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SHIV PRASAD

v.

GOVERNMENT OF INDIA & ORS.

(Civil Appeal No. 2979 of 2008)

APRIL 25, 2008

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(C.K. THAKKER AND D.K. JAIN, JJ.)

Service Law:

Roorkee University Act, 1947:

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Appointment of Associate Professor/Assistant Professor in University – Incumbent allegedly recommended for selection as Associate Professor but not offered appointment, but respondent No.4, an ineligible woman candidate, was D *appointed as Assistant Professor – Challenge to – High Court set aside the appointment of respondent No.4 – Correctness of – Held: Incorrect – Cadre of Associate Professors and Assistant Professors is combined one – Since legality of combined cadre not challenged, it could be treated as legal –* E *In terms of reservation policy of the State Government, as accepted by the University, there exist reservation for woman candidate – Reservation of woman candidate cannot be held invalid – Selection Committee was, therefore, enjoined to consider the selection in terms of reservation policy treating the cadre as combined cadre – Under the circumstances,* F *selection of respondent No.4, a woman candidate, as Assistant Professor cannot be held illegal/unlawful.*

Appointment against a single post – Applicability of rule of reservation – Held: Not applicable – However, in the instant G *case, there were three posts to be filled in, allowing 20% reservation for woman candidates, one post, therefore, could to be reserved horizontally for a woman candidate.*

It is the case of the appellant that pursuant to the advertisement issued by the respondent-University for

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filling up the posts of Associate Professor/Assistant Professor, he had applied for appointment for the post of Associate Professor and his name was recommended for appointment as Associate Professor; that respondent No. 4, a woman candidate who was not recommended by the Selection Board, but was declared selected and being appointed as Assistant Professor in the Department of Mathematics. Against her appointment, he had made representations to the University, but there was no favourable reply. He, therefore, filed a writ petition, which was allowed by the Division Bench of the High Court setting aside the appointment of respondent No.4 and directing the University to re-advertise the post and to conduct the selection process afresh. Though, the selection and appointment of respondent No. 4 to the post of Assistant Professor had been set aside, no effective relief was granted in favour of the appellant. Hence, the present appeal. Aggrieved against the order of the High Court setting aside her appointment, respondent No.4 has filed a cross appeal.

Appellant contended that there was no merit list prepared for the Combined Cadre of Associate/Assistant Professor, and horizontal reservation could not be applied thereto; even otherwise, the rule of reservation does not apply to a single post; that respondent No. 4 was an outside candidate and she had wrongly been selected under Flexible Cadre Structure (FCS) as Assistant Professor; that the High Court wrongly interpreted and applied a decision of this Court in the case of *Swati Gupta vs. State of Uttar Pradesh,* (1995) 2 SCC 560 : JT 1995 (2) SC 438 and refused relief to him; and that once the High Court upheld his contention that the University was not right in appointing respondent No. 4 as Assistant Professor, it ought to have allowed the petition in its entirety by directing the authorities to appoint him against the post of Associate Professor. To that extent, the order

A passed by the High Court deserves to be set aside by granting consequential relief to him.

Respondent No. 4 submitted that the High Court has committed an error of law in allowing the petition filed by the appellant and in quashing her appointment; that B admittedly, the cadre of Associate Professor and Assistant Professor is combined one and even the advertisement was issued showing that one post was reserved for woman candidate; that according to the policy of U.P. Government, there should be 20% reservation for 'women C candidates' and the said policy had been followed by the University; and that since there were three posts in the 'Combined Cadre', one was reserved for a woman candidate. Respondent No. 4 was a woman candidate. Thus, the University was fully justified in selecting her D name for the post of Assistant Professor and in giving the appointment; and that her appointment may be restored by modifying the direction of the High Court to re-advertise the post and to undertake selection process afresh.

E Respondent-University submitted that there was no challenge to the Combined Cadre of Associate Professor/ Assistant Professor; that once it is conceded that appointments were to be made against the Combined Cadre, the cases will have to be considered on that basis; F that one vacancy in the Combined Cadre of Associate Professor/Assistant Professor was reserved for women candidate and since respondent No. 4 was available, she was rightly selected, recommended and appointed as Assistant Professor; and that the High Court failed to G appreciate in its proper perspective the concept of 'Combined Cadre' and wrongly allowed the petition, set aside the appointment of respondent No. 4 and directed re-advertisement and fresh process.

H Dismissing the appeal and allowing the cross-appeal,

the Court

HELD: 1. The High Court was in error in allowing the petition filed by the writ petitioner and in setting aside the appointment of respondent No. 4 as Assistant Professor. (Para – 9) [1106-A]

2.1 It is clear that reservation policy of the State Government has been accepted by the University and has been enforced in making various appointments. (Para – 10) [1106-B, C]

2.2 Even the advertisement in question, pursuant to which applications were made by the appellant as also by respondent No. 4 specifically states that the reservation policy of the Government will apply in filling up of posts. The High Court, in the circumstances, ought to have considered and decided the question proceeding on the basis that there was reservation for women. (Para – 10) [1106-D, E]

2.3 It is clear that the reservation for women candidates cannot be held invalid or in excess of permissible quota. In fact, reservation policy itself makes this position clear. (Para – 29) [1114-C, D]

Anil Kumar Gupta & Ors. vs. State of U.P. & Ors., (1995) 5 SCC 173: JT 1995 (5) SC 505 and *Mahesh Gupta & Ors. vs. Yashwank Kumar Ahirwar & Ors.*, (2007) 8 SCC 621 : JT 2007 (10) SC 556 – relied on.

2.4 In the affidavit-in-reply by the University, it was clarified that three posts in the Flexible Cadre Structure (1 General : unreserved + 2 Schedule Caste) were vacant under the heading 'Associate Professor/ Assistant Professor'. Since there was 20% reservation for women and three posts were to be filled in, it came to 0.6% i.e. more than 0.5% and as such one post had to be horizontally reserved for a woman candidate. As respondent No. 4 was found eligible and qualified, she

A was selected and recommended for appointment as Assistant Professor and no grievance can be raised against such lawful action of the University. (Para – 30) [1114-E-G]

3.1 It is clear from the record that the appellant was B selected and recommended for appointment as Associate Professor since he was already working as Assistant Professor (feeder cadre), was eligible to be appointed as Associate Professor and was found fit by the Selection Committee. But it also cannot be ignored or overlooked C that respondent No 4 had also applied to be appointed as Assistant Professor. (Paras – 11 & 12) [1106-F, G]

3.2 The cadre of Associate Professor and Assistant Professor is combined one. An advertisement was issued on that basis. Applications were invited and all candidates D applied on that footing. Legality of 'Combined Cadre' was not challenged in the petition. The Court is, therefore, required to consider the case and decide treating 'Combined Cadre' as legal and valid. (Para – 10) [1106-A,B]

E 3.3 It is no doubt true that in the High Court, at one stage, it was contended by the University that respondent No. 4 was found more meritorious and was preferred to the writ-petitioner though it was neither the assertion of the University at the initial stage nor in the affidavit-in-reply F filed in the High Court. (Para – 31) [1114-G; 1115-A]

3.4 In view of Combined Cadre of Associate/Assistant Professor, the Selection Committee was enjoined to consider the matter on the policy of the Government keeping in view reservation for women. Hence, even G though the appellant was found fit, selected and recommended by the Committee for the post of Associate Professor, in the light of the reservation policy, availability of respondent No. 4 and her selection to the post of Assistant Professor, the action of the University in H appointing her to that post and not appointing the

appellant as Associate Professor cannot be held illegal, unlawful or contrary to law and could not have been set aside by the High Court. (Para – 14) [1107-F, G, H; 1108-A]

3.5 It is clear that the action of the University had neither violated any provision of law nor was inconsistent with the law laid down in the case of *Indra Sawheny vs. Union of India 1992 Supp.(3) SCC 217.* **(Para – 20) [1111-A]**

Indra Sawhney vs. Union of India, **1992 Supp (3) SCC 217: JT 1992 (6) SC 273** *(Indra Sawheny (I))* **– relied on.**

4. On the facts and in the circumstances of the case, the selection, recommendation and appointment of respondent No.4 as Assistant Professor is legal, valid and in accordance with law and could not have been set aside by the High Court. The order of the High Court to that extent is set aside upholding the action of the University. (Para –34) [1115-E, F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2979 of 2008.

From the Order dated 18.9.2003 of the High Court of Uttranchal at Nainital in C.W.P. No. 802 (S/B) of 2001.

WITH

Civil Appeal No. 2989 of 2008.

V. Shekhar, J.N. Dubey, R.P. Wadhwani, S. Ganesh, Pradeep K. Dubey, Zangpo Sherpa, Abhigya, S.R. Setia, Ashok K. Srivastava, Saurabh Trivedi, Indrajeet Das, Anurag Dubey, Anu Sawheney and S.K. Daivakar for the Appearing parties.

The Judgment of the Court was delivered by

C.K. THAKKER, J. 1. Leave granted.

2. Both these appeals have been instituted by the appellants being aggrieved and dissatisfied with the judgment and order passed by the High Court of Uttranchal (now

A Uttrakahand) on September 18, 2003 in Writ Petition No. 802 (S/B) of 2001.

3. Shortly stated the facts of the case are that on August 10, 2000, Roorkee University issued an advertisement for filling up various vacancies in different faculties. The controversy in
B present appeals relates to the vacancy position in the Department of Mathematics. As observed in the impugned judgment of the High Court, there were six posts of Professors (unreserved) and three posts of Associate/Assistant Professors. Out of three posts, two were reserved for Scheduled Caste
C candidates while one was for General Category: Unreserved (UR). They were to be filled under Flexible Cadre Structure (FCS) in accordance with reserve roaster notified by the Government of Uttar Pradesh under whose control the University was functioning at the relevant time. Appellants in both the appeals
D applied in March, 2001. Interviews were conducted on March 20, 2001. Selection Committee met on the next day, i.e. March 21, 2001. It is the case of the writ petitioner that he was selected for the post of Associate Professor. According to him, respondent No. 4 (Dr. Madhu Jain) was not found eligible and
E was neither selected nor recommended. The writ petitioner, however, did not receive an appointment letter for quite some time. On the contrary, he came to know that respondent No. 4 was intimated by the University that she was selected and being appointed as Assistant Professor in the Department of
F Mathematics. The writ petitioner made representations. Since there was no favourable reply, he was constrained to approach the High Court by filing a writ petition. The Division Bench of the High Court by the order impugned in the present appeals, allowed his petition, set aside the appointment of respondent
G No. 4 but directed the University to re-advertise the post and to conduct the selection process afresh. Consequence of the order passed by the High Court was that the writ petitioner succeeded and selection and appointment of respondent No. 4 to the post of Assistant Professor in Mathematics had been set aside, but no effective relief had been granted in favour of writ petitioner.
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The grievance of the writ petitioner in the present appeal is that A
though he was eligible, qualified, found fit and recommended for appointment to the post of Associate Professor, he was not appointed. The High Court, no doubt, allowed his writ petition but it was wrong in directing re-advertisement of the post and to conduct selection process afresh. The complaint of respondent B
No. 4-appellant in the cognate appeal, on the other hand, is that on the facts and in the circumstances of the case, she was rightly selected, recommended and appointed as Assistant Professor in Mathematics and the High Court was not justified in setting aside her appointment. The action of the University in appointing C
her was legal and valid and ought not to have been disturbed by the High Court.

4. On January 6, 2004, notice was issued by this Court in Special Leave Petition instituted by the writ petitioner. The parties were directed to exchange affidavits. Meanwhile, D
respondent No. 4 also instituted Special Leave Petition on January 29, 2004. In that matter also notice was issued. Both the matters were then ordered to be placed for final hearing on a non-miscellaneous day and that is how the matters have been placed before us. E

5. We have heard the learned counsel for the parties.

6. The learned counsel for the appellant-writ petitioner contended that the writ petitioner was working as Assistant Professor. Pursuant to an advertisement issued by the University F
for filling up posts of Associate/ Assistant Professor (Combined Cadre), the writ petitioner applied and got himself selected and was recommended for appointment to the post of Associate Professor. It was also submitted that there was no merit list for the Combined Cadre of Associate/Assistant Professor, and G
horizontal reservation could not be applied. Moreover, the post of Associate Professor is a promotional post from the post of Assistant Professor which the writ petitioner was holding. In other words, the post of Assistant Professor is the feeder post from which a person may be promoted to the higher post of Associate H

A Professor. Since there was only one post of Associate Professor, even otherwise, the rule of reservation does not apply to a single post. In the advertisement also, the post was shown as UR (unreserved). Respondent No. 4 was an outside candidate, i.e. she was from Agra University and she had wrongly been B selected under FCS [Flexible Cadre Structure] as Assistant Professor in the Combined Cadre of Associate/Assistant Professor. It was also submitted that the High Court wrongly interpreted and applied a decision of this Court in *Swati Gupta v. State of Uttar Pradesh,* (1995) 2 SCC 560 : JT 1995 (2) SC C 438 and refused relief to the writ petitioner. Once the High Court upheld his contention that the University was not right in appointing respondent No. 4 as Assistant Professor, it ought to have allowed the petition in its entirety by directing the authorities to appoint writ petitioner to the post of Associate Professor. To D that extent, therefore, the order passed by the High Court deserves to be set aside by granting consequential relief to the writ petitioner.

7. The learned counsel for respondent No. 4 who has also approached this Court against the order setting aside her E appointment, contended that the High Court has committed an error of law in allowing the petition filed by the writ petitioner and in quashing her appointment. It was submitted that admittedly, the cadre of Associate Professor and Assistant Professor is combined and even the advertisement was issued F showing both the cadres as 'combined' one. One post was reserved in women category. According to the policy of the U.P. Government, there should be 20% reservation for 'women candidates'. The said policy had been accepted and implemented by the University. Since there were three posts in G the 'Combined Cadre', one was reserved for a woman candidate. Respondent No. 4 was a woman candidate so far as Assistant Professor (Mathematics) was concerned. In view of the said fact, the University was fully justified in selecting her, recommending her name for Assistant Professor and in giving appointment. The writ petitioner could not have made grievance H

against her appointment and the High Court was not right in setting aside the appointment of respondent No. 4. She had, therefore, prayed that the writ petition filed by the writ petitioner may be dismissed and her appointment may be restored by modifying the direction of the High Court to re-advertise the post and to undertake selection process afresh. It was also urged that the writ petitioner had made prayer only to .quash appointment of respondent No. 4 in the writ petition and no relief was sought seeking his appointment to the post of Associate Professor. Therefore, even otherwise, he cannot be ordered to be appointed as Associate Professor and his appeal is liable to be dismissed.

8. The learned counsel for the University supported the action taken by the University. According to him, there was no challenge to the Combined Cadre of Associate Professor/ Assistant Professor. The contention of the writ petitioner that he was already holding the post of Assistant Professor and was seeking selection and appointment to the higher and promotional post of Associate Professor was wholly irrelevant. Once it is conceded that appointments were to be made to Combined Cadre, the cases will have to be considered on that basis. In the instant case, one vacancy in the Combined Cadre of Associate Professor/Assistant Professor was reserved for women candidate and since respondent No. 4 was available, she was rightly selected, recommended and appointed as Assistant Professor and the writ petitioner could not have challenged that action. The counsel also stated that respondent No. 4 was selected as Assistant Professor. The High Court unfortunately failed to appreciate in its proper perspective the concept of 'Combined Cadre' and wrongly allowed the petition, set aside the appointment of respondent No. 4 and directed re-advertisement and fresh process. To that extent, therefore, the High Court was in error. He, therefore, submitted that the appeal filed by the writ petitioner is liable to be dismissed and the appeal of respondent No. 4 deserves to be allowed.

9. Having considered the rival contentions of the parties,

A in our opinion, the High Court was in error in allowing the petition filed by the writ petitioner and in setting aside the appointment of respondent No. 4 as Assistant Professor.

10. It is no more in dispute that the cadre of Associate Professor and Assistant Professor is combined one. An B advertisement was issued on that basis. Applications were invited and all candidates applied on that footing. Legality of 'Combined Cadre' was not challenged in the petition. The Court is, therefore, required to consider the case and decide treating 'Combined Cadre' as legal and valid. It is also clear that C reservation policy of the State Government has been accepted by the University and has been enforced in making various appointments. This is also clear from the letter, dated February 26, 1999 by the Secretary, Government of U.P. to various authorities wherein it was expressly stated that a decision of D 20% reservation for women in direct appointment had been taken by the Government. Moreover, even the advertisement in question, dated August 10, 2000, pursuant to which applications were made by the writ-petitioner as also by respondent No. 4 refers to the advertisement and specifically states that the E reservation policy of the Government will apply in filling up of posts. The High Court, in the circumstances, ought to have considered and decided the question proceeding on the basis that there was reservation of 20% for women.

11. Now, from the record, it is clear that the writ-petitioner F was selected and recommended for the appointment as Associate Professor since he was already working as Assistant Professor (feeder cadre), was eligible to be appointed as Associate Professor and was found fit by the Selection Committee.

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12. But it also cannot be ignored or overlooked that respondent No 4 had also applied to be appointed as Assistant Professor. The learned counsel for the writ petitioner contended that respondent No. 4 was not eligible to be considered for the post of Associate Professor inasmuch as she was an 'outsider',

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i.e. not from the University of Roorkee but from the University of Agra and that she was not eligible and qualified to be selected and appointed as Associate Professor since she was not working as Assistant Professor which is the feeder cadre.

13. The learned counsel is right to that extent. The High Court, upholding the contention of the writ petitioner, allowed his petition and set aside the appointment of respondent No. 4. It is, however, important to note that the cadre is a Combined Cadre of Associate Professor as well as Assistant Professor. An advertisement was also issued on the basis of Combined Cadre. The said action was never challenged by the writ-petitioner. The reservation policy of the Government of U.P. was applied by the University which is also not in dispute. Even the advertisement refers to such policy. In the circumstances, the only question is whether appointment of respondent No. 4 to the post of Assistant Professor could legally have been made by the University.

14. In our considered opinion, in the light of the above facts and circumstances, namely, the cadre of Associate Professor and Assistant Professor is a Combined Cadre, the policy of reservation of U.P. Government provides for 20% reservation for women, the said policy has been accepted by the University; that even the advertisement referred to that policy, the advertisement also provided for selection and appointment on the Combined Cadre of Associate/ Assistant Professor, that respondent No. 4 was a woman candidate for the post of Assistant Professor and was duly considered, selected and recommended for the post of Assistant Professor, selection and recommendation of the writ petitioner as Associate Professor, in our considered opinion, was irrelevant. In view of Combined Cadre of Associate/Assistant Professor, the Selection Committee was enjoined to consider the matter on the policy of the Government keeping in view reservation for women. Hence, even though the writ petitioner was found fit, selected and recommended by the Committee for the post of Associate Professor, in the light of the reservation policy, availability of

A respondent No. 4 and her selection to the post of Assistant Professor, the action of the University in appointing her to that post and not appointing the writ petitioner as Associate Professor cannot be held illegal, unlawful or contrary to law and could not have been set aside by the High Court.

B 15. It was contended by the learned counsel for the writ-petitioner in the High Court as also before us that there was only one post of Associate/Assistant Professor and as per settled principle of law, the rule of reservation does not apply to 'Single Cadre Post'. The counsel, in this connection, relied upon
C a decision of this Court in *Post Graduate Institute of Medical Education & Research, Chandigarh v. Faculty Association & Ors.*, (1998) 4 SCC 1 : JT 1998 (3) SC 223.

16. So far as the proposition of law is concerned, there
D can be no two opinions about it. It was, however, the case of the respondents that this was not a case of 'Single Cadre Post'. In this connection, the attention of this Court was invited to an affidavit filed by the Registrar of the University clarifying the position.

E 17. The deponent while dealing with 'preliminary submissions', in para (ii) stated;

> The post of Associate Professor and Asstt. Professor are in the Joint Cadre under the 'Flexible Cadre Structure' and as such the number of these posts is to be jointly
F counted for the purpose of women's reservation in the advertisement issued by the University, a copy of which is annexed as Annexure P-1 to the S.L.P. one post in General Category and two posts for S.C. category (total three posts) have been shown as vacant under the heading of
G 'Associate Professor/ Asstt. Professor' and when the reservation of 20% for the women was calculated on three vacancies, the figure came to 0.6 meaning thereby, that one post had to be horizontally reserved for a women candidate who may be found eligible for selection. Dr.
H Madhu Jain, a selected woman candidate, was therefore,

correctly given the appointment of Asstt. Professor. This offer had also been accepted by Dr. Madhu Jain.

It is significant to bring it to the kind notice of this Hon'ble Court that had Dr. Madhu Jain not accepted the offer of appointment to the post of Asstt. Professor, the other woman candidate on the combined panel, namely, Dr. (Ms.) Pratibha, would have been offered appointment.

Thus it is submitted that the positions of Associate Professor and Asstt. Professor were both in the 'Joint Cadre' in the University under the 'Flexible Cadre Structure', approved for the University by the U.P. Govt. and according to the policy of the U.P. Govt. (which was followed in the University), 20 percent of all the advertised posts in a Deptt. Other than Professors, were to be reserved "Horizontally" for the women candidates.

The University had implemented the reservation policy of the Govt. for reservation of the women in services in letter and spirit, it was not possible to offer an appointment to the Petitioner first, when women candidates were on the panel and according to the provision for horizontal reservation, they were entitled in turn, to get the appointment first.

18. The University, through its Registrar, further stated in the counter that the University had considered the provisions of the Roorkee University Act, 1947, the policy of reservation framed by the Government of U.P. and also the direction issued and law laid down by this Court in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : JT 1992 (6) SC 273 (*Indra Sahney I)* that the total reservation of vacancies of all categories should not exceed 50% of the total vacancies.

19. The University, then stated;

If we apply the aforesaid mandate to the facts of the present case in the Department of Mathematics reservation roster register worked like this:

(a) Upto the year 1999 and immediately before the impugned advertisement dated 10.8.2000 (R-3) the University had utilized 10 roster points for the Department of Mathematics. Out of these 10 roster points while 02 vacancies were to go to SCs, 03 were to go to OBCs and 05 unreserved. 05 vacancies for OBCs and 05 unreserved had been filled up, while 02 vacancies reserved for SCs remained unfilled for want of suitable candidates. This position emerged out after conducting 02 special recruitment drives in addition to normal recruitment between 1995 to 1999.

(b) The 11th Roster point meant for a Scheduled Caste was filled up during this recruitment. The 12th roster point (for unreserved category) and the 13th (for OBC) were separately advertised for the Master of Computer Applications (MCA Programme) an inter disciplinary programme, being run by the Department of Mathematics as the Administrative Department.

(c) Came then the 14th roster point meant for an unreserved candidate, on which Dr. (Mrs.) Madhu Jain was appointed.

(d) The net result thus is that out of the 14 roster points so far utilized, 2 were meant for the MCA Programme, while remaining 12 had the under-mentioned distribution:-

SC	-	3 (2 unfilled)
OBC	-	3 (filled)
Unreserved	-	6 (filled)

It is, therefore, crystal clear that out of the 12 roster points utilised till date, 6 went to the unreserved candidates and 6 to the reserved candidates of different categories, thereby assiduously following the 50% mandate of the Hon'ble Supreme Court expounded in Indira Sawheny's case supra.

20. It is thus clear that the action of the University had neither violated any provision of law nor was inconsistent with the law laid down in *Indra Sawheny I.* A

21. The next question then is : How can this woman-reservation be implemented and enforced? Whether such reservation will violate *Indra Sawheny (I)* and exceed 50% reservation which is maximum? Our reply is in the negative. Let us consider the issue. B

22. In *Indra Sawheny (I)*, Justice Jeevan Reddy dealt with this aspect. His Lordship observed that there are two types of reservations; (i) vertical reservations; and (ii) horizontal reservations. They must be so applied as not to exceed the percentage of reservations which is permissible under law. This can be done by 'interlocking reservations'. C

23. His Lordship proceeded to state; D

> There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations — what is called interlocking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to clause (1) of Article 16. ***The persons selected against this quota will be placed in the appropriate category; if he belongs to SC category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (OC) category, he will be placed in that category by making necessary adjustments.*** Even after providing for these horizontal reservations, the percentage E F G H

A of reservations in favour of backward class of citizens remains — and should remain — the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure. (emphasis supplied)

B 24. A similar question came up for consideration in *Swati Gupta*. There, the petitioner appeared in the Combined Pre-Medical Test (CPMT) held by the State. She was not selected. She challenged a notification of the State Government on the ground that the reservation was 65% which exceeded 50% and C was thus violative of the constitutional guarantee under Articles 14, 16, 19 and 21 of the Constitution as also the ratio laid down in *Indra Sawhney (I)*. The Government of U.P., however, issued another notification clarifying its stand on reservations.

D 25. In the amended notification, it was clarified that the reservations for the candidates belonging to ***other categories***, such as, dependents of freedom-fighters, sons/ daughters of deceased/disabled soldiers, physically handicapped candidates, etc. would be '***horizontal***' and the candidates selected in those categories would be adjusted in the categories E to which they belong, i.e. either reserved category of Schedule Castes (SC), Schedule Tribes (ST), Other Backward Class (OBC) or Open Category (OC) in '***vertical***' reservation and it would not violate constitutional guarantee.

F 26. The Court considered *Indra Sawhney (I)*, applied it to the case on hand and held that the submission of the State was well founded and the contention of the petitioner that the reservation violated constitutional guarantee of 50% was not well-founded.

G 27. The Court stated;

> The vertical reservation is now 50% for general category and 50% for Scheduled Castes, Scheduled Tribes and Backward Classes. Reservation of 15% for various categories mentioned in the earlier circular which reduced

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the general category to 35% due to vertical reservation has now been made horizontal in the amended circular extending it to all seats. The reservation is no more in general category. The amended circular divides all the seats in CPMT into two categories— one, general and other reserved. Both have been allocated 50%. ***Para 2 of the circular explains that candidates who are selected on merit and happen to be of the category mentioned in para 1 would be liable to be adjusted in general or reserved category depending on to which category they belong, such reservation is not contrary to what was said by this Court in Indra Sawhney.***

(emphasis supplied)

28. A similar question was raised in *Anil Kumar Gupta & Ors. V. State of U.P. & Ors.*, (1995) 5 SCC 173 : JT 1995 (5) SC 505. Referring to *Indra Sawhney (I),* and *Swati Gupta,* the Court observed;

Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied — in case it is an overall horizontal reservation — no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/ accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of

A compartmentalised horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, B may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against C the OC quota.

[see also *Mahesh Gupta & Ors. V. Yashwank Kumar Ahirwar & Ors.*, (2007) 8 SCC 621 : JT 2007 (10) SC 556].

29. It is thus clear that the reservation for women candidates D cannot be held invalid or in excess of permissible quota. In fact, reservation policy itself makes this position clear. A letter, dated February 26, 1999 referred to above and annexed as Annexure P1 is explicitly clear. Para 2 reads thus;

Reservation will be of Horizontal nature i.e. if any Woman E candidate selected on the basis of reservation on any category then she will be fixed of the said category.

30. In the affidavit-in-reply by the University, it was clarified that three posts in the Flexible Cadre Structure (1 General : unreserved + 2 Schedule Caste) were vacant under the heading F 'Associate Professor/ Assistant Professor'. Since there was 20% reservation for women and three posts were to be filled in, it came to 0.6% i.e. more than 0.5% and as such one post had to be horizontally reserved for a woman candidate. As respondent No. 4 was found eligible and qualified, she was G selected and recommended for appointment as Assistant Professor and no grievance can be raised against such lawful action of the University.

31. It is no doubt true that in the High Court, at one stage, it was contended by the University that respondent No. 4 was H

found more meritorious and was preferred to the writ-petitioner though it was neither the assertion of the University at the initial stage nor in the affidavit-in-reply filed in the High Court. A

32. The learned counsel for the University stated that the cases of the candidates, i.e. writ-petitioner and respondent No. 4 were totally different and distinct. Case of writ-petitioner was considered for the post of Associate Professor whereas the case of respondent No. 4 was considered for the post of Assistant Professor. It was only because there was Combined Cadre of Associate/Assistant Professor that only one of them could be appointed. And in view of horizontal reservation, it was respondent No. 4 who could be selected and recommended for appointment as Assistant Professor and writ-petitioner had no occasion to make complaint against such appointment. The post was of Open Category (OC), i.e. General and respondent No. 4 was accommodated on that post on Open Category in Women Reservation Quota. B C D

33. For completion of record, it may be stated that in 2005, writ-petitioner (Dr. Shiv Prasad) was selected and has joined as Associate Professor from February 14, 2006 (A.N.). E

34. For the foregoing reasons, in our view, the appeal filed by Dr. Shiv Prasad (Petitioner of Writ Petition No. 802 (S/B) of 2001) deserves to be dismissed and is hereby dismissed. The appeal filed by Dr. (Mrs.) Madhu Jain (respondent No. 4 in Writ Petition No. 802 (S/B) of 2001) deserved to be allowed and is accordingly allowed. Her selection, recommendation and appointment as Assistant Professor is held legal, valid and in accordance with law and could not have been set aside by the High Court. The order of the High Court to that extent is set aside upholding the action of the University. On the facts and in the circumstances of the case, however, all the parties are directed to bear their own costs. F G

S.K.S. Civil Appeal No. 2979 of 2008 dismissed and Civil Appeal No. 2989 of 2008 allowed. H