

PRAMOD KUMAR SINGH AND ORS.

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v.

STATE OF UTTAR PRADESH AND ORS.

(Writ Petition (Civil) No. 465 of 2020)

MARCH 16, 2021

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**[UDAY UMESH LALIT, S. RAVINDRA BHAT AND  
HRISHIKESH ROY, JJ.]**

*Service Law:*

*Reservation – Shifting of candidates of reserved category to open category – Validity of – In selection process, 3295 vacancies remained unfilled – As per direction of Supreme Court further process of selection undertaken and select list prepared on 11.11.2019 – Writ petition challenging the select list dated 11.11.2019 alleging that the candidates who were earlier selected against reserved categories, were shifted to general category – Prayed for re-working the select-list – Held: The candidates who were initially selected in their respective reserved categories, depending on their merit were entitled to be put in general/open category – Such exercise cannot be termed as illegal or invalid.*

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**Dismissing the petition, the Court**

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**HELD: 1. Selection in respect of 3295 posts was undertaken in accordance with the directions issued by this Court in *Ashish Kumar Yadav case* and the State Government and its functionaries were obliged to go strictly in order of merit and apply the principle of reservation. [Para 8][923-E-F]**

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**2. It is not the grievance of the petitioners that any candidate who had secured marks lesser than the petitioners, has been selected. The challenge is to the shifting of candidates, who were earlier selected against posts meant for reserved categories, to the open category. [Para 7][923-D]**

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**3. The process adopted by the State Government as is discernable from the affidavit of compliance shows that List-I dealt with the candidates selected in ‘Open Category’ while Lists II,**

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- A **III and IV** pertained to the candidates selected in ‘OBC/SC/ST categories’ respectively. List-I comprised of two kinds of candidates. *First*, those who were initially selected in their respective vertical reserved categories (OBC/SC/ST), but depending on their merit, were found entitled to be put in ‘Open Category’; and *secondly*, new candidates who were selected on the basis of their merit in various categories. Break up of 1906 candidates who were considered in ‘Open Category’ was thus clearly set out. [Para 6][923-B-D]
- B **4. With the availability of 3295 additional posts, in the re-working exercise, if the candidates who were already selected against reserved posts were entitled to be considered against open category posts, that exercise cannot be termed as illegal or invalid on any count. These 3295 posts were part of the same selection process initiated in 2013 for filling up 41610 posts and as such the adjustment was rightly done by the State.**
- C **[Para 8][923-E-F]**

*Saket Kumar and Ors. vs. State of U.P. and Ors. 2015*

**SCC OnLine Allahabad 1250; Hanuman Dutt Shukla**

**and Ors. vs. State of U.P. and Others (2018) 16 SCC**

**447; Ashish Kumar Pandey and 24 others vs. State of**

- E **U.P and 29 others 2016 SCC OnLine ALL 187; Upendra and others vs. State of U.P. and others 2018 (7) ADJ 37 (2 e); Ashish Kumar Yadav and Ors. vs. State of Uttar Pradesh and ors. Special Leave Petition (Civil) No. 20015 of 2018 – referred to.**

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**Case Law Reference**

**(2018) 16 SCC 447 referred to Para (2 c)**

**2018 (7) ADJ 37 referred to Para (2 e)**

- G **CIVIL ORIGINAL JURISDICTION: Writ Petition (Civil) No. 465 of 2020**

**(Under Article 32 of the Constitution of India)**

**Vinod Diwakar, AAG, P.S. Patwalia, Vinay Navare, Neeraj Kishan Kaul, Basava Prabhu S. Patil, Ms. Vibha Datta Makhija, Sr. Advs., Anurag Dubey, Rajesh Pathak, Sumit Kumar, Kumari Supriya, Binod**

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Mishra, Hemant Kumar, Prabodha Kumar Agrawal, Rajesh Pathak, A  
 Mukesh Kumar Singh, Amit, Ms. Vani Vyas, Purushottam Sharma  
 Tripathi, Danish Zubair Khan, Ms. Garima Prashad, Ms. Nupur Dubey,  
 Abhishek Tripathi, Shakil Ahmed Syed, Mohd. Parvez Dabas, Uzmi  
 Jameel Husain, Qazi Wakeel Ahmad, Daanish Ahmed Syed, D.K. Garg,  
 Dhananjay Garg, Nikhil Jain, Rajiv Ranjan Dwivedi, Randhir Kumar  
 Ojha, Satish Pandey, Advs. for the appearing parties. B

The Judgment of the Court was delivered by

**UDAY UMESH LALIT, J.**

1. This petition under Article 32 of the Constitution of India prays C  
 for following reliefs: -

- A. Issue a Writ, Order or Direction in the nature of Mandamus directing the Respondents to consider the Petitioners for appointment to the post of Constable PAC & Fireman seats meant for General Category Male Candidates in PAC & Fireman Posts which remained unfilled till date; and D
- B. Issue a Writ, Order or Direction in the nature of Mandamus directing the Respondents to rectify the final select list dated 11.11.2019 in terms of three parameters i.e. merit, preference and reservation. E

1.1 The principal grounds raised in the petition are:-

“I. Because there are 958 seats where candidates who made it in original select list in their reserve category in Constable (Civil) were wrongly shifted to open category on different cadre i.e. PAC and Fireman without actually changing their cadre as they are all working on the said post (Constable Civil) for last 3 years. Had the aforesaid 958 seats were not wrongly overlapped then the Petitioners would have made their place in the list published on 11.11.2019 by the Board. F

II. Because, admittedly, the Respondents had filled up only 1650 seats out of 2016 seats meant for male general category candidates in various select list till date in Constable PAC Post and 446 seats out of 1038 seats meant for male general category candidates in various select list till date in Constable Fireman Post.” G

2. The facts leading to the filing of this petition, in brief, are as under:- H

- A A) By issuing an advertisement on 20.06.2013, selection process was undertaken to fill up 41610 posts of Police Constables [U.P. Civil Police/Provincial Armed Constabulary (PAC)/Fireman]. The petitioners had participated in the selection process as candidates of General Category.
- B B) After the requisite examinations, results were declared on 16.07.2015, in which 38315 candidates were successful. Thus, as on that date, there were vacancies which were not filled as no suitable candidates were available.
- C C) In *Saket Kumar and ors. Vs. State of U.P. and Ors.*<sup>1</sup>, the High Court of Judicature at Allahabad, was concerned with the process of selection for Sub-Inspectors in U.P. Police, which process was going on simultaneously with the instant selection. The High Court dealt with the issue where the candidates had used blades or whiteners while answering their answer papers of the main examination. By its order dated 29.05.2015, the High Court had disqualified all such candidates and directed that their names be deleted from the selection list.
- E In the appeal arising therefrom, this Court in its decision in *Hanuman Dutt Shukla and Ors. Vs. State of U.P. and Others*<sup>2</sup>, held that those candidates who had used blades or whiteners ought not to have been disqualified. However, by that time, the process of selection, in terms of the decision of the High Court in *Saket Kumar*<sup>1</sup>, had gone ahead and the seniority list was already re-worked in terms of said decision. This Court, therefore, observed that the candidates who had been selected as a result of directions in *Saket Kumar*<sup>1</sup>, should not be thrown out from the process of selection, but those who had used blades or whiteners be given the advantage in a notional selection. It was also observed that the additional number of candidates so selected should be reckoned as against additional posts and should not be taken to be the part of the original posts for selection.
- F D) The same principles were adopted in the selection process for Police Constables and consequently, the candidates who

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H <sup>1</sup> 2015 SCC OnLine Allahabad 1250 (Writ.A.No. 67782 of 2014 etc.)  
<sup>2</sup> (2018) 16 SCC 447

had used blades or whiteners were considered in the instant process of selection. The selection list was re-worked and it was found that 4429 candidates were entitled to be given the advantage in terms of law declared in ***Hanuman Dutt Shukla***<sup>2</sup>.

- E) In the meantime, decisions were rendered by the High Court in ***Ashish Kumar Pandey and 24 others vs. State of U.P and 29 others***<sup>3</sup> and ***Upendra and others vs. State of U.P and others***<sup>4</sup>, touching upon the issue of horizontal reservation with which we are not presently concerned, except for the fact that the seats remaining vacant as a result of non-availability of candidates for the concerned horizontal reservation categories, became available for the same selection process. A
- F) In the instant case concerning selection of police constables, about 2312 vacancies had remained unfilled and additionally, there were 982 vacancies arising out of causes such as non-reporting of the selected candidates. In the circumstances, this Court in its Order dated 24.07.2019 passed in IA No. 103934 of 2018 and connected applications in Special Leave Petition (Civil) No. 20015 of 2018 (***Ashish Kumar Yadav and ors. v. State of Uttar Pradesh and ors.***) issued following directions:- B
- “It is accepted by the learned counsel for the State that the State did not undertake any process of selection in respect of those 2312 vacancies. In the circumstances it is directed:
- A) The State shall within a month from today complete the entire process of selection in respect of 2312 vacancies strictly in accordance with law. C
- B) The State shall follow the principle of reservation while filling up these 2312 vacancies. D
- C) While filling up these vacancies, the State shall adhere to the minimum required qualifying marks as devised during the process of selection but subject to this, the State shall consider all eligible candidates and go strictly in order of merit. E

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<sup>3</sup> 2016 SCC OnLine ALL 187 (Writ A. No. 37599 of 2015) F

<sup>4</sup> 2018 (7) ADJ 37 : Writ C. No. 3417 of 2016 G

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- D) The State shall before the next date of hearing, shall file a list of all the selected candidates.

It is also accepted that apart from these 2312 vacancies, there are still 982 vacancies to be filled up in the original selection.”

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- G) Therefore, further process of selection for 3295<sup>5</sup> posts was undertaken and the results were declared on 11.11.2019. The breakup of said 3295 posts was as under:

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Sl. No.	Category	Civil Police	PAC	Fireman	Total
1	Open	721	473	712	1906
2	OBC	615	77	39	731
3	SC	511	59	31	601
4	ST	48	6	3	57
	<b>Total</b>	<b>1895</b>	<b>615</b>	<b>785</b>	<b>3295</b>

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- H) In the affidavit of compliance filed on behalf of the State Government following details were submitted:-

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**“E. Details of result of selected 3295 candidates as per Hon’ble Supreme Court’s order**

In compliance of above order of Hon’ble Court following lists and details of last selected candidates are attached herewith.

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**(I) List-1- candidates selected in open category-1906**

This list contains –

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- (a) The names of candidates who have already been selected in their respective vertical category (OBC/SC/ST) but presently find their positions in open category after redrawing the merit on the basis of their merit irrespective of their social category and gender.
- (b) New candidates purely on the basis of their merit irrespective of their social category.

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<sup>5</sup> (according to the aforesaid Order dated 24.07.2019, the vacancies would be 3294, being total of 2312+982. However, according to the State, the actual figure was 3295)

The composition of list as follows – A

<b>(A)- Already selected candidates-</b>	<b>1252</b>	
OBC	1118	
SC	0132	
ST	0002	B

**(B)- Now selected candidates-**

Male Gen.	0461	
Male Gen. DFF-	0005	
Female Gen.-	0187	C
Female Gen. DFF-	0001	
<i>Total Male-</i>	<i>0466</i>	
<i>Total Female-</i>	<i>0188</i>	

**Grand Total** **0654** D

A copy of the List I is annexed hereto and marked as Annexure A-1

F. List-2 – candidates selected in OBC category – 1849 (1118+731)

Since 1118 candidates belonging to OBC category, have already been selected and find their position in present open category list due to their higher merit hence 1118 unselected OBC candidates have been selected in lieu of selected candidates and 731 candidates have been selected afresh as against their respective 731 vacancies. It is submitted that this list contains 1849 names. E F

A copy of the List II is annexed hereto and marked as Annexure A-2

G. List-3- the candidates selected in SC category – 733 (132+601) G

Since 132 candidates belonging to SC category, have already been selected and find their position in present open category list due to their higher merit so 132 unselected SC candidates H

- A have been selected in lieu of selected candidates and 601 candidates have been selected afresh as against their respective 601 vacancies. It is submitted that this list contains 733 names.
- B A copy of the List III is annexed hereto and marked as Annexure A-3
- H. List-IV- candidates selected in ST category-59 (02+57)  
Since 02 candidates, belonging to ST category, have already been selected and find their position in present open category list due to their higher merit, so 02 unselected ST candidates have been selected in lieu of selected candidates and 57 candidates have been selected afresh as against their respective 57 vacancies. It is submitted that this list contains 59 names.
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- D A copy of the List IV is annexed hereto and marked as Annexure-A-4"
- E 3. The present Writ Petition has been filed submitting *inter alia* that certain candidates coming from 'Reserved Categories', who were initially selected against Reserved Categories' seats, were now shown against the 'Open Category' in the list published on 11.11.2019 and, thus, the chances of 'Open Category' candidates to that extent stood prejudiced. According to the petitioners, there should not have been any adjustment of the candidates who were already selected in 'Reserved Categories' and all those seats should have been made available to the
- F 'Open Category'. In this light, the principal grounds as quoted hereinabove are raised and the prayer for re-working of the select list dated 11.11.2019 is made.
- G 4. In the affidavit-in-reply filed in the present matter, marks obtained by all the petitioners have been set out. The State has given details about the last selected candidates in various categories and has stated that the last selected person in 'General Male Category' was one Pawan Singh (having secured 313.616 marks). Except the petitioners at serial Nos. 22 and 24, who had secured 313.616 marks, none of the 48 petitioners had secured marks in excess of 313.616. It is also stated that since large number of candidates had secured exactly 313.616 marks,
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tiebreaker principle was adopted in which these two petitioners got A eliminated.

5. We have heard Mr. P. S. Patwaria, learned Senior Advocate for the petitioners, Mr. Vinod Diwakar, learned Additional Advocate General for the State and Mr. B. P. Patil and Mr. Vinay Navare, learned Senior Advocates for Intervenors. B

6. The process adopted by the State Government as is discernable from the affidavit of compliance shows that List-I dealt with the candidates selected in 'Open Category' while Lists II, III and IV pertained to the candidates selected in 'OBC/SC/ST categories' respectively. List-I comprised of two kinds of candidates. *First*, those who were initially selected in their respective vertical reserved categories (OBC/SC/ST), but depending on their merit, were found entitled to be put in 'Open Category'; and *secondly*, new candidates who were selected on the basis of their merit in various categories. Break up of 1906 candidates who were considered in 'Open Category' was thus clearly set out. C

7. It is not the grievance of the petitioners that any candidate who had secured marks lesser than the petitioners, has been selected. The challenge is to the shifting of candidates, who were earlier selected against posts meant for reserved categories, to the open category. D

8. Selection in respect of 3295 posts was undertaken in accordance with the directions issued by this Court in *Ashish Kumar Yadav and Ors. vs. State of Uttar Pradesh and Ors.* (supra) and the State Government and its functionaries were obliged to go strictly in order of merit and apply the principle of reservation. With the availability of 3295 additional posts, in the re-working exercise, if the candidates who were already selected against reserved posts were entitled to be considered against open category posts, that exercise cannot be termed as illegal or invalid on any count. These 3295 posts were part of the same selection process initiated in 2013 for filling up 41610 posts and as such the adjustment was rightly done by the State. E

9. We, therefore, see no merit in this petition which is accordingly dismissed. F G