	366976	Math			97
Manpreet Kaur	122368				273.80
Lovepreet Kaur	120414				260.30
Gagandeep Kaur	122166				266.77
Rajo Bai	2153761				57
Rajni Devi	2143149				57
Meenu Rani	2158203				57
Sukhpal Kaur	2150268				57
Rajpal	2143385				57
Rajinder Kumar	2145749				57
Rashdeep Singh	2154728				57
Jasvir Kaur	2159793				57
Jagseer Singh	2136872				57
Veerpal Kaur	2142120				57
Nisha Sharma	2157776				57
Pritpal Singh	2143257				57
Babita Rani	2154356				57
Parmodh Sharma	2143360				57
Twinkle	2137872				58



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Manpreet Kaur	2136750				57
Abhey Singh	2143379				58
Nisha Rani	2155793				57
Ramandeep Kaur	2163317				57
Amandeep Singh					110
Rajinder Kumar					110
Balkarn Singh					124
Rajesh Kumar					112
Rajo Bai					108
Maninder Singh					102
Amrit Singh					109
Gagandeep Kaur	221587				54
Gurpreet Kaur	226004				45
Mandeep Kaur	219362				41
Rajinder Pal	225599				47
Pahaldeep Singh	222433				53
Parmodh Sharma	220326				55

27. Thereafter, on 18.02.2021, respondent-department issued merit list of General Category candidates and a separate merit list of Economically Weaker Section candidates along with other category-wise merit lists. The General Category List (55 posts) shows that the last candidate at position No. 65 has 255.40 marks and the one at position No. 55 has 260.03 marks whereas in EWS List (14 posts) candidate at position No. 14 has 260.20 marks and last candidate at position No. 19 has 258.10 marks. This shows that all the candidates shown to be eligible under EWS List i.e 19 candidates have higher

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marks than the candidates shown to be eligible in the merit list with respect to General Category.

28. On 22.02.2021, the counselling was conducted for all the selected candidates. However, the counselling carried no marks and the same had no bearing on the merit of the candidates.

29. The Government of India, vide memorandum dated 31.01.2019 provided 10% reservation for Economically Weaker Sections (EWSs) in direct recruitment in Civil Posts and services in the Government of India. In this memorandum, it was mentioned that the persons whose family has gross annual income below Rs.8 lakhs per annum are to be identified as EWSs for benefit of reservation. The column No. 7 of the office memorandum reads as under:-

“7. ADJUSTMENT AGAINST UNRESERVED VACANCIES

A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation.”

30. Thereafter, State of Punjab, vide its letter dated 28.05.2019 decided to provide 10% reservation to the residents of Punjab belonging to the Economically Weaker Sections (EWSs) in all the Departments/Boards/Corporations/Local Bodies of the State of Punjab.

31. Further another letter/office memorandum dated 30.10.2020 was issued by State of Punjab for reservation of Economically Weaker Sections (EWSs) in direct recruitment in civil posts and services in the

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Government of Punjab and in column No. 3, 8 and 12, it has been mentioned as under:-

“3. Quantum of Reservation:-

The residents of Punjab belonging to EWSs who, are not covered under the existing scheme of reservation for SCs and BCs shall get ten percent reservations in all direct recruitment vacancies in all the Departments or Boards or Corporations of Local Bodies of the Government of Punjab.”

8. ADJUSTMENT AGAINST RESERVED VACANCIES

Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation.

12. The above scheme of reservation shall be effective in all respect of all direct recruitment vacancies to be notified on or after the issuance of these instructions.”

32. The Government of Himachal Pradesh issued letter dated 11.06.2019 regarding reservation for Economically Weaker Sections (EWSs) in Class I, II, III or IV posts in direct recruitment in the services of the State Government. In column No. 6, it has been mentioned as under:-

“6. ADJUSTMENT AGAINST RESERVED VACANCIES

A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation.”

33. The Government of Haryana also issued letter dated 25.02.2019 regarding reservation for Economically Weaker Sections (EWSs) in Direct

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Recruitment in Civil Posts and services as well as in admissions in Government/Government Aided Educational Institutions in the State of Haryana. In column No. 6, it has been mentioned as under:-

“6. *ADJUSTMENT AGAINST RESERVED VACANCIES*

A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation.”

34. The grievance of the petitioners before this Court is that the last candidate in the General/Open Category secured 255.40 marks as against 258.10 marks in EWS Category. Thus, all the candidates shown to be eligible by the respondent-department under EWS category are higher in merit than the last candidate in the General/Open Category. The petitioners are seeking to be considered for appointment in Open/General Category. Hence the present petitions.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PARTIES

35. Learned senior counsel for the petitioner (s) contends that the merit list with respect to the general category is illegal and is liable to be set aside, in view of Article 16 (6) of the Constitution of India wherein reservation as provided for EWS Category is a vertical reservation.

36. Learned counsel for the petitioner (s) further contends that it is settled principles of law that the right of a candidate to compete in General/Open Category cannot be taken away and in case a candidate has higher merit, his/her candidature is liable to be considered against the post meant for General Category. However, the respondents have completely

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ignored the said fact and are proceeded to deviate from the same against the principles of law.

37. Learned counsel for the petitioner (s) further contends that the letter dated 30.10.2020 issued by State of Punjab would be prospective in nature and not retrospective. Therefore, the same would not be applicable in the case of the petitioners, who are selected, pursuant to advertisement No. 2 of 30.01.2020.

38. Per contra, learned counsel for the State submits that in Clause 2 of letter dated 28.05.2019, it has been mentioned that the detailed instructions regarding operation of roster and procedure for implementation of Economically Weaker Sections reservation will be issued separately. The letter dated 30.10.2020 is in continuity to the same wherein in Clause 8, it has been mentioned as under:-

**“8. ADJUSTMENT AGAINST RESERVED VACANCIES**

Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation.”

39. Learned State counsel has further argued that the merit list has been prepared as per letter dated 30.10.2020 and would be applicable to the case of the petitioners as well.

40. Learned counsel appearing for the respondent-department on the other hand, contends that if the EWS candidates are higher in merit to General Category candidates, then it would amount to increase in the quota fixed for EWS category i.e 10 per cent.

41. We have heard learned counsel for the parties and perused the whole record of the case.

42. Reference can be made to the relevant paras of the reply dated 20.04.2021 filed by respondent Nos. 1 to 4-State, which reads as under:-

“PRELIMINARY SUBMISSIONS

4. That now, the writ petitioners who belong to the EWS category through the instant writ petition has claimed that as they have scored the higher marks than the candidates shown in the merit list in respect to the General Category so they are liable to be selected in the general category. However, the claim of the petitioner cannot be taken into consideration in view of the notification/instructions issued vide memo No. 1/3/2019- RCI/700 dated 30.10.2020 (Annexure R-1) with regard to Reservation for Economically Weaker Sections (EWS's) in direct recruitment in civil posts and services in the Government of Punjab” and provisions



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have been made in the para No. 8 of the notifications/instructions with regard to the adjustment against reserved vacancies as under:-

“Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation.”

5. That further vide memo no. 1/03/2019-RC1/196 dated 18.03.2021 (Annexure R-2) clarification with regard to the above notification/instructions have also been issued by the Government of Punjab department of Social Justice, Empowerment and Minorities (Reservation Cell). The para No. 8 of the instructions issued vide letter referred above is clarified as under:-

Existing Provision	Clarification
8.Adjustment against reserved vacancies:- Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation	8. Adjustment against reserved vacancies:- Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation. It means that:- i. Firstly, to fill the quota of the open category in order of merit and thereafter, ii. Secondly, to find out how many EWS candidates have been selected on the above basis and thereafter; iii. If the number of EWS candidates in open category is equal to or more than the ten percent reservation quota for EWS, then there shall be no further selection towards the reservation quota for EWS. iv. Only if there is any shortfall of EWS candidates



	<i>in a open category, then the requisite number of eligible EWS candidates shall have to be taken and adjusted or accommodated against EWS reservation categories by deleting the corresponding number of candidates there from.</i>
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Meaning there by the persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation only.

6. *That Article 15(6) (amended) enables the State to make special provision for the growth of economically weaker section of the society, including reservation in educational institutions. It states that such reservation can be made in any education institutional together with aided and unaided private institutions, excluding minority educational institutions covered under Article 30(1). Under Article 15(6)(a), the benefits of the EWS reservation, were extended only to the candidates belonging to General category. This reservation to the economically backward classes is based upon the concept of social backwardness. Meaning there by that the candidates who have applied in the EWS category will only be considered in the EWS category whether or not they scored more marks than the General Category. It is submitted that combined merit list was prepared by respondent no 2 and action regarding change if any to the merit list is to be taken by respondent no. 2.*

**Reply on Merits**

2. That in reply to the contents of the para no. 2 of the writ petition it is submitted that the claim of the petitioner cannot be taken into consideration in view of the notification/instructions issued vide memo No. 1/3/2019- RCI/700 DATED 30.10.2020 (Annexure R-1) with regard to " Reservation for Economically Weaker Sections (EWS's) in direct recruitment in civil posts and services in the Government of Punjab" and provisions have been made in the para No. 8 of the notification/instructions with regard to the Adjustment against Reserved vacancies :- "Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant 100 for EWS reservation." As under Article 15(6)(a), the benefits of the EWS reservation, were extended only to the candidates belonging to **General category**. Contents of paras of preliminary submissions are retreated.

6. That in reply to the contents of the para no. 6 of the writ petition it is submitted that the claim of the petitioner cannot be taken into consideration in view of the notification/instructions issued vide memo No. 1/3/2019- RCI/700 DATED 30.10.2020 (Annexure R-1) with regard to " Reservation for Economically Weaker Sections (EWS's) in direct recruitment in civil posts and services in the Government of Punjab" and provisions have been made in the para No. 8 of the notification/instructions with regard to the Adjustment against Reserved vacancies as under:-

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"Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation." As under Article 15(6)(a), the benefits of the EWS reservation, were extended only to the candidates belonging to General category."

8. That in reply to the para no. 8 of the writ petition it is submitted that as per Article 16 (6) of the constitution of India "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category. "Thus, no where mentioned that the reservation provided for EWS category is a vertical reservation. Moreover, while claiming so, the candidates belonging to EWS category would deprive the rights of the candidates who have not applied in the EWS category. Contents of the para of the preliminary submissions are retreated."

43. A perusal of the reply filed by the State of Punjab shows that on the one hand, in clause 12 of the letter dated 30.10.2020, it has been mentioned that the above scheme shall be effective in respect of all direct recruitment vacancies to be notified on or after the issuance of these instructions, whereas in the reply filed by the State, the contradictory stand has been taken by stating that the letter dated 30.10.2020 are made applicable to advertisement No. 2 of 2019.

44. Reference can be made to the relevant paras of the reply dated 18.10.2021 filed by respondent No. 2-Punjab Public Service Commission, which reads as under:-

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“5. That it is also submitted that as per the instructions of the Department Social Justice Empowerment and Minorities Government of Punjab (Pb/dated 30/10/2020, the persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS and further there is no provision to consider the candidates of EWS category having secured higher marks than candidates in General Category to be appointed against the General category candidates.”

45. Reference can be made to the relevant paras of the reply dated 05.01.2023 filed by respondent No. 15-Union of India, which reads as under:-

“16. In respect of the issue relating to reservation for EWS category, it is stated that Department of Personnel & Training, Ministry of Personnel, Public Grievances and Pensions issued OM No. 36039/1/2019-Estt. (Res), dated 31.01.2019, providing 10% reservation to the persons belonging to EWSs who are not covered under the scheme of reservation for SCs, STs and OBCs in Direct Recruitment in civil posts and services in the Government of India. It is stated that Para 7 of said OM provides as under:

Adjustment Against Unreserved Vacancies:

"A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation"

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46. A perusal of the above shows that Union of India as per instruction bearing No. 36039/1/2019-Estt. (Res), dated 31.01.2019 provided 10 per cent reservation to the persons belonging to EWS Category and stated that EWS category cannot be denied the right to compete for appointment against the un-reserved vacancies.

47. Reference at this stage can be made to clause 8 and 12 of letter bearing No. 1/3/2019-RCI/700 dated 30.10.2020, which reads as under:-

8. ADJUSTMENT AGAINST RESERVED VACANCIES

Persons belonging to EWS who are selected on the basis of merit shall be counted towards the quota meant for EWS reservation.

12. The above scheme of reservation shall be effective in all respect of all direct recruitment vacancies to be notified on or after the issuance of these instructions.”

48. The above clause 8 of letter is contrary to the office memorandum dated 31.01.2019 issued by Government of India. As per letter dated 30.10.2020, the above scheme of reservation would be effective in respect of all direct recruitment vacancies to be notified on or after the issuance of these instructions. The relevant portion of the office memorandum dated 31.01.2019 reads as under:-

7. ADJUSTMENT AGAINST UNRESERVED VACANCIES

A person belonging to EWS cannot be denied the right to compete for appointment against an unreserved vacancy. Persons belonging to EWS who are selected on the basis of merit and not on account of reservation are not to be counted towards the quota meant for reservation.”

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49. Reference can further be made to Article 15 and 16 of the Constitution of India, which reads as under:-

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

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children. [Editorial comment- The Constitution (First Amendment) Act, 1951, made several changes to the Fundamental Rights Part of the Indian constitution. It made it clear that the right to equality does not preclude passing laws that give special consideration to society's most vulnerable groups. Article 15(3) was appropriately expanded to prevent any special provisions made by the State for the social, economic, or educational progression of any disadvantaged class of citizens from being contested based on discrimination.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of



any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of Scheduled Castes and the Scheduled Tribes which in the opinion of State are not adequately represented in the services under the State.

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(4b) 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.[The Constitution (Eighty-first Amendment) Act, 2000, aimed to protect reservations for SCs and STs in the backlog of vacancies. A new clause (4B) was added to Article 16 of the Constitution of India by the 81st Amendment Act of 2000, after clause (4A). This gave the states the authority to treat unfilled reserved vacancies from one year as a separate class of vacancies to be filled in the following year or years. The new provision stated that such vacancies must not be included in the vacancies of the year in which they are filled, in order to calculate the overall vacancy reservation ceiling of 50% for that year. This modification essentially eliminated the 50% cap on reservations for backlog vacancies.

[\(5\)](#)Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

[\(6\)](#)Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any

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economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.”

50. A perusal of the above Articles shows that the reservation of EWS is vertical reservation, as provided by the Constitution of India. The State of Punjab cannot issue instructions/letters, which are contrary to the provisions of the Constitution of India. Clause 8 of letter dated 30.10.2020 referred to above shows that the State of Punjab on its own ignored the provisions of the Constitution of India and has wrongly considered the EWS reservation as horizontal.

51. Reference at this stage can be made to judgment of Hon'ble the Surpeme Court of India in a case of ***Janhit Abhiyan vs. Union of India (EWS Reservation), 2023 (5) SCC 1***. The relevant portion of the judgment reads as under:-

“26. Learned Solicitor General of India, Mr. Tushar Mehta, has submitted that to set aside a constitutional amendment, very high judicial threshold is needed. He would submit that a constitutional amendment may even touch upon the basic structure but unless it is shown that it fundamentally alters the basic structure or basic features of the Constitution, it cannot be struck down under judicial review. In support of his contentions, learned Solicitor General has placed reliance on the said decisions in Raghunathrao, Bhim Singhji and Kesavananda as also on the decision in Indira Nehru Gandhi v. Raj Narain and Anr. 1975 Supp SCC 1. He has further argued that the amendment in question, instead of hitting or disturbing the basic structure, rather strengthens the Preambular vision of the

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Constitution i.e., of providing economic justice to its people along with social and political justice

31. Three major issues to be answered in these matters by this Bench have been noticed at the outset. In order to answer those issues and in view of the variety of submissions urged as also the subject-matter, following principal points arise for determination:

(a) As to whether reservation is an instrument for inclusion of socially and educationally backward classes to the mainstream of society and, therefore, reservation structured singularly on economic criteria violates the basic structure of the Constitution of India?

(b) As to whether the exclusion of classes covered under Articles 15(4), 15(5) and 16(4) from getting benefit of reservation as economically weaker sections violates the Equality Code and thereby, the basic structure doctrine?

(c) As to whether reservation for economically weaker sections of citizens up to ten per cent. in addition to the existing reservations results in violation of basic structure on account of breaching the ceiling limit of fifty per cent.?

31.1. All these points are essentially structured on three important components namely, (i) the general rule of equality enshrined in Article 14 of the Constitution; (ii) the reservations enabled in Articles 15 and 16 as exception to the general rule of equality; and (iii) the doctrine of basic structure that defines and limits the power of the Parliament to amend the Constitution.

Relevant Constitutional Provisions

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32. Any process of determination of the points aforesaid would invariably require an insight of the constitutional provisions. The relevant provisions could be usefully reproduced as follows:

32.1. Preamble to the Constitution of India, in its present form, reads as under: "We, The People Of India, Having Solemnly Resolved To Constitute India Into A Sovereign Socialist Secular Democratic Republic And To Secure To All Its Citizens: Justice, Social, Economic And Political; Liberty Of Thought, Expression, Belief, Faith And Worship; Equality Of Status And Of Opportunity; And To Promote Among Them All Fraternity Assuring The Dignity Of The Individual And The Unity And Integrity Of The Nation; In Our Constituent Assembly This Twenty-Sixth Day Of November, 1949, Do Hereby Adopt, Enact And Give To Ourselves This Constitution."

32.2. The underlying attribute of all the points and questions arising in these matters is as to whether the 103rd Amendment violates the basic structure of the Constitution. The discussion, therefore, revolves around the power of the Parliament to amend the Constitution and for this purpose, we need to have a close look at the provisions contained in Article 368 of the Constitution.

32.2.1. Article 368, as originally adopted, read as under: -

"368. Procedure for amendment of the Constitution.- An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the

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President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in-

- (a) article 54, article 55, article 73, article 162 or article 241, or*
- (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or*
- (c) any of the Lists in the Seventh Schedule, or*
- (d) the representation of States in Parliament, or*
- (e) the provisions of this article,*

32.2.2. Article 368 has undergone several amendments, some of which had been the subject matter of debates in this Court, including the cases of Kesavananda and Minerva Mills. Leaving aside other details, we may reproduce the relevant of the provisions now contained in Article 368 as under: -

"368. Power of Parliament to amend the Constitution and procedure therefore. -(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be



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presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in

accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in-

(a) article 54, article 55, article 73, article 162, article 241 or article 279-A, or (b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

(3) Nothing in article 13 shall apply to any amendment made under this article.

32.2.3. After the amendments approved in Kesavananda, Article 368 starts with a non obstante clause and further to that, sub-clause (3) thereof re-emphasises that nothing in Article 13 would apply to any amendment made under Article 368. In this context, a look at Article 13 of the Constitution is apposite, which otherwise declares void every law which is inconsistent with or is in derogation of Fundamental Rights but, the inserted sub-clause (4) keeps its operation away from the amendment made under Article 368. Article 13 reads as under: -

"13. Laws inconsistent with or in derogation of the fundamental rights. –

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent

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with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,-

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."

32.3. By way of the amendment in question, sub-clause (6) and Explanation have been added to Article 15 and sub-clause (6) has been added to Article 16 of the Constitution of India. These two Articles, 15 and 16, being the subject of the amendment in question and forming the core of controversy before us, need a closer look. For the purpose, it is relevant to indicate at this stage itself that these Articles have undergone several changes from time to time. For the purpose of the present discussion, worthwhile it would be to take note of these Articles as originally adopted and as now existing after

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various amendments, including the 103rd Constitution Amendment (25).

32.3.1. Articles 15 and 16, in their original form were as under: -

*"15. **Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.** - (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-*

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

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

*16. **Equality of opportunity in matters of public employment.** -(1)*

There shall be equality of opportunity for all

citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or

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appointment to an office under any State specified in the First Schedule or any local or other

authority within its territory, any requirement as to residence within that State prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

32.3.2. These Articles 15 and 16, as now existing after various amendments, including the amendment in question, read as under: -

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth *-(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.*

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

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

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of

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any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,-

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

Explanation.-For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by

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the State from time to time on the basis of family income and other indicators of economic disadvantage.

16. Equality of opportunity in matters of public employment. - (1)

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4-A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

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(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 (4-A) 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.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category."

32.3.3. Articles 14, 17 and 18, forming the integral part of Equality Code along with the afore-mentioned Articles 15 and 16, could also be taken note of as under: -

"14. Equality before law. -The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.



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17. *Abolition of Untouchability.* - "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

18. *Abolition of titles.* -(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State."

32.4. Various provisions in Part IV of the Constitution of India laying down Directive Principles of State Policy also require a close look, including Article 46, which has been referred to in the Statement of Objects and Reasons for the purpose of the amendment in question. Articles 38, 39 and 46 of the Constitution of India read as under: -

"38. *State to secure a social order for the promotion of welfare of the people.* -(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status,

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facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State.- The State shall, in particular, direct its policy towards securing-

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

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46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections. - The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the

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Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

64. Thus, in almost all references to real and substantive equality, the concept of economic justice has acquired equal focus alongside the principles of social justice.

65. In giving effect to the rule of equality enshrined in Article 14, the Courts have also been guided by the jurisprudence evolved by the U.S. Supreme Court in the light of the amendments made to their Constitution, which were founded on economic considerations.

73. In view of the principles discernible from the decisions aforesaid as also the background aspects, including the avowed objective of socio-economic justice in the Constitution, the observations of this Court in the past decisions that reservations cannot be claimed only on the economic criteria, apply only to class or classes covered by or seeking coverage under Articles 15(4) and/or 15(5) and/or 16(4); and else, this Court has not put a blanket ban on providing reservation for other sections who are disadvantaged due to economic conditions.

77.1. As noticed, the amendment in question introduces clause (6) to both the Articles, i.e., 15 and 16. Clause (6) of Article 15 starts with a non obstante preposition, making it operative notwithstanding anything otherwise contained in other clauses of Article 15 or Article 19(1)(g) or Article 29(2). Sub-clause (a) of clause (6) of Article 15 enables the State to make any special provision for the advancement of any economically weaker sections of citizens and sub-clause (b)



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thereof provides for making a maximum of ten per cent. reservation in the matter of admission to educational institutions, public or private, barring minority educational institutions. Similarly, clause (6) of Article 16 also starts with a non obstante preposition, making it operative notwithstanding anything otherwise contained in other clauses of that Article and enables the State to make any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens to a maximum of ten per cent. As per the Explanation to clause (6) of Article 15, "economically weaker sections" for the purpose of both these Articles 15 and 16 shall be such as to be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage. However, when both these clauses exclude from their ambit those classes who are already covered under Articles 15(4), 15(5) and 16(4), that is to say, the benefits under these amended provisions do not avail to Scheduled Castes, Scheduled Tribes, and Other Backward Classes

*79. The amendment in question makes a reasonable classification between "economically weaker sections" and other weaker sections, who are already mentioned in Articles 15(4), 15(5) and 16(4) of the Constitution and are entitled to avail the benefits of reservation thereunder. **The moment there is a vertical reservation, exclusion is the vital requisite to provide benefit to the target group. In fact, the affirmative action of reservation for a particular target group, to achieve its desired results, has to be carved out by exclusion of others. The same principle has been applied for the affirmative***



action of reservation qua the groups of SEBCs, OBCs, SCs, and STs. Each of them takes reservation in their vertical column in exclusion of others. But for this exclusion, the purported affirmative action for a particular class or group would be congenitally de-formative and shall fail at its inception. Therefore, the claim of any particular class or section against its exclusion from the affirmative action of reservation in favour of EWS has to be rejected.

102. For what has been discussed and held hereinabove, the points formulated in paragraph 31 are answered as follows: -

a. Reservation is an instrument of affirmative action by the State so as to ensure all-inclusive march towards the goals of an egalitarian society while counteracting inequalities; it is an instrument not only for inclusion of socially and educationally backward classes to the mainstream of society but, also for inclusion of any class or section so disadvantaged as to be answering the description of a weaker section. In this background, reservation structured singularly on economic criteria does not violate any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India.

b. Exclusion of the classes covered by Articles 15(4), 15(5) and 16(4) from getting the benefit of reservation as economically weaker sections, being in the nature of balancing the requirements of non-discrimination and compensatory discrimination, does not violate Equality Code and does not in any manner cause damage to the basic structure of the Constitution of India.



c. Reservation for economically weaker sections of citizens up to ten per cent. in addition to the existing reservations does not result in violation of any essential feature of the Constitution of India and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of fifty per cent. because, that ceiling limit itself is not inflexible and in any case, applies only to the reservations envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution of India.

157. The Constitution of India was amended by the Eighty sixth Amendment Act, 2002, to include the right to education as 157. The Constitution of India was amended by the Eightysixth Amendment Act, 2002, to include the right to education.

182. The constitutional validity of clause (5) in Article 15 of the Constitution introduced by the Constitution (93rd Amendment) Act, 2005 was made the subject matter of challenge before this Court in Pramati Educational and Cultural Trust (Registered) and Others v. Union of India and Others, (2014) 8 SCC 1.

183. The constitutional validity of clause (5) in Article 15 was essentially challenged on the ground that the same is violative of Article 19(1)(g) of the Constitution, inasmuch as it compels the private educational institutions to give up a share of the available seats to the candidates chosen by the State and such appropriation of seats would not be a regulatory measure and not a reasonable restriction on the right under Article 19(1)(g) of the Constitution within the meaning of Article 19(6) of the Constitution. It was further argued that clause (5) of Article 15 of the Constitution, as its very

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language, indicates would not apply to the minority educational institutions referred to in clause (1) of Article 30 of the Constitution.

It was argued that thus it violated Article 14 because the aided minority institutions and unaided minority institutions cannot be treated alike. It was also argued that clause (5) of Article 15 of the Constitution is discriminatory and violative of the equality clause in Article 14 of the Constitution, which is a basic feature of the Constitution.

233. The doctrine of Basic Structure includes general features of the broad democracy, supremacy of the Constitution, rule of law, separation of powers, judicial review, freedom and dignity of the individual, unity and integrity of the nation, free and fair education, federalism and secularism. The Basic Structure Doctrine admits to identify a philosophy upon which a Constitution is based. A Constitution stands on certain fundamental principles which are its structural pillars and if those pillars are demolished or damaged, the whole constitutional edifice may fall down. The metaphor of a living Constitution is usually used in its interpretive meaning i.e., that the language of the document should evolve through judicial decisions according to the changing environment of society. A Constitution's amendment process provides another mechanism for such evolution, as a 'built-in provision for growth'. Prima facie, the view that a Constitution must develop over a period of time supports a broad use of the amendment power. Nevertheless, even if we conceive of the Constitution as a living tree, which must evolve with the nation's growth and develop with its philosophical and cultural advancement,



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it has certain roots that cannot be uprooted through the growth process. In other words, the metaphor of a living tree captures the idea of certain constraints: 'trees, after all, are rooted, in ways that other living organisms are not'. These roots are the basic principles of a given Constitution. [Reference: "Unconstitutional Constitutional Amendments : A Study of the Nature and Limits of Constitutional Amendment Powers", Yaniv Roznai, Thesis, February, 2014] ”

52. A perusal of the above referred judgment shows that EWS reservation is vertical reservation and it is to be applied accordingly

53. Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others, 2007 (4) SCT 99***, wherein Hon'ble the Supreme Court has held that the Selection Process adopted by RPSC was contrary to the reservation policy contained in Rule 9 (3) of the Service Rule. The relevant portion of the judgment reads as under:-

“5. Before examining whether the reservation provision relating to women, had been correctly applied, it will be advantageous to refer to the nature of horizontal reservation and the manner of its application. In Indra Sawhney v. Union of India [1992 Supp.(3) SCC 217], the principle of horizontal reservation was explained thus (Pr.812) :

"... all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes,



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Scheduled Tribes and Other Backward Classes [(under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped (under clause (1) of Article 16) can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations - what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The persons selected against the quota 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."

A special provision for women made under Article 15(3), in respect of employment, is a special reservation as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in Anil Kumar Gupta v. State of U.P., 1995(4) SCT 403 : [1995(5) SCC 173] thus:

".... The proper and correct course is to first fill up the Open Competition quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to

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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 compartmentalized horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen percent in favour of special categories, overall, may be satisfied or may not be satisfied.)

6. 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'.

7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social

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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 numbers will not be counted against the quota reserved for the 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 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 - Indira Sawhney (Supra), R.K. Sabharwal v. State of Punjab, 1995(2) SCT 646 : (1995(2) SCC 745), Union of India v. Virpal Singh Chauhan, 1995(4) SCT 695 : (1995(6) SCC 684 and Ritesh R. Sah v. Dr. Y.L. Yamul, 1996(2) SCT 524 : (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

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Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example :

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women

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candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.]

9. 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 women 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 women candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl. Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 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.

10. 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

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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 woman.

11. The appellants' grievance that the selection process adopted by RPSC was contrary to the reservations policy contained in Rule 9(3) is justified. But the question is whether the entire selection should be set aside and whether all appellants should be granted relief. On completion of the selection process, 97 candidates were appointed in the year 2002 and have been serving as Judicial Officers for more than five years. There has also been a subsequent selection and appointments in the year 2005. Further all the selected candidates are not impleaded as parties. Even from among the original ten writ petitioners, only seven are before us. On the facts and circumstances, we do not propose to disturb the selection list dated 30.12.2001 or interfere with the appointments already made in pursuance of it. We will only consider whether the appellants before us are entitled to relief. We find that even if the selection list had been prepared by applying horizontal reservation properly, only the appellant (Rajesh Kumar Daria) in this appeal, and appellant Nos.3 and 6 in the connected appeal (Mohan Lal Soni and Sunil



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Kumar Gupta) will get selected. The other appellants were not eligible to be selected.”

54. A perusal of the above judgment shows that Hon’ble the Supreme Court of India has explained the vertical as well as horizontal reservation and its application.

55. In view of the above mentioned judgments passed by Hon’ble the Supreme Court of India, we are of the view that the action of the State is in violation of Articles 15 and 16 of the Constitution of India.

56. Accordingly, the present petitions are **allowed**. The category-wise merit lists dated 17.07.2020 for the General Category (Code No. 71) and Economically Weaker Section Category (Category Code No. 88) are quashed. Clause 8 of the office memorandum dated 30.10.2020 along with clarification/instructions issued on 18.03.2021, are also set aside.

57. The State is directed to reframe/re-cast the merit list for the appointment to the post of Agriculture Development Officer, by including the petitioners belonging to EWS Category on the basis of their merit and not on account of reservation.

58. It is further clarified that EWS candidates who are selected on the basis of merit and not on account of reservation, are not to be counted towards the quota meant for reservation.

59. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

14.10.2024
G Arora

Whether speaking/reasoned : Yes
Whether reportable : Yes