

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.P. No.19126/2019

Pinki Asati

-Versus-

State of M.P. & others

W.P. No.19630/2019

Anju Shukla

-Versus-

State of M.P. & others

W.P. No.19643/2019

Pranjali Kekre

-Versus-

State of M.P. & others

W.P. No.19644/2019

Dr. Deepti Gupta

-Versus-

State of M.P. & others

W.P. No.19831/2019

Laxmi Tiwari

-Versus-

State of M.P. & others

W.P. No.19942/2019

Bhavna Singh Bhadoriya

-Versus-

State of M.P. & others

W.P. No.19952/2019

Dr. (Smt.) Kajal Saxena

-Versus-

State of M.P. & others

W.P. No.20106/2019

Farhat Khan
-Versus-
State of M.P. & others

W.P. No.20170/2019

Deepa Shrivastava
-Versus-
State of M.P. & others

W.P. No.20212/2019

Dr. Ekta Jain
-Versus-
State of M.P. & others

W.P. No.20218/2019

Neelofer Khan
-Versus-
State of M.P. & others

W.P. No.20375/2019

Anjana Bhatewara
-Versus-
State of M.P. & others

W.P. No.20384/2019

Kusumlata Rajak
-Versus-
State of M.P. & others

W.P. No.20418/2019

Dr. Rashmi Jha
-Versus-
State of M.P. & others

W.P. No.20421/2019

Dr. Shalini Shukla

-Versus-
State of M.P. & others

W.P. No.20538/2019

Sapna Devi
-Versus-
State of M.P. & others

W.P. No.20544/2019

Pragya Dubey
-Versus-
State of M.P. & others

W.P. No.20586/2019

Jyoti Shukla
-Versus-
State of M.P. & others

W.P. No.20983/2019

Dr. (Ms.) Praneeta Bhatele
-Versus-
State of M.P. & others

W.P. No.21169/2019

Dr. Gurjeet Kaur Chawla
-Versus-
State of M.P. & others

W.P. No.21236/2019

Dr. Sandhya Mishra (Tiwari)
-Versus-
State of M.P. & others

W.P. No.21276/2019

Pramila
-Versus-
State of M.P. & others

W.P. No.21319/2019

Tanu Shree
-Versus-
State of M.P. & others

W.P. No.21473/2019

Shanti Sharma
-Versus-
State of M.P. & others

W.P. No.21477/2019

Dr. Arti Upadhyay
-Versus-
State of M.P. & others

W.P. No.21482/2019

Dr. Amrita Dwivedi
-Versus-
State of M.P. & others

W.P. No.21529/2019

Priyanka Dwivedi
-Versus-
State of M.P. & others

W.P. No.21993/2019

Ms. Anu Thakur
-Versus-
State of M.P. & others

W.P. No.22024/2019

Ku. Sonu Pandey
-Versus-
State of M.P. & others

W.P. No.22840/2019

Dr. (Smt.) Anupama Agnihotri

-Versus-
State of M.P. & others

W.P. No.22847/2019

Alaknanda Tripathi
-Versus-
State of M.P. & others

W.P. No.23510/2019

Smt. Ritu Dubey
-Versus-
State of M.P. & others

W.P. No.24711/2019

Neha Samdariya
-Versus-
State of M.P. & others

W.P. No.19300/2019

Ms. Garima Singh Baghel
-Versus-
State of M.P. & others

W.P. No.19108/2019

Dr. Jyoti Choubey
-Versus-
State of M.P. & others

W.P. No.20208/2018

Smt. Lalima Vijayvargiya
-Versus-
State of M.P. & others

W.P. No.24914/2018

Smt. Rakhi Dwivedi
-Versus-
State of M.P. & others

W.P. No.22237/2019

Faiza Qureshi
-Versus-
State of M.P. & others

W.P. No.1567/2020

Ku. Prachi Tiwari
-Versus-
State of M.P. & others

CORAM :

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Appearance :

Shri Suyas Mohan Guru, Shri Kailash Chandra Ghildiyal, Shri Manas Mani Verma, Shri Amit Seth, Shri Bramha Nand Pandey, Shri Shailesh Tiwari, Shri Jubin Prasad, Shri Sanjay Kumar Agrawal, Shri L.C. Patne, Shri Swapnil Ganguly, Shri Brijesh Kumar Mishra, Shri Ashish Choubey, Shri Brijendra Kumar Mishra, Shri Praveen Kumar Pandey, Shri Arun Kumar Singh, Shri Ashok Kumar Gupta, Shri Amit Khatri, Shri Anshuman Singh, Shri Chandra Kant Patne, Shri Harshmeet Hora, Shri Pawan Kumar Dwivedi and Shri Nitin Singh Bhati, Shri Gopi Chourasiya, Shri Rajneesh Sharma and Shri Brahmendra Prasad Pathak, Advocates for the petitioners.

Shri Himanshu Mishra, Govt. Advocate for the respondents/State.
 Shri Prashant Singh, Senior Advocate assisted by Shri Anshul Tiwari for the M.P. Public Service Commission.

Smt. Shobha Menon, Senior Advocate with Shri Rahul Choubey, Shri Naman Nagrath, Senior Advocate with Shri Jubin Prasad, Shri Kailash Chandra Ghildiyal, Shri Akash Choudhary, Shri Sanjeev Kumar Mishra, Shri A.S. Raizada, Shri Manish Kholia, Shri Shivam Mishra, Shri Aditya Narayan Shukla, Shri Kabeer Paul, Shri Parag S. Chaturvedi, Shri Pramod Kumar Thakre, Shri Rahul Rawat, Shri Ashish Shroti, Shri Vibudhendra Mishra, Shri Amit Seth, Shri K.S. Jha, Shri Rakesh Pandey, Shri Avinash Zarger, Shri Himanshu Chouhan, Shri Bharat Kumar Dubey, Shri Kamalnath Nayak, Shri Saurabh Singh Sengar, Advocates for other respondents and interveners.

<i>Whether approved for reporting ?</i>	Yes.
<i>Law laid down</i>	<p><i>(i) The object of an explanation is to understand the Act in the light of the explanation. It does not ordinarily enlarge the scope of original section which it explains, but only makes the meaning clear beyond dispute.</i></p> <p><i>(ii) The reservation for women category under Rule 3 of the M.P. Civil Services (Special Provision for Appointment of Woman) Rules, 1997 is horizontal and compartment-wise. It is interlocking and watertight reservation, therefore, migration from one category to another is not permissible.</i></p> <p><i>(iii) The placement in merit list in overall merit and allotment of earmarked seats in horizontal reservation are distinct process.</i></p>
<i>Significant paragraph Nos.</i>	30, 37 & 38

ORDER

(Jabalpur, dtd.29.04.2020)

Per : Vijay Kumar Shukla, J.-

In this batch of writ petitions, invoking writ jurisdiction under Article 226 of the Constitution of India, the petitioners have assailed the legality of the revised Select List issued by the M.P. Public Service Commission, Indore [for short, “the MPPSC”], whereby private respondents, who submitted their candidature against reserved category in Other Backward Class Female (OBCF) for the post of Assistant Professors in different subjects, have been selected and allotted Unreserved Female (UNRF) posts/seats, however the petitioners have been kept in waiting list denying selection. Thus, in the obtaining factual matrix, the petitioners have agitated their grievance in the present batch of writ petitions, wherein the following issue has cropped up for consideration :

Whether a candidate having opted to participate in a competitive examination as a reserved category candidate, can be permitted to migrate to General Category in UNRF category? In other words, a candidate who opts to take up a competitive examination not as a General Category, but as a reserved category candidate belonging to Scheduled Castes (SC)/Scheduled Tribes (ST)/Other Backward Classes (OBC) falling under special category of female (horizontal seat) competing amongst the candidates of her category, if obtains marks higher than the candidate of a General Category, whether such candidates can be permitted to be allotted "Open Category - UNRF" Seat/post?

2. Regard being had to the commonality of controversy, the writ petitions were heard together and are being disposed of by common order. For the sake of convenience, the facts from ***W.P. No.19126/2019 (Pinki Asati vs. State of M.P.)*** are adumbrated herein. Before advertizing to the issue, it is condign to refer the pleadings and submissions canvassed on behalf of the petitioners, respondents and interveners as well, in W.P. No.19126/2019.

3. The Madhya Pradesh Public Service Commission issued an advertisement, dated 12-12-2017, called as **"Assistant Professor Examination – 2017"** for the post of Assistant Professors in various disciplines. Three types of vacancies were advertised. We have taken example of post in the subject of Geography from the case of Pinki Asati (W.P. No.19126/2019). The first was of backlog posts, in which there was no post for the "unreserved category". The second

type of posts were the posts which fell vacant due to promotion/superannuation, in which there were total 36 posts, out of which 16 posts were meant for unreserved category and 5 posts out of said 16 posts of unreserved category were reserved for Female Unreserved Category (UNRF) under the 33% reservation provided in the *M.P. Civil Services (Special Provision for appointment of Women) Rules, 1997* [hereinafter referred to as “1997 Rules”]. The third type of posts were newly created posts in which there were total 40 posts out of which 20 posts were for unreserved category and 7 posts out of said 20 posts of unreserved category were reserved for Female Unreserved Category (UNRF). Thus, out of total 36 posts of Unreserved Category (UNR), 12 posts were reserved for the UNRF, as mandated in the 1997 Rules. At this juncture it is useful to refer the relevant part of the advertisement which is extracted hereunder :

एक भारत के नागरिकों तथा भारत के संविधान के तहत मान्य अन्य श्रेणियों के आवेदकों से उच्च शिक्षा

विभाग, मध्य प्रदेश शासन, के अन्तर्गत निम्न पद हेतु आवेदन आमंत्रित किए जाते हैं:-

बैकलाग पद:-

क्रमांक	विषय	रिक्त पदों की संख्या				रिक्तियों में से मध्य प्रदेश की मूल निवासी महिला अभ्यर्थियों हेतु आरक्षित पदों की संख्या			रिक्तियों में से मध्य प्रदेश के मूल निवासी निःशक्त अभ्यर्थियों हेतु आरक्षित पदों की संख्या		
		SC	ST	OBC	कुल	SC	ST	OBC	अ.बा.	दृ.बा.	श्र.बा.
1	2	3	4	5	6	7	8	9	10	11	12
1	वनस्पति शास्त्र	0	9	0	9	0	3	0	0	0	0
2	रसायन शास्त्र	4	36	0	40	1	12	0	0	3	2
3	वाणिज्य	37	53	0	90	12	17	0	3	5	4
4	नृत्य	1	1	1	3	0	0	0	0	0	0
5	अर्थशास्त्र	24	62	4	90	8	20	1	2	4	3

6	अंग्रेजी	24	58	17	99	8	19	6	2	5	5
7	भूगोल	3	3	0	6	1	1	0	0	0	0
8	भूगर्भ शास्त्र	4	4	1	9	1	1	0	0	0	0
9	हिंदी	30	40	5	75	10	13	2	2	5	5
10	गृह विज्ञान	11	16	0	27	4	5	0	2	2	2
11	विधि	13	14	2	29	4	5	1	1	1	1
12	गणित	9	38	0	47	3	13	0	1	2	2
13	सैन्य विज्ञान	1	1	0	2	0	0	0	0	0	0
14	संगीत	2	2	0	4	1	1	0	0	0	0
15	दर्शन शास्त्र	3	4	1	8	1	1	0	0	0	0
16	भौतिक शास्त्र	4	2	0	6	1	1	0	2	2	2
17	राजनीति शास्त्र	24	47	8	79	8	16	3	0	4	4
18	मनोविज्ञान	0	6	0	6	0	2	0	0	0	0
19	लोक प्रशासन	0	1	0	1	0	0	0	0	0	0
20	समाज शास्त्र	24	33	0	57	8	11	0	1	3	3
21	उर्दू	3	3	0	6	1	1	0	0	0	0
22	प्राणी शास्त्र	0	14	0	14	0	5	0	0	2	0
	योग	221	447	39	707	72	147	13	17	38	33

पदोन्नति/सेवा निवृत्ति से रिक्त पद:-

क्रमांक	विषय	रिक्त पदों की संख्या					रिक्तियों में से मध्य प्रदेश की मूल निवासी महिला अभ्यर्थियों हेतु आरक्षित पदों की संख्या				रिक्तियों में से मध्य प्रदेश के मूल निवासी निःशक्त अभ्यर्थियों हेतु आरक्षित पदों की संख्या		
		UR	SC	ST	OBC	कुल	UR	SC	ST	OBC	अ.बा.	दृ.बा.	श्र.बा.
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	एक्वाकल्चर	1	0	0	0	1	0	0	0	0	0	0	0
2	अरबी	1	0	0	0	1	0	0	0	0	0	0	0
3	जीव रसायन	1	0	1	1	3	0	0	0	0	0	0	0
4	वनस्पति शास्त्र	17	0	24	33	74	6	0	8	11	3	4	5
5	रसायन शास्त्र	4	4	15	47	70	1	1	5	16	2	5	6
6	वाणिज्य	25	2	9	28	64	8	1	3	9	3	5	4
7	अपराध शास्त्र	1	0	0	0	1	0	0	0	0	0	0	0
8	नृत्य	1	0	1	0	2	0	0	0	0	0	0	0
9	चित्र कला	1	0	3	3	7	0	0	1	1	0	0	0
10	अर्थशास्त्र	15	3	8	38	64	5	1	3	13	0	4	3
11	अंग्रेजी	4	5	11	36	56	1	2	4	12	3	4	4
12	भूगोल	16	3	6	11	36	5	1	2	4	2	3	3
13	भूगर्भ शास्त्र	0	0	0	3	0	0	0	0	1	0	0	0
14	हिंदी	0	4	2	45	51	0	1	1	15	3	3	5
15	इतिहास	27	1	10	30	68	9	0	3	10	1	2	5
16	इतिहास (प्राचीन)	1	0	0	0	1	0	0	0	0	0	0	0
17	गृह विज्ञान	0	0	0	10	10	0	0	0	3	1	2	2
18	ज्योतिष	1	0	0	0	1	0	0	0	0	0	0	0

19	विधि	58	1	13	10	82	19	0	4	3	1	2	2
20	गणित	20	5	8	17	50	7	2	3	6	0	3	2
21	सैन्य विज्ञान	3	1	2	2	8	1	0	1	1	0	0	0
22	दर्शन शास्त्र	1	0	2	3	6	0	0	1	1	0	0	0
23	भौतिक शास्त्र	22	0	34	29	85	7	0	11	10	2	3	3
24	राजनीति शास्त्र	17	11	7	41	76	6	4	2	14	2	4	4
25	मनोविज्ञान	0	0	0	4	4	0	0	0	1	0	0	0
26	संस्कृत	16	0	0	11	27	5	0	0	4	0	2	1
27	संस्कृत ज्योतिष	1	0	0	0	1	0	0	0	0	0	0	0
28	संस्कृत प्राच्य	1	1	1	1	4	0	0	0	0	0	0	0
29	संस्कृत साहित्य	1	1	1	1	4	0	0	0	0	0	0	0
30	संस्कृत व्याकरण	1	1	1	1	4	0	0	0	0	0	0	0
31	समाज शास्त्र	0	11	16	32	59	0	4	5	11	2	3	3
32	सांख्यिकी	0	0	1	1	2	0	0	0	0	0	0	0
33	उर्दू	10	4	6	2	22	3	1	2	1	0	1	1
34	वेद	2	0	1	0	3	1	0	0	0	0	0	0
35	प्राणी शास्त्र	21	8	15	42	86	7	3	5	14	3	3	3
36	संगीत गायन	0	1	1	2	4	0	0	0	1	0	0	0
	योग	290	67	199	484	1040	91	21	64	162	28	53	56

नवीन सृजित पद:-

क्रमांक	विषय	रिक्त पदों की संख्या					रिक्तियों में से मध्य प्रदेश की मूल निवासी महिला अभ्यर्थियों हेतु आरक्षित पदों की संख्या						
		UR	SC	ST	OBC	कुल	UR	SC	ST	OBC	अ.बा.	दृ.बा.	श्र.बा.
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	वनस्पति शास्त्र	48	15	19	13	95	16	5	6	4	2	5	4
2	रसायन शास्त्र	92	29	37	26	184	30	10	12	9	4	6	5
3	ऑर्गेनिक रसायन	2	0	1	0	3	1	0	0	0	0	0	0
4	भौतिक रसायन	2	0	0	0	2	1	0	0	0	0	0	0
5	वाणिज्य	48	15	19	13	95	16	5	6	4	4	4	4
6	अर्थशास्त्र	34	11	13	9	67	11	4	4	3	1	2	3
7	अंग्रेजी	54	17	22	15	108	18	6	7	5	2	2	2
8	भूगोल	20	6	8	6	40	7	2	3	2	1	1	1
9	हिंदी	52	16	20	14	102	17	5	7	5	2	2	3
10	इतिहास	39	12	15	11	77	13	4	5	4	2	2	2
11	विधि	29	9	12	8	58	10	3	4	3	1	1	1
12	गणित	35	11	14	10	70	12	4	5	3	0	3	3
13	भौतिक शास्त्र	65	21	26	18	130	21	7	9	6	3	4	5
14	राजनीति शास्त्र	30	9	12	8	59	10	3	4	3	1	2	3
15	समाज शास्त्र	22	7	9	6	44	7	2	3	2	1	3	3
16	प्राणी शास्त्र	44	14	17	12	87	15	5	6	4	4	3	3
	योग	616	192	244	169	1221	205	65	81	57	28	40	42

4. The petitioner appeared in the Assistant Professor Examination – 2017 conducted by the MPPSC for the post of Assistant Professor (Geography) as an unreserved candidate. The petitioner has arraigned respondent Nos.3 to 5 as party, who were selected against the post reserved for female unreserved category (UNRF), though they were the candidates of OBCF category.

5. Earlier, the petitioner assailed the select list, dated 14-8-2018 published by the respondent No.2 in **W.P. No.21091/2018** which was disposed of on 26-6-2019 considering the undertaking given by the State and the Union Public Service Commission, that they would examine all the issues as regards reservation and appointment made for the women categories and publish a final list afresh in accordance with law.

6. Thereafter, the respondent No.2 issued another corrigendum, dated 19-8-2019 which demonstrates that 12 posts are reserved for UNRF in the subject of Geography. It is asserted that instead of revising the list for the UNRF, the same was published by the respondent No.2 on 4-9-2019. It is vehemently submitted that the action of the respondent No.2 in selecting the respondents No.3 to 5 as against the OBC Category (Non-creamy Layer) against the vacancies meant for special reservation of UNRF is illegal and

violative of principles of law. It is argued that special reservation in favour of women under Article 15(3) of the Constitution of India is horizontal reservation and creates a compartment-wise reservation, where no women candidates of another category can be inducted in the quota prescribed for women candidate of a specific category. It is strenuously urged that the respondents No.3 to 5 were entitled for selection against the quota prescribed for OBC (female) category only. It is further argued that Clause 4 of the advertisement specifically provides that OBC candidates, who come under creamy layer, are required to submit their online application forms under unreserved category. However, the respondents No.3 to 5 have applied under the OBC Female category (Non-creamy layer) and thus, they are not entitled to selection against the quota prescribed for UNRF. Further, in view of Notification dated 07-11-2000 candidates of reserved category are not entitled to be selected towards the seats reserved for UNRF.

7. According to the petitioner she being fully qualified and eligible for the post of Assistant Professor applied in the subject of Geography under UNRF category. There were total 36 posts of Assistant Professor (Geography) for unreserved category (UNR), out of which, 12 posts were reserved for the UNRF, as per the mandate of the 1997 Rules. Similarly, reservation for women

candidates was provided for other categories also. For delineation we have taken an example of the post of Assistant Professor (Geography). It is not in dispute that the same reservation was provided in other subjects as well.

8. Select list of Assistant Professor Examination, 2017 for Geography subject was published by the respondent No.2 in its official website. In the select list the petitioner was placed at overall Sr. No.11 of the waiting list and at Sr. No.2 in the list of General Category Female (UNRF). It is contended that select list shows that out of 12 posts reserved for the UNRF, 10 candidates belonging to OBC (female) category were selected and only 2 General female candidates were selected against the said post. It is assiduously urged that the select list is bad in law, as the posts reserved for UNRF were filled by the candidates belonging to OBCF. It is the contention of the petitioner that the select list also contravenes the mandate envisaged in the 1997 Rules.

9. A reference is made to the Notification dated 7-11-2000 issued by the General Administration Department of the State of M.P., which prescribes that only those candidates of reserved category can be selected for unreserved (open) category - (UNR) seat in order of merit, who attained the merit at their own and

without any relaxation. It is asserted that the candidates belonging to SC, ST and OBC categories can be selected only against unreserved category (open) posts and not against the posts reserved for female candidates - (UNRF), which falls within the purview of special reservation and such reservation is horizontal and compartment-wise. It is asseverated that even as per the advertisement, certain relaxations were provided viz. minimum qualifying marks, examination fees and travelling allowance conferred on the candidates belonging to SC, ST and OBC categories etc.. Thus, they are not entitled to be selected towards the seats reserved for unreserved women candidates - (UNRF) against unreserved category.

10. In substance, the argument is that when a reservation is horizontal, then the candidates selected on the basis of reservation in any category has to be assigned a seat/post in the said category and cannot be allowed to migrate to other category. The concept of migrating from one category to another category on the basis of merit is permissible in vertical reservation, but in horizontal reservation the same is not applicable. In support of his submissions learned counsel referred to Rule 3 of the “1997 Rules” which would be considered in detail at later stage.

11. In order to substantiate the arguments on behalf of the petitioner, reliance is placed on the verdicts of the Apex Court rendered in the cases of **Indra Sawhney vs. Union of India, 1992 Supl (3) SCC 217; Anil Kumar Gupta vs. State of U.P., (1995) 5 SCC 173; Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others, (2007) 8 SCC 785; and Public Service Commission, Uttranchal vs. Mamta Bisth and others, (2010) 12 SCC 204.** Besides, reference is also made to the order passed by this Court in **Bhavna Lakher vs. State of M.P. and others (W.P. No.18475/2013, dated 18-11-2013); Sita Prajapati vs. State of M.P. (W.P. No.5256/2017, decided on 24-10-2017); M.P. Public Service Commission vs. Dr. Nabhikishore Choudhary & others (W.A. No.414/2017); State of M.P. vs. Uday Sisode and others, (R.P. No.1572/2018, decided on 18-10-2010); Shruti Sharma vs. State of M.P., 2002 (4) MPLJ 380; and Sunita Thakre vs. State of M.P. and others, 2014 (2) MPLJ 86.**

12. Shri Himanshu Mishra, learned Govt. Advocate for the State assiduously argued that in view of the provisions of Rule 3 of the 1997 Rules, women reservation is overall reservation and, therefore, the procedure prescribed by the respondents while allotting a seat of UNRF to reserved categories women – SC(F), ST(F) and OBC(F) is valid. To buttress his submission he has placed

reliance on the judgment passed by the **Allahabad High Court in the case of Ajay Kumar vs. State of U.P. and others 2019 SCC Online All 2674 : (2019) 5 All LJ 466.**

13. It was also argued on behalf of the respondents No.1 and 2 that pursuant to the directions issued by this Court in **W.P. No.21091/2018**, dated 26-6-2019 the respondent wrote a letter dated 7-7-2019 to the Department of General Administration and requested for issuance of appropriate instructions, so that the issue raised by the writ petitioner regarding reservation and appointment for the Women Category, may be properly complied with. On 25-7-2019 the State Government has approved method of reservation pertaining to women reservation and thereafter after due consultation the revised list, dated 4-9-2019 was published.

14. A reference is made to Circular dated 12-5-1999 issued by the State Government, wherein it is clarified that neither under the provisions of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Picchade Vargon ke Liye Arakshan) Adhiniyam, 1994 [hereinafter referred to as “the Act 1994”] nor under the Reservation Rules 1998 framed under Section 13 of the Act 1994, there is mention of “General Category” rather, term “Unreserved” is used for “General Category”. By the aforesaid

Circular, clear direction has been issued by the State Government that in the official work, term “General Category” shall not be used and in the light of Act 1994 and Rules 1997, term “Unreserved” category shall be used. Further, in Circular dated 7-11-2000, it is clarified by the State Government in the light of Section 4(4) of the Act 1994, that whenever reserved class candidates competes on merit, then such candidates shall be selected under the vacancies of UNR category, provided that such reserved class candidates have not availed any relaxation on acquiring the eligibility criterion. It is asseverated that “Unreserved category” is not reservation and it is open category for all candidates, who acquired position in the Select List on the basis of merit.

15. Support was also gathered from the notification dated 17-11-2015 issued by the State Government by referring to Rule 3(1) of the 1997 Rules which provides 33% special reservation for women and the same is horizontal and compartmentalwise. In the said rules, in rule 3, for sub-rule (1), it was substituted as under :

“(1) Notwithstanding anything contained in any Service rules, there shall be reserved thirty three percent of all posts in the service under the State (except Forest Department) in favour of women at the stage of direct recruitment and the said reservation shall be horizontal and compartment-wise.”

Thus, after application of Rule 3(1) of the Rules, 1997 out of 36 posts of UNR, 12 posts were reserved for UNRF category. In SC category out of total 13 posts 4 posts were reserved for SC Female (SCF). In Scheduled Tribe (ST) category out of 18 posts 6 posts were reserved for ST Female (STF) and in OBC category out of 17 posts, 6 posts were reserved for OBC Female (OBCF) candidates. Thus, it is categorically stated that 33% reservation for SC, ST, OBC and UNR category has been given by the answering respondent and, therefore, Special Reservation for Women category is 12 posts under UNRF; 4 posts under SC female; 6 posts under ST Female; and 6 posts under OBC Female candidates.

16. A reference is also made to the Circular dated 30-6-2014 issued by the State Government wherein it is clarified that 6% horizontal reservation shall be given to Orthopaedically Handicapped, Visually Handicapped and Hearing Impaired candidates and 2%-2% each reservation is to be provided for all above three handicapped categories. Thus, after applying 2% reservation to Handicapped Category-wise, out of about 84 posts of Assistant Professor (Geography), as many as 6 posts are reserved for the Handicapped candidates.

17. Further argument was advanced on behalf of the MPPSC (respondent No.2) clarifying various quotas for reservation that UNR is the ‘Unreserved Category’ and the same is not reserved compartment and the same is open for all candidates, provided the reserved category candidates have not availed any relaxation in acquiring minimum eligibility qualification. In order to assure 33% reservation, the minimum representation of women under UNR category, the answering respondent has started counting female candidates from the top of the merit list, so as to fill up 12 posts of UNRF Category from amongst 35 posts under UNR category. The topper in the select list was a female candidate belonging to OBC category and she has not availed any benefit of relaxation in acquiring minimum qualification and thus, she has also been selected under UNRF category. Likewise, the respondents No.3 to 5 and other candidates have also been rightly selected under UNRF category, as they have acquired position in the Select List on the basis of merit.

18. It is argued that the object of Rule 3(1) of the 1997 Rules is to ensure minimum 33% representation of women in SC, ST, OBC and UNR categories. The UNR is “Unreserved Compartment” open for all candidates who are selected on the basis of merit without availing any benefit of reservation in terms of

acquiring minimum qualification. It is asserted that in order to fill up 12 posts of female under UNR category, the answering respondent has selected number of female candidates from the top of the Merit List for exhausting the quota of 12 posts of female category under UNR category. It is stated that a candidate who is not domicile of State of Madhya Pradesh and as such outside State candidate, if acquired position in the Merit List on the basis of merit, irrespective of category to which she belongs, she is liable to be accommodated under UNR category. Similarly, if Handicapped Category candidates are found under UNR category, then they are also to be included under UNR category, but female handicapped category candidate, if selected under Handicapped Category candidate and not under UNR category, then 12 posts of female under UNR category will not be disturbed, merely because the female handicapped candidate has been selected. Thus, refuting the arguments advanced on behalf of the petitioner, the respondent No.2, MPPSC has asseverated that there is no illegality in the revised select list, dated 4-9-2019. It is argued that 12 posts of UNRF category is to be counted from the top of the select list so as to ensure minimum representation of women under the UNR category. It is reiterated that the Unreserved Category is a category open for all and it is not reserved for any category, much less, 'General Category' as claimed by the petitioner. The Circular, dated

7-11-2000 specifically provides that a reserved class category candidate who has not availed any benefit of relaxation in acquiring minimum qualification, shall be treated as Unreserved category candidate. It is stated that horizontal reservation has been applied for women category while preparing the revised select list. It is putforth that the seats under the UNR category are filled-up from amongst the candidates who have acquired position on the basis of merit and those candidates, who belong to reserved class category, but they have not availed any benefit of reservation in acquiring minimum qualification and acquiring position in the select list on the basis of merit, are also included in the UNR category. It is vehemently argued that as regards horizontal reservation under UNRF category, the female candidates who are domicile of State of Madhya Pradesh are included under UNRF category. The female candidates belonging to SC, ST and OBC categories, if acquire position on the basis of merit, then they are accommodated under UNR category and not under UNRF category. It is strenuously urged that the respondents No.3 to 5 have acquired position on the basis of their merit and they have not availed any benefit of reservation and, therefore, they have been rightly accommodated under UNRF category.

19. Learned counsel appearing for the respondents No.3 to 5 controverting the arguments canvassed by the petitioner strenuously urged that once it is established that they have not availed any benefit and their names feature in the UNRF category, then in terms of the judgment of the Supreme Court in **Deepa E.V. vs. Union of India and others, (2017) 12 SCC 680**, the same is justified as it has categorically been held that there is an express bar for the candidates belonging to the SC/ST/OBC candidates who have availed relaxation for being considered for general category candidates. Further, they have relied upon the verdict of the Apex Court in **Jitendra Kumar Singh vs. State of U.P., (2010) 3 SCC 119**, wherein it is observed that a candidate who has attained higher marks without availing benefit of reservation in open competition, such person shall be deemed to have been adjusted against unreserved vacancies.

20. Number of interlocutory applications seeking intervention have been filed, espousing the common cause on behalf of the OBC (female) candidates, who found place in the merit list and were allotted UNRF seats. It is contended that because of the interim order passed by this Court, these interveners have not been permitted to participate in the counselling either as UNRF candidate or OBC(female) and they have not been given appointment order. It

is contended that OBC candidates who are lower in merit, have been allotted the seats in OBC (female) and thus, they have been deprived from participating in the counselling for appointment, despite the fact that they had secured more marks than General category candidates. Considering the aforesaid submissions, all the **intervention applications are allowed** and the interveners named in the applications, are directed to be treated as party in the present case.

21. A common rejoinder has been filed by the petitioner to the reply of the respondents contending inter alia, that the respondents have completely misunderstood the concept of horizontal reservation or special reservation provided to woman, physically handicapped etc. enshrined under Articles 15(3) and 16(1) of the Constitution of India. The horizontal reservation under Article 16(1) and Article 15(3) of the Constitution is completely different than that of vertical reservation or social reservation provided under Article 16(4) of the Constitution of India to the candidates belonging to SC, ST and OBC categories. It is assiduously urged that the provisions envisaged in the 1997 Rules specifically provide that the reservation for women is horizontal and compartment wise reservation. In the present case OBC or any other candidates not belonging to the unreserved category, cannot be

selected for the post vacant for unreserved female category (UNRF), if they do not belong to that category.

22. Referring to Act of 1994 it is argued that the stand of respondent No.2 is misplaced that provisions of the Act of 1994 shall only be applicable, when a candidate belonging to SC/ST/OBC category is selected on the basis of merit in an open competition with general category candidates. In that eventuality he/she shall be adjusted against the vacancies reserved for general category i.e. unreserved (UNR). It is vehemently argued that in the instant case the candidates are adjusted against the vacancies belonging to unreserved female (UNRF) which is specifically reserved for women as per 1997 Rules in terms of Special Reservation, provided under Articles 15(3) and 16(1) of the Constitution of India.

23. It is assiduously argued by the learned counsel for the petitioner that the issue in hand has been answered by a Co-ordinate Bench of this Court in the case of **Uday Sisode and other (supra)** and the observations made therein, squarely cover the obtaining factual matrix of the present case. It is vehemently put forth that the respondents have completely misunderstood the concept of horizontal reservation or special reservation provided to women, physically handicapped etc. under Articles 15(3) and 16(1) of the

Constitution of India vis-a-vis vertical reservation or special reservation provided under Article 16(4) of the Constitution of India.

24. We have bestowed our anxious consideration on the arguments advanced on behalf of the parties *in extenso*. In order to appreciate the facts and circumstances of the case in proper perspective, it is apt to delve into the concept of reservation and law governing the field, as the factual matrix in the present batch of writ petitions revolves around the propriety of the applicability of principles of reservation.

25. In view of the aforesaid submissions, the issue which has crystallized for consideration is that - ***“Whether the OBC (Female) who scored more marks than the General Category woman candidates would secure a seat /post in un-reserved female category; and whether in a case of horizontal reservation, reserved-category candidates scoring higher marks than General Category candidates would be entitled to get a seat/post of un-reserved categories ?”***

26. The main plank of submissions on behalf of the petitioners rests on the provisions of Rule 3 of the 1997 Rules and subsequent circulars of the Government that the concept of

migration from one category to another on the basis of merit is prescribed in vertical reservation, but in the horizontal reservation the same is not applicable. To appreciate the aforesaid submission it is apt to refer to the relevant provisions of the M.P. Lok Sewa (Anusuchit Jatiyon Jan Jatiyon Aur Anya Pichhada Vargon ke liye Arakshan) Adhiniyam, 1994 [in short “the Act 1994”], which is an Act to provide for reservation of vacancies in public services and posts in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens and for matters connected therewith or incidental thereto. Sub-section (4) of Section 4 of the Act 1994 stipulates that percentage of posts reserved in service in favour of persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes which is reproduced as under :

“4. xx xx xx
 (1) xx xx xx
 (4) – if a person belonging to any of the categories mentioned in sub-section (2) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (2).”

Thus, if a candidate who opts to take up a competitive examination not as General Category but as reserved category candidate belonging to SC,ST and OBC gets selected on the basis of merit, he shall not be adjusted against the vacancies reserved for

such category. In other words, a candidate having opted to participate in the competitive examination as reserved category candidate can be permitted to migrate to General Category. This would be the position in the vertical reservation.

27. Before adverting to the case law in relation to reservation of vertical and horizontal reservations, it would be appropriate to refer to the provisions of the M.P. Civil Services (Special Provision for appointment of Women) Rules, 1997 [for short, “the 1997 Rules], which were framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India, to provide reservation of post in direct recruitment for women in public service and post in connection with affairs of the State. Rule 3 of the 1997 Rules is reproduced hereunder :

“3. Reservation of posts for women .-
Notwithstanding anything contained in any service Rules, there shall be reserved thirty per cent of all posts in the service under the State in favour of women at the stage of direct recruitment and the said reservation shall be horizontal and compartment wise.

Explanation - for the purpose of this rule “Horizontal and compartment wise reservation” means reservation in each category, namely, Scheduled Castes, Scheduled Tribes, Other Backward Classes and General.”

The aforesaid rule was amended in the year 2000 vide notification dated 23-9-2000 and the amended Rule 3 of the 1997

Rules reads :

“3. Reservation of posts for women – (1)
Nowithstanding anything contained in any service Rules, there shall be reserved thirty percent of all posts in the service under the State in favour of women at the stage of direct recruitment and the said reservation shall be horizontal and compartment-wise.

Explanation . - For the purposes of this rule “horizontal and compartmentwise reservation” means reservation in each category, namely, Scheduled Castes, Scheduled Tribes, Other Backward Classes and General.

(2) Subject to the provisions of sub-rule (1) in the said appointments preference shall be given to the widow of divorced women.”

In the year 2015, Rule 3 was again amended whereby sub-rule (1) of Rule 3 was substituted, which is re-quoted for ready reference :

“(1) Notwithstanding anything contained in any Service rules, there shall be reserved thirty three percent of all posts in the service under the State (except Forest Department) in favour of women at the stage of direct recruitment and the said reservation shall be horizontal and compartment-wise.”

28. A plain reading of the aforesaid clearly shows that the only amendment in the year 2015 was in respect of percentage of reservation by enhancing it from 30% to 33% and the applicability of the Rule to all the departments of the State, except Forest

Department. On behalf of the respondents it was argued that explanation is no more a part of Rule 3(1) of the 1997 Rules, and therefore, in absence of explanation the word “General Category” along with Scheduled Castes, Scheduled Tribes and Other Backward Class categories, cannot be read and the reservation is “overall reservation” and not horizontal and compartment-wise.

29. Combating the aforesaid submissions the counsel for the petitioners vehemently argued that it cannot be accepted, as by the amendment dated 17-11-2015 it is only substitution of Sub-rule (1) of Rule 3 and the intention of the State was not to omit the explanation which explains the word “horizontal and compartment-wise”. It is further submitted that even in the absence of an explanation, the words ‘horizontal’ and ‘compartment-wise’ stand explained by the judgments of the Apex Court in various cases and, therefore, the procedure for allotment of seats/posts in a horizontal reservation cannot be adopted differently.

30. Upon perusal of the Rule 3 of the 1997 Rules and the subsequent amendments, we are of the considered view that the Rule-making Authority had no intention to delete/omit the explanation appended to Rule 3. It may be noted that initially there was no sub-rule (1) and sub-rule (2) of Rule 3. In a subsequent

amendment Rule 3 of the 1997 Rules was divided into sub-clauses (1) and (2) and by modification dated 17-11-2015 the sub-rule (1) of Rule was substituted to the extent of enhancement of percentage from 30% to 33% and exclusion of Forest Department relating to reservation. The words ‘horizontal’ and ‘compartment-wise’ still finds place after substitution in the substantive provision. The explanation clause explaining the words “horizontal and compartment-wise” remained unamended. Therefore, we are constrained to repel the argument of the learned counsel for the State that the words ‘General Category’ stand omitted by virtue of substitution of Rule 3 of 1997 Rules, vide notification dated 17-11-2015.

31. The role and impact of an explanation in a statute has been elaborately discussed in the case of **S. Sundaram Pillai and others vs. V.R. Pattabiramana ndothers, (1985) 1 SCC 591**, wherein it has been held that the object of an explanation is to understand the Act in the light of the explanation. It does not ordinarily enlarge the scope of the original section which it explains, but only makes the meaning clear beyond dispute. After referring to various books on the interpretation of statutes the Apex Court in para 53 ruled :

“53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is -

(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful.

(d) an Explanation cannot be in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.”

Thus, it is luminescent from Rule 3 of the 1997 Rules that the reservation of woman in SC/ST/OBC/General categories are horizontal and compartment-wise. The posts/seats are earmarked, therefore, there cannot be migration from one category to another category.

32. Now, we advert to the law governing the field of reservation – vertical and horizontal. In the case of **Indra Sawhney and others (supra)**, in paragraph 812 distinction between vertical and horizontal reservation has been drawn and horizontal

reservation cutting across the vertical reservation is termed as

“interlocking reservations”, by holding 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 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.”

33. In the case of **Anil Kumar Gupta (supra)** a distinction between horizontal and vertical reservation has been elaborated and it has been clarified, as to when the horizontal reservation is overall reservation or compartmentalised reservation. Compartmentalised reservation is one where the seat reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable. In compartmentalised reservation,

social reservation is watertight compartment in each of the vertical reservation class (OC, OBC, SC and ST). In this regard in the case of **Anil Kumar Gupta (supra)** it has been laid down 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 inter-transferable, 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 percent) 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 O.B.Cs.; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. and S.T., 30 seats would be allocated to the O.B.C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. 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 O.C. category or not; the special reservation would be a water tight compartment in each of the vertical reservation classes (O.C., O.B.C., S.C. and S.T.). As against this, what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all 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 O.C. category which means that the number of special reservation candidates in O.C. category would be $56+20=76$. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. 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 O.C., O.B.C., S.C. and S.T. will not be altered.”

34. In the above case it has been clearly held that the Government should specifically provide if the horizontal reservation is overall horizontal reservation or compartmentalised reservation, while concluding as under:-

“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", since it appears from the judgment in Swati Gupta that in the first notification issued by the Government of Uttar Pradesh on 17-5-1994, the thirty percent 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 percent but at the same time it was stated that thirty percent 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., S.T., S.C., O.B.C. and O.C. 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 O.C. category alone - and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year.”

35. In the above judgment, the procedure for filling-up the open and reserved category seats has been provided as under:-

“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 percent special reservation seats to be filled up first and then take up the O.C. (merit) quota (followed by filling of O.B.C., S.C. and S.T. quotas). The proper and correct course is to first fill up the O.C. 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 special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied - in case it is an over-all 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 percent 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 O.C. quota.”

36. Further, it has been clarified that in case of compartmentalised horizontal reservation, process of verification and adjustment should be applied separately to each of the vertical reservation.

37. In **Rajesh Kumar Daria (supra)** it has been made clear that in case of vertical reservations, candidate of SC, ST, OBC are allowed to compete and appoint against the non-reserved post, but that is not so in the case of horizontal reservation. Taking the

example of women seats it has been held that proper procedure is to fill up the quota for SC in order of merit and then find out the number of candidate among them who belong to special reservation group of Scheduled Caste Woman and then meet the shortfall. In this regard, the relevant portion reads 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 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 (1992 Supp(3 SCC 217, R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. 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 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 candidate on the ground that 'SC- women' have been selected in excess of the prescribed internal quota of four.] '

10. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 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.

11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC - Women', instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for women.”

38. Next, in the case of **Mamta Bisht and others (supra)** the Apex Court reiterated the view taken in **Rajesh Kumar Daria (supra)** and held :

“12. The High Court decided the case on the sole ground that as the last selected candidate, receiving the benefit of horizontal reservation had secured marks more than the last selected general category candidate, she ought to have been appointed against the vacancy in general category in view of the judgment of this Court in *Indra Sawhney Vs. Union of India*, AIR 1993 SC 477, and the Division Bench judgment of High Court of Uttaranchal in *Sikha Agarwal Vs. State of Uttaranchal*, WP No.816 of 2002 (M/B), decided on 16.4.2003, and respondent no.1 ought to have appointed giving benefit of reservation thus, allowed the writ petition filed by respondent No.1.

13. In fact, the High Court allowed the writ petition only on the ground that the horizontal reservation is also to be applied as vertical reservation in favour of reserved category candidates (social) as it held as under:

"In view of above, Neetu Joshi (Sl.No.9, Roll No.12320) has wrongly been counted by the respondent No.3/Commission against five seats reserved for Uttaranchal Women General Category as she has competed on her own merit as general candidate and as 5th

candidate the petitioner should have been counted for Uttaranchal Women General Category seats."

Admittedly, the said Neetu Joshi has not been impleaded as a respondent. It has been stated at the Bar that an application for impleadment had been filed but there is nothing on record to show that the said application had ever been allowed. Attempt had been made to implead some successful candidates before this Court but those applications stood rejected by this Court.

14. The view taken by the High Court on application of horizontal reservation is contrary to the law laid down by this Court in *Rajesh Kumar Daria Vs. Rajasthan Public Service Commission & Ors.* AIR 2007 SC 3127, wherein dealing with a similar issue this Court held as under: (SCC pp.790-91, para 9)

"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, R.K. Sabharwal v. State of Punjab, Union of India v. Virpal Singh Chauhan and Ritesh R. Sah v. Dr. Y.L. Yamul.*) 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." (Emphasis added)"

39. Now we proceed to examine the facts of the present case on the anvil of the aforesaid enunciation of law. In the selection process of Assistant Professors of the year 2017, it emerges from the facts that not only in the subject of Geography, but in all subjects the merit of OBC (female) category was overflowing. As per the revised select list, a candidate who is at serial number 1 of the select list, is a candidate of the OBC(F) category and she has been allotted a UNRF seat. Like-wise, out of 12 unreserved female seats (UNRF) 10 seats have been allotted to OBC (female) on the basis of merit alone, and due to fallout, 2 seats have been allotted to unreserved female of General Category woman. Respondents have allotted 10

URF seats/posts to OBC (female) and then 6 seats earmarked for OBC (female) which have been further allotted to the OBC (female) candidates thereby completely destroying the allocation of seats in horizontal reservation. The distribution of 33% women reservation horizontal was 12 UNRF; 4-SC(F); 6-ST(F); and 6 – OBC (F). To elaborate, the same is reproduced in the form of chart :

“Subject : Geography

total Seats – 36 UNR + 13 SC + 18 ST + 17 OBC = 84

Unreserved UNR (36)		Schedule Caste SC (13)		Schedule Tribe ST (18)		Other Backward Class OBC (17)	
Unreserved or Open Seats	33% women reservation as per rules of 1997	Reserved as per Act of 1994	33% women reservation as per Rules of 1997	Reserved as per Act of 1994	33% women reservation as per Rules of 1997	Reserved as per Act of 1994	33% women reservation as per Rules of 1997
Category UNR	Category UNR (F)	Category SC	Category SC(F)	Category ST	Category ST(F)	Category OBC	Category OBC(F)
24	12	9	4	12	6	11	6

Total Seats -84

Selected – 83

1 post of UNR carry forwarded for PH

	Total Seats - 84							
	Unreserved 36		SC-13		ST – 18		OBC – 17	
	UNR	UNR(F)	SC	SC(F)	ST	ST(F)	OBC	OBC(F)
Seats	24	12	9	4	16	6	11	6
Selecte d	23	2	9	4	12	6	11	16
Short fall	1 seats carry forwarde d	10	0	0	0	0	0	Excess Selection of 10 candidates
	17 UNR 2 SC 1 OBC 3 PH 1 Post kept vacant							6 Under OBC (F) (46, 47, 48, 52, 53, 59 10 under UNR (F) (1, 19, 27, 30, 31, 36, 37, 38, 39, 43)

40. In the result, we cannot appreciate the procedure adopted by the respondent – MPPSC while drawing the list in respect of woman category in all subjects. As discussed hereinabove, the law relating to vertical and horizontal reservations is clear that the migration of reserved category candidate on the basis of merit for allotment of seat of General category is applicable to vertical reservation, in view of the proviso engrafted in subsection (4) of Section 4 of the Act 1994. But, in view of the specific provisions of Rule 3 of the 1997 Rules and the law laid down by the Apex Court, the horizontal reservation is compartmentalised and watertight and there cannot be any migration on the basis of merit. At this juncture, it is also condign to appreciate another submission advanced in this regard by the learned counsel for the respondents, that the candidate who has obtained higher marks than a General category candidate, cannot be made to suffer to lose his merit position and seniority. If a candidate who is an OBC (female) and has competed against a reserved category, cannot be placed in the merit list lower than the General Category candidate, because of being a candidate of reserved category – OBC(female). We do not perceive any merit in the aforesaid submission. Placement in the merit list is one thing and the allotment of the earmarked seat/post is distinct process from placement in the merit list. A candidate who

has secured higher marks, certainly gets a place in the merit list above than the candidates having obtained less marks, but the allotment of earmarked seats would be made in *stricto sensu*, in a case of horizontal reservation, category-wise. For example in the present case, one of the interveners, a candidate who has scored highest marks in the subject of Geography, shall remain at serial number 1 in the overall merit list, but she will be allotted a seat against an OBC (female), being a candidate of reserved category – OBC (female) and not a seat earmarked for General/Unreserved Female (UNRF).

41. The seniority is governed by the Rules, namely, *M.P. Civil Services (General Conditions of Services) Rules, 1961* and the seniority of a selected candidate shall be fixed in order of merit and in the select list and, therefore, when the seniority of Assistant Professor in the subject of Geography shall be drawn, and the same will be considered above all other candidates lower in merit and there will be no loss to his/her seniority. However, such candidate shall be allotted a seat of OBC(F) only to maintain 33% reservation to female candidates of SC/ST/OBC/General Category, being horizontal and compartment-wise under Rule 3 of the 1997 Rules. It is interlocking and watertight reservation as held by the Apex Court in the judgements discussed hereinabove. Thus, a distinction has to

be made between the placement in the merit list/select list and the allotment of seats. A woman candidate of OBC category if scores higher marks than a candidate of General category, she has to be allotted a seat against an OBC (female) in her own category and not a seat against the unreserved female. The same procedure has to be adopted for drawing a merit list and allotment of earmarked seats in a case of horizontal reservation as per the judgment in the case of **Rajesh Kumar Daria (supra)**. However, it is made clear that this procedure is applied only in the case of special reservation in favour of physically handicapped, woman etc., which are horizontal reservation.

Thus, it is held that a candidate not falling in the merit list of unreserved category – UNRF cannot be brought from any other candidates belonging to OBC(F), SC(F) and ST(F) in order to accommodate against the horizontal quota of UNRF. The interveners who are OBC (F) candidates and have secured place in the merit list and have been allotted UNRF seats because of merit, will occupy a place in overall merit list, but they will be allotted seats of OBC(F) in their OBC category; and a candidate having merit lower than these interveners has to give way/passage to these interveners so that they do not suffer.

42. We further hold that the procedure adopted by the respondents regarding these 92 interveners not allotting them a seat against OBC, SC and ST - females in their own category, cannot be given a stamp of approval, and we do not approve the allotment of seats granted to the candidates of different reserved categories for women, who have been allotted seats of SC, ST and OBC – females, ignoring the claims of the interveners. It was stated on behalf of the respondents/State, that 92 seats for reserved category women, who have secured place in merit, have been kept vacant, though they have been deprived of the appointment. Initially they were not permitted to participate in the counselling but after subsequent interim order passed by this Court to allow them to participate in the counselling by extending the date, they have participated in the counselling and 92 seats/posts have been kept reserved, subject to final outcome of these petitions. It is also stated that all appointments made during the pendency of these petitions are subject to final decision of these petitions.

43. In view of the aforesaid discussion and clear enunciation of law by the Apex Court in the cases of **Rajesh Kumar Daria (supra)** and **Mamta Bisht and others (supra)**, we are of the considered opinion that the impugned select list is vulnerable and deserves to be lanced in exercise of extraordinary jurisdiction of

this Court. Therefore, we quash the revised select list prepared by the respondents and direct that a merit list will be drawn afresh by making fresh allotment of seats keeping in view the provisions of Rule 3 of the 1997 Rules, which prescribes horizontal and compartment-wise reservation for each category, i.e. General/OBC/SC/ST, meaning thereby 33% reservation will be made for 4 – SC(F); 4-ST(F), 6-OBC(F) and 12-UNRF categories. Exercise in that regard, shall be carried out in quite promptitude, preferably within a period of two months from the date of receipt of certified copy of this order.

44. *Ex-consequenti*, the **writ petitions are disposed of**, as indicated hereinabove. However, in the facts and circumstances of the case there shall be no order as to costs.

(Ajay Kumar Mittal)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.