

Kameshwar Kumar Yadav vs State Of Chhattisgarh on 14 October, 2026

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YOGESH Digitally

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2026:CGHC:44352

signed by
YOGESH TIWARI

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HIGH COURT OF CHHATTISGARH AT BILASPUR
Order Reserved on : 06.08.2026
Order Delivered on : 14.10.2026

WPS No. 4254 of 2023

1 – Kameshwar Kumar Yadav Son Of Munjanlal Yadav Aged About 31
Years Village Koparo Post Rampur Block Salewara, District :
Khairagarh–Chhuikhadan–Gandai, Chhattisgarh

2 – Yogendramani Verma Son Of Shri Kailash Verma Aged About 28
Years Resident Of Village Jaghrakhand, District : Gaurela–Pendra–
Marwahi, Chhattisgarh

3 – Sandeep Kumar Kumbhkar Son Of Shri Jogi Ram Kumbhkar Aged
About 31 Years Resident Of Village Khaprikala Block Lormi, District :
Mungeli, Chhattisgarh

4 – Jitendra Kumar Son Of Shri Panna Lal Aged About 32 Years
Resident Of Village Bagehwar Ward 5 Arang, District : Raipur,
Chhattisgarh

5 – Omprakash Chelak S/o Sudharam Chelak Aged About 33 Years
Satnamipara Khuteri Block Arang, District : Raipur, Chhattisgarh
--- Petitioner(s)

Versus

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1 – State Of Chhattisgarh Through Secretary, Department Of School
Education, Mahanadi Bhawan, Mantralaya Atal Nagar, New Raipur,
District : Raipur, Chhattisgarh

2 – Director, Directorate Of Chhattisgarh Public Instruction Indrawati
Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
--- Respondent(s)

WPS No. 125 of 2024

1 – Yogendra Kumar Sharma S/o Vinod Kumar Sharma Aged About 23 Years Roll No. 13023411 R/o Village– Ghuthia, Post– Baitalpur, Tahsil– Pathariya,, District : Mungeli, Chhattisgarh

2 – Sudeep Kumar S/o Bodhram Aged About 25 Years Roll No. 18153125, R/o Ward No. 12, Sundar Gali, Lewai Khisora,, District : Janjgir–Champa, Chhattisgarh

3 – Ghanshyam S/o Awadh Ram Aged About 33 Years Roll No. 16173061 R/o Sahupara, Bargaon, Bemetara,, District : Bemetara, Chhattisgarh

4 – Sanat Kumar Miri S/o Chedi Lal Aged About 25 Years Roll No. 18103240 R/o Post– Hardi,, District : Janjgir–Champa, Chhattisgarh

5 – Chandra Prakash S/o Rikhiram Aged About 29 Years Roll No. 13393070 R/o Vill– Padariya, Post– Takhatpur,, District : Bilaspur, Chhattisgarh

6 – Bhupendra S/o Tikam Das Aged About 24 Years Roll No. 26073392 R/o Gadhula,, District : Rajnandgaon, Chhattisgarh

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7 – Anuradha Tamrakar D/o Sohan Lal Tamrakar Aged About 32 Years Roll No. 16123064 R/o Shiv Mandir Titurdih, District : Durg, Chhattisgarh

8 – Lokesh Kumar Janghel S/o Omprakash Janghel Aged About 31 Years Roll No. 26133290, R/o H.No. 10, Padmawatipur,, District : Rajnandgaon, Chhattisgarh

9 – Daneshwar S/o Bhupendra Aged About 29 Years Roll No. 25073508 R/o Maraud, Dhamtari, District : Dhamtari, Chhattisgarh

10 – Pooja Mande D/o Ratan Lal Mande Aged About 30 Years Roll No. 25103113 R/o Abhanpur,, District : Raipur, Chhattisgarh

11 – Shalini Gavel D/o Hazari Lal Gavel Aged About 26 Years Roll No. 22113064, R/o Pathripara, Korba, District : Korba, Chhattisgarh

12 – Farukh Ahmad Khan S/o Kalim Ahmad Khan Aged About 32 Years Roll No. 13153445 R/o Taiba Chowk, Talapara,, District : Bilaspur, Chhattisgarh

13 – Kanchan Tripathi W/o Sanjeev Kumar Tripathi Aged About 29 Years Roll No. 24203026 R/o Ambika Sadan, Gharghoda,, District : Raigarh, Chhattisgarh

14 – Adarsh Agrahari S/o Gouri Shankar Agrahari Aged About 25 Years Roll No. 13123103 R/o Mangla, District : Bilaspur, Chhattisgarh

15 – Shriram Pal S/o Aado Pal Aged About 27 Years Roll No. 26173039 R/o Dapka, District : Rajnandgaon, Chhattisgarh

16 – Ajay Lahare S/o Teturam Lahare Aged About 28 Years Roll No. 13343267 R/o Pamgarh,, District : Janjgir–Champa, Chhattisgarh

17 – Suman Patel D/o Govind Ram Patel Aged About 31 Years Roll No. 24303003 R/o Chandrapur,, District : Janjgir–Champa, Chhattisgarh

18 – Sagar Chandrakar S/o Pokhan Lal Chandrakar Aged About 32 Years Roll No. 23103153 R/o Village– Kharora,, District : Mahasamund, Chhattisgarh

19 – Shaukat Quraishi S/o Akbar Ali Quraishi Aged About 32 Years Roll No. 13243234 Roll Vill– Sahaspur, Block– Lormi, District : Mungeli, Chhattisgarh

20 – Deepak Dongre S/o Devchand Dongre Aged About 30 Years Roll No. 16043195 R/o Gandhi Nagar, Diprapara, Ward No. 39, District : Durg, Chhattisgarh

21 – Indra Kumar Sahu S/o Tuldas Sahu Aged About 31 Years Roll No. 26163147 R/o Lakholi Naka,, District : Rajnandgaon, Chhattisgarh

22 – Bhawna Sahu D/o Jyotikant Sahu Aged About 31 Years Roll No. 25253251 R/o Nagri,, District : Dhamtari, Chhattisgarh

23 – Reshma Sahu D/o Rajendra Sahu Aged About 30 Years Roll No. 25223232 R/o Neonara,, District : Bemetara, Chhattisgarh

24 – Mithlesh Verma S/o Geetalal Verma Aged About 27 Years Roll No. 16013001 R/o Maroda, Junvani, District : Rajnandgaon, Chhattisgarh

25 – Mamata D/o Uttam Kumar Aged About 27 Years Roll No. Borsi,, District : Gariyabandh, Chhattisgarh

26 – Tanuja D/o Jagdish Prasad Aged About 27 Years Roll No. 40083170 R/o Lawsara,, District : Janjgir–Champa, Chhattisgarh

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27 – Himanshu Sahu D/o Bihari Lal Sahu Aged About 26 Years Roll No. 30093030 R/o Kaitha,, District : Balodabazar–Bhathapara, Chhattisgarh

28 – Ankit Yadav S/o Ballu Yadav Aged About 26 Years Roll No. 16053202 R/o Kasaridih, District : Durg, Chhattisgarh

29 – Murli Manohar Jaltare S/o Santosh Kumar Aged About 29 Years Roll No. 18093330, R/o Karnaud Bamhani Bazar,, District : Janjgir–Champa, Chhattisgarh

30 – Suryaprakash S/o Kamleshwar Aged About 24 Years Roll No. 25053202 R/o Ajad Para Mohara, District : Balod, Chhattisgarh

31 – Vinod Kumar Sahu S/o Chesh Kumar Sahu Aged About 27 Years Roll No. 26073472, R/o Ranitarai,, District : Balod, Chhattisgarh

32 – Mahendra S/o Horilal Aged About 29 Years Roll No. 29063110 R/o Tarra, Rajim,, District : Gariyabandh, Chhattisgarh

33 – Khushboo D/o Jaikumar Aged About 28 Years Roll No. 16233487 R/o Gautam Nagar, Khurshipar, Bhilai,, District : Durg, Chhattisgarh

34 – Lakesh Kumar S/o Ashok Kumar Aged About 27 Years Roll No. 25113218, R/o Pendra, Fingeshwar, District : Gariyabandh, Chhattisgarh

35 – Ashish Kumar Rathore S/o Balaji Rathore Aged About 34 Years Roll No. 18183017 R/o Barpali Chowk, Champa,, District : Janjgir-Champa, Chhattisgarh

36 – Suman D/o Chandrabhan Aged About 31 Years Roll No. 15043260 R/o Jagannathpur, District : Balod, Chhattisgarh
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37 – Human Lal S/o Keja Ram Aged About 33 Years Roll No. 26193065 R/o Harduwa Ghumka,, District : Rajnandgaon, Chhattisgarh

38 – Vinod Bandhekar S/o Shivshay Bandhekar Aged About 26 Years Roll No. 22083315 R/o Balco Nagar,, District : Korba, Chhattisgarh

39 – Seema D/o Gop Singh Aged About 29 Years Roll No. 16023174 R/o Chaurel, District : Balod, Chhattisgarh

40 – Sukanya Gupta D/o Pradeep Gupta Aged About 32 Years Roll No. 12013537 R/o School Para Main Road, Baikunthpur, District : Koriya (Baikunthpur), Chhattisgarh

41 – Wahaab Ahmad S/o Abdul Wahid Aged About 29 Years Roll No. 16183310 R/o Bhilai Nagar,, District : Durg, Chhattisgarh

42 – Rishikesh Ratre S/o Bharatlal Ratre Aged About 26 Years Roll No. 23023097 R/o Balsi,, District : Mahasamund, Chhattisgarh

43 – Fanendra Mouryawanshi S/o Murli Mouryawanshi Aged About 29 Years Roll No. 25253027 R/o Semra Bahkhara,, District : Dhamtari, Chhattisgarh

44 – Laxmi D/o Kriparam Aged About 26 Years Roll No. 16193084 R/o Umar Poti, District : Durg, Chhattisgarh

45 – Shivam Panda S/o Sanatan Panda Aged About 27 Years Roll No. 24153049 R/o Tarkela, Raigarh, District : Raigarh, Chhattisgarh

46 – Bhupesh Tiwari S/o Rajendra Tiwari Aged About 28 Years Roll No. 16073115 R/o Ajad Chowk, Bhilai3,, District : Durg, Chhattisgarh
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47 – Parmanand Ray S/o Paritosh Ray Aged About 31 Years Roll No. 28033109 R/o Vill- Gondahur,, District : Kanker, Chhattisgarh

48 – Kishan Kumar Sahu S/o Indreshwar Sahu Aged About 24 Years
Roll No. 16163126 R/o Jeora, Distt- Durg, Cg

49 – Ashish Patel S/o Toshram Patel Aged About 24 Years Roll No.
13253095, R/o Hirapur, Lailunga,, District : Raigarh, Chhattisgarh

50 – Narad S/o Bishahu Ram Aged About 31 Years Roll No. 13443380
R/o Rajpur, District : Mungeli, Chhattisgarh

51 – Shivaji Rao Madhukar S/o Geetaprasad Madhukar Aged About 30
Years Roll No. 18093497 R/o Indra Nagar,, District : Raigarh,
Chhattisgarh

52 – Dinesh Kumar Sahu S/o Poshan Das Sahu Aged About 26 Years
Roll No. 26033279 R/o Jarwahi, District : Rajnandgaon, Chhattisgarh

53 – Rashmi Hota W/o Nitesh Hota Aged About 30 Years Roll No.
13233374 R/o Ashma Deluxe Home, Bilaspur,, District : Bilaspur,
Chhattisgarh

54 – Gaind Lal Sahu S/o Purooshottam Sahu Aged About 27 Years Roll
No. 23133182 R/o Bagbahara,, District : Mahasamund, Chhattisgarh

55 – Prateek Shrivastava S/o Jairam Prasad Shrivastava Aged About 32 Years
Roll No. 25123428 R/o Khamtarai,, District : Raipur, Chhattisgarh

56 – Hitesh Kumar S/o Bijelal Aged About 27 Years Roll No. 26043374,
R/o Ward No. 2, Naya Dhaba,, District : Rajnandgaon, Chhattisgarh
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57 – Pankaj Vema S/o Ravindra Verma Aged About 32 Years Roll No.
25183204 R/o Ward No. 5, Budgahan, Raipur,, District : Raipur,
Chhattisgarh

58 – Krishna Kumar Saytode S/o Deval Das Saytode Aged About 29
Years Roll No. 25013097 R/o Village- Mungi, Post- Chandkhuri, Block-
Arang,, District : Raipur, Chhattisgarh

59 – Balkrishna Sahu S/o Khelendra Sahu Aged About 29 Years Roll
No. 25323088 R/o Village- Bailaspur, Post- Manpasar,, District :
Balodabazar-Bhathapara, Chhattisgarh

60 – Santosh S/o Sohan Lal Aged About 24 Years Roll No. 26173118
R/o Village- Kallutola, Jithratola,, District : Rajnandgaon, Chhattisgarh

61 – Gopi Kumar S/o Ramhu Ram Aged About 31 Years Roll No.
21043311 R/o Bisatoal,, District : Kawardha (Kabirdham), Chhattisgarh

62 – Lokeshwari Dewangan D/o Kanhaiya Lal Dewangan Aged About
25 Years Roll No. 2503007, R/o Sorid,, District : Dhamtari, Chhattisgarh

63 – Suryapratap S/o Nakul Singh Aged About 25 Years Roll No.
31013229 R/o Ward No. 15, Bhimkanhar,, District : Balod, Chhattisgarh

64 – Mayank Dewangan S/o I.P. Dewangan Aged About 29 Years Roll

No. 13353070 R/o Kumharpara,, District : Bilaspur, Chhattisgarh

65 – Deepak Kushwaha S/o Shri Jaiprakash Kushwaha Aged About 29 Years Roll No. 13173375 R/o Village– Amhar, Post– Patna, Tahsil– Baikunthpur, Distt– Koriya, Cg

66 – Kisan Kumar S/o Uttam Kumar Aged About 23 Years Roll No. 29013149 R/o Borsi,, District : Gariyabandh, Chhattisgarh

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67 – Vaibhav Rao Jadhav S/o Narendra Rao Jadhav Aged About 25 Years Roll No. 15023219 R/o Bansapara, Ward No. 30,, District : Dhamtari, Chhattisgarh

68 – Hemshankar Sahu S/o Fulas Kumar Sahu Aged About 23 Years Roll No. 16273485 R/o Ward No. 11, Hasda,, District : Balod, Chhattisgarh

69 – Sandeep Kumar S/o Chhedu Ram Aged About 31 Years Roll No. 13193541 R/o Village– Kumhari, District : Sarangarh–Bilaigarh, Chhattisgarh

70 – Hansraj Jalchhatri S/o Byas Narayan Jalchhatri Aged About 34 Years Roll No. 23051034, R/o Arang, District : Raipur, Chhattisgarh
---Petitioner(s)

Versus

1 – State Of Chhattisgarh Through Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur,, District : Raipur, Chhattisgarh

2 – Director Directorate Of Chhattisgarh Public Instruction Indravati Bhawan, Naya Raipur,, District : Raipur, Chhattisgarh

3 – Professional Examination Board Through its Controller Vyapam Bhawan, Sector– 19, North Block– Atal Nagar, Raipur, CG
--- Respondent(s)

WPS No. 300 of 2024

1 – Parimal Kumar Bhoi S/o Vijay Bhoi Aged About 38 Years R/o 06, Balanda, District Mahasamund Chhattisgarh.

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2 – Hupendra Kumar Devangan S/o Shri Omprakash Devangan Aged About 34 Years R/o H.N. 88 Mohlai Trimurit Chowk Durg District Durg Chhattisgarh.

3 – Harishankar S/o Shri Dulichand Dewangan, Aged About 30 Years R/o 157, Ward No. 05, Bilaigarh, Bangla Bhata District Baloda Bazar Chhattisgarh.

---Petitioner(s)

Versus

1 – State Of Chhattisgarh Through Secretary, Department Of Education,

Mahanadi Bhawan, Manatralaya, Atal Nagar, New Raipur, District :
Raipur, Chhattisgarh

2 – Director Directorate Of Chhattisgarh Public Instruction Indravati
Bhawan, Raipur Chhattisgarh.

3 – Joint Director, Directorate Of Chhattisgarh Public Instruction
Indravati Bhawan, Raipur Chhattisgarh.

4 – National Council Of Teacher Education Sector -10 Dwarka Near
Metro Station New Delhi.

--- Respondent(s)

WPS No. 5884 of 2023

1 – Mehat Kumar S/o Badrika Prasad Aged About 28 Years R/o Village
Andola Tahsil Sarangarh District Sarangarh Bilaigarh Chhattisgarh.

2 – Dheluram Yadav S/o Bhagwat Ram Yadav Aged About 30 Years R/o
Village Pathartal Tahsil Lormi District Mungeli Chhattisgarh.

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3 – Shyam Sundar Sahu S/o Shri Ram, Aged About 33 Years R/o
Village Hasuwa Tahsil Tundra District Baloda Bazar Chhattisgarh.

4 – Rupesh Kumar Tarak S/o Shri Pati Ram Tarak, Aged About 30 Years
Adress Jawaibardha District Raipur Chhattisgarh.

5 – Manoj Kumar Sahu S/o Shri Manharan Lal Sahu Aged About 28
Years Dhardei, Via, Kharod District Janjgri Champa Chhattisgarh.

6 – Dilsay S/o Shri Antu Ram Aged About 34 Years Ward No. 2 13.
School Para Sonadula Parsadih, Bilaigarh, Baloda Bazar Chhattisgarh.

7 – Vishwanath Chandra S/o Shri Rajkumar Chandra, Aged About 29
Years Addree. Word No. 12 Deoraha, Deoraha Dhangaon Baloda
Bazar Bilaigarh Chhattisgarh.

8 – Prem Lal S/o Shri Bhagwat Ram Sahu, Aged About 29 Years
Address 03 Sadhakpara 08 Samariya Baloda Bazar Chhattisgarh.

---Petitioner(s)

Versus

1 – State Of Chhattisgarh Through Secretary, Department Of School
Education, Mahanadi Bhawan, Mantralaya Atal Nagar, New Raipur,
District Raipur Chhattisgarh.

2 – Director, Directorate Of Chhattisgarh Public Instruction Indravati
Bhawan, Naya Raipur, District Raipur Chhattisgarh.

3 – Professional Examination Board Through Its Controller Vyapam
Bhawan Sector 19 North Block Atal Nagar, Raipur Chhattisgarh.

--- Respondents

(Cause-title taken from Case Information System)

For Respective : Ms. Naushina Afrin Ali, Senior Advocate
 Petitioners assisted by Ms. Ankita Gouraha, Mr. Shailendra Kumar Bajpai, Mr. Ajay Shrivastava and Mr. Tapan Kumar Chandra, Advocates
 Mr. Yogendramani Verma, in person in WPS No.4254/2023

For Respondents-State : Mr. Anand Dadariya, Deputy Advocate General

For Respective : Ms. Akanksha Singh, Advocate on
 Respondents behalf of Mr. Avinash Singh, Mr. Arpit Parakh, Mr. Animesh Tiwari and Mr. Rupendra Kumar Dewangan, Advocates

Hon'ble Shri Amitendra Kishore Prasad, Judge
 CAV Order

1. Heard Ms. Naushina Afrin Ali, learned Senior Advocate, assisted by Ms. Ankita Gouraha, Mr. Shailendra Kumar Bajpai, Mr. Ajay Shrivastava and Mr. Tapan Kumar Chandra, learned counsel appearing for the respective petitioners; Mr. Yogendramani Verma, petitioner appearing in person in WPS No.4254/2023; Mr. Anand Dadariya, learned Deputy Advocate General appearing for the respondents-State; and Ms. Akanksha Singh, learned counsel appearing on behalf of Mr. Avinash Singh, Mr. Arpit Parakh, Mr. Animesh Tiwari and Mr. Rupendra Kumar Dewangan, learned counsel for the respective respondents.
 2. Since a common question of law and facts arises for consideration
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- in all these writ petitions, they were, therefore, heard analogously and are being disposed of by this common order, so as to avoid repetition of facts and pleadings and to ensure consistency in adjudication. Though the petitioners have sought certain reliefs which may vary in their form and formulation, the principal and foundational challenge raised in all the writ petitions is directed against the legality and validity of the advertisement dated 04.05.2023 issued by the respondent authorities for recruitment to the posts of Assistant Teacher, Teacher and Lecturer, particularly Teachers (E-Cadre) and Teachers (T-Cadre), insofar as the reservation provided therein is alleged to be contrary to the applicable reservation policy, reservation roster and the law laid

down by this Court as well as the Hon'ble Supreme Court.

3. For the sake of convenience, WPS No.300 of 2024 is treated as the lead case, and the facts, pleadings, documents and reliefs contained therein are being referred to for the purpose of adjudication of all the connected matters, except where any distinction is specifically required to be noticed.
4. The petitioners' common grievance arises out of the advertisement dated 04.05.2023 issued by the respondent authorities through CGVYAPAM for recruitment to the posts of Assistant Teachers, Teachers and Lecturers, including Teachers (E-Cadre) and Teachers (T-Cadre). The petitioners, possessing the requisite qualifications under the Chhattisgarh School
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Education (Teaching Cadre) Service Rules, 2019, participated in the selection process; the written examination was conducted on 10.06.2023 and the result was declared on 02.07.2023. The principal challenge is to the category-wise distribution of vacancies, particularly the alleged excessive reservation in favour of the Scheduled Tribe category. It is pleaded that out of 1113 posts of Teachers (E-Cadre), 698 posts were reserved for Scheduled Tribe candidates, constituting approximately 62.71%, while out of 4659 posts of Teachers (T-Cadre), 3105 posts were reserved for the Scheduled Tribe category, constituting approximately 66.64%. According to the petitioners, such distribution substantially exceeds the permissible reservation and correspondingly reduces the vacancies available to unreserved and other categories.
5. The petitioners further contend that the aforesaid reservation cannot be justified by treating the vacancies as backlog vacancies. According to them, out of the total 12489 vacancies, approximately 3746 were backlog vacancies and 8743 were fresh vacancies, and even after excluding the backlog vacancies, the proportion of unreserved posts remained substantially below what was permissible under the applicable reservation regime. The

petitioners rely upon the Chhattisgarh Lok Seva (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and the subsequent notification dated 29.11.2012, whereby reservation was enhanced from 50% to

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58%, comprising 12% for Scheduled Castes, 32% for Scheduled Tribes and 14% for Other Backward Classes. The said enhancement was challenged before this Court in WPC No.591 of 2012 and connected matters and was quashed by the Division Bench vide order dated 19.09.2022. The said judgment was challenged before the Hon'ble Supreme Court in SLP (C) Nos.18816-18817 of 2022, wherein, by order dated 01.05.2023, the State was permitted to complete recruitment and promotion processes which were already pending, subject to the final outcome of the proceedings. According to the petitioners, the said order did not authorise issuance of any fresh advertisement on the basis of the quashed reservation notification.

6. It is, therefore, the specific case of the petitioners that the impugned advertisement dated 04.05.2023, issued after the judgment of this Court and immediately after the order of the Hon'ble Supreme Court, could not have continued or extended the quashed 58% reservation regime, much less provided reservation to the Scheduled Tribe category beyond the prescribed percentage. The petitioners also rely upon the order dated 12.05.2022 whereby the circular dated 17.01.2012 concerning eligibility of local residents for appointments in the Surguja and Bastar Divisions was quashed. They contend that, despite their representation dated 24.08.2023 pointing out the alleged errors in the reservation roster, the recruitment and online counselling process was proceeded with. The impugned

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advertisement is, therefore, assailed as being contrary to the statutory reservation scheme, the judgment of this Court dated 19.09.2022, the order dated 01.05.2023 of the Hon'ble Supreme Court and [Articles 14](#) and [16](#) of the Constitution of India, with a

consequential prayer for quashing of the advertisement insofar as it relates to the posts of Teachers and for consideration of the petitioners for document verification, counselling and appointment in accordance with law.

7. In the lead petition, i.e. WPS No.300/2024, the petitioners have accordingly sought, inter alia, the following reliefs:-

"10.1 That the Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner.

10.2 That, Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and quash the impugned advertisement dated 04.05.2023 as far as the post of Teachers are concerned.

10.3 That, Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and direct the respondent authorities to send call letters to the petitioners for document verification.

10.4 That, Hon'ble Court may kindly be pleased to issue an appropriate writ/order/direction and direct the appropriate authorities to issue respondent appointment

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orders in favour of the petitioners after the counseling process.

10.5 Any other relief/reliefs which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also kindly be granted."

8. The present batch of writ petitions arises out of a common recruitment process initiated by the respondent authorities pursuant to advertisement dated 04.05.2023, whereby applications were invited for filling up vacant posts of Assistant Teachers, Teachers and Lecturers under the Chhattisgarh School Education (Teaching Cadre) Service Rules, 2019 and the amendments made thereto. The recruitment process was to be conducted through the Chhattisgarh Professional Examination Board (CGVYAPAM). The impugned advertisement pertains, inter alia, to the posts of Teachers in E-Cadre and T-Cadre in the Surguja and Bastar Divisions. The petitioners in the respective writ petitions are candidates possessing the requisite educational and other qualifications prescribed for the posts in question and

had participated in the recruitment process pursuant to the aforesaid advertisement. After submission of their applications, the eligible candidates were issued admit cards and the written examination was conducted by CGVYAPAM on 10.06.2023. The result of the examination was thereafter declared on 02.07.2023 and the petitioners claim to have been declared successful therein and to have acquired a legitimate expectation of being considered

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further in the recruitment process in accordance with law.

9. The principal grievance raised by the petitioners is with regard to the manner in which the vacancies were distributed amongst the various social categories in the impugned advertisement. According to the petitioners, the reservation roster adopted by the respondent authorities has resulted in an excessive allocation of vacancies to the Scheduled Tribe category, substantially beyond the percentage prescribed under the applicable reservation framework. It has been pleaded that, out of 1113 posts advertised for Teachers (E-Cadre), 698 posts were earmarked for candidates belonging to the Scheduled Tribe category, constituting approximately 62.71% of the total vacancies, whereas 105 posts were earmarked for the Scheduled Caste category. Likewise, out of 4659 posts advertised for Teachers (T-Cadre), 3105 posts were reserved for the Scheduled Tribe category, constituting approximately 66.64% of the vacancies. The petitioners contend that such distribution has resulted in a corresponding reduction in the number of posts available to candidates belonging to the unreserved and Scheduled Caste categories and is contrary to the reservation roster as well as the constitutional guarantee of equality of opportunity in public employment under [Articles 14](#) and [16](#) of the Constitution of India.

10. The challenge to the impugned reservation roster has its genesis in the earlier reservation regime prevailing in the State of

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Chhattisgarh. According to the petitioners, under the Chhattisgarh Lok Seva (Anusuchit Jatiyo, Anusuchit Janjatiyo aur Anya Pichhda

Vargon Ke Liye Arakshan) Adhiniyam, 1994, the reservation for direct recruitment was originally prescribed at 16% for Scheduled Castes, 20% for Scheduled Tribes and 14% for Other Backward Classes, aggregating to 50%. Subsequently, by amendment/notification dated 29.11.2012, the reservation structure was altered and the reservation for Scheduled Tribes was enhanced to 32%, while the reservation for Scheduled Castes was fixed at 12% and that for Other Backward Classes at 14%, thereby taking the aggregate reservation to 58%. The said enhancement, including the model roster applicable to the Surguja Division, was challenged before this Court in WPC No.591 of 2012 and connected matters. By judgment/order dated 19.09.2022, the Division Bench of this Court quashed the notification dated 29.11.2012, inter alia, on the ground that the enhanced reservation exceeded the permissible ceiling of 50%, and also dealt with the special reservation arrangement applicable to the Surguja Division. The petitioners contend that, in view of the aforesaid judgment, the respondent authorities could not have proceeded to frame a fresh recruitment roster by relying upon the very reservation structure which had already been judicially invalidated.

11. The aforesaid judgment of the Division Bench was assailed before the Hon'ble Supreme Court in SLP (C) Nos.18816-18817 of 2022.

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During pendency of the proceedings before the Hon'ble Supreme Court, the State brought to the notice of the Court that, prior to the judgment of this Court, various recruitment and promotion processes had already been initiated under the reservation regime contemplated by the notification dated 29.11.2012 and that several such processes were at different stages of completion. In the said backdrop, by order dated 01.05.2023, the Hon'ble Supreme Court permitted the State to proceed with and complete the selection processes which were already pending and to make appointments and promotions pursuant thereto, subject to the final outcome of the proceedings pending before it. According to

the petitioners, however, the said order was confined to protecting or permitting completion of recruitment and promotion processes which had already been initiated and did not authorise the State to commence a fresh recruitment process by issuing a new advertisement based upon the reservation regime contained in the notification dated 29.11.2012. It is the specific case of the petitioners that the advertisement dated 04.05.2023 was a fresh advertisement issued after the judgment of this Court dated 19.09.2022 and, therefore, could not derive protection from the order dated 01.05.2023 passed by the Hon'ble Supreme Court.

12. The petitioners further contend that the reservation in the present recruitment cannot be justified merely by describing a substantial portion of the vacancies as backlog vacancies. According to the material relied upon by them, a considerable number of vacancies

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advertised in the recruitment process were fresh vacancies, and even after excluding the backlog vacancies, the distribution of the remaining vacancies did not conform to the permissible reservation structure. The petitioners have referred to the particulars disclosed by the State in connected writ proceedings, including the number of backlog and fresh vacancies, and contend that the proportion of unreserved posts in relation to the fresh vacancies was substantially reduced on account of the excessive reservation provided to the Scheduled Tribe category. It is their further case that the State itself, in its pleadings in connected matters, disclosed the existence of a substantial number of backlog vacancies, but the same could not be utilised as a device to justify reservation in fresh vacancies beyond the prescribed percentage. The petitioners accordingly assert that the impugned advertisement effectively continues the quashed 58% reservation regime and, in respect of certain categories, even provides reservation to the Scheduled Tribe category substantially beyond 58%.

13. During the course of the recruitment process, the petitioners also approached the competent authorities and raised objections

regarding the alleged error in preparation and implementation of the reservation roster. Representations were submitted before the concerned authorities, including the Director, Public Instruction, pointing out the alleged disparity in the category-wise allocation of vacancies and seeking correction of the roster. It is further stated

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that the recruitment process proceeded through online counselling and that candidates were called upon to participate in the counselling process despite the objections raised by the petitioners. The petitioners have also relied upon the proceedings in other connected writ petitions, including WPS No.4254/2023 and WPS No.3179/2023, and the pleadings filed therein by the State, in support of their contention regarding the number of backlog vacancies, fresh vacancies and the manner in which the reservation roster was prepared. The petitioners submit that, despite the pendency of litigation concerning the reservation policy and despite the judgment of this Court quashing the notification dated 29.11.2012, the respondents proceeded with the recruitment on a reservation pattern which, according to them, is inconsistent with the applicable law.

14. It is in the aforesaid factual and legal backdrop that the present batch of writ petitions has been instituted. Though the individual petitioners have sought consequential reliefs in relation to their respective candidature, document verification, counselling and appointment, the core issue raised in all the matters is substantially common, namely, whether the respondent authorities could have issued the advertisement dated 04.05.2023 and undertaken the recruitment process by adopting a reservation roster which, according to the petitioners, earmarks vacancies in excess of the permissible percentage for the Scheduled Tribe category and thereby reduces the vacancies available to the

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unreserved and other reserved categories. The petitioners contend that such action is contrary to the statutory reservation scheme, the judgment dated 19.09.2022 passed by the Division

Bench of this Court, the order dated 01.05.2023 passed by the Hon'ble Supreme Court, and the constitutional mandate contained in [Articles 14](#) and [16](#) of the Constitution of India. The respondent-State, on the other hand, has sought to justify the recruitment process and the reservation roster on the basis of the applicable reservation policy, the nature of the vacancies and the protection granted in the pending proceedings before the Hon'ble Supreme Court.

15. Ms. Naushina Afrin Ali, learned Senior Counsel assisted by Ms.

Ankita Gouraha, learned counsel for the petitioners would submit that the controversy involved in the present batch of writ petitions is not directed against the constitutional concept of reservation or the affirmative action contemplated under [Article 16\(4\)](#) of the Constitution of India, but is confined to the legality of the recruitment process initiated pursuant to the advertisement dated 04.05.2023. It is submitted that the respondents have initiated a fresh recruitment process for the posts of Teacher (E-Cadre) and Teacher (T-Cadre) by applying the reservation notification dated 29.11.2012 and the consequential reservation roster, despite the fact that the said notification had already been quashed by the Division Bench of this Court vide judgment dated 19.09.2022.

According to learned Senior Counsel, once the parent notification

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itself stood quashed, the consequential reservation roster framed thereunder could not have continued to operate as an independent source of power for making fresh appointments. The petitioners, being qualified candidates who participated in the selection process and successfully cleared the written examination, are directly prejudiced by the unlawful distribution of vacancies and, therefore, have a substantive legal right to challenge the recruitment process.

16. Learned Senior Counsel further submits that prior to the notification dated 29.11.2012, the reservation structure in the State provided for 16% reservation for Scheduled Castes, 20% for Scheduled Tribes and 14% for Other Backward Classes,

aggregating to 50%. Subsequently, by notification dated 29.11.2012, the reservation was enhanced to 58%, comprising 12% for Scheduled Castes, 32% for Scheduled Tribes and 14% for Other Backward Classes, and consequential reservation rosters were prepared for different divisions, including Bastar and Surguja. The validity of the said notification and the consequential rosters was challenged before this Court in WPC No.591 of 2012 and connected matters, and this Court, after examining the issue, quashed the notification dated 29.11.2012 vide judgment dated 19.09.2022. It is submitted that the legal consequence of such quashing is that the notification ceased to have operative force and could not thereafter constitute the foundation for any fresh recruitment. The respondents, therefore, could not have treated

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the said notification as continuing to remain in force merely because the judgment was subsequently challenged before the Hon'ble Supreme Court.

17. Learned Senior Counsel submits that the subsequent order dated 01.05.2023 passed by the Hon'ble Supreme Court in the proceedings arising out of the judgment dated 19.09.2022 does not assist the respondents. According to learned Senior Counsel, the Hon'ble Supreme Court, while taking note of the fact that certain recruitment and promotion processes had already commenced under the earlier reservation regime, permitted the State to complete such pending processes, subject to the final outcome of the proceedings pending before it. The said order neither stayed the judgment dated 19.09.2022 nor revived the notification dated 29.11.2012, nor did it grant liberty to the State to initiate a fresh recruitment process by issuing a new advertisement on the basis of the quashed notification. It is emphatically submitted that the impugned advertisement dated 04.05.2023 was issued after the judgment of this Court and after the order dated 01.05.2023 of the Hon'ble Supreme Court and, therefore, cannot be treated as a continuation of any recruitment process which was already pending. The distinction between

completion of an existing selection process and initiation of a fresh recruitment process, according to learned Senior Counsel, is fundamental and goes to the root of the controversy.

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18. Learned Senior Counsel further submits that the figures contained in the impugned advertisement themselves demonstrate the extent of the illegality. Out of 1113 posts advertised for Teacher (E-Cadre), 698 posts have been earmarked for candidates belonging to the Scheduled Tribe category, constituting approximately 62.71% of the total vacancies, while out of 4659 posts advertised for Teacher (T-Cadre), 3105 posts have been earmarked for the Scheduled Tribe category, constituting approximately 66.64% of the total vacancies. It is submitted that even under the very notification dated 29.11.2012, upon which the respondents seek to rely, the reservation for Scheduled Tribe candidates was only 32%, and, therefore, allocation of more than 60% of the vacancies to a single reserved category cannot be justified merely by referring to the said notification or the reservation roster framed thereunder. Learned Senior Counsel submits that the respondents have failed to disclose any lawful statutory or constitutional basis for such extraordinary allocation of vacancies and that the impugned distribution materially affects the rights of candidates belonging to the unreserved as well as other reserved categories and consequently infringes the guarantee of equality of opportunity under [Articles 14](#) and [16](#) of the Constitution.

19. It is further submitted by learned Senior Counsel that the respondents cannot overcome the aforesaid illegality by describing a part of the vacancies as backlog vacancies.

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According to learned Senior Counsel, backlog vacancies and fresh vacancies stand on a distinct legal footing and the existence of backlog vacancies has to be established by production of the relevant roster, category-wise vacancy position, recruitment year, statutory provision governing carry-forward and the methodology

by which such vacancies have been adjusted against the present recruitment. In the present case, the respondents have not furnished the foundational material necessary to demonstrate that the excessive reservation reflected in the impugned advertisement is attributable exclusively to validly carried-forward backlog vacancies. It is submitted that even assuming the existence of backlog vacancies, such vacancies cannot revive a reservation notification which has already been quashed by a constitutional court, nor can they confer jurisdiction upon the respondents to commence a fresh recruitment process under an invalidated reservation regime. The respondents must first establish the existence of a valid source of power before seeking to justify the manner in which the vacancies have been distributed.

20. Learned Senior Counsel also submits that the respondents, being executive authorities, are constitutionally bound to obey and implement the judgments of this Court unless the same are stayed, modified or set aside by a competent superior court. Mere pendency of an appeal or Special Leave Petition does not efface the binding effect of the judgment under challenge. In the present

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case, there was no order staying the operation of the judgment dated 19.09.2022, nor was there any order expressly restoring the notification dated 29.11.2012. Therefore, the respondents could not have proceeded as though the quashed notification continued to possess legal force. Learned Senior Counsel submits that the reservation roster, being merely a mechanism for implementation of the parent reservation policy, could not survive independently once the parent notification had been quashed. Reliance is placed on the settled principles governing the distinction between quashing and stay of an order and the binding nature of judgments rendered by constitutional Courts.

21. Lastly, learned Senior Counsel submits that the impugned advertisement and the recruitment process undertaken pursuant thereto are consequently vitiated by lack of lawful authority,

disregard of the binding judgment dated 19.09.2022 passed by this Court, an erroneous interpretation of the limited protection granted by the Hon'ble Supreme Court vide order dated 01.05.2023, and arbitrary implementation of the reservation roster. It is submitted that the State cannot, under the guise of filling backlog vacancies or by relying upon a consequential roster, circumvent a judgment of this Court and continue a reservation regime which has already been judicially invalidated. According to learned Senior Counsel, permitting such action would not only prejudice the petitioners and similarly situated candidates but would also undermine the rule of law and the constitutional

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discipline governing executive action. The impugned advertisement, insofar as it proceeds on the basis of the quashed notification and provides reservation substantially in excess of the permissible limit, is therefore liable to be quashed, with consequential directions for consideration of the petitioners' candidature in accordance with the reservation regime legally prevailing on the date of the fresh recruitment.

22. Learned Senior Counsel, in support of her submissions, has placed reliance upon a catena of decisions of the Hon'ble Supreme Court as well as this Court. She has first relied upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217, particularly the principles governing the extent of reservation permissible under [Article 16\(4\)](#) of the Constitution of India. It is submitted that the Constitution Bench, while recognising reservation as an instrument of substantive equality, has cautioned that reservation cannot be permitted to obliterate the general rule of equality of opportunity and has evolved the general rule that reservation should not ordinarily exceed 50%, save in exceptional circumstances. Learned Senior Counsel submits that the aforesaid constitutional principle assumes significance in the present case, where the impugned advertisement allocates more than 60% of the vacancies in certain cadres to the Scheduled

23. Learned Senior Counsel has further placed reliance upon the judgment of the Hon'ble Supreme Court in R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745, to contend that a reservation roster is only a mechanism for giving effect to a valid reservation policy and cannot itself constitute an independent source of reservation. According to learned Senior Counsel, the respondents' reliance upon the division-wise reservation roster for Bastar and Surguja cannot be sustained once the parent notification dated 29.11.2012, pursuant to which the said roster was prepared, had already been quashed by this Court. It is submitted that the roster merely operationalises the reservation policy and, therefore, its validity necessarily depends upon the continued existence of the statutory or executive instrument from which it derives its authority. Once the foundational notification stood quashed, the consequential roster could not have been utilised for initiating a fresh recruitment process.

24. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, (1992) 3 SCC 1, in support of the proposition that there is a fundamental distinction between an order being quashed and its operation being stayed. Learned Senior Counsel submits that when an order or notification is quashed by a competent constitutional court, it is rendered non-existent in the eyes of law, whereas a stay merely suspends its operation. Applying the said principle, it is contended that after the

judgment dated 19.09.2022 passed by the Division Bench of this Court quashing the notification dated 29.11.2012, the respondents could not have treated the said notification as continuing to remain operative merely because the State had preferred Special Leave Petitions before the Hon'ble Supreme Court. Unless the judgment itself was stayed or the quashed notification was specifically revived by the Hon'ble Supreme Court, the executive

authorities were bound to act in accordance with the judgment of this Court.

25. Learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court in East India Commercial Co. Ltd. v. Collector of Customs, AIR 1962 SC 1893, to emphasise the binding nature of judgments of the High Court upon executive authorities and subordinate forums functioning within its territorial jurisdiction. It is submitted that the executive cannot disregard a judgment rendered by a constitutional court merely because an appeal or Special Leave Petition has been preferred against such judgment. According to learned Senior Counsel, the doctrine of judicial discipline obliges the executive authorities to faithfully implement the law declared by the competent constitutional court unless and until the judgment is stayed, modified or set aside by a superior court. In the present case, the respondents were, therefore, bound to give effect to the judgment dated 19.09.2022 and could not have proceeded upon the assumption that the quashed notification dated 29.11.2012 continued to confer
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authority upon them.

26. Reliance has further been placed upon the judgment of the Constitution Bench of the Hon'ble Supreme Court in M. Nagaraj v. Union of India, (2006) 8 SCC 212, to submit that reservation, though constitutionally permissible, remains subject to the limitations and requirements flowing from the equality code contained in [Articles 14](#) and [16](#) of the Constitution. Learned Senior Counsel submits that the power of the State to make reservation is an enabling power and cannot be exercised in an arbitrary or unstructured manner so as to destroy the constitutional guarantee of equality of opportunity. According to her, the present case is not a challenge to reservation as an affirmative action measure, but to the manner in which the State has exercised that power by relying upon a notification which had already been quashed and by providing reservation to the Scheduled Tribe category at a level substantially higher than the

percentage prescribed even under the said notification.

27. Learned Senior Counsel has also referred to the judgment of the Constitution Bench in *Jarnail Singh v. Lachhmi Narain Gupta*, (2018) 10 SCC 396, for the proposition that the exercise of reservation powers by the State remains subject to constitutional scrutiny and cannot be permitted to operate outside the parameters prescribed by the Constitution. It is submitted that the fact that reservation is intended to advance substantive equality

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does not confer an unfettered discretion upon the executive to determine the extent or manner of reservation contrary to the constitutional framework. The impugned action, according to learned Senior Counsel, must therefore be examined on the touchstone of [Articles 14](#) and [16](#) and cannot be sustained merely by invoking the object of providing adequate representation to Scheduled Tribe candidates.

28. Reliance has also been placed upon the Constitution Bench judgment of the Hon'ble Supreme Court in *Jaishri Laxmanrao Patil v. State of Maharashtra*, (2021) 8 SCC 1, wherein the constitutional significance of the 50% ceiling governing reservation was reiterated. Learned Senior Counsel submits that, although the constitutional scheme recognises the possibility of exceptional circumstances, any departure from the general rule cannot be presumed or founded upon administrative convenience and must be supported by constitutionally relevant material. According to her, in the present case no such exceptional constitutional basis has been disclosed by the respondents for earmarking more than 60% of the vacancies in favour of the Scheduled Tribe category.

29. Learned Senior Counsel has further placed reliance upon the judgment of the Hon'ble Supreme Court in *Chebrolu Leela Prasad Rao v. State of Andhra Pradesh*, (2021) 11 SCC 401, to contend that even where the State seeks to advance the interests

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of a particular Scheduled Tribe population or a geographically distinct area, the exercise of reservation power remains subject to the constitutional limitations embodied in [Articles 14](#) and [16](#). It is submitted that the geographical or demographic composition of a particular division cannot, by itself, furnish an unrestricted basis for granting reservation in a manner which substantially excludes candidates belonging to other categories from equal consideration for public employment.

30. Learned Senior Counsel has also relied upon the judgment of the Hon'ble Supreme Court in Assistant Collector of Central Excise v. Dunlop India Ltd., (1985) 1 SCC 260, in support of the principle of judicial discipline and the binding nature of orders passed by superior courts. According to learned Senior Counsel, once a constitutional court has adjudicated upon the validity of an executive policy or notification, the executive authorities cannot circumvent or indirectly nullify the effect of such judgment by adopting the same policy through another administrative instrument. The respondents, therefore, could not have achieved indirectly, through the impugned advertisement and consequential reservation roster, what stood prohibited by the judgment dated 19.09.2022 of this Court. She also placed reliance upon the judgment rendered by the Hon'ble Supreme Court in Vikas Kishanrao Gawali v. State of Maharashtra, (2021) 6 SCC 73 as well as recent judgment of the Hon'ble Apex Court in State of Punjab v. Davinder Singh, (2025) 1 SCC 1.

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31. Learned Senior Counsel has lastly placed specific reliance upon the judgment dated 19.09.2022 passed by the Division Bench of this Court in WPC No.591 of 2012 and connected writ petitions, whereby the notification dated 29.11.2012 enhancing the reservation to 58% and the consequential reservation arrangement applicable to the concerned divisions were quashed. It is submitted that the said judgment constitutes the immediate and foundational judicial pronouncement governing the present controversy. According to learned Senior Counsel, once the

aforesaid notification was quashed, the respondents could not have invoked the same reservation structure for a recruitment process initiated thereafter. The subsequent order dated 01.05.2023 passed by the Hon'ble Supreme Court in the proceedings arising from the said judgment, according to learned Senior Counsel, merely permitted completion of recruitment and promotion processes which had already commenced and did not revive the quashed notification or authorise the State to issue a fresh advertisement on its basis. The present recruitment, having admittedly commenced only with the advertisement dated 04.05.2023, is therefore not covered by the protection granted by the Hon'ble Supreme Court and is liable to be tested independently on the basis of the law prevailing on the date of issuance of the impugned advertisement.

32. Mr. Ajay Shrivastava, learned counsel for the petitioners adopting the submissions advanced by learned Senior Counsel, submits

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that the impugned advertisement dated 04.05.2023 is liable to be set aside, as the reservation roster adopted therein is founded upon the very notifications and model rosters which had already been declared ultra vires and quashed by this Court. It is submitted that the recruitment relates to 1,113 posts of Teacher (E-Cadre), 4,659 posts of Teacher (T-Cadre), 793 posts of Assistant Teacher (E-Cadre) and 5,492 posts of Assistant Teacher (T-Cadre), wherein an excessive percentage of vacancies has been earmarked for the Scheduled Tribe category, ranging from approximately 56.62% to 68.42%. According to learned counsel, such reservation is traceable to the notification dated 29.11.2012 and the consequential district/divisional model roster, both of which have ceased to have legal efficacy pursuant to the judgment of this Court. It is further submitted that the petitioners have themselves participated in the selection process for the posts of Assistant Teacher and Teacher and their candidature is directly affected by the unlawful distribution of vacancies.

33. Learned counsel further submits that reliance placed by the State

upon the order dated 01.05.2023 passed by the Hon'ble Supreme Court in the pending proceedings arising out of WPC No.591 of 2012 is wholly misplaced. The permission granted by the Hon'ble Supreme Court was confined to recruitment and promotion processes which had already been initiated prior to the judgment of the Division Bench and was subject to the final outcome of the proceedings pending before the Hon'ble Supreme Court. It did not

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authorise the State to issue a fresh advertisement dated 04.05.2023 by relying upon a notification and model roster which had already been quashed by this Court. Learned counsel submits that once the Division Bench had, by judgment dated 19.09.2022, struck down the notification dated 29.11.2012 and the consequential model roster providing excessive reservation at the district and divisional levels, there was no subsisting statutory or executive instrument authorising the respondents to prescribe such enhanced reservation for district-level posts of Assistant Teacher and divisional-level posts of Teacher. Consequently, in the absence of a valid notification or reservation roster, the respondents could not have proceeded to earmark an excessive percentage of vacancies in favour of the Scheduled Tribe category. It is, therefore, submitted that the impugned recruitment deserves to be reconsidered by applying a legally valid reservation framework and by excluding the benefit of the quashed notifications and rosters.

34. Learned counsel has placed specific reliance upon the judgment dated 19.09.2022 passed by the Division Bench of this Court in WPC No.591 of 2012 and connected matters, particularly paragraph 85 thereof, whereby the notification dated 29.11.2012, including the provisions relating to enhancement of reservation and the district/divisional model roster providing excessive reservation, was held ultra vires and quashed. It is submitted that the very model roster which has been relied upon by the State in

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its affidavit to justify the impugned distribution of vacancies was

the subject-matter of challenge and stands specifically invalidated by the aforesaid judgment. Learned counsel has further relied upon W. P. No.1081/2020, wherein this Court quashed the provision providing preference/eligibility on the basis of local residency for recruitment in the Bastar and Surguja Divisions. According to learned counsel, after the said judgment, the respondents could not indirectly achieve the same result by adopting a special reservation roster for the said divisions so as to substantially enhance reservation in favour of the Scheduled Tribe category. Learned counsel has also referred to the order dated 01.05.2023 passed by the Hon'ble Supreme Court in the proceedings arising from WPC No.591 of 2012, to submit that the protection granted therein was confined to recruitment processes which were already underway and did not confer authority to commence a fresh recruitment under the quashed reservation framework. Thus, according to learned counsel, neither the notification dated 29.11.2012 nor the consequential district/divisional model roster could constitute the legal foundation for Advertisement dated 04.05.2023.

35. Mr. Tapan Kumar Chandra, learned counsel for the petitioners submits that the impugned Advertisement dated 04.05.2023 is based upon the notification dated 29.11.2012 and the consequential district/divisional model roster, despite the same having already been quashed by this Court in WPC No.591 of

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2012 and connected matters, particularly paragraph 85 thereof, whereby the enhancement of reservation and the excessive reservation provided for the Scheduled Tribe category were held ultra vires; he submits that, notwithstanding the aforesaid judgment, out of 1,113 posts of Teacher (E-Cadre), 698 posts (62.71%) have been reserved for Scheduled Tribes, out of 4,659 posts of Teacher (T-Cadre), 3,005 posts (64.49%) have been reserved for Scheduled Tribes, out of 793 posts of Assistant Teacher (E-Cadre), 449 posts (56.62%) have been reserved for Scheduled Tribes and out of 5,492 posts of Assistant Teacher (T-

Cadre), 3,758 posts (68.42%) have been reserved for Scheduled Tribes, which clearly demonstrates excessive reservation contrary to the applicable reservation framework; he further submits that although this Court, vide orders dated 10.07.2023 and 27.07.2023, directed the State to explain the basis and procedure adopted for providing such reservation, the State, in its affidavit dated 14.09.2023, sought to justify the same by relying upon the Surguja and Bastar model rosters, which themselves had already been quashed; learned counsel also places reliance upon the judgment in WP No.1081/2020, whereby the provision granting reservation/ preference on the basis of local residency in Bastar and Surguja Divisions was quashed, and submits that the respondents cannot, by adopting a divisional or district-wise roster, indirectly confer special and excessive reservation upon the Scheduled Tribe category in the said divisions; accordingly, it

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is submitted that the impugned recruitment, being founded upon the very notifications and rosters which have ceased to have legal efficacy, is contrary to the binding judgments of this Court and liable to be interfered with.

36. Mr. Yogendramani Verma, petitioner-in-person in WPS No.4254/2023, submits that the impugned Advertisement dated 04.05.2023 suffers from serious constitutional infirmity inasmuch as, out of the total 5,772 posts advertised, 2,050 posts were subsequently disclosed by the State to be backlog vacancies and, out of the remaining 3,722 fresh vacancies, as many as 2,277 posts were earmarked for the Scheduled Tribe category, constituting approximately 61.17% of the fresh vacancies, apart from the reservation provided to the Scheduled Caste and Other Backward Classes categories. He submits that the excessive reservation is also evident from the cadre-wise distribution, wherein 698 out of 1,113 Teacher (E-Cadre) posts (62.71%), 3,005 out of 4,659 Teacher (T-Cadre) posts (64.49%), 449 out of 793 Assistant Teacher (E-Cadre) posts (56.62%) and 3,758 out of 5,492 Assistant Teacher (T-Cadre) posts (68.42%) have been

reserved for the Scheduled Tribe category. Learned petitioner-in-person submits that the State seeks to justify the aforesaid distribution by relying upon the 100 Point Model Roster and the divisional/district-wise model rosters; however, the validity of the very reservation arrangement was considered by this Court in WPC No.591 of 2012 and connected matters, decided on

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19.09.2022, wherein, particularly in paragraph 85, the notification dated 29.11.2012 and the Schedule-II Model Roster insofar as it related to the districts of Surguja, Surajpur, Balrampur-Ramanujganj, Jashpur, Korla and Surguja Division were declared unconstitutional. He further submits that the said judgment has admittedly not been stayed, which position was also noticed by the Three-Judge Committee of this Court in Annexure P-10, and therefore the respondents could not have relied upon the quashed model roster for a fresh recruitment initiated on 04.05.2023.

37. He further submits that the constitutional limitation upon excessive reservation is firmly settled by the judgments of the Hon'ble Supreme Court in M.R. Balaji v. State of Mysore, AIR 1963 SC 649; Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217; M. Nagaraj v. Union of India, (2006) 8 SCC 212; Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1; Chebrolu Leela Prasad Rao v. State of Andhra Pradesh, (2021) 11 SCC 401; Jaishri Laxmanrao Patil v. Chief Minister, Maharashtra, (2021) 8 SCC 1; R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745; and Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396, which collectively emphasise that reservation must operate within constitutional parameters and that a roster is merely a mechanism for implementing a valid reservation policy and cannot itself create or enlarge a reservation quota. He submits that the State has failed to satisfactorily explain the legal authority for applying the old model roster after the judgment

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dated 19.09.2022 and the subsequent clarification regarding the applicable reservation regime. He further points out that the petition was instituted on 06.07.2023, immediately after

declaration of the combined examination result on 02.07.2023 and before the first selection list dated 12.08.2023, and therefore the plea that the petitioners approached the Court only after their non-selection is factually incorrect. He submits that this Court, vide orders dated 10.07.2023 and 27.07.2023, had already required the State to explain the basis and procedure adopted for providing such excessive reservation, and the subsequent affidavits relying upon the Bastar and Surguja model rosters do not cure the fundamental illegality arising from reliance upon a roster which had been declared unconstitutional.

38. Per contra, Mr. Anand Dadariya, learned Deputy Advocate General appearing for the State, opposes the submissions advanced on behalf of the respective petitioners and submits that the impugned recruitment process has been undertaken strictly in accordance with the reservation policy and the applicable reservation roster of the State Government. He submits that the petitioners have proceeded on an erroneous assumption that the percentage of reservation reflected in the advertisement represents fresh or excessive reservation in favour of the Scheduled Tribe category, whereas the vacancies advertised comprise both newly sanctioned posts and backlog vacancies pertaining to earlier recruitment processes, particularly the

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vacancies which remained unfilled pursuant to the recruitment conducted in the year 2019. He submits that the State Government, by its policy decision, had provided for division/district-wise reservation for the Bastar and Surguja Divisions, having regard to the special circumstances prevailing in those areas, and the competent authorities, while issuing the advertisement dated 04.05.2023, merely implemented the reservation roster already prescribed by the Government. According to learned Deputy Advocate General, the reservation figures appearing against the Scheduled Tribe category cannot be considered in isolation by comparing them with the State-level percentage, since the posts of Assistant Teacher are district-level

posts and the posts of Teacher are division-level posts, for which the applicable district/division-wise roster was required to be followed.

39. Learned Deputy Advocate General further submits that the State has already placed on record, by way of affidavit filed in WPS No.4254 of 2023, the complete particulars of the vacancies, including the newly sanctioned vacancies as well as the backlog vacancies of the year 2019, and the manner in which the same were incorporated in the impugned recruitment. He submits that out of the total posts, 9,299 posts were sanctioned as fresh vacancies, while 3,190 posts represented backlog vacancies, and the reservation roster was applied accordingly. Therefore, the mere fact that the resultant number of Scheduled Tribe vacancies

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appears to be higher than the ordinary percentage of reservation does not, by itself, establish any violation of the constitutional or statutory reservation scheme. He would further submit that the reliance placed by the petitioners upon the judgment dated 19.09.2022 passed in WPC No.591 of 2012 and connected matters is misplaced. According to him, the said judgment is the subject matter of challenge before the Hon'ble Supreme Court in SLP(C) No.19668 of 2022 and connected matters, and the interim order passed by the Hon'ble Supreme Court has permitted continuation/completion of recruitment processes in the manner protected therein. It is submitted that the State authorities, while issuing the impugned advertisement, acted upon the existing Government policy and reservation roster and did not independently create or enhance reservation in favour of the Scheduled Tribe category.

40. Lastly, learned Deputy Advocate General submits that the petitioners have failed to demonstrate any individual or constitutional prejudice warranting interference with the recruitment process. The advertisement was issued pursuant to a conscious policy decision of the State Government, the

reservation roster was applied uniformly to the concerned districts and divisions, and the inclusion of backlog vacancies is supported by the record placed before this Court. He, therefore, submits that the challenge to the advertisement is founded upon an incorrect computation of reservation and deserves to be rejected, there

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being neither any arbitrariness nor violation of [Articles 14](#) and [16](#) of the Constitution of India.

41. Ms. Akanksha Singh, learned counsel appearing on behalf of Mr.

Avinash Singh, Mr. Arpit Parakh, Mr. Animesh Tiwari and Mr. Rupendra Kumar Dewangan, learned counsel for the respective respondents, adopts the submissions advanced by Mr. Anand Dadariya, learned Deputy Advocate General appearing for the State, and submits that the impugned recruitment process has been undertaken strictly in accordance with the applicable reservation policy and the district/division-wise reservation roster prescribed by the competent authority. She submits that the petitioners have incorrectly treated the percentage of Scheduled Tribe vacancies reflected in the advertisement as fresh reservation, without taking into account the nature of the posts, the applicable district/division-wise roster and the backlog vacancies carried forward from the earlier recruitment process. They further submit that the vacancies advertised pursuant to the advertisement dated 04.05.2023 comprised both newly sanctioned posts and backlog vacancies which had remained unfilled from the recruitment process of the year 2019. The inclusion of such backlog vacancies necessarily resulted in a higher numerical representation of the Scheduled Tribe category in the total advertised vacancies and cannot, by itself, be construed as an enhancement of the prescribed reservation.

According to learned counsel, the State has already placed the

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relevant particulars and the methodology adopted for preparation of the vacancy position on record and, therefore, there is no factual or legal basis to contend that the respondents have acted arbitrarily or contrary to the reservation policy.

42. Learned counsel further submit that the reliance placed by the petitioners upon the judgment dated 19.09.2022 passed in WPC No.591 of 2012 and connected matters does not render the impugned recruitment illegal, particularly when the said judgment is under challenge before the Hon'ble Supreme Court and the State authorities have acted in accordance with the prevailing policy and the orders passed in the pending proceedings. She accordingly adopts the submissions advanced on behalf of the State in their entirety and submits that the petitioners have failed to establish any violation of [Articles 14](#) or 16 of the Constitution of India. The writ petitions, therefore, deserve to be dismissed.
43. I have heard learned counsel appearing for the respective parties and perused the documents annexed with the batch of writ petitions.
44. The principal grievance of the petitioners is that the percentage of vacancies earmarked for Scheduled Tribe candidates in the impugned recruitment is substantially higher than 50% and that such reservation has been worked out on the basis of the reservation framework and model rosters which were considered by the Division Bench in WPC No.591 of 2012 and connected
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matters. The State, on the other hand, has explained that the figures appearing in the advertisement cannot be examined merely by comparing the total number of advertised vacancies with the percentage of reservation ordinarily prescribed at the State level, since the posts in question are district-level and division-level posts, different rosters operate for such posts, and, significantly, the advertised vacancies include a substantial number of backlog vacancies pertaining to earlier recruitment cycles.
45. Before examining the rival submissions, this Court considers it necessary to determine the precise legal effect of the judgment dated 19.09.2022 passed by the Division Bench of this Court in

WPC No.591 of 2012 and connected matters and, more particularly, the effect of the subsequent order dated 01.05.2023 passed by the Hon'ble Supreme Court in the proceedings arising therefrom. The controversy cannot be decided merely by noticing that the judgment dated 19.09.2022 is presently under challenge before the Hon'ble Supreme Court. The legal consequence of a judgment declaring a statutory provision, notification or reservation arrangement unconstitutional is materially different from a mere stay of its operation. Unless the judgment is stayed, modified or set aside, the executive authorities are bound to respect the law declared by the competent constitutional Court.

46. The judgment dated 19.09.2022 rendered in WPC No.591 of 2012
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and connected matters was not confined to an abstract examination of the reservation policy. The Division Bench specifically considered the enhancement of reservation brought about by the notification dated 29.11.2012 and the consequential model rosters prepared for different districts and divisions. Upon examining the constitutional scheme contained in [Articles 14, 15](#) and [16](#) of the Constitution of India, the Division Bench found that the reservation arrangement, insofar as it exceeded the constitutionally permissible limits without a legally sustainable justification, could not be permitted to continue. In paragraph 85 of the said judgment, the relevant provisions and the reservation arrangement reflected in Schedule-II Model Roster in respect of the specified districts and Surguja Division were declared unconstitutional and quashed.

47. The consequence of such declaration cannot be diluted merely because the State preferred a Special Leave Petition before the Hon'ble Supreme Court. It is well settled that there is a fundamental distinction between an order which is quashed and an order whose operation is merely stayed. Mere filing or pendency of an appeal or Special Leave Petition does not, by itself, obliterate the binding effect of the judgment under challenge. The executive authorities cannot proceed on the

assumption that a quashed notification continues to have independent legal efficacy unless the superior Court, in exercise of its jurisdiction, quash judgment or grants an appropriate final order.

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48. In the present bunch of cases, the respondents have admittedly relied upon the very notification dated 29.11.2012 and the consequential district/division-wise model rosters which were the subject matter of consideration in WPC No.591 of 2012 and connected matters. The material placed before this Court further demonstrates that the percentage of vacancies earmarked for Scheduled Tribe candidates under the impugned advertisement is exceptionally high. Out of 1,113 posts of Teacher (E-Cadre), 698 posts, constituting approximately 62.71%, were earmarked for Scheduled Tribe candidates; out of 4,659 posts of Teacher (T-Cadre), 3,005 posts, constituting approximately 64.49%, were earmarked for Scheduled Tribe candidates; out of 793 posts of Assistant Teacher (E-Cadre), 449 posts, constituting approximately 56.62%, were earmarked for Scheduled Tribe candidates; and out of 5,492 posts of Assistant Teacher (T-Cadre), 3,758 posts, constituting approximately 68.42%, were earmarked for Scheduled Tribe candidates. The aforesaid figures are not merely a mathematical aberration which can be ignored by referring generally to the existence of a roster. They call for a strict constitutional examination because the resultant reservation is substantially in excess of the ordinary constitutional ceiling.

49. The respondents have attempted to justify the aforesaid distribution by referring to backlog vacancies and by contending

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that the posts of Assistant Teacher and Teacher constitute different territorial cadres. This submission, however, does not answer the foundational question involved in the present cases. A roster is only an instrument for implementing a legally valid reservation policy. It cannot itself become a source of power to create or perpetuate a reservation arrangement which has already

been declared unconstitutional. Once the foundational notification and the consequential model roster stood quashed by the judgment dated 19.09.2022, the respondents were required to identify a subsisting and legally valid source authorising the reservation pattern adopted in the impugned advertisement. The State has not been able to demonstrate the existence of any subsequent statutory provision, notification or validly operative reservation policy which independently authorises the very extent of reservation reflected in the impugned advertisement. The mere description of certain vacancies as backlog vacancies cannot revive a reservation framework which has ceased to possess legal efficacy. Backlog vacancies may be carried forward only in accordance with law; the concept of backlog cannot be utilised as a mechanism for reviving an invalid reservation regime or for introducing, through an administrative exercise, a reservation arrangement which otherwise lacks a lawful foundation.

50. The distinction between backlog vacancies and fresh vacancies, undoubtedly, has significance in the constitutional scheme. [Article 16\(4B\)](#) itself recognises that unfilled vacancies of a year reserved

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for a particular category may, subject to the constitutional and statutory framework, be treated as a separate class of vacancies in succeeding years. However, [Article 16\(4B\)](#) does not confer an independent power upon the executive to create reservation. It operates within the framework of an otherwise valid reservation policy. Therefore, before the respondents can rely upon backlog vacancies, it must first be demonstrated that the reservation to which those vacancies originally related was founded upon a legally valid and subsisting reservation provision. In the present cases, the respondents seek to trace the excessive reservation to the district/division-wise model rosters which themselves were part of the reservation arrangement declared unconstitutional by this Court. Consequently, the label of "backlog vacancy" cannot, by itself, validate the source from which the vacancy is claimed to have arisen.

51. The constitutional position governing reservation is no longer res integra. In *Indra Sawhney* (supra), the Constitution Bench held that reservations contemplated under [Article 16\(4\)](#) should ordinarily not exceed 50% and that, though exceptional circumstances may justify departure, extreme caution is required and a special case must be made out. The principle was thereafter reiterated in subsequent Constitution Bench decisions. The constitutional ceiling is not a matter of administrative convenience but forms part of the balancing mechanism between [Articles 14](#) and [16\(1\)](#), on the one hand, and [Articles 15\(4\)](#) and [52](#) [16\(4\)](#), on the other.
52. In *Dr. Jaishri Laxmanrao Patil* (supra), the Constitution Bench reiterated that reservation under [Article 16\(4\)](#) should not exceed 50%, and that exceeding the ceiling requires extraordinary circumstances of the nature contemplated in *Indra Sawhney*. The Court further emphasised that the 50% ceiling is intended to preserve equality of opportunity and that any departure from it must satisfy the stringent constitutional requirements. The principle is of direct relevance to the present case because the reservation figures reflected in the impugned advertisement are not marginally above the ordinary ceiling but, in certain cadres, substantially exceed it. When the State adopts such a reservation arrangement, the constitutional burden is correspondingly greater to demonstrate the source of power, the existence of constitutionally permissible circumstances and the legal methodology by which the reservation has been computed.
53. The decision in *M. Nagaraj* (supra), also emphasises that reservation provisions remain subject to constitutional limitations and that the ceiling of 50% constitutes an important quantitative limitation within the equality scheme. Similarly, *Jarnail Singh* (supra), and *Chebrolu Leela Prasad Rao* (supra), reiterate that affirmative action, however desirable its objective, cannot be implemented in a manner which destroys the constitutional

guarantee of equality of opportunity. The Court is conscious that

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the State possesses enabling powers under [Articles 15](#) and [16](#) to adopt measures for advancement of backward classes and for ensuring adequate representation. However, such power is constitutionally structured and cannot be exercised in an uncanalised or arbitrary manner.

54. Equally significant is the principle laid down in R.K. Sabharwal (supra) that a reservation roster is only a mechanism for giving effect to a valid reservation policy. The roster cannot independently create reservation. Once the prescribed reservation has been achieved, the roster must operate consistently with the cadre strength and the governing reservation policy. Therefore, in the present case, the respondents cannot derive independent authority merely from the existence of a district/division-wise roster when the very reservation arrangement underlying such roster has already been declared unconstitutional by this Court.

55. The judgment in WPC No.591 of 2012 also requires to be read in its entirety. The Division Bench, while declaring the impugned provisions and the specified reservation arrangement unconstitutional, was conscious of the consequences which would follow if all appointments and admissions already made under the impugned framework were unsettled. Paragraphs 87 and 88 of the judgment demonstrate that the Court moulded the relief so as to prevent administrative chaos and hardship to persons who had already been selected or appointed. The Court specifically

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observed that the power under [Article 226](#) could be exercised to mould relief and that setting aside selections and appointments made under the impugned framework would cause great hardship and administrative complications. Consequently, while the relevant provisions were declared unconstitutional, the existing admissions and appointments were not disturbed. The Divisional Bench of this Court while passing the order dated 19.09.2022 in WPC No.591 of 2022, has observed as follows :-

"43. [Articles 15](#) and [16](#) read as follows:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. – (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or conditions with regard to –

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

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(4) Nothing in this article or in clause (2) of [article 29](#) shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of [article 19](#) shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of [Article 30](#).

(6) Nothing in this article or sub-clause (g) of clause (1) of [article 19](#) or clause (2) of [article 29](#) shall prevent the State from making –

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to

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educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause

(1) of [article 30](#), which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Explanation. – For the purpose of this article and [article 16](#), "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

16. Equality of opportunity in matters of public employment . – (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State;

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any

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requirement as to residence within that State or Union Territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

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(5) Nothing in this article shall affect the

operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.

44. [Article 15\(4\)](#) provides that nothing in this Article or [Article 29\(2\)](#) shall prevent the State from making any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the SCs and the STs.

45. [Article 15\(4\)](#) was added by the [Constitution \(First Amendment\) Act 1951](#). The object of this amendment was to bring [Articles 15](#) and [29](#) in line with [Article 16\(4\)](#) as a result of the decision rendered by the Hon'ble Supreme Court in the case of *The State of Madras v. Srimathi Champakam Dorairajan & Another*, reported in AIR 1951 SC 226. In the aforesaid case, the validity of an order issued by the Madras Government

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fixing certain proportions in which students seeking for admissions to the Engineering and Medical Colleges in the State should be admitted, was challenged. The said government order being on the face of it a communal order fixing the admissions in the stated proportion by reference to the communities of the candidates, was struck down by the Madras High Court and the decision of the Madras High Court was confirmed by the Hon'ble Supreme Court in appeal, on the ground that the fundamental rights guaranteed by [Articles 15\(1\)](#) and [29\(2\)](#) were not controlled by any exception, and that since there was no provision under [Article 15](#) corresponding to [Article 16\(4\)](#), the impugned order could not be sustained. Thus, there is no doubt that [Article 15\(4\)](#) has to be read as a proviso or an exception to [Articles 15\(1\)](#) and [29\(2\)](#). In other words, if the impugned order is justified by the provisions of [Article 15\(4\)](#), its validity cannot be impeached on the ground that it violates [Article 15\(1\)](#) or [Article 29\(2\)](#). The fundamental rights guaranteed by the said two provisions do not affect the validity of the special provision which it is permissible to make under Article. 15(4).

46. [Article 15\(4\)](#) authorises the State to make a special provision for the advancement of any socially and educationally backward classes of citizens, as distinguished from the SCs and STs. No doubt, special provision can

be made for both categories of citizens, but in specifying the categories, the first category is distinguished from the second. Sub-clauses (24) and (25) of [Article 366](#) define SCs and STs respectively, but there is no clause defining socially and educationally backward classes of citizens, and so, in determining the question as to whether a particular provision has been validly made under [Article 15 \(4\)](#) or not, the first question which falls to be determined is whether the State has validly determined who should be included in these Backward Classes. It seems fairly clear that the backward classes of citizens for whom special provision is authorised to be made are, by [Article 15\(4\)](#) itself, treated as being similar to the SCs and STs. SCs and STs which have been defined were known to be backward and the Constitution-makers felt no doubt that special provision had to be made for their advancement. It was realised that in the Indian society there were other classes of citizens who were equally, or may be somewhat less, backward than the SCs and STs and it was thought that some special provision ought to be made even for them. [Article 341](#) provides for the issue of public notification specifying the castes, races or tribes which shall, for the purposes of the Constitution, be deemed to be SCs either in the State or the Union territory as the case may be. Similarly, [Article 342](#) makes a provision for the issue of public notification in

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respect of STs. Under [Article 338 \(3\)](#), it is provided that references to the SCs and STs shall be construed as including references to such other Backward Classes as the President may, on receipt of the report of a Commission appointed under [Article 340\(1\)](#), by order, specify and also to the Anglo Indian community. It would thus be seen that this provision contemplates that some Backward Classes may by the Presidential order be included in scheduled castes and tribes. That helps to bring out the point that the Backward Classes for whose improvement special provision is contemplated by [Article 15 \(4\)](#) are in the matter of their backwardness comparable to SCs and STs.

47. In M. R. Balaji (supra), the validity of an order dated 31.07.1962 passed by the State of Mysore under [Article 15\(4\)](#) of the Constitution of India superseding all previous orders for reservation of seats in favour of the SCs, STs as well as OBCs was questioned. The OBCs were divided into two categories, namely, Backward Classes and More Backward Classes. 50% was fixed as the quota for the reservation of seats for OBCs; 28% out of this was reserved for Backward Classes so called and 22% for More Backward Classes. 15% seats was reserved for the SCs and 3% for the STs. The result of the order was that 68% of the seats available for admission to the Engineering and Medical

specified in the aforesaid order, is reserved and only 32% was available to the merit pool.

48. On consideration of the materials on record as well as Nagan Gowda Committee recommendations, the Hon'ble Supreme Court held that the classification of the socially backward classes of citizens made by the State proceeded on the only consideration of their castes without regard to the other factors which are relevant and therefore, the social backwardness of the communities to whom the order applied had been determined in a manner which is not permissible under [Article 15\(4\)](#) and that itself would introduce an infirmity which is fatal to the validity of the said classification. It was held that the sub-classification made by the order between Backward Classes and More Backward Classes is not justified under [Article 15\(4\)](#) which authorises special provision being made for the really backward classes. By introducing two categories, the order purported to devise measures for the benefit of all the classes of citizens who are less advanced compared to the most advanced classes in the State which is not within the scope of [Article 15\(4\)](#).

49. It was observed that in considering the scope and extent of the expression 'backward classes' under [Art. 15\(4\)](#), it is necessary to remember that the concept of backwardness is not intended to be relative in the sense that

any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would be several layers or strata of backward classes and each one of them may claim to be included under [Article 15\(4\)](#). The backwardness under [Article 15\(4\)](#) must be social and educational. It is not either social or educational but it is both social and educational.

50. While considering the question of social backwardness observed that the problem of determining as to who are socially backward classes is very complex and for determination of which an elaborate investigation and collection of data and examining the said data in a rational and scientific way will be required. It was observed that the castes cannot be the sole or the dominant test to consider in determining social backwardness of groups or classes of citizens as social backwardness is on the ultimate analysis the result of poverty, to a very large extent. It is in that context it was held that both caste and poverty have relevance in determining backwardness of citizens.

51. While considering the question of educational backwardness of the classes of

citizens, it was noticed by the Hon'ble Supreme Court that the impugned order proceeded to deal with the question on the

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basis of the average of the student population in the last three High School classes in the State in relation to a thousand citizens of that community and on the basis of the figures supplied, the Nagan Gowda Committee came to the conclusion that the State average of student population in the last three High School classes of all High Schools in the State was 6.9 per thousand. Accordingly, all castes whose average was less than 6.9 per thousand be added as backward community and had further held that if the average of any community was less than 50% of the State average, it should be recorded as constituting the more backward classes. The Hon'ble Supreme Court held that assuming that the test applied is rational and permissible under [Article 15\(4\)](#), then also, if the State average is 6.9 per thousand, a community which satisfied the said test or is just below the said test cannot be regarded as educationally backward classes of citizens and that classes of citizens whose average of student population works below 50% of the State average, are obviously educationally backward classes of citizens.

52. Coming to the question about the extent of the special provision which it would be competent for the State to make under [Article 15\(4\)](#), in M.R.Balaji (supra), it was observed that unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of

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establishing social and economic equality will not be attained and so, there can be no doubt that [Article 15\(4\)](#) authorises the State to take adequate steps to achieve the object which it has in view. The Hon'ble Supreme Court emphasised that consideration of national interest and the interests of the community or society as a whole cannot be ignored in determining the question as to whether the special provision contemplated by [Article 15\(4\)](#) can be special provision which excludes the rest of the society altogether. It was observed that if admission to professional and technical colleges is unduly liberalised, it will be idle to contend that the quality of our graduates would not suffer. While advocating reservation, it was observed that reservation should and must be adopted to advance the prospects of the weaker sections of the society. It was also emphasised that while providing for special measures in that behalf, care should be taken not to exclude admission to higher educational centres to the deserving and qualified candidates of other communities. Special provision contemplated by [Article 15\(4\)](#) like reservation of posts and appointments contemplated by [Article 16\(4\)](#) must be within reasonable limits. While expressing no opinion categorically and

definitely as to what would be a proper provision to make, it was observed that speaking generally and in a broad way, a special provision should be less than 50%;

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how much less than 50% would depend upon the relevant prevailing circumstances in each case. Resultantly, the impugned order was held to be a fraud on the Constitutional power conferred on the State by [Article 15\(4\)](#).

53. In the majority judgment in *Indra Sawhney (supra)*, at paragraph 681, the Hon'ble Supreme Court noted eight questions which were framed by the learned counsel for the parties for consideration and the same read as follows:

"(I) Whether [Article 16\(4\)](#) is an exception to [Article 16\(1\)](#) and would be exhaustive of the right to reservation to posts in services under the State?

(II) What would be the content of the phrase Backward Class in [Article 16\(4\)](#) of the Constitution and whether caste by itself could constitute a class and whether economic criterion by itself could identify a class for [Article 16\(4\)](#) and whether backward Classes in [Article 16\(4\)](#) would include the [Article 46](#) as well?

(III) If economic criterion by itself could not constitute a Backward Classes under [Article 16\(4\)](#) whether reservation of posts in services under the State based exclusively on economic criteria would be covered by [Article 16\(1\)](#) of the Constitution?

(IV) Can the extent of reservation to posts in the services under the State under [Article 67](#)

[16\(4\)](#) or, if permitted under [Articles 16\(1\)](#) and [16\(4\)](#) together, exceed 50% of the posts in a cadre or Service under the State or exceed 50% of the appointment in a cadre or Service in any particular year and can such extent of reservation be determined without determining the inadequacy of representation of each class in the different categories and grades of Services under the State?

(V) Does [Article 16\(4\)](#) permit the classification of 'Backward Classes' into Backward Classes and Most Backward Classes or permit classification among them based on economic or other considerations?

(VI) Would making "any provision" under [Article 16\(4\)](#) for reservation "by the State" necessarily have to be by law made by the Legislatures of the State or by law made by Parliament? Or could such provisions be made by an executive order?

(VII) Will the extent of judicial review be limited or restricted in regard to the identification of Backward Classes and the

percentage of reservations made for such classes, to a demonstrably identification or a demonstrably unreasonable percentage?

perverse

(VIII) Would reservation of appointments or posts "in favour of any Backward Class" be restricted to the initial appointment to the post or would it extend to promotions as well?

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54. At paragraph 682, the Hon'ble Supreme Court re-framed the questions as follows:

"1(a) Whether the 'provision' contemplated by [Article 16\(4\)](#) must necessarily be made by the legislative wing of the State?

(b) If the answer to Clause (a) is in the negative, whether an executive order making such a provision is enforceable without incorporating it into a rule made under the proviso to [Article 309](#)?

2(a) Whether Clause (4) of [Article 16](#) is an exception to Clause (1) of [Article 16](#)?

(b) Whether Clause (4) of [Article 16](#) is exhaustive of the special provisions that can be made in favour of 'backward class of citizens'? Whether it is exhaustive of the special provisions that can be made in favour of all sections, classes or groups?

(c) Whether reservations can be made under Clause (1) of [Article 16](#) or whether it permits only extending of preferences/concessions?

3(a) What does the expression 'backward class of citizens' in [Article 16\(4\)](#) mean?

(b) Whether backward classes can be identified on the basis and with reference to caste alone?

(c) Whether a class, to be designated as a backward class, should be situated similarly

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to the Scs/Sts?

(d) Whether the 'means' test can be applied in the course of identification of backward classes? And if the answer is yes, whether providing such a test is obligatory?

4(a). Whether the backward classes can be identified only and exclusively with reference to economic criteria?

(b) Whether a criteria like occupation-cum-income without reference to caste altogether, can be evolved for identifying the backward classes?

5. Whether the backward classes can be further categorised into backward and more backward categories?

6. To what extent can the reservation be made?

(a) Whether the 50% rule enunciated in Balaji a binding rule or only a rule of caution or rule of prudence?

(b) Whether the 50% rule, if any, is confined to reservations made under Clause (4) of [Article 16](#) or whether it takes in all types of reservations that can be provided under [Article 16](#)?

(c) Further while applying 50% rule, if any, whether an year should be taken as a unit or whether the total strength of the cadre should be looked to?

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(d) Whether Devadasan was correctly decided?

7. Whether [Article 16](#) permits reservations being provided in the matter of promotions?

8. Whether reservations are anti-merit? To what extent are [Articles 335, 38\(2\)](#) and [46](#) of the Constitution relevant in the matter of construing [Article 16](#)?

9. Whether the extent of judicial review is restricted with regard to the identification of Backward Classes and the percentage of reservations made for such classes to a demonstrably perverse identification or a demonstrably unreasonable percentage?

10. Whether the distinction made in the second Memorandum between 'poorer sections' of the backward classes and others permissible under [Article 16](#)?

11. Whether the reservation of 10% of the posts in favour of 'other economically backward sections of the people who are not covered by any of the existing schemes of the reservations' made by the Office Memorandum dated September 25, 1991 permissible under [Article 16](#)?"

55. In paragraphs 809 and 810, it is stated as follows:

"809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of

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[Article 16](#) should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way,

some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

56. At paragraph 860, the answers to the questions as framed by the counsel for the parties and as set out in paragraph 681 were recorded as follows:

"(1) [Article 16\(4\)](#) is not an exception to [Article 16\(1\)](#). It is an instance of classification inherent in [Article 16\(1\)](#). [Article 16\(4\)](#) is exhaustive of the subject of reservation in favour of backward classes, though it may not be exhaustive of the very concept of reservation. Reservations for other classes can be provided under Clause (1) of [Article 16](#).

(2) The expression 'backward class' in [Article 16\(4\)](#) takes in 'Other Backward Classes', SCs, STs and may be some other backward classes as well. The accent in [Article 16\(4\)](#) is

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upon social backwardness. Social backwardness leads to educational backwardness and economic backwardness. They are mutually contributory to each other and are intertwined with low occupations in the Indian society. A caste can be and quite often is a social class in India. Economic criterion cannot be the sole basis for determining the backward class of citizens contemplated by [Article 16\(4\)](#). The weaker sections referred to in [Article 46](#) do include SEBCs referred to in [Article 340](#) and covered by [Article 16\(4\)](#).

(3) Even under [Article 16\(1\)](#), reservations cannot be made on the basis of economic criteria alone.

(4) The reservations contemplated in Clause (4) of [Article 16](#) should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.

For applying this rule, the reservations should

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not exceed 50% of the appointments in a grade, cadre or service in any given year. Reservation can be made in a service or category only when the State is satisfied that representation of backward class of citizens therein is not adequate.

To the extent, Devadasan is inconsistent

herewith, it is over-ruled.

(5) There is no constitutional bar to classification of backward classes into more backward and backward classes for the purposes of [Article 16\(4\)](#). The distinction should be on the basis of degrees of social backwardness. In case of such classification, however, it would be advisable- nay, necessary- to ensure equitable distribution amongst the various backward classes to avoid lumping so that one or two such classes do not eat away the entire quota leaving the other backward classes high and dry.

For excluding 'creamy layer', an economic criterion can be adopted as an indicium or measure of social advancement.

(6) A 'provision' under [Article 16\(4\)](#) can be made by an executive order. It is not necessary that it should be made by Parliament/ Legislature.

(7) No special standard of judicial scrutiny can be predicated in matters arising under [Article 16\(4\)](#). It is not possible or necessary to

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say more than this under this question.

(8) Reservation of appointments or posts under [Article 16\(4\)](#) is confined to initial appointment only and cannot extend to providing reservation in the matter of promotion. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/ permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in [Article 12](#) - such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of [Article 16\(4\)](#). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so."

57. In R.K.Sabharwal (supra), it was laid down that [Article 16\(4\)](#) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the

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opinion of the State is not adequately represented in the services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the

backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. The roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain

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percentage of reservations for the backward classes are operative the same have to be followed.

58. In *M. Nagaraj (supra)*, the petitioner had prayed for quashing of the [Constitution \(Eighty-Fifth Amendment\) Act, 2001](#) inserting [Article 16\(4A\)](#) of the Constitution retrospectively from 17.6.1995 providing reservation in promotion with consequential seniority as being unconstitutional and violative of the basic structure. [Article 16\(4A\)](#) is inspired by the observations in *Indra Sawhney (supra)* vide paragraphs 802 and 803 in which the Hon'ble Supreme Court had observed that in order to avoid lumping of OBC, SC and ST which would make OBC take away all the vacancies leaving SC and ST high and dry, the State concerned was entitled to categorise and sub-classify SCs and STs on one hand vis-a-vis OBC on the other hand. In paragraphs 121, 122, 123, it was observed as follows:

"121. The impugned constitutional amendments by which [Articles 16\(4A\)](#) and [16\(4B\)](#) have been inserted flow from [Article 16\(4\)](#). They do not alter the structure of [Article 16\(4\)](#). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration

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under [Article 335](#). These impugned amendments are confined only to SCs and STs. They do not obliterate any of the

constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in Indra Sawhney, the concept of post-based roster with inbuilt concept of replacement as held in R.K. Sabharwal.

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

123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matter of promotions. However if they wish to exercise

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their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of [Article 335](#). It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

59. In Ashoka Kumar Thakur (supra), insertion of [Article 15\(5\)](#) by the [Constitution \(Ninety-third Amendment\) Act, 2005](#), which reads as under, was challenged:

"15. (5) Nothing in this article or in sub-clause (g) of Clause (1) of [Article 19](#) shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to the educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of [Article 30](#)".

60. After the above [Constitution \(Ninety-third Amendment\) Act](#)), 2005, the Parliament passed Central Educational Institutions

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(Reservation in Admission) Act 2006 (Act 5 of 2007) wherein Section 3 provided for reservation of 15% seats for Scheduled Castes, 7 ½ % of seats for Scheduled Tribes and 27% for Other Backward Classes in the State aided institutions which were defined as "Central Educational Institutions". The order of the Court in Ashoka Kumar Thakur (supra) was as follows:

"668. The Constitution (Ninety-third Amendment) Act, 2005, is valid and does not violate the "basic structure" of the Constitution so far as it relates to the State-maintained institutions and aided educational institutions. Question whether the Constitution (Ninety-third Amendment) Act, 2005 would be constitutionally valid or not so far as "private unaided" educational institutions are concerned, is not considered and left open to be decided in an appropriate case. Bhandari J, in his opinion, has, however, considered the issue and has held that the Constitution (Ninety-third Amendment) Act, 2005 is not constitutionally valid so far as private unaided educational institutions are concerned.

669. Act 5 of 2007 is constitutionally valid subject to the definition of "Other Backward Classes" in Section 2(g) of Act 5 of 2007 being clarified as follows: If the determination of "Other Backward Classes" by the Central Government is with reference to a caste, it shall exclude the "creamy layer" among such

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caste.

670. Quantum of reservation of 27% of seats to Other Backward Classes in the educational institutions provided in the Act is not illegal.

671. Act 5 of 2007 is not invalid for the reason that there is no time-limit prescribed for its operation but majority of Judges are of the view that the review should be made as to the need for continuance of reservation at the end of 5 years.

672. The writ petitions are disposed of in the light of majority judgment. However, in Contempt Petition No. 112 of 2007 in WPC No. 265 of 2006, no orders are required."

61. In Union of India v. Ramesh Ram & Others, reported in (2010) 7 SCC 234, a Constitution Bench reiterated that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision in Indra Sawhney (supra).

62. In Jarnail Singh & Others-I (supra), the controversy centered around interpretation of Articles 16(4-A) and 16(4-B), 335, 341 and 342 of the Constitution of India. Arguments were advanced for reconsideration of the judgment rendered in Nagaraj (supra), which is a later judgment, on the ground that it was in conflict with

grounds. It was observed by the Hon'ble Supreme Court that in E.V.Chennaiah (supra), the Supreme Court was dealing with a completely different problem, apart from dealing with a State statute and not a constitutional amendment, as was dealt in Nagaraj (supra). However, it was held that the observations in Nagaraj (supra) that the State has to collect quantifiable data showing backwardness of the SCs and STs was contrary to the decision in Indra Sawhney (supra) and therefore had to be declared as bad on that ground. It was observed that the whole object of reservation is to see that the backward classes of citizens move forward so that they may march hand in hand with other citizens on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. This being the case, it is clear that when a court applies the creamy layer principle to SCs and STs, it does not in any manner tinker with the Presidential List under [Article 341](#) and [342](#) of the Constitution of India. The caste or group or sub-group named in the said List continues exactly as before. It is only those persons within that group or sub-group who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation.

Even these persons who are contained within the group or sub-group in the Presidential Lists continue to be within those Lists. It is only when it comes to the application of the reservation principle under [Articles 14](#) and [16](#) that the creamy layer within that sub-group is not given the benefit of such reservation. In view of the above, the Hon'ble Supreme Court held that when in Nagaraj (supra), when the creamy layer test to SCs and STs was applied in exercise of application of the basic structure test to uphold the constitutional amendments leading to [Articles 16\(4-A\)](#) and [16\(4-B\)](#), it did not in any manner interfere with Parliament's power under [Article 341](#) and [342](#), and therefore, in Jarnail Singh-I (supra), it was observed that there was no necessity to refer the judgment in Nagaraj (supra) to a Seven-Judge Bench.

63. In B.K. Pavitra (supra), the Hon'ble Supreme Court, observed that for equality to be truly effective or substantive, the principle must recognize existing inequalities in society to overcome them. Reservations are thus not an exception to the rule of equality of opportunity. They are rather the fulfilment of effective and substantive equality by accounting for the structural conditions into which people are born. If [Article 16\(1\)](#) merely postulates the principle of formal equality of

opportunity, then [Article 16\(4\)](#), by enabling reservations due to existing inequalities, becomes an exception to the strict rule of

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formal equality in [Article 16\(1\)](#). However, [Article 16\(1\)](#) itself sets out the principle of substantive equality including the recognition of existing inequalities, then [Article 16\(4\)](#) becomes the enunciation of one particular facet of the rule of substantive equality set out in [Article 16\(1\)](#). With regard to adequacy of representation, it was observed that the same has to be assessed with reference to a benchmark on adequacy, which conventionally, the same is linked by the State and Central Governments the percentage of reservation for the SCs and STs to their percentage of population and accordingly it was held that it is open to the State to make reservation in promotion for SCs and STs proportionate to their representation in general population.

64. In Dr. Jaishri Laxmanrao Patil (supra), six questions were formulated which read as follows:

"(1) Whether judgment in Indra Sawhney v. Union of India needs to be referred to a larger Bench or requires a re-look by the larger Bench in the light of subsequent constitutional amendments, judgments and changed social dynamics of the society, etc.?"

(2) Whether Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments in the Public Services and Posts under the State) for Socially and Educationally

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Backward Classes (SEBC) Act, 2018 as amended in 2019 granting 12% and 13% reservation for Maratha community in addition to 50% social reservation is covered by exceptional circumstances as contemplated by the Constitution Bench in Indra Sawhney case?

(3) Whether the State Government on the strength of Maharashtra State Backward Class Commission Report chaired by M.C.Gaikwad has made out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in the judgment of Indra Sawhney case?

(4) Whether the Constitution (One Hundred and Second) Amendment deprives the State Legislature of its power to enact a legislation determining the socially and economically backward classes and conferring the benefits of the said community under its enabling power?

(5) Whether, State power to legislate in relation to "any backward class" under [Article 15\(4\)](#) and [16\(4\)](#) is anyway abridged by [Article](#)

[342-A](#) read with [Article 366\(26-C\)](#) of the Constitution of India?

(6) Whether, [Article 342-A](#) of the Constitution abrogates States' power to legislate or classify in respect of "any backward class of citizens" and thereby affects the federal

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policy/structure of the Constitution of India? "

65. Hon'ble Justice L. Nageswara Rao, Hon'ble Justice Hemant Gupta and Hon'ble Justice S. Ravindra Bhatt, concurred with Hon'ble Justice Ashok Bhushan and Hon'ble Justice S. Abdul Nazir in respect of question No. 1, 2 and 3 whereas, with regard to question No. 4, 5 and 6, Hon'ble Justice L. Nageswara Rao and Hon'ble Justice Hemant Gupta concurred with Hon'ble Justice S. Ravindra Bhatt.

66. At paragraphs 10 and 194, Hon'ble Justice S. Ravindra Bhatt stated as follows:

"10. A careful reading of the judgments in Indra Sawhney v. Union of India, clarifies that seven out of nine judges concurred that there exists a quantitative limit on reservation – spelt out at 50%. In the opinion of four judges, therefore, per the judgment of B.P. Jeevan Reddy, J., this limit could be exceeded under extraordinary circumstances and in conditions for which separate justification has to be forthcoming by the State or the agency concerned. However, there is unanimity in the conclusion by all seven judges that an outer limit for reservation should be 50%. Undoubtedly, the other two judges, Ratnavel Pandian and P.B. Sawant, JJ. indicated that there is no general rule of 50% limit on reservation. In these circumstances, given the general common agreement about the existence of an outer limit, i.e. 50%, the

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petitioner's argument about the incoherence or uncertainty about the existence of the rule or that there were contrary observations with respect to absence of any ceiling limit in other judgments (the dissenting judgments of K.Subbarao, in T. Devadasan v Union of India, the judgments of S.M. Fazal Ali and Krishna Iyer, JJ. in State of Kerala v N.M. Thomas and the judgment of Chinnappa Reddy, J. in K.C. Vasanth Kumar v. State of Karnataka) is not an argument compelling a review or reconsideration of Indra Sawhney rule.

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"194. In view of the above discussion, my conclusions are as follows:

194.1. Re Point (1): Indra Sawhney does not require to be referred to a larger Bench nor does it require reconsideration in the light of subsequent constitutional amendments, judgments and changed social dynamics of

the society, for the reasons set out by Ashok Bhushan, J. and my reasons, in addition.

194.2. Re Point (2): The Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments in the Public Services and Posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 as amended in 2019 granting 12% and 13% reservation for Maratha community in

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addition to 50% social reservation is not covered by exceptional circumstances as contemplated by the Constitution Bench in Indra Sawhney case. I agree with the reasoning and conclusions of Ashok Bhushan, J. on this point.

194.3. Re Point (3): I agree with Ashok Bhushan, J. that the State Government, on the strength of the Maharashtra State Backward Class Commission Report chaired by M.C. Gaikwad has not made out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in Indra Sawhney."

67. Question Nos. 4, 5 and 6 essentially pertain to interpretation of [Article 342-A](#) of the Constitution of India, which is not relevant for the purpose of these cases.

68. It will also be relevant to take note of paragraphs 459, 474, 476, 480, 481, 515, 520 and 542 dealing with the first three questions rendered in the judgment of Hon'ble Justice Ashok Bhushan.

"459. We have noticed above that the majority judgment in Indra Sawhney has laid down that reservation shall not exceed 50% as a rule. In the majority opinion, however, it was held that looking to the diversity of the country there may be some extraordinary situations where reservation in exceptional cases is

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made exceeding 50% limit. In this respect, we may again refer to paras 809 and 810 of the judgment of Indra Sawhney by which the above proposition of law was laid down. Paras 809 and 810 are to the following effect: (SCC p. 735)

"809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of [Article 16](#) should not exceed 50%.

810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of

conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

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474. We may revert back to para 810 where Indra Sawhney has given illustration which illustration is regarding certain extraordinary situations. The exact words used in para 810 are: (SCC p. 735)

"810. ... It might happen that in far-flung and remote areas the population inhabiting those
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areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

476. This Court in several judgments has noticed that what can be the extraordinary situations as contemplated in para 810 in few other cases. We have referred above the three-Judge Bench judgment in Union of India v. Rakesh Kumar {(2010) 4 SCC 50}, where the three-Judge Bench held that exceptional case of 50% ceiling can be in regard to Panchayats in scheduled areas. The above three-Judge Bench has also been approved and reiterated by the Constitution Bench of this Court in K. Krishna Murthy {(2010) 7 SCC 202}. In the above cases this Court was examining the reservation in Panchayats. In the context of Part IX of the Constitution, 50% ceiling principle was applied but exception was noticed.

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480. From the above, it is clear that both the Commission and the High Court treated the extraordinary situations with regard to exceeding 50% for granting separate reservation to Marathas, the fact that population of backward class is 85% and reservation limit is only 50%. The above
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extraordinary circumstances as opined by the Commission and approved by the High Court is not extraordinary situation as referred to in para 810 of Indra Sawhney judgment. The Marathas are dominant forward class and are in the mainstream of national life. The above situation is not an extraordinary situation contemplated by Indra Sawhney judgment and both the Commission and the High Court fell in error in accepting the above circumstances as extraordinary circumstance for exceeding the 50% limit. At this stage, we may notice that what was said by Dr. Ambedkar in the Constituent Assembly Debates dated 30-11-1948 while debating

draft [Article 10\(3\)](#) [[Article 16\(4\)](#) of the Constitution]. Dr Ambedkar by giving an illustration said: (CAD Vol. VII)

"... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70% of the total posts under the State and only 30% are retained as the unreserved. Could anybody say that the reservation of 30% as

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open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with clause (1) of [Article 10](#), must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation."

481. The illustration given by Dr Ambedkar that supposing 70% posts are reserved and 30% may retain as unreserved, can anybody say that 30% as open to general competition would be satisfactory from point of view of giving effect to the first principle of equality, the answer given by Dr Ambedkar was in the negative. Thus, Constituent Assembly by giving illustration has already disapproved principle which is now propounded by the High Court. We cannot approve the view of the High Court based on the same view taken by the Commission.

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515. The reservation under [Article 16\(4\)](#) of the Constitution is enabling power of the State to make any provision for reservation of appointment or posts in favour of other backward class of citizens who in the opinion of the State is not adequately represented in the services under the State. The condition precedent for exercise of power under [Article](#)

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[16\(4\)](#) are that the backward class is not adequately represented in the services under the State.

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520. The word "adequate" is a relative term used in relation to representation of different caste and communities in public employment. The objective of [Article 16\(4\)](#) is that backward class should also be put in mainstream and they are to be enabled to share power of the

State by affirmative action. To be part of public service, as accepted by the society of today, is to attain social status and play a role in governance. The governance of the State is through service personnel who play a key role in implementing government policies, its obligation and duties. The State for exercising its enabling power to grant reservation under [Article 16\(4\)](#) has to identify inadequacy in representation of backward class who is not adequately represented. For finding out adequate representation, the representation of backward class has to be contrasted with representation of other classes including forward classes. It is a relative term made in reference to representation of backward class, other caste and communities in public services.

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542. Indra Sawhney has categorically held that what is required by the State for
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providing reservation under [Article 16\(4\)](#) is not proportionate representation but adequate representation. The Commission thus proceeds to examine the entitlement under [Article 16\(4\)](#) on the concept of proportionate representation in the State services which is a fundamental error committed by the Commission."

69. While dealing with the scope and reach of judicial scrutiny in Dr. Jaishri Laxmanrao Patil (supra), at paragraphs 508, 509 and 515, it is stated as follows:

"508. Indra Sawhney had referred to the judgment of this Court in Barium Chemicals {AIR 1967 SC 295} for the scope and reach of judicial scrutiny. We need to refer the test enunciated in Barium Chemicals. The Constitution Bench in Barium Chemicals had occasion to consider the expression "if in the opinion of the Central Government occurring in [Section 237](#) of the Companies Act, 1956". Hidayatullah, J. laid down that no doubt the formation of opinion is subjective but the existence of the circumstances relevant to the inference as the sine qua non for action must be demonstrable. The following observations were made in para 27: (Barium Chemicals case, AIR p. 309)

"27. ... No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action

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is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my Brother Shelat has put it trenchantly: (Barium Chemicals case, AIR p. 325, para 64)

'64. ... It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist....'

Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least *prima facie*."

509. Shelat, J. with whom Hidayatullah, J.

has agreed in para 63 laid down the following:

(Barium Chemicals case, AIR p. 324) "63. ... Therefore, the words, "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative."

515. The reservation under [Article 16\(4\)](#) of the Constitution is enabling power of the State to make any provision for reservation of appointment or posts in favour of other backward class of citizens who in the opinion of the State is not adequately represented in the services under the State. The conditions precedent for exercise of power under [Article 16\(4\)](#) are that the backward class is not adequately represented in the services under the State."

70. At paragraph 688, conclusions in Dr. Jaishri Laxmanrao Patil (supra) is recorded. Conclusions relevant for our purpose, namely, 688.1 to 688.21 are reproduced here in below.

"688. From our foregoing discussion and finding we arrive at the following conclusions:

688.1. The greatest common measure of agreement in six separate judgments delivered in Indra Sawhney is:

688.1.1. Reservation under [Article 16\(4\)](#) should not exceed 50%.

688.1.2. For exceeding reservation beyond 50%, extraordinary circumstances as indicated in para 810 of B.P. Jeevan Reddy, J. should exist for which extreme caution is to be exercised.

688.2. The 50% rule spoken in Balaji and 96 affirmed in Indra Sawhney is to fulfil the objective of equality as engrafted in [Article 14](#) of which [Articles 15](#) and [16](#) are facets. 50% is reasonable and it is to attain the object of equality. To change the 50% limit is to have a society which is not founded on equality but based on caste rule.

688.3. We are of the considered opinion that the cap on percentage of reservation as has been laid down by the Constitution Bench in Indra Sawhney is with the object of striking a balance between the rights under [Articles 15\(1\)](#) and [15\(4\)](#) as well as [Articles 16\(1\)](#) and [16\(4\)](#). The cap on percentage is to achieve principle of equality and with the object to strike a balance which cannot be said to be arbitrary or unreasonable.

688.4. Providing reservation for advancement of any socially and educationally backward class in public services is not the only means and method for improving the welfare of backward class. The State ought to bring other measures including providing educational facilities to the members of backward class free of cost, giving concession in fee, providing opportunities for skill development to enable the candidates from the backward class to be self-reliant.

688.5. There can be no quarrel that society changes, law changes, people change but that does not mean that something which is good and proven to be beneficial in 97 maintaining equality in the society should also be changed in the name of change alone.

688.6. When the Constitution Bench in Indra Sawhney held that 50% is upper limit of reservation under [Article 16\(4\)](#), it is the law which is binding under [Article 141](#) and to be implemented.

688.7. We find that the Constitution Bench judgment in Indra Sawhney is also fully applicable in reference to [Article 15\(4\)](#) of the Constitution of India.

688.8. The setting aside of 50% ceiling by the eleven-Judge Bench in T.M.A. Pai Foundation {(2002) 8 SCC 481} as was laid down by St. Stephen's case {(1992) 1 SCC 558} i.e. 50% ceiling in admission in aided minority institutions has no bearing on the principle of 50% ceiling laid down by Indra Sawhney with respect to reservation. The judgment of T.M.A. Pai was in reference to rights of minority under [Article 30](#) and is not relevant for reservation under [Articles 16\(4\)](#) and [15\(4\)](#) of the Constitution.

688.9. [The Constitution \(Eighty-first Amendment\) Act, 2000](#) by which clause (4-B) was inserted in [Article 16](#) makes it clear that ceiling of 50% "has now received constitutional recognition".

688.10. We fully endorse the submission of Shri Rohatgi that extraordinary situations indicated in para 810 of Indra Sawhney case 98 were only illustrative and cannot be said to be exhaustive. We however do not agree with Mr Rohatgi that para 810 provided only a geographical test. The use of the expression "on being out of the mainstream of national life", is a social test, which also needs to be fulfilled for a case to be covered by exception. 688.11. We do not find any substance in any of the 10 grounds urged by Shri Rohatgi and Shri Kapil Sibal for revisiting and referring the judgment of Indra Sawhney to a larger Bench. 688.12. What was held by the Constitution Bench in Indra Sawhney on the relevance and significance of the principle of stare decisis clearly binds us. The judgment of Indra Sawhney has stood the test of time and has never been doubted by any judgment of this Court. The Constitution Bench judgment of this Court in Indra Sawhney neither needs to be revisited nor referred to a larger Bench for consideration.

688.13. The Constitution Bench in M. Nagaraj does not contain any ratio that ceiling of 50% reservation may be exceeded by showing quantifiable contemporary data relating to backwardness. The Commission has completely misread the ratio of the judgment, when the Commission took the view that on the quantifiable data ceiling of 50% can be breached.

688.14. The Commission and the High Court 99 found existence of the extraordinary situations with regard to exceeding 50% ceiling in respect to grant of separate reservation to Marathas because the population of backward class is 80% and reservation limit is only 50%, containing the Marathas in pre-existing reservation for OBC shall not be justice to them, which circumstance is not covered under the parameters indicated in Indra Sawhney case as extraordinary circumstance to breach 50% ceiling.

688.15. We have found that no extraordinary circumstances were made out in granting separate reservation of Maratha community by exceeding the 50% ceiling limit of reservation. The 2018 Act violates the principle of equality as enshrined in [Article 16](#). The exceeding of ceiling limit without there being any extraordinary circumstances clearly violates [Articles 14](#) and [16](#) of the Constitution which makes the enactment ultra vires.

688.16. The proposition is well settled that Commissions' reports are to be looked into with deference. However, one of the parameter of scrutiny of Commission's report as approved by this Court is that on the basis of data and materials referred to in the report whether conclusions arrived at by the Commission are justified.

688.17. The measures taken under [Articles 15\(4\)](#) and [16\(4\)](#) can be examined as to 100 whether they violate any constitutional principle, and are in conformity with the rights under [Articles 14, 15](#) and [16](#) of the Constitution. The scrutiny of measures taken by the State, either executive or legislative, thus, has to pass the test of constitutional scrutiny.

688.18. The word "adequate" is a relative term used in relation to representation of different castes and communities in public employment. The objective of [Article 16\(4\)](#) is that backward class should also be put in mainstream to enable to share power of the State by affirmative action. To be part of public service, as accepted by the society of today, is to attain social status and play a role in governance.

688.19. We have examined the issues regarding representation of Marathas in State services on the basis of facts and materials compiled by Commission and obtained from the States and other sources. The representation of Marathas in public services in Grades A, B, C and D comes to 33.23%, 29.03%, 37.06% and 36.53% computed from out of the open category filled posts, is adequate and satisfactory representation of Maratha community. One community bagging such

number of posts in public services is a matter of pride for the community and its representation in no manner can be said to be not adequate in public services.

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688.20. The Constitutional precondition for providing reservation as mandated by [Article 16\(4\)](#) is that the backward class is not adequately represented in the public services.

The Commission laboured under
misconception that unless Maratha

community is not represented equivalent to its proportion, it is not adequately represented. Indra Sawhney has categorically held that what is required by the State for providing reservation under [Article 16\(4\)](#) is not proportionate representation but adequate representation.

688.21. The Constitutional precondition as mandated by [Article 16\(4\)](#) being not fulfilled with regard to Maratha class, both the Gaikwad Commission's Report/Report of the Gaikwad Commission and consequential legislation are unsustainable."

71. In *Jarnail Singh & Others-II* (supra), with regard to proportionate representation as test of adequacy in promotional posts, the Hon'ble Supreme Court had observed as follows:

"3) PROPORTIONATE REPRESENTATION AS TEST OF ADEQUACY

30. In *R.K. Sabharwal* (supra), it was observed that State Governments may take the total population of a particular Backward Class and its representation in the State services for the purpose of coming to a 102 conclusion that there is inadequate representation in the State services. In *M. Nagaraj* (supra), this Court was of the considered view that the exercise of collecting quantifiable data depends on numerous factors, with conflicting claims to be optimised by the administration in the context of local prevailing conditions in public employment.

As equity, justice and efficiency are variable factors and are context-specific, how these factors should be identified and counter- balanced will depend on the facts and circumstances of each case. The attempt of the learned Attorney General for India to impress upon this Court that the proportion of SCs and STs in the population of India should be taken as the test for determining whether they are adequately represented in promotional posts, did not yield results. This Court in *Jarnail Singh* (supra) found no fault with *M. Nagaraj* (supra) regarding the test for determining the adequacy of representation in promotional posts in the State. While emphasising the contrast in the language used between [Article 330](#) and [Articles 16\(4-A\)](#) and [16\(4-B\)](#) of the Constitution, this Court declined the invitation of the learned Attorney General for India to hold that the proportion of SCs and STs to the population of India should be the test for determining inadequacy of representation in promotional posts.

Therefore, we are not persuaded to express any opinion on this aspect. It is for the State 103 to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors."

72. While striking down Rule 9.3 of the Madhya Pradesh Medical and Dental Graduate Entrance Examination Rules, 2003, which increased the percent of reservation to 56.94%, the High Court of Madhya Pradesh, in *Mayank Jain* (supra) had observed as follows:

"In this context we may refer with profit to the Constitution Bench decision rendered in the case of [Dr. Preeti Shrivastava v. State of M.P. and Ors.](#), {AIR 1999 SC 2894}, wherein the Apex Court held as under:--

"..... While the object of [Article 15\(4\)](#) is to advance equality principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and be able to compete equality with others more fortunate, one can not also ignore the wider interests of society while devising such special provisions. Undoubtedly, protective discrimination in favour of backward, including Scheduled Castes and Scheduled Tribes is as much in the interest of society as the protected groups. At the same time, there may be other national interests, such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and 104 contribute to society, which have also to be borne in mind. Special provisions must strike a reasonable balance between these diverse national interests. Moreover, study and training at the level of specialities and super- specialities in medicine involve

discharging the duties attached to certain specified medical posts in the hospitals attached to the medical institutions giving education in specialities and super-specialities....."

We are conscious that the aforesaid decision was rendered in the context of reservation for admission to the Post Graduate Course in various professional faculties but we have referred to the aforesaid paragraph to indicate what is the view of the Apex Court in relation to weaker sections and what their Lordships have stated therein. We may repeat at the cost of repetition that the cause put forth by the State for advancement of the weaker section can not distort the dictum of the Apex Court. It was contended before us that in certain exceptional cases extra reservation is permissible. But, in our considered opinion, the present one does not fit into the said prism. When the students are appearing in the examination harbouring hope that when they would qualify they would be selected their hopes can not be marred or smothered by ushering in a rule of this type. The said Rule does not subserve the constitutional philosophy and as we have noted earlier it runs contrary to the principles [laid down by](#) the Apex Court. If we allow ourselves to say so, an innovative attempt has been made to frame a rule to enhance the conception of reservation which the law prescribes. By no stretch of rationalization or ratiocination it can be conceived that this is the field where this innovative approach is warranted. On the contrary, it is absolutely unthinkable."

73. Grant of reservation under [Articles 15\(4\)](#) or 16(4), either by legislative measure or by an executive order are measures which act as a tool and means to attain the constitutional goal of fulfilment of the principle of equality. Such reservation are enabling provisions to facilitate the State to make any provision for reservation for appointment on a post in favour of backward class of citizens. Unless the educational and economic interest of the weaker sections of the people are promoted by affirmative action, the constitutional goal of establishing social and economic equality will not be attained and as such, while [Article 15\(4\)](#) provides for making any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs, [Article 15\(5\)](#) provides for making any special provision for advancement of any socially and educationally backward classes of citizens or for the SCs and STs relating to their admission to educational institutions including aided or unaided private educational 106 institutions other than minority educational institutions referred to in [Article 30\(1\)](#). It is worth remembering that framers of the Constitution intended the Constitution to bring in winds of social change in a caste-ridden society. It needs no reiteration that equality has been recognized as a basic feature of our Constitution and to preserve equality, a harmonious balance has to be struck to ensure that the fundamental ethos and the spirit as encapsulated in [Articles 14](#) and [16](#) reign supreme and at the same time, to ensure that it galvanises social and economic upliftment of the backward classes. The condition precedent for exercise of power under [Article 16\(4\)](#) is that backward class is not adequately represented in the services under the State. Reservation can be made in service and educational institutions only when the State is satisfied that representation of backward classes of citizens therein is not adequate. In order to ascertain the extent of reservation, the State has to justify the existence of compelling reasons, namely, backwardness, inadequacy in representation and overall administrative efficiency before making provision for reservation.

74. The Hon'ble Supreme Court in Indra Sawhney (supra) had observed that not only should a class be a backward class for meriting reservations, it should also be inadequately represented in the services under the State. The language of Clause (4) 107 makes it clear that the question whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This opinion can be formed by the State on its own, i.e., on the basis of the material it has in its possession already or it may gather such material through a Commission/Committee, person or authority. There must be some material upon which the opinion is formed. While observing that in a matter of the present nature, the Court should show due deference to the opinion of the State, it does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. It was further held that [Article 16\(4\)](#) speaks about adequate representation and not proportionate representation and adequate representation cannot be read as proportionate representation. Accordingly, it was held that it was not possible to accept the theory of proportionate representation, though the proportion of population of backward classes to the total population would certainly be relevant. It was held that the power conferred by [Article 16\(4\)](#) should be exercised reasonably and fairly, in a fair manner and within reasonable limits - and what is more reasonable than to say that reservation under Clause 16(4) shall not exceed 50% of the appointments or posts, barring certain extra-ordinary situations. Accordingly, it was held that it is an irresistible 108 conclusion that the reservation contemplated in [Article 16\(4\)](#) should not exceed 50%.

While holding 50% to be the rule, it was also observed that it is necessary to point out certain extraordinary situations inherent in the great diversity of our country and the people. It might so happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main stream of national life and in view of conditions peculiar to and characteristic to them, they need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out. The Hon'ble Supreme Court also held that for the purpose of applying the rule of 50%, a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be.

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82. Special provisions contemplated by [Article 15\(4\)](#), [15\(5\)](#) or 16(4) must be within reasonable limits. As noted earlier, it was observed in Balaji (supra) that a special provision should be less than 50% and how much less than 50% would depend upon the relevant prevailing circumstances in each case. Any reservation contemplated in [Article 16\(4\)](#) should not exceed 50% was held to be the rule in Indra Sawhney (supra), which can 109 be breached only on certain extraordinary situations and on a special case made out. It was also observed that such power has to be exercised with extreme caution. In Indra Sawhney (supra), it was categorically held what is required by the State for providing reservation under [Article 16](#) is not proportionate representation, but adequate representation, which cannot be read as proportionate representation. The said principle was reiterated in Dr. Jaishri Laxmanrao Patil (supra). In Nagaraj (supra) also, ceiling limit of 50% was reiterated. It was also held that reservation under [Article 16\(4\)](#) should not exceed 50% and for exceeding reservation beyond 50%, there has to be extraordinary circumstances as held in Indra Sawhney (supra). It was further held that the judgment in Indra Sawhney (supra) is fully applicable in reference to [Article 15\(4\)](#). It was further held that Constitution 81st Amendment Act 2000 by which clause 4(B) was inserted in [Article 16](#) makes it clear that ceiling of 50% has now received constitutional recognition.

83. In view of the above, the principles enunciated regarding the ceiling of 50% in Indra Sawhney (supra) are also applicable in respect of [Article 15\(5\)](#) of the Constitution."

56. The next and most important question is the effect of the order dated 01.05.2023 passed by the Hon'ble Supreme Court in SLP (C) Nos.18816-18817 of 2022 and connected proceedings. The 110 respondents have heavily relied upon the said order to contend that the recruitment process was protected and that the State was permitted to proceed with appointments and promotions.

57. There can be no dispute that the order dated 01.05.2023 is binding upon all concerned and must be given its full effect. However, the said order has to be understood in its proper context and in the manner in which it was passed. The Hon'ble Supreme Court permitted the State to proceed with the selection/recruitment and promotion processes and to make appointments and promotions, but expressly directed that such appointments and promotions would remain subject to the result of the proceedings pending before it. Thus, the Hon'ble Supreme Court did not finally adjudicate upon or approve the constitutional validity of the reservation arrangement. Equally, the order did not confer a permanent or indefeasible right upon any selected candidate.

58. The expression "subject to the outcome" employed by the Hon'ble Supreme Court is of decisive significance. It indicates that the process may continue so that public administration is not brought to a standstill, but the rights created pursuant thereto remain provisional and subordinate to the final adjudication of the Hon'ble Supreme Court. In other words, the Hon'ble Supreme Court balanced two competing considerations: the immediate administrative necessity of filling vacancies and maintaining 111 functioning of the State machinery, and the requirement that the final rights of the parties should abide by the ultimate decision concerning the validity of the reservation framework.

59. The interim protection granted by the Hon'ble Supreme Court, therefore, cannot be construed as an order validating the quashed notification dated 29.11.2012 or the model rosters which were declared unconstitutional by this Court. Nor can it be read as authorising the State to disregard the constitutional limitations governing reservation. The protection is procedural and conditional in nature; it is not a declaration of substantive validity.

60. This distinction assumes considerable importance. If the order dated 01.05.2023 were interpreted as reviving the quashed reservation notification for all purposes, the words "subject to the outcome of the proceedings" would become meaningless. The very purpose of imposing such condition was to ensure that whatever appointments or promotions were made during the pendency of the proceedings would remain capable of being moulded in accordance with the final decision of the Hon'ble Supreme Court. Therefore, the State was entitled to proceed with the process, but it was not entitled to treat the reservation arrangement as finally settled or to confer upon the selected candidates an absolute right immune from the final decision of the Hon'ble Supreme Court.

61. The Court is also unable to accept the submission of the 112 respondents that the order dated 01.05.2023 completely immunises the impugned advertisement from judicial scrutiny. The jurisdiction of this Court under [Article 226](#) does not stand excluded merely because proceedings on the reservation issue are pending before the Hon'ble Supreme Court. The question before this Court is whether the respondent authorities acted in accordance with the law declared by this Court and whether the recruitment process, particularly the reservation roster adopted therein, could legally be sustained after

the judgment dated 19.09.2022. The pendency of the Special Leave Petition does not authorise the executive to proceed as though the judgment dated 19.09.2022 had never been delivered. At the same time, the order dated 01.05.2023 prevents this Court from directing that all recruitment and promotion activity must come to an end. The two judicial orders have, therefore, to be harmoniously implemented.

62. The proper approach, in the opinion of this Court, is to recognise that the respondents may continue the recruitment and promotion process in view of the liberty granted by the Hon'ble Supreme Court, but every consequential right arising from such process must remain expressly subject to the final decision in the pending proceedings. This approach neither nullifies the order of the Hon'ble Supreme Court nor permits the respondents to claim that the reservation arrangement has received final judicial approval.

63. The impugned advertisement, insofar as it adopts the reservation 113 pattern founded upon the notification dated 29.11.2012 and the consequential model rosters already declared unconstitutional, therefore cannot be sustained in its present form. The State authorities were required to proceed in accordance with the reservation framework legally available to them after the judgment dated 19.09.2022, subject always to the protection and conditions contained in the order dated 01.05.2023 of the Hon'ble Supreme Court. The State could not achieve indirectly, through the impugned advertisement and consequential roster, what stood directly invalidated by the judgment of this Court. The principle of judicial discipline applies not merely to formal compliance with the operative portion of a judgment but also to executive action which has the effect of substantially reproducing the very arrangement that has been declared unconstitutional.

64. The contention of the respondents that the excessive numerical figures are explained by the inclusion of backlog vacancies cannot, therefore, be accepted as a complete answer. The existence of backlog vacancies may explain why a particular recruitment may contain a numerical composition different from the ordinary reservation percentage. But it cannot answer the prior question as to whether the reservation points forming the foundation of those backlog vacancies were themselves legally sustainable. The State must necessarily distinguish between a vacancy lawfully carried forward from a valid reservation roster and a vacancy claimed to be backlog merely because it arose 114 under a reservation arrangement subsequently declared unconstitutional.

65. The Court is not holding that backlog vacancies, as a class, are constitutionally impermissible. On the contrary, backlog vacancies are recognised in the constitutional scheme. What is impermissible is to employ the concept of backlog to preserve, perpetuate or revive a reservation arrangement which has ceased to have legal efficacy. The respondents must, therefore, undertake the recruitment exercise on the basis of a legally sustainable roster and thereafter give due effect to the order dated 01.05.2023 of the Hon'ble Supreme Court. The material placed before this Court further shows that the petitioners approached this Court promptly. The examination was conducted on 10.06.2023, the result was declared on 02.07.2023 and the proceedings were instituted on 06.07.2023, i.e. before the first selection list dated 12.08.2023. Thus, the petitioners cannot be non-suited on the ground of delay, acquiescence or having approached the Court only after their non-selection. The petitioners participated in the examination because they were otherwise qualified and because the recruitment process was open to them. Participation in an unconstitutional or legally defective selection process cannot operate as an estoppel against a candidate challenging the legality of the reservation arrangement, particularly when the challenge was raised at the earliest available opportunity. 115

66. The Court is equally conscious that the recruitment concerns a large number of vacancies and that several candidates may have already been selected or appointed. This Court is not inclined to direct wholesale termination of appointments already made. Such a direction would be contrary to the protective approach adopted by the Hon'ble Supreme Court and would also cause avoidable administrative disruption. The appropriate relief must, therefore, be moulded so as to protect both the constitutional rights of the petitioners and the interests of candidates who have already participated in the recruitment.

67. [Article 226](#) confers wide powers upon the High Court to mould relief according to the facts and circumstances of the case. The Court is not required to adopt an all-or-nothing approach. Where the illegality lies in the manner in which the reservation roster has been applied, and where the recruitment has proceeded during the pendency of litigation pursuant to orders of the constitutional courts, the Court can direct reconsideration and continuation of the process in a manner which preserves the rights of all concerned. In the present cases, such a course is particularly appropriate because the final determination regarding the reservation framework is pending before the Hon'ble Supreme Court.

68. It is accordingly held that the respondents were not justified in treating the notification dated 29.11.2012 and the consequential 116 model rosters, insofar as they were declared unconstitutional by the judgment dated 19.09.2022, as an independent and unrestricted source of authority for prescribing the impugned reservation. The impugned advertisement

and the consequential recruitment process, to that extent, cannot be permitted to operate as though the quashed reservation framework continues to have unconditional and final legal validity.

69. At the same time, this Court cannot ignore the subsequent order dated 01.05.2023 passed by the Hon'ble Supreme Court. The said order expressly permits the process of recruitment and promotion to go on, but makes the resultant appointments and promotions subject to the final outcome of the proceedings pending before the Hon'ble Supreme Court. This Court is, therefore, required to preserve the recruitment process rather than bring it to an absolute halt, while ensuring that no candidate obtains an indefeasible right contrary to the ultimate decision of the Hon'ble Supreme Court.

70. In this view of the matter, the appropriate relief would be to allow the writ petitions and direct the respondents to proceed with the recruitment process in accordance with law, subject to the final outcome of SLP (C) Nos.18816-18817 of 2022 and connected proceedings. The respondents shall ensure that the candidature of the petitioners and other similarly situated candidates is considered in accordance with the legally permissible reservation 117 framework and the directions of the competent constitutional courts. It is made clear that this Court is not directing that any candidate belonging to any particular category should be displaced merely on the basis of the present judgment. The protection granted by the Hon'ble Supreme Court on 01.05.2023 shall remain operative. Any appointment already made pursuant to the impugned recruitment shall continue, but such continuation shall be expressly subject to the final outcome of the proceedings pending before the Hon'ble Supreme Court.

71. Similarly, the State shall be at liberty to proceed with further appointments and promotions so that the administrative functioning of the State is not adversely affected. However, every such appointment or promotion shall carry a clear and unambiguous stipulation that the appointment/promotion is subject to the final outcome of SLP (C) Nos.18816-18817 of 2022 and connected matters and to any further order that may be passed by the Hon'ble Supreme Court. The said stipulation shall not be treated as a mere formality. It shall constitute an integral and enforceable condition of every appointment order, promotion order and consequential service order issued pursuant to the recruitment/promotion process covered by the present controversy. The authorities shall ensure that the condition is incorporated in the body of the order itself and not merely by way of a separate communication or internal departmental note. 118

72. The reason for issuing such a direction is apparent. The Hon'ble Supreme Court, while permitting the recruitment and promotion process to proceed, has consciously protected the final adjudication by making the appointments and promotions subject to the outcome of the pending proceedings. Any appointment or promotion made without incorporating such condition would dilute the protection expressly granted by the Hon'ble Supreme Court and may create equities which were never intended to arise during the pendency of the proceedings.

73. Consequently, no selected candidate shall claim that mere issuance of an appointment order during the pendency of the proceedings has conferred an absolute, indefeasible or irreversible right upon him or her in respect of continuation in service, seniority, promotion, consequential benefits or any other service benefit, insofar as such right is affected by the final determination of the reservation issue pending before the Hon'ble Supreme Court.

74. Correspondingly, the petitioners shall also not be denied consideration merely on the ground that the recruitment process has already progressed or that appointments have been made. Their candidature shall be considered in accordance with the directions issued herein and in conformity with the final decision of the Hon'ble Supreme Court. If, upon implementation of the final judgment of the Hon'ble Supreme Court, any consequential 119 reworking of the selection, appointment, seniority or promotion becomes necessary, the respondents shall undertake such exercise strictly in accordance with law.

75. The Court further directs that the respondents shall not treat the order dated 01.05.2023 passed by the Hon'ble Supreme Court as a declaration of validity of the reservation notification dated 29.11.2012 or the model rosters which were the subject matter of the judgment dated 19.09.2022. The said order is to be understood as permitting continuation of the process, subject to the final adjudication. The substantive validity of the reservation framework shall remain open to and governed by the final decision of the Hon'ble Supreme Court. This construction, in the opinion of the Court, strikes the constitutionally appropriate balance. On one hand, it gives full respect to the judgment dated 19.09.2022 and the constitutional principles governing reservation; on the other hand, it gives full effect to the subsequent order dated 01.05.2023 of the Hon'ble Supreme Court permitting the State to proceed with recruitment and promotion. It also protects the interests of candidates who have already been appointed while preserving the rights of the petitioners and similarly situated candidates.

76. The Court accordingly holds that the petitioners have made out a case for interference. The reservation arrangement reflected in the impugned advertisement, insofar as it proceeds upon the 120 quashed notification dated 29.11.2012 and

the consequential model rosters declared unconstitutional, cannot be sustained as an independent and unconditional basis for making appointments. The respondents are consequently required to regulate the further recruitment exercise in accordance with law and subject to the final outcome of the proceedings pending before the Hon'ble Supreme Court. In the peculiar facts of the present cases, however, the relief shall not take the form of annulment of every appointment already made pursuant to the impugned recruitment. Such a course would be neither necessary nor consistent with the order dated 01.05.2023 passed by the Hon'ble Supreme Court. Instead, all such appointments shall remain protected subject to the final outcome of the proceedings pending before the Hon'ble Supreme Court. The same principle shall apply to promotions already made or which may hereafter be made during the pendency of the proceedings.

77. In view of the foregoing discussion and the findings recorded hereinabove, this Court is of the considered opinion that the petitioners have made out a case for interference under [Article 226](#) of the Constitution of India. The impugned advertisement dated 04.05.2023, insofar as it proceeds upon and gives effect to the reservation arrangement founded upon the notification dated 29.11.2012 and the consequential model rosters which had already been declared unconstitutional by this Court in WPC No.591 of 2012 and connected matters, cannot be sustained in law. Accordingly, the impugned advertisement dated 04.05.2023, to the extent it incorporates the aforesaid reservation arrangement, is hereby quashed and set aside.

78. Consequently, all consequential actions taken by the respondents on the basis of the impugned reservation arrangement shall stand subject to the directions contained in this judgment and, more importantly, to the final outcome of SLP (C) Nos.18816-18817 of 2022 and connected proceedings pending before the Hon'ble Supreme Court. This Court, however, considers it neither necessary nor appropriate to direct wholesale cancellation of the recruitment process or termination of candidates who have already been appointed, particularly in view of the specific order dated 01.05.2023 passed by the Hon'ble Supreme Court permitting the State to proceed with the process subject to the final outcome of the proceedings.

79. Accordingly, the respondents are directed to proceed with the recruitment and promotion process in accordance with law and in conformity with the order dated 01.05.2023 passed by the Hon'ble Supreme Court. The respondents shall reconsider and regulate the vacancies and the reservation roster in accordance with the law declared by this Court, subject to the final adjudication by the Hon'ble Supreme Court in the aforesaid proceedings.

80. It is made clear that the setting aside of the impugned advertisement, to the extent indicated hereinabove, shall not result in automatic termination of the persons who have already been appointed pursuant thereto. Their appointments shall continue, but strictly subject to the final outcome of SLP (C) Nos.18816-18817 of 2022 and connected matters and any further order passed by the Hon'ble Supreme Court. No appointee shall, therefore, claim any indefeasible right on the basis of such appointment contrary to the final decision of the Hon'ble Supreme Court.

81. The respondents shall, however, ensure that every appointment order issued hereafter pursuant to the recruitment process in question contains, in clear and unambiguous terms, a specific stipulation that the appointment is "subject to the final outcome of SLP (C) Nos.18816-18817 of 2022 and connected proceedings pending before the Hon'ble Supreme Court and to any further order passed therein." The said stipulation shall constitute an integral condition of such appointment and shall be specifically incorporated in the appointment order itself.

82. Similarly, every promotion order issued hereafter, where the promotion is in any manner connected with or affected by the reservation framework which is the subject matter of the proceedings before the Hon'ble Supreme Court, shall specifically record that such promotion is subject to the final outcome of SLP (C) Nos.18816-18817 of 2022 and connected proceedings and to any further order passed by the Hon'ble Supreme Court therein. The concerned authorities shall not issue any such promotion order without incorporating the aforesaid condition. It is further directed that the same condition shall be incorporated, wherever applicable, in orders relating to seniority, confirmation, regularisation or any other consequential service benefit arising out of the appointments or promotions made during the pendency of the proceedings before the Hon'ble Supreme Court. The purpose of such stipulation is to ensure that no equity is created in favour of any individual which may operate to defeat or frustrate the final judgment of the Hon'ble Supreme Court.

83. Upon final adjudication of the aforesaid proceedings by the Hon'ble Supreme Court, the respondent authorities shall be bound to give full and consequential effect to the judgment/order so rendered. If such final adjudication necessitates re-determination of the reservation roster, selection, appointment, promotion, seniority or any other consequential service benefit, the competent authorities shall undertake the necessary exercise strictly in accordance with the final directions of the Hon'ble Supreme Court.

84. It is clarified that this Court has not expressed any final opinion upon the ultimate validity of the reservation framework which is presently under consideration before the Hon'ble Supreme Court. The relief granted herein is intended to give effect to the judgment dated 19.09.2022 passed by this Court, while simultaneously 124 preserving the liberty granted by the Hon'ble Supreme Court by its order dated 01.05.2023 to continue the recruitment and promotion process subject to the final outcome of the pending proceedings.

85. For the reasons aforesaid, the batch of writ petitions is allowed.

The impugned advertisement dated 04.05.2023, insofar as it gives effect to the reservation arrangement founded upon the notification dated 29.11.2012 and the consequential model rosters declared unconstitutional by this Court, is quashed and set aside. The consequential recruitment and promotion processes shall, however, be permitted to continue in terms of the order dated 01.05.2023 passed by the Hon'ble Supreme Court, subject to the final outcome of SLP (C) Nos.18816-18817 of 2022 and connected matters.

86. All interim orders, if any, shall stand merged in this final order, subject to the directions contained herein.

87. There shall be no order as to costs.

Sd/-

(Amitendra Kishore Prasad) Judge Yogesh The date when the The date when the The date when the judgment is judgment is judgment is uploaded on the website reserved pronounced Operative Full 06.08.2026 14.10.2026 ----- 14.10.2026 125 Head-Note Constitutional validity of reservation -- Effect of judicial declaration of invalidity -- Executive authorities cannot act upon a reservation framework already held unconstitutional, unless protected by a subsequent order of the Supreme Court -- Recruitment/ appointment/promotion may proceed subject to the final outcome of proceedings pending before the Supreme Court, with consequential orders expressly made subject thereto.