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WA-1156-2013

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 11<sup>th</sup> OF FEBRUARY, 2026

WRIT APPEAL No. 1156 of 2013

*THE STATE OF MADHYA PRADESH AND OTHERS*

*Versus*

*ADITYA TIWARI AND OTHERS*

.....  
Appearance:

Smt. Janhavi Pandit Additional Advocate General for appellants/State.

Shri Abhay Tiwari, Advocate for respondent No.1.

Shri Pravesh Naveriya, Advocate for respondents Nos.  
4,6,7,8,10,11,12 and 13.

.....  
WITH

WRIT APPEAL No. 600 of 2014

*ANURAG JHARIYA*

*Versus*

*THE STATE OF MADHYA PRADESH AND OTHERS*

.....  
Appearance:

*None appears for the appellant.*

*Smt. Janhavi Pandit, Additional Advocate General for respondents No. 1 and  
2/State.*

*Shri Abhay Tiwari, Advocate for respondent No.3.*

*Shri Pravesh Naveriya, Advocate for respondents No. 7,9,10,12,13,14,15 and 16.*

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ORDER

*Per. Justice Pradeep Mittal*



The present writ appeals arise out of the order dated 03.07.2013 passed by the learned writ court in W.P. No. 610 of 2012, whereby the writ petition filed by writ petitioner Aditya Tiwari (respondent No. 1 herein) was allowed and direction was issued to appoint Aditya Tiwari against the post of ex-serviceman general category stating that against the general quota, no reserve quota candidate can be adjusted and appointment of Anurag Jahariya was cancelled stating that he was wrongly adjusted from reserve quota to general quota of ex-servicemen. Since both these writ appeals involve a common issue, they are heard and decided together by this common order. References to the annexures and documents are taken from W.A. No. 1156 of 2013 for the sake of convenience.

2. The facts leading to the filing of the present cases are that the examination for post of Sub Inspector was conducted by respondent no 1 in the writ petition. There were 30 posts reserved for filling up all the post of Sub Inspector (Radio) in which as per the reservation provided 20% for Scheduled Tribes, 16% for Scheduled Caste and 14% for O.B.C. Out of total 30 posts 15 belong to the unreserved category. The respondent No.1 herein Aditya Tiwari (writ petitioner in the writ petition) belongs to unreserved category. That it is not disputed that the total marks obtained by the writ petitioner is 226 but in written Exams he got less mark than Anurag Jahariya respondent No.14 herein.

3. That in the first scan, 18 candidates were considered for appointment in which 8 candidates were selected against the 9 unreserved quota as 3 candidates unreserved category and 5 candidates belonging to the reserved category on the basis of merit secure unreserved category, and one



unreserved candidate for police persons. The last candidate in the open category who was granted appointment in the unreserved quota was Pramod Kumar Jatve who belongs to the reserved category but was treated to be unreserved due to his merit position as he has obtained 231 marks whereas against the writ petitioner who could only secure 226 marks. That all the 9 persons who were selected under the unreserved quota were admittedly having higher merit than the writ petitioner.

4. In the second scan 9 candidates were considered after posts reserved for 5 female candidates were reverted to male candidates due to non-availability of eligible female candidates. That in the second scan 4 persons were granted the benefit of appointment in the unreserved quota Namely : (1) Prashant Singh Parihar, (2) Gajendra Singh Raghuwanshi, (3) Vikash Upadhyay, (4) Sanjeev Pandey. Shri Sanjeev Pandey was having equal marks as granted to the respondent but was granted the benefit of appointment in the light of clause 1.11 of the recruitment rules wherein 2 candidates are having equal marks than the candidate having higher marks in the written examination will be considered for appointment. Shri Sanjeev Pandey had obtained 189 marks in the written examination as against the petitioner who obtained 182 marks thus Shri Sanjeev Pandey in the unreserved category against female quota was granted the benefit of appointment. Thus, in the first scan out of the total 15 posts reserved for general category 9 posts were filled up in which none of the candidates was lower in merit than the writ petitioner.

5. That 3 posts were reserved for ex-serviceman candidates could not be filled up therefore same were reverted to 1 post to unreserved, 2 posts to



Scheduled Tribes and 1 post to Scheduled Caste. That against the unreserved category Shri Ajay Singh was granted the benefit of appointment though he was having equal marks of 226 as the respondent but had obtained 186 marks in his written examination whereas the petitioner only could secure 182 marks. Thus by virtue of clause 1.11 of the rules having obtained more marks in the written examination Shri Ajay Singh was selected for appointment.

6. It is submitted that by the Additional Advocate General for the appellants/State that the learned Single Judge failed to consider the settled legal position regarding the scope of judicial review in matters of recruitment. The Hon'ble Supreme Court, in a catena of decisions, has consistently held that the Court does not sit as a Selection Committee or as an expert body to reassess the merits of candidates. Judicial review is limited to examining whether the selection process is contrary to statutory rules or suffers from illegality, arbitrariness, or mala fides. In the present case, the writ petitioner failed to make out any ground warranting interference with the valid and lawful recruitment process.

7. It is submitted that the learned Single Judge committed a grave error in holding that horizontal and vertical reservations were not applied in accordance with the prescribed rules, without properly appreciating the Reservation Rules and the law laid down by the Hon'ble Supreme Court.

8. It is submitted that under the applicable Reservation Rules, 05 candidates were to be selected from the SC category, 06 from the ST category, 04 from the OBC category, and 15 from the Unreserved category. The selection process for the posts of Subedar/Sub Inspector/Platoon



Commander–2011 was conducted strictly in accordance with merit, the Recruitment Rules, and the Reservation Rules of the State Government. The written examination results and the final select list were prepared in conformity with the principles laid down by the Hon’ble Supreme Court.

9. It is submitted that the learned Single Judge erred in cancelling the selection of Respondent No. 14 herein, Anurag Jhariya (SC category), and directing the selection of the writ petitioner, Adiya Tiwari (Unreserved category). This direction is contrary to the Reservation Rules.

10. It is submitted that Respondent No. 14 herein, Anurag Jhariya, is an SC candidate who falls within the five vacancies earmarked for the SC category on merit. His selection is fully consistent with the Reservation Rules and the principles laid down by the Hon’ble Supreme Court in **Anil Kumar Gupta v. State of U.P. (1995 SCC 5 173)**, **Rajesh Kumar Daria v. RPSC (2007) 8 SCC 785**, and **Public Service Commission v. Mamta Bisht 2010 (12) SCC 204**. His selection could not have been cancelled on erroneous assumptions.

11. It is submitted that if the selection of Anurag Jhariya (SC category) is cancelled and the writ petitioner Aditya Tiwari (Unreserved category) is selected in his place, it would disturb the prescribed reservation quota. Instead of 05 SC candidates, only 04 would be selected, and the number of Unreserved candidates would increase from 15 to 16. This would reduce the SC quota below the prescribed 16% and increase the Unreserved quota beyond 50%, thereby violating the Reservation Rules. The prescribed percentage of reservation must be maintained in all circumstances.

12. It is submitted that cancelling the selection of an SC candidate and replacing him with an Unreserved candidate violates the fundamental



principle that reserved posts must be filled by candidates belonging to the respective reserved category. If suitable candidates are unavailable, such posts are to remain vacant or be dealt with as per the rules, but they cannot be filled by Unreserved category candidates in violation of reservation policy.

13. It is submitted that the learned Single Judge also erred in holding that Respondent No. 14 herein was wrongly adjusted against a vacancy of Unreserved (Female) category. In fact, Respondent No. 14- Anurag Jhariya was selected against a post reserved for Ex-Servicemen in the SC category. As no eligible SC Ex-Serviceman candidate was available in the merit list, the vacancy reverted to the open SC category in accordance with the rules. Therefore, his selection was strictly as per the Reservation Rules and did not violate any policy.

14. It is submitted that the learned Single Judge proceeded on the incorrect assumption that Respondent No. 14- Anurag Jharia was adjusted against a reverted Unreserved (Female) vacancy solely because he belongs to the Scheduled Caste category. This finding overlooks the factual position that he was selected against a reverted SC Ex-Servicemen vacancy, and not against an Unreserved Female vacancy. The impugned order, therefore, proceeds on a misinterpretation of the Reservation Rules and an incorrect appreciation of facts, and is liable to be set aside.

15. The controversy pointed out by the learned Single Judge is that Pramod Kumar Jatav, a candidate belonging to the Scheduled Caste (S.C.) category, was adjusted against the female quota of the general category, which, according to the learned Single Judge, was not permissible under the rules. It



was held that he could have been adjusted only against a vacancy reserved for the Scheduled Caste female quota. Learned counsel for the appellants has submitted that the unreserved quota is open to all candidates and is required to be filled on the basis of merit; therefore, the finding recorded by the learned Single Judge is not correct.

16. The respondents have supported the findings of the learned Single Judge and submitted that the female quota should be filled only by candidates belonging to the respective category, and not by candidates from the Scheduled Caste, Scheduled Tribe, or OBC categories. According to them, the female quota in the General (Unreserved) category must be filled exclusively by female candidates belonging to the General category. The respondents further contended that such vacancies, particularly those reserved for female candidates in the General category, ought to have been filled by male candidates of the same category and not by candidates belonging to reserved categories. It was alleged that certain Scheduled Caste candidates were improperly adjusted against General category vacancies, contrary to the applicable rules and the law laid down by the Supreme Court in **Rajesh Kumar Daria v. Rajasthan Public Service Commission (2007) 8 SCC 785**.

Heard the learned counsel for the parties.

17. In **W.P. No. 7179 of 2016 (Nirmala Chouhan Vs. High Court of M.P. and others order dated 04.02.2026)**, this court has already held that the unreserved quota is open to all. That controversy has been resolved and no longer *res integra*. In the case of **Airport Authority of India and Others Vs. Sham Krishna B and others 2026Live Law (SC) 63**, it was held that the open



category is not a “quota”, but rather available to all women and men alike, open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him. The same have a profound meaning and needs to be translated into action without being unnecessarily bothered by a term like ‘migration’ candidate from a reserved category (including women) who is more meritorious than the last candidate selected in the unreserved (general) category must be allotted a seat from the unreserved category. The Supreme Court has ruled that the "open category" is a merit-based pool accessible to all, not a quota for general candidates. Her candidature has not been approved by the High Court at administrative side on the ground of previous law laid down by the High Court as well as Hon'ble Supreme Court; now the Supreme Court laid down the contrary view.

18. The Division Bench of this Court in cases of **State of M.P. and another vs. Uday Sisode and others** [2020(1) M.P.L.J. 359] and in the cases of **Sachin Pathak Vs. State of Madhya Pradesh and others** W.P. No.15147/2019 and **Chhaya Dubey Vs. State of Madhya Pradesh and others**, W.P. No.20289/2019, Single Bench of this Court held that when a reservation is horizontal, then the candidate selected on the basis of reservation in any category has to be fixed in the said category and cannot be allowed to migrate to other category. In the latest judgement of the Hon'ble Supreme Court this judgement is not a good law.

19. In **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and others** reported as 2007(8) SCC 785, it was held that a provision for women made under Article 15(3), in respect of employment, is a special reservation





as contrasted from the social reservation under Article 16(4). The method of implementing special reservation, which is a horizontal reservation, cutting across vertical reservations, was explained by this Court in *Anil Kumar Gupta v. State of U.P.* (1995) 5 SCC 173. The difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are "vertical reservations". Special reservations in favour of physically handicapped, women, etc., under Articles 16(1) or 15(3) are "horizontal reservations". Where a vertical reservation is made in favour of a Backward Class under Article 16(4), the candidates belonging to such Backward Class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their number will not be counted against the quota reserved for respective Backward Class. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven woman candidates selected on their own merit (candidates at Sl. Nos. 2, 3, 4, 5, 9, 19, 21, 25, 31, 35 and 41 of the selection list) and another eleven (candidates at Sl Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 and 80 of the selection list) included under reservation quota for "general category women". This is clearly impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation." The above principal is not good law in the light of latest judgement of Hon'ble Supreme Court in the case of *Union of India Vs. Sajib Roy* reported as 2025 LiveLaw (SC) 881 and *Sham Krishna B* (supra).

20. In the cases of *Indra Swahney vs. Union of India*, 1992 Supp (3)



SCC 217, **R.K. Sabharwal vs. State of Punjab** (1995) 2 SCC 745, **Union of India vs. Virpal Singh Chauhan** (1995) 6 SCC 684 and **Ritesh R. Sah v. Dr. Y.L. Yamul** (1996) 3 SCC 253.) **Anil Kumar Gupta v. State of U.P.** (1995) 5 SCC 173, it was held that the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. When a reservation is horizontal, then the candidate selected on the basis of reservation in any category has to be fixed in said category and cannot be allowed to migrate to other category. The concept of migrating from one category to another on the basis of merit may hold good in vertical reservation but in horizontal reservation the same is not applicable. The above principle is no longer good law in the light of latest judgement of Hon'ble Supreme Court in the cases of **Sajib Roy and Sham Krishna B.** (supra).

21. The learned Single Judge recorded his findings on the basis of the judgment of the Hon'ble Supreme Court in the case of **Rajesh Kumar Daria v. Rajasthan Public Service Commission & Others** [(2007) 8 SCC 785]. However, in light of the latest judgments of the Hon'ble Supreme Court in **Sajib Roy and Sham Krishna B** (supra), that view can no longer be considered good law. Therefore, the finding recorded by the learned Single Judge cannot be sustained in law. It is not correct law to hold that an unreserved seat earmarked for female candidates should be filled only by unreserved category candidates. In view of the law laid down by the Hon'ble Supreme Court, the female quota in the unreserved category is available to all eligible female candidates as well as male candidate on non-availability of female candidate on the basis of merit.



22. It is noteworthy to mention there that the following directions were given by the writ court while allowing the writ petition.

"The appointment and selection of respondent No.16 Anurag Jharia as Sub Inspector (Radio) against the Post of ex-service man candidate cannot be upheld. The same is required to be cancelled. Instead of said Anurag Jharia, Jitendra Shakya said to be selected on the post of Sub Inspector (Radio) against the vacancy of female candidate in that category would be treated to be selected and appointed against the vacancy of ex-serviceman in the same category. Pramod Kumar Jatav said to be selected as General category candidate on account of merits would be treated to be selected and appointed against the vacancy of Scheduled Caste female in place of said Jitendra Shakya. In his place, Shri Sanjeev Pandey said to be selected in General category against the vacancy of female candidate in General category would be treated to be selected and in place of Shri Sanjeev Pandey, Ajay Singh said to be selected and appointed as Sub-Inspector (Radio) in General category against the post of ex-serviceman would be treated to be selected and appointed against the post reserved for female candidates in General category. In the vacancy so available in General category on account of non-availability of the ex-serviceman, the appointment be given to the petitioner Aditya Tiwari."

23. The aforesaid directions cannot be sustained in law. The learned Single Judge wrongly cancelled the candidature of Respondent No. 14 herein, Anurag Jaharia, and the above directions were issued on account of such cancellation. Since we now hold that the candidature of Anurag Jaharia is in accordance with law, all the directions issued by the learned Single Judge



cannot be sustained and are liable to be set aside.

24. Accordingly, both the writ appeals are allowed, and the order dated 03.07.2013 of the Writ Court passed in W.P. No. 610 of 2012 is set aside. The candidature of Anurag Jaharia respondent No.14 herein against the general quota of Ex- serviceman is affirmed due to non-availability of EX-serviceman candidate.

**(VIVEK RUSIA)**  
**JUDGE**

**(PRADEEP MITTAL)**  
**JUDGE**

MSP