

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Writ Jurisdiction)

W.P(S) No.5882 of 2003

1. Raghubansh Prasad Singh, S/o Sri Radha Prasad Singh, 188-C, Vidyalay Marg, Ashok Nagar, P.O. Ashok Nagar, P.S. Argora, Town & Dist. Ranchi.
2. Jai Kishore Dutta, S/o late Kash Ballabh Dutta, R/o 154-C, Ashok Nagar, P.O. Ashok Nagar & P.S. Argora, Dist. Ranchi.
3. Krishna Nand Choubey, S/o late Ram Khelawan Choubey, R/o Bank Colony Road, Kokar, P.S. Sadar, P.O. GPO, Town & Dist. Ranchi.
4. Tripurari Shankar Prasad, S/o late Sarju Prasad, R/o D-3 Yuvraj Enclave, Deputy Para, P.S. Lalpur, P.O. GPO, Town & Dist. Ranchi.
5. Ganesh Prasad, S/o late Baij Nath Prasad, R/o 2A, Yuvraj Silver Tower, Deputy Para, P.S. Lalpur, P.O. GPO, Town & Dist. Ranchi.

..... **Petitioners.**

Versus

1. The State of Jharkhand through the Chief Secretary, Ranchi.
2. The Commissioner-cum-Secretary, Department of Personnel & Administrative Reforms, Government of Jharkhand, Ranchi.
3. The Secretary, Road Construction, Government of Jharkhand, Ranchi.
4. The Secretary, Rural Development Department, Govt. of Jharkhand, Ranchi
5. The Union of India through the Cabinet Secretary, Govt. of India, New Delhi.
6. The State of Bihar, through the Secretary, P&A.
7. The Secretary, Road Construction Department having office at Bisweswarayya Bhavan, Bailley Road, Patna.

.... **Respondents**

With

W.P(S) No.3795 of 2003

1. Dr. Pravin Shankar Son of Late Rajeshwar Lal resident of 59 Patliputra Colony, Patna-800013.
2. Dr. Sunil Kumar Singh, son of Shri Bireshwar Pd. Singh, residence of Booty Officers Flat, P.S. Lalpur, District- Ranchi.
3. Shri Jag Narayan Singh, Son of Late R.K. Singh, resident of Piska More, P.S. Sukhdeo Nagar, District- Ranchi.
4. Satrugan Pathak, son of Late Chakradhari Pathak, resident of Piska More, PS. Sukhdeo Nagar, District- Ranchi.
5. Bimal Chaudhary, son of Late Girija Nandan Choudhary Postal address: Office of Additional Collector, P.S. Kotwali, Ranchi
6. Ratan Kumar son of Late Laxmi Shankar Singh, resident of Booty Officers Flat, P.S. Lalpur, Distt- Ranchi.

..... **Petitioners.**

Versus

1. The State of Jharkhand, through the Chief Secretary Ranchi.
2. Commissioner- cum- Secretary, Department of Personnel and Administrative Reforms, Government of Jharkhand, Ranchi.
3. Commissioner cum- Secretary, Finance Department, Government of Jharkhand, Ranchi.
4. Union of India, through the Cabinet Secretary, New Delhi.
5. Secretary, Personnel Public Grievance and Pension, Department of Personnel and Training, Government of India, New Delhi.

6. Deputy Secretary to the Government of India, Ministry of Personnel, Public Grievance and Pension department of Personnel and Training, New Delhi.

.... **Respondents.**

With

W.P(S) No. 5961 of 2003

1. Shardendu Narayan, S/o late P.N. Prasad, Residing at Ran Basera Colony, P.O. & P.S. Adityapur, Dist. Saraikela Kharswan.

2. Brij Bihari Ojha, S/o late Paras Nath Ojha, Residing at Water Tower Colony, P.O. & P.S. & Dist. Latehar.**Petitioners.**

-Versus-

1. The State of Bihar through the Commissioner-cum-Secretary, Public Health Engineering Department (PHED), having its office at Nirman Bhawan, Bailey Road, Patna-800015.

2. The State of Jharkhand through the Commissioner-cum-Secretary, Drinking Water and Sanitation Department, Nepal House, P.O. & P.S. Doranda, Ranchi-834002.

3. The Commissioner-cum-Secretary, Personnel & Administrative Reforms Department, Government of Jharkhand, having its office at Project Building, P.O. & P.S. Dhurwa, Ranchi-834004. ... **Respondents.**

With

W.P(S) No.2517 of 2004

1. Yogendra Prasad Singh, son of Shri Shiv Narayan Singh, Deputy Secretary, Co-operative Department, Govt of Jharkhand, residing at Usha Niketan, Birsa Chowk, P.O. Dhurwa, P.S. Jagannathpur, Dist. Ranchi

2. Abdul Bari son of Shri Abdul Baqui, Deputy Secretary, Rural Development Deptt., Govt of Jharkhand, residing at Rahmat Colony, P.O. & P.S. Doranda, District Ranchi;

3. Ranjeet Prasad Sah son of Late Mathura Prasad Sah, Under Secretary, Finance Deptt., Govt of Jharkhand residing at CD/593/OHC, Dhurwa, P.C. Dhurwa, P.S. Jagannathpur, Distt. Ranchi,

4. Tasneem Ahmad son of Late Md. Nayeemuddin, Under Secretary, Food Supply & Commerce Deptt., Govt of Jharkhand, residing at Resaldar Nagar, P.O. & P.S. Doranda, Distt. Ranchi;

5. Anil Narayan Singh son of Late K.K.N. Singh, Under Secretary, Home Deptt., Govt of Jharkhand, residing at 82, Kadru, A.G. Colony, PO & P.S. Doranda, District Ranchi;

6. Smt. Veena Mishra wife of Shri Tiwari Satya Narayan Prasad, Under Secretary, Welfare Deptt., Govt of Jharkhand, residing at 11-Yamuna Apartment, Kanke Road PO & P.S. Gonda, District Ranchi;

7. M.C. Panda son of late Mritunjay Panda, Under Secretary, Co-operative Deptt., Govt of Jharkhand, residing at Quarter No. 2730, Sector-IV, Site-5, HEC, Dhurwa, P.S. -Jagannathpur, Distt. Ranchi;

8. Rabindra Prasad son of Shri Murlidhar Prasad, Under Secretary, Road Construction Deptt., Govt of Jharkhand, residing at Flat No. 302, Lakshmi Apartment, Hinoo, P. O. & P.S. Doranda, Distt. Ranchi;

9. Miss Uma Shashi Chatterjee daughter of Dr. K.C. Chatterjee, District Programme Officer, East Singhbhum, residing at 96-State Mile Road, Sakchi, PO & P.S. Sakchi, Jamshedpur, Distt. East Singhbhum;

10. Sudarshan Prasad Singh son of Shri Vishwanath Singh, Sub-divisional Officer, Hazaribag, residing at residence of Sub-divisional Officer, Jheel Kinare (Lake side), Hazaribag, P.O Hazaribagh, P.S. Sadar, District Hazaribag.

.....**Petitioners.**

Versus

1. The State of Jharkhand, through the Chief Secretary, Ranchi;
2. Commissioner-cum-Secretary, Deptt. of Personnel & Administrative Reforms, Govt of Jharkhand, Ranchi;
3. Commissioner-cum-Secretary, Finance Department, Govt of Jharkhand, Ranchi;
4. Union of India, through the Cabinet Secretary, New Delhi ;
5. Secretary, Personnel Public Grievance and Pension Deptt. of personnel and Training, Govt of India, New Delhi ;
6. Deputy Secretary to the Govt of India, Ministry of Personnel, Public Grievance and Pension Deptt. of Personnel & Training, New Delhi. **Respondents.**

With

W.P(S) No.4709 of 2004

1. Siya Ranjan Kumar Singh, son of Late Kritarath Singh, resident of Garima Apartment, Central Ashoka, P.S. Argora, P.O. Ashok Nagar, District-Ranchi.
2. Ramesh Jha, son of Late Sukhdeo Jha, Assistant Engineer, Field Survey Division, Advance Planning, Road Construction Department, P.O. & P.S. Lalpur, District-Ranchi.
3. Sudhakant Jha, son of Late Rameshwar Jha, Assistant Engineer, D.W.S.D., Nepal House, Drinking Water & Sanitation Department, P.O. & P.S. Doranda, District-Ranchi.
4. Brij Bihari Ojha, son of Late Paras Nath Ojha, Technical Advisor to Superintending Engineer, Drinking Water & Sanitation Circle, Ranchi, P.O.& P.S. Hatia, District-Ranchi.
5. Ram Prawesh Singh, son of Sri Ram Khelawan Sinha, Deputy Secretary (MC), Drinking Water & Sanitation Department, P.O. & P.S. Doranda, District-Ranchi.

..... **Petitioners.**

Versus

1. The State of Jharkhand, through the Chief Secretary, Government of Jharkhand, Project Building, H.E.C., Dhurwa, Ranchi.
2. The State of Bihar, through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. Secretary, Personnel, Administrative, Reforms and Rajbhasa Department, Project Building, H.E.C., Government of Jharkhand, Ranchi.
4. Secretary, Road Construction Department, Government of Jharkhand, Project Building, H.E.C., Dhurwa, Ranchi.
5. Secretary, Water Resources Department, Government of Jharkhand, Nepal House, P.O. Doranda, Ranchi.
6. Secretary, Drinking Water & Sanitation Department, Government of Jharkhand, Nepal House, P.O. Doranda, Ranchi. ... **Respondents.**

With

W.P(S) No. 3970 of 2005

Ripu Sudan Dubey S/o Late Pandit Ramashray Dubey resident of MIG 188, Adityapur 2, Jamshedpur P.O.-Adityapur P.S.-RIT Jamshedpur, District-, Seraikela Kharswan

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Petitioner

Versus

1. The State of Jharkhand

2. The Principal Secretary, Department of Personnel & Administrative Reforms, Government of Jharkhand, Ranchi.
 3. The Principal Secretary, Road Construction Department, Government of Jharkhand, Ranchi.
- **Respondents**

With
W.P(S) No. 4577 of 2005

Bidhu Bhushan Dvivedi son of Sri Sunil Kumar Dvivedi, Police Inspector, East Singhbhum, Jamshedpur, resident of Police Line, Golmuri, P.O. and P.S. Golmuri, District East Singhbhum.

.... **Petitioner.**

Versus

1. The State of Jharkhand.
 2. Home Secretary, Government of Jharkhand, P.O. and P.S. Ranchi, District Ranchi.
 3. Personnel (Karmik) Secretary, Government of Jharkhand, P.O. and P.S. Ranchi, District Ranchi.
 4. Director General of Police, Government of Jharkhand, P.O. and P.S. Ranchi, District Ranchi.
 5. Chairman, Jharkhand Public Service Commission, P.O. and P.S. Ranchi, District Ranchi.
- **Respondents**

With
W.P(S) No. 3963 of 2006

Yadunandan Chowdhary, son of late Raghunandan Chowdhary, resident of 396 B, Ashok Nagar, P.O. and P.S. Argora, District Ranchi.

..... **Petitioner**

Versus

1. State of Jharkhand.
2. The Secretary, Road Construction Department, Govt. of Jharkhand, Project Bhawan, H.E.C. Township, P.O. and P.S. Jagannathpur, District-Ranchi.
3. The Secretary, Road Construction Department, Govt. of Bihar, Vishweswaraiya Bhawan, Secretariat, P.O. and P.S. Bailey Road, District-Patna, Bihar.
4. The Principal Secretary, Rural Development Department, Government of Jharkhand, Project Bhawan H.E.C. Township, P.O. and P.S. Jagannathpur, District-Ranchi.
5. The Secretary, Personnel Administrative Reforms and Rajbhasha Department, Govt. of Jharkhand, Project Bhawan, H.E.C. Township, P.O. and P.S. Jagannathpur, District-Ranchi.
6. The Union of India through the Secretary, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, Govt. of India, Lodhi Road, P.O. and P.S. Lodhi Road, Delhi.
7. The Under Secretary, Road Construction Department, Govt. of Jharkhand, Project Bhawan, H.E.C. Township, P.O. and P.S. Jagannathpur, District-Ranchi.

..... **Respondents**

With
W.P(S) No. 4969 of 2006

Ramdeo Paswan S/O Late Darbari Paswan Resident of at present Staff Quarter,
Booty Road, District- Ranchi, **Petitioner**

-Versus-

1. State of Jharkhand
2. Secretary, Road Construction Department. Govt. of Jharkhand, Ranchi.
3. Deputy Secretary, Road Construction Department Govt. of Jharkhand, Ranchi.
4. Ripusudan Dubey S/o Ram Ashray Dubey Resident of MIG Adityapur, Jamshedpur, P.S. RIT, District- Saraikela Kharsawan. At present posted as Chief Engineer, R.C.D., Ranchi.
5. Raghubansh Pd. Singh S/o Sri Radha Prasad Singh Resident of 188 C. Vidyalaya Marg, Ashok Nagar, P.S. Argora, Dist- Ranchi. At present posted as Superintending Engineer, R.E.O. Ranchi.
6. Tripurari Prasad S/o Late Saryu Prasad Resident of D-3 Yuvraj Enclave, Deputy Para, P.S. Lalpur, P.O. G.P.O., Dist. Ranchi. At present (suspended)
7. Krishna Nand Choubey S/o Late Ram Khelawan Choubey Resident of Bank Colony Road, Kokar, P.S. Sadar, P.O. G.P.O. Town & Dist. Ranchi. At present posted as Executive Engineer, Building Construction Deptt. Ranchi

..... **Respondents**

With

W.P(S) No.6540 of 2007

- (1) Ram Krishna Thakur, Son of late Satya Narayan Thakur, Resident of Village Danre, P.S.Pareyahat District Godda (santhal pargana). Present Posting Secretary Technical to Engineer in-chief, Road Construction Department, Govt.of Jharkhand, Project Building, Ranchi.
- (2) Srikant Deo Mandal Son of Late Dhaneshwar Mandal, Resident of Village Dondia PS. Sonorai Thana, Distt Deoghar (Santhal Pargana), Present Posting:- Superintending Engineer, Building Construction Department, Building Circle-2 Ranchi.
- (3) Vijay Kumar Singh Son of Late Ramadhar Singh, Resident of Village Bhelain P.S.Udwantnagar Distt Bhojpur (Bihar), Present Posting:- Technical Secretary, to chief Engineer, N.H. Wing, Jharkhand Ranchi.
- (4) Chandreshwar Prasad Sinha, Son of Sri Badri Narain Sinha, Resident of Village Sarmantpur P.S.-Karpi District Arwal, Present Posting:- Superintending Engineer, N.H. Circle, Dhanbad. (Jharkhand). ... **Petitioners.**

Versus

- (1) The State of Jharkhand, through Chief Secretary, State of Jharkhand, Ranchi.
- (2) The Secretary, Road Construction Department, Govt. of Jharkhand, Ranchi.
- (3) The Deputy Secretary, Road Construction Department Govt. of Jharkhand, Ranchi.
- (4) The Secretary, R.E.O., Govt. of Jharkhand, Ranchi.
- (5) The Secretary, Building, Building Construction Department, State of Jharkhand, Ranchi.
- (6) The Special Secretary, Building Construction Department, Govt. of Jharkhand, Ranchi.
- (7) The Secretary, Personnel and Administration Reforms, Govt. of Jharkhand, Ranchi.
- (8) Yadunandan Choudhary on of not known, Engineer-in-Chief, R.E.O. Cum Special Secretary, Govt. of Jharkhand, Project Bhawan, at and P.O. Ranchi P.S.Dhurwa District-Ranchi.

- (9) Vishnu Ram Son of Not Known, Chief Engineer, National Highway At and P.O. Ranchi P.S.Dhurwa District-Ranchi.
- (10) Patwari Saran Son of not Known, Chief Engineer, C.D.O., Govt. of Jharkhand, Engineer's Hostel, At and P.O.Ranchi P.S.Dhurwa Ranchi.
- (11) Jai p\Prakash Son of Not Known, Chief Engineer, Road, Communication, Govt.of Jharkhand C.M.P.D.I. Kanke Road, At P.O. and P.S.Gonda District-Ranchi.
- (12. Anugrah Prakash Son of Not Known, Chief Engineer, R.E.O. Govt. of Jharkhand Engineer's Bhawan, At and P.O. Ranchi P.S. Ranchi District-Ranchi.
- (13). Murari Bhagat son of Not Known, Chief Engineer, Building Construction Department Govt. of Jharkhand, Near Commissioner office at and P.O. Ranchi P.S. Ranchi(T) District-Ranchi.
- (14) Surajdeo Prasad Son of Not Known, Engineer-in-Chief Building-cum Special secretary Govt. of Jharkhand, project Bhawan, at Ranchi P.S. Dhurwa District Ranchi.
- (15) P.M. Toppo Son of Not Known, Engineer,-in-Chief Road Govt. of Jharkhand Project Bhawan, at Ranchi P.S. Dhurwa District Ranchi(Jharkhand).

... **Respondents.**

With
W.P(S) No.3792 of 2016

Amarendra Kumar Singh, son of Late Sheo Kumar Singh, resident of A/3, Maharani Mansion, CH Area, Old, Road No. 2, Jamshedpur, P.O. and P.S. Bishtupur, District East Singhbhum.

Petitioner

Versus

1. The State of Jharkhand through the Chief Secretary, Government of Jharkhand, Project Bhawan, H.E.C., P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.
2. The Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand, Project Bhawan, H.E.C., P.O. Dhurwa, P.S. Jagannathpur, District Ranchi.
3. The Principal Secretary, Department of Forest and Environment, Government of Jharkhand, Nepal House, Doranda, P.O. and P.S. Doranda, District Ranchi

.... **Respondents.**

With
W.P(S) No.109 of 2017

1. Babu Lal Mahto, son of Shri Sadhu Mahto, resident of Kathitand (Block Road), P.O. & P.S. Ratu, District Ranchi, Jharkhand.
- 2.Raj Kishore Mishra, son of Shri Keshav Nath Mishra, resident of Sunday Market, Aam Tand Road, Ratu, P.O. & P.S. Ratu, District Ranchi.

...**Petitioners.**

Versus

1. The State of Jharkhand through the Chief Secretary, Govt. of Jharkhand, Project Bhawan, H.E.C. Township, P.O. & P.S. Dhurwa, District Ranchi.
2. The Principal Secretary, Department of Personnel, Administrative Reforms and Rajbhasa, Government of Jharkhand, Project Building, H.E.C. Township, P.O. & P.S. Dhurwa, District- Ranchi.
3. The Secretary, Department of School Education and Literacy Department, Government of Jharkhand, P.O. & P.S., District Ranchi.
4. The District Superintendent of Education, Ranchi, P.O., P.S. & District Ranchi.

...Respondents

**CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR**

- | | |
|----------------------------|--|
| For the Petitioners | : Mr. Manoj Tandon, Advocate
Ms. Neha Bhardwaj, Advocate
Mr. Adamyia Kerketta, Advocate
[in W.P(S) Nos.5882 of 2003, 3970 of 2005 & 3963 of 2006]
Mr. Altaf Hussain, Advocate
[in W.P(S) No.2517 of 2004]
Mr. Rahul Kumar, Advocate
Ms. Kavita Kumari, Advocate
[in W.P(S) Nos.3963 of 2006 & 109 of 2017] |
| For the State of Jharkhand | : Mr. Ashok Kumar Yadav, Sr.SC-I
Mr. Sreenu Garapati, SC-III
Ms. Divya, AC to SC-III
[in W.P(S) Nos.5882 of 2003 & 2517 of 2004, 4709 of 2004, 6540 of 2007]
Mr. Nehru Mahto, GP-IV
[in W.P(S) No.109 of 2017] |
| For the State of Bihar | : Mr. S.P Roy, GA(Bihar)
Mr. Binit Chandra, AC to GA(Bihar)
[in W.P(S) No.5882 of 2003] |
| For the JPSC | : Mr. Sanjoy Piprawall, Advocate
Mr. Rakesh Ranjan, Advocate
Mr. Prince Kumar, Advocate
[in W.P(S) No.4577 of 2005] |
| For the Intervenor (Resp.) | : Mr. Sumeet Gadodia, Advocate
Mr. Prakhar Harit, Advocate
[in W.P(S) No.3792 of 2016] |

6th March 2024

Per, Shree Chandrashekhar, A.C.J.

In this batch of writ petitions, the constitutional validity of Eighty-Fifth Amendment Act, 2001 has been challenged primarily on the ground that the amended Article 16(4-A) violates the right to equality under Article 14 and the right to equal opportunity in service under Article 16 of the Constitution. The petitioners are aggrieved by re-fixation of their seniority in the cadre pursuant to the Resolution No.1862 dated 31st March 2003 which was issued by the State of Jharkhand to give effect to Article 16(4-A) of the Constitution. Therefore, the petitioners have also challenged their respective seniority/civil list on a similar ground of violation of Article 14 and Article 16 of the Constitution. For example, the petitioners in W.P(S) No.5882 of 2003 have challenged the provisional gradation list vide Notification dated 15th March 2003 whereunder their seniority has gone down the list to their prejudice. Similarly, in WP(S) No.3963 of 2006

the petitioners have challenged the provisional gradation list dated 29th June 2006 on a similar ground.

2. The petitioners have also questioned the Resolution dated 31st March 2003 issued by the State of Jharkhand adopting the office memorandum issued by the Union of India.

3. In W.P(S) No. 5882 of 2003, the petitioners have made the following prayers:

- i. for quashing/setting aside the 85th Amendment Act 2001, Article 16(4A) whereby and whereunder the Constitution of India has been amended to the effect that nothing in this article shall prevent the state from making any provision for reservation (in matters of promotion with consequential seniority to any class) or class of position in the service under the state in favour of the scheduled case and the scheduled tribe which, in the opinion of the state are not adequately represented in the service under the state.
- ii. For also quashing/setting aside the circular dated 31.3.2002 issued under the signature of the respondent no.2 whereby and whereunder the State of Jharkhand had adopted the memorandum dated 21.1.2002 issued by Union of India.
- iii. For also quashing/setting aside the notification dated 15.3.2003 issued by the Government of Bihar whereby and whereunder the provisional gradation list has been prepared taking into consideration the 85th Amendment in the Constitution of India which is clearly prejudicial to the interest of the petitioners in view of the fact that the juniors to the petitioners have become senior.
- iv. For issuance of any other appropriate direction for doing conscionable justice to the petitioner.”

4. There is an unanimity at the Bar that the constitutional validity of Eighty-Fifth Amendment Act, 2001 after having been affirmed by the Hon’ble Supreme Court in “*M. Nagaraj v. Union of India*” (2006) 8 SCC 212 cannot be debated before this Court. However, the petitioners seek to challenge the Resolution dated 31st March 2003 on the ground that the instructions/directions contained thereunder are unguided, arbitrary and do not confirm to the law laid down by the Hon’ble Supreme Court in “*M. Nagaraj*”, “*Jarnail Singh v. Lachhmi Narain Gupta*” (2018) 10 SCC 396 (hereinafter referred to as “*Jarnail Singh-I*”) and other cases.

5. Mr. Rahul Kumar, the learned counsel who appears for the petitioners in WP(S) Nos.3963 of 2006 and 109 of 2017 takes this Court through the history of reservation in service. The learned counsel has referred to “*General Manager, S. Rly. v. Rangachari*” (1962) 2 SCR 586 wherein the majority decision was that reservation in promotions is permissible. Then came “*State of Kerala v. N.M. Thomas*” (1976) 2 SCC 310 which held that Article 16(4) is not an exception to Article 16(1). It was in “*Indra Sawhney v. Union of India*” 1992 Supp (3) SCC 217 where the majority opinion held that the view expressed in “*Rangachari*” was erroneous and that reservation in promotions is impermissible

under Article 16. Thereafter, Article 16 has undergone amendments to provide for reservation in the promotions and preserving the consequential seniority of the Scheduled Castes and Scheduled Tribes.

6. In “*M. Nagaraj*”, the Hon’ble Supreme Court held that Clause (1) and Clause (4) of the Article 16 of the Constitution embody the principle of equality under Article 14. Therefore, in every case where the State decides to provide for reservation in promotions to the Scheduled Castes and Scheduled Tribes the said decision must be based on twin considerations viz. (i) backwardness and (ii) inadequacy of representation in service. In “*M. Nagaraj*”, the Hon’ble Supreme Court held as under:

“121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal*.

122. We reiterate that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

123. However, in this case, as stated above, the main issue concerns the “extent of reservation”. In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance with Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

124. Subject to the above, we uphold the constitutional validity of the Constitution (Seventy-seventh Amendment) Act, 1995; the Constitution (Eighty-first Amendment) Act, 2000; the Constitution (Eighty-second Amendment) Act, 2000 and the Constitution (Eighty-fifth Amendment) Act, 2001.”

7. Mr. Manoj Tandon and Mr. Rahul Kumar, the learned counsels for the petitioners submit that notwithstanding the constitutional validity of Article 16 (4-A) of the Constitution having been upheld by the Hon’ble Supreme Court the individual writ petitions are required to be dealt with on their own merits.

8. For the sake of convenience, we shall refer to the pleadings in W.P(S) Nos.5882 of 2003. The petitioners therein have pleaded that they were

appointed as Assistant Engineers in the Department of Road Construction in the erstwhile State of Bihar. After the bifurcation of the State of Bihar, they were allotted Jharkhand cadre and were posted in different capacity under different departments of the Government of Jharkhand. The grievance of the petitioners who belong to General category is that the Assistant Engineers under the Scheduled Castes and Scheduled Tribes category (a) who were juniors to them (b) some of them were diploma holders and (c) even those who joined as Junior Engineers and promoted to the post of Assistant Engineer on a much later date, are shown senior to them in the provisional gradation list which was issued after Eighty-Fifth Amendment. Mr. Manoj Tandon, the learned counsel has referred to the comparative chart of seniority before and after Eighty-Fifth Constitution Amendment to demonstrate that unguided adoption and implementation of Article 16(4-A) of the Constitution has caused serious harm to their promotional prospects. The learned counsel has demonstrated that the petitioner no.1 who was initially holding seniority position at Sl. No.232 has gone down in the list at Sl. No.598. Similarly, the other petitioners have also lost their seniority by about 300 position. Whereas, the Scheduled Caste candidates who were appointed later and came in the initial cadre about 5 years after the petitioners have gained and jumped in the seniority list. For example, Ramdeo Paswan who holds a diploma qualification and was appointed in 1980 was at Sl. No.429 in the seniority list and now he is placed at Sl. No.305.

9. The comparative chart showing the positions of the petitioners and the Scheduled Castes and Scheduled Tribes officers in the gradation list is reproduced below:

Sl. No.	Petitioner name	Joined as Asst. Engg. in the years	Technical Qualification	Seniority position in the gradation list dated 15.7.2000	Seniority position in the gradation list dated 15.7.2003	Category
1.	Sri Raghubansh Prasad Singh	1975	Degree	232	598	General
2.	Sri Ganesh Prasad	1975	Degree	263	653	General
3.	Sri Tripurari Shankar Prasad	1976	Degree	279	683	General
4.	Sri Jai Kishore Dutta	1976	Degree	294	698	General
5.	Sri Krishna Nand Choubey	1976	Degree	315	718	General

10. The list of the Scheduled Castes and Scheduled Tribes officers gaining seniority in the gradation list is as under:

1.	Sri Ramdeo Paswan	1980	Diploma	429	305	SC
2.	Sri Yadu Nandan Choudhary	1980	Degree	369	309	SC
3.	Sri Jai Ram Rajak	1980	Diploma	385	373	SC
4.	Sri Badshahi Choudhary	1980	Diploma	389	377	SC
5.	Sri Amrendra Kumar	1981	Diploma	393	379	SC
6.	Sri Pramod Kumar No.2	1981	Diploma	397	391	SC
7.	Sri Hari Charan Rajak	1981	Diploma	430	393	SC

11. Some arguments on applicability of creamy-layer are also advanced by the learned counsel for the petitioners. Mr. Manoj Tandon, the learned counsel for the petitioners has endeavored to contend that the creamy layer restriction has not been considered by the State and the Resolution dated 31st March 2003 does not exclude such Scheduled Castes and Scheduled Tribes seeking reservation in promotions. However, Mr. Sreenu Garapati, the learned SC-III, successfully controverted the attack on Resolution dated 31st March 2003 on such a ground by referring to several paragraphs in *“B.K. Pavitra v. Union of India”* (2019) 16 SCC 129.

12. In *“B.K. Pavitra”*, the Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018 (in short, Reservation Act) enacted to protect the consequential seniority of the Scheduled Castes and Scheduled Tribes from 24th April 1978 was challenged on various grounds including, that the reservation Act does not confirm to the principles enunciated in the decisions of the Hon’ble Supreme Court and, in particular, does not confirm to the compliance, with *“M. Nagaraj”* and *“Jarnail Singh-I”*.

13. In *“B.K. Pavitra”*, the Hon’ble Supreme Court held that the protection of consequential seniority to the Scheduled Castes and the Scheduled Tribes being an incident of promotion does not require the application of the creamy layer test. In paragraph no.148 of the reported judgment, the Hon’ble Supreme Court conclusively pronounced that the concept of creamy layer has no

application in assessing the validity of the Reservation Act which was designated to protect consequential seniority upon promotion of the persons belonging to the Scheduled Castes and Scheduled Tribes.

14. The main plank of the petitioners is “*M. Nagaraj*” wherein the Hon’ble Supreme Court held that the exercise of power by the State shall be arbitrary if the State fails to identify and measure inadequate representation in service of that particular class of employees, to give effect to Article 16 (4-A) of the Constitution by providing reservation in promotions to the Scheduled Castes and Scheduled Tribes and protecting their consequential seniority. Mr. Manoj Tandon, the learned counsel would submit that the provisions under Article 16 (4-A) cannot be given effect to overlooking the equality clause under Article 16 (1) and the discretion of the State to provide reservation in promotions with consequential seniority shall always be subject to the existence of backwardness and inadequacy of representation in public employment.

15. In “*Jarnail Singh-I*” the Hon’ble Supreme Court revisited “*M. Nagaraj*” and held that the requirement to collect quantifiable data showing backwardness of the Scheduled Castes and Scheduled Tribes in “*M. Nagaraj*” was contrary to “*Indra Sawhney*”. Furthermore, “*Jarnail Singh-I*” specifically declined to accept the proposition that the proportion of the Scheduled Castes and Scheduled Tribes to the population of the country should be taken to be the test for determining whether they are adequately or inadequately represented in promotional post for the purpose of Article 16 (4-A). In “*U.P. Power Corpn. Ltd. v. Rajesh Kumar*” (2012) 7 SCC 1, the Hon’ble Supreme Court held that when any provision of the Constitution is held valid with certain conditions or riders then it becomes incumbent on the part of the State to ensure that those conditions are met and fulfilled. In “*Pravakar Mallick v. State of Orissa*” (2020) 15 SCC 297, the Hon’ble Supreme Court held that the parameters as stipulated in “*M. Nagaraj*” and “*Jarnail Singh-I*” on the inadequacy of representation of the Scheduled Castes and Scheduled Tribes in promotional posts in the State are mandatory conditions for the grant of reservation in promotion with consequential seniority under Article 16 (4-A), while balancing the same with the requirements of overall administrative efficiency.

16. The general propositions emanating from the aforementioned decisions are reaffirmed in “*Jarnail Singh v. Lachhmi Narain Gupta*” (2022) 10 SCC 595 (hereinafter referred to as “*Jarnail Singh-II*”) wherein the Hon’ble

Supreme Court held that it is for the State to assess the inadequacy of representation of the Scheduled Castes and Scheduled Tribes in promotional posts by taking into account the relevant factors.

17. In “*Jarnail Singh-II*” the Hon’ble Supreme Court held as under:

“69. The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a “group”, which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions, cadre, which is a part of a “group”, is the unit and the data has to be collected with respect to each cadre. Therefore, we hold that the conclusion of this Court in *B.K. Pavitra (2)* approving the collection of data on the basis of “groups” and not cadres is contrary to the law laid down by this Court in *M. Nagaraj and Jarnail Singh*.”

18. The Resolution dated 31st March 2003 refers to the judgment in “*Union of India v. Virpal Singh Chauhan*” (1995) 6 SCC 684 and the amendment in Article 16(4-A) of the Constitution by the Constitution Eighty-Fifth Amendment Act, 2001 and provides that (i) the resultant seniority of the government servant belonging to the Scheduled Castes and Scheduled Tribes upon their promotion following the rules of reservation/roster shall remain intact and (ii) this decision shall be effective from 17th June 1995 that is the date of the enforcement of Eighty-Fifth Amendment. This Resolution further provides that the government servants belonging to SC/ST category shall be promoted from the date of promotion of their immediate junior belonging to General category/Other Backward Classes and for the intervening period they shall be given notional promotion. Mr. Manoj Tandon and Mr. Rahul Kumar, the learned counsels appearing for the petitioners have indicated that even the stipulation under clause (c) of paragraph no. 3(iii) in the Resolution dated 31st March 2003 to the effect that any procedure approved by the competent authority has not been laid down and blanket reservation in promotions and accelerated promotions with preservation of consequential seniority to the Scheduled Castes and Scheduled Tribes have been provided in the State of Jharkhand.

19. The State of Jharkhand seeks to provide reservation in the promotions to the Scheduled Castes and Scheduled Tribes in public employment under Article 16(4-A) of the Constitution. The State of Jharkhand has however not made any legislation for providing reservation in the promotions to the

Scheduled Castes and Scheduled Tribes in public employment. In the counter-affidavit, the State of Jharkhand did not address any of the issues raised by the petitioners. The stand of the State of Jharkhand as projected in the counter-affidavit is confined to mere reiteration of the provisions under Article 16(4-A) of the Constitution. This is not even pleaded in the counter-affidavit that promotions to the Scheduled Castes and Scheduled Tribes are provided in the government service after conducting a survey as regards their inadequate representation in the cadre. Naturally, there is no reference of any procedure being followed by the State of Jharkhand for providing reservation in promotions to the Scheduled Castes and Scheduled Tribes in government service. The Resolution dated 31st March 2003 has been issued by the order of the Governor of Jharkhand which is thus an executive instruction. However, while providing reservation in promotions to the Scheduled Castes and Scheduled Tribes the State of Jharkhand did not provide any guideline in the Resolution dated 31st March 2003. There is no whisper about the mode, manner and method of providing promotion to the Scheduled Castes and Scheduled Tribes. This is not even pleaded that the inadequacy of representation in any cadre/service has been taken into account for providing reservation in promotions and the consequential benefit of promotion to the Scheduled Castes and Scheduled Tribes. As the pleadings and the data furnished by the petitioners in W.P(S) No.5882 of 2003 reveal, wholesale reservation in promotions to the Scheduled Castes and Scheduled Tribes are being given and their consequential promotions have been protected. The Resolution dated 31st March 2003 apparently does not provide any guidance or lay down any procedure for (i) assessing inadequate representation of the Scheduled Castes and Scheduled Tribes in any cadre/service and (ii) the extent of reservation in promotions that is required to be extended to the Scheduled Castes and Scheduled Tribes.

20. The Resolution dated 31st March 2003 simply reproduces the provisions under Article 16(4-A) of the Constitution with a little elaboration. The validity of this Resolution has to be seen with reference to the object and purpose behind Article 16(4-A) of the Constitution. This is well-settled that even a subordinate legislation can be challenged on the grounds of (i) violation of the fundamental rights (ii) violation of any provision of the Constitution of India (iii) failure to conform to the Parent Act (iv) exceeding the limits of authority under the Parent Act (v) manifest arbitrariness and (vi) unreasonableness. This is also a

well-settled principle that the conferment of authority by the Parent Act for subordinate legislation does not enable the authority to make a provision which travels beyond the scope of the Enabling Act or which is inconsistent therewith or repugnant thereto.

21. Tested on the aforementioned principles, this Court comes to a conclusion that the Resolution dated 31st March 2003 does confer a blanket power to provide reservation in promotions with protection to the consequential seniority to the Scheduled Castes and Scheduled Tribes in government employment. However, having regard to a possible cascading effect in any cadre in the government service about two decades after the first writ petition was filed questioning the validity of the Resolution dated 31st March 2003, this Court is not inclined to interfere with the benefits already conferred pursuant to the seniority/civil list prepared by different departments of the Government.

22. Henceforth, the Resolution dated 31st March 2003 shall not be given effect to till rules/guidelines/executive instructions are issued based on the requirements as mandated by the Hon'ble Supreme Court in "*M. Nagaraj*", "*Jarnail Singh-I*" "*Jarnail Singh-II*" and other decisions of the Hon'ble Supreme Court.

23. These writ petitions succeed to the aforesaid extent and are accordingly disposed of.

(Shree Chandrashekhar, A.C.J.)

(Navneet Kumar, J.)