

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1945 of 2022

-
1. Ankit Kumar Shukla, Son of Shiv Kishor Shukla Resident of Shuklan Ka Purawa, Naudhiya, P.S. Sangramgarh, District- Pratapgarh, Uttar Pradesh - 230141,
 2. Arun Kumar Son of Raj Kumar Resident of Umaria, Pipara, Halia, P.S. - Hallia, District- Mirzapur, U.P. - 231211.
 3. Pradeep Mishra Son of Anil Mishra Resident of Village - Padrahawa, P.O. - Majhauna, P.S. Campierganj, District- Gorakhpur, U.P. - 273165.
 4. Rajnish Kumar Mishra Son of Ram Narayan Mishra Resident of Village - Devali (Mishrapura), P.O. -Salamatpur, Ghazipur, P.S. - Salamatpur, District- Ghazipur, U.P. - 275201.
 5. Prateek Singh Son of Uday narayan Singh Resident of 257, Saray Bharti, P.S. - Rasra, District- Ballia, U.P. - 221712.
 6. Rahul Joshi Son of R.N. Joshi Resident of 24/25 MMIG, Koshalpuri Colony, Phase - 1, P.S. Rekabganj, District- Faizabad, U.P. - 224001.
 7. Manish Kumar Singh Son of Ravindra Singh Resident of Laudah, Dama, Mahnagar, P.S. Mehnagar, District- Azamgarh, U.P. - 276204.
 8. Alok Mohan Yadav Son of Rajdev Yadav Resident of Siyarampur Tola, Nandpar, Rampur, Gopalpur, P.S. - Gulthariya, District- Gorakhpur, U.P. - 273007.
 9. Shubham Singh Son of Mahendra Pratap Singh Resident of Pure Baburiha, P.O. - Chhivalaha, Lalganj, P.S. - Sareni, District- Rae Bareli, U.P. - 229216.
 10. Sonu Kumar Pandey Son of Munnan Pandey Resident of Iiia, Chandauli, P.S. - Iiia, District- Chandauli, U.P. - 232118.
 11. Snehi Kumari D/o Dharendra Kumr Sinha Resident of Birpur Hospital Road, Near Shiv Mandir, Ward No. 1, Basantpur, P.S. - Birpur, District- Supaul, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Secretary, Water Resources Department, Government of Bihar, Patna.
4. The Secretary, Building Construction Department, Government of Bihar, Patna.
5. The Secretary, Rural Works Department, Government of Bihar, Patna.
6. The Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
7. The Principal Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
8. The Deputy Secretary (Management Cell), Road Construction Department, Govt.

of Bihar, Patna.

- 9. The Bihar Public Service Service Commission through its Chairman, Patna.
- 10. The Secretary, Bihar Public Service Commission, Patna.
- 11. The Joint Secretary - cum - Controller of Examination, Bihar Public Service Commission, Patna.
- 12. Robin Kumar (U R Category), Roll No. 225446, Merit SI. No. 2949.
- 13. Jyoti Kumari (SC Category), Roll No. 212173, Merit SI. No. 2950.
- 14. Supriya Kumari ST Category), Roll No. 210416, Merit SI. No. 2678.
- 15. Md. Irshad Ansari (EBC Category), Roll No. 224284, Merit SI. No. 2945.
- 16. Praveen Kumar (BC Category), Roll No. 210461, Merit SI. No. 2934.
- 17. Ankita Kumari (BC Lady Category), Roll No. 212350, Merit SI. No. 2847.

... ... Respondent/s

with

Civil Writ Jurisdiction Case No. 13498 of 2021

- 1. Sudhanshu Kumar S/o Bajindra Singh R/o Village Katauna, P.S. Katrisarai, District Nalanda
- 2. Gaurav S/o Lal Babu Thakur R/o Maa Laxmi Complex, 403, Block B, I.A.S. Colony, P.S. Rupaspur, District Patna.
- 3. Ankit Singh S/o Sriram Singh R/o Ranipur, Dighwara, P.S. Dariyapur, District Saran.
- 4. Shubham Gupta S/o Radhe Shyam Gupta R/o 605/1, Near Kanpur Railway Line, C.P. Mission Compound, P.S. Sipri, District Jhansi (Uttar Pradesh)
- 5. Neeraj Kumar Das S/o Chaturanand Das R/o 19 Gopal Vihar Colony, P.S. Sadar Bazar, District Agra (Uttar Pradesh).

... ... Petitioner/s

Versus

- 1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
- 2. Chief Secretary, Govt. of Bihar, Patna.
- 3. Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
- 4. Principal Secretary, Public Health Engineering Department, Govt. of Bihar, Patna.
- 5. Principal Secretary, Water Resources Department, Govt. of Bihar, Patna.
- 6. Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
- 7. Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
- 8. Principal Secretary, Planning and Development Department, Govt. of Bihar, Patna.
- 9. The Bihar Public Service Commission through its Chairman, Patna.

- 10. The Secretary, Bihar Public Service Commission, Patna.
- 11. The Joint Secretary cum Controller of Examination, Bihar Public Service Commission, Patna.
- 12. Satyam Kumar S/o Shri Sushil Kumar Mandal R/o Village and P.O.- Valthi Maheshpur, P.S.- Karsela, District- Katihar, Pin Code- 854101.
- 13. Sunil Kumar S/o Shri Uma Charan Gupta R/o Mohalla Plus, P.O.- Plus, P.S.- Shekhpura, Dist- Shekhpura, Pin Code- 811105.
- 14. Reshikesh Ranjan S/o Shri Mahendra Ram R/o Chitragupatpuri Manipur, Ward No.-1, P.S.- Kajimuhamadpur, Dist- Muzaffarpur, Pin Code- 842001.
- 15. Gaurav Kumar S/o Subodh Kumar Chaurasia Resident of Village and Post- Madaiya, P.S.- Parbatta, Dist- Khagaria, Pin Code- 851212.
- 16. Sonu S/o Shri Jagdish Sahu Resident of Village- Sohata, P.O.- Giridhpatti, P.S.- Chhatapur, District- Supaul, Pin Code- 852137.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6094 of 2022

- 1. Shashank Shekhar Sandilya son of Anant Narayan Tiwari, Resident of Village- Parsia, P.S.-Brahampur, District-Buxar.
- 2. Sudhanshu Kumar, Son of Bajindra Singh, Resident of Village-Katauna, P.S.- Katarisarai, District-Nalanda.
- 3. Raj Kumar, son of Sanjay Kumar Singh, Resident of Rana Pratap Nagar, Chas, Bokaro, P.S.-Chas, District-Bokaro (Jharkhand).

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
- 2. The Secretary, Public Health Engineering Department, Government of Bihar, Patna.
- 3. The Secretary, Water Resources Department, Government of Bihar, Patna.
- 4. The Secretary, Building Construction Department, Government of Bihar, Patna.
- 5. The Secretary, Rural Works Department, Government of Bihar, Patna.
- 6. The Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
- 7. The Principal Secretary, Minor Water Resources Department, Govt. of Bihar, Patna.
- 8. The Deputy Secretary (Management Cell), Road Construction Department, Govt.

of Bihar, Patna.

- 9. The Bihar Public Service Commission through its Chairman, Patna.
- 10. The Secretary, Bihar Public Service Commission, Patna.
- 11. The Joint Secretary-cum-Controller of Examination, Bihar Public Service Commission, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3389 of 2023

Nitesh Kumar Son of Madan Mohan Karn, Resident of Mohalla- Ward No. 15, Barah Patther Samastipur, P.S.- Samastipur Muffasil, District- Samastipur.

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Additional Chief Secretary, Road Construction Department, Government of Bihar, Patna.
- 2. The Secretary, Public Health Engineering Department, Government of Bihar, Patna.
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- 7. The Principal Secretary, Minor Water Resources Department, Government of Bihar, Patna.
- 8. The Deputy Secretary (Management Cell), Road Construction Department, Govt. of Bihar, Patna.
- 9. The Bihar Public Service Commission through its Chairman, Patna.
- 10. The Secretary, Bihar Public Service Commission, Patna.
- 11. The Joint Secretary-Cum- Controller of Examination Bihar Public Service Commission, Patna.
- 12. Robin Kumar, (UR Category), Roll No. 225446, Merit Sl. no. 2949.

... .. Respondent/s

Constitution of India---Article 14, 16, 226---writ petition to challenge the final result published by The Bihar Public Service Commission (BPSC) for selection of candidates for the post of Assistant Engineer (Civil Engineering) in various Departments in the Government of Bihar on the ground that that the same had been prepared solely on the basis of merit and not on the basis of merit cum choice (preference wise) as was mandated under the Notification dated 20.02.2021.

Findings: in the instant case, though B.P.S.C. selected Assistant Engineers (Civil), they were selected for distinct and separate departments, constituting separate cadre--- By virtue of Advertisement No. 2 of 2017, the option of the candidates was sought for with respect to the service in different departments. The meritorious candidates were entitled to be appointed in their preferential departments constituting separate and distinct cadre---if such exercise was done, there would have been automatic march of unreserved candidates like the petitioners in the vacant reserved category and, in such event, the cut-off mark would automatically be decreased--- neither the State Government nor the B.P.S.C. carried out such exercise resulting in almost 140 vacant seats in different departments--- in examinations where different cadres of posts are required to be filled up in different cadre, if preference based allotment and distribution of merit-list on the basis of Meritorious reserved candidates (MRC) and filling up of the vacant seats taken by MRCs by the unreserved candidates are not taken into consideration, there would be topsy turvy situation with regard to the principles of reservation--- writ petitions allowed--- Respondents directed to revisit the final selection list and rewrite the cut-off mark for unreserved candidate within 90 days from the date of this order. **(Para- 2-3, 67-71)**

2010 (7) SCC 234

.....**Relied Upon.**

(1996) 3 SCC 253, (2018) 2 SCC 656

.....**Differentiated.**

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 10. Sonu Kumar Pandey Son of Munnan Pandey Resident of Ilia, Chandauli, P.S. - Ilia, District- Chandauli, U.P. - 232118.
 11. Snehi Kumari D/o Dharendra Kumr Sinha Resident of Birpur Hospital Road, Near Shiv Mandir, Ward No. 1, Basantpur, P.S. - Birpur, District- Supaul, Bihar.

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8. The Deputy Secretary (Management Cell), Road Construction Department, Govt.



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- 12. Robin Kumar, (UR Category), Roll No. 225446, Merit Sl. no. 2949.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1945 of 2022)

For the Petitioner/s : Mr. Mukesh Kumar



For the Respondent/s : Mr. Vikash Kumar (Sc11)
For the BPSC : Mr. Lalit Kishore, Sr. Advocate
Mr. Sanjay Pandey, Advocate
Mr. Ayush Kumar, Advocate
Mr. Kanishka Shanker, Advocate

(In Civil Writ Jurisdiction Case No. 13498 of 2021)

For the Petitioner/s : Mr. P. N. Shahi, Sr. Advocate
Mr. Rajendra Narain, Sr. Advocate
Mr. Bhola Kumar, Advocate
Mr. Harsh Singh, Advocate
Mr. Mukesh Kumar, Advocate
For the Respondent/s : Mr. P.K. Verma, AAG-3
Mr. Suman Kumar Jha, AC to AAG-3
For the BPSC : Mr. Lalit Kishore, Sr. Advocate
Mr. Sanjay Pandey, Advocate
Mr. Nishan Kumar Jha, Advocate

(In Civil Writ Jurisdiction Case No. 6094 of 2022)

For the Petitioner/s : Mr. Mukesh Kumar
For the Respondent/s : Mr. Vikash Kumar (SC 11)
Mr. Shushil Kumar, GP-22
For the BPSC : Mr. Lalit Kishore, Sr. Advocate
Mr. Sanjay Pandey, Advocate
Mr. Nishant Kumar Jha, Advocate

(In Civil Writ Jurisdiction Case No. 3389 of 2023)

For the Petitioner/s : Mr. Bhola Kumar, Advocate
For the Respondent/s : Mr. Sushil Kumar (Gp 22)
Mr. K. K. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 07-02-2025

1. These batch of writ petitions having similar set of questions of law and facts have been heard together and this Court



proceeds to deliver the following judgement to dispose of aforementioned writ petitions by a composite judgement.

2. The Bihar Public Service Commission (hereinafter referred to as “BPSC” for short) came out with an advertisement bearing Advertisement Number 02/2017 for selection of candidates for the post of Assistant Engineer (Civil Engineering) in various Departments in the Government of Bihar. Petitioners fulfilling all the eligibility criteria, applied against the advertisement under the Unreserved Category and finding their applications and candidature in order, Petitioners were allotted Roll Numbers and issued admit cards. Petitioners appeared for the Preliminary Test (PT), which was held on 15.09.2018 and were declared successful in the result which was published on 30.01.2019. Thereafter, the Petitioners appeared in the Mains Examination held between 27.03.2019 to 31.03.2019 and were again declared successful in the results which were published on 24.01.2021. Thereafter, on 03.02.2021 BPSC published the schedule and instructions for interview for candidates who had qualified in the Mains Examination, which was to be held from 22.02.2021 to 13.03.2021. On 20.02.2021 BPSC published another notification titled "Important Information" on its website whereby it was inter alia informed that the candidates appearing for



interview were required to fill in and submit their preference for different Departments in prescribed Form II, which along with department-wise available vacancies were available on the website of BPSC. A bare perusal of Notification dated 20.02.2021 and Form II accompanied by Departmental vacancies appended thereto would reveal the following:-

i. it was mandatory for the candidates to notify their preference in Form II and submit the same at the time of the interview.

ii. the candidature of a candidate would not at all be considered for such department with respect to which no preference was indicated by the candidate and the said post of the department would be allotted to the next candidate, lower in merit list as per his/her preference.

iii. if a candidate failed to mention preference with respect to any of the departments, then even if the candidate was placed in the merit list, the candidate would not be allotted any post/ vacancy in any department even if the same remained unfilled.

iv. no application in future would be considered or entertained for modification of preference indicated by the



candidates. Petitioners accordingly appeared for interview on their respective dates and submitted their preferences.

3. In the interview the Petitioners found that the questions being put to them were based on the first preference indicated by them in Form II and in Petitioners' own assessment, the Petitioners performed fairly well in the interview. But to the shock of the Petitioners, in the Final Result published by the Respondent BPSC on 14.07.2021, they found that the same had been prepared solely on the basis of merit and not on the basis of merit cum choice (preference wise) as was mandated under the Notification dated 20.02.2021.

4. Furthermore, the petitioners found that their names did not feature on the merit list as their total marks were either equal to or below the cut-off marks for the Unreserved Category (477 marks), which was arrived at by preparing the final result solely on the basis of merit and not on the basis of merit cum choice. Upon asking for the reason for not preparing the result on the basis of merit cum choice, viz., that since in another Advertisement being Advertisement No. 03/2017 issued for appointment of Assistant Engineers (Mechanical Engineering) for different departments in Govt. of Bihar, preference had not been sought from the candidates of the said Advertisement No. 03/2017



therefore, despite seeking preference from candidates who had appeared for interview in the present advertisement (Advertisement No. 02/2017), results were being published on the basis of merit list and not merit cum choice and was being sent as such to the nodal department for the Advertisement i.e. Road Construction Department.

5. Petitioners submit the reasoning of BPSC to be highly absurd because Advertisement No. 03/2017 which was published for appointment on a different post and only 4 out of the 7 departments for which the present advertisement (Advertisement No. 02/2017) was issued has no bearing on the present advertisement whatsoever. The above would be further manifest from the fact that the requirement of educational qualification in the two advertisements were distinct and that the Preliminary Tests, Written Examinations, Interviews for the two advertisements were held on different dates and the respective results were also published on completely different dates. In fact the selection process for Advertisement No. 03/2017 had long stood concluded much before Notification dated 20.02.2021 (Annexure 3 series) was published by BPSC for the present Advertisement. A chart setting out the dates on which exams/ interviews were held and



results were declared under the two advertisements is being set out for convenience and kind consideration of this Hon'ble Court:

	Advt. 03/ 2017	Advt. 02/2017
Preliminary Test	19.09.2018	15.09.2018
Result of PT	-	30.01.2019
Written Exam	05.08.2019 to 09.08.2019	27.03.2019 to 31.03.2019
Result of Written Exam	12.05.2020	24.01.2021
Interview	15.06.2020 to 19.06.2020	22.02.2021 to 13.03.2021
Final Result	20.06.2020	14.07.2021

6. Learned Advocate for the Petitioner submits that petitioners have been kept in dark regarding the department wise cut off in respective categories on the basis of which the final results ought to have been prepared and published as mandated under Notification dated 20.02.2021.

7. Petitioner submits that the reason assigned by the BPSC in the impugned Final Result for deviating from its own notification is wholly arbitrary, absurd and unsustainable in the eyes of law in as much as the procedure adopted in a different advertisement viz., Advertisement No. 03/2017 issued for selection of Assistant Engineers (Mechanical Engineering) did not have any bearing whatsoever on the instant advertisement.

8. Interlocutory Application was filed by the petitioner on 13.09.2021. During the pendency of the instant writ application



and after the case was adjourned on 23.08.2021 for enabling the BPSC to file a comprehensive counter affidavit in the case, the Road Construction Department, Govt. Of Bihar, Patna, which is the nodal department for Advertisement No. 02/2017, published a notification on or about 25.08.2021 on its website, whereby a decision has been taken by the Department to allot the department to the successful candidates on the basis of merit cum choice. Thereafter a link was provided on the website of the Department where the candidates were supposed to mandatorily give their preference with respect to all 7 departments for which requisition was originally sent.

9. That the above notification further changes the selection process to the detriment and disadvantage of candidates like the Petitioners who had obtained the minimum qualifying marks in the written examination. It is stated that in terms of the notification dated 20.02.2021 read with Form II appended thereto issued in connection with the Advertisement, the candidates had already submitted their preference at the stage of interview. The said notification has not been withdrawn till date and was not implemented only on the specious premises that a similar exercise was not undertaken with respect to another advertisement. It is submitted that in case the results were published strictly in terms



of notification dated 20.02.2021, a candidate like the Petitioner, who may not have made it to the merit list in the present result would also get a chance for being selected. In view of the above developments which have taken place during the pendency of the instant writ application the petitioners seek amendment in the pleadings made in the writ application and incorporated further pleadings after paragraph 18 of the writ petition mentioning the same contention in the writ petition as stated above in the gist. And further adds to the writ application through this Interlocutory Application that on the basis of the information available on the website of the RCD and to the best of the Knowledge of the Petitioners, more than 75 Meritorious reserved candidates (MRC) will be migrated to their respective category in order to get the 1st Department in order of preference i.e. the most preferred department. Petitioner contends that the filling of these vacancies/posts of Unreserved category/General Category with reserved category candidates who are less meritorious than the petitioners is violative of the Article 14 and 16 of Constitution of India. Furthermore, it is now well settled that the aggregate reservation should not exceed the 50% of all the available vacancies. If the present impugned MRC candidates are adjusted against the Reserved Category Vacancies, with respect to their



higher preferences and the seats vacated by them in the General Category are further allotted to other Reserved Category candidates, the aggregate reservation would possibly exceed 50% of all the available vacancies which was applicable to the adv. No. 02/2017. That it is also well settled that the vacancy created due to Migration of Meritorious reserved candidates (MRC) in their respective categories for getting the most preferred department/post/service shall be filled by General Pool Candidates. Petitioner vehemently opposes the notification issued by Road Construction Department to be unsustainable firstly on account of the fact that it sharply deviates from the selection procedure as envisaged in terms of notification dated 20.02.2021 published in connection with Advertisement No. 02/2017 and secondly because the same is arbitrary, unworkable and violative of Article 14 & 16 of the Constitution of India.

10. Again an Interlocutory Application 2 was filed by the petitioner on 08.12.2021. It is submitted by the Petitioner that in case the results were published strictly in terms of notification dated 20.02.2021, a candidate like the Petitioners, who may not have made it to the merit list in the present impugned result would also get a chance for being selected. For illustration if a candidate from the reserved category, say SC category, who has qualified in



the unreserved category does not get his first preference as an unreserved category candidate, he would be considered as a SC category candidate for allocation of department of his first preference. In such an eventuality, the last candidate of the SC category would go out of the merit list and a vacancy would be created in the unreserved category, which will have to be filled by the next candidate of unreserved category, who may not have made it to the merit list i.e. by someone of the likes of the Petitioners.

11. Counter Affidavit on behalf of the Principal Secretary, Water Resources Department, Government of Bihar was filed in which they plead that the petitioners are aggrieved by the impugned result published by the BPSC and they also seek some direction against the BPSC for re- publication of result. Thus the grievance of the petitioners relates to the BPSC and its authorities who have been impleaded as respondent no. 9 to 11 in the writ application. As such, they are competent to give specific reply to the averments made in the writ application.

12. Interlocutory Application Number 3 was filed by the Petitioners on 07.02.2022. That the Respondent Road Construction Department vide Memo No. 6252(s) dated 31.12.2021 has taken a decision to allot 1241 successful candidates department-wise purportedly on the basis of the merit cum choice of the candidates



obtained pursuant to earlier impugned notification (Annexure 8) and accordingly the departments were allocated to the successful candidates.

13. Due to allocation of department by the RCD certain anomalies have occurred namely violation of roster reservation, increasing the number of seats in certain department and number of seats were decreased in certain departments. That as per the list of the department allotment published on 31.12.2021 on official website of RCD. Govt. of Bihar, there are 122 Meritorious Reserved Category Candidates who have migrated to their respective categories for getting the most preferred department in order of their preference. But the vacancies occurred due to migration of Meritorious Reserved Category Candidates have not been filled up by the candidates including the petitioners who are placed next in the combined merit/general merit list i.e. petitioners. The aforesaid migration is consistent with Article-14 and 16 of the Constitution of India. hence, vacancies as shown in UR category pursuant to advertisement No. 02/2017 should be filled up by the petitioners and other similarly situated candidates of UR category who are placed next in the combined merit/general merit list i.e. petitioners. That at this juncture, the Petitioners considered it pertinent to bring to the notice of this Court that the Meritorious



Reserved Category Candidates matter so far appointment is concerned, has already been settled by the Constitution Bench judgment of the Hon'ble Apex Court in the case of Union of India Vs. Ramesh Ram since reported in 2010 (7) SCC 234, wherein at Paragraph 39, the Hon'ble Apex Court has held as follows:-

"A significant aspect which needs to be discussed is that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision of this Court in Indra Sawhney vs. Union of India. If Meritorious Reserved Category Candidates are adjusted against the reserved category vacancies with respect to their higher preferences and the seats vacated by them in the general category are further allotted to other reserved category candidates, the aggregate reservation could possibly exceed 50% of all of the available post"

14. That in Para-42 of the **Ramesh Ram** (supra) the Hon'ble Supreme Court has further held that Meritorious Reserved Category Candidates who avail the benefit of Rule-16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by Meritorious Reserved Category Candidates in the general pool will therefore, be offered to general category candidates. This is the only viable



solution since allotting these general category seats (vacated by Meritorious Reserved Category Candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats.

15. In view of aforementioned facts and circumstances the petitioners have made representation on 07.01.2022 to the Additional Chief Secretary, Road Construction Department as well as on 08.01.2022 to the Secretary, Bihar Public Service Commission requesting therein to fill up the vacant UR seats due to migration of Meritorious Reserved Category Candidates by general category candidates who are placed next in the combined merit/general merit list i.e. petitioners. However, their representation is yet to be considered by the respondents.

16. Counter Affidavit on behalf of Bihar Public Service Commission was filed on 01.02.2022. It is stated that after the publication of result of the Written (Mains) Examination, the Commission published the schedule and instructions for successful candidates to participate in the interview. The interview was held from 22.02.2021 to 19.04.2021 and again from 25.06.2021 to 27.06.2021. It is further stated that the Commission again published a corrigendum on 20.02.2021 and number of posts have been reduced to 1257. The Commission vide notice dated



20.02.2021 informed the candidates to fill up Form II for preferences for different departments at the time of interview. It is further submitted that the preferences were sought from the candidates for 7 departments in view of vacancies received from those departments under Advt. No. 02/2017. It is further stated that under Advt. No. 03/2017 which was published along with Advt. No. 02/2017 for appointment of Assistant Engineer (Mechanical), vacancies were received from 4 departments but no preferences were sought for from the candidates for those departments therefore, the Commission in its meeting dated 07.07.2021 decided to send the list of selected candidates on the basis of final result for appointment on the post of Assistant Engineer (Civil) to the Road Construction Department without allotment of departments to the successful candidates.

17. The Learned Senior Counsel submits that it is relevant to state here that the Commission published the notice dated 20.02.2021 only to facilitate the selection process. The Commission never intended to publish the final result on the basis of preference. Therefore, the final result was published on the basis of performance of candidates in the written examination as well as interview. The Commission also published final result in Advt. No. 03/2017 and Advt. No. 04/2017 for appointment of Assistant



Engineer, Mechanical and Civil respectively in different departments of Government of Bihar on the basis of performance of candidates in Written examination as well as interview and thereafter, recommendations have been sent. Indeed, the Commission never published final merit list on the basis of preference under any Advertisement for appointment of Assistant Engineer. The Learned Senior Counsel finds it relevant to mention here that earlier also the Commission sent the recommendation of successful candidates to the Road Construction Department vide letter no. 166 dated 23.09 2013 in Advt. No. 01/2011 for appointment on the post of Assistant Engineer (Mechanical) on the basis of their performance in written examination as well as interview without allotment of departments.

18. Counter Affidavit was filed on behalf of the state on 19.05.2022. The Learned Additional Advocate General for the Respondent pleaded that in exercise to allocate the departments on the basis of merit cum choice, the principles laid down by Hon'ble Supreme Court in Civil Appeal No. 8499/2012(Arising out of Civil No. 31979/2010) Alok Kumar Pandit Versus state of Assam & others at para no. 21, Civil Appeal no. 4310-4311 of 2010 (Arising out of SLP (C) Nos. 13571-72 of 2008 at para no. 32 and 50 (1) ii) & (iv) were taken as guiding principle and after



consideration of the same, departments were allocated accordingly. In the given exercise, going by merit and choices, some candidates of reserved categories who had qualified in the unreserved (Open) category had to be migrated in their reservation category, resulting in such as many vacancies in unreserved category remaining vacant, as the allocation was restricted to list of successful candidates.

19. Rejoinder on behalf of Petitioner to the counter affidavit filed by Bihar Public Service Commission was filed on 08.03.2023. Learned Counsel states that in reply to Paragraph 4 of the Counter Affidavit, under reply, it is stated that the Respondent Commission has admitted to the fact that the Commission is bound by the Rules and Regulations of the State Government. However, in the instant case, the Respondent Commission is not following the guidelines and Rules of the State of Bihar. According to Clause 2 of the minutes of meeting dated 14.01.2022 of Road Construction Department (RCD), Government of Bihar it is apparent that on the recommendation of Law Department Government of Bihar the decision of preference which is based on Respondent Commission (BPSC) preference through Form -II prapatra given in the final RCD allotment notification for BPSC AE (Civil) 02/2017 dated 31.12.2021. The BPSC AE (Civil) result



dated 14.07.2021 and 24.08.2021 for 1241 selected students based on merit without preference. It is submitted that RCD had followed the recommendation of Law Department, Government of Bihar as mentioned in Clause 2 and then BPSC also followed the state regulation as said in the counter-affidavit paragraph no. 6, then why there is the variation in the advertised reservation roster by BPSC notification dated 20.02.2021 and allotment done by RCD. They further submitted in this regard that the RCD allotment based upon the BPSC result considering Merit without preference leads to the violation of reservation roster which is reservation exceeding > 50% and it has also created 122 vacant seats in UR unreserved category created due to the migration of Meritorious reserved candidate (MRC). It is well settled in the judgment of Hon'ble Apex Court in *Union of India v. Ramesh Ram* [reported in 2010 (7) SCC 234] that the vacancy created by the migration of MRC candidates into their respective categories for getting most preferred department/service/post shall be filled up by General Pool Candidates (UR, unreserved category). That the Hon'ble Supreme Court in the said case in Para-39 has held that “a significant aspect which needs to be discussed is that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision of this Court in *Indra Sawhney vs.*



Union of India. If MRC candidates are adjusted against the reserved category vacancies with respect to their higher preferences and the seats vacated by them in the general category are further allotted to other reserved category candidates, the aggregate reservation could possibly exceed 50% of all of the available post.”

20. It may be appreciated that in Para-42 of the said judgment, Union of India v. Ramesh Ram [reported in 2010 (7) SCC 234], the Hon'ble Supreme Court has further held that MRC candidates who avail the benefit of Rule-16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore, be offered to general category candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. That in reply to the statements made Paragraphs 11 of the Counter Affidavit, under reply, it is reiterated that the Respondent Commission has erroneously omitted the Petitioners from the Final Result dated 14.07.2021. It is stated that the



Respondent Commission has prepared the Final Result in utter disregard and violation of their own Notification dated 20.02.2021 [Annexure 3], in as much as, the Final Result was prepared solely on the basis of merit marks whereas the scheme of the selection process clearly provided that final selection would be on the basis of merit-cum-choice [Notification dated 20.02.2021]. Thus, the action of the Respondent Commission is not only violative of the principles of service law but is also barred by the doctrine of promissory estoppel.

21. It is further submitted in this regard that Total 719 seats of UR category were advertised in Advertisement No. 02/2017 as shown below. However, the number of candidates finally selected 579 UR candidates as per RCD allotment notification dated 31.12.2021 (Annexure-g departments are as below:

Department	seats as per BPSC 02/2017 notification correction letter dated	seats as per RCD allotment (31.12.2021)	deviation of seats between advertised reservation roster and allotted seats



	20.02.2021		
PLAN(UR)	135	45	-90
MWRD	28	04	-24
WRD	196	170	-26
RCD	104	104	0
PHED	32	32	0
BCD	54	54	0
RWD	170	170	0
Total Seats	719	579	-140

22. From above table it is crystal clear that 90 seats of UR Category are vacant in Plan and Development Department, 24 Seats in MWRD and 26 seats of WRD departments are vacant. Cut off marks of any Category is the marks scored by the last selected candidate consistent to the seats advertised as per reservation roster in that Category. “Here as mentioned above, 122 seats of UR Category is remaining vacant then how can 477 be the cut off marks of UR category?” is the question raised in the Court towards Respondent by the Petitioner. Further, the petitioner No.1, Mr. Sudhanshu Kumar having merit serial No. 503 and all the Petitioners will get selected if the 122 vacant seats of UR Category are filled by the General Pool candidates placed next in the merit was firmly asserted by the Learned Counsel.

23. In reply to the statements made Paragraphs 12 of the Counter Affidavit, under reply, it is stated that the Commission is



not permitted, in law, to unilaterally change the already advertised and notified procedure during an on-going selection process that too on materials basis of extraneous. It is reiterated that Advertisement No. 03/2017 relates to appointment of Assistant Engineer (Mechanical Engineering) and eligibility requirement, dates of examination, number of vacancies etc are totally different from the Advertisement No. 02/2017 in question. Therefore, any omission or commission relating to Advertisement No. 03/2017 cannot be a valid and legal basis to alter/amend the selection process with respect to Advertisement No. 02/2017 and as such Resolution dated 07.07.2021 [Annexure D to the Counter Affidavit] is bad in law and cannot be sustained in the eyes of law. It is humbly stated and submitted by the Petitioner that vacancies still remain as lesser number of candidates were selected than the total vacancies. Therefore, the Petitioners may be selected/adjusted against such vacant posts in their category i.e Unreserved (UR) category without interfering with the rights of other successful candidates.

24. Counter Affidavit on behalf of Road Construction Department was filed on 06.08.2024. The Learned Counsel submitted that the Road Construction Department (RCD) is only a Nodal Department with respect to Public Health Department



(PHED), Water Resources Department (WRD), Building Construction Department, Rural Works Department and Minor Water Resource Department Resources Department (MWRD) and some other works Departments. The RCD is only required to communicate and forward the names of selected candidates sent by the BPSC with respect of those Departments individually. On 15.05.2024 the Hon'ble Court was pleased to pass the order para-5 to 7 whereof is quoted as per below:-

"It is submitted by the senior counsel on behalf of the petitioners that so far as their knowledge goes there were more than 122 or more vacancies that occurred due to the interplay of MRC and UR candidates by way of migration at the time of placement in a particular department as per the preference/choice given by the candidates.

In such view of the matter this court is of the opinion that the State Government should come up with the actual numbers of vacancies remaining in Assistant Engineer (Civil) service the and selection on which were of the examination done on the basis of Adv. No.02 of 2017. After having such numbers of vacancies calculated the State Government shall also come up with the amended cut off mark. The State Government will be at liberty to take the help of



the expertise of Bihar Public Service Commission (BPSC)."

25. That in compliance of the Hon'ble Court's order, the replying respondent submits the following facts:-

26. The selection held by the BPSC, vide Adv. No.02 of 2017 was for the post of Assistant Engineer (civil) which was based on the requisition of vacancies made by various works department separately viz, (i) RCD- 236, (ii) PHED- 64, (iii) MWRD- 31(iv) WRD- 284 (v) BCD- 122 (vi) RWD- 250 (vii) Planning and Development Department- 270.

27. Thus , the total number of vacancies put together against which the names were to be recommended by the BPSC for the respective departments was 1257.

28. The BPSC after undertaking selection process recommended the names of total 1241 candidates category wise against 1257 vacancies stating non availability of 16 Physically Handicapped (PH) candidates, vide its revised recommendation dated 24.08.2021. However, the recommendation was made neither department-wise nor after undertaking choice/ preference made by the candidates so taken in Form-II.

29. It may be noted that all the department who had made their separate requisition to the BPSC for selection and recommendation, are independent and separate departments and



the cadre of Assistant Engineer (Civil) are separate cadres in each of those Departments.

30. Since, the RCD had been made a Nodal Department the said recommendation of the BPSC was referred to the RCD for allocation to all the department. The RCD was required only to allocate the recommended candidates to their respective departments for appointment but as the BPSC had not recommended the names, department wise, after undertaking the exercise as per merit -cum choice/preference taken from individual candidates, as was required, the RCD had to do the exercise as per merit-cum-choice/ preference made by the recommended candidates for the purpose of allocation of department.

31. It is relevant to submit that a total number of 703 candidates were recommended against the consolidated unreserved vacancies of 719 (16 PH not available). This list of 703 of unreserved candidates (Annexure-B) included the Meritorious Reserved Category (MRC) candidates also. In addition 147 candidates were recommended against 147 vacancies of SC, 4 candidates against 4 vacancies of ST, 230 candidates against 230 vacancies of EBC, 92 candidates against 92 vacancies of BC and 65 candidates against 65 vacancies of BC Lady.



Evidently, the aforesaid numbers are consolidated numbers of vacancies appertaining to 7 separate departments noted above.

32. While making allocation of department to candidates on the basis of their merit cum choice/ preference submitted by the individual candidates, the MRC vis-à-vis the candidates of the reserved category to which that MRC originally belonged was also considered as per the law laid down by the Apex Court. Accordingly, the preference of department given by an MRC candidate compared to that of the candidate belonging to his reserved category, was allowed on the basis of marks obtained in the merit list. While doing so 124 MRC under the unreserved category were given the choice of department vis-à-vis their respective reserved category candidates. Accordingly, those candidates belonging to the reserved category got the department left by the said MRC.

33. After allocation of the department made on the basis of merit-cum- choice/preference through a software developed by the NIC, all the 1241 recommended candidates were given appointment by the respective departments. The appointment letters of these 1241 candidates have been issued in year 2021-22 itself and consequent thereof they have joined their posts in the respective departments and are working since past more than 2



years. Thus actually in fact no vacancy is left to be filled under the Adv. No.02/2017 for the post of Assistant Engineer (Civil) except 16 meant for PH candidates which was not recommended by the BPSC due to non-availability.

34. Learned Counsel submits that 1241 the recommended candidates have been appointed against the 1241 vacancies as per recommendation made by BPSC and no further vacancy is available against the Advertisement no.02/2017 except 16 Physically Handicapped as no names were recommended by BPSC due to non-availability. However, it is clarified that no further vacancy is available against the Advertisement no. 02/2017, as all the 1241 recommended candidates have been appointed against the 1241 vacancies.

35. Supplementary Counter Affidavit was filed by Road Construction Department on 13.08.2024 where the learned counsel clarifies that allotment of department has been made through a software where some discrepancy has been noticed. Like in the Road Construction Department against the 236 vacancies, 259 candidates have been appointed it was decided that such discrepancy would be removed by adjustment in future appointment to be made.

36. These are all about the pleadings of the parties.



37. Mr. Rajendra Narain, learned Sr. Advocate appearing on behalf of the petitioners makes his submission on the basis of the principles relating to vertical reservation in connection with Meritorious Reserved Candidates and the unreserved candidates laid down in ***Union of India v. Ramesh Ram & Ors.***, reported in ***(2010) 7 SCC 234***. Paragraph No. 32 of Ramesh Ram (supra) held as hereunder: -

“32. There is an obvious distinction between qualifying through an entrance test for securing admission in a medical college and qualifying in UPSC examinations since the latter examination is conducted for filling up vacancies in the various civil services. In the former case, all the successful candidates receive the same benefit of securing admission in an educational institution. However, in the latter case there are variations in the benefits that accrue to successful candidates because they are also competing amongst themselves to secure the service of their choice. For example, most candidates opt for at least one of the first three services [i.e. Indian Administrative Service (IAS), Indian Foreign Service (IFS) and Indian Police Service (IPS)] when they are asked for preferences. A majority of the candidates prefer IAS as the first option. In this respect, a reserved category candidate who has



qualified as part of the general list should not be disadvantaged by being assigned to a lower service against the vacancies in the general category especially because if he had availed the benefit of his reserved category status, he would have got a service of a higher preference. With the obvious intention of preventing such an anomaly, Rule 16(2) provides that an MRC candidate is at liberty to choose between the general quota or the respective reserved category quota.”

38. On the question, whether the reserved category candidates, who are selected on merit, i.e., MRCs and placed in the list of general category candidates can be considered as reserved category candidates at the time of service allocation, the Hon'ble Supreme Court in **Ramesh Ram** (supra) has placed reliance on an earlier decision in the case of **State of Kerala v. N. M. Thomas**, reported in **(1976) 2 SCC 310**. Paragraph 26 of N. M. Thomas (supra) states as follows:-

“26. The respondent contended that apart from Article 16(4) members of Scheduled Castes and Scheduled Tribes were not entitled to any favoured treatment in regard to promotion. In T. Devadasan v. Union of India [T. Devadasan v. Union of India, AIR 1964 SC 179] reservation was made for Backward Classes. The number of reserved seats which were not filled up were



carried forward to the subsequent year. On the basis of 'carry forward' it was found that such reserved seats might destroy equality. To illustrate, if 18 seats were reserved and for two successive years the reserved seats were not filled and in the third year there were 100 vacancies the result would be that 54 reserved seats would be occupied out of 100 vacancies. This would destroy equality. On that ground 'carry forward' principle was not sustained in Devadasan case [T. Devadasan v. Union of India, AIR 1964 SC 179] . The same view was taken in M.R. Balaji v. State of Mysore [M.R. Balaji v. State of Mysore, AIR 1963 SC 649] . It was said that not more than 50 per cent should be reserved for Backward Classes. This ensures equality. Reservation is not a constitutional compulsion but is discretionary according to the ruling of this Court in Rajendran case [AIR 1968 SC 507] .”

39. In Paragraph 42 of Ramesh Ram (supra), the Hon'ble Supreme Court observed as under:-

“42. Therefore, we are of the firm opinion that MRC candidates who avail the benefit of Rule 16(2) and are eventually adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the general pool will therefore be offered to general category



candidates. This is the only viable solution since allotting these general category seats (vacated by MRC candidates) to relatively lower-ranked reserved category candidates would result in aggregate reservations exceeding 50% of the total number of available seats. Hence, we see no hurdle to the migration of MRC candidates to the reserved category.”

40. It is submitted by Mr Rajendra Narain, learned Sr. Advocate appearing for the petitioners that if the Respondents followed the policy of migration of MRC candidates to the reserved category, there would have been vacancy between advertised reservation roster and allotted seats, numbering 140 candidates. If those 140 candidates were to be accommodated in the selection list, there would have been lowering down of cut-off mark in the general category quota and the petitioners might have got chance for selection in the service.

41. It is further submitted by the learned Sr. Advocate appearing on behalf of the petitioners that the candidates were directed under Praptra-II to fill up their choice of departments for which candidates should be recommended. If the candidate does not fill up any recommendation, he will not be considered for any of the posts. It is clearly stated in Praptra-II by way of a



declaration to be submitted by a selected candidate, which is as follows:-

महत्वपूर्ण:- उपर्युक्त सारणी में अधिमानता कोड एवं विभाग का नाम का उल्लेख स्पष्ट रूप से करें तथा रिक्त कॉलम को स्पष्टतः क्रॉस (X) कर दें। जिस विभाग के पद/रिक्ति के लिए आपके द्वारा अधिमानता क्रम नहीं भरा जायेगा उस विभाग के पद / रिक्ति के लिए आपकी उम्मीदवारी पर कोई विचार नहीं किया जाएगा एवं उक्त विभाग का पद /रिक्ति मेधा क्रम में आपसे नीचे स्थित उम्मीदवार को उनके द्वारा दी गई अधिमानता के आधार पर आवंटित कर दिया जायगा। साथ ही यह भी स्पष्ट किया जाता है कि यदि आपके द्वारा किसी भी विभाग के पद /रिक्ति के लिए अधिमानता नहीं अंकित की जाती है तो मेधा सूची में रहने एवं विभाग का पद/रिक्ति उपलब्ध रहने के बावजूद भी आपको विभाग का पद / रिक्ति आवंटित नहीं किया जायेगा।

42. Therefore, it is clear that the rule of recruitment depended upon a successful candidates' filling up of all posts showing preference of the department. If any candidate does not suggest any preference or fails to give preference of his department, he will not be considered for such department, and the said candidature will go to the next candidate on merit. In other words, even if a candidate is selected on merit, he may not be appointed due to failure of his part to submit preference under Prapatra – II. This condition has been violated by the State



Respondents and without considering the preferences, candidates were appointed. This obviously is a gross departure from the rule of game of selection to the post of Assistant Engineer (Civil), which is not permissible after the selection process started.

43. In support of his contention, Mr. Rajendra Narain, learned Sr. Advocate refers to the result which was published on 14th of July, 2021 (Annexure- 4) only on the basis of merit and preference was given a go-bye. Inherent fallacy in the process of recruitment did not end here. B.P.S.C. sent the names on merit basis on 14th of July, 2021 to the nodal department, i.e., Road Construction Department, but the nodal department *vide* Annexure- 7 issued notification on its website, stating, inter alia, that allotment of the department shall be based on merit cum choice. All qualified candidates shall have to indicate on-line choices of the department. Though the said notification was not withdrawn, it was not implemented only on the ground that a similar exercise was not undertaken with respect to other Advertisement No. 3 of 2017.

44. It is submitted by the learned Sr. Advocate for the petitioners that non-adherence to the recruitment contained in Praptra – II violated petitioners' right under Article 14 and 16 of the Constitution of India on the ground that if a candidate from



reserved category who has qualified in the unreserved category does not get his first preference as an unreserved category candidate, he would be considered as a SC category candidate for allocation of department of his first preference. In such an eventuality, the last candidate of the SC category would go out of the merit list and the vacancy would be created in the unreserved category, which will have to be filled up by the next candidate of unreserved category, who may not have merit to the merit-list like that of the petitioners. In other words, if the candidate of reserved category is selected on his own merit in unreserved category, but on indicating his choice, he would not be treated as a successful candidate of unreserved category, he would switch over to his reserved category candidate, but the vacancy would remain in unreserved category for the choice he has made. If B.P.S.C. would have created the merit-list on the basis of merit cum preference, there would have been vacancy in the unreserved category, causing reduction of cut-off mark.

45. As for illustration, the learned Sr. Advocate appearing on behalf of the petitioners refers to Annexure- 6 at page 50 of the writ petition. One of the candidates, namely Kajal Kumari, did not get appointment letter though she got higher marks than the cut-off mark. The said candidate belonged to backward class. She got



511 marks while the cut-off mark was 510, but she was not appointed on the ground that she gave the preference only for the post of Bihar Police Sewa (Police Upadhikshak). For selection in Bihar Police Sewa (Police Upadhikshak), she did not get adequate marks and therefore in spite of getting higher marks, she was not selected. If the merit cum preference of department was taken in the instant case, there would have been the same condition in the instant selection process also.

46. The learned Sr. Advocate appearing on behalf of the petitioners has urged referring to the supplementary counter affidavit filed by the Road Construction Department on 13th of August, 2024, where the nodal department admitted that allotment of department was made through a software and some discrepancies have been noticed in Road Construction Department that against 236 vacancies, 259 candidates have been appointed and such discrepancy has been removed by adjustment in future appointment to be made by the Government.

47. The above statement made on behalf of the Road Construction Department is undoubtedly hopeless and unfortunate. An existing appointment in excess of vacancy cannot be adjusted from future vacancy for the simple reason that it would take away the right of the future candidates who would be



eligible in future for the post. Secondly, the averments is in the nature of an admission that the rule of recruitment was not followed and either additional or less recruitment was made in different departments of the Government by virtue of the examination held on the basis of Advertisement No. 2 of 2017.

48. The learned Sr. Advocate next refers to paragraph 11 of the counter affidavit filed on behalf of the Respondent Nos. 1 and 8 on 23rd of May, 2022. Paragraph Nos. 11 and 12 of the said counter affidavit runs :-

“11. That in the exercise to allocate the departments on basis of merit cum choice, the principles laid down by Hon'ble Supreme Court Judgement in Civil Appeal No. 8499/2012 (Arising out of (Civil) No. 31979/2010) Alok Kumar Pandit Versus State of Assam & Others at para no. 21, Civil Appeal No. 4310-4311 of 2010 (Arising out of SLP (C) Nos. 13571-72 of 2008 at para no. 32 and 50(I) (ii) & (iv) was taken as guiding principle after consideration of departments were done accordingly.

12. That in given exercise, going by merit and choices, some candidates of reserved categories who had qualified in the unreserved (Open) category had to be migrated in their reservation category, resulting in such as many vacancies in unreserved category remaining



vacant, as the allocation was restricted to list of successful candidates.”

49. It is urged by the learned Sr. Advocate on behalf of the petitioners that after above-mentioned affidavit, the Respondents cannot say that the selection process in question was governed on the principle of ***Ritesh R. Sah v. Dr. Y.L. Yamul & Ors.***, reported in ***(1996) 3 SCC 253*** and ***Tripurari Sharan & Ors. v. Ranjit Kumar Yadav & Ors.***, reported in ***(2018) 2 SCC 656***.

50. Mr. P. K. Verma, learned Additional Advocate General, on the other hand, submits that the counter affidavit filed by the Road Construction Department in C.W.J.C. No. 13498 of 2021 may be treated as the case on behalf of the State Respondents in all the writ petitions. The case made out by the Road Construction Department against the above-mentioned writ petitions is depicted in paragraph 4 of the counter affidavit, dated 6th of August, 2024.

51. It is stated in paragraph 4 of the counter affidavit that the petitioners have prayed for quashing the final result of the selection test held on Advertisement No. 2 of 2017 for the appointment to the post of Assistant Engineer (Civil) dated 14th of July, 2021 on the ground that the said result was not published on the basis of merit cum choice. Subsequently, by filing I. A. No. 01 of 2021, the petitioners have prayed for amendment of the relief



adding a prayer to quash the notification of Road Construction Department issued on or about 25th of August, 2021. By another I. A. No. 02 of 2021, the petitioners have sought impleading all candidates who might be affected by the outcome of the present writ petition. In this regard, it is submitted on behalf of the State that Road Construction Department (RCD) is only a nodal department with respect to Public Health Department, Water Resources Department, Building Construction Department, Rural Works Department, Minor Water Resources Department and some other Works Department. The Road Construction Department is under obligation to communicate and forward the name of the selected candidates sent by the B.P.S.C. with respect to those departments individually.

52. It is also stated by the contesting Respondent (Road Construction Department) that no counter affidavit could be filed earlier although in compliance of the Court 's order passed on 15th of May, 2024, an affidavit was prepared and sworn but the same was not filed as it did not contain the actual details of facts, which were needed to be brought to the notice of the Court for proper adjudication. Earlier in C.W.J.C. No. 1945 of 2022, a third counter affidavit had been filed but the facts in detail could not be stated. On 15th May, 2024, this Court passed the following order:-



“1. On the prayer made by the learned Senior Counsels on behalf of the petitioners in C.W.J.C. No. 13498 of 2021 and C.W.J.C. No. 1945 of 2022, C.W.J.C. No. 3389 of 2023 are also taken up with the above-mentioned two writ petitions, as the facts and circumstances under which C.W.J.C. No. 3389 of 2023 has been filed are similar to the above-mentioned two writ petitions.

2. Therefore, C.W.J.C. No. 3389 of 2023 is taken up together with the above-mentioned two writ petitions.

3. All three writ petitions relate to an issue as to whether there will be any change in the cut-off marks of unreserved categories of selected candidates in the Assistant Engineer (Civil Engineering Recruitment Examination), pursuant to Advertisement No. 02 of 2017 for the reason that as per the reservation policy, if the position of an unreserved candidate is taken up by reserved Meritorious Reserved Candidates (M.R.C.) and after submitting preferences of the department, the M.R.C. will migrate to the position of the Reserved Candidate (R.C.), then there would be change of cut-off mark in respect of the unreserved candidates.

4. In course of hearing of the matter, Mr. Sahi, learned Senior Counsel appearing in C.W.J.C. No. 1945 of 2022 refers to paragraph 12 of the counter affidavit filed by the Respondent



Nos. 1 and 8, i.e., The State of Bihar and the Deputy Secretary (Management Cell), Road Construction Department, Government of Bihar, Patna. Paragraph 12 of the counter affidavit runs thus:-

“12. That in given exercise, going by merit and choices, some candidate of reserved categories who had qualified in the unreserved (Open) category had to be migrated in their reservation category, resulting in such as many vacancies in unreserved category remaining vacant, as the allocation was restricted to list of successful candidates.”

5. It is submitted by the learned Senior Counsel on behalf of the petitioners that so far as their knowledge goes, there were 122 or more vacancies that occurred due to the interplay of M.R.C. and U.R. candidates by way of migration at the time of placement in a particular department as per the preference/choice given by the candidates.

6. In such view of the matter, this Court is of the opinion that the State Government should come up with the actual number of vacancies remaining in the service of Assistant Engineers (Civil), the examination and selection of which were done on the basis of Advertisement No. 2 of 2017.

7. After having such number of vacancies calculated, the State Government shall



also come up with the amended cut-off mark of the unreserved category. In assessing such cut-off mark, the State Government is at liberty to help of the expertise of the Bihar Public Service Commission (BPSC)

8. The State Government is directed to furnish the above information on affidavit within two weeks after vacation and the matter be treated as part heard.

9. Matter be fixed on 2nd of July, 2024 for final hearing.”

53. In compliance of the said order, following has been submitted by the Road Construction Department : -

“a. The selection held by the BPSC, vide Adv. No. 2 of 2017 was for the post of Assistant Engineer (Civil) which was based on the requisition of vacancies made by various works department separately viz, (i) RCD-236, (ii) PHED-64, (iii) MWRD-31 (iv) WRD-284, (v) BCD-122 (vi) RWD-250 and (vii) Planning and Development Department-270.

Thus, the total number of vacancies put together against which the names were to be recommended by the BPSC for the respective departments was 1257. Roster of reservation to various categories was made department wise separately while making the requisitions.

(b) The BPSC after undertaking the selection process recommended the names of total



1241 candidates category wise against 1257 vacancies stating non availability of 16 Physically Handicapped (PH) candidates, vide its revised recommendation dated 24.08.2021. However, the recommendation was made neither department-wise nor after undertaking choice/preference made by the candidates so taken in Form-II.

(c) All the department who had made their separate requisition to the BPSC for selection and recommendation, are independent and separate departments and the cadre of Assistant Engineer (Civil) are separate cadres in each of those Departments

(d) Since, the RCD had been made Nodal Department the said recommendation of the BPSC was referred to the RCD for allocation to all the department. The RCD was required only to allocate the recommended candidates respective to departments appointment but as not recommended their for the BPSC had the names department wise after undertaking the exercise as per merit -cum choice/preference individual taken candidates, from as was required, the RCD had to do the exercise as per merit-cum-choice/preference made by the recommended candidates for the purpose of allocation of department.

(e) It is relevant to submit that total number of 703 candidates were recommended



against the consolidated unreserved vacancies of 719 (16 PH shown not available). This list of 703 of unreserved candidates (Annexure-B) included the Meritorious Reserved Category (MRC) candidates also addition 147 candidates were recommended against 147 vacancies of SC, 4 candidates against vacancies of ST, 230 candidates against 230 vacancies of EBC, 92 candidates against 92 vacancies of BC and 65 candidates against 65 vacancies of BC Lady. Evidently, the aforesaid numbers are consolidated numbers of vacancies appertaining 7 separate to departments noted above.

(f) While making allocation department to candidates on of the basis of their merit cum choice/preference submitted by the individual candidates, the MRC vis-à-vis the candidates of the reserved category to which that MRC originally belonged was also considered as per the law laid down by the Apex Court. Accordingly, department the preference of given by an MRC candidate compared to that of the candidate belonging to his reserved category, was allowed on the basis of marks obtained in the merit list. While doing so 124 MRC under the unreserved category were given the choice of department vis-à-vis their reserved category Accordingly, those respective candidates. candidates belonging to the reserved category got the department left by the said MRC.



(g) After allocation of the department made on the basis of merit-cum-choice/preference through a software developed by the NIC, all the 1241 recommended candidates were given appointment by the respective departments. The appointment letters of these 1241 candidates have been issued in year 2021-22 itself and consequent thereof they have joined their posts in the respective departments and are working since past than more 2 years. Thus actually in fact no vacancy is left to be filled under the Adv. No.02/2017 for the post of Assistant Engineer (Civil) except 16 meant for PH candidates which was not recommended by the BPSC due to non availability.”

54. It is submitted by Mr. Verma that the ratio of **Ramesh Ram** (supra) would not be applicable in the facts and circumstances of the case. The examination was held in the instant case only in respect of one cadre and post of Assistant Engineers having same pay-scale and status. Ramesh Ram’s judgement has dealt with UPSC examination where different cadres of posts are required to be filled up, viz., IAS, IFS, IPS, allied Central Services and even Group-B services consisting of different cadres. In such examination, if preference based allotment and distribution of merit-list on the basis of MRC and filling up of the vacant seats taken by MRCs by the unreserved candidates, are not taken into



consideration, there would be topsy turvy situation with regard to the principles of reservation.

55. In the instant case, however, the position is otherwise. Therefore, the ratio laid down in ***Ritesh R. Sah and Tripurari Sharan*** (both supra) are to be applied.

56. The learned Additional Advocate General has also placed his reliance in support of his argument to an unreported decision of the Division Bench of this Court in ***L.P.A. No. 519 of 2023 in Civil Review No. 21 of 2020 (Kumar Gaurav Singh & Ors. v. The Bihar Staff Selection Commission & Ors.)***. In the said case, the Division Bench of this Court had the occasion to consider all the above-mentioned judgements and held that the principles laid down in ***Ritesh R. Sah and Tripurari Sharan*** (both supra) are applicable in the facts and circumstances of this case.

57. The Division Bench of this Court in ***Kumar Gaurav Singh & Ors. v. The Bihar Staff Selection Commission & Ors.*** (supra) had the occasion to deal with the question of reservation and the mandate to confine it to 50 per cent so as to not compromise merit. The application of the principle, on the facts of the case, resulted in MRC being given their choice districts, enabled only by reason of their higher merit, leading to ouster of



reserved candidates to accommodate the meritorious general candidates in the resultant vacancies.

58. In the aforesaid decision, the Division Bench of this Court had dealt with the applicability of the ratio laid down in *Ritesh R. Sah* (supra), *Tripurari Sharan* (supra), *Dega Venkata Harsha Vardhan v. Akula Ventaka Harshavardhan* [(2019) 12 SCC 735], which relate to admission to academic institutions, and *Union of India v. Ramesh Ram* (supra) followed by *Alok Kumar Pandit v. State of Assam* [(2012) 13 SCC 516], with respect to appointment to civil services.

59. It would not be out of place to mention at this stage that the question which was raised in the above-mentioned case before the Division Bench is as to whether MRCs by virtue of their merit got their choice districts, would lead to ouster of reserved candidates to accommodate meritorious general candidates in the resultant of vacancies. In paragraph 23 of the judgement, the Division Bench of this Court held as under: -

“23. The instant selection was to the post of Agricultural Coordinator under the Directorate of Agriculture, Bihar, Patna. A copy of the advertisement is produced as Annexure-1 in the Civil Review cases from which the appeals arise. A translated copy was also produced across the Bar. The advertisement indicates the number



of vacancies and the reservation quota as eligible to the various categories entitled to such reservation. Enumerating the details of vacancies indifferent districts, the advertisement indicates the total sanctioned posts in each district from which the reservation quota and the general quota were segregated and shown separately. This is the context in which the candidates were required to give their option with respect to the 38 districts. It was also specified in the advertisement that those candidates who failed to give their option would be allotted the district as per their merit. Hence, as in Ramesh Ram (supra), there is no disparity in benefits in the services to which the applications are called for. The option to be exercised is also not with respect to the service; which in the present case is only one cadre post, and is exercised specifically for the purpose of allotment of district. There is no district cadre insofar as the posts are concerned and the modalities for reservation as provided in the advertisement does not indicate any adjustments being made of 'the MRC' candidates in the opted districts, in the reservation post and thus, dis-entitling the less meritorious reserved candidates from being considered for appointment in the reserved vacancies."

60. The Division Bench also examined the recruitment rule, i.e., the Agriculture Coordinator Cadre (Recruitment &



Service Conditions) Rules, 2014. The Agriculture Coordinator is defined as such personnel giving technical and administrative cooperation in implementing various schemes of the Agriculture Department, below Block level; which makes it a State Cadre. The Division Bench found glaring difference between the said rule and Rule 16(2) of CSE Rules, 2005 and held that there is no rule similar to rule 16(2) in the Agriculture Coordinator Cadre Rules, 2014.

61. In fact, there is no necessity for such rule since there is an identity in so far as the post to which the appointment is made similar to the admission made to a medical course. The district-wise option does not give any additional benefit to the appointee other than who being accommodated in the home district or a district nearby to his district of domicile. In other words, in the Agriculture Coordinator Cadre Rules, 2014, the MRCs were only given option of districts within the cadre to Rule 16(2) of CSE Rules, 2005 deals with common examination conducted by the UPSC in respect of different cadres like that of IAS, IFS, IPS and Allied Civil Services under the Union and other services. Therefore, UPSC examination is conducted for selection of the candidates constituting different cadres, different pay-scale and differing hierarchy.



62. Under such circumstances, the principle laid down in ***Ramesh Ram*** (supra) is applicable in such examination. However, in the case of Agriculture Coordinator, a person having higher merit would be considered for his or her optional district and it is in that context that MRC candidates who would be appointed as Agriculture Coordinator on merit would be shifted to his optional district in a reserved vacancy, which does not give him any additional benefit or perceived higher status in the service of a State. It is more a rule of convenience so as to enable the meritorious candidate to get a district of his / her option than one resulting in divergence of status, when a meritorious candidate is allowed to a higher service having a different status based on the option exercised. If in the event of identity of status in the service to which appointment is made, the reserved vacancy is deemed to have been filled up by MRC candidate allotted to a district of his choice, then it would be effacing the merit of MRC candidate belonging to the reserved candidate. Hence, when a notional adjustment is made on the basis of an option exercised in so far as the district to which the appointment is to be made, the shifting of the point is only as against the MRC candidate, and the reserved candidate having a lesser merit as well have to be considered to the vacancy created by the shifting made of the MRC candidate. On



the above reasoning in the facts and circumstances of the instant case, the Division Bench found that the principle in **Rameh Ram** (supra) would not apply and that in **Ritesh R. Sah** and **Tripurari Sharan** (both supra) would clearly apply.

63. The learned Additional Advocate General as well as the learned Sr. Advocate appearing on behalf of the B.P.S.C. have strongly relied on the Division Bench's judgement of **Kumar Gaurav Singh** (supra). It is submitted by them that the examination was held in respect of one cadre of Assistant Engineer (Civil). According to their merit, they had the chance only to occupy a particular department on the basis of merit. As for example, if an MRC is of the view that the Department of Road Construction is most preferential department for him and by virtue of his merit he is entitled to be appointed in Road Construction Department, he would be appointed in that department but this does not mean that the consequent vacancy would go to the lesser meritorious candidate in unreserved pool.

64. Having heard the learned counsels for the parties at length, this Court likes to record at the outset that none of the contesting parties denies that reservation quota would extend up to 50 per cent in terms of the guidelines made by the Hon'ble Apex Court in **Indra Sawhney** case.



65. It is needless to say that both **Ritesh R. Sah** (supra) and **Tripurari Sharan** (supra) are decisions on the point of determination of seats in medical colleges in between MRCs, reserved candidates and unreserved candidates. The above-mentioned judgements were delivered by the Hon'ble Supreme Court taking into consideration that none of the contesting parties would be refused to get a chance in a medical college of the country on the basis of their acquiring cut-off mark. The inter se dispute is with regard to admission in a college of preference by MRC.

66. In both the above-mentioned cases, the selected candidates did not constitute separate entities or cadres.

67. However, in the instant case, though B.P.S.C. selected Assistant Engineers (Civil), they were selected for distinct and separate departments, constituting separate cadre. In other words, cadre of RCD is not the same as that of the cadre of Water Resources Department. In **Ramesh Ram** (supra), UPSC examination was held for different Central Services, constituting different cadres. In the instant case also, a common examination was held for separate and district cadre posts and the facts of these cases are not the same as that of **Ritesh R. Sah** or **Tripurari Sharan** (both supra).



68. By virtue of Advertisement No. 2 of 2017, the option of the candidates was sought for with respect to the service in different departments. The MRCs were entitled to be appointed in their preferential departments constituting separate and distinct cadre. If such exercise was done, there would have been automatic march of unreserved candidates like the petitioners in the vacant reserved category. In such event, the cut-off mark would automatically be decreased. Neither the State Government nor the B.P.S.C. carried out such exercise resulting in almost 140 vacant seats in different departments.

69. For the reasons stated above, this Court is of the view that the principle laid down by the Hon'ble Supreme Court in ***Ramesh Ram*** (supra) would clearly be applicable in the instant case.

70. Accordingly, all the writ petitions are allowed on contest.

71. The Respondents are directed to revisit the final selection list in the light of the principles laid down by the Hon'ble Supreme Court in ***Ramesh Ram*** (supra) and rewrite the cut-off mark for unreserved candidate within 90 days from the date of this order. Thereafter, the new list is to be placed before the State



Government for consideration of the appointments of the candidates.

72. It is made clear that while doing such exercise, the State Government shall not disturb the service of the candidates who have already been appointed as Assistant Engineers (Civil) in different departments on the basis of their selection list published earlier by the B.P.S.C.

(Bibek Chaudhuri, J)

skm/-

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