

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11443 of 2024

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Md Sameer Son of Md. Wazeer Resident of Nohsa, P.S. and P.O. Phulwari Sharif, District-Patna-801505.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar, Old Secretarity, Bailey Road, Patna-800015.
3. The Secretary, Education Department, Government of Bihar, Old Secretarity, Bailey Road, Patna-800015.
4. The Director, Primary Education, Education Department, Government of Bihar, Old Secretarity, Bailey Road, Patna-800015.
5. The Bihar Public Service Commission, through its Chairman, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001.
6. The Chairman, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001.
7. The Additional Secretary-Cum-Examination Controller, Bihar Public Service Commission, 15, Jawaharlal Nehru Marg, Bailey Road, Patna-800001.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Adil Abbas, Adv.
For the BPSC	:	Mr. Zaki Haider, Adv.
For the State	:	Mr.Addl. Advocate General (7)
		Mr. Deepak Kumar, AC to AAG 7

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 11-11-2025

Heard the parties.

2. The petitioner, an aspirant for the post of Elementary Teacher of Urdu subject (Class I-V) in connection with Advertisement No. 27 of 2023, has approached this Court seeking issuance of a writ in the nature of mandamus commanding upon the respondent authorities of the Bihar Public



Service Commission (hereinafter referred to as the 'Commission') to publish the revised merit list for the teachers in Primary School for the afore noted Class in Urdu subject by including the name of the petitioner, on the premise that he has secured 54 marks in the Teachers Recruitment Examination (TRE-II), which is much above the cut off marks of 47 prescribed for the candidates belonging to the Orthopaedically Handicapped, in short, OH Category.

3. By way of Interlocutory Application No. 1 of 2024, the petitioner has also brought on record the fact that a fresh advertisement bearing No. 22 of 2024 has been issued, wherein unfilled vacancies under Orthopedically Handicapped Reserve Category of previous recruitment have been carried forward and merged into the fresh selection process. Hence, the petitioner has sought an amendment in the relief clause praying, therein, that one post under OH category may be reserved in favour of the petitioner, subject to the final outcome of the present writ petition. The petitioner through said I.A. also prayed for quashing of the resolution dated 22.01.2021 wherein the State has resolved that the candidates claiming reservation under the disability quota shall be accommodated in their category only.

4. The facts, brief stated are that pursuant to the



caption advertisement published by the BPSC, the petitioner has applied for the post of Elementary Teacher (Class I-V) in Urdu subject under Orthopedically Handicapped in EWS category. In support of his claim of disability, the petitioner has annexed the disability certificate bearing Certificate No. 4106 dated 27.06.2023, copy of which is enclosed as Annexure-P/6. Subsequently, the admit card was issued in favour of the petitioner, pursuant to which he appeared in TRE-II Examination. The petitioner secured 23 marks in the Language paper, which was qualifying in nature and 54 marks in General Studies paper. Finally, on 27.12.2023, the merit list of the Elementary Teachers of Urdu subject was published by the Commission prescribing the cut off marks for OH Reserve Category at 47. Only 21 candidates were selected in the OH Reserve Category against the notified 72 posts of OH Reserved Category, nonetheless, the name of the petitioner did not find place in the merit list.

5. Learned Advocate for the petitioner, Mr. Adil Abbas submitted that it is not in dispute that the petitioner has secured 54 marks in Teachers Recruitment Examination-II, but he has not been selected irrespective of the fact the cut off marks for OH Reserve Category was fixed at 47 marks. Being aggrieved



by the illegal exclusion, the petitioner has also submitted his grievance on the official portal of the BPSC stating all these facts; however no action has been taken by the concerned authorities in response to his grievance till date. Heavy reliance has been placed on a decision rendered by the 3-Judges Bench of the Hon'ble Supreme Court in the case of ***Saurav Yadav & Ors. vs. State of Uttar Pradesh & Ors. [(2021) 4 SCC 542]***. Taking this Court through various paragraphs of the decision, learned Advocate for the petitioner, in sum and substance, contended that once the petitioner has secured more marks than the cut off marks prescribed for Orthopedically Handicapped Reserve Category in such circumstances, he cannot be ousted from the zone of consideration, that will lead to detriment of the petitioner and giving a complete go by to his merit. It is further contended that after making placement of the reserved category candidates as per the vertical reservation, when it comes to adjustment at the stage of horizontal reservation, even if such reserved category candidates are entitled on merit, to be considered and accommodated against General or Open seats.

6. *Per contra*, Mr. Zaki Haider, learned Advocate for the Bihar Public Service Commission submits that the Commission is a recommending body and in matters of



appointment, it strictly acts in accordance with rules, regulation and requisition, framed and forwarded by the State Government. The petitioner had undoubtedly applied pursuant to the caption advertisement under both EWS and OH categories for the post of Urdu teacher (Class I-V). The petitioner secured 54 marks, whereas the cut off marks for OH category was 47. However, the petitioner was not declared successful as OH candidates, since the candidates were adjusted against the vacancies within their respective social reservation categories.

7. Learned Advocate for the Commission specifically submitted that the petitioner belongs to EWS category and since no vacancy was notified under EWS category for Urdu subject, the petitioner could not be selected, despite having been secured marks above the OH category cut off. Reliance is placed on a resolution dated 22.01.2021 issued by the General Administration Department. Referring thereto, he thus submitted that the reservation will not be given separately, rather the candidate belonging to disabled quota will be adjusted in the category to which they belong and accordingly the petitioner was considered under the EWS category; since there was no vacancy or "0" vacancy for Urdu subject under EWS category, the petitioner could not be selected. He further submits



that the judgment of the Apex Court in the case of **Saurav Yadav** (supra) is not applicable to the facts of the present case.

8. Learned Advocate for the State supported the contention of the learned Advocate for the Commission by emphasizing on the prescription of the resolution dated 22.01.2021.

9. This Court has carefully heard the learned Advocate for the respective parties and also perused the materials available on record. Before coming to the facts of the case, it would be pertinent to recapitulate the legal position as crystallized by the Apex Court in series of decisions. In **Rajesh Kumar Daria vs Rajasthan Public Service Commission & Ors. [(2007) 8 SCC 785]**, where a Bench of 3-Judge of the Apex Court considered the differences between vertical and horizontal reservation, which are as under:

“ 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.

10. In **Saurav Yadav** (supra), the Hon'ble Supreme Court reiterated the settled principle of law that a candidate belonging to any of the vertical reservation categories, who, on the basis of own merit, is entitled to be selected in the Open or General category will be selected against the General Category and his selection would not be counted against the quota reserved for such vertical reservation categories. The Apex Court while considering the issue as to whether such principle laid down in the case of **Indra Sawhney v. Union of India [1992 Supp (3) SCC 217]** and, followed subsequently in various decisions would also apply to the cases of horizontal reservation, while crystallizing the conflicting views of different High Courts and taking note of various earlier pronouncements, held that the steps indicated by the High Court of Gujarat in para-69 of its judgment in **Tamannaben Ashokbhai Desai v.**



Shital Amrutlal Nishar [2020 SCC OnLine Guj 2592] is correct, which highlighted appropriate procedure for considering and giving effect to both vertical and horizontal. It would be apposite to quote the relevant paragraphs of the afore noted judgment of *Saurav Yadav* (supra);

“23.10. In Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar [Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar, 2020 SCC OnLine Guj 2592] , the High Court of Gujarat considered the decisions on the point including some of those rendered by the High Courts of Rajasthan, Bombay and Uttarakhand as stated above and observed as under : (SCC OnLine Guj paras 58-59 & 62-63)

“58. The above-referred case law can be better explained by way of the following illustration based on the factual position obtaining in the present case.

59. There are 115 posts of Police Inspector (unarmed), out of which 55 posts are reserved for the SC, ST and SEBC and remaining 60 posts for Open/General category. Out of the said posts, 33% are reserved for women under each category, meaning thereby, out of 60 posts in the open category, 20 posts are reserved for women. Thus, the first step would be that of preparing the entire list on the basis of merit and out of the same, selecting first 60 candidates, irrespective of their caste and sex, in open category. The second step would be then of evaluating as to whether 20 women, irrespective of their caste, are there within those 60 candidates, so as to meet with the requirement of horizontal reservation. If 20 women are already there, then there is no need to select any more woman in that category, but if not, then in



the third step, the remaining number of women have to be included on the basis of the merit from the aforesaid list, irrespective of their caste, while deleting the corresponding number of male candidates from the bottom of the list of first 60 candidates. Thereafter, identical exercise is required to be undertaken for implementing vertical reservation, followed by horizontal reservation, with respect to the posts belonging to the SEBC, SC and ST categories.

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62. It is pertinent to note that Rule 2(d) seeks to carve out a fourth category of posts, not being posts reserved in favour of the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes. In other words, this fourth category is nothing but an open category of posts, excluding the posts reserved in favour of the above-referred classes i.e. the posts reserved for women in open category would be over and above the posts reserved for women in SC, ST and SEBC quota, as referred to in Rule 2(a), 2(b) and 2(c) of the said Rules. Thus, all the meritorious candidates, whether belonging to the reserved category or unreserved category, will be covered by the open category, irrespective of their caste, community or tribe where merit alone will be taken into account, while implementing vertical reservation as well as horizontal reservation within the same. It may be noted that by virtue of the Gujarat Civil Services (Reservation of Posts for Women) (Amendment) Rules, 2014, the requirement of reservation in favour of women came to be enhanced from 30% to 33%.

63. In view of the aforesaid discussion, we have no hesitation in arriving to the conclusion that the Government Resolution dated 1-8-2018 of the GAD deserves to be quashed and set aside, and



is hereby quashed and set aside.”

23.11. *The High Court then laid down :
(Tamannaben Ashokbhai Desai case [Tamannaben
Ashokbhai Desai v. Shital Amrutlal Nishar, 2020
SCC OnLine Guj 2592] , SCC OnLine Guj paras
69-71)*

*“69. For the future guidance of the State
Government, we would like to explain the proper
and correct method of implementing horizontal
reservation for women in a more lucid manner.*

***‘PROPER AND CORRECT METHOD OF IMPLEMENTING
HORIZONTAL RESERVATION FOR WOMEN***

<i>No. of posts available for recruitment</i>	<i>..... 100</i>
<i>Social Reservation Quota (49%)</i>	
<i>Open Competition (OC)</i>	<i>.....51</i>
<i>Scheduled Castes (SC)</i>	<i>.....12</i>
<i>Scheduled Tribes (ST)</i>	<i>.....17</i>
<i>Socially and Educationally Backward Classes (SEBC)</i>	<i>.....20</i>
<i>Horizontal Reservation for Women (33% in each of the above categories)</i>	
<i>OC</i>	<i>.....17</i>
<i>SC</i>	<i>.....04</i>
<i>ST</i>	<i>.....06</i>
<i>SEBC</i>	<i>.....07</i>

*Step 1: Draw up a list of at least 100 candidates
(usually a list of more than 100 candidates is
prepared so that there is no shortfall of
appointees when some candidates do not join
after offer) qualified to be selected in the*



order of merit. This list will contain the candidates belonging to all the aforesaid categories.

Step 2: From the aforesaid Step 1 List, draw up a list of the first 51 candidates to fill up the OC quota (51) on the basis of merit. This list of 51 candidates may include the candidates belonging to SC, ST and SEBC.

Step 3: Do a check for horizontal reservation in OC quota. In the Step 2 List of OC category, if there are 17 women (category does not matter), women's quota of 33% is fulfilled. Nothing more is to be done. If there is a shortfall of women (say, only 10 women are available in the Step 2 List of OC category), 7 more women have to be added. The way to do this is to, first, delete the last 7 male candidates of the Step 2 List. Thereafter, go down the Step 1 List after Item 51, and pick the first 7 women (category does not matter). As soon as 7 such women from Step 1 List are found, they are to be brought up and added to the Step 2 List to make up for the shortfall of 7 women. Now, the 33% quota for OC women is fulfilled. List of OC category is to be locked. Step 2 List becomes final.

Step 4: Move over to SCs. From the Step 1 List, after Item 51, draw up a list of 12 SC candidates (male or female). These 12 would also include all male SC candidates who got deleted from the Step 2 List to make up for the shortfall of women.

Step 5: Do a check for horizontal reservation in the Step 4 List of SCs. If there are 4 SC women, the quota of 33% is complete. Nothing more is to be done. If there is a



shortfall of SC women (say, only 2 women are available), 2 more women have to be added. The way to do this is to, first, delete the last 2 male SC candidates of the Step 4 List and then to go down the Step 1 List after Item 51, and pick the first 2 SC women. As soon as 2 such SC women in Step 1 List are found, they are to be brought up and added to the Step 4 List of SCs to make up for the shortfall of SC women. Now, the 33% quota for SC women is fulfilled. List of SCs is to be locked. Step 4 List becomes final. If 2 SC women cannot be found till the last number in the Step 1 List, these 2 vacancies are to be filled up by SC men. If in case, SC men are also wanting, the social reservation quota of SC is to be carried forward to the next recruitment unless there is a rule which permits conversion of SC quota to OC.

Step 6: Repeat Steps 4 and 5 for preparing list of Sts.

Step 7: Repeat Steps 4 and 5 for preparing list of SEBCs.”

11. The steps indicated by the learned High Court of Gajarat in ***Tamannaben Ashokbhai Desai*** (supra) has been held to be a correct and appropriate procedure and held that the same will satisfy all claims and will not lead to any incongruity. Such observation of the Apex Court as referred in para-43 is encapsulated hereinbelow:

“43. Finally, we must say that the steps indicated by the High Court of Gujarat in para 69 of its judgment in Tamannaben Ashokbhai Desai



[Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar, 2020 SCC OnLine Guj 2592] contemplate the correct and appropriate procedure for considering and giving effect to both vertical and horizontal reservations. The illustration given by us deals with only one possible dimension. There could be multiple such possibilities. Even going by the present illustration, the first female candidate allocated in the vertical column for Scheduled Tribes may have secured higher position than the candidate at Serial No. 64. In that event said candidate must be shifted from the category of Scheduled Tribes to Open/General category causing a resultant vacancy in the vertical column of Scheduled Tribes. Such vacancy must then enure to the benefit of the candidate in the waiting list for Scheduled Tribes-Female. The steps indicated by the Gujarat High Court will take care of every such possibility. It is true that the exercise of laying down a procedure must necessarily be left to the authorities concerned but we may observe that one set out in said judgment will certainly satisfy all claims and will not lead to any incongruity as highlighted by us in the preceding paragraphs.”

12. The observation as noted hereinabove was duly concurred by S. Ravindra Bhatt J. by supplementing the decision rendered by the Court. It would be worth benefiting to quote paragraph-66 of the said judgment [(**Saurav Yadav** (supra))]:

“66. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate's merit, which otherwise entitles her to



be shown in the open general category, is foreclosed, as the consequence would be, if the State's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.”

13. Recently a Two-Judge Bench of the Apex Court in the case of ***Ramnaresh alias Rinku Kushwah & Ors. vs. State of Madhya Pradesh & Ors. [2024 SCC OnLine SC 2058]*** following the afore noted decisions has been been pleased to observe that the horizontal as well as the vertical reservation would not be seen as rigid “slots”; where a candidate's merit, which otherwise entitles her or him to be shown in the open general category, is foreclosed. It was observed that by doing so, it would result in communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. It was observed that the open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.

14. In the case of ***Ramnaresh alias Rinku Kushwah*** (supra), the writ petitioner had challenged the decision of the



Department of Medical Education of not allotting MBBS Unreserved (UR) Category Government School (GS) quota seats to the meritorious reserved candidates, who had passed from the Government Schools. The writ petition was filed in the premise that on 19th June, 2019, the Madhya Pradesh Education Admission Rules, 2018 were notified and new sub-rules were established that defined 'category' and the method to fill up the vacancies for category wise reservation. On 7th May, 2023, the NEET (UG) Examination was conducted in which the appellants had participated. On 10th May 2023, the State of Madhya Pradesh notified another amendment in the Admission Rules, 2018 by defining the "Government School" and the students who could fall under the category of "Government School Students". By deleting the quantum of reservations, 5% of the total seats were reserved for government school students. Subsequently, the results of NEET (UG) were declared and the amendment afore noted applied to the counselling process. The respondent State of Madhya Pradesh issued seat wise distribution, however at the end of second round of counselling, several seats remained vacant. According to Rule 2(g) of the Admission Rules, 2018, the vacancies were transferred from one category to other categories. In the said case, out of 89



unreserved seats for Government School students, 77 were sent to the open category. The appellants, being aggrieved by the fact that the vacant seats were going to be released to the unreserved category, approached the High Courts that the meritorious students of reserved category, who have studied in Government Schools must be allotted MBBS seats of unreserved category government school quota before they are released to the open category. Both the learned Single Judge as well as the Division Bench of the High Court of Madhya Pradesh dismissed the writ petitions finding the same *sans* merit. The matter has finally come up for consideration before the Apex Court. The Apex Court following the decisions rendered in the case of **Saurav Yadav** (supra) and **Sadhna Singh Dangi vs. Pinki Asati [(2022) 12 SCC 401]** held that the methodology adopted by the respondents in compartmentalizing the different categories in the horizontal reservation and restricting the migration of meritorious reserved category candidates to the unreserved seats was totally unsustainable; The relevant paragraph of the judgment is being quoted hereinbelow:

“16. In view of the settled position of law as laid down by this Court in the case of Saurav Yadav (supra) and reiterated in the case of Sadhana Singh Dangi (supra), the methodology adopted by the respondents in compartmentalizing the different categories in the horizontal reservation and



restricting the migration of the meritorious reserved category candidates to the unreserved seats is totally unsustainable. In view of the law laid down by this Court, the meritorious candidates belonging to SC/ST/OBC, who on their own merit, were entitled to be selected against the UR-GS quota, have been denied the seats against the open seats in the GS quota.”

Emphasis supplied

15. Now coming to the case at hand, there is no dispute that the petitioner had secured 54 marks in General Studies paper, which is higher to the cut off marks as prescribed 47 marks. It is also not in dispute that out of 72 vacancies/posts, only 21 candidates were selected in the Orthopedically Handicapped Reserved Category.

16. Once the petitioner has secured more than the cut off marks under OH Reserve Category and there had been no post available or advertised in EWS, in any view of the matter, his candidature should be considered in the Open Category, if any of the candidate under OH Reserve Category awarding lower marks than the petitioner is selected and declared successful under Open Category. An open category is not a quota but is available to all men and women alike. The Court emphasized that both vertical and horizontal reservations are method of ensuring representation in public services and there cannot be seen as rigid “slots”, where a candidate's merit, which



otherwise entitles his / her to be shown in the open general category is foreclosed. The contention of the respondent BPSC that a candidate claiming horizontal reservation is entitled to benefit only under social category reservation and cannot fill open category vacancy, is rejected by the Apex Court as that would result in such candidate with less merit (in the open category) being selected, and those with more merit than such selected candidates (in the social/vertical reservation category), being left out of selection. The open category is open to all, the only condition that candidate to be selected in it is merit, regardless of whether reservation benefit of either type is available to her or him.

17. In view thereof, non consideration of the candidature of the petitioner under Orthopedically Handicapped in open category is *per se* illegal. The concerned respondent authorities is directed to revisit the merit list of teachers in Primary School of Class 1-5 in Urdu subject against Advertisement No. 27 of 2023 by keeping in mind the mandate of **Saurav Yadav** (supra) followed in subsequent rulings as discussed hereinabove, and issue appointment letter in favour of the petitioner on the post of Primary Teacher in Urdu subject, in case any of the candidate, who secured lesser marks than the



petitioner against the vacancies of Orthopedically Handicapped in open category is appointed. This exercise must be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

18. Needless to observe that in case the left over vacancies of OH reserved category against Advertisement No. 27 of 2023 is carried forward, the appointment of the petitioner shall be made against the existing vacancies by treating it as part of Advertisement No. 27 of 2023, in view of the prayer made by the petitioner in I.A. No. 1 of 2024.

19. The writ petition as well as I.A. No. 1 of 2024 stand allowed.

20. There shall be no order as to cost.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	15.11.2025
Transmission Date	N.A.

