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**ORISSA HIGH COURT : CUTTACK**

**W.P.(C) No.17057 of 2022**

In the matter of an Application under Articles 226 and 227  
of the Constitution of India, 1950

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Ramakanta Pradhan,  
Aged about 28 years  
Son of Padma Charan Pradhan  
At: Badasurabila  
P.O.: Bakugram  
Via: Balanga, District: Puri  
Pin: 752105. ... Petitioner.

*-VERSUS-*

- 1.** State of Odisha  
represented through  
Commissioner-*cum*-Secretary  
to Government, Commerce  
& Transport Department  
New Secretariat, Bhubaneswar  
District: Khordha.
- 2.** Transport Commissioner, Odisha  
Rajaswa Bhawan, 6<sup>th</sup> Floor, Cuttack  
District: Cuttack.
- 3.** Odisha Staff Selection Commission  
Barrack No.1, Unit No.V  
Bhubaneswar: 751054  
District: Khordha.
- 4.** Padan Behera  
Traffic Constable (OMVD)  
C/o: Office of R.T.O., Puri.



5. Sisir Kumar Nayak  
Traffic Constable (OMVD)  
C/o: Office of R.T.O., Puri. ... Opposite parties.

***Counsel appeared for the parties:***

For the Petitioner	: M/s. Amitav Das, Ajit Kumar Dash, Mitali Madhusmita Mohanty and Basumati Pradhan, Advocates
For the Opposite Party No.1	Mr. Sailaza Nandan Das, : Additional Standing Counsel
For the Opposite Party No.2	Mr. Pravakar Behera : Standing Counsel (Transport)
For the Opposite Party No.3	: M/s. Surya Narayan Patnaik, Priyambada Mohapatra, Sonali Mohapatra and Ashok Aurovindo Mohanty, Advocates
For the Opposite Party Nos.4 and 5	: M/s. Bipin Kumar Choudhury : and Harekrushna Nayak, Advocates

*P R E S E N T:*

**HONOURABLE  
MR. JUSTICE MURAHARI SRI RAMAN**

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**Dates of Hearing : 05.09.2024 :: Date of Judgment : 24.12.2024**

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**JUDGMENT**

***MURAHARI SRI RAMAN, J.—***

Challenge is laid to the Order dated 22.05.2022 of the  
Principal Secretary to Government of Odisha in



Commerce and Transport (Transport) Department issued *vide* No. 4341— TRN-FE-CASE-0003-2021/T, dated 23.05.2022 (Annexure-14), wherein the representation to consider selection of the petitioner for the post of Traffic Constable (OMVD) in Transport Department under the “unreserved (men)” category has been rejected.

1.1. Being dissatisfied with the Order dated 22.05.2022 (Annexure-14), the petitioner, invoking extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India, has filed the instant writ application with the following prayer(s):

*“It is, therefore, most humbly and respectfully prayed that this Hon’ble Court may be graciously pleased to issue a Rule Nisi calling upon the opposite parties to show cause as to why:*

1. *The Order No.4341 dated 23.05.2022 issued by opposite party No.1 under Annexure-14 shall not be quashed after declaring the same is illegal;*
2. *The opposite party No.1 shall not be directed to consider the case of the petitioner on the basis of the direction given by this Hon’ble Court on the basis of the Order dated 23.06.2021 passed in WPC (OAC) No.1214 of 2016 and order dated 07.04.2022 passed in W.P.(C) No.8604 of 2022;*
3. *Direction shall not be given to opposite party No.3 to recast the merit list under Annexure-3 by*



*following Clause-11, i.e., Selection Procedure of the Advertisement;*

- 4. The selection of opposite party Nos.4 and 5 against unreserved vacancies shall not be held illegal;*
- 5. The opposite party No.3 shall not be directed to select the petitioner as Traffic Constable (OMVD) for Unreserved (Men) category;*

*If the opposite parties fail to show cause or show insufficient cause, the rule may be made absolute;*

*And pass any other order(s) as would be deem fit and proper;"*

***Facts:***

**2.** Facts emanating from the pleadings are narrated herein below for comprehension of issue involved in the present matter.

2.1. The petitioner, appointed on 28.07.2004 as a member of the Home Guards bearing No.60/HG in the Office of the Commandant of Home Guards, Puri, under the Odisha Home Guards Act, 1961, has undergone the Basic Course of training conducted from 02.01.2005 to 06.01.2006 and the Refresher Course of training conducted from 10.11.2006 to 31.12.2006.

2.2. In response to the advertisement dated 11.12.2014 issued by the Odisha Staff Selection Commission



(“OSSC”, for short) inviting applications for recruitment to the post of Traffic Constable in OMVD under the Commerce and Transport (Transport) Department of Government of Odisha (for brevity, “Transport Department”), against 122 vacant posts (SC-20, ST-27, SEBC-14 and UR-61), the petitioner appeared in the written test held on 07.06.2015 under “unreserved” category, while the opposite party No.4 (Padan Behera) and the opposite party No.5 (Sisir Kumar Nayak) have appeared under the categories of Schedule Caste and Socially and Economically Backward Class respectively. However, the names of the opposite party Nos.4 and 5 have been reflected at serial Nos.26 and 40 respectively in the order of merit *vide* provisional select list published in the Notification No.4152—IIE-97/2015 (Conf)/OSSC, dated 07.09.2015.

2.3. The opposite party No.3-OSSC selected candidates in the following categories:

Category	Number of posts advertised	Number of candidates selected
Scheduled Caste	20	29
Scheduled Tribes	27	29
Socially and Economically Backward	14	46
Unreserved	61	17

It is asserted at paragraph 9 of the writ petition that the number of selected candidates as mentioned in the



above table as against number of vacancies advertised is in contradiction of conditions stipulated in Clause-11 of the advertisement dated 11.12.2014<sup>1</sup> (Annexure-1).

2.4. The petitioner filed an Original Application under Section 19 of the Administrative Tribunals Act, 1985, before the Odisha Administrative Tribunal, Cuttack Bench, Cuttack, registered as O.A. No.1214 of 2016 which was re-registered as WPC (OAC) No.1214 of 2016 being transferred to this Court pursuant to abolition of said Tribunal by virtue of Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification F. No. A-11014/10/2015-AT [G.S.R.552(E).], dated 2<sup>nd</sup> August, 2019), with a prayer to quash the provisional select list dated 07.09.2015 and recast the merit list in tune with Clause-11 of the Advertisement dated 11.12.2014. Said writ petition has come to be disposed of on 23.06.2021 with the following Order:

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<sup>1</sup> Clause-11 of the Advertisement dated 11.12.2014 stood as follows:

*“Selection procedure.—*

*The combined merit list shall be prepared basing on the aggregate of marks secured in the written examination and career evaluation. The candidates shall be selected in order of merit category-wise equal to the number of vacancies advertised.”*



*It appears, there is no resistance at the instance of the Petitioner to Annexure-3, re-casting of which is sought for in the present Writ Petition. However, the Petitioner has taken several grounds in his opposition to the list prepared, vide Annexure-3. The dispute was filed in the year 2016. There is no counter as of now. For the opinion of this Court, involving the dispute raised herein, in the first hand, the Competent Authority is required to take call on the request of the Petitioner. It is in this view of the matter, this Court directs O.P.1 to treat this Writ Petition as a representation at the instance of the Petitioner by way of objection to Annexure-3 and take decision on the same, if necessary, by involving the parties likely to be affected by completing the entire exercise within a period of three months from the date of communication of this order. With the above, the Writ Petition stands disposed of.”*

2.5. In compliance thereof, the opposite party No.1 having rejected the representation, as stated to have been communicated to him along with copy of writ petition as well as aforesaid order of this Court by Speed Post on 02.07.2021, by Order No.9556— TRN-FE-CASE-0003-2021/T, dated 09.11.2021 the petitioner under constraint had to approach this Court by filing writ petition bearing W.P.(C) No.8604 of 2022, which was disposed of *vide* Order dated 07.04.2022 with the following observations:

“3. This writ petition has been filed by the Petitioner thereby challenging the order dated 09.11.2021





*passed by the Commissioner-cum-Secretary to Government, Commerce & Transport Opposite Party No.1.*

4. *As it appears from the order, pursuant to the direction of this Court dated 23.06.2021 passed in WPC (OAC) No.1214 of 2016 (Ramakanta Pradhan Vrs. State of Odisha & Others), petitioner had approached the Authority by filing a comprehensive representation. There was a specific direction in the said writ petition to the effect that taking into consideration certain guidelines as has been laid down in order dated 23.06.2016, the representation was to be considered and disposed of. However, the representation of the petitioner has been rejected on 09.07.2021 by the Authority.*
5. ***On a perusal of the impugned order, it appears that F.A.-cum-Special Secretary to Government-Opposite Party No.1 has although discussed the principle, but it appears that the fact of the present case has not been discussed and it has not been stated as to how the petitioner is not entitled to the benefit claimed by him.*** However, learned counsel for the petitioner relying on certain judgments submits that the Petitioner belong to a separate category. The category the Petitioner belongs to cannot be transferred under the U.R. category. In such view of the matter, learned counsel for the petitioner urges that the Authority be directed to consider the matter in the light of the judgments relied upon by the Petitioner as well as earlier direction of this Court.





6. *Learned counsel for the State on the other hand submits that the Authority has not committed any illegality by taking into consideration the judgment of the Hon'ble Supreme Court and rejecting the same with reason. **However, he also admits that facts have not been analyzed in the impugned order and it has also not been stated as to how the petitioner is not entitled to the benefit.***
7. *Considering the rival contentions of the parties and taking into consideration the judgments of the Hon'ble Supreme Court, this Court is of the considered view that the order dated 09.11.2021 passed by the Opposite Party No.1 is not sustainable in the eye of law, accordingly, the same is hereby quashed. Further the Opposite Party No.1 is directed to consider the matter afresh after giving opportunity of hearing to the present petitioner. Further it is open for the opposite party No.1 to decide whether hearing the affected parties required or not and in the event the same is required they may be noticed. Opposite Party No.1 shall do well to complete the entire exercise within a period of three months from the date of certified copy of this order.*
8. *With the aforesaid observation, the writ petition stands disposed of."*

2.6. Upon fresh consideration as directed by this Court *vide* Order dated 07.04.2022, the Principal Secretary of Transport Department *vide* Order No.4341— TRN-FE-CASE-0003-2021/T, dated 23.05.2022, rejected



the claim of the petitioner and communicated *vide* Memo No.4342/T, dated 23.05.2022 (Annexure-14), content of which is reproduced hereunder:

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*Whereas during hearing, observation of Hon’ble Apex Court in the case of Civil Appeal No.74 of 2010 filed by Jitendra Kumar Singh & another Vrs. State of UP and others<sup>2</sup> was discussed, which says that*

*‘if a reserved category candidate gets selected on the basis of merit, he cannot be treated as a reserved candidate. **The concessions availed of by the reserved category candidates in age relaxation and fee concession had no relevance to the determination of the inter se merit on the basis of the final written test and interview.** The ratio of the aforesaid judgment in fact permits reserved category candidates to be included in the General Category Candidates on the basis of merit.’*

*Whereas, in the case of Civil Appeal No.7211-7212 of 2019 filed by Pradeep Singh Dehal Vrs. State of Himachal Pradesh and others<sup>3</sup> was discussed. In the said case the Hon’ble Apex Court has observed that,*

*‘every person is a general category candidate. The benefit of reservation is conferred to Scheduled Castes, Scheduled Tribes and OBC category candidates or such other category as is permissible under law. It is a consistent view of this Court starting from Indra*

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<sup>2</sup> (2010) 3 SCC 119.

<sup>3</sup> (2019) 9 SCC 276.



*Sawhney & others Vrs Union of India & Others<sup>4</sup> that if a reserved category candidate is in merit, he will occupy a general category seat. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.'*

*In view of the above after due consideration of the claim of the petitioner Sri Ramakanta Pradhan vis-à-vis the Orders of Hon'ble Apex Court in the case of Civil Appeal No.74 of 2010 filed by Jitendra Kumar Singh & another Vrs. State of UP and others<sup>5</sup> and in Civil Appeal No.7211-7212 of 2019 filed by Pradeep Singh Dehal Vrs. State of Himachal Pradesh and others<sup>6</sup> for his selection to the post of Traffic Constable under UR (Men) category is found to have no merit, hence rejected.*

*Sd/- 21.05.2022*

*Principal Secretary to Govt."*

2.7. Questioning the legality of said decision of the Government of Odisha-opposite party No.1, the petitioner has knocked the doors of this Court invoking extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India.

**Counter affidavit of the opposite party Nos.1 and 2:**

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<sup>4</sup> (1992) Supp.3 SCC 217.

<sup>5</sup> (2010) 3 SCC 119.

<sup>6</sup> (2019) 9 SCC 276.



3. It is affirmed by the opposite party Nos.1 and 2 that the provisional select list published by the OSSC in consonance with requirement of Clause-11 of the Advertisement dated 11.12.2014 was based on the aggregate marks secured in the written examination and career evaluation. All the candidates under the list were placed in their respective positions in order of merit regard being had to the total number of vacancies advertised. The candidates belonging to any socially reserved categories are entitled to be selected in open or general category. If such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the reserved quota.

3.1. It is clarified that all the candidates who fulfil the eligibility conditions, *e.g.*, qualification, age and physical test were permitted to participate in the written examination. However, with invocation of relaxation clauses with respect to age and grant of concession in fee *qua* the candidates claiming reservation were merely brought within the zone of consideration so that they could be allowed to participate in the open competition on merit. Once the candidates were allowed to participate in the written examination, it was immaterial as to which category that candidate belongs. All the candidates had to



appear in the same written test and face the same interview. There cannot be any cavil that grant in the concession of fees and relaxation in upper age enables such candidates belonging to the reserved category to fall within the zone of consideration. Accordingly, nine meritorious Scheduled Caste candidates, two Schedule Tribe candidates and thirty-two candidates of Socially and Economically Backward Classes were migrated to the open category and got adjusted against the vacancies relating to unreserved/general category. It is further affirmed that no separate advertisement has been issued for different categories of candidates, no different examination has been conducted for different categories of candidates and the combined merit list has been published *vide* Annexure-3 basing on the competitive examination as well as the carrier evaluation. The provisional select list has been published in order of merit to the total number of vacancies, *i.e.*, 122 as advertised.

***Hearing:***

4. As the pleadings have been completed and this matter relates to recruitment for the post of Traffic Constable of the year 2014 and in the meanwhile another Advertisement bearing No.4328—IIE-124/2021/OSSC, dated 23.12.2021 has been published, on the



concession of counsel for the respective parties, this matter is taken up for final hearing at the stage of admission.

4.1. Pursuant to Order dated 19.10.2022, the opposite party No.3-OSSC has furnished status with regard to above Advertisement dated 23.12.2021 (Annexure-15) in shape of affidavit dated 20.10.2022, relevant portion of which is as follows:

- “5.(A) That the Odisha Staff Selection Commission (OSSC), opposite party No.3, published Advertisement No.4328/OSSC, dated 23.12 .2021 for recruitment to the post of Traffic Constable against 56 vacancies based on online requisition filed by the State Transport Authority, Odisha, Cuttack-opposite party No.2.*
- (B) The written examination was held on 30.07.2022 and 31.07.2022 through CBRE Mode.*
- (C) The physical measurement and physical test of the shortlisted candidates was held on 21.09.2022.*
- (D) The certificate verification of the candidates who qualified in the physical test was conducted on 20.09.2022.*

*After completion of the recruitment process select list has been published vide Notification No.215(C)/OSSC, dated 30.09.2022. The Bio-data-cum-Attestation forms of the selected candidates have been sent to the requisitioning authority for issue of appointment order.”*



- 4.2. In the above backdrop of facts, heard Sri Amitav Das, learned Advocate for the petitioner and Sri Surya Narayan Patnaik, learned Advocate for the opposite party No.3-OSSC in the presence of learned Sri Pravakar Behera, for the Transport Department and Mr. Sailaza Nandan Das, learned Additional Standing Counsel.
- 4.3. Though the opposite party Nos.4 and 5 entered appearance through their advocates, have chosen not to participate in the final hearing.
- 4.4. On conclusion of hearing the matter stood reserved for preparation and pronouncement of Judgment/Order.

***Arguments:***

5. Sri Amitav Das, learned Advocate laying emphasis on Clause-11 of the Advertisement dated 11.12.2014, submitted that in spite of this Court directed on earlier occasions while disposing of *WPC (OAC) No.1214 of 2016 on 23.06.2021* and *W.P.(C) No.8604 of 2022 vide Order dated 07.04.2022*, the opposite party No.1 on erroneous application of ratio of judgments failed to consider the case of the petitioner in proper perspective.
- 5.1. He submitted that in view of Clause-11 of the Advertisement *vide* Annexure-1, though combined





merit list was prepared, candidates should have been selected in order of merit “category-wise” equal to the number of vacancies advertised. He submitted that the opposite party Nos.4 and 5 having applied under the reserved category, their merit should have been considered under the respective categories and they could not have been considered under the unreserved categories.

- 5.2. By referring to written note of submission, he would submit that in view of *Gaurav Pradhan Vrs. State of Rajasthan*, (2018) 11 SCC 352 and *Niravkumar Dilipbhai Makwana Vrs. Gujarat Public Service Commission*, (2019) 7 SCC 383 distinguishing the decision rendered in *Jitendra Kumar Singh Vrs. State of Uttar Pradesh*, (2010) 3 SCC 119, as the opposite party Nos.4 and 5, being Scheduled Caste and Socially and Economically Backward Class candidates respectively, were entitled to the benefit of relaxation/concession in physical tests; as such, they were not eligible to be migrated to the unreserved category. Subtle distinction has been drawn by Sri Amitav Das, learned counsel that the relaxation availed on account of age and exemption from fee for participating in the examination as ordinary examinee is quite different from that of participating in the examination with relaxation in eligibility criteria. Such vital aspect



having not been borne in mind while rejecting the representation of the petitioner, the Order dated 23.05.2022 issued by the Transport Department, being vitiated for non-application of judicious mind, warrants interference.

6. Sri Pravakar Behera, learned Standing Counsel for the Transport Department vehemently contended that the Government of Odisha has not issued any circular or executive instructions restricting migration of reserved candidates to the unreserved posts on the basis of merit. Therefore, he submitted that relaxation having no relevancy in determining the merits of the candidature of the opposite party Nos.4 and 5. It is argued that once the reserved category candidate participated in the final written examination and secured more marks than that is secured by the last selected candidate, it is, thus, immaterial as to which category such candidate belongs.

- 6.1. Relying on *Akash Bhunia Vrs. State of West Bengal, 2023 SCC OnLine Cal 3138*, he contended that no policy decision of the State of Odisha being available to the effect that an examinee having availed of the age relaxation as a reserved category candidate cannot be migrated to the General category berth. The ratio of decision rendered in the case of *Jitendra Kumar Singh*



*Vrs. State of Uttar Pradesh, (2010) 3 SCC 119* is very much applicable to the fact-situation of the present case. Therefore, in exercise of power of judicial review, the Order dated 23.05.2022 *vide* Annexure-14 needs no indulgence.

***Issue involved in the matter:***

7. This Court is called upon to decide whether a candidate, applying for consideration of his application for recruitment under reserved category, on his merit being adjudged could he be migrated to or adjusted against the unreserved category notwithstanding that he was allowed to participate in the recruitment examination on availing benefit like exemption from payment of fee and relaxation in upper age limit including tests?

***Case laws on the issue:***

8. Before delving into merit of matter, it is necessary to have reference to case laws referred to and relied upon by the counsel for the respective parties.

8.1. *Union of India Vrs. Dalbir Singh, (2009) 7 SCC 251:*

“2. *The short question is: whether the Administrative Tribunal is justified in directing the appellants to appoint Respondent 1 as a selected candidate in*



the general category even though he had not applied under that category?

3. The appellants advertised in the newspaper for selection to 20 vacant posts of mazdoor, both in general and reserved category. Respondent 1 applied for selection in the reserved (OBC) category and had annexed his OBC certificate dated 04.05.1997. **A separate Board proceedings was prepared for the candidates who had claimed concession on the basis of OBC certificate and name of Respondent 1 was also** (sic included) in the said proceedings.

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5. **It was intimated by SDO(C), Ambala, vide their letter dated 11.07.2000 that the said certificate was not issued by their office.** The same was informed to Respondent 1, and thereafter, he produced another certificate dated 14.08.2000 issued by SDO(C), Ambala in which a new address was given and Respondent 1 was shown to be in OBC category on account of his being of "Saini" caste and later on it was found that "Saini" caste was not in the OBC category in Punjab State. **In view of this discrepancy in the caste certificate produced, the candidature of Respondent 1 came to be rejected by the appellants** and accordingly, no letter of appointment was issued to Respondent 1.

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8. The appellants had also stated that to fill up the vacancies of mazdoors, an advertisement had



been issued separately for general and OBC categories and pursuant to such advertisement, the applicant had applied against OBC category and not under general category and therefore, his name was not considered under general category.

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12. In the employment notice there is a mention of number of posts available in general category and Other Backward Classes (OBC category). Pursuant to the aforesaid employment notice, Respondent 1 filed his application to consider his case under the OBC category. **In support of his claim, he had produced the caste certificate. It so happened that the certificate produced was found to be defective.** This had resulted in not enlisting his name in the select list. The respondent at no point of time had claimed before the authorities that if for any reason, his case cannot be considered under OBC category, at least the appellants should consider his case under the general merit list.
13. **From the pleadings it appears to us that the appellants had prepared two sets of lists. The first one being the list of those candidates who had staked their claim in the general merit and the second list contains those candidates who had opted for consideration of their case under OBC category.** The respondent at no point of time had taken exception to the procedure adopted by the appellants in preparing the select list. **In our opinion, having opted to consider his case**



**only under OBC category, he cannot thereafter claim that his case requires to be considered in the general merit, only because he has scored better percentage of marks than the last selected candidate in the general merit.”**

8.2. *Jitendra Kumar Singh Vrs. State of Uttar Pradesh*,  
(2010) 3 SCC 119:

“11. The Division Bench noticed the submissions made by the learned counsel for the parties in detail and formulated seven issues which arose in the appeals. The issues were as under:

1. What is the extent of selection of a reserved category candidate against unreserved seats and in what circumstances can he be considered against unreserved vacancies besides reserved seats. The relevant factors, shades and nuances for such adjustment also need to be identified, if any.
2. Whether Section 3(6) of the Act of 1994 would apply where a candidate of reserved category though has availed relaxation meant for reserved category candidates, namely, of fee and age but in all other respect, in the selection test, has competed with general category candidates and has secured more marks than the last selected general category candidate. **In other words whether relaxation in age and fee would deprive and outsource him from competing against an unreserved seat in**



***an open competition with general candidates.***

3. *Whether selection of reserved category candidates against reserved and unreserved seats constituting more than 50% is unconstitutional or otherwise contrary to law.*
  4. *Whether reservation of seats for women is violative of Article 16(2) of the Constitution of India.*
  5. *Whether seats reserved for women can be carried forward in case suitable candidates are not available or the reservation being horizontal and applicable to all categories, the unfilled vacancies are to be filled by suitable male candidates.*
  6. *Whether keeping 2% sports quota separate from the selection in question is illegal.*
  7. *Whether selection in question is otherwise vitiated on account of any alleged irregularity or bungling.*
41. *A Constitution Bench of this Court in Indra Sawhney case, 1992 Supp (3) SCC 217 reiterated the need to balance the fundamental right of the individual under Article 16(1) against the interest and claim of the reserve category candidates under Article 16(4) of the Constitution:*
- '808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving*





*the very same objective. Clause (4) is a special provision— though not an exception to clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14. The provision under Article 16(4)— conceived in the interest of certain sections of society— should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being ‘confined to a minority of seats’ (see his speech in Constituent Assembly, set out in para 693). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats [were] never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.’*

42. *In Post Graduate Institute of Medical Education & Research Vrs. Faculty Assn., (1998) 4 SCC (Pgimer case) in para 32 the same principle was reiterated as under:*

*‘32. Articles 14, 15 and 16 including Articles 16(4), 16(4-A) must be applied in such a manner so that the balance is struck in the matter of appointments by creating reasonable opportunities for the reserved classes and also for the other members of the*



*community who do not belong to reserved classes. Such view has been indicated in the Constitution Bench decisions of this Court in M.R. Balaji Vrs. State of Mysore, AIR 1963 SC 649, T. Devadasan Vrs. Union of India, AIR 1964 SC 179 and R.K. Sabharwal Vrs. State of Punjab, (1995) 2 SCC 745. Even in Indra Sawhney case, 1992 Supp (3) SCC 217 the same view has been held by indicating that only a limited reservation not exceeding 50% is permissible. It is to be appreciated that Article 15(4) is an enabling provision like Article 16(4) and the reservation under either provision should not exceed legitimate limits. In making reservations for the backward classes, the State cannot ignore the fundamental rights of the rest of the citizens. The special provision under Article 15(4) [sic. 16(4)] must therefore strike a balance between several relevant considerations and proceed objectively. In this connection reference may be made to the decisions of this Court in State of A.P. Vrs. U.S.V. Balram, (1972) 1 SCC 660 and C.A. Rajendran Vrs. Union of India, AIR 1968 SC 507. It has been indicated in Indra Sawhney case, 1992 Supp (3) SCC 217 that clause (4) of Article 16 is not in the nature of an exception to clauses (1) and (2) of Article 16 but an instance of classification permitted by clause (1). It has also been indicated in the said decision that clause (4) of Article 16 does not cover the entire field covered by clauses (1) and (2) of Article 16. In Indra Sawhney case, 1992*



*Supp. (3) SCC 217 this Court has also indicated that in the interests of the backward classes of citizens, the State cannot reserve all the appointments under the State or even a majority of them. The doctrine of equality of opportunity in clause (1) of Article 16 is to be reconciled in favour of backward classes under clause (4) of Article 16 in such a manner that the latter while serving the cause of backward classes shall not unreasonably encroach upon the field of equality.'*

*These observations make it abundantly clear that the reservations should not be so excessive as to render the fundamental right under Article 16(1) of the Constitution meaningless. In Indra Sawhney, 1992 Supp (3) SCC 217 this Court has observed as under:*

*'818. \*\*\* In our opinion, however, the result of application of carry-forward rule, in whatever manner it is operated, [shall] not result in breach of 50% rule.'*

*Therefore, utmost care has to be taken that the 50% maximum limit placed on reservation in any particular year by this Court in Indra Sawhney case, 1992 Supp (3) SCC 217 must be maintained. It must further be ensured that in making reservations for the members of the Scheduled Castes and Scheduled Tribes, the maintenance of the efficiency of administration is not impaired.*



43. *It is in this context, we have to examine the issue as to whether the relaxation in fee and upper age-limit of five years in the category of OBC candidates would fall within the definition of “reservation” to exclude the candidates from open competition on the seats meant for the general category candidates.*
44. *Taking note of the submissions, the Division Bench has concluded by considering Questions 1, 2 and 3 that concession in respect of age, fee, etc. are provisions pertaining to eligibility of a candidate to find out as to whether he can appear in the competitive test or not and by itself do not provide any indicia of open competition. According to the Division Bench, the competition would start only at the stage when all the persons who fulfil the requisite eligibility conditions, namely, qualification, age, etc. are shortlisted. We are of the opinion that the conclusion reached by the Division Bench on the issue of concessions and relaxations cannot be said to be erroneous.*
45. *The selection procedure provided the minimum age for recruitment as 21 years and the maximum age of 25 years on the cut-off date. Relaxation of age for various categories of candidates in accordance with the Government orders issued from time to time was also admissible. This included five years' relaxation in age to Scheduled Castes, Scheduled Tribes, Other Backward Classes and dependants of freedom fighters. Relaxation of age was also provided in case of ex-servicemen. The period of service rendered in the army would be reduced for computing the age of the ex-army*



personnel. After deducting the period of service they had rendered in the army, they would be deemed eligible. These were mere eligibility conditions for being permitted to participate in the selection process. Thereafter, the candidates had to appear in a preliminary written test. This consisted of 300 maximum marks and the candidates were required to secure 50% or more marks to participate in the further selection process. Thereafter, the candidates had to undergo physical test consisting of 100 marks. Again a candidate was required to secure at least 50% or more marks.

46. ***It is not disputed before us that the standard of selection in the preliminary written test and the physical test was common to all the candidates. In other words, the standard was not lowered in case of the candidates belonging to the reserved category.*** The preliminary written test and the physical test were in the nature of qualifying examinations to appear in the main written test. The marks obtained in the preliminary written examination and the physical test were not to be included for determination of final merit. It was only candidates who qualified in the preliminary written test and the physical test that became eligible to appear in the main written test which consisted of 600 marks. As noticed earlier, this had two papers—general Hindi, general knowledge and mental aptitude test. A candidate who secured 40% or above would be declared successful in the written test. Thereafter, the candidates were to appear for



*interview of 75 marks. **The final merit list would be prepared on the basis of merit secured in the main written test and the interview. The candidates appearing in the merit list, so prepared, would be declared selected.***

47. *It is common ground that more than 50,000 candidates appeared in the preliminary written test. Upon declaration of the result on 22.09.2000, only 3325 candidates were found successful. Thereafter, the physical test which was conducted from 29.10.2000 to 06.11.2000 reduced the successful candidates to 1454. It was these 1454 candidates who sat in the main written test held on 29.04.2001. Upon declaration of result, 1178 candidates were declared successful. The candidates who were successful in the written test were subjected to an interview between 18.06.2001 to 01.07.2001. The final result published on 06.07.2001 declared only 1006 candidates successful.*
48. ***In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the general category candidates is without any foundation. It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is***





**therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration.** The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list.

49. It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. **Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16(1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates on a par with general category candidates.** It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates.
50. It has been recognised by this Court in *Indra Sawhney*, 1992 Supp (3) SCC 217 that larger concept of reservation would include incidental and ancillary provisions with a view to make the main provision of reservation effective. In *Indra Sawhney*, 1992 Supp (3) SCC 217 it has been observed as under:





‘743. The question then arises whether clause (4) of Article 16 is exhaustive of the topic of reservations in favour of backward classes. Before we answer this question it is well to examine the meaning and content of the expression ‘reservation’. Its meaning has to be ascertained having regard to the context in which it occurs. The relevant words are ‘any provision for the reservation of appointments or posts’. The question is whether the said words contemplate only one form of provision namely reservation simpliciter, or do they take in other forms of special provisions like preferences, concessions and exemptions. In our opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The constitutional scheme and context of Article 16(4) induces us to take the view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions ... and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration—the admonition of Article 335. The several concessions, exemptions and other measures issued by the Railway Administration and noticed in *Akhil Bharatiya Soshit Karamchari Sangh Vrs. Union of India*, (1981) 1 SCC 246 are instances of supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective i.e. to ensure that the members of



*the reserved class fully avail of the provision for reservation in their favour.'*

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51. *We are further of the considered opinion that the reliance placed by Mr Rao and Dr. Dhavan on K.L. Narasimhan, (1997) 6 SCC 283 is misplaced. The learned Senior Counsel had relied on the following observations:*

- '5. \*\*\* Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.'*

*The aforesaid lines cannot be read divorced from the entire paragraph which is as under:*

- "5. It was decided that no relaxation in respect of qualifications or experience would be recommended by Scrutiny Committee for any of the applicants including candidates belonging to Dalits and Tribes. In furtherance thereof, the faculty posts would be reserved without mentioning the speciality; if the Dalit and Tribe candidates were available and found suitable, they would be treated as reserved candidates. If no Dalit and Tribe candidate was found available, the post would be filled from general candidates; otherwise the reserved post would be carried forward to the next year/advertisement. It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit*



as general candidate, he should not be treated as reserved candidate. **Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.'**

*These observations make it clear that **if a reserved category candidate gets selected on the basis of merit, he cannot be treated as a reserved candidate.***

52. ***In the present case, the concessions availed of by the reserved category candidates in age relaxation and fee concession had no relevance to the determination of the inter se merit on the basis of the final written test and interview. The ratio of the aforesaid judgment in fact permits reserved category candidates to be included in the general category candidates on the basis of merit.***

53. *Even otherwise, merely quoting the isolated observations in a judgment cannot be treated as a precedent de hors the facts and circumstances in which the aforesaid observation was made."*

8.3. *Gaurav Pradhan Vrs. State of Rajasthan, (2018) 11 SCC 352:*

*"19. The judgment of the learned Single Judge in Chandra Bhan Yadav Vrs. State of Rajasthan, 2008 SCC OnLine Raj 875 was a judgment where circulars issued by the State Government which are referable to Rule 7(1) of the 1989 Rules*



relevant in the context of selection in question, were neither referred to nor considered. The learned Single Judge only relied on the judgments laying down that reserved category candidates selected in open competition shall not be counted in reserved quota and they shall be treated as open category candidates. There cannot be any dispute with the general proposition which stands well settled as laid down by the nine-Judge Bench in *Indra Sawhney Vrs. Union of India*, 1992 Supp (3) SCC 217. \*\*\*

20. Another judgment of the learned Single Judge in *Mangla Ram Bishnoi Vrs. State of Rajasthan*, 2010 SCC OnLine Raj 4648 relied on in the impugned judgment *Rajesh Singh Vrs. State of Rajasthan*, 2014 SCC OnLine Raj 6470 was a judgment where the learned Single Judge has placed heavy reliance on *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119. The Circular of the State Government dated 04.03.2002 as applicable was considered in para 37. But the learned Single Judge held *Mangla Ram Bishnoi Vrs. State of Rajasthan*, 2010 SCC OnLine Raj 4648 that in view of the law laid down by this Court in *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119 the Circular dated 04.03.2002 does not remain operative. We thus need to look into the judgment of this Court in *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119. The Division Bench further held that **since the judgment of Mangla Ram Bishnoi Vrs. State of Rajasthan, 2010 SCC OnLine Raj 4648 which was Judge-made law was holding**



**field, the State Government was required to permit migration of the reserved category candidates having obtained age relaxation into general category candidates and no exception can be taken in following the Circular dated 11.05.2011.**

21. As noted above, the nine-Judge Constitution Bench *Indra Sawhney Vrs. Union of India*, 1992 Supp (3) SCC 217 had laid down that **if the members belonging to the reserved category get selected in the open competition field on the basis of their own merit, they will not be counted against the quota reserved for Scheduled Castes and they would be treated as open competition candidates.** In *Post Graduate Institute of Medical Education & Research Vrs. K.L. Narasimhan*, (1997) 6 SCC 283, a three-Judge Bench of this Court in para 5 has laid down the following:

‘5. \*\*\* **It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate.** Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate.’

22. Article 16 clause (4) of the Constitution is an enabling provision empowering the State for making any provision for the reservation of appointments or posts in favour of any backward



class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. The orders issued by the State Government from time to time were the orders contemplated by Article 16 clause (4). It is well settled by the nine-Judge Constitution Bench [Indra Sawhney Vrs. Union of India, 1992 Supp (3) SCC 217] that reservation in favour of backward classes can be provided by a State Government by an executive order also.

23. The reservation being the enabling provision, the manner and extent to which reservation is provided has to be spelled from the orders issued by the Government from time to time. In the present case, there is no issue pertaining to the extent of reservation provided by the State Government to the SC, ST and OBC candidates. **The issue involved in the present case is as to whether the reserved category candidates can be allowed to be migrated into general category candidates.** The reservation is wide enough to include exemption, concession, etc. The exemption, concession, etc. are allowable to the reserved category candidates to effectuate and to give effect to the object behind Article 16 clause (4) of the Constitution. **The State is fully empowered to lay down the criteria for grant of exemption, concession and reservation and the manner and methodology to effectuate such reservation. The migration of reserved candidates into general category candidates is also part and parcel of larger concept of reservation** and the Government Orders issued





on 17.06.1996, 04.03.2002 and 24.06.2008 were the Government Orders providing for methodology for migration of reserved category candidates into general category candidates which was well within the power of State. Neither before us nor even before the High Court, the aforesaid Government orders, last being 24.06.2008, were under challenge. As noted above, the High Court itself has returned a finding that earlier methodology of providing for migration of reserved category candidates into general category candidates was reversed by order dated 11.05.2011 by which despite taking any special concession, reserved category candidates could be migrated into general category candidates.

24. **Now we come to the judgment of this Court in *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119.** In the above case also the question which had come up for consideration was as to whether reserved category candidates who have taken the age relaxation and secured more marks to the last candidate in the general category candidate should be treated to be in general category. In para 23 the issue which was involved in the case was noted in the following words:

‘23. We have heard the learned counsel for the parties. Mr L.N. Rao, learned Senior Counsel appearing on behalf of the appellants submitted that the cardinal issue raised in these appeals is whether the reserved category candidates who had taken the benefit of age or fee relaxation, are entitled to





*be counted as general category candidates. According to the learned Senior Counsel, the Division Bench has erred in law in concluding that relaxation in age and fee cannot be treated to be relaxation in standard of selection and shall not deny a reserved category candidate's selection in open competition with general category candidate.'*

25. ***This Court had considered the above issue in the context of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994.*** Section 3 of the Act provided for reservation in favour of ST, SC and other backward classes. Section 3 sub-section (6) of the 1994 Act provided as following:

- ‘3. Reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes.—
- (1) *In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentages of vacancies to which recruitments are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens— \*\*\**

*Provided that the reservation under clause (c) shall not apply to the category of Other*



*Backward Classes of citizens specified in Schedule II:*

\*\*\*

- (6) ***If a person belonging to any of the categories mentioned in sub-section (1) 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 (1).'***

26. The State of U.P. issued Instructions dated 25.03.1994 which have been extracted in para 72 of the judgment. Para 72 is stated below:

‘72. Soon after the enforcement of the 1994 Act the Government issued Instructions dated 25.03.1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:

- ‘4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in



*age-limit) available to reserved category.'*

*From the above it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. main written test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that Government orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation in upper age-limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.'*

27. *The last line of the Government Instructions dated 25.03.1994 as quoted above provided:*

***'It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category.'***

28. *The provisions of Section 3 sub-section (6) of the 1994 Act read with Instructions dated 25.03.1994 clearly meant that grant of age relaxation to*



*reserved category candidate does not militate against him being treated as general category candidate if he has obtained more marks than the last general category candidate.*

29. This Court in the above case has also made general observation [Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119] especially in para 75 which is to the following effect:

‘75. In our opinion, the relaxation in age does not in any manner upset the “level playing field”. It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. **At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the**



**candidate belongs.** All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.'

30. The ratio of the judgment in *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119 has to be read in the context of statutory provisions and the Government Orders dated 25.03.1994 and the said observation cannot be applied in a case where the Government orders are to the converse effect. As noted above, the State of Rajasthan has issued Circular dated 24.06.2008 where the following is provided in Para 6.2:

'Circular dated 24.06.2008

6.2. In the State, members of the SC/ST/OBC can compete against non-reserved vacancies and be counted against them, in case they have not taken any concession (like that of age, etc.) payment of examination fee in case of direct recruitment.'

31. It is relevant to note that in the case before us, the Circular dated 24.06.2008 was not under challenge. The State has come up with the Circular dated 11.05.2011 which was issued during process of recruitment. The Division Bench [*Rajesh Singh Vrs. State of Rajasthan*, 2014 SCC OnLine Raj 6470] **has already recorded a finding that recruitment process had begun prior to the Circular dated 11.05.2011. The State clearly**



***provided that candidates belonging to reserved category irrespective of having availed any of the special concessions secure benchmark prescribed for general/open category candidates, if selected, such a reserved category candidate shall be counted against unreserved/open category candidates.***

32. ***We are of the view that the judgment of this Court in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 which was based on statutory scheme and the Circular dated 25.03.1994 has to be confined to scheme which was under consideration, statutory scheme and intention of the State Government as indicated from the said scheme cannot be extended to a State where the State circulars are to the contrary especially when there is no challenge before us to the converse scheme as delineated by the Circular dated 24.06.2008.***

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36. *In Deepa E.V. Vrs. Union of India, (2017) 12 SCC 680, reliance was also placed on Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119. This Court considered Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 and the Circular dated 25.03.1994 issued by the State of U.P. which came up for consideration in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119. This Court in Deepa E.V. Vrs. Union of India, (2017) 12 SCC 680 has distinguished Jitendra Kumar Singh*





*Vrs. State of U.P., (2010) 3 SCC 119 in paras 8, 9 and 10, which are to the following effect:*

- ‘8. The learned counsel for the appellant mainly relied upon the judgment of this Court in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119, which deals with the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and Government Order dated 25.03.1994. On a perusal of the above judgment, we find that there is no express bar in the said U.P. Act for the candidates of SC/ST/OBC being considered for the posts under general category. In such facts and circumstances of the said case, this Court has taken the view that the relaxation granted to the reserved category candidates will operate a level playing field. In the light of the express bar provided under the proceedings dated 1-7-1998 the principle laid down in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 cannot be applied to the case in hand.*
- 9. The learned Senior Counsel appearing for the respondents has also drawn our attention to paras 65 and 72 in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 to contend that the principle in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 is in the context of interpretation of the U.P. Act, 1994 and in the particular factual situation of the said case. Paras 65 and 72, read as under:*





*‘65. In any event the entire issue in the present appeals need not be decided on the general principles of law laid down in various judgments as noticed above. In these matters, we are concerned with the interpretation of the 1994 Act, the Instructions dated 25.03.1994 and the G.O. dated 26.02.1999. The controversy herein centres around the limited issue as to whether an OBC who has applied exercising his option as a reserved category candidate, thus becoming eligible to be considered against a reserved vacancy, can also be considered against an unreserved vacancy if he/she secures more marks than the last candidate in the general category.*

*\*\*\**

*72. Soon after the enforcement of the 1994 Act the Government issued Instructions dated 25.03.1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:*

*“4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will*



*not be adjusted towards reserved category, that is, **he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category.***

***From the above it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. main written test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that Government orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation in upper age-limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.***



10. *Having regard to the observations in paras 65 and 72, in our view, the principles laid down in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 cannot be applied to the case in hand. As rightly pointed out by the High Court that judgment in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 was based on the statutory interpretation of the U.P. Act, 1994 and Government Order dated 25.03.1994 which provides for entirely a different scheme.'*
37. *The judgment of this Court in Deepa E.V. Vrs. Union of India, (2017) 12 SCC 680 fully supports the case of the appellants. In Deepa E.V. Vrs. Union of India, (2017) 12 SCC 680 also the Circular of the Central Government dated 01.07.1998/02.07.1997 provided the relevant provision which is to the following effect:*
- '6. \*\*\* '\*\*\* In other words, when a relaxed standard is applied in selecting SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.' \*\*\*'*
38. *The contents of the above Circular dated 01.07.1998/02.07.1997 which speaks of age*



*relaxation and makes reserved category candidates ineligible to be treated into general category candidates is same as in Para 6.2 of the Circular dated 24.06.2008 as noted above which is applicable in the present case. Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 is distinguishable with the present case as has been distinguished by this Court in Deepa E.V. Vrs. Union of India, (2017) 12 SCC 680.*

*\*\*\**

- 48. We are thus of the opinion that the Division Bench [Rajesh Singh Vrs. State of Rajasthan, 2014 SCC OnLine Raj 6470] erred in modifying the judgment of the learned Single Judge [Madan Lal Vrs. State of Rajasthan, 2012 SCC OnLine Raj 1182], [Manish Sharma Vrs. State of Rajasthan, 2013 SCC OnLine Raj 4100] and holding that candidates availing relaxation of age belonging to reserved category candidates who find place in merit list of the general/open category has to be treated to be included in the general/open category. The above conclusion of the Division Bench [Rajesh Singh Vrs. State of Rajasthan, 2014 SCC OnLine Raj 6470] is unsustainable for the reason as indicated above.*
- 49. In view of the foregoing discussion, we are of the considered opinion that the candidates belonging to SC/ST/BC, who had taken relaxation of age, were not entitled to be migrated to the unreserved vacancies; the State of Rajasthan has migrated such candidates who have taken concession of age against the unreserved vacancies which*



*resulted displacement of a large number of candidates who were entitled to be selected against the unreserved category vacancies. The candidates belonging to unreserved category who could not be appointed due to migration of candidates belonging to SC/ST/BC were clearly entitled for appointment which was denied to them on the basis of the above illegal interpretation put by the State. We, however, also take notice of the fact that the reserved category candidates who had taken benefit of age relaxation and were migrated on the unreserved category candidates, are working for more than last five years. The reserved category candidates who were appointed on migration against unreserved vacancies are not at fault in any manner. Hence, we are of the opinion that SC/ST/BC candidates who have been so migrated in reserved vacancies and appointed, should not be displaced and allowed to continue in respective posts. On the other hand, the unreserved candidates who could not be appointed due to the above illegal migration are also entitled for appointment as per their merit. The equities have to be adjusted by this Court.”*

8.4. *Pradeep Singh Dehal Vrs. State of Himachal Pradesh, (2019) 9 SCC 276:*

*“14. We find that the process of conducting separate interviews for the posts of Assistant Professor under general category and OBC category is wholly illegal. Though, none of the parties have raised any dispute about it but since the same is*



*inherently defective, we are constrained to observe so. **Every person is a general category candidate. The benefit of reservation is conferred to Scheduled Castes, Scheduled Tribes and OBC category candidates or such other category as is permissible under law.** It is a consistent view of this Court starting from Indra Sawhney Vrs. Union of India, 1992 Supp (3) SCC 217 that if a reserved category candidate is in merit, he will occupy a general category seat.*

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15. *In the judgment reported as Vikas Sankhala Vrs. Vikas Kumar Agarwal, (2017) 1 SCC 350 one of the questions examined was whether reserved category candidate who obtains more marks than the last general category candidate is to be treated as general category candidate. **It was held that such reserved category candidate has to be treated as unreserved category candidate provided such candidate did not avail any other special concession.** The Court held as under:*

*‘84.2.Migration from reserved category to general category shall be admissible to those reserved category candidates who secured more marks obtained by the last unreserved category candidates who are selected, subject to the condition that such reserved category candidates did not avail any other special concession. **It is clarified that concession of passing marks in TET would not be treated as concession falling in the aforesaid category.**’*





16. The concessions which were availed by the reserved category candidates are in the nature of age relaxation, lower qualifying marks, concessional application money than the general category candidates.

17. ***In view of the said fact, we find that the selection process conducted by the University cannot be said to be fair and reasonable.*** Consequently, the University is directed to re-examine the selection process by constituting an Expert Committee who shall consider the “publications” of the candidates who were being considered in pursuance of Advertisement No. 3 of 2011 and make suitable recommendations accordingly by having a joint merit list of all the categories of candidates who applied for appointment to the post of Assistant Professor. However, in such selection process, the appointment of candidates already selected will not be disturbed, except the appellant whose appointment shall be subject to the decision of the University on the basis of recommendation of the Expert Committee.”

8.5. *Niravkumar Dilipbhai Makwana Vrs. Gujarat Public Service Commission, (2019) 7 SCC 383:*

“13. The State Government, in exercise of its powers conferred under Article 309 of the Constitution of India made Rules of 1967 vide Notification dated 10.10.1967. As per sub-rule (2) of Rule 8, the appointing authority has been given powers to relax age-limit in favour of the candidates belonging to SC/ST and SEBC and in favour of



women candidates to the extent indicated therein. The Ministry of Personnel, Public Grievances and Pensions vide Office Memorandum dated 22.05.1989 formulated a policy in tune with Article 16(4) of the Constitution of India, which enables the State Government to provide for reservation for the category of persons belonging to backward classes. Thereafter, the Ministry of Personnel, Public Grievances and Pensions vide Office Memorandum dated 01.07.1998 clarified the earlier OM dated 22.05.1989.

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28. The judgment in *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119, was pressed into service in support of the contention that when a relaxed standard is applied in selecting Scheduled Castes, Scheduled Tribes and Other Backward Classes candidates, the same cannot be treated as a bar on such candidates for being considered for general category vacancies. **This Court did not agree with the said proposition. It was held that *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119 was based on the statutory interpretation of the U.P. Act, 1994, and the G.O. dated 25.03.1994 which provides for an entirely different scheme. Therefore, the principles laid down in *Jitendra Kumar Singh Vrs. State of U.P.*, (2010) 3 SCC 119 cannot be applied to the said case.**
30. **Taking into consideration the above circular, this Court held that the ratio of the judgment**



***in Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119 has to be read in the context of statutory provisions and the G.O. dated 25.03.1994 and the said observation cannot be applied in a case where the Government orders are to the converse effect.***

***\*\*\****

31. *The judgments in Deepa E.V. Vrs. Union of India, (2017) 12 SCC 680 and Gaurav Pradhan Vrs. State of Rajasthan, (2018) 11 SCC 352 fully support the case of the respondents.”*

***Analysis and discussions:***

**9.** The petitioner contended that as against 20, 27, 14 and 61 numbers of posts under the categories of Scheduled Caste, Scheduled Tribe, Socially and Economically Backward Class and General respectively, 29, 29, 46 and 17 numbers of Scheduled Caste, Scheduled Tribe, Socially and Economically Backward Class and General categories of candidates were selected in the said provisional merit list. It is urged that such selection is not in consonance with the requirement contained in Clause-11 of the Advertisement dated 11.12.2014.

9.1. Objecting strongly, Sri Amitav Das, learned counsel submitted that the opposite party Nos.4 and 5 have availed the benefits of relaxation as extended through the Advertisement dated 11.12.2014 to the reserved



candidates. Referring to *Deepa E.V. Vrs. Union of India*, (2017) 12 SCC 680 and *Gaurav Pradhan Vrs. State of Rajasthan*, (2018) 11 SCC 352, wherein *Jitendra Kumar Singh Vrs. State of Uttar Pradesh*, (2010) 3 SCC 119 has been distinguished and it has been authoritatively propounded that said case is applicable to particular factual matrix, the counsel for the petitioner amplified his argument by stating that while rejecting the case of the petitioner, the Principal Secretary of Transport Department has fell in grave error of law.

9.2. Perusal of Advertisement dated 11.12.2014 (Annexure-1) reveals that the Recruitment Examination consisted of:

- i) Physical standard measurement and physical test;
- ii) Written Examination for those who qualify in physical test; and
- iii) Evaluation of Academic Career.

In physical standard measurement test the reserved category are enjoined with relaxations as provided under Clause-8 of the Advertisement dated 11.12.2014. The reserved candidates besides being exempted from payment of the examination fees as



provided under Clause-6(4) of the Advertisement, Clause-8 specifies criteria for Written Examination of one and half hour duration comprising of 85 marks, which may be quoted herein below:

**“8. Plan of Examination:**

*(Rule 7(2) of the Recruitment Rules):*

*The recruitment examination shall consist of the following stages:*

Sl No.	Name of the Test/ Examination	Paper, Duration & Type of Test/ Examination	Marks
i	Physical Standard measurement and Physical Test	Only qualifying in nature.	No marks
ii	Written examination (For those who qualify in Physical Test)	One paper of objective type with multiple choices of answers to be answered within 1 hour and 30 minutes in OMR answer sheet using black/blue ball point pen only.	85 marks
iii	Evaluation of academic career	Performance of the candidate in +2 level Examination or Equivalent Examination	15 marks
		Total	100 marks

**8(1) Physical Standard Measurement and Physical Test:**

*(a) The candidate must have possessed the following Physical Standard to be eligible for the post:*

Category	Height	Weight	Chest: Unexpanded	Chest: expended
General/ SEBC (Men)	168 CM	55 Kg	79 CM.	84 CM.
General/ SEBC (Women)	158 CM	47.5 Kg	—	—
SC/ ST (Men)	163 CM	50 Kg	76 CM.	81 CM.
SC/ ST (Women)	153 CM	45 Kg	—	—



- (b) *The candidates who will qualify in the physical standard prescribed above will be required to undergo the following physical test:*

<i>Item of physical test</i>	<i>Men (all category)</i>	<i>Women (all category)</i>
<i>i. Running 1.6 Kilometres</i>	<i>In 6 minutes 30 seconds</i>	<i>In 8 minutes 30 seconds</i>
<i>ii. Cycling 1.6 Kilometres</i>	<i>In 4 minutes 30 seconds</i>	<i>In 7 minutes</i>

- (c) *The candidates qualifying in the Physical Measurement and Physical Test will be allowed to appear in the written examination. The Commission shall constitute Physical Test Board at district level for each Physical Test Centre. The decision of the Board shall be final.*

- 8(ii) *Written Examination (One and half hour duration)— 85 marks)*

*The qualified candidates in the Physical Test shall be allowed to appear in the Written Examination. The Written Examination will be of objective type with multiple choices of answers to be responded by the candidates in the OMR answer sheet. The duration of the examination shall be of one and half hour carrying full marks 85. There will be total 85 questions carrying one mark each. The question will be asked proportionately from Odia Language, English Language, Arithmetic, General Knowledge etc. of +2 standard. The Commission at their discretionary fix a minimum qualifying mark to be qualified in the written examination.*

- 8(iii) *Evaluation of Academic Career:*





*Candidates twice the number of vacancies in each category, basing on their relative performance in the main written examination shall be called for verification of original certificate for assessment of their academic career. The verification of original certificate is mandatory for the candidates who will qualify in the written examination. The candidates who will not submit the DAF after qualifying in the written examination and not appear for verification of original certificates, no career evaluation will be done in their favour and their names will be deleted from the merit list.*

*There shall be a career making out of total 15 marks for performance in +2 certificates or equivalent examination. The break-up of marks for career evaluation will be as follows:*

<i>60% and above</i>	<i>—</i>	<i>15 Marks</i>
<i>50% and above</i>	<i>—</i>	<i>10 Marks</i>
<i>40% and above</i>	<i>—</i>	<i>05 Marks</i>
<i>Below 40%</i>	<i>—</i>	<i>No Marks”</i>

9.3. It is strenuously argued by Sri Pravakar Behera, learned Standing Counsel for the Transport Department that mere exemption from fee and relaxation in age in respect of reserved category candidate would not take away their right to participate in the examination along with general candidates. To examine such contention, this Court having minutely studied the “Plan of Examination”. It is not only exemption from fee for Scheduled Tribe and Scheduled Caste candidates in terms of Clause-6, but



also they are entitled to certain relaxation in examination while undertaking along with other candidates other than the reserved candidates.

9.4. Clause-8 of the Advertisement dated 11.12.2014 as extracted herein above clearly depict the position that candidates of General/SEBC (Men) are required to possess physical standard of height, weight, unexpanded chest and expanded chest of 168 cm., 55 kg., 79 cm. and 84 cm. respectively for being eligible for the post of Traffic Constable, whereas SC/ST (Men) are required to possess 163 cm., 50 kg., 76 cm. and 81 cm. respectively. Such concession/scaling down in the physical standard measurement and physical test would lead to demonstrate that relaxed standard is applied in selecting a candidate for SC/ST category candidate.

9.5. It does need emphasised that cautions have been clipped under the heading "IMPORTANT" at the beginning of the Advertisement, which read as follows:

*"Caution:*

- 1. The candidates applying for the post must go through the advertisement and ensure that they fulfil all eligibility conditions prescribed for the post/examination as laid down in this advertisement. Admission of a candidate for the Physical Test and written examination shall be*



*provisional and would be on the basis of the information furnished by him/her in the on-line application. If at any stage of recruitment or thereafter, it is found that any information furnished by the candidate in his/her application is false/incorrect or the candidate has suppressed any relevant information or the candidate otherwise does not satisfy the eligibility criteria for the post, his/her candidature will be cancelled forthwith.*

2. ***The candidates qualifying the Physical Standard & Test will be only allowed to appear in the written examination.*** *The candidates qualifying in the written examination shall have to submit the DAF as per Clause-7 of this advertisement within 15 days of the declaration of the result for awarding marks in the career evaluation. No further instruction shall be issued for the purpose.”*

9.6. There is no gainsaid that Advertisement contained in Annexure-1 is a document. As is understood, ‘document’ is something that furnishes evidence, specially a legal deed or other piece of writing. Document shall also include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter. Document will also include summons, notice, requisition, order, other legal process and registers.



Any decipherable information, which is set down in a lasting form would be a document. Document is a written paper or something similar, which may be put forward in evidence. The term 'document' means a document legally enforceable. An instrument on which is recorded, by means of letter, figures or marks, matters which may be evidentially used, would be 'document'. The expression 'document' would also mean something, on which things are written, printed or inscribed, and which gives information and would also include, any written thing, capable of being evidence, a paper or other material thing affording information, proof or evidence of anything. Document would also mean and include something to provide with factual or substantial support for statements, made on hypothesis proposed and also to equip with exact references to authoritative supporting information. In that sense, the Advertisement dated 11.12.2014, being a document, as is well-settled, it must be read as a whole.

- 9.7. The Advertisement so read would unambiguously lead to make one understand that the candidates qualifying the Physical Standard & Test will be only allowed to appear in the written examination. Furthermore, the physical standard and test qua reserved candidates vis-à-vis general candidates are different.



Advantageous position is enjoyed by the reserved candidates with their reduced height, weight and chest measurement in comparison to the general candidates for the same post, *i.e.*, Traffic Constable.

9.8. Therefore, the opposite party Nos.4 and 5 were required to be assessed accordingly in contrast with the petitioner so far as "Plan of Examination" envisaged in Clause-8 of the Advertisement dated 11.12.2014 is concerned.

9.9. As is well settled in the above referred case laws more particularly *Niravkumar Dilipbhai Makwana Vrs. Gujarat Public Service Commission, (2019) 7 SCC 383*, and ratio of said judgment if applied to the present case, it can safely be said that SC/ST (Men) having enjoyed the benefit of relaxation in height, weight and chest (expansion/unexpansion), they could not have been considered against unreserved vacancy. Under such premise, the contention of the opposite party Nos.1 and 2 that with age relaxation and fee concession, the reserved candidates were brought within the zone of consideration, so that they could participate in the open competition on merit is a myth.

9.10. There is no dispute that every person is a general category candidate notwithstanding the benefit of reservation is conferred on Scheduled Caste,



Scheduled Tribe and SEBC category candidates or such other category as is permissible under law. It is a consistent view of the Hon'ble Supreme Court of India that if a reserved category candidate secured more marks than the last selected candidate of general category, he will occupy a general category seat *vide Jitendra Kumar Singh Vrs. State of UP (2010) 3 SCC 119 and Paradeep Singh Dehal Vrs. State of Himachal Pradesh and Others, (2019) 9 SCC 276.*

9.11. However, *Jitendra Kumar Singh Vrs. State of UP (2010) 3 SCC 119* has been distinguished in *Gaurav Pradhan Vrs. State of Rajasthan, (2018) 11 SCC 352.*

9.12. Section 8 of the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, stands as follows:

“8. *Relaxation and concessions.—*

*For initial appointment:*

(a) *the upper age limit prescribed for recruitment shall be increased by five years;*

(a-1) *the qualification regarding experience if any, may be relaxed upto two years by the Orissa Public Service Commission, the Selection Board or the competent authority, as the case may be, provided such relaxation is not inconsistent with efficiency;*





- (b) *fees prescribed for admission into any competitive examination or interview for recruitment shall be exempted;*
- (c) *the Scheduled Castes and the Scheduled Tribes candidates shall be paid travelling allowance to competitive recruitment examination or interview at such rate as may be prescribed.”*

9.13. The State Government, after careful consideration, have taken a policy decision that the posts and services under the State shall be reserved for the Socially and Educationally Backward Classes to the extent of twenty-seven per centum in initial recruitment and in Section 6 of the Odisha Reservation of Posts and Services (for Socially and Educationally Backward Classes) Act, 2008, it is provided that,

“6. *Relaxation.—*

*For appointment of candidates belonging to Socially and Educationally Backward Class —*

- (a) *the upper age limit prescribed for the recruitment shall be increased by five years ; and*
- (b) *any other relaxation or concession may be allowed by the State Government as may be prescribed.”*

9.14. In addition to the concession in fee and relaxation in upper age limit, the reserved candidates do have certain other benefits *inter alia* qualifications also. In



the present case the Advertisement dated 11.12.2014 (Annexure-1) clearly grants benefit to the reserved candidate in eligibility criteria *vis-à-vis* general candidates. Therefore, the contention of Sri Pravakar Behera, learned Standing Counsel for the Transport Department deserves to be repelled.

9.15. The Hon'ble Supreme Court in the case of *Saurav Yadav Vrs. State of U.P.*, (2021) 4 SCC 542 had the occasion to consider the possibility of mobility (migration) from the reserved to unreserved category based on merit. It is held,

*“26. The principle that candidates belonging to any of the vertical reservation categories are entitled to be selected in “Open or General Category” is well settled. It is also well accepted that if such candidates belonging to reserved categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories for vertical reservation that they belong. Apart from the extracts from the decisions of this Court in Indra Sawhney Vrs. Union of India, 1992 Supp (3) SCC 217 and R.K. Sabharwal Vrs. State of Punjab, (1995) 2 SCC 745 the observations by the Constitution Bench of this Court in V.V. Giri Vrs. D. Susi Dora, (1960) 1 SCR 426 = AIR 1959 SC 1318, though in the context of election law, are quite noteworthy: (AIR pp. 1326-27, paras 21-22)*



‘21. \*\*\* In our opinion, the true position is that a member of a Scheduled Caste or Tribe does not forego his right to seek election to the general seat merely because he avails himself of the additional concession of the reserved seat by making the prescribed declaration for that purpose. The claim of eligibility for the reserved seat does not exclude the claim for the general seat; it is an additional claim; and both the claims have to be decided on the basis that there is one election from the double-Member constituency.

22. In this connection we may refer by way of analogy to the provisions made in some educational institutions and universities whereby in addition to the prizes and scholarships awarded on general competition amongst all the candidates, some prizes and scholarships are reserved for candidates belonging to backward communities. In such cases, though the backward candidates may try for the reserved prizes and scholarships, they are not precluded from claiming the general prizes and scholarships by competition with the rest of the candidates.’

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38. The second view is thus neither based on any authoritative pronouncement by this Court nor does it lead to a situation where the merit is given precedence. Subject to any permissible reservations i.e. either social (vertical) or special



(horizontal), opportunities to public employment and selection of candidates must purely be based on merit. **Any selection which results in candidates getting selected against Open/General category with less merit than the other available candidates will certainly be opposed to principles of equality. There can be special dispensation when it comes to candidates being considered against seats or quota meant for reserved categories and in theory it is possible that a more meritorious candidate coming from Open/General category may not get selected. But the converse can never be true and will be opposed to the very basic principles which have all the while been accepted by this Court.** Any view or process of interpretation which lead to incongruity as highlighted earlier, must be rejected.

39. The second view will thus not only lead to irrational results where more meritorious candidates may possibly get sidelined as indicated above but will, of necessity, result in acceptance of a postulate that Open/General seats are reserved for candidates other than those coming from vertical reservation categories. Such view will be completely opposed to the long line of decisions of this Court.”

9.16. It may be significant to notice *Deependra Yadav Vrs. State of Madhya Pradesh*, (2024) 6 SCR 36 in the context of existence of the statutory provisions the Hon’ble Supreme Court of India observed as follows:



“27. Significantly, in *State of U.P. and others Vrs. Atul Kumar Dwivedi and others*, (2022) 1 SCR 28, this Court had occasion to consider application of moderation/ scaling of marks in a recruitment process and as to when such an exercise would be permissible. It was observed that normalization of marks means increasing and/or decreasing the marks obtained by students in different timing sessions (shifts) to a certain number, as observed by the High Court in its judgment, and it was noted that such normalization techniques help in comparing corresponding normalized values from two or more different data sets in a way that it eliminates the effects of the variation in the scale of the data sets, i.e., a data set with large values can be easily compared with a data set of smaller values and the normalized score/percentile is obtained by applying a formula. This Court, accordingly, concluded that the exercise undertaken in adopting the process of normalization was quite consistent with the requirements of law. This Court further observed that decisions made by expert bodies, including the Public Service Commissions, should not be lightly interfered with, unless instances of arbitrary and mala fide exercise of power are made out.

28. On similar lines, in *Tajvir Singh Sodhi and others Vrs. State of Jammu and Kashmir and others*, (2023) 3 SCR 714, this Court observed that interference in the selection process for public employment should generally be avoided, recognizing the importance of maintaining the



autonomy and integrity of the selection process. Noting that Courts would recognize that the process of selection involves a high degree of expertise and discretion and that it would not be appropriate for Courts to substitute their judgment for that of a selection committee, it was observed that it is not within the domain of the Court, exercising the power of judicial review, to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a selection committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene. 29. The detailed explanation by the experts being rather technical, we do not propose to burden this judgment with the same, but the learned senior counsel/counsel opposing the MPPSC, who also heard the experts, did not bring to our notice any lacuna in the process adopted or the formula applied, whereby injustice was done to any candidate or any arbitrariness crept in. We, therefore, hold that the process of normalization and the consequential merger of the marks secured by the candidates who appeared in the two main examinations cannot be found fault with.

30. We may also note that Rule 4(3)(d)(III) of the Rules of 2015 patently harmed the interests of the reservation category candidates, **as even meritorious candidates from such categories, who had not availed any reservation benefit/relaxation, were to be treated as**





***belonging to those reservation categories*** and they were not to be segregated with meritorious unreserved category candidates at the preliminary examination result stage. As a result, they continued to occupy the reservation category slots which would have otherwise gone to deserving reservation category candidates lower down in the merit list of that category, had they been included with meritorious unreserved category candidates on the strength of their marks.

31. *In Saurav Yadav and others Vrs. State of U.P. and others, (2020) 11 SCR 281, a 3-Judge Bench of this Court affirmed the principle that candidates belonging to any of the vertical reservation categories would be entitled to be selected in the 'open category' and if such candidates belonging to reservation categories are entitled to be selected on the basis of their own merit, their selection cannot be counted against the quota reserved for the categories of vertical reservation that they belong to. It was further observed that reservations, both vertical and horizontal, are methods of ensuring representation in public services and these are not to be seen as rigid 'slots', where a candidate's merit, which otherwise entitles him to be shown in the open general category, is foreclosed. The Bench further observed that the 'open category' is open to all and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type was available to him or her.*

32. *This being the settled legal position, it appears that the State of Madhya Pradesh itself realized*



*the harm that it was doing to the reservation category candidates and chose to restore Rule 4, as it stood earlier, which enabled drawing up the result of the preliminary examination by segregating deserving meritorious reservation category candidates with meritorious unreserved category candidates at the preliminary examination stage itself. As this was the process that was undertaken after the judgment in Kishor Choudhary Vrs. State of Madhya Pradesh and Another (W.P. No.542 of 2021 of Madhya Pradesh High Court vide judgment dated 07.04.2022), whereby a greater number of reservation category candidates cleared the preliminary examination and were held eligible to appear in the main examination, there can be no dispute with the legality and validity of such process.”*

9.17. Since this Court finds that the reserved candidates have special benefit in respect of examination, the ratio of the case laws referred to *supra* would indicate that *Jitendra Kumar Singh Vrs. State of Uttar Pradesh, (2010) 3 SCC 119* basing on which the opposite party No.1 has rejected the representation of the petitioner was declared to be confined to facts of the said case and distinguishable. The present case is not confined to relaxation in upper age limit or exemption from fee, but reserved candidates have enjoyed the benefit of relaxation in standard of examination also. The Government of Odisha has no such provision put in place for migration of meritorious reserved candidates.



9.18. In *Vikas Sankhala Vrs. Vikas Kumar Agarwal*, (2017) 1 SCC 350 it has been observed that,

***“24. It so happened that many candidates who belonged to reserved category got higher marks than the last candidates from the general category who was selected for the appointment in the said recruitment process. In terms of its various circulars, which we shall refer to at the appropriate stage, such reserved category candidates who emerged more meritorious than the general category candidates were allowed to migrate in general category. Effect thereof was that these candidates though belonging to reserved category occupied the post meant for general category. According to the writ petitioners (the respondents herein), it was impermissible as these reserved category candidates got selected after availing certain concessions and, therefore, there was no reason to allow them to shift to general category. The High Court has accepted this plea treating the relaxation in pass marks in TET as concession availed by the reserved category candidates in the selection process.*”**

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59. First thing that has to be borne in mind is that after prescribing 60% pass marks in the TET examination, provision for relaxation is made in same Para 9 giving liberty to the school management (Government, local bodies, Government aided and unaided) to consider giving concessions to different kinds of reserved



categories mentioned therein “which has to be in accordance with their extant reservation policy”. This brings out one important feature. **NCTE has nowhere mandated that there cannot be relaxation in pass marks in TET examination for reserved category candidates or that the standard would remain uniform irrespective of the fact as to whether a person belongs to general category or any of the reserved categories insofar as this examination is concerned. On the contrary, specific authorisation is given to grant special concessions. It, thus, accepts in principle that relaxed standard for passing TET can be prescribed by laying down a policy in this behalf.** In fact, there is no challenge to this permissive provision. All that is argued by the general category candidates is that there is no such “extant policy”, meaning thereby if there is such a policy, the action of the State Government would be justified.

60. In fact, it hardly needs to be emphasised that the Government may prescribe relaxed standards for such reserved categories, as it is in conformity with the spirit of the constitutional provisions contained in Articles 15 and 16 read with Articles 38, 39(a) and 46 of the Constitution, which are enabling provisions permitting the State to make special provisions and provide relaxed standards for persons belonging to Scheduled Castes, Scheduled Tribes and socially and educationally backward classes.

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80. ***Having regard to the respective submissions noted above, first aspect that needs consideration is as to whether relaxation in TET pass marks would amount to concession in the recruitment process.*** The High Court has held to be so on the premise that Para 9(a) dealing with such relaxation in TET marks forms part of the document which relates to the recruitment procedure. It is difficult to accept this rationale or analogy. Passing of TET examination is a condition of eligibility for appointment as a teacher. It is a necessary qualification without which a candidate is not eligible to be considered for appointment. This was clearly mentioned in the Guidelines/Notification dated 11.02.2011. These Guidelines pertain to conducting of TET; basic features whereof have already been pointed out above. Even Para 9 which provides for concessions that can be given to certain reserved categories deals with “qualifying marks” that is to be obtained in TET examination. Thus, a person who passes TET examination becomes eligible to participate in the selection process as and when such selection process for filling up of the posts of primary teachers is to be undertaken by the State. On the other hand, when it comes to recruitment of teachers, the method for appointment of teachers is altogether different. Here, merit list of successful candidates is to be prepared on the basis of marks obtained under different heads. One of the heads is “marks in TET”. So far as this head is concerned, 20% of the marks obtained in TET are to be assigned to each candidate. Therefore, those reserved category candidates who secured lesser



marks in TET would naturally get less marks under this head. We would like to demonstrate it with an example: Suppose a reserved category candidate obtains 53 marks in TET, he is treated as having qualified TET. However, when he is considered for selection to the post of primary teacher, in respect of allocation of marks he will get 20% marks for TET. As against him, a general candidate who secures 70 marks in TET shall be awarded 14 marks in recruitment process. **Thus, on the basis of TET marks reserved category candidate has not got any advantage while considering his candidature for the post. On the contrary, “level-playing field” is maintained whereby a person securing higher marks in TET, whether belonging to general category or reserved category, is allocated higher marks in respect of 20% of TET marks.** Thus, in recruitment process no weightage or concession is given and allocation of 20% of TET marks is applied across the board. Therefore, the High Court is not correct in observing that concession was given in the recruitment process on the basis of relaxation in TET.

81. Once this vital differentiation is understood, it would lead to the conclusion that no concession becomes available to the reserved category candidate by giving relaxation in pass marks in TET insofar as recruitment process is concerned. It only enables them to compete with others by allowing them to participate in the selection process. In this backdrop, irrespective of the





*Circular dated 11.05.2011, the reserved category candidates who secured more marks than marks obtained by the last candidate selected in general category, would be entitled to be considered against unreserved category vacancies. However, it would be subject to the condition that these candidates have not availed any other concession in terms of number of attempts, etc., except on fee and age.*

82. ***In Jitendra Kumar Singh Vrs. State of U.P., (2010) 3 SCC 119, this Court has very categorically held that relaxations given in educational qualifications, etc. making a person eligible to participate in selection process would not be treated as availing benefits in the recruitment/ employment and the benefits envisaged have to be those which have direct relation to recruitment/ employment and are relatable to the jovial relationship of employer and employee. It is also clarified that such benefits must occur from and should be post “level-playing field”. We would like to reproduce the following discussion from the said judgment touching upon the aforesaid aspects :***

*‘48. In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the general category candidates is without any foundation. It is to be noticed that the reserved category*



*candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/ select list.*

49. *It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16(1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates on a par with general category candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates.*

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75. *In our opinion, the relaxation in age does not in any manner upset the “level-playing field”. It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16(1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfil the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the preliminary test as also in the physical test. It is only thereafter that successful candidates have been permitted to participate in the open competition.’*

83. ***It is stated at the cost of repetition that provision of giving 20% marks of TET score was applied to all candidates irrespective of the category to which he/she belongs and,***



***therefore, no concession or relaxation or advantage or benefit was given in this behalf which could disturb the level-playing field and tilt advantage in respect of reserved category candidate.*** On the contrary, the reserved category candidates who had secured less marks in TET examination are given lesser marks in the recruitment process on the application of the formula of allocating 20% marks of TET score. Question (iii) is answered accordingly.”

9.19. Since the benefit of concession/relaxation was extended only to the reserved candidate in the instant case in terms of Clause-8 of the Advertisement dated 11.12.2014 with respect to physical test/examination it cannot be said that the doctrine of “level-playing field” as devised in the aforesaid reported case<sup>7</sup> by the Hon’ble Supreme Court of India, has been applied in the present case.

9.20. A Co-ordinate Bench of this Court in the case of *Ranjit Kumar Sarangi Vrs. State of Odisha*, WPC (OAC) No.188 of 2016, vide Judgment dated 06.02.2024, has made the following observation:

*“4.1. It is contended that the Petitioner having belong to UR category and taking into account the marks secured by him, he was included in the select list in the UR category with 191 rank in the common*

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<sup>7</sup> *Vikas Sankhala Vrs. Vikas Kumar Agarwal*, (2017) 1 SCC 350.



merit list, 181 rank in the State rank and 9th position in the district rank. It is contended that since the private Opp. Party No.4 secured 49 marks which is higher than the present petitioner, he was selected and appointed as against UR vacancy and no illegality was committed by the Commission in recommending his name and consequential appointment of the said Opp. Party No.4 as against UR vacancy.

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9. Having heard learned counsel for the parties and after going through the materials available on record, it is found that pursuant to the advertisement issued under Annexure 1, the Petitioner as well as Opp. Party No.4 to 6 made their applications for the Post of Excise Constable. As provided in the advertisement under Annexure-1, under Para 7-A the prescribed height for UR category was 168 cm and the prescribed height for S.C & S.T candidate (men) was 163 cm. **Since Opp. Party No.4 was not having the required height, he availed the benefit of relaxation of height having belonged to S.T candidate and accordingly qualified in the physical test and subsequently participated in the selection process. Since Opp. Party No.4 was allowed the benefit of relaxation of height and accordingly he participated in the selection process, in view of the decision of the Hon'ble Apex Court reported in the case of Niravkumar Dilipbhai Makwana, as cited (supra), Opp. Party No.4 should not have been selected as against UR vacancies. The plea**



taken by the Petitioner regarding availability of relaxation in height by Opp. Party No.4 has not been disputed either by the State-Opp. Parties or by the Opp. Party No.4 while filing their respective counters.

- 9.1. In view of such non-denial on the part of Opp. Party No.4 as well as the State-Opp. Parties, it is an admitted fact that Opp. Party No.4 participated in the selection process by availing the benefit of relaxation of height. Therefore, placing reliance on the Hon'ble Apex Court in the case of Niravkumar Dilipbhai Makwana, as cited (supra), he should not have been selected as against UR vacancy. Therefore, this Court is inclined to interfere with the selection of Opp. Party No.4 only and finds no illegality or irregularity with the selection of Opp. Party Nos.5 & 6. While interfering with the matter, this Court quash the selection of Opp. Party No.4 and direct the Opp. Party Nos.3 and 8 to select and provide appointment to the Petitioner as Excise Constable taking into account his position in the district wise merit list. Such action shall be initiated and completed within a period of two months from the date of receipt of this order.
- 9.2. However, while parting with the case and taking into account the fact that Opp. Party No.4 has completed more than 7 years of service after being appointed by the Opp. Parties, Opp. Party No. 8 may consider his continuance as against any available vacancy, if it is so permissible in the eye of law. The Writ Petition is accordingly disposed of with the aforesaid observation and direction."





9.21. It may be fruitful to have reference to what has been submitted by Sri Surya Narayan Patnaik, learned counsel appearing for the OSSC. By way of written note of submission, he has stated thus:

*“7. That the petitioner has further relied upon a decision of this Hon’ble Court in the matter of Ranjit Kumar Sarangi Vrs. State of Odisha and others in WPC (OAC) No.188 of 2016 which is also not applicable to the present case. Be that as it may from the narration of facts in the case of Ranjit Kumar Sarangi it is crystal clear that Mr. Sarangi had not only availed the age and examination fees relaxation **but also had availed the relaxation in the physical measurement.** The petitioner has not raised any such claim in the present case excepting his stand that nobody belonging to reserved category can compete against unreserved post unless and until he has applied for the same.”*

9.22. Such a stance on behalf of the opposite party No.3 is a misnomer. Clause-8 read with Clause-11 of the Advertisement dated 11.12.2014 itself shows that the reserved candidates have availed benefit of relaxation in respect of measurement standards by scaling down the eligibility criteria so far as physical test is concerned.

9.23. It is apparent from the underlying principles contained in the case laws discussed in the foregoing paragraphs



that relaxation in upper age has no role to play in allowing the reserved candidates to compete in the unreserved category on the basis of merit but as is evinced from Clauses-8 and 11 of the Advertisement dated 11.12.2014, it is abundantly clear that the reserved category candidates had availed concession/relaxation in the “physical standard measurement and physical test” which enabled them to appear in the written examination. To repeat it would suffice to notice that for being eligible for the post of Traffic Constable in OMVD, whereas General/SEBC (Men) are required to possess 168 cm., 55 kg., 79 cm. and 84 cm. in respect of height, weight, chest (unexpanded) and chest (expanded) respectively, the reserved candidates in SC/ST (Men) the same is scaled down and fixed at 163 cm., 50 kg., 76 cm. and 81 cm. respectively. It is also noteworthy that in Clause 8(1)(c) it has been clearly stipulated (rather restriction has been put upon the general otherwise eligible candidates) that “the candidates qualifying in the physical measurement and physical test will be allowed to appear in the written examination”. Such a relevant and pertinent factor despite this Court’s direction to consider afresh *vide* Order dated 07.06.2022 in W.P.(C) No.8604 of 2022, the Principal Secretary of Transport Department under



misconceived notion proceeded to reject the representation of the petitioner by Order dated 23.05.2022 (Annexure-14).

9.24. Reliance placed by Sri Pravakar Behera, learned Standing Counsel for the Transport Department on a Division Bench decision of the Calcutta High Court in the case of *Akash Bhunia*, 2023 SCC OnLine Cal 3138 is misplaced inasmuch as the same is distinguishable on facts. In view of perspective of application of precedents contained in *Union Of India Vrs. Arulmozhi Iniarasu*, AIR 2011 SC 2731 = (2011) 7 SCC 397<sup>8</sup>, reading of paragraph 57 of the Judgment in *Akash Bhunia* makes it clear that the facts in the said before Hon'ble Calcutta High Court was with respect to age relaxation *qua* reserved candidate who was found meritorious in the examination conducted with equal standard for all the categories of candidates.

9.25. The impugned Order dated 23.05.2022 merely stating that “the Appointing Authority, Transport

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<sup>8</sup> It has been laid down in *Arulmozhi Iniarasu*, AIR 2011 SC 2731 as follows:  
“Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid’s theorems nor as provisions of Statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases.”



Commissioner, Odisha, Cuttack had given requisition to Odisha Staff Selection Commission for selection of candidates for recruitment to the post of Traffic Constables *vide* their Letter No.446/TC, dated 10.01.2014” and “Transport Commissioner has also attended the meeting on conduct of physical measurement and physical tests of Traffic Constables held under the Chairmanship of Chairman, OPSC”, has not discussed the aforesaid material fact which touches the very selection process and/or decision making process of the opposite parties.

9.26. The last ditch effort of the opposite party No.3 to save the select list prepared pursuant to examination conducted in response to Advertisement dated 11.12.2014 (Annexure-14) is as follows:

*“11. The Annexure-3 Notification dated 07.09.2015 which is nothing but the select list and under challenge before this Hon’ble Court is evidently clear that such select list is valid for a period of one year from the date of publication of such list i.e. 07.09.2015. In absence of any interim order to keep the validity of such select list open and in view of Rule 15(3) of Odisha Staff Selection Commission Rules, 1993 as amended from time to time with respect to the validity of the select list for a period of one year, the claim of the petitioner and the prayer relating to issuing direction to the*



*OSSC to recast the merit list dated 07.09.2015 is not maintainable.”*

In humble view of this Court such stand of the opposite party No.3 falls to the ground inasmuch as the petitioner has been diligently pursuing his matter. The present writ petition is the third round of litigation. Therefore, this Court does not subscribe to the contention of the opposite party No.3.

**Conclusion:**

**10.** This Court, on perusal of the record and scrutiny of material available thereon, finds that advantages have been conferred on the reserved candidates with respect to physical tests of height, weight and chest (expanded and unexpanded) *vis-à-vis* unreserved candidates. The standard of tests was not the same across the board as is apparent from Clause-8 of the Advertisement dated 11.12.2014 (Annexure-1).

**10.1.** Such pertinent and crucial distinctive feature has conspicuously been ignored by the Principal Secretary to Government in the Commerce and Transport (Transport) Department while considering the representation of the petitioner pursuant to direction of this Court *vide* Order dated 07.04.2022 passed in W.P.(C) No.8604 of 2022. Without discussing merit of the matter with respect to variation in standard of



physical tests between reserved candidate and unreserved candidate in terms of Advertisement dated 11.12.2014 failed to apply the ratio contained in *Jitendra Kumar Singh Vrs. State of Uttar Pradesh*, (2010) 3 SCC 119 and *Pradeep Singh Dehal Vrs. State of Himachal Pradesh*, (2019) 9 SCC 276.

10.2. It is unequivocally laid down in *Niravkumar Dilipbhai Makwana Vrs. Gujarat Public Service Commission*, (2019) 7 SCC 383 with reference to *Deepa E.V. Vrs. Union of India*, (2017) 12 SCC 680 and *Gaurav Pradhan Vrs. State of Rajasthan*, (2018) 11 SCC 352 that *Jitendra Kumar Singh*, (2010) 3 SCC 119 “was based on the statutory interpretation of 1994 Act<sup>9</sup> and the Instructions dated 25.03.1994 which is entirely different from the statutory scheme under consideration”.

10.3. Cursory glance at the decision rendered in *Jitendra Kumar Singh*, (2010) 3 SCC 119 would reveal that the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 was under consideration before the Hon’ble Supreme Court of India. Section 3(6) *ibid.* laid down that “If a person belonging to any of the categories mentioned in sub-section (1) gets selected

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<sup>9</sup> The U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994.





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 subsection (1)". Nonetheless, in the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975, no *pari materia* provision is found. Therefore, the Principal Secretary of Transport Department in making the impugned Order dated 23.05.2022 has misapplied the ratio of *Jitendra Kumar Singh, (2010) 3 SCC 119* to the present case.

10.4. At this juncture reference to *Union of India Vrs. Dhanwanti Devi, (1996) 6 SCC 44* may not be inept, wherein it has been laid down as follows:

"9. Before advertng to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that *Hari Krishan Khosla case, 1993 Supp (2) SCC 149* is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and is *per se per incuriam*. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of



*precedents, every decision contains three basic postulates—*

- (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts;*
- (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and*
- (iii) judgment based on the combined effect of the above.*

*A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the*



*abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.”*

10.5. It is apposite to quote the following dictum from *State of Orissa Vrs. Mohd. Illiyas*, (2006) 1 SCC 275:

“12. When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the case concerned and there cannot be any straitjacket formula. **The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on an earlier decision of the Court held that prerequisite conditions were absent.** Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. **A decision is a precedent on its own facts.** Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge’s decision binding a party is



*the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. \*\*\* A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn Vrs. Leathem, 1901 AC 495 : 85 LT 289 = (1900-03) All ER Rep 1 (HL) the Earl of Halsbury, L.C. observed that **every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.**"*

10.6. The Principal Secretary of the Transport Department has extracted a portion the judgment in *Pradeep Singh Dehal*, (2019) 9 SCC 276. It may be relevant to take note of the following distinctive factor contained in the said judgment:

“11. In this background, we examine the respective contentions of the parties.

12. As per the conditions pertaining to Advertisement No. 3 of 2011, the applications submitted earlier were to be considered. This shows that the “publications” of the writ petitioner were with the University when the writ petitioner was granted marks for “publications”. Even if the Selection



*Committee has undergone a change as well as norms of selection as per the Regulations, the Selection Committee was within its jurisdiction not to award any marks for “publications”, if it was not meeting the requisite conditions. But surprisingly, the writ petitioner has not been granted any marks under the heading “publications” in the interview held on 12.05.2012, when the candidates for under OBC category were interviewed but the writ petitioner was granted five marks for “publications” when the interview was being conducted for the post of Assistant Professor under general category on 13.05.2012. Though, the writ petitioner has not appeared in the interview but the fact remains that he has been granted five marks for “publications”. It is the same Selection Committee who conducted interview on 12-5-2012 and on 13.05.2012. Therefore, the stand of the appellant that the writ petitioner has not submitted any “publications” does not merit acceptance. Such “publications” were before the Search Committee when the writ petitioner was interviewed on 13.05.2012.*

- 13. But it is equally true that it is for the experts to award marks for “publications”. The High Court, while exercising the power of judicial review, does not sit in the arm chair of the experts to award the marks for publications, that too, on the basis of an earlier selection process. The marks obtained by the writ petitioner under the heading “publications” on 13.05.2012 were not before the High Court. The appellant was granted three marks for “publications” in the earlier selection*



process initiated vide Advertisement No. 3 of 2010. Such “publications” were also required to be taken into consideration by the Selection Committee.

14. **We find that the process of conducting separate interviews for the posts of Assistant Professor under general category and OBC category is wholly illegal.** Though, none of the parties have raised any dispute about it but since the same is inherently defective, we are constrained to observe so. Every person is a general category candidate. **The benefit of reservation is conferred to Scheduled Castes, Scheduled Tribes and OBC category candidates or such other category as is permissible under law. \*\*\***
15. In the judgment reported as *Vikas Sankhala Vrs. Vikas Kumar Agarwal*, (2017) 1 SCC 350 one of the questions examined was whether reserved category candidate who obtains more marks than the last general category candidate is to be treated as general category candidate. **It was held that such reserved category candidate has to be treated as unreserved category candidate provided such candidate did not avail any other special concession. \*\*\***
16. **The concessions which were availed by the reserved category candidates are in the nature of age relaxation, lower qualifying marks, concessional application money than the general category candidates.”**





17. ***In view of the said fact, we find that the selection process conducted by the University cannot be said to be fair and reasonable.*** Consequently, the University is directed to re-examine the selection process by constituting an Expert Committee who shall consider the “publications” of the candidates who were being considered in pursuance of Advertisement No. 3 of 2011 and make suitable recommendations accordingly by having a joint merit list of all the categories of candidates who applied for appointment to the post of Assistant Professor. However, in such selection process, the appointment of candidates already selected will not be disturbed, except the appellant whose appointment shall be subject to the decision of the University on the basis of recommendation of the Expert Committee.”

10.7. Notwithstanding this Court directed by Order dated 07.04.2022 while disposing of second round of litigation by the present petitioner *vide* W.P.(C) No.8604 of 2022 that the matter required consideration afresh, said Secretary has, on an erroneous perception of legal position enunciated by the Hon’ble Supreme Court of India, rejected the representation without considering the matter on the facts in the light of discussion made hereinabove. The facts as emanate from the Advertisement dated 11.12.2014 is tell-tale and manifestly clear and unambiguous. There is no disputed question of fact



involved in the present matter with respect to grant of concession/relaxation in physical test *qua* reserved candidates for the post of Traffic Constable.

10.8.If the present case is examined keeping the aforesaid perspective in view, the conclusion is obvious that the Order dated 23.05.2022 *vide* Annexure-14 cannot withstand judicial scrutiny for the reasons *inter alia*,

- i. The Principal Secretary to Government in the Commerce and Transport (Transport) Department has failed to apply the ratio of decisions in its right earnest.
- ii. He ignored to discuss the factual merit of the matter as the Advertisement dated 11.12.2014 indisputably leads to demonstrate that apart from relaxation in upper age limit and exemption from payment of fee, the reserved candidates were allowed to avail the benefit *qua* eligibility criteria for the post of Traffic Constables. It may deserve to be observed that, when a relaxed standard in test/examination (Clause-8 read with Caution contained in the Advertisement dated 11.12.2014) is permitted to the reserved candidates, the same is construed to have expanded the zone of consideration larger than what is provided for general category candidates.



Thus, such reserved candidates who have availed the benefit of relaxation in the criteria fixed in the test/examination would be deemed as unavailable for consideration against unreserved candidates.

- iii. Relaxing the upper age limit and granting exemption from payment of fee for the benefit of candidates applying under the reserved category could be understood; but this Court is not made aware by the opposite parties as to the rationality behind relaxing the criteria for qualifying examination with respect to measurement of height, weight and chest (expanded and unexpanded). Therefore, this Court is of the opinion that such candidates of reserved category who are selected on the same standard as applied to the general candidates can be adjusted against unreserved category. Thus, the Principal Secretary, Transport Department has misdirected himself in applying the principles enunciated in *Jitendra Kumar Singh, (2010) 3 SCC 119* and *Pradeep Singh Dehal, (2019) 9 SCC 276* to the fact-situation of the present case.
- iv. On misreading of said decisions, said authority failed to exercise his conscientious mind



particularly when there is no *pari materia* provision contained in the Odisha Reservation of Vacancies in Posts and Services (for Scheduled Castes and Scheduled Tribes) Act, 1975 nor in the Odisha Reservation of Posts and Services (for Socially and Educationally Backward Classes) Act, 2008, in comparison to provisions contained in the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, which was under consideration in *Jitendra Kumar Singh, (2010) 3 SCC 119*. As *Jitendra Kumar Singh, (2010) 3 SCC 119* has application to particular fact-situation, in absence of any provision in this State for migration of candidate who made application under reserved category, having availed the benefit of concession/relaxation in the standard of test compared to the test specified for the general candidate, the migration of such candidates under the unreserved category is not permissible.

- v. It is not the case of the opposite parties or even sought to argue that the opposite party Nos.4 and 5 have not availed benefit under Clause-8 of the Advertisement dated 11.12.2014 (Annexure-1). It is also not the case of the opposite parties



that the opposite party Nos.4 and 5 have not claimed reservation while applying for the post of Traffic Constable in pursuance to the terms of said advertisement. Nothing is also demonstrated by the opposite parties particularly the opposite party No.3-OSSC that the select list was prepared in consonance with Clause-11 of said Advertisement, i.e., the candidates were selected in order of merit "CATEGORY-WISE" equal to number of vacancies advertised. However, to justify the selection of candidates, the opposite party Nos.1 and 2, who have not prepared the provisional select list, filed counter affidavit by asserting as follows:

*"7. That it is humbly submitted that the provisional selection list under Annexure-3 published by the Odisha Staff Selection Commission pursuant to Clause-11 of the advertisement under Annexure-1 basing on the aggregate mark secured in the written examination and career evaluation. All the candidates under the list placed in their respective position in order of merit for the total number of vacancies advertised. It is settled proposition of law that the candidates belonging to any socially reserved categories are entitled to be selected in open or general category. It is also well accepted that if such candidates belonging to reserve categories*



*are entitle to be selected on the basis of their own merits, their selection cannot be counted against the quota reserved for the categories for the social reservation that they belong. The aforesaid settled principle of law has been laid down by the Hon'ble Apex Court in case of Indra Sawhney Vrs. Union of India, (1992) Supp.(3) SCC 217, R.K. Sabharwal Vrs. State of Punjab, (1995) 2 SCC 745 and Constitution Bench of Hon'ble Supreme Court in V.V. Giri Vrs. D. Sosi Dora, AIR 1959 SC 1318."*

- vi. Such evasive reply without presenting before the Court the material particulars with respect to consideration of the opposite party Nos.4 and 5 pitted against the petitioner so as to discern respective merit cannot be said to have passed the test of judicial review. It is obvious that the opposite party Nos.1 and 2 having not prepared the select list, whether there was compliance of Clause-11 of the Advertisement dated 11.12.2014 could be answered by none other than the opposite party No.3-OSSC which has chosen not to file any counter-affidavit to the notice issued by this Court in the writ petition.

**11.** In the wake of the above discussions, reasons ascribed, principles as expounded by the Hon'ble Supreme Court and taking note of distinguishing





factor in the decision of the Hon'ble Calcutta High Court *vis-à-vis* the identical factual position obtained in the decision of this Hon'ble Court, there is no other alternative than to quash the Order dated 22.05.2022 of the Principal Secretary to Transport Department issued *vide* Order No.4341— TRN-FE-CASE-0003-2021/T., dated 23.05.2022 (Annexure-14).

11.1. Finding that the selection process conducted by the OSSC cannot be said to be fair and reasonable, a direction is, therefore, issued to recast the select list examining the case of the petitioner in the light of the above observation.

11.2. However, in such selection process, if the petitioner is found eligible, while granting him the required consequential benefit, the appointment of candidates already selected will not be disturbed.

12. With the aforesaid observation and direction, the writ petition stands disposed of, but in the circumstances there shall be no order as to costs.

**(MURAHARI SRI RAMAN)**  
**JUDGE**