

(2026) 01 SC CK 1879

In the Supreme Court Of India

Case No : Civil Appeal No. 304 Of 2026 (Arising Out Of Special Leave Petition (Civil) No.10686 Of 2020)

Airport Authority Of India & Ors

APPELLANT

Vs

Sham Krishna B & Ors

RESPONDENT

Date of Decision : 16-01-2026

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 335

Citation : (2026) 01 SC CK 1879

Hon'ble Judges : M. M. Sundresh, J; Satish Chandra Sharma, J

Bench : Division Bench

Advocate : A. Karthik, Aishwarya Bhati, Neetika Sharma, Tavinder Sidhu, M/s M. V. Kini & Associates, A. Karthik, Govind Manoharan, Smrithi Suresh, Sugam Agrawal, Veera Mahuli, Nanditha S, Aishwarya Bhati, Neetika Sharma, Tavinder Sidhu, M/S. M. V. Kini & Associates

Final Decision : Allowed

Judgement

Satish Chandra Sharma, J

1. Leave granted.

2. The present appeals arising out of the final judgment and order dated 19.02.2020 passed by the Division Bench of the Hon'ble High Court of Kerala at Ernakulam in Writ Appeal bearing W.A. No. 1581 of 2018 (hereinafter "the Impugned Judgment"). SLP(C) No. 10686 of 2020 has been preferred by the Airport Authority of India (hereinafter "the Appellant Authority"), and SLP(C) No. 12937 of 2021 is filed by Krishna Chandran and another who had been impleaded as an additional Respondent in W.A. No. 1581 of 2018.

3. The Impugned Judgment directed, inter alia, that Sham Krishna (hereinafter "the first Respondent"), who is the Writ Petitioner, be appointed to a vacancy left vacant pursuant to the Learned Single Judge's orders in Writ Petition No. 35998 of 2016. The Division Bench further directed the Appellant Authority to publish

rank lists immediately after selection and to ensure that roster points are filled in accordance with the model roster in the Office Memorandum issued by the Department of Personnel and Training dated 02.07.1997 (hereinafter "1997 DoPT Office Memorandum"). With respect to the impleaded candidate, the Court denied any relief, noting that he did not challenge the selection or denial of his appointment in a timely manner.

4. In the year 2013, the Appellant Authority issued Advertisement No. 01/SR/2013 inviting applications for appointment to the post of Junior Assistant (Fire Service) in the scale of pay of Rs. 12,500 - 28,500. The total number of posts notified was 244 +1, out of which 122 posts were earmarked as unreserved, 78 for Other Backward Classes (hereinafter "OBC"), 22 for Scheduled Castes (hereinafter "SC") and 22 +1 for Scheduled Tribes (hereinafter "ST"), with +1 being a carried forward vacancy.

5. The notification prescribed the following qualifications: (i) Pass in Class X and a regular three-year Diploma in Mechanical, Automobile or Fire Engineering with not less than 50% marks; or (ii) Pass in Class XII (regular study) with not less than 50% marks together with one of the following licences: (a) a valid heavy vehicle licence; or (b) a valid medium vehicle licence issued at least one year before 30.04.2013; or (c) a valid light motor vehicle licence issued at least two years before 30.04.2013.

6. The recruitment received 12,891 applications, of which 7,278 candidates were found eligible to appear for the written examination. The written test prescribed qualifying marks of 50 out of 100 for general category candidates and 40 out of 100 for SC/ST candidates, and 478 candidates qualified in the written examination. All 478 candidates were called for the subsequent stages of selection, namely the physical measurement test, driving test, physical endurance test and interview. Upon completion of the entire selection process, 185 candidates remained qualified, out of whom 158 candidates were initially selected, and the remaining 27 candidates were placed on the panel.

7. The first Respondent, who is the Writ Petitioner, had applied for appointment to the post of Junior Assistant (Fire Service) and participated in all stages of the selection process. He qualified at each stage but was not included in the final list of selected candidates.

8. As the select list was not published on the official website of the Appellant Authority, the first Respondent submitted an application dated 22.06.2016 under the Right to Information Act, 2005 (hereinafter "2005 Act").

9. In response, he was furnished with the select list along with mark details by a letter dated 18.07.2016. The list so furnished disclosed that 158 candidates had been selected.

10. On noticing that appointments had been made only to 158 candidates against 245 notified vacancies, the first Respondent submitted a further

application dated 23.07.2016 under the 2005 Act seeking the final list of selected candidates with reservation points, as well as the list of candidates excluded from selection along with their marks. By reply dated 08.08.2016, the Appellant Authority furnished separate lists of unreserved candidates, reserved category candidates, and candidates not selected.

11. The information so furnished revealed that 122 candidates were selected under the unreserved category, while only 10 candidates were selected under the Other Backward Classes category, 22 under the Scheduled Caste category and 4 under the Scheduled Tribe category. The category-wise position of advertised vacancies and appointments made stood as follows:

S. No.

Category

Advertised

Filled

Panel

1.

Unreserved

122

122

21

2.

OBC

78

10

-

3.

SC

22

22

6

4.

ST

23

4

-

Total

245

158

27

12. The first Respondent was placed at serial number ten in the list of candidates not selected under the unreserved category. His aggregate score was 128.08 marks out of 225, comprising 50 marks in the written examination, 18.08 marks in the interview and 60 marks in the physical endurance test, with his merit position being 132.

13. Aggrieved by the merit list, his non-selection and inclusion of reserved category candidates under the unreserved category, the first Respondent filed Writ Petition (C) No. 35998 of 2016 in the Hon'ble High Court of Kerala at Ernakulam (hereinafter "High Court") in late 2016, challenging the selection.

14. The learned Single Judge vide order dated 31.01.2018 allowed the Writ Petition. He found that the appointments were vitiated because only 158 candidates had been appointed against 245 notified posts, and the reservation policy had not been correctly applied. Consequently, he directed the Appellant Authority to prepare and publish the rank list in accordance with the recruitment rules and to re-arrange candidates in conformity with the model roster contained in the 1997 DoPT Office Memorandum, after which appointments were to be made to the remaining notified posts.

15. The Appellant Authority challenged the Single Judge's order in Writ Appeal No. 1581 of 2018. By its Impugned Judgment dated 19.02.2020, the Division Bench upheld the Single Judge's core findings that the appointments had been erroneously made and that the roster had not been properly applied. The Division Bench, however, modified the relief granted by the Single Judge insofar as it declined to disturb the entire selection exercise where no other appointee had challenged his or her appointment. The Division Bench directed that the first Respondent be appointed to the vacancy that had been kept vacant by the Single Judge and ordered the Appellant Authority to publish rank lists forthwith and to ensure that future roster points are filled in accordance with the 1997 DoPT Office Memorandum. The Division Bench further made it clear that the persons impleaded as additional Respondents in the Writ Appeal, having not challenged the selection or the denial of their appointment at the appropriate time, were not entitled to any relief.

16. Aggrieved by the Division Bench's decision, the Appellant Authority filed

Special Leave Petition (C) No. 10686 of 2020 before this Court. The impleaded candidate who was refused relief by the Division Bench filed Special Leave Petition (C) No. 12937 of 2021. Both petitions challenge the impugned order dated 19.02.2020 passed by Division Bench of the High Court in Writ Appeal No. 1581 of 2018 on different aspects.

17. Ms. Aishwarya Bhati, Learned Additional Solicitor General, appearing for the Appellants, submitted that the appeals call for interference and that the Impugned Judgment rests on a misconstruction of the manner in which select list was prepared and the legal effect of appointments made on own merit.

18. Learned Additional Solicitor General has vehemently argued before this Court that it is a settled proposition of law that in case a reserve category candidate finds place in the merit list prepared for the General Category candidates on the basis of his own merit, he has to be treated as a General Category candidate and has to be adjusted against the posts meant for General Category candidate and, therefore, the learned Single Judge as well as the Division Bench of the Kerala High Court have erred in law and in facts by allowing the writ petition and directing the appointment of Respondent No. 1.

19. It was further submitted that a reservation register or roster is an administrative, post-based instrument maintained to record cadre composition and to identify points for future recruitment. The roster monitors representation over time, and it does not operate as a parallel selection mechanism to displace candidates who legitimately secure an unreserved place on their own merits.

20. That the DoPT scheme, as implemented in the memorandum dated 23.01.2014, provides a simplified format for maintaining the reservation register, and the Authority has followed that format. The Authority's maintenance of the reservation register in the prescribed format and its method of preparing UR/OM lists conform to the administrative instructions issued on the subject.

21. Learned Additional Solicitor General has vehemently argued before this Court that the petition was filed after the entire process was over and it should have been dismissed on the ground of delay and laches alone. Learned ASG has further contended that the process of selection was conducted in accordance with the recruitment rules and after following the reservation roster and by no stretch of imagination, the persons who have secured more or equal marks than the general category candidates are required to be placed in the merit list prepared for reserved category candidates. She has stated that the law on the point has been crystalised by this Court and it is a settled proposition of law that a candidate belonging to reserved category if he secures more or equal marks like a general candidate, he has to be included in the general category list and she has prayed for quashment of the orders passed by learned Single Judge as well as the Division Bench of the Kerala High Court and that the appeals arising out of SLP(C) No. 10686 of 2020 be allowed and the other appeal arising out of SLP(C) No. 12937 of 2021 be dismissed.

22. Learned counsel for the Respondent has stated before this Court that the writ petition was certainly not at all barred by delay and laches and the writ petition was filed with quite promptitude after obtaining the relevant documents. He has vehemently argued before this Court that the recruitment rules have not been applied properly which has resulted in non-selection of the Respondent No. 1 and the exercise on the part of the Respondents by including all reserved category candidates in the list prepared for general category candidates is void and is opposed to law. Learned counsel for Respondent No.1 has placed reliance upon the judgment delivered in the case of Mathew David v. State of Kerala & Ors., (2020) 14 SCC 577, on the ground of delay and laches and his contention is that the writ petition could not have been dismissed on the ground of delay and laches as argued by learned ASG. Learned counsel has vehemently argued before this Court that the select list prepared by the Respondent was in contravention with the office memorandum issued by the Department of Personnel and Training pursuant to the judgment delivered in the case of R.K. Sabharwal & Ors. v. State of Punjab & Ors., (1995) 2 SCC 745. He has stated that the Appellant has not followed the roster prepared by the Department and by no stretch of imagination, the vacancy belonging to unreserved category candidates could have been filled by a person belonging to reserve category candidates.

23. Learned counsel submits that as per Paragraph 11 of the 1997 DoPT Office Memorandum, a reserved-category candidate who obtains appointment on merit must be shown against an unreserved point and not against a reserved point. This must not mean, however, that if a reserved post is available and a reserved candidate is next to be appointed based on his rank, the reserved candidate is to be overlooked and another candidate belonging to the reserved category lower in rank is to be appointed.

24. Learned counsel for the Respondent has vehemently argued before this Court that by applying the roster, all 122 posts advertised for unreserved category candidates should have been filled only and exclusively by unreserved category candidates and the vacancies advertised for OBC/SC/ST candidates should have been filled only by the candidates belonging to OBC/SC/ST categories. He has further argued that a large number of OBC/SC/ST vacancies are available in the Department and the vacancies advertised for reserve category candidates were not filled under the examination in question and, therefore, there was no justification in shifting the reserve category candidates towards the vacancies meant for the general category candidates.

25. On these submissions, learned counsel for the first Respondent prayed that the appeal be dismissed and the Impugned Judgment of the High Court be upheld.

26. Heard learned counsel for the parties at length and perused the record.

27. The facts of the case reveal that total 245 posts were advertised out of which

122 posts were for unreserved category candidates, 78 posts for OBC candidates, 22 posts for Scheduled Caste category and 23 posts were reserved for Scheduled Tribe candidates. After the selection process was over, 122 posts were filled by unreserved candidates, 10 posts were filled by OBC candidates, 22 posts were filled by Scheduled Caste candidates and 4 posts were filled by Scheduled Tribe candidates, meaning thereby that out of 245 posts, 158 posts were filled by the Department. The record of the case further reveals that after the process of selection was over, the Appellant prepared a merit list/ panel of all qualified candidates and in the process, first list of unreserved category candidates was prepared which included candidates as per the performance in the examination including the candidates belonging to reserve category candidates who have not availed the concession or any relaxation of their own category reservation and who have scored higher marks or marks at par with the candidates belonging to unreserved category candidates and, therefore, such selected candidates were coined as candidates on their own merit and their names find place in the unreserved category list. The Respondents after fulfilling the notified unreserved posts have kept the remaining qualified unreserved candidates in the waiting list of the selection panel and thereafter the list of OBC candidates was prepared by taking the remaining top OBC candidates until the total number of OBC posts are filled and are declared selected. The same exercise was done for Scheduled Caste and Scheduled Tribe candidates. In the present case, Respondent No. 1 secured 128.08 marks which was less than the last candidate in the unreserved category of 122 candidates, therefore, he was not considered for appointment against the post meant for unreserved category and was kept in the unreserved selection panel of 21 candidates who scored less than the last candidate of the unreserved list.

28. This Court has carefully gone through the office memorandum dated 02.07.1997 issued by the Department of Personnel and Training and it is clear from the reading of the Impugned Judgment that the Division Bench of the High Court has not considered the said Office Memorandum in its right perspective. The record of the case further reveals that the Appellant Authority maintained reservation roster as "Reservation Register" as per the format given in Annexure 1 of Chapter 5 of Brochure on reservation of SC/ST/OBC circulated vide DOPT Office Memorandum dated 23.01.2014.

29. The facts of the case also reveal that the Division Bench of the High Court has also failed to appreciate the fundamental fact that the reservation roster comes into picture only after selection process is over and a reservation register or roster is a list of employees of a cadre, who are on the payroll of the organization after joining their duty.

30. There are mainly two-fold purposes of maintaining reservation register or roster. Firstly, to ascertain that any given point of time, the number of employees in a cadre belonging to a particular category (SC, ST and OBC) does not exceed their lawful quota in the cadre. The second purpose is to determine the number

of posts in all the categories (UR, SC, ST and OBC) which is vacant for future recruitments. Therefore, the reservation roster is not used to make selections during the recruitment process, but only to define number of vacant posts for advertising for recruitment. However, since reservation register or roster defines the quota available for recruitment, it can be used to decide who deserves selection and who does not deserve selection on account of a concerned category quota being filled by more meritorious candidates in the category available for the concerned candidate.

31. The Appellant Authority has justified its stand in shifting reserve category candidates towards the list of unreserved category candidates as they have obtained marks more than the candidates belonging to unreserved category or at par with the candidates belonging to unreserved category candidates.

32. The issue in respect of migration of reserved category candidates who has not availed any concession or relaxation has been considered in detailed by this Court in Rajasthan High Court & Anr. v. Rajat Yadav & Ors. in Civil Appeal No. 14112 of 2024 decided on 19.12.2025, wherein this Court after taking into account all the judgments on the subject has held that a candidate belonging to reserve category who has scored higher marks than the cut off marks for the General Category candidates has to be treated as having qualified against an open unreserved vacant post. This Court in the aforesaid case in paragraph 58 to 74 as held as under:

58. We begin our observations, analysis and ruling on migration by refreshing our memory with certain well-established principles in relation to affirmative action under our Constitution. It is well-settled that the concept of 'equality before law' ingrained in Article 14 of the Constitution of India contemplates, inter alia, elimination of inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people and is aimed at securing the educational and economic interests of the weaker sections of the society and to protect them from social injustice and exploitation. The equal protection clause urges affirmative action for those who are placed unequally. Affirmative action is also recognised by Article 16. Then again, Article 335 thereof provides for special consideration in the matter of claims of the Scheduled Castes/ Scheduled Tribes for public employment. The entire field of law relating to affirmative action is so well occupied by authoritative decisions that we consider it unnecessary to burden this judgment by referring to the same. What particularly concerns us in these appeals is not a sterile invocation of formal legal equality, but an assessment of the real-world consequences flowing from the principle of equality. The focus, therefore, must be on outcomes as much as on rules.

59. Indra Sawhney 1992 Supp (3) SCC 217 (supra) explained the principles of reservation. Hon'ble B.P. Jeevan Reddy, J. (as His Lordship then was) declared, inter alia, that where a vertical reservation is made in favour of a backward class, the candidates in this category may compete for open or general category and

that if they are appointed on merit in the open or general category, their number will not be counted against the backward class category and, as such, it cannot be considered that the vertical reservations have been filled up to the extent candidates of this category have migrated to the open category on merit.

60. In *Saurav Yadav* (2021) 4 SCC 542 (supra), Hon'ble S. Ravindra Bhat, J. in His Lordship's supplementing opinion outlined the features of vertical and horizontal reservation as follows:

59. The features of vertical reservations are:

59.1. They cannot be filled by the open category, or categories of candidates other than those specified and have to be filled by candidates of the social category concerned only (SC/ST/OBC).

59.2. Mobility ("migration") from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance.

59.3. In case of migration from reserved to open category, the vacancy in the reserved category should be filled by another person from the same specified category, lower in rank.

59.4. If the vacancies cannot be filled by the specified categories due to shortfall of candidates, the vacancies are to be "carried forward" or dealt with appropriately by rules.

60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are "interlocking" reservations. As a sequel, they are to be calculated concurrently and along with the inviolate "vertical" (or "social") reservation quotas, by application of the various steps laid out with clarity in para 21.3 of *Lalit*, J.'s judgment. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/social reservation.

61. The open category is not a "quota", but rather available to all women and men alike. ...".

61. The above observations were followed by His Lordship's observation, found almost at the end of the opinion, that the "open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.". The same have a profound meaning, and needs to be translated into action without being unnecessarily bothered by a term like 'migration'.

62. Drawing inspiration from the guiding light provided by *Indra Sawhney* (supra) and *Saurav Yadav* (supra), we hold that the word 'open' connotes nothing but 'open', meaning thereby that vacant posts which are sought to be

filled by earmarking it as 'open' do not fall in any category. One does find categories like 'open' or 'unreserved' or 'general' being widely used in course of recruitment drives but they are meant to signify the open/unreserved vacant posts on which any suitable candidate can be appointed, regardless of the caste/tribe/class/gender of such candidate. For all intents and purposes, the vacancies on posts which are notified/advertised as open or unreserved or general, as the terms suggest, are not reserved for any caste/tribe/class/gender and are, thus, open to all notwithstanding that a cross-section of society can also compete for appointment on vacant posts which are 'reserved' – vertical or horizontal – as mentioned in the notification/advertisement.

63. Now, turning to the dictionary meaning of the word 'migration', what we find is that the same typically refers to the act of moving from one place to another, often involving a change of residence or location. This can apply to various contexts like human migration, animal migration, data migration, etc. In general, migration involves a change of location, often with the intention of settling or establishing a new presence in the new location.

64. In the context of reservation in public employment, the word 'migration' refers to a candidate claiming benefits or entitlements. The word is used in, at least, two scenarios.

65. Scenario 1 is "Inter-State Reservation Migration" envisaging a portability of reservation benefits. Since we are not concerned with a scenario 1 case, we make no observation except noting two decisions of this Court. The first is *Action Committee v. Union of India* (1994) 5 SCC 244 where it has been held by a Constitution Bench that a person belonging to Scheduled Caste/Scheduled Tribe in relation to his original State, of which he is a permanent or ordinary resident, cannot be deemed to be so in relation to any other State on his migration to that State for the purpose of employment, education, etc. The second is *Uttar Pradesh Public Service Commission v. Sanjay Kumar Singh* (2003) 7 SCC 657 holding that if a person certified as Scheduled Caste/Scheduled Tribe in one State migrates to another State, then he would not be entitled to the benefit available to Scheduled Caste/Scheduled Tribe in the State to which he has migrated unless he belongs to the Scheduled Caste/Scheduled Tribe in that State.

66. Scenario 2, with which we are concerned, occurs when there is a "Merit Induced Shift". Although this shift is largely referred to as migration, we find in *Saurav Yadav* (supra) Hon'ble Ravindra Bhat, J. explaining the term as adjustment of a reserve category candidate in the unreserved category based on his/her merit.

67. Here, we do not see reason to agree with Mr. Gupta that any shift or adjustment, or even migration as he contends, as such is required where a candidate, who is also otherwise entitled to compete and be selected for a reserved vacant post, happens to outscore, outperform and outshine not only reserved candidates but also general candidates and figures at the top of the list

of successful candidates prepared after a qualifying/preliminary examination (for screening/shortlisting) solely by dint of the marks secured by him/her in such examination (without availing any concession/relaxation) thereby entitling him/her to participate in the second tier of a further suitability test. Such a meritorious candidate, notwithstanding that he/she belongs to a reserved category, be it Scheduled Caste or Scheduled Tribe or Other Backward Class, must of necessity (arising out of the concept of equality before law and equal protection of the laws in Article 14, and extended to Article 16 in matters of public employment) be treated as a candidate who has competed for the 'unreserved' category and not the 'reserved' category, thereby obviating the need for any 'migration' or, so to say, shift or adjustment.

68. In a two-tier process, as in the present case, we wish to illustrate how, generally, the exercise of screening/short-listing of candidates (belonging to General/Open, Scheduled Caste or Scheduled Tribe or Other Backward Class, etc., categories) with five times the number of vacancies in each category, who would literally be gaining the 'pass' to reach the second tier to participate in the typewriting test on computer can be conducted without complaints of unfairness and nontransparency in the process. Say, 100 vacancies in the General/Open category are notified and a similar number for the reserved categories is also notified. Five times the number of vacancies would mean not more than 500 candidates can be screened/shortlisted for the General/Open category. At the outset, based on the performance of the candidates who take the written test, the recruiting authority has to screen/short-list the candidates to be included in the General/Open category and subsequently for reserved categories. Judicial notice can be taken that this exercise is often facilitated by preparing a broadsheet, also called a short-list, containing names of all the candidates (who acquit themselves successfully in the written test). For the preparation of the short-list for the General/Open category, candidates are first arranged strictly in descending order of merit and, thereafter, candidates falling short of the cut-off for such category figure in descending order of merit according to their respective reservation category in separate short-lists. If any candidate, say 'C', being the member of a Scheduled Caste or Scheduled Tribe or Other Backward Class, outscores the candidates not belonging to any reserved category in the written test, he/she shall be included in the short-list for the General/Open category. At this stage, there is no question of any migration; merit is the only criterion amongst all candidates who have to be seen as belonging to General/Open category. Once 'C' gains the 'pass' for the second-tier process and qualifies in the typewriting test on computer obtaining marks in excess of the requisite marks, his/her marks obtained in such test would be required to be added to the marks obtained in the written test. Once again, a broad-sheet has to be prepared based on cumulative scores containing names of all the candidates in order of highest to lowest marks with the more meritorious candidates, obviously, figuring at the top. Preparation of this broad-sheet is a handy tool for drawing up the final merit list of candidates. From the broad-

sheet, names of candidates drawn up in order of merit with candidates ranked according to their marks in descending order, commonly called the Combined Merit List, ought to reflect where each one of the aspiring candidates stand on merit. If 'C' figures within the first 100 candidates in order of merit, i.e., the number of vacant posts for the General/Open category, he/she shall be counted as a General/Open candidate for the purpose of appointment. Here too, there is no question of migration for the reason we have already indicated above, i.e., merit being the only criterion and not caste/tribe/gender, etc. If 'C' does not figure in the first 100 candidates and whilst preparing the merit list of reserved category candidates it is found that he/she figures within the specified number of vacancies in the reserved category to which he/she belongs and which can be filled up by appointing him/her, he/she ought to be counted as a candidate of such reserved category for appointment. If 'C' fails to figure in the merit list for the reserved category list as well, question of his/her appointment would not arise.

69. We, however, sound a note of caution that our observations above are relatable to the selection process of the kind under consideration. It has not been shown with reference to the recruitment rules that the same ordain otherwise. If, at all, the recruitment rules governing any selection process ordain otherwise than what is observed above, obviously the recruitment rules would have precedence subject to the condition that such rule passes the test of constitutionality.

70. Reverting to the appeals under consideration, we see no reason to say that there has been a 'migration', in the sense of either an adjustment or a shift being made. At the time of screening/short-listing of candidates based on their performance in the qualifying examination and even thereafter, initially all the aspiring candidates including the reserved candidates should be seen as General/Open candidates. If such a candidate, notwithstanding that he/she belongs to a reserved category maintains excellence in standard even in the second tier of examination (typewriting test, in this case), he/she would cease to be treated as a candidate belonging to any category and entitled to treatment as a candidate seeking appointment on a vacant post which is categorised as General/Open. Should there be a decline in performance in the second tier test pushing out the candidate from the zone of consideration for appointment on posts which are open or unreserved or general but not beyond the zone for the reserved vacant posts, it is necessary to regard him/her as a candidate belonging to the reserved category to which he/she belongs, thereby paving the way for him/her to stake a claim for consideration for appointment on an appropriate reserved vacant post.

71. In the milieu of facts, none of the petitioning candidates has been shown to have availed of any concession/relaxation. No law – either rule or executive instruction – has been shown which prevented the High Court from treating the reserved candidates as General/Open candidates once it transpired that they outshone the latter. Question of any migration or deriving twin benefits of

migration did not and could not arise in the circumstances.

72. If we accept the proposition advanced by the appellants, it would not only have a detrimental impact on candidates from the disadvantaged sections but also erode the principles enshrined in the Constitution.

73. Now, turning to *Chattar Singh* (supra) which was heavily relied on by the appellants, we have to record that the ratio laid down therein must be appreciated in its proper context. In that case, the scheme of examination clearly provided that the marks obtained in the preliminary examination would not be considered for the determination of final merit. The rule therein, appearing from paragraph 5 of the decision, read as follows:

5. Rule 13 of the Rules prescribes the mode of conducting preliminary as well as Main Examination. It reads as under:

"13. Scheme of Examination, personality and viva voce test.— The competitive examination shall be conducted by the Commission in two stages, i.e., Preliminary Examination and Main Examination as per the scheme specified in Schedule III. The marks obtained in the Preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination will not be counted for determining their final order of merit..."

(emphasis ours)

It is in view of this rule that this Court held that the claim of reserved category candidates to be accommodated in the open category on the basis of marks obtained will be determined at the final stage. We find no reason to differ from that principle. However, the facts of the present case stand on a distinct footing. First, the main written examination here is not a mere preliminary/screening test but an integral and substantive component of the selection process, carrying 300 marks out of a total of 400 - constituting 75% of the final assessment. Its weight and determinative value distinguish it from the limited preliminary stage examination contemplated in *Chattar Singh* (supra), thereby rendering that ratio inapplicable to the present factual matrix. Secondly, the inclusion of a reserved category candidate in the open merit list at the stage of shortlisting cannot be equated with 'migration', for no benefit or concession of reservation is availed. Such inclusion is purely merit-based and, therefore, stands on a plane distinct from the concept of 'migration' as addressed in *Chattar Singh* (supra).

74. Before we part, we find it necessary to enter a caveat. A situation could arise, if the aforesaid principles were applied, of a reserved category candidate based on his/her performance outshining General/Open candidates and figuring in the General merit list, but finding the options to be limited. He/she may, as a consequence of being counted as a General candidate, lose out on a preferred service or a preferred post because the same is reserved for a reserved category candidate. Should such an eventuality occur, the same is bound to breed dissatisfaction, disappointment and displeasure which are not in the interests of

public service. After all, fairness matters even in public employment. Where adjustment against the unreserved category would result in a more meritorious reserved category candidate being displaced in favour of a less meritorious candidate within the same category for a preferred service or a preferred post within the reserved quota, the former must be permitted to be considered against the service/post in the reserved quota. This would ensure merit being preserved both across categories and within them, and that reservation functions as a means of inclusion rather than an instrument of disadvantage. The approach adopted by us in holding so is consistent with the view expressed by this Court, encapsulated in paragraph 24.1 of *Alok Kumar Pandit* (2012) 13 SCC 516 (supra). We may also mention here that prior to the view expressed in *Alok Kumar Pandit* (supra), the High Court at Calcutta in a somewhat like situation took the same view in *Mukul Biswas v. State of West Bengal* 2010 SCC Online Cal 1983".

33. In the considered opinion of this Court, the controversy involved in the present case is no longer *res integra*. It is now a settled proposition of law that a candidate belonging to reserve category who has scored marks higher than the cut off marks for the General Category is to be treated as having qualified against an open or unreserved vacant post. In the present case, no concession or relaxation was extended to the reserve category candidates who have been appointed on their own merit against the posts meant for the General Category candidates as they have scored more marks than the General Category candidates in the selection process. The facts of the case further makes it clear that all the vacancies notified for unreserved category i.e. 122 posts were filled up based upon the marks scored by candidates in the process of selection on their own merit and, therefore, the Appellant Authority were justified in migrating the candidates belonging to reserve category to the unreserved list on the basis of their own merit as they have scored higher marks than the General category candidates.

34. This Court is of the considered opinion that the judgment delivered by the learned Single Judge as well as the Division Bench of the Kerala High Court deserves to be set aside and are accordingly set aside and the question of directing appointment of Respondent No. 1 i.e. Sham Krishna B. or any other person belonging to unreserved category does not arise as all vacancies notified under the unreserved category have been filled strictly in accordance with the merit list prepared by the Appellant Authority.

35. Accordingly, the appeal arising out of SLP (C) No. 10686 of 2020 is allowed and the appeal arising out of SLP (C) No. 12937 of 2021 is dismissed. No order as to costs.