



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VINAY SARAF**

**WRIT PETITION No. 7297 of 2025
DHARMU KHAPARIYE AND ORS.**

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

*Mr. Naman Nagrath Senior Advocate with Mr. Dinesh Singh Chouhan,
Advocate for the petitioners.*

Mr. Shri Anubhav Jain - Government Advocate for respondent/State.

Mr. Siddhartha Sharma Advocate for the respondent no. 4.

WITH

WRIT PETITION No. 44040 of 2025

SUMIT KUMAR PANDEY AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. Dinesh Singh Chouhan, Advocate for the petitioners.

Mr. Shri Anubhav Jain - Government Advocate for respondent/State.



Mr.Siddhartha Sharma Advocate for the respondent no. 4.

WRIT PETITION No. 5834 of 2026

PRIYA MISHRA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. Suyash Vyas Advocate for the petitioners.

Mr. Shri Anubhav Jain - Government Advocate for respondent/State.

Mr.Siddhartha Sharma Advocate for the respondent no. 4.

WRIT PETITION No. 7325 of 2026

MAHENDRA LODHI AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. Anil Kumar Gautam Advocate for the petitioners.

Mr. Shri Anubhav Jain - Government Advocate for respondent/State.

Mr.Siddhartha Sharma Advocate for the respondent no. 4.



Reserved on – **27.04.2026**

Pronounced on – **22.05.2026**

ORDER

Per: Justice Vinay Saraf:

1. By these petitions, the petitioners have challenged Constitutional validity and legality of Gazette Notification dated 24.01.2025 issued by Home Department of the State of Madhya Pradesh, whereby amendments have been introduced to the Madhya Pradesh Police Executive (Non-Gazetted) Service Recruitment Rules, 1997(hereinafter referred to as “**the Rules,1997**”) for incorporating that at the first stage of the preliminary examination cut-off marks shall be declared only for vertical reservation categories like UR/ OBC/ SC/ ST/ EWS and no separate cut-off marks shall be declared for candidates belonging to horizontal reservation categories at that stage. In some of the petitions relief has also been sought to quash the clause 2(2)(2)(Ga) of the Rule Book published for MP Police Sub Inspector recruitment test, 2025(MPSI-2025). It is also prayed that direction be issued to apply minimum benchmarks criteria as prescribed by the MP State Govt. Gazette issued in 2016 to qualify for the written examination.



2. As common issues are involved in these writ petitions filed under Article 226 of the Constitution of India, with the consent of parties arguments were heard analogously for the purposes of final disposal.

3. For sake of brevity the facts have been taken from W.P. no. 7297 of 2025, however this order will decide all the petitions.

4. The petitioners are Police constables and ex-serviceman and are aspirants for the post of Sub Inspector in MP Police. A Gazette Notification has been issued on 24.01.2025 for amending the provisions of the Madhya Pradesh Police Executive (Non-Gazette) Service Recruitment Rules, 1997, wherein the respondent no. 1 has notified the following amendment in clause (ii) of sub rule 8 of Rule 6, as under: -

“Note.- Preliminary examination under sub-clause(c) of clause (ii) is compulsory for all candidates.

On the basis of the marks obtained in the preliminary examination of the first stage, Separate merit lists, for non-technical posts [Subedar, . Sub-Inspector (Special Armed Force/District Executive Force/ Special Branch)] and for technical posts (Sub-Inspector-Radio/Finger Print/ Questioned Documents/ Photo/Arms] shall be prepared in which the candidates numbering ten times the number of vacant posts advertised in their respective vertical categories viz Unreserved, Other Backward Classes, Scheduled Tribes, Scheduled Castes and Economically Weaker Sections, shall be called for examination of second stage. Unreserved women as well men include candidates from Other Backward Classes, Scheduled Tribes, Scheduled Castes and Economically Weaker Sections. Errorfree merit list shall always have cut-off marks of any vertical



reservation category, lower than the cut-off marks of the unreserved category.

Last candidate on whom ten times number is completed and all those candidates, who obtained more than or equal marks to: this candidate shall be admitted to the second stage Main examination irrespective of the number exceeding the stipulated ten times number. First stage preliminary examination cut-off marks shall be declared only for each vertical category Unreserved/ Other Backward Classes/Scheduled Tribes/ Scheduled Castes/Economically Weaker Sections. There shall be no separate cut-off marks for the horizontal reservation categories.”

5. As per the amendment in Rule 6(8)(ii) of the Rules, 1997 at first stage i.e. preliminary examination cut-off marks shall be declared only for each vertical category viz. Unreserved/ Other Backward Classes / Scheduled Tribes/Scheduled Castes/Economically Weaker Section and no separate cut off marks will be declared for horizontal reservation categories.

6. All the petitioners are Police constables and ex-serviceman and as per rules 15% seats are reserved for police constables and 10% seats are reserved for ex-servicemen in all the categories, which is Horizontal Compartment wise Reservation, and, as per amendment carried out in Rules, 1997, there shall be no separate cut-off marks for the horizontally reserved categories at the stage of preliminary examination. Earlier there was no provision in the Rules, 1997 that no separate cut-off marks for horizontal reservations would be provided at the preliminary stage. In the earlier advertisement issued in 2016 and 2017, it was simply mentioned that Horizontal Reservation will



be applied as per the law laid down by the Supreme Court in the case of Indira Sawhney.

7. Madhya Pradesh Public Service Commission organized exams for recruitment on the posts of state services, wherein MPPSC had given benefit of Horizontal Reservation at the preliminary stage by declaring separate cut-off marks.

8. On 27.10.2025, Employees Selection Board issued advertisement for recruitment on the post of Sub Inspector and Recruitment Rule Book, 2025 is published, wherein, no separate cut-off is prescribed for applying Horizontal Reservation. In these petitions the amendment in the Rules, 1997 and relevant provision in Rule Book, 2025 have been challenged by the petitioners, wherein it is prescribed that there will be no separate cut-off for horizontal reservation at preliminary examination stage.

9. Mr. Naman Nagrath, learned Senior Counsel appearing on behalf of the petitioners submits that earlier the provisions were silent on the issue of separate cut-off for horizontal reservation at preliminary stage and MPPSC was declaring the separate cut-off marks at initial stage also, but after the impugned amendment in the Rules, 1997 on 24.01.2025, in the advertisement issued for recruitment on the post of sub-inspector on 27.10.2025, it is specifically mentioned that there will be no separate cut-off for horizontal reservation at the stage of preliminary examination, which



is contrary to the law laid down by Supreme Court in *Indira Sawhney Vs Union of India* 1992 SUPP (3)SCC-217, *Anil Kumar Gupta Vs State of up* 1995 (2)SUPP SCR 396 and *Rajesh Kumar Daria Vs Rajasthan Public Service Commission Appeal Civil 3132/2007* etc.

10. He further submits that the concept of horizontal reservation stands conclusively settled by the Constitution Bench of the Supreme Court in **Indra Sawhney (supra)**, wherein it has been categorically held that Reservations for SC/ST/OBC are vertical reservations under Article 16(4) and reservations for special categories such as ex-servicemen, women, and PwD are horizontal reservations under Article 16(1) and Horizontal reservations must operate across all vertical categories as interlocking reservation and cannot be treated as a separate, isolated quota.

11. Learned senior advocate argued that ex-servicemen reservation being horizontal in nature, must be distributed within each vertical category viz. General, SC, ST, OBC and must be applied at every stage of selection, including the preliminary examination. He submits that 57 posts are reserved for ex-servicemen (ex-army personnel) and as per the recruitment procedure candidates equal to 10 times the number of vacancies are required to be called for the next stage of examination and therefore, 570 ex-servicemen candidates ought to have been shortlisted for the subsequent stage and in the absence of separate cut-off marks at the preliminary stage, it would not be



possible to shortlist 570 ex-servicemen candidates for next stage, and due to an arbitrary and illegal clause, only 12 ex-servicemen candidates could qualified for the next stage, which completely defeats the very purpose of reservation and renders the entire selection process vitiated.

12. Mr. Dinesh Singh Chouhan, Suyash Vyas and Anil kumar Goutam learned counsel for petitioners submit that horizontal reservation cuts across vertical reservation categories, namely SC, ST, OBC and General, and candidates selected under the ex-servicemen quota are to be adjusted within their respective vertical categories depending upon their social classification and an ex-serviceman belonging to SC category is to be counted against the SC quota, similarly for ST, OBC and General categories, thereby ensuring that horizontal reservation operates within each vertical category and not as a separate or isolated pool.

13. Learned Counsels further submit that in consonance with the constitutional scheme under Articles 14 and 16, it was incumbent upon the respondents to implement ex-servicemen reservation in a manner that ensures its application at every stage of the selection process, including the preliminary examination and the amendment in the Rules, 1997 being contrary to the scheme of Constitution of India are liable to be declared ultra vires and consequently the provisions in



the Rule Book, 2025 to the effect that there will be no separate cut-off at preliminary examination stage are liable to be quashed.

14. The petitioners have heavily relied on the judgment of Supreme Court delivered in *suo moto* W.P.(Civil) Nos.02/2024 and 06/2024 and other batch of matters in; **Recruitment of Visually Impaired in Judicial Service**, wherein the Supreme Court has taken *suo motocognizance* of letter petition addressed to the Hon'ble Chief Justice of India by the mother of one of the aspirants for judicial service, who was visually impaired candidate, challenging the legality of the M.P. Judicial Services Examination (Recruitment and Conditions of Service) Rules, 1994 (hereinafter referred to as “the Rules, 1994”) as amended on 23.06.2023 complaining that the said Rules do not provide any specific exemption for persons with disabilities and thus are not sufficient to protect the interest of visually impaired candidates. The Supreme Court after examining the provisions of **the Rights of Persons With Disabilities Act, 2016** has held that in *Indira Sawhney Vs. Union of India*, the Seven Judge Constitution Bench proposed for reservation of PwD candidates in public employment and for relaxation in qualifying marks as amounting to affirmative action in their favour. The judgment illustrates that relaxation in marks can be given to the PwD candidates and this relaxation in marks does not dilute the efficiency in administration and relaxation in minimum marks is permissible in law.



15. The Supreme Court further held that in the opinion of the court, relaxation in minimum cut-off marks is permissible especially when there is specific power of relaxation available to the appointing authority under the Rules, 1994. The Supreme Court ordered that maintaining and operating a separate cut-off list is mandatory for each category, which axiomatically includes PwD category as well and non-declaration of cut-off marks affects transparency and creates ambiguity. The Candidates are left uninformed about the last marks scored by the qualifying candidate belonging to the particular category to be able to get through the next stage of selection process.

16. Rule 6 A of the Rules, 1994 was struck down by the Supreme Court in so far as it excludes visually impaired and low vision candidates for appointment in judicial services and direction was issued to extend the relaxation in cut off marks to the PwD candidates at every stage of examination.

17. Mr. Anubhav Jain, learned Government Advocate opposed the petitions and submits that even before the impugned amendment, there was no provision in the Rules, 1997 to declare the separate cut-off marks for horizontal reservation categories at the first stage of the preliminary examination and for the purpose of removing the doubts the amendments were introduced to the Rules, 1997, whereby it is specified that no separate cut-off marks will be declared at the first stage of the preliminary examination for horizontal reservation



categories and cut-off marks shall be declared only for vertical reservation categories. Madhya Pradesh Employees Selection Board has issued the recruitment notification as per the amended provisions and therefore, the Rule Book issued by the Board along with the Advertisement dated 27.10.2025 is not ultravires to the provisions of the Rules and the petitions are liable to be dismissed.

18. Mr. Siddharth Sharma, learned counsel appearing on behalf of respondent/Board submits that the Rules, 1997 have been amended in exercise of powers conferred under Article 309 of the Constitution of India and the amendment is neither ultravires to Article 16 (1) nor to the provisions of Article 16 (4) of the Constitution of India and thus cannot be struckdown. The advertisement issued for the post of M.P. Sub Inspector is based on the impugned amendment and it is also in consonance with the Constitution and the Rules, 1997. He further submits that as per the amended provisions, preparation of separate merit list at the preliminary stage for all vertically reserved categories by including candidates up to ten times the number of posts advertised in their respective categories are mandatory, however, no separate cut-off marks or merit list is prescribed at the preliminary stage for any horizontally reserved categories.

19. The respondent/Board submits that the judgment delivered by the Supreme Court in the *suo moto* case (supra) is not applicable to the case in hand as the Supreme Court itself in paragraph 63 of the



judgment indicates that it is confined specifically to PwD candidates and the rights derived from the Rights of Persons With Disabilities Act, 2016. Mr. Siddharth Sharma, learned counsel relied on the judgment of the Supreme Court in **Indira Sawhney** (supra), which defines horizontal reservation and vertical reservation and the relevant paragraph reads as under :

"95. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of Physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is called inter-locking 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 this quota will be placed in the appropriate category, if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure."

20. The aforesaid exposition clearly establishes that horizontal reservations operate as interlocking adjustments within the vertical categories, and do not constitute independent compartments for



selection. The candidates selected under horizontal reservation are necessarily to be accommodated within their respective vertical categories.

21. Learned counsel relied on the judgment of Supreme Court delivered in **Rajesh Kumar Daria Vs. Rajasthan Public Service Commission,(2007) 8 SCC 785**, wherein the Supreme Court enumerated the scheme of interlocking reservation and the relevant paragraph reads as under:

“7. A 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) 5 SCC 173] thus: (SCC p. 185, para 18)

“The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied—in case it is an overall horizontal reservation—no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)”



22. Mr. Sharma, submits that it is settled position of law that preliminary examination is merely a screening mechanism intended to shortlist candidates for further stages and does not constitute a stage of final determination. The marks obtained in the preliminary examination by the candidates should not be counted for determining their final order of merit. The merit of the candidate is not judged by the preliminary examination and it is only the eligibility criteria fixed by the examination conducting body.

23. Mr. Sharma relied on the judgment delivered by the learned Single Bench of this Court in **Paroksh Kumar Sen & Ors. Vs. State of M.P. & Ors., 2024 SCC OnLine MP 9605**, wherein the learned single Judge, while dealing with the identical controversy has held as under:

“28. Thus, when the scheme of the examination is crystal clear that candidates in the ratio of five times the number of posts are to be called for, in terms of each of the vertical compartment and then, from amongst those horizontal reservation posts are to be filled, merit could not have been diluted by either diluting the benchmark requirement or extending the list so to accommodate five times the candidates from each of the horizontal category Group. Thus, the first issue is answered in Negative. It is held that candidates are required to be called for in a prescribed ratio only in terms of the vertical categories and not in terms of horizontal reservation categories.”

24. He further relied on the judgment delivered in **W.P.No.8757/2022 (Aditi Tiwari & Ors. Vs. State of M.P. & Ors.)**, wherein the learned Single Judge has held as under:



“20. A perusal of the aforesaid clause reflects that for each category the candidates in proportion to 5 times of the post were to be called for the second stage of the examination and the candidates were to be called castewise. The said clause further reflects that the merit list was to be prepared on the basis of total 100 marks. It was provided in the said clause that for each category list of the proposed candidates in 5 times of the total posts would be prepared.

21. Clause 1.15.2 (3) of the Rule Book is important for the purpose of the instant matter wherein it is provided that after preparation of the list in terms of Clause (2) of Clause 1.15.2, overall horizontal reservation would be provided. It is further stipulated that for horizontal reservation only those women and ex-soldiers would be eligible, who have secured the marks more than cut-off marks in their respective vertical reservation categories.

22 . Therefore, a perusal of the aforesaid clause leaves no iota of doubt that overall horizontal reservation was to be applied at the final stage of the selection process and not at the preliminary stage of selection process. It is undisputed that the comparative evaluation of candidate's merit is not required to be taken recourse to, at the preliminary stage and, therefore, there is no question of applying the horizontal reservation at the preliminary stage.”

25. Mr. Sharma submits that if separate cut-off marks are declared at the stage of preliminary examination, it would fundamentally alter the structure and objective of the preliminary examination by introducing horizontal reservation at a stage, which is merely eliminatory in nature. He prays for dismissal of the petition.

26. After having heard the arguments of learned counsel for the parties, it is profitable to first consider the difference between the vertical and horizontal reservation. The Constitution Bench of the Supreme Court in celebrated case of **Indira Sawhney (supra)**, has held that horizontal reservation is permissible to achieve the objects of



the Article 16 (1) of the Constitution of India. There are two types of reservations, vertical reservation and horizontal reservation. The reservations in favour of Schedule Caste, Schedule Tribes and Other Backward Classes under Article 16(4) may be called vertical reservation, wherein reservation in favour of physically handicapped, women etc. under Clause 1 of the Article 16 can be referred to as horizontal reservation. Horizontal reservation cut across the vertical reservation, which is called interlocking reservations. The persons selected against this quota are to be placed in the appropriate category, if he belongs to the SC category; he will be placed in that quota by making necessary adjustments in the SC category. Even after providing for this horizontal reservation, the total percentage of social reservation of vertical categories remains intact. The relevant para reads as under:

“812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture : all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as ‘vertical reservations’ and ‘horizontal reservations’. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. The



persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

27. It is further explained by the Supreme Court in ***Anil Kumar Gupta & Ors. Vs. State of U.P. & Ors., (1995) 5 SCC 173***, wherein the Supreme Court has held that there are two types of horizontal reservations, one is over all reservation and second is compartmentalized reservation, where the seats reserved for horizontal reservations are proportionately divided among the social vertical reservation and are not inter-transferable, it would be a case of compartmentalized reservation. As against these, in overall reservation while allocating the special reservation candidates to their respective social vertical reservation category, the overall reservation in favour of special reservation category has to be honoured. The Supreme Court further held that if it is a case of compartmentalized horizontal reservation then the process of verification/adjustment and accommodation should be applied separately to each of the vertical reservations and in a case of over all horizontal reservation, the consideration would be only to the effect that sufficient number of candidates have secured the reserved seats for special categories or



not, irrespective to the social vertical reserved categories. The relevant paragraphs of the judgment read as under:

“15. On a careful consideration of the revised notification of 17-12-1994 and the aforementioned corrigendum issued by the Lucknow University, we are of the opinion that in view of the ambiguous language employed therein, it is not possible to give a definite answer to the question whether the horizontal reservations are overall reservations or compartmentalised reservations. We may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not intertransferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen per cent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for OBCs; if the 112 special reservation seats are also divided proportionately as between OC, OBC, SC and ST, 30 seats would be allocated to the OBC category; in other words, thirty special category students can be accommodated in the OBC category; but say only ten special reservation candidates belonging to OBC are available, then these ten candidates will, of course, be allocated among OBC quota but the remaining twenty seats cannot be transferred to OC category (they will be available for OBC candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in OC category or not; the special reservation would be a watertight compartment in each of the vertical reservation classes (OC, OBC, SC and ST). As against this, what happens in the overall reservation is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to OC category which means that the number of special reservation candidates in OC category would be $56+20=76$. Further, if no special reservation candidate belonging to SC and ST is available then the proportionate number of seats meant for special reservation candidates in SC and ST also get transferred to OC category. The result would be that 102 special



reservation candidates have to be accommodated in the OC category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between OC, OBC, SC and ST will not be altered.

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

17. It would have been better and the respondents may note this for their future guidance that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. As a matter of fact, it may not be totally correct to presume that the Uttar Pradesh Government was not aware of this distinction between “overall horizontal reservation” and “compartmentalised horizontal reservation”, since it appears from the judgment in Swati Gupta [(1995) 2 SCC 560] that in the first notification issued by the Government of Uttar Pradesh on 17-5-1994, the thirty per cent reservation for ladies was split up into each of the other reservations. For example, it was stated against backward classes that the percentage of reservation in their favour was twenty-seven per cent but at the same time it was stated that thirty per cent of those seats were reserved for ladies. Against every



vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a “compartmentalised horizontal reservation”. We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised in the sense explained above. In other words, the notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., ST, SC, OBC and OC. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the OC category alone and none from the OBC or for that matter, from SC or ST. It can well happen the other way also in a given year.

18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied — in case it is an overall horizontal reservation — no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where



the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.”

28. Reference may be had to the judgment of Supreme Court in **Rajesh K. Dariya Vs. Rajasthan Public Service Commission (2007) 8 SCC 785**, wherein, considering the challenge to the Rajasthan Judicial Services Rules, 1955, the Supreme Court examined the procedure of application of Horizontal(Special) Reservation and held that social reservation in favour of SC, ST and OBC under Article 16(4) are vertical reservations and special reservations in favour of the physically handicapped, women etc. under Article 16(1) or 15(3) are horizontal reservation. 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 non-reserved posts on their own way, their number will not be counted against the quota reserved for respective backward class, however, the said principle will not apply to horizontal compartmentalized reservation and candidate who belong to the special reservation, can claim the seat in the said vertical compartment only. The relevant paragraphs of the judgment read as under:

“7. A 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) 5 SCC 173] thus: (SCC p. 185, para 18)



“The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas i.e. SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied—in case it is an overall horizontal reservation—no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.)”

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

9. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are “vertical reservations”. Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are “horizontal reservations”. Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of



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

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



woman candidates on the ground that “SC women” have been selected in excess of the prescribed internal quota of four.)

29. Reference may be had to the decisions of the Supreme Court in *suo moto writ petition (supra)*, wherein the Supreme Court while considering the provisions of the Rights of the Persons with Disabilities Act, 2016 has held that a relaxation should be granted to the PwD candidates as the Chief Justice of M.P. is empowered to relax the particular rule to such an extent and subject to such exception and conditions as may be deemed necessary under Rule 19 of the Rules, 1994 and office memorandum dated 15.01.2018 issued by the Government of India also provides for relaxation in standards of suitability in respect of PwD candidates and after considering the aforesaid provisions of the Act, 2000, Act, 2016, Rules, 1994 and the Supreme Court has held that the relaxation should be granted to the PwD candidates at every stage by maintaining separate cut-off and merit list for PwD candidates.

30. The petitioners have heavily relied upon the judgment of the Supreme Court in *suo moto writ petition (supra)*, and argued that the case of the other horizontal reserved category candidates are identical to the case of the PwD candidates and thus the judgment delivered by the Supreme Court in *suo moto writ petition (supra)*, is applicable to all the horizontal categories. We are unable to accept the arguments advanced by learned Senior Counsel for the petitioners that the said



judgment is applicable to all the horizontal categories as the Supreme Court has extended the relaxation in favour of PwD candidates after considering the provisions of the Act, 2016, which provides for special relaxation to the PwD candidates and the OM issued by the Government of India for providing additional relaxation to the PwD candidates and similar situation is not available in the case in hand. Consequently, the judgment delivered by the Supreme Court in *suo moto writ petition (supra)*, is not helpful to the petitioners.

31. The petitioners also relied on the judgment of Supreme Court in **Rekha Sharma Vs. Rajasthan High Court Jodhpur & Anr.** 2024 SCC OnLine SC 2109, wherein the Supreme Court has held that the reservation for women (widow or divorcee) was compartmentalized reservation, whereas the reservation for the persons with benchmark disabilities was overall reservation and non-fixation of separate cut-off marks could neither be said to be violative of any of the fundamental rights of the appellants, who belonged to PwD category. Said judgment is based on the advertisement issued by the recruitment agency, wherein the recruitment agency has provided for separate cut-off marks for certain categories and considering the same, the Supreme Court has held that declaration of cut-off marks for some of the categories of compartmentalized reservation and non-fixation of cut-off marks for other categories was not violative of any fundamental rights of the petitioners. Said judgment is also not helpful to the petitioners.



32. One important aspect of this case is that in the scheme of recruitment, it is not provided that in case of any seat left vacant, which is reserved for Ex-Serviceman or Police Constable, the same shall be carried forward. On the contrary, if sufficient number of Police Constable and Ex-Serviceman are not available, the left out seats will be filled up from the candidates of vertical compartmental candidates and thus, it is not the intention of the State that the prescribed number of reserved candidates for Horizontal compartmentalized reserved category of Ex-Serviceman or Police Constable must be filled up by that category only and considering the same, it is understandable, why the separate cut-off has not been prescribed for these horizontal compartmentalized reserved category candidates at initial stage of preliminary examination.

33. As discussed herein above, the preliminary examination is only the qualifying test and is not having any bearing upon the final merit list and, therefore, at the stage of preliminary examination, no separate cut-off is mandatory to be declared. The petitioners have failed to point out any specific clause of Article 16 (1) which provides for separate cut-off marks for horizontal compartmentalized reserved categories at the stage of preliminary examination. Except the case of PwD candidates, the Supreme Court has not issued any directions to declare separate cut-off marks at all the stages.



34. Declaration of separate cut off amounts to relaxation to the candidates of certain categories and it is no more *res integra* that relaxation cannot be claimed as a matter of right. No writ of mandamus can be issued to any authority to exercise its powers to extent the relaxation to any candidate or category. It would be appropriate to mention here that even in the Rules, 1997, Rule 21 provides the powers to the Governor to relax any provision of the Rules. It is for the appropriate authority to take a call whether the authority wants to relax the Rules by declaring lesser cut off for the Ex-servicemen and Police Constables at initial stage also, and if the authority deems it justified, it is for the Examination Board to mention the complete details in the advertisement itself as per the provisions of the concerned recruitment rules, however until and unless the advertisement is contrary to the provisions of the Rule, the same cannot be declared *ultravires* or struck down. The Constitutional Courts cannot issue any direction for declaring separate cut off marks for the candidates of any category, but at the same time it will not be out of context to suggest here that for the purpose to achieve the objects of horizontal reservations, the competent authority should consider to relax the cut off marks for horizontally reserved candidates in subject examination also, as relaxed in the M P Civil Services Examination at the preliminary stage itself.

35. The amendment introduced by the State Government in the Rules, 1997 clarifying the process of declaration of cut-off marks,



whereby it is incorporated that there will be no separate cut-off marks in preliminary examination stage, is valid and cannot be struck down. Similarly, the advertisement issued by the Employee Selection Board for recruitment of the Sub Inspector is not *ultravires* and is in consonance with the amended Recruitment Rules, 1997.

36. Consequently, we find no merit in the petitions and are hereby dismissed. There shall be no order as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE