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WP-7179-2016

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 4<sup>th</sup> OF FEBRUARY, 2026WRIT PETITION No. 7179 of 2016*NIRMALA CHOUHAN**Versus**HIGH COURT OF M.P. AND OTHERS*

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Appearance:

Shri Devendra Kumar Tripathi - Advocate for the petitioner.

Shri Parag Tiwari, Advocate for respondents.

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ORDER

*Per. Justice Pradeep Mittal*

By way of this petition, the petitioner challenges the memo dated 17.02.2016, whereby approval for her appointment as Peon has been denied on the ground that she belongs to the Scheduled Tribe category and secured 20 marks in the examination, whereas no post was reserved for woman of the Scheduled Tribe category. It is contended that, petitioner got more marks than the unreserved woman candidate, the petitioner ought to have been considered against an unreserved category post.

2. The facts leading to the present petition are that pursuant to the advertisement for the post of Peon/Chowkidar/Waterman/Gardener the petitioner applied for the post of peon. In the examination she obtained 20 marks. After preparation of select list the petitioner finds place at serial no. 3.



3. It is submitted that the select list was issued for the unreserved (female) category. It is further submitted that, as per the advertisement, no post was reserved for the Scheduled Tribe (female) category, and three posts were advertised for the unreserved (female) category. Out of the three posts under the unreserved (female) category, three candidates, namely Darshana Sharma, ArarnaRajoria, and Ruchi Vishwakarma, who secured 25, 20, and 17 marks respectively in the selection process, were selected in the final select list. No selection was made against the Scheduled Tribe (female) category. Further, the last selected candidate in the unreserved (female) category secured 17 marks, and several candidates belonging to the Other Backward Classes category were selected under the unreserved category. That the petitioner, who belongs to the Scheduled Tribe category and secured 20 marks, has not been selected under the unreserved (female) category, despite there being no post reserved for the Scheduled Tribe (female) category. Hence, the present petition has been filed on the following grounds.

4. It is submitted that the impugned select list is discriminatory, arbitrary, and bad in the eyes of law; hence, it deserves to be quashed.

5. That there is no condition in the advertisement stipulating that a candidate belonging to a reserved category must be considered only against the opted reserved category, nor is there any restriction preventing such a candidate from being considered against the unreserved category even if he or she has secured higher marks than candidates in the unreserved category.

6. That the petitioner belongs to the ST (Female) category, and as



there was no post reserved for the ST (Female) category, she secured 20 marks, whereas the last selected candidate in the UR (Female) category secured only 17 marks. Hence, the petitioner deserves to be selected under the Unreserved (Female) category.

7. That in paragraph 4 of the select list, the respondent No. 1 has merely stated that the petitioner is a candidate of the ST (Female) category and, on that basis alone, held her to be not entitled, thereby not approving the name of the petitioner.

8. That the petitioner has secured more marks than the last candidate selected under the UR (Female) category; therefore, the petitioner deserves to be selected and appointed against the post of UR (Female) category.

9. Per contra, the respondents have denied the allegations made by the petitioner, stating that, as is evident from the advertisement dated 31.10.2015 (Annexure P-2), no post for the ST Female category was notified in District Sehore. The petitioner applied for the aforesaid post as a Scheduled Tribe (Female) category candidate and was thereafter included in the provisional select list.

10. In Annexure P-5, it is clearly mentioned that the provisional list was not the final select list and that the final select list would be issued only after recommendations by the High Court. It was also made clear in the advertisement that reservation for the Female category is horizontal and compartmentalized; therefore, for posts in the General category, only female candidates belonging to the General category could be appointed.

11. The G.A.D. Circular dated 10.02.1997 specifically provides that



reservation for women is horizontal and compartmentalized, and if any seat reserved for women of a particular category remains vacant due to non-availability of an eligible woman candidate of that category, such seat shall not be carried forward to the next year and shall instead be filled by a male candidate of the same category.

12. It is further submitted that the contentions raised by the petitioner are denied and disputed, as she applied pursuant to the aforementioned advertisement and accepted all its terms and conditions. Without challenging any condition of the advertisement, she consciously participated in the selection process. Therefore, in light of the decision of the Hon'ble Supreme Court in *Ashok Kumar & Anr. v. State of Bihar & Others*, (2017) 4 SCC 357, the petitioner is bound by the principle of estoppel and cannot subsequently turn around and challenge the method of selection or its outcome. Accordingly, the respondents pray for dismissal of the writ petition.

13. Heard the learned counsel for the parties at length.

14. The Division Bench of this Court in the case of **State of M.P. and another vs. Uday Sisode and others** reported as [2020(1) M.P.L.J. 359] and in **W.P. No.15147/2019 (Sachin Pathak Vs. State of Madhya Pradesh and others** and in **W.P. No.20289/2019 (Chhaya Dubey Vs. State of Madhya Pradesh and others)**, a 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 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.



15. In the case of **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 the case of **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 v. Sajib Roy, 2025 LiveLaw (SC) 881 and Airport Authority of India and Others Vs. Sham Krishna B and others 2026Live Law (SC) 63.

16. In the cases of **Indra Swahney vs. Union of India and others** reported as 1992 Supp (3) SCC 217, **R.K. Sabharwal vs. State of Punjab** reported as (1995) 2 SCC 745, **Union of India vs. Virpal Singh Chauhan** reported as (1995) 6 SCC 684 and **Ritesh R. Sah v. Dr. Y.L. Yamul** reported as (1996) 3 SCC 253) and **Anil Kumar Gupta v. State of U.P.** reported as (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 **Sajib Roy and Sham Krishna B.(supra)**.

17. In the case of **Union of India v. Sajib Roy**, reported as 2025 LiveLaw (SC) 881, the Hon'ble Supreme Court settled a recurring controversy in public recruitment namely, whether candidates belonging to reserved categories (SC/ST/OBC) who avail certain relaxations, such as age relaxation, may, upon securing marks higher than the last selected general (unreserved) candidate, be adjusted against unreserved vacancies. The Court



held that such “migration” is not a universal right flowing from general principles of merit or equality; rather, it depends entirely on the governing recruitment rules or executive instructions. Where the applicable rules impose an embargo on migration by candidates who have availed such relaxations, migration is impermissible.

18. In the case of **Airport Authority of India and Others Vs. Sham Krishna B and others** reported as 2026Live Law (SC) 63, it was held that the ratio in **Chatter Singh and Others v. State of Rajasthan and Others**, reported as (1996) 11 SCC 742, is inapplicable to the present factual matrix. Secondly, the inclusion of a reserved category candidate in the open merit list at the stage of shortlisting cannot be equated with ‘migration’, for no benefit or concession of reservation is availed. In the considered opinion of this Court, the controversy involved in the present case is no longer res integra. It is now a settled proposition of law that a candidate belonging to reserve category who has scored marks higher than the cut-off marks for the General Category is to be treated as having qualified against an open or unreserved vacant post. In the present case, no concession or relaxation was extended to the reserve category candidates who have been appointed on their own merit against the posts meant for the General Category candidates as they have scored more marks than the General Category candidates in the selection process. The facts of the case further makes it clear that all the vacancies notified for unreserved category i.e. 122 posts were filled up based upon the marks scored by candidates in the process of selection on their own merit and, therefore, the Appellant Authority were justified in migrating the



candidates belonging to reserve category to the unreserved list on the basis of their own merit as they have scored higher marks than the General category candidates.

19. The petitioner Niramla Chouhan belongs to a reserved category and applied for the post of Contingency Peon under the reserved category. She secured 20 marks. The selected candidate Ruchi Vishwakarma belonging to the OBC category applied for the unreserved seat and secured 17 marks. Three seats were reserved for women under the general (unreserved) category.

20. A selection list was prepared in which the second-last candidate secured 25 marks, while the last selected candidate Ruchi Vishwakarma secured 17 marks. The name of the petitioner was not approved in the general category selection list on the ground that she belongs to ST category, despite the fact that she had secured more marks than the last selected candidate Ruch Vishwakarma in the general category.

21. The respondents argued that women reservation is horizontal, and therefore a reserved category candidate cannot be considered for inclusion in the unreserved list. The petitioner opposed this argument, contending that this is not a case of migration from a reserved list to an unreserved list. The petitioner submitted that she ought to have been placed in the general category list because she secured more marks than the cut-off of the last selected general category candidate. Once her name is placed in the general category list on merit, the issue of migration from reserved to unreserved category does not arise.





22. Upon considering all the facts of the case, there is no dispute that if a candidate, without availing any concession, applies for a reserved post and secures more marks than an unreserved candidate, such candidate is entitled to be included in the general category selection list. Therefore, an apparent error exists in the selection list of unreserved candidates. The petitioner ought to have been placed against one of the women seats in the unreserved category. It is not proper to hold that only those women who applied under the unreserved women category are eligible for selection. In our view, if any woman candidate secures more marks than another woman candidate, she must be selected for the unreserved women seat on merit. Accordingly, the petitioner's claim was denied by applying the principle laid down by the Court at that time; however, the legal position has since changed.

23. 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. In the present case, the petitioner's candidature was not approved by the High



Court on the administrative side on the basis of the law prevailing at the relevant time, as laid down by the High Court and the Hon'ble Supreme Court. Subsequently, the Hon'ble Supreme Court has taken a contrary view. However, since the petitioner's candidature was rejected in accordance with the law as it stood at that time, and more than ten years have elapsed since the examination, the petitioner is not entitled to appointment to the post of Peon on the basis of the subsequent change in legal interpretation.

24. The seat was not kept reserved for the petitioner subject to the decision of this petition. The petitioner neither challenged the appointment of the selected candidate nor impleaded her as a party to the present petition. The petitioner has also not sought the relief of quashing the appointment order of the selected candidate. Therefore, after a lapse of about ten years, the petitioner does not deserve appointment to a post which has already been filled up.

25. Accordingly, the writ petition is dismissed.

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

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