



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Reference No. 6/2020

In

D.B. Civil Writ Petition No.16344/2018

1. Anita Sharma D/o Shri Dhan Raj Sharma, Aged About 26 Years, R/o Ward No. 10, Sujatnagar, Jaipur 303107
2. Aman Lamba D/o Shri Sumender Singh Lamba, Aged About 27 Years, R/o House No. 152, Sec-9, Bhadurgarh (Haryana) 124507
3. Mamta Yadav D/o Shri Ganesh Narayan Yadav, Aged About 26 Years, R/o Jaipuriyon Ka Bad, Ward No.12, Sirsi, Jaipur (Raj)
4. Manju Devi D/o Shri Rameshwar Lal W/o Sanjeet Mehariya, Aged About 28 Years, R/o 15, Dhani Mehraiyan Ki, Neemkathan, Nursingh Puri, Sikar (Raj) 332706
5. Ritu Khichar D/o Shri Mohar Singh Khichar, Aged About 31 Years, R/o 4C-345, Jamunapuri, Murlipura Scheme, Jaipur (Raj) 302039
6. Mahendra Pal Sain S/o Shri Manohar Lal Sain, Aged About 34 Years, R/o Naiyan Ka Mohalla, Near Ganesh Mandir Jasol, Distt. Barmer (Raj) 344024
7. Pravindra Kumar S/o Shri Nathu Mal, Aged About 36 Years, R/o 7/B/3A, Shiv Shakti Nagar, Inside Third Pole Mahamandir, Jodhpur (Raj).

----Petitioners

Versus

1. State of Rajasthan, through Principal Secretary, Medical & Health Services, Govt. Secretariat, Jaipur
2. The Director, Medical & Health Services, Swasthya Bhawan, Tilak Marg, C-Scheme, Jaipur
3. Neeti Sharma D/o Shri Ramavatar Sharma, Aged About 34 Years, Resident of F-1/281, Chitrakoot, Vaishali Nagar, Jaipur

----Respondents



For Petitioner(s) : Shri Tanveer Ahmed
For Respondent(s) : Dr. Vibhuti Bhushan Sharma, AAG
with Shri Prakhar Gupta; Shri Rakesh
Kumar with Ms. Priyanka Chauhan

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE GOVERDHAN BARDHAR
HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL

JUDGEMENT

Judgement Reserved on :: 11/02/2020

Judgement Pronounced on :: 04/08/2020

(PER HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL),J.

1. This Larger Bench has been constituted on a reference made in pursuance of the order dated 09.01.2020 passed by a Division Bench of this Court in D.B. Civil Writ Petition No.16344/2018, Anita Sharma & Ors. vs. State & Ors. and two connected matters viz. D.B. Civil Writ Petition No.18286/2018, Yogendra Malviya vs. State & Anr. and D.B. Civil Writ Petition No.27508/2018, Seema Gupta vs. State & Anr.

2. The aforesaid Writ Petitions came to be filed challenging inter alia, the validity of the Notification dated 22.12.2015 issued by the Government of Rajasthan in Department of Personnel whereby, the existing Rule as mentioned in column no.3 against each of the Service Rules as mentioned in column no.2 of the schedule appended thereto, has been substituted by the Rajasthan Various Service (II Amendment) Rules, 2015 in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The Notification reads as under:



"2. Substitution of Rule - The existing Rule as mentioned in column number 3 against each of the Service Rules as mentioned in column number 2 of the schedule appended hereto, shall be substituted by the following, namely:-

"Reservation of vacancies for women.-

Reservation of vacancies for women candidates shall be 30% category wise in the direct recruitment, out of which one third shall be for widows and divorced women candidates in the ratio of 80:20. In the event of non availability of eligible and suitable candidates, either in widow or in divorcee, in a particular year, the vacancies may first be filled by interchange, i.e. vacancies reserved for widows to the divorcees or vice versa. In the event of non availability of sufficient widow and divorcee candidates, the unfilled vacancies, shall be filled by other women of the same category and in the event of non availability of eligible and suitable women candidates, the vacancies so reserved for them shall be filled up by male candidates of the category for which vacancy is reserved. The vacancy so reserved for women candidates shall not be carried forward to the subsequent year. The reservation for women including widows and divorcee women shall be treated as horizontal reservation, within the category, i.e. even the women selected in general merit of the category shall first be adjusted against the women quota.

Explanation: In the case of widow, she will have to furnish a certificate of death of her husband from the Competent Authority and in case of divorcee she will have to furnish the proof of divorce."

3. The Division Bench of this Court has, vide its order dated 09.01.2020, observed as under:

"In the earlier case decided by Division Bench of this Court vide order dated 2.11.2015, the inter-changeability of reservation of the widow and divorcee category candidates was held to be justified and thereafter, the Notification-in-question was issued by the State. We are of the opinion that





question involved in the present case requires to be dealt by a Larger Bench.”

4. As a matter of fact, we find that the validity of the Notification dated 22.12.2015 was not under challenge before the earlier Division Bench in D.B. Special Appeal No.1498/2012; which has, vide its order dated 02.11.2015, held as under:



“During pendency of the special appeal, this Court passed a detailed order dt.13.2.2015 holding that the State Government in exercise of powers conferred by proviso to Art.309 of the Constitution of India, made an omnibus amendment vide its Notification dt.24.01.2011 introducing reservation of vacancies for Women candidates in direct recruitment of 30% category-wise out of which further reservation is provided of 8% for widows and 2% for divorced women candidates with further stipulation that in the event of non-availability of eligible and suitable widows and divorced women candidates may be filled in a particular year, the vacancies so reserved for widows and divorced women candidates may be filled by other women candidates. The amendment introduced by the State Government vide Notification dt.24.01.2011 relevant for the present purpose reads ad infra-

“Reservation of vacancies for women- Reservation of vacancies for women candidates shall be 30% category wise in direct recruitment out of which 8% shall be for widows and 2% for divorced women candidates. In the event of non-availability of eligible and suitable widows and divorced women candidates in a particular year, the vacancies so reserved for widow and divorced women candidates shall be filled by other women candidates and in the event of non availability of eligible and suitable women candidates, the vacancies so reserved for them shall be filled up by male candidates and such vacancies shall not be carried



forward to the subsequent year and the reservation shall be treated as horizontal reservation i.e. the reservation of women candidates shall be adjusted proportionately in the respective category to which the women candidates belong”.

In compliance of order of this Court dt.13.2.2015, the State Government also examined the case and proposed that reservation of 8% in widow category and 2% in divorcee category out of 30% reservation meant for women category if remain unfilled in the event of non-availability of eligible or suitable widows or divorced women candidates in a particular year, the same be filled vice versa within two categories and if no suitable candidate is available in both these categories, such vacancy shall be transferred & be filled by open women candidates. The proposal of the State Government reads ad infra-



“मान. न्यायालय द्वारा डी.बी. सिविल रिट याचिका संख्या 1498/2012 में दिये गये निर्णय दिनांक 13.02.15 (परिशिष्ट अ) की पालनार्थ, नियमों में विहित प्रावधान के स्थान पर महिलाओं के लिए 30 प्रतिशत उपलब्ध आरक्षण में 8 प्रतिशत विधवा महिलाओं के 2 प्रतिशत तथा विवाह विच्छिन्न महिलाओं के लिए उपलब्ध अभ्यांश में रिक्त रहे पदों को इन्हीं में से अंतरा परिवर्तन (interchange) द्वारा विपरीत क्रम (vice versa) से भरने के प्रस्ताव को उचित समझा गया उक्त है निर्णय। अतः की पालना हेतु विधिक सेवा नियमों में यह प्रावधान करना आवश्यक हो गया है कि यदि किसी वर्ष विशेष में पात्र तथा उपयुक्त विधवा एवं विवाह विच्छिन्न महिलाओं के उपलब्ध न होने की दशा में ऐसी आरक्षित रिक्तियां अंतरा प्रथमतः परिवर्तन (interchange) द्वारा भरी जावेंगी अर्थात् विधवा महिलाओं के लिए आरक्षित रिक्तियों को विवाह विच्छिन्न महिलाओं से या इसके विपरीत (vice versa) क्रम से भरी जावेंगी और किसी वर्ष विशेष में पात्र तथा उपयुक्त विधवा एवं विवाह विच्छिन्न महिलाओं के उपलब्ध न होने की दशा में ऐसी आरक्षित रिक्तियां संबंधित वर्ग की अन्य महिला अभ्यर्थियों से भरी जावेंगी और पात्र तथा उपयुक्त महिला अभ्यर्थी उपलब्ध न होने की दशा में उनके लिए इस प्रकार आरक्षित रिक्तियां उसी वर्ग के पुरुष अभ्यर्थियों से भरी जावेंगी। इसके साथ ही नियमों में एक परन्तुक के रूप में यह प्रावधान भी जोड़ना आवश्यक हो गया है कि जिन सेवा नियमों में महिलाओं का 30 प्रतिशत आरक्षण से भी अधिक है उनमें भी विधवा और विवाह विच्छिन्न महिला अभ्यर्थियों हेतु प्रवर्गानुसार आरक्षण कुल रिक्तियां: 8 प्रतिशत क्रमशः और 2 प्रतिशत से अधिक नहीं होगा। यह आरक्षण क्षैतिज आरक्षण होगा।”



We do find justification in the proposal of the State Government that the Reservation of vacancies for women candidates is 30% category wise in direct recruitment, 8% to be filled by widows and 2% by divorced women candidates and if it remain unfilled in the event of non-availability of eligible or suitable widows and divorced women candidates in a particular year, it has to be first offered inter-se to the widow/divorcee women candidates and vice versa and if no suitable candidate is available in both these categories, such vacancy shall be filled by other women candidates.”



Therefore, from the aforesaid, it is apparent that proposal of the State Government was found to be justified by the Division Bench and, as a matter of fact, the Notification which was yet to be issued, was never the subject matter of challenge before it.

5. The Division Bench has, in its order dated 9.1.2020, also taken note of dismissal of the review petition filed in the aforesaid matter. In the review petition no.183/2018, the Division Bench, vide its order dated 4.12.2018, held as under:

“This petition has been filed seeking review of order dated 13.02.2015 and judgment dated 02.11.2015 passed by Coordinate Division Bench in D.B. Special Appeal (Writ) No.1498/2012 filed by one Ms. Mona Sharma, who claimed that she was eligible for appointment on the post of Teacher Grade-III, Level-II (Hindi Subject). She participated in the process of selection pursuant to advertisement dated 25.02.2012. She was entitled to be considered against the vacancies which were meant for divorced/widow women category. According to the Notification dated 24.01.2011 issued by the respondents and the circular dated 05.06.2013, if member of either category was not available against the total number of vacancies, the vacancy would



revert to general category of women based on their vertical reservation but there was no provision of inter changeability of widow being 8% and divorced being 2%, which is why the appellant Ms. Mona Sharma was not getting appointment in the quota of divorced even though vacancies were available in the widow quota.

A perusal of the judgment of this Court dated 02.11.2015 reveals that this Court did not pass any specific orders but simply observe that since the amendment Notification dated 24.01.2011 and circular dated 05.06.2013 need consideration at the end of the Government, therefore, the Government should examine the issue and take appropriate decision in this regard.

It is informed by Mr. S. K. Gupta, learned Additional Advocate General that the Government has now amended the Rules and provided for exchange of the vacancies between divorced and the widow and that if the vacancies in the quota of divorcees remain unfilled they can be offered to widow and vice-versa and would not revert to the open category.

Mr. Tanveer Ahmed, learned counsel for the review petitioner submits that this Court in the judgment sought to be reviewed failed to appreciate that reservation under women category is horizontal reservation and therefore inter changeability of reservation to widow and divorced category under the reservation quota of woman category would tantamount to reservation within the reservation, which is not permissible in law. It is argued that new Notification dated 22.12.2015 cannot be applied to the advertisement issued prior thereto as there was no amendment in the Rajasthan Panchayati Raj Rules, 1996.

Even if that be so, this cannot be considered as an error apparent on the face of the record. All that this Court has done in the judgment of which review is sought is that it left the matter to the state authorities to consider the question of inter changeability of vacancies between the divorced and the widow category. This does not make out a





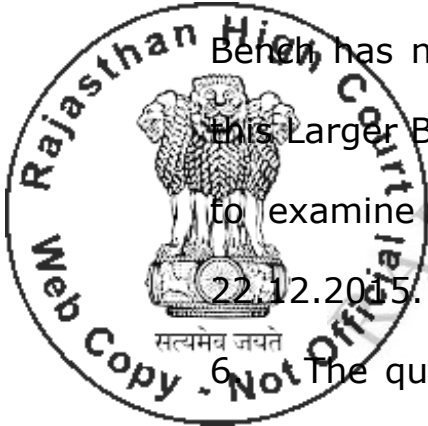
case for review. This Court cannot in the scope of review comment on the correctness of the Notification issued subsequently.”

Thus, we find that the validity of the Notification dated 22.12.2015 has never been subject matter of judicial scrutiny on earlier occasion either in the D.B. Special Appeal (Writ) No.1498/2012 or in the review petition. Moreover, the Division Bench has not referred any specific question for consideration of this Larger Bench; however, in larger public interest, we think it fit to examine the constitutional validity of the Notification dated 22.12.2015.

6. The question which may be formulated for consideration by this Larger Bench would be “whether the Notification dated 22.10.2015 providing for interchangeability of reservation between widow and divorcee women categorywise in the event of non-availability of eligible/suitable widow/divorcee women candidate in a particular year is ultra vires of the provisions of the Constitution of India?”

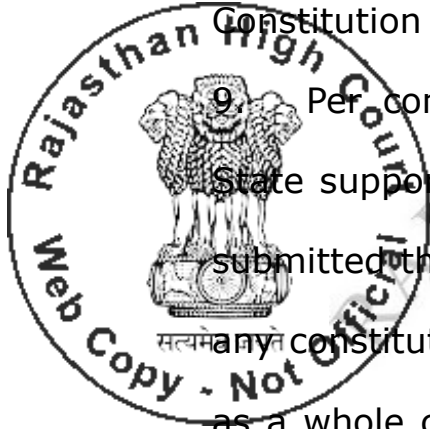
7. Assailing validity of the Notification dated 22.12.2015, the learned counsel for the petitioners submitted that since the Rule provides the reservation for women to be compartmentalized horizontal, interchangeability or migration of divorcee candidate to widow category or vice versa is impermissible and is against the constitutional mandate of Articles 15 and 16. He further submitted that if such interchangeability is permitted, the less meritorious divorcee/widow category women would march over more meritorious women candidates of their respective category.

8. Learned counsel for the petitioners further contended that while widowhood is an unfortunate status conferred upon a





woman without human intervention, there are instances where only to get benefit of reservation, divorces are being contrived, i.e., obtained artificially in a sham manner and if such interchangeability is permitted, it would be an impetus to such dishonest practice. He, therefore, prayed that the Rule inserted vide Notification dated 22.12.2015 be declared ultra vires to the Constitution of India.



9. Per contra, learned counsel appearing for the respondent-State supporting the validity of the Notification dated 22.12.2015 submitted that the petitioners have failed to point out violation of any constitutional provision. He submitted that although 'women' as a whole constitute an under-privileged class, the divorcee and widow category women constitute a more deprived class in themselves and the State Government has, in its legislative competence, enacted the Rule beneficial to such less advantageous group of women as a policy decision to ameliorate them from their vulnerable situation in which no fault can be found with.

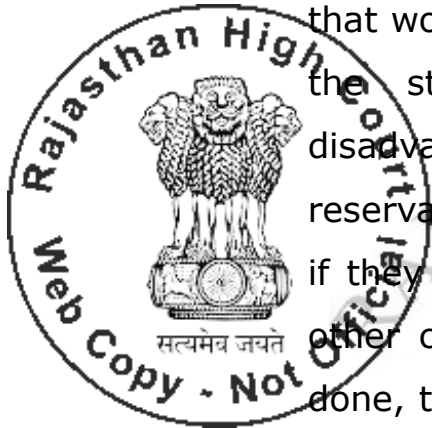
10. Heard the learned counsels for the parties.

11. Articles 15 (3) of the Constitution of India is the enabling provision providing for special measures for women which may be in the shape of reservation too. The Constitution Bench of Hon'ble Apex Court has, in the case of **Indra Sawhney etc. vs. Union of India & Ors.-(1992) Suppl. (3) SCC 217**, held as under:

"514. It is necessary to add here a word about reservations for women. Clause (2) of [Article 16](#) bars reservation in services on the ground of sex. [Article 15\(3\)](#) cannot save the situation since all reservations in the services under the State can only be made under [Article 16](#). Further, women



come from both backward and forward classes. If reservations are kept for women as a class under Article 16(1), the same inequitous phenomenon will emerge. The women from the advanced classes will secure all the posts, leaving those from the backward classes without any. It will amount to indirectly providing statutory reservations for the advanced classes as such, which is impermissible under any of the provisions of Article 16. However, there is no doubt that women are a vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. Hence reservations for them on that ground would be fully justified, if they are kept in the quota of the respective class, as for other categories of persons, as explained above. If that is done, there is no need to keep a special quota for women as such and whatever the percentage-limit on the reservations under Article 16, need not be exceeded."



12. It was further held in para 812 as under:

"812. We are also of the opinion that this Rule of 50% applied only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture; all reservations are not of the same nature. 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 Casts, Scheduled Tribes and other backward classes (under Articles 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 providing for these horizontal reservations, the percentage 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."



The Hon'ble Apex Court in the case of **Anil Kumar Gupta & Ors. vs. State of U.P. & Ors.-(1995) 5 SCC 173** held as under:

"13. Against every vertical reservation, a similar provision was made, which meant that the said horizontal reservation in favour of ladies was to be a "compartmentalised horizontal reservation". we are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised in the sense explained above. In other words, the Notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., S.T., S.C., O.B.C. and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out herein-above, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year.

18. 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 percent special reservation seats to be filled up first and then take up the O.C.(merit)

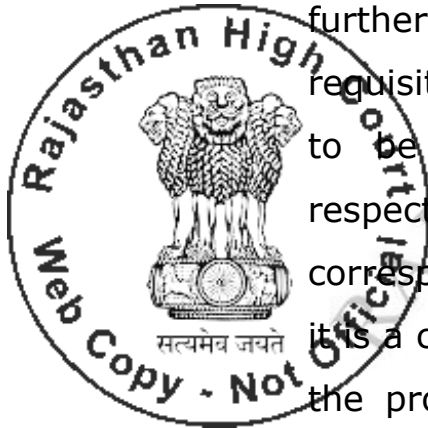


quota (followed by filling of O.B.C., S.C. and S.T. Quotas). The proper and correct course is to first fill up the O.C. quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., S.C., S.T. and B.C; the third step would be to find out how many candidates belonging to 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 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 percent in favour of special categories, overall, 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 the O.C. quota.

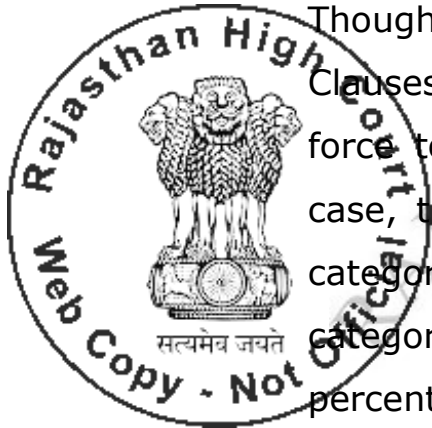
19. In this connection, we must reiterate what this Court has said in *Indra Sawhney-1992 Supp (3) SCC 217*. While holding that what may be called "horizontal reservation" can be provided under Clause (1) of Article 16, the majority judgment administered the following caution in para 744;

"(B)ut at the same time, one thing is clear. It is in very exceptional situation and not for all and sundry reasons that any further reservations of whatever kind, should be provided under Clause (1). In such cases, the State has to satisfy, if called upon, that making such a provision was necessary (in public interest) to redress the specific situation. The very presence of Clause (4)





should act as a damper upon the propensity to create further classes deserving special treatment. The reason for saying so is very simple. If reservations are made both under Clause (4) as well as under (1), the vacancies available for free competition as well as reserved categories would be correspondingly whittled down and that is not a reasonable thing to do".



Though the said observations were made with reference to Clauses (1) and (4) of Article 16, the same apply with equal force to Clauses (1) and (4) of Article 15 as well. In this case, the reservation of fifteen percent of seats for special categories was on very high side. As pointed out above, two categories out of them representing six percent out of fifteen percent are really reservations under Article 15(4), wrongly treated as reservations under Article 15(1). Even otherwise, the special reservation would be nine percent. The respondents would be well advised to keep in mind the admonition administered by this Court and ensure that the special reservations (horizontal reservations) are kept at the minimum."

14. A perusal of the Notification dated 22.12.2015 reveals that it, in no uncertain terms, provides for reservation in favour of women categorywise, i.e., compartmentalized horizontal reservation. Thus, it is watertight reservation in each vertical reservation class. The question for our consideration is whether interchangeability of reservation for widow/divorcee within their respective women category is violative of the constitutional scheme of reservation for women?

15. In **Indra Sawhney** (supra), the Hon'ble Apex Court has held as under:



“Further, women come from both backward and forward classes. If reservations are kept for women as a class under Article 16(1), the same inequitous phenomenon will emerge. The women from the advanced classes will secure all the posts, leaving those from the backward classes without any. It will amount to indirectly providing statutory reservations for the advanced classes as such, which is impermissible under any of the provisions of Article 16. However, there is no doubt that women are a vulnerable section of the society, whatever the strata to which they belong. They are more disadvantaged than men in their own social class. **Hence reservations for them on that ground would be fully justified, if they are kept in the quota of the respective class...**”



16. In **Anil Kumar Gupta's case** (supra), the distinction between overall horizontal reservation and compartmentalised horizontal reservation has been explained by way of following illustration:

“Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not inter-transferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen percent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for O.B.Cs.; if the 112 special reservation seats are also divided proportionately as between O.C., O.B.C., S.C. and S.T., 30 seats would be allocated to the O.B.C. category; in other words, thirty special category students can be accommodated in the O.B.C. category; but say only ten special reservation candidates belonging to O.B.C. are available, then these ten candidates will, of course, be allocated among O.B.C. quota



but the remaining twenty seats cannot be transferred to O.C. category (they will be available for O.B.C. candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in O.C. category or not; the special reservation would be a watertight compartment in each of the vertical reservation classes (O.C., O.B.C., S.C. and S.T.). As against this, what happens in the over-all reservation is that while allocating the special reservation students to their respective social reservation category, the over-all reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to O.C. category which means that the number of special reservation candidates in O.C. category would be $56+20=76$. Further, if no special reservation candidate belonging to S.C. and S.T. is available then the proportionate number of seats meant for special reservation candidates in S.C. and S.T. also get transferred to O.C. category. The result would be that 102 special reservation candidates have to be accommodated in the O.C. category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between O.C., O.B.C., S.C. and S.T. will not be altered.”

17. Taking cognizance of the repercussion of the overall horizontal reservation, the Hon'ble Apex Court has held as under:

“We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised in the sense explained above. In other words, the Notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., ST., S.C.,



O.B.C. and O.C. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the O.C. category alone - and none from the O.B.C. or for that matter, from S.C. or S.T. It can well happen the other way also in a given year."



From the aforesaid, it is apparent that the interchangeability is impermissible within compartmentalized horizontal reservation. The impermissibility of migration amongst horizontal reservation has loud object as such migration inter-se may prejudice the vertical reservation; but, no such mischief can be said to be obtaining if interchangeability in between widow and divorcee i.e. two sub classes under the women reservation as a class is permitted categorywise. If such interchangeability between the widow and divorcee is permitted, it will adversely affect neither the vertical reservation nor the horizontal reservation for the women of the category other than the category to which the widow/divorcee belongs.

18. So far as the aforesaid aspect as well as contention of the learned counsel for the petitioners that such migration may result in marching over of some less meritorious widow/divorcee women candidates over more meritorious women candidate in their respective category, suffice is to say that the whole object behind the reservation is to protect the weaker/vulnerable section of the society against competition from open category candidates. The Hon'ble Apex Court has, in the case of **Indra Sawhney** (supra) has observed as under:



suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year **and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories** and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability.

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government."



Thus, interchangeability amongst horizontal reservations which does not adversely affect vertical reservation, already exists under the scheme of the Rules providing for horizontal reservation. The petitioners have not disputed the legislative competence of the respondents in enacting the Rule in question issued vide Notification dated 22.12.2015. We find no constitutional impediment in making the reservation for widow and divorced women interchangeable i.e. filling up of unfilled vacancies of one sub-class from another sub-class; categorywise.

19. Although, contention of the learned counsel for the petitioner that the course of divorce can be resorted to obtain it contrively in order to have benefit of reservation, at first blush appears lucrative; but, in absence of any material/data on record to substantiate the contention, it has no legs to stand on and deserves to be rejected.

20. It is trite law that there is always a presumption in favour of the constitutionality of an enactment. The Hon'ble Apex Court has,

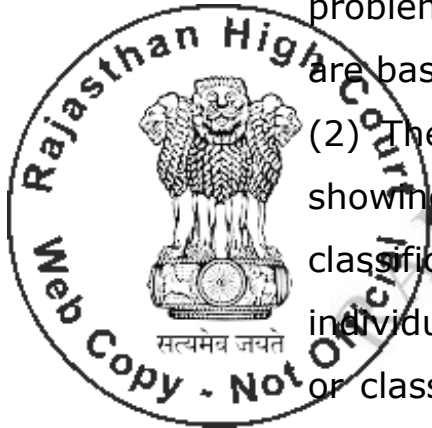


in case of **State of Bombay vs. F.N. Balsara-AIR 1951 SC 318**

held as under:

"(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class."



The petitioners have miserably failed to rebut the aforesaid presumption.

21. The upshot of the aforesaid analysis is that the Rule permitting interchangeability of reservation between widow and divorcee women is held to be constitutionally valid and we find no merit in the challenge to the Notification dated 22.12.2015 permitting inter-se transfer of unfilled vacancies between widow and divorcee women categorywise.

22. The reference is answered accordingly and registry is directed to list the writ petitions before the appropriate Bench having roster for decision on merit.

(MAHENDAR KUMAR GOYAL),J. (GOVERDHAN BARDHAR),J. (SANGEET LODHA),J.