[2025] 9 S.C.R. 542 : 2025 INSC 1084

Union of India & Ors.
v.
Sajib Roy

(Civil Appeal No. 11718 of 2025)

09 September 2025

[Surya Kant and Joymalya Bagchi,* JJ.]

Issue for Consideration

Issue arose as regards the correctness of the order by the High Court permitting the respondents who had applied as reserved candidates in OBC category after having availed age relaxation for the post of Constable, to be considered for recruitment under unreserved category.

Headnotes†

Service law – Recruitment – Appointment of OBC candidate to unreserved candidate – Permissibility – Recruitment of Constables – OBC candidates availed age relaxation for participation in the recruitment process, however, declared unsuccessful as they had scored marks lower than the last selected candidate in the OBC category, but their marks were higher than the last selected candidate in the unreserved category – OBC candidates sought migration to the unreserved category – High Court held that the writ petitioners-OBC candidates who had applied as reserved candidates in OBC category after having availed age relaxation for the post of Constable (GD) to be considered for recruitment under unreserved category – Correctness:

Held: Whether a reserved candidate who has availed relaxation in fees/upper age limit to participate in open competition with general candidates may be recruited against unreserved seats would depend on the facts of each case **–** In the event there is no embargo in the recruitment rules/employment notification, such reserved candidates who have scored higher than the last selected unreserved candidate shall be entitled to migrate and be recruited against unreserved seats **–** However, if an embargo is imposed under relevant recruitment rules, such reserved candidates shall not be permitted to migrate to general category

* Author

seats – As the respondents-writ petitioners had availed concession of age for participating in the recruitment process, in the teeth of office memorandum dated 01.07.1998 which clearly barred such migration in the event the reserved candidates had availed relaxations in age, experience qualification, etc, the High Court erred in applying the ratio in Jitendra Kumar's case wherein by virtue of the government instructions dated 25.03.1994 expressly permitted reserved candidates who have availed relaxation in fees/ upper age limit etc. to be considered for appointment in unreserved category – Thus, the impugned judgment and order by the High Court set aside. [Paras 32, 33]

Case Law Cited

Jitendra Kumar Singh & Anr v. State of UP & Ors. **[2010] 1 SCR 325 : (2010) 3 SCC 119 – distinguished.**

Haryana Financial Corporation & Anr v. Jagdamba Oil Mills & Anr. **[2002] 1 SCR 621 : (2002) 3 SCC 496;** *Deepa E. V. v. Union of India & Ors.* **[2017] 1 SCR 938 : (2017) 12 SCC 680;** *Gaurav Pradhan & Ors. v. State of Rajasthan & Ors.* **[2017] 8 SCR 951 : (2018) 11 SCC 352;** *Niravkumar Dilipbhai Makwana v. Gujarat Public Service Commission & Ors.* **[2019] 9 SCR 47 : (2019) 7 SCC 383;** *Government (NCT of Delhi) & Ors. v. Pradeep Kumar & Ors.* **[2019] 13 SCR 1056 : (2019) 10 SCC 120;** *Vikas Sankhala & Ors. v. Vikas Kumar Agarwal & Ors.* **[2016] 7 SCR 639 : (2017) 1 SCC 350;** *Saurav Yadav & Ors. v. State of UP & Ors.* **[2020] 11 SCR 281 : (2021) 4 SCC 542;** *Ajithkumar P. & Ors. v. Remin K. R. & Ors.* **(2015) 16 SCC 778;** *Sadhana Singh Dangi & Ors. v. Pinki Asati & Ors.* **(2022) 12 SCC 401;** *Bharat Sanchar Nigam Limited & Anr. v. Sandeep Chaudhary & Ors.* **[2022] 4 SCR 1002 : (2022) 11 SCC 779 – referred to.**

Quinn v. Leathem **[1901] AC 495 (HL) – referred to.**

List of Acts

Constitution of India.

List of Keywords

Reserved candidates; OBC category; Age relaxation; Post of Constable; Recruitment; Unreserved category; Jitendra Kumar's case; Office memorandum dated 01.07.1998; Migration of reserved candidates; Concessions in the form of age relaxation; Appointment

in unreserved category; Recruitment process; Last selected candidate; Migration to unreserved category; Recruitment rules/ employment notification; General category; Government instructions dated 25.03.1994.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 11718 of 2025

From the Judgment and Order dated 12.10.2018 and 26.02.2019 of the High Court of Tripura at Agarthala in WP(C) No. 281 of 2017 and RP No. 04 of 2019

With

Civil Appeal Nos. 11720, 11722, and 11724 of 2025

Appearances for Parties

Advs. for the Appellants:
Shailesh Madiyal, Sr. Adv., Ms. Priyanka Das, Rajan Kumar Chourasia, Apoorva Kurup, Mukul Singh, Pratyush Srivastav, Sharath Narayan Nambiar, Ashok Panigrahi, Shreekant Neelappa Terdal.

Advs. for the Respondent:
Dr. Nirmal Chopra, T. N. Singh, Vikas K. Singh, Dr. Sham Chand, Shubhranshu Padhi, Jay Nirupam, D. Girish Kumar, Pranav Giri, Ekansh Sisodia, Ms. Manika Tripathy, Ashutosh Kaushik.

Judgment / Order of the Supreme Court

Judgment

Joymalya Bagchi, J.

1. Leave granted.

2. Appellants have assailed common impugned judgment and order dated 12.10.2018[1] and order dated 26.02.2019[2] whereby the respondents-writ petitioners who had applied as reserved candidates

1 In WP (C) No. 277/2017, WP (C) No. 279/2017, WP (C) No. 280/2017 and WP (C) No. 281/2017

2 In Review Application No. 3/2019, Review Application No. 4/2019, Review Application No. 5/2019 and Review Application No. 6/2019

in OBC category after having availed age relaxation for the post of Constable (GD) were directed to be considered for recruitment under unreserved category.

3. Facts in a short compass giving rise to the appeals are as follows –

Staff Selection Commission[3] published employment notification for recruitment of Constables (GD) in BSF, CRPF, ITBP, SSB, NIA and SSF and Rifleman in Assam Rifles comprising physical test, written examination and medical examination. As per the employment notification, the prescribed age limit for eligible candidates to participate in the recruitment process was 18 to 23 years as on 01.08.2015 and age relaxation was given to various reserved candidates[4]. For OBC candidates, i.e., the respondents-writ petitioners, age relaxation was 3 years[5].

4. All the respondents-writ petitioners availed of such age relaxation for participation in the recruitment process. However, they were declared unsuccessful as they had scored marks lower than the last selected candidate in the OBC category for various departments. But their marks were higher than the last selected candidate in the unreserved category for those departments. Claiming that they ought to be permitted to migrate to the unreserved category, the respondents-writ petitioners approached the High Court. Union of India opposed the prayer on the ground that the respondents-writ petitioners had applied in the OBC category after availing age relaxation and under such circumstances cannot be considered eligible for appointment in unreserved category.

5. Relying on *Jitendra Kumar Singh & Anr v. State of UP & Ors*[6], the High Court held that the refusal to permit respondents-writ petitioners to migrate to the unreserved category though they scored higher than the last candidate in such category runs counter to the principles of merit-based recruitment in public services and would be opposed to the principles of equality enshrined under Article 14 of the Constitution. The High Court further held that relaxations in fee and age for reserved candidates to participate in the selection

3 SSC for short

4 Employment Notification no. F. No.3/1/2014–P&P-I (vol-II), Para 4A

5 Para 4B of the aforementioned notification

6 (2010) 3 SCC 119

process are concessions in aid of reservation and do not impair the 'level-playing field' in the open competition, i.e., written examination where such candidates have scored more than those selected under the unreserved category.

6. Subsequently, Union of India by way of a review petition placed on record an office memorandum no. 36011/1/98-Estt. (Res) dated 01.07.1998 which *inter alia* provided that SC/ST/OBC candidates who have availed relaxations in age limit, experience qualification or number of chances in written examinations would be deemed unavailable for consideration against the unreserved vacancies. Notwithstanding such office memorandum the High Court refused to review its judgment and the review petition came to be dismissed.

7. We have heard Mr. Shailesh Madiyal, learned senior counsel for the appellants and Dr. Nirmal Chopra and Ms. Manika Tripathy, learned counsel for the respondents-writ petitioners.

8. The moot issue which falls for consideration is did the High Court err in applying the ratio in *Jitendra Kumar* (supra) in the teeth of the office memorandum dated 01.07.1998 which put a clog on migration of reserved candidates who have availed concessions in the form of age relaxation for appointment in unreserved category?

9. In *Jitendra Kumar* (supra) this Court was called upon to decide whether availing relaxation in fees/upper age limit in the reserved category would disentitle such candidates from being considered for appointment in the unreserved seats. The Bench held such relaxations in fee or age were incidental and ancillary provisions which made the core concept of reservation under Article 16(4) effective. Such enlargement of zone of consideration by giving concession in fees/upper age limit were merely an 'aid to reservation' and enabled the reserved candidate to participate with others in an open competition on merit. These concessions did not affect the level-playing field in the recruitment process wherein both reserved and unreserved candidates competed against each other without handicap. The Bench elucidated as follows:-

> "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."

10. Having propounded the aforesaid general principles, the Bench proceeded to decide the case in light of the relevant recruitment rules:-

> "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 25-3-1994 and the G.O. dated 26-2-1999. 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."

11. It is clear that the decision in *Jitendra Kumar* (supra) is not founded on the general principles but on the interpretation of the relevant statute[7], government order[8] and instructions[9] regulating the selection

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7 The U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (1994 Act for short)

8 GO dated 26.02.1999

9 Instructions dated 25.03.1994

process. It may not be out of place to note Section 8 (1) of the 1994 Act empowered the State Government to grant concessions in respect of age limit, fees for reserved categories in any competitive examination or interview. The government instructions dated 25.03.1994 permitted reserved candidates availing such concessions to be adjusted against unreserved seats[10].

12. In light of such government instructions the Bench held:-

> "72. ……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."

13. The ratio in *Jitendra Kumar* (supra) is clearly distinguishable on facts. The recruitment process at hand is regulated by office memorandum dated 01.07.1998 which bars the migration of a reserved candidate. Office memorandum reads as follows:-

> "No.36011/1/98-Estt. (Res)
>
> Ministry of Personnel, P.G. & Pensions
> Department of Personnel & Training
>
> New Delhi Dated 01.07.1998
>
> OFFICE MEMORANDUM
>
> Subject: Relaxations and concessions for SCs and STs clarification regarding.
>
> The undersigned is directed to refer to this Department's O.M.No.36012/13/88-Estt. (SCT) dated May 22, 1989 and to clarify that the instructions contained in the C.M. apply in all types of direct recruitment whether by written test alone or written test followed by interview or by interview alone.

10 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.

> 2. O.M. dated May 22, 1989 referred to above and the
>
> O.M. No. 36012/2/96-ESTT(RES) dated July 2, 1997 provide that in cases of direct recruitment, the SC/ST/ OBC candidates who are selected on their own merit will not be adjusted against reserved vacancies.
>
> 3. In this connection, it is clarified that only such SC/ST/ OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates for example in the age limit, experience qualification, permitted number of chances in written examination, extended zone of consideration larger then 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.

14. It may be apposite to bear in mind the respondents-writ petitioners have without demur participated in the selection process and had not called in question the constitutional validity of the aforementioned office memorandum.

15. Given this situation, the High Court erred in mechanically applying the ratio in *Jitendra Kumar (supra)* to the present case without appreciating the difference in the factual matrix of the present case with the cited authority. While in *Jitendra Kumar* (supra) the government instructions dated 25.03.1994 expressly permitted reserved candidates who have availed relaxation in fees/upper age limit etc. to be considered for appointment in unreserved category, office memorandum dated 01.07.1998 clearly barred such migration in the event the reserved candidates had availed relaxations in age, experience qualification, etc.

16. It is trite the ratio in a judgment must be read in the facts of a particular case and cannot have universal application. In *Quinn v. Leathem*[11], Lord Halsbury remarked:-

11 [1901] AC 495 (HL)

> "….there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, 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 may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

17. In *Haryana Financial Corporation & Anr v. Jagdamba Oil Mills & Anr*[12], the Court held:-

> "21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.
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> 22. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR p. 688, para 19)
>
> > "19. … Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."
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> *** *** *** ***

12 (2002) 3 SCC 496

> "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

18. Whether the general observations in *Jitendra Kumar* (supra) could be treated as a binding precedent in respect of recruitment process where such migration is not permitted is no longer *res integra*.

19. In *Deepa E. V. v. Union of India & Ors*[13], a two judge Bench of this Court taking note of self-same office memorandum applicable in the present case held the ratio in *Jitendra Kumar* (supra) pertained to interpretation of the 1994 Act and government instructions dated 25.03.1994 and general principles made therein were inapplicable to a recruitment process where such migration is not permitted. The Bench observed:-

> "8. The learned counsel for the appellant mainly relied upon the judgment of this Court in Jitendra Kumar Singh v. State of U.P, which deals with the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and Government Order dated 25-3-1994. 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 cannot be applied to the case in hand.
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> 10. Having regard to the observations in paras 65 and 72, in our view, the principles laid down in Jitendra Kumar Singh cannot be applied to the case in hand. As rightly pointed out by the High Court that the judgment in Jitendra

13 (2017) 12 SCC 680

> Kumar Singh was based on the statutory interpretation of the U.P. Act, 1994 and Government Order dated 25-3-1994 which provides for entirely a different scheme."

20. Considering similar embargo[14] in the recruitment process, another Coordinate Bench in *Gaurav Pradhan & Ors v. State of Rajasthan & Ors*[15], held general observations in *Jitendra Kumar* (supra) shall not come in aid of reserved candidates who have availed age relaxation to migrate to general category. The Bench observed as follows:-

> "32. We are of the view that the judgment of this Court in Jitendra Kumar Singh which was based on statutory scheme and the Circular dated 25-3-1994 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 24-6-2008."

21. These views have been reiterated in *Niravkumar Dilipbhai Makwana v. Gujarat Public Service Commission & Ors*[16] and affirmed by a three judge Bench in *Government (NCT of Delhi) & Ors v. Pradeep Kumar & Ors*[17].

22. On the other hand, respondents-writ petitioners have relied on *Vikas Sankhala & Ors v. Vikas Kumar Agarwal & Ors*[18], *Saurav Yadav & Ors v. State of UP & Ors*[19], *Ajithkumar P. & Ors. v. Remin K. R. & Ors*[20] and *Sadhana Singh Dangi & Ors v. Pinki Asati & Ors*[21], to sustain the view of the High Court that the migration of the reserved candidate who has scored higher than the last selected unreserved candidate is permissible. Respondents-writ petitioners argue that a bar

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14 Para 6.2 of circular dated 24.06.2008

15 (2018) 11 SCC 352

16 (2019) 7 SCC 383

17 (2019) 10 SCC 120

18 (2017) 1 SCC 350

19 (2021) 4 SCC 542

20 (2015) 16 SCC 778

21 (2022) 12 SCC 401

to migration would be in violation of the principles of equality under Article 14 and counter to maintenance of efficiency of administration enshrined under Article 335 of the Constitution.

23. In *Vikas Sankhala* (supra), the State government had relaxed the minimum pass marks in Teacher Eligibility Test[22] by 10 percent to 20 percent for various reserved categories in the matter of recruitment of primary teachers. It was contended such relaxation was contrary to the extant reservation policy of the State and migration of such candidates who availed concession for recruitment to unreserved categories was illegal. Reserved candidates relied on a circular dated 11.05.2011 which permitted such migration. Holding that the said circular was issued after the recruitment process had commenced and migration was barred as per earlier circulars, the High Court held appointment of reserved candidates availing concession in qualifying marks in TET against unreserved seats was impermissible.

24. This Court analysed the concession given to reserved candidates with regard to qualifying marks in TET in the context of the recruitment rules which *inter alia* prescribed a uniform addition of 20 percent of TET marks to the final score of each candidate. Consequently, the reserved candidates who secured lesser marks in TET would not get any additional advantage *vis-à-vis* general candidates in computing the final scores irrespective of the lowering of the qualifying marks in TET. The Bench clarified this issue as follows:-

> "80. …..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

22 TET for short

> 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."

25. In this backdrop, the Bench held irrespective of the applicability of circular dated 11.05.2011 relaxation in TET qualifying marks does not amount to a concession which would disentitle migration of reserved candidates against unreserved seats. The Bench opined:-

> "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 11-5-2011, 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."

It may also be apposite to note that the earlier circulars applicable to the selection process[23] did not put a restriction on selection of the reserved candidate availing concession in TET marks for appointment in unreserved seats provided they scored higher than the last selected unreserved candidate.

23 See Para 73 and 74 in *Vikas Sankhala* (supra)

26. In *Ajithkumar* (supra) the issue which fell for consideration was the power of the recruiting authority to conduct a preliminary examination in order to shortlist candidates and not the right of a reserved candidate seeking relaxation to migrate to unreserved category.

27. In *Saurav Yadav* (supra) the issue which fell for decision was whether women OBC candidates could be adjusted against vacancies in the women general category. The case involved an interplay between vertical reservation and horizontal reservation for women. Lalit J., (as His Lordship then was) permitted the migration holding that the candidates in question had not availed of any special benefit which may disentitle them from being considered against general category seats:-

> "42. We must also clarify at this stage that it is not disputed that Applicant 1 and other similarly situated candidates are otherwise entitled and eligible to be appointed in "Open/ General Category" and that they have not taken or availed of any special benefit which may disentitle them from being considered against "Open/General Category" seat. The entire discussion and analysis in the present case is, therefore, from said perspective."

28. Supplementing this view, Ravindra Bhat J. held that:-

> "65. ….it is too late in the day for the respondent State to contend that women candidates who are entitled to benefit of social category reservations, cannot fill open category vacancies. The said view is starkly exposed as misconceived, because it would result in such women candidates with less merit (in the open category) being selected, and those with more merit than such selected candidates, (in the social/vertical reservation category) being left out of selection."

29. However, such observations were premised on the fact that there was no rule, or direction which prohibited the adjustment of socially reserved categories of women in the general category or open category[24].

24 See Para 57 in *Saurav Yadav* (supra)

30. In *Sadhana Singh Dangi* (supra), the Court again looked into migration of women candidates availing horizontal reservation from reserved i.e. OBC category to unreserved category. The recruitment process permitted migration in vertical reservation but stated that the horizontal reservation for women is compartmentalised. Referring to the observations of Ravindra Bhat J. in *Saurav Yadav* (supra) the Bench reversed the decision of the High Court barring migration in horizontal category, observing as follows:-

> "22. It is true that the leading judgment in *Saurav Yadav* [*Saurav Yadav* v. *State of U.P.*, considered the matter from a general plane but the concurring judgment authored by S. Ravindra Bhat, J. did additionally consider the issue from the perspective of absence of any statutory rules in the field. It is also true that in the instant case, there are rules occupying the field and the case would be a fortiori, but we need not enter into that arena as, in our view, the general propositions laid down in *Saurav Yadav* by themselves are sufficient to take care of the controversy which has arisen in the instant matters.
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> 23. The law laid down in *Saurav Yadav* is very clear that even while applying horizontal reservation, the merit must be given precedence and that if the candidates who belong to SCs, STs and OBCs have secured higher marks or are more meritorious, they must be considered against the seats meant for unreserved candidates.

These observations in *Sadhana Singh Dangi* (supra) must be read in the factual matrix of the case which permitted migration of candidates in vertical reservation unlike the present case.

31. In *Bharat Sanchar Nigam Limited & Anr. v. Sandeep Chaudhary & Ors*[25], the cut off marks was reduced for both OBC and general candidates and no special concession was given to OBC candidates. Under these circumstances, the Court permitted the OBC candidates who had scored higher marks than the last selected candidate in the general category to avail unreserved seats.

25 (2022) 11 SCC 779

32. On an analysis of the aforecited cases, we summarise as follows:

Whether a reserved candidate who has availed relaxation in fees/ upper age limit to participate in open competition with general candidates may be recruited against unreserved seats would depend on the facts of each case. That is to say, in the event there is no embargo in the recruitment rules/employment notification, such reserved candidates who have scored higher than the last selected unreserved candidate shall be entitled to migrate and be recruited against unreserved seats. However, if an embargo is imposed under relevant recruitment rules, such reserved candidates shall not be permitted to migrate to general category seats.

33. Accordingly, we hold as the respondents-writ petitioners had availed concession of age for participating in the recruitment process, in the teeth of office memorandum dated 01.07.1998, the High Court was wrong in applying the ratio in *Jitendra Kumar* (supra) and permitting them to be considered for appointment in the unreserved category. Consequently, we set aside the common impugned judgment and order dated 12.10.2018 and order dated 26.02.2019 and allow the appeals. Pending application(s) if any, stand disposed of.

Result of the case: Appeals allowed.

[†]*Headnotes prepared by:* Nidhi Jain