

(2020) 11 DEL CK 0215

In the Delhi High Court

Case No : Civil Writ Petition No. 4114 Of 2020, Civil Miscellaneous Application
No. 14769 Of 2020

Dr. Pradeep Shinde & Ors

APPELLANT

Vs

Jawaharlal Nehru University Through: Its Vice Chancellor &
Anr

RESPONDENT

Date of Decision : 17-11-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(4), 16(4B), 16(6), 46
University Grants Commission Act, 1956 — Section 20(1)
Uttar Pradesh Public Services (Reservation Of Scheduled Castes, Schedule Tribes And
Other Backward Classes) Act, 1994 — Section 3(5)
Central Educational Institutions (Reservations In Teachers' Cadres) Act, 2019 —
Section 3(1), 3(2)

Citation : (2020) 11 DEL CK 0215

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Akhil Sibai, Maanav Kumar, Roshni Namboodiry, Nitya Gupta, Sonali
Malik, Nupur, Monika Arora, Ankita Shah, Ajay Diggpaul, Kamal R. Diggpaul

Final Decision : Partly Allowed

Judgement

Common Statement of teaching position as on 20.02.2020,,,,,,,,,,,,,,,,,,,,,

Name

of Â the

Posts", "No. of

Sanctioined

posts", "Details of Sanctioned strength as on

20.02.2020",,,,,,Details of Existing strength of 20.02.2020,,,,,,,,,Vacant positions
as on 20.02.2020,,,,,,,,

„GEN,SC,ST,OBC,EWS,TOTAL,GEN,SC,ST,OBC,EWS,TOTAL,"PWD

F",EMALE,GEN,SC,ST,OBC,EWS,TOTAL,

Professor,201,156,30,15,0,0,201,76,14,0,0,0,90,3,20,80,16,15,0,0,111,

Assoc.

Prof.",372,290,55,27,0,0,372,191,17,5,0,0,213,2,77,99,38,22,0,0,159,

Asstt.

Prof.",353,180,53,26,94,0,353,170,41,18,43,2,274,9,90,8,12,8,51,0,79,

Total,926,626,138,68,94,0,926,437,72,23,43,2,577,14,187,187,66,45,51,0,349,

affidavit it is stated that no post of SC and ST has been converted/de-reserved into unreserved post, though reservation roster points have changed in respect of some posts, due to interpolation." ,,,,,,,,,,,,,,

This stand is demonstrably false as is clear from a comparison of the 2017 and 2019 rosters. In response to the order dated 10.07.2020 Respondent No.1 was directed to explain the manner in,,,,,,,,,,,,,,,,,,,,,

which the rosters were being applied before the judgment of the Allahabad High Court but the counter-affidavit is silent on the operation of the 2017 roster and deliberately refers only to the,,,,,,,,,,,,,,,,,,,,,

2011 roster comparing it with the 2019 roster. The stand in the affidavit is that in 2011 roster, the roster points were earmarked in excess of the share of the SCs/ STs, which is false and it was" ,,,,,,,,,,,,,,,,,,,,,,

also misrepresented that the 2011 roster was replaced by 2019 roster. This stand blatantly conceals the existence of 2017 roster as also the fact that the 2019 roster was not brought into effect,,,,,,,,,,,,,,,,,,,,,,,,,

on 04.07.2019, as alleged, since the appointments made after 04.07.2019 are recorded and updated in 2017 roster. It is also argued that Respondent No.1 is misrepresenting that the" ,,,,,,,,,,,,,,,,,,,,,,,,,,

Parliamentary Committee on SCs/STs had on 27.03.2016 criticized the excess reservations. In stark contrast, in fact the Committee observed that there was inadequate representation of the" ,,,,,,,,,,,,,,,,,,,,,,,,,,

SCs/STs in the teaching faculty in the University and in this regard, attention is drawn to the relevant extract of the Parliamentary Committee from the excerpts appended to the writ petition." ,,,,,,,,,,,,,,,,,,,,,,,,,,

11. Ms. Monika Arora learned counsel for the University, per contra, takes a stand that after publication of the Notification dated 07.03.2019 by Government of India being â??Central" ,,,,,,,,,,,,,,,,,,,,,,,,,,

Educational Institutions (Reservation in Teachersâ?? Cadres) Ordinance,

2019â??, Gazette Notification published by MHRD on 07.03.2019 and UGC letters dated 07.03.2019 and" ,,,,,,,,,,,,,,

08.03.2019, coupled with DOPT OM dated 31.01.2019 and MHRD Gazette Notification dated 12.07.2019, Respondent University, in order to conduct the Recruitment process, carried out the" ,,,,,,,,,,,,,,

recasting of existing reservation rosters by plotting and by including the already issued roster points and posts sanction/vacated. The reservation rosters points, as per the registers maintained by" ,,,,,,,,,,,,,,

the University for the posts of Professors and Associate Professors have been issued in accordance with the principles laid down in the judgement of the Supreme Court in R.K. Sabharwal,,,,,,,,,,,,,

(supra) as well as the DOPT OM dated 02.07.1997, applying the post-based reservation policy." ,,,,,,,,,,,,,,

12. It is further submitted that in order to comply with the mandate of the DOPT OM dated 31.01.2019, regarding reservation for OBCs and EWSs, recasting of reservation roster register was" ,,,,,,,,,,,,,,

carried out and due to the interpolation with previous roster points, few reservation points have shifted. Reservation share, according to her is calculated with regard to total number of" ,,,,,,,,,,,,,,

sanctioned posts in a cadre, but reservation points are issued having due regard to 50% ceiling of vacant posts. In fact, share of reserved category shall in practice will usually be equal to or less" ,,,,,,,,,,,,,,

than what is prescribed and shall be completed only when the entire roster is rationalized.,,,,,,,,,,,,,,

13. Ms. Arora emphatically argues that neither any post of SC or ST has been converted by exchange nor any de-reserved into unreserved post as alleged by the Petitioner and reiterates that,,,,,,,,,,,,,

there is merely a shift in points. This change, according to Ms. Arora has not caused any loss in required reservations of SCs and STs. It is further submitted that on scrutiny of the roster points" ,,,,,,,,,,,,,,

issued for post of Professor and Associate Professor, as per the previously existing rosters, which were reflected in Advertisement Nos. RC/02/2016 and RC/57/2017, it was noticed that these" ,,,,,,,,,,,,,,

points were issued with a view to adjust or make up for the shortfall of SCs/STs, taking into account the cadre strength. This approach led to a situation wherein roster points were in excess of" ,,,,,,,,,,,,,,

the share of reservation issued. In addition, the reservation registers were grouped in certain schools/special centres in the University, which resulted in

excess reservation to SCs/STs. The",,,,,,,,,,,,,,

registers were divided into four groups of schools/special centres making a total of 12 reservation registers of Professor, Associate Professor and Assistant Professor. This was critically",,,,,,,,,,,,,,

analyzed and evaluated by Parliamentary Committee on SCs/STs in its visit to the University on 27.04.2016 and it was directed to merge all the four groups of reservation registers for all the,,,,,,,,,,,,,

three cadres.,,,,,,,,,,,,,,

14. It is argued that the University has acted in accordance with the mandate of the provisions of Article 16(4) and 16(6) of the Constitution of India as well as the DOPT OM dated 31.01.2019,",,,,,,,,,,,,,

by incorporating reservation percentages as prescribed for SCs, STs, OBCs and EWSs in MHRD Gazette Notification dated 12.07.2019 viz. SCs 15%, STs 7.5%, OBCs 27% and EWSs 10%",,,,,,,,,,,,,

on total available vacant posts. The records clearly reflect that the Executive Council in its meeting held on 11.04.2007 had decided to implement reservations at 15% for SCs and 7. 5% for,,,,,,,,,,,,,

STs, as per guidelines of the UGC for Associate Professors and Professors. It was further resolved to implement 27% reservation for OBCs at the level of Assistant Professor, as",,,,,,,,,,,,,

recommended by the MHRD vide letter dated 09.10.06 and UGC letter dated 24.01.2007. However, it was actually implemented after adoption of UGC Regulations, 2010 by the University, in",,,,,,,,,,,,,

2011 and the first advertisement with SC/ST reservation for Professors/Associate Professors was released in November, 2011.",,,,,,,,,,,,,

15. In so far as vacancies for the years 2016/2017 were concerned, recruitment process was put on hold due to communication received from UGC vide letter dated 05.03.2018 regarding",,,,,,,,,,,,,

implementation of the reservation policy of Government of India for recasting of reservation roster department wise, subject wise, instead of cadre wise, in compliance of the judgement of the",,,,,,,,,,,,,

Allahabad High Court in Vivekanand Tiwari v. Union of India, 2017 SCC OnLine All 2729. University also received a letter dated 19.07.2018 from UGC to postpone the recruitment process, if",,,,,,,,,,,,,

it was underway.,,,,,,,,,,,,,,

16. It is submitted that in the meantime University received the new UGC Regulations, 2018 and advertised all the vacancies afresh in 2019, after

cancelling the faculty positions advertised in" ,,,,,,,,,,,,,,

the earlier two years. The stand is that after recast of the reservation register there were no shortfalls for SCs and only 7 shortfalls for STs at Professor level and 1 shortfall each for both SCs,,,,,,,,,,,,,,,,,,,,,

and STs at Assistant Professor level. The shortfall also extends to 16 for SCs and 11 for STs at Associate Professor level and all efforts shall be made to adjust the shortfall in future,,,,,,,,,,,,,,,,,,,,,

recruitments, subject to applicable Rules." ,,,,,,,,,,,,,,

17. Ms. Arora further sought to explain that Chapter-IV of the Brochure of Reservation, 2016 lays down the principles to be followed for determination of the number of posts reserved for SCs," ,,,,,,,,,,,,,,

STs and OBCs in a cadre having more than 13 posts. The posts have to be determined by multiplying the cadre strength by the percentage of reservation prescribed for respective categories,,,,,,,,,,,,,,,,,,,,,

Drawing the attention of the Court to an explanatory note filed during the pendency of the petition, Ms. Arora argues that as on 28.02.2017 the vacancy position for SCs and STs works out to" ,,,,,,,,,,,,,,

92 in the cadre of Professor and Associate Professor. Along with the explanatory note Respondent has placed on record documents showing statement of fresh teaching positions between,,,,,,,,,,,,,,,,,,,,,

2010-2020 as well as details of previous vacancies, fresh vacancies, roster point issued and post filled from 2011 onwards. It is argued on the basis of the documents that the share of SCs/STs" ,,,,,,,,,,,,,,

in the cadre of Professor and Associate Professor works out to 129 @ 22.5% of the total sanctioned 573 posts. Out of these 45 posts have been filled and 57 advertised in the impugned,,,,,,,,,,,,,,,,,,,,,

advertisements. The remaining 27 posts shall be filled in future from vacant posts for which 31 posts are available at present in the University,,,,,,,,,,,,,,,,,,,,,

18. It is also the stand of the Respondent that the "backlog vacancies" as defined in Note-2 of Chapter-5 of DOPT Brochure, 2016 are those vacancies which were earmarked reserved" ,,,,,,,,,,,,,,

for that category in an earlier recruitment year but remained unfilled in the earlier recruitment attempt on account of non-availability of suitable candidates belonging to that category and are still,,,,,,,,,,,,,,,,,,,,,

lying unfilled. In the years 2016-2017 despite advertising 91 vacancies for SCs/STs, interviews were held for 18 posts and none was found suitable. Thus, only these 18 vacancies can be termed" ,,,,,,,,,,,,,,

as backlog vacancies as defined in the Brochure, 2016. The recruitment process could not be completed on account of the judgement of the Allahabad High Court dated 07.04.2017 directing the" ,,,,,,,,,,,,,,

Central Universities to apply department-wise rosters. The Respondent followed directives of UGC issued vide letter dated 19.07.2018 and postponed the recruitment process.,,,,,,,,,,,,,,

19. Counsel for the Respondent argues that the allegations of the Petitioners that the roster points of post no. 135 and post no. 60 in the impugned Advertisements have been stripped of their,,,,,,,,,,,,,

reservation character is misconceived. On account of recasting of the roster as per the UGC and MHRD OMs as well as interpolations of EWS due to the DOPT OM dated 31.01.2019 the,,,,,,,,,,,,,

points have shifted to other schools/centres. The reservation rosters/registers are only an aid to ensure that the reserved classes get the quotas reserved for them and no one can claim a right to,,,,,,,,,,,,,

a particular roster point per se. The percentage of reservations is no doubt fixed and every effort is made to abide by the same assuring adequate representation, It is also argued para 6.8 of the" ,,,,,,,,,,,,,,

2016 Brochure on reservations prescribes that vacancies reserved for SCs, STs and OBCs which could not be filled up will be carried forward as backlog vacancies for subsequent recruitment" ,,,,,,,,,,,,,,

years and all efforts shall be made by the University to do so in the coming recruitment years with respect to the vacancies which have not been advertised in the impugned advertisements. It is,,,,,,,,,,,,,

denied that there has been any exchange of reservation points from SC to ST or vice versa, as alleged by the Petitioners." ,,,,,,,,,,,,,,

20. Mr. Sibal Learned Senior Counsel for the Petitioners arguing in rejoinder submits that the falsity of the stand of the University is apparent from the fact that varying stands have been taken,,,,,,,,,,,,,

in the different pleadings filed by the University and each of the stands is self-contradictory and self- destructive. The attempt is only to misrepresent and misguide the Court. He reiterates the,,,,,,,,,,,,,

stand of the Petitioners that in the impugned Advertisements University has not treated the backlog reserved SC/ST vacancies as a distinct group from the fresh vacancies and all vacancies,,,,,,,,,,,,,

have not been carried forward. An attempt has been made in the additional affidavit to justify the illegality and it is claimed by the University that of the 91 backlog vacancies which were,,,,,,,,,,,,,

reserved as SCs/STs posts and advertised in 2016-2017, only 18 are backlog because interviews were held only for these posts. Reliance is placed by the Respondent on para 4.4, Note 2 of" ,,,,,,,,,,,,,,,,,,,,,,

Chapter-IV of the DOPT Brochure. Through this interpretation Respondent No. 1 seeks to create two sub-categories of the backlog posts viz one for which the interviews were held and the,,,,,,,,,,,,,,,,,,,,,,,,,

other for which no interviews were held. This is a self created classification of Respondent No. 1 and has no basis in law. As per the 2016 Brochure backlog ST/ SC vacancies are those which,,,,,,,,,,,,,,,,,,,,,,,,,

are earmarked reserved and advertised in the previous year but not filled. These vacancies must stay reserved for the same category and carried forward until filled in the subsequent,,,,,,,,,,,,,,,,,,,,,,,,,

recruitment year. Neither the Brochure nor any other Government directive makes this artificial distinction between posts for which interviews are held and those for which no interviews are,,,,,,,,,,,,,,,,,,,,,,,,,

held. ,,,,,,,,,,,,,,,,,,,,,,,,,,

21. Mr. Sibal further argues that the Advertisement No. RC/02/2016 was a special recruitment drive only with respect to backlog vacancies. The 91 reserved posts advertised through this,,,,,,,,,,,,,,,,,,,,,,,,,

advertisement were the backlog vacancies carried forward from previous years which is evident from a bare reading of the advertisement. These vacancies had been reserved between the,,,,,,,,,,,,,,,,,,,,,,,,,

years 2012-2015 and do not lose their status as "backlog" only because no interviews were held for them. Elaborating the argument, it is pointed out that para 13 of the Parliamentary" ,,,,,,,,,,,,,,,,,,,,,,,,,,

Committee Report dated 27.04.2016 indicated four reasons why the vacant posts had remained unfilled being; no candidate had applied; candidates applying did not meet essential qualifications; ,,,,,,,,,,,,,,,,,,,,,,,,,,

candidates did not make up to the prescribed API score and that the Selection Committees had not recommended for appointment. Nowhere does this Report provide for a distinction between,,,,,,,,,,,,,,,,,,,,,,,,,

these categories as far as their reservation status is concerned. The interpretation given by Respondent No. 1 would lead to a situation where a University would be able to de-reserve all,,,,,,,,,,,,,,,,,,,,,,,,,

backlog reserved posts simply by not holding interviews and this would be contrary to the rigorous de-reservation procedure outlined in Chapter-7 of 2016 Brochure. ,,,,,,,,,,,,,,,,,,,,,,,,,,

22. It is contended that in the additional affidavit Respondent No. 1 has made a

blatantly false statement. It is correct that in JNU previously there existed 12 rosters which were recast into one,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

roster per cadre (three rosters) in 2019, as per DOPT OM dated 31.01.2019. However, the claim that serial numbers of roster points were renumbered due to recasting is false in the light of the",,,,,,,,,,,,,,,,,,,,,,,,,,,,,

2017 rosters, which was shared with the Petitioners during the pendency of the Petition. The 2017 roster would show that the change to one roster per cadre took place when the 2017 rosters",,,,,,,,,,,,,,,,,,,,,,,,,,,,,

were prepared and not in 2019. This is also evident from the ECs Resolution dated 22.11.2016 and 03.01.2017. University has tried to mislead the Courts by claiming that Petitioner No. 3 who,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

was in-charge of maintaining the rosters in 2011 had reserved 80 posts out of 169 for SCs/STs which are 47% and far in excess of 22.5%. This according to Mr. Sibal is an incorrect claim on,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

account of the fact that in a post-based reservation system, the number of posts to be reserved for a category must be calculated by applying the prescribed percentages to the total number of",,,,,,,,,,,,,,,,,,,,,,,,,,,,,

posts and not vacancies. 80 posts were below and not above 22.5% of the sanctioned posts in the two cadres, let alone 15%. According to Mr. Sibal the correct application of reservation",,,,,,,,,,,,,,,,,,,,,,,,,,,,,

percentages is depicted in the table formulated by the Petitioners and which is as follows:-,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

,2011,,2012,,2014,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

Cadre,"Total

Sanctioned

Posts","PostsÂ Â

toÂ Â be

earmarked/reser

ved Â for

Â SC/ST

(22.5% limit)","Total

Sanctioned

Posts","PostsÂ Â toÂ

Â be

earmarked/rese
rved for SC/ST
(22.5% limit)","Total
Sanctioned
Posts","Posts to be
earmarked/
reserved
for
Â SC/ST
(22.5%
limit)" ,,,,,,,,,,

Assoc.

Prof.",283,61,314,65,364,78,,,,,,,,,
Prof.,156,30,173,36,198,39,,,,,,,,,
Total,439,91,487,101,562,117,,,,,,,,,

11. We, therefore, find considerable force in the second point raised by the learned counsel for the petitioners. We, however, direct that the interpretation given by us to the" ,,,,,,,,,,

working of the roster and our findings on this point shall be operative prospectively.â??,,,,,,,,,,

27. With a view to implement the judgment and bring the policy of reservation in line with the law laid down by the Supreme Court, the DOPT issued an OM dated 02.07.1997 and the existing" ,,,,,,,,,,

200-point, 40-point and 120-point rosters which were vacancy-based were replaced by post-based rosters. All Ministries/Departments and concerned Authorities were required to prepare their" ,,,,,,,,,,

respective rosters based on the principle laid down in Annexure-I to the OM and illustrated in model roster annexed therein as Annexure-II, III and IV. Relevant part of the OM dated" ,,,,,,,,,,

02.07.1997 is as follows:- ,,,,,,,,,,

â??4. The principles for preparing the rosters elaborated upon in the Explanatory Notes are briefly recapitulated below: ,,,,,,,,,,

a) Since reservation for OBCs does not apply in promotions, there shall be

separate rosters for direct recruitment and for promotions;" ,,,,,,,,,,,,,,,,,,,,,,

b) The number of points in the roster shall be equal to the number of posts in the cadre. In case there is any increase or decrease in the cadre strength in future, the rosters shall be" ,,,,,,,,,,,,,,,,,,,,,,

expanded/contracted correspondingly;,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

c) Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

applicable recruitment rules. Thus, in a cadre of, say, 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two rosters â?" one" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

for direct recruitment and one for promotion (when reservation in promotion applies) - each comprising 100 points shall be drawn up on the lines of the respective rosters;,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

5. At the stage of initial operation of a roster, it will be necessary to adjust the existing Appointments in the roster. This will also help in identifying the excesses/ shortages, if any, in" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark â?"utilised by SC/ST/ OBC/Gen.â?", as the case" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

may be, against each point in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

to SCs/STs/OBCs which were made on merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

are to be treated as general category appointments.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

6. Excess, if any, would be adjusted through future appointments and the existing appointments would not be disturbed." ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

7. All Ministries/Departments are requested to initiate immediate action to prepare rosters and operate them according to these guidelines.â??" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

28. Thus, after the issue of the said OM pursuant to the judgment of the Supreme Court, the methodology of preparing rosters changed to post-based instead of vacancy-based. While the" ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

rosters were being so operated, clarifications were sought by certain Departments as to whether it was possible to fill up a post reserved for ST by a

SC candidate or vice-versa, by applying" ,,,,,,,,,,,,,,

principle of exchange of reservation, which was possible when vacancy-based rosters were applied. To resolve this issue, the DOPT issued OM dated 6.11.2003 and clarified that after the" ,,,,,,,,,,,,,,

introduction of post-based reservation, it is not permissible to fill up a post reserved for ST by a SC candidate or vice-versa by exchange of reservation. The reasoning behind the clarification" ,,,,,,,,,,,,,,

was that basic principle of post-based reservation is that number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that category. If exchange,,,,,,,,,,,,,

of reservation is permitted, number of employees of one reserved category appointed by reservation will go beyond reservation prescribed for that category defeating the spirit of post-based" ,,,,,,,,,,,,,,

reservation. The OM further laid down the procedure that was required to be followed if sufficient number of SC/ST/OBC candidates, fit for appointment against reserved vacancies are not" ,,,,,,,,,,,,,,

available. Since the present case concerns direct recruitment, relevant part of the OM relating to direct recruitment is as follows:-" ,,,,,,,,,,,,,,

â??A. In cases of Direct Recruitment:,,,,,,,,,,,,,

(i) Where sufficient number of candidates belonging to SC/ST/OBC are not available to fill up the vacancies reserved for them in direct recruitment, the vacancies shall not be filled" ,,,,,,,,,,,,,,

by candidates not belonging to these communities. In other words, there is a ban on de-reservation of vacancies reserved for SCs, STs and OBCs in direct recruitment." ,,,,,,,,,,,,,,

(ii) If sufficient number of suitable SC/ST/OBC candidates are not available to fill up vacancies reserved for them in the first attempt of recruitment, a second attempt shall be made" ,,,,,,,,,,,,,,

for recruiting suitable candidates belonging to the concerned category in the same recruitment year or as early as possible before the next recruitment to fill up these vacancies. If,,,,,,,,,,,,,

the required number of SC/ST/OBC candidates are not even then available, the vacancies which could not be filled up shall remain unfilled until the next recruitment year. These" ,,,,,,,,,,,,,,

vacancies will be treated as â??backlog vacancies.â?? ,,,,,,,,,,,,,,

(iii) In the subsequent recruitment year when recruitment is made for the vacancies of that year (called the current vacancies), the backlog vacancies of

SCs, STs and OBCs will",,,,,,,,,,,,,,

also be announced for recruitment. While doing so it may be kept in view that the vacancies of the particular recruitment year i.e. the current vacancies and the backlog vacancies,,,,,,,,,,,,,

of OBCs will be treated as one group and backlog vacancies of SCs and STs as a separate and distinct group. Thus, there will be two distinct groups of vacancies. One group will",,,,,,,,,,,,,,

contain the current vacancies and the backlog vacancies of OBCs, and the another group will contain backlog vacancies of SCs and STs. While in respect of vacancies in the first",,,,,,,,,,,,,,

group instructions that not more than 50% of the vacancies can be reserved in a year will apply, all the backlog vacancies reserved for SCs and STs will be filled up by the",,,,,,,,,,,,,,

candidates belonging to concerned category without any restriction whatsoever as they belong to distinct group of backlog vacancies of SCs and STs.,,,,,,,,,,,,,,

(iv) If vacancies reserved for SCs/STs/OBCs cannot be filled up and are carried forward as backlog vacancies and remain unfilled in the following recruitment year also, they will",,,,,,,,,,,,,,

be carried forward as backlog vacancies for subsequent recruitment year(s) as long as these are not filled by candidates of the category for which these are reserved.,,,,,,,,,,,,,,

(v) There may be rare and exceptional cases in Group A services, where posts cannot be allowed to remain vacant in public interest. In such situations, the administrative",,,,,,,,,,,,,,

Ministry/Department under which the recruitment is being made shall make a proposal for dereservation giving full justification for such action, and consult the National",,,,,,,,,,,,,,

Commission for Scheduled Castes and Scheduled Tribes in case of posts reserved for SCs/STs and the National Commission for Backward Classes in case of posts reserved for,,,,,,,,,,,,,

OBCs and obtain the comments of concerned Commission on each proposal. After obtaining the comments of the concerned Commission, the administrative Ministry/Department",,,,,,,,,,,,,,

shall place the proposal for dereservation alongwith the Commission's comments before a Committee comprising the Secretaries in the Department of Personnel and Training,",,,,,,,,,,,,,

in the Ministry of Social Justice and Empowerment and in the Ministry/

Department under which the recruitment is being made for consideration and recommendation. The,,,,,,,,,,,,,

recommendation of the Committee shall be placed before the Minister in charge of the Department of Personnel and Training for a final decision. If dereservation of the vacancies,,,,,,,,,,,,,

is approved, these can be filled by the candidate of other communities.â??",,,,,,,,,,,,,

29. This principle was reiterated in the Brochure dated 17.10.2016 on reservation for SCs/STs and OBCs in service and to the extent it applies to teaching appointments is as under:-,,,,,,,,,,,,,

â??1.9 Reservation till 1.7.1997 was computed on the basis of number of vacancies filled. The Supreme Court in the case of R.K. Sabharwal Vs. State of Punjab held that the,,,,,,,,,,,,,

reservation should be determined on the basis of number of posts in the cadre and not on the basis of vacancies. Accordingly post based reservation was introduced w.e.f.,,,,,,,,,,,,,,

2.7.1997. The basic principle of post based reservation is that the number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that,,,,,,,,,,,,,

category. Prior to introduction of post based reservation, there was a provision of exchange of reservation between SCs and STs. After implementation of the post based",,,,,,,,,,,,,

reservation such exchange is no more permissible.â??,,,,,,,,,,,,,,

30. Another issue that arose in the context of reservation was with regard to â?? backlog vacanciesâ??. Article 16(4-B) of the Constitution of India incorporated by Constitution (Eighty-First,,,,,,,,,,,,,

Amendment) Act, 2000 stipulates that backlog vacancies which are carried forward are not to be considered with fresh vacancies and do not contribute to the reservation ceiling of 50%.",,,,,,,,,,,,,

Article 16(4-B) is extracted hereunder for ready reference:-,,,,,,,,,,,,,

â??Article 16(4-B). 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 (4-A) 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 yearâ??.,,,,,,,,,,,,,,

31. The Brochure further elucidates that current vacancies of a given year will be treated as one group while backlog vacancies of SCs/STs a separate and distinct group. Para 6.8 is as under:-,,,,,,,,,,,,,

â??6.8 Vacancies reserved for SCs/STs/OBCs which could not be filled up and are carried forward as backlog vacancies and remain unfilled in the following recruitment year,,,,,,,,,,,,,

also, will be carried forward as backlog vacancies for subsequent recruitment year(s) as long as these are not filled by candidates of the category for which these are reserved.â??",,,,,,,,,,,,,,

32. The 2016 reservation Brochure in para 6.5 mandates that there shall be no de-reservation in SC/ST/OBC posts as under:-,,,,,,,,,,,,,

â??6.5 Where sufficient number of candidates belonging to SC/ST/OBC are not available to fill up the vacancies reserved for them in direct recruitment, the vacancies should not",,,,,,,,,,,,,,

be filled by candidates not belonging to these communities. In other words, there is a ban on de-reservation of vacancies reserved for SCs, STs and OBCs in direct recruitment.â??",,,,,,,,,,,,,,

33. The broad principles that thus emerge from a collective reading of the judgment in R.K. Sabharwal (supra), the OM and the Brochure 2016, are that in direct recruitment post-based",,,,,,,,,,,,,,

reservation rosters have to be followed and when a post is reserved and earmarked for a reserved category, based on prescribed percentages for SC/ST i.e 15% and 7.5% respectively, only",,,,,,,,,,,,,,

persons belonging to the said category can be appointed. When the post is vacated the said vacancy shall be filled by a person belonging to the reserved category for which it was earmarked.,,,,,,,,,,,,,,

This procedure is set in motion after the Cadre reaches the saturation level of 15% and 7.5%. There will be no exchange of reservations between SC and ST categories. Backlog vacancies of,,,,,,,,,,,,,

the reserved categories shall form a separate group when carried forward from the vacancies arising in the current year and shall not form a part of the 50% ceiling towards prescribed,,,,,,,,,,,,,

percentages of reservation.,,,,,,,,,,,,,,

34. Another facet of reservation which is important and relevant in the present

case is with respect to de-reservation. The status of an SC/ST backlog post can be changed to an unreserved,,,,,,,,,,,,,,,,,,,,,

post by a formal process of de-reservation, which is regulated by an elaborate and rigorous process, stipulated in 2016 reservation Brochure. Para 7.2 on the subject prescribes that there is a",,,,,,,,,,,,,,,,,,,,,

general ban on de-reservation of reserved posts in case of direct recruitment except in very rare and exceptional cases where a vacancy in a Group A service cannot remain vacant in,,,,,,,,,,,,,,,,,,,,,

public interest. This is based on the mandate in para 3(A)(v) of DOPT OM dated 06.11.2003. Para 3(A)(v) is as follows:-,,,,,,,,,,,,,,,,,,,,,

â??(v) There may be rare and exceptional cases in Group A services, where posts cannot be allowed to remain vacant in public interest. In such situations, the",,,,,,,,,,,,,,,,,,,,,

administrative Ministry/Department under which the recruitment is being made shall make a proposal for dereservation giving full justification for such action, and consult the",,,,,,,,,,,,,,,,,,,,,

National Commission for Scheduled Castes and Scheduled Tribes in case of posts reserved for SCs/STs and the National Commission for Backward Classes in case of posts,,,,,,,,,,,,,,,,,,,,,

reserved for OBCs and obtain the comments of concerned Commission on each proposal. After obtaining the comments of the concerned Commission, the administrative",,,,,,,,,,,,,,,,,,,,,

Ministry/Department shall place the proposal for dereservation alongwith the Commission's comments before a Committee comprising the Secretaries in the Department of,,,,,,,,,,,,,,,,,,,,,

Personnel and Training, in the Ministry of Social Justice and Empowerment and in the Ministry/Department under which the recruitment is being made for consideration and",,,,,,,,,,,,,,,,,,,,,

recommendation. The recommendation of the Committee shall be placed before the Minister in charge of the Department of Personnel and Training for a final decision. If,,,,,,,,,,,,,,,,,,,,,

dereservation of the vacancies is approved, these can be filled by the candidate of other communities.â??",,,,,,,,,,,,,,,,,,,,,

35. As the present case concerns a teaching Institution, it shall be important to refer to the reservations rosters as they applied to the teaching Institutions. Ministry of Human Resource",,,,,,,,,,,,,,,,,,,,,

Development (MHRD), Department of Secondary and Higher Education, Government of India, issued an Order on 06.12.2005, referring to Article 46 of

the Constitution and exercising powers" ,,,,,,,,,,,,,,,,,,,,,,

vested under Section 20(1) of the University Grants Commission Act, 1956 directed UGC to ensure effective implementation of reservation policy in Central Universities and Deemed" ,,,,,,,,,,,,,,,,,,,,,,

Universities receiving aid from the public funds in view of the policy of the Central Government that in these institutions, the percentage of reservation in admissions and recruitments in teaching" ,,,,,,,,,,,,,,,,,,,,,,

and non-teaching posts is to be 15% for SCs and 7.5% for STs.,,,,,,,,,,,,,,,,,,,,,,

36. To implement the said direction of the Government UGC framed Guidelines and the same were circulated under a covering letter dated 25.08.2006. Relevant would it be to refer to para,,,,,,,,,,,,,,,,,,,,,

6(a) of the Guidelines providing that reservation would be made applicable to all teaching posts in the Universities, Deemed Universities, Colleges and other Grant-in-Aid Institutions and Centres" ,,,,,,,,,,,,,,,,,,,,,,

referred to in the Guidelines. Para 6(c) dealt with the grouping of posts for reservation specially when more than one University functions under a single Act or where several colleges function,,,,,,,,,,,,,,,,,,,,,

under one University. It was mentioned that practice of creating Department-wise cadres which tend to create single posts or cadres with artificially reduced number of posts, to avoid" ,,,,,,,,,,,,,,,,,,,,,,

reservation, was strictly forbidden. Para 6(c) is as under:-" ,,,,,,,,,,,,,,,,,,,,,,

â??6(c). In the cases of reservations referred to in clause (a) above, the Instructions issued by the Central Government for grouping of posts shall be resorted to wherever" ,,,,,,,,,,,,,,,,,,,,,,

applicable, especially when more than one University functions under a single Act, or several colleges function under one University grouping of posts are mandatory if the posts" ,,,,,,,,,,,,,,,,,,,,,,

concerned are transferable on an inter-university or inter-college levels. The practice of creating department-wise cadres, which tends to create single posts or cadres with" ,,,,,,,,,,,,,,,,,,,,,,

artificially reduced number of posts in order to avoid reservation, is strictly forbidden.â??" ,,,,,,,,,,,,,,,,,,,,,,

37. Para 8 prescribed the procedure to be followed in matters of reservation for teaching and non-teaching staff in line with the judgment in R.K. Sabharwal (supra) and is as under:-,,,,,,,,,,,,,,,,,,,,,

â??8. Procedure to be followed in matters of reservation for teaching as well as non-teaching staff:,,,,,,,,,,,,,,,,,,,,,

(a)â?|â?|â?|,,,,,,,,,,,,,,

(v) The Roster, 40-point or 100-point as the case may be, shall be applied to the total number of posts in cadre only, (R.K. Sabharwal v. State of Punjab, ((1995) 2 SCC 745 : AIR",,,,,,,,,,,,,,

1995 SC 1371); cadre is best indicated by seniority list governing the members with same pay-scales:,,,,,,,,,,,,,

(vi)â?|â?|â?|.â??,,,,,,,,,,,,,,

38. In 2016, a writ petition being Writ A No.43260/2016 was filed before the Allahabad High Court by Petitioners who claimed to be eligible as Assistant Lecturers in Hindi and Physiotherapy,",,,,,,,,,,,,,

seeking quashing of the Rolling Advertisement for teaching equivalent post as well as Clause 6(c) and Clause 8(a)(v) of UGC Guidelines dated 25.08.2006. The core question to be determined,,,,,,,,,,,,,

in the petition was whether the reservation in teaching posts in any University is to be applied treating the University as a â??unitâ?? or the Department / Subject as a â??unitâ??. The,,,,,,,,,,,,,

Allahabad High Court relied on the judgment of the Division Bench of the said High Court in Dr Vishwajeet Singh and others v. State of U.P. and others 2009 (3) AWC 2929 wherein the Court,,,,,,,,,,,,,

framed the following issues:-,,,,,,,,,,,,,

â??(i) Whether 467 vacancies, which were available because of retirement, resignation and death up to 30.6.2003, could have been included and reserved for Scheduled Castes,",,,,,,,,,,,,,

Schedule Tribes, Other Backward Classes only along with 371 carry forward vacancies in advertisement No. 37 of 2003?",,,,,,,,,,,,,

(ii) Whether 467 vacancies were rightly reserved only for Scheduled Castes, Schedule Tribes, Other Backward Classes without they having been earlier advertised or offered to",,,,,,,,,,,,,,

General Category candidates?,,,,,,,,,,,,,,

(iii) What is a unit for applying the Rules of Reservation according to 1994 Act and the roster framed thereunder?,,,,,,,,,,,,,,

(iv) Whether the reservation is to be applied by consolidating all the vacancies of the Lecturers in different degree colleges/postgraduate colleges?,,,,,,,,,,,,,,

(v) Whether in case, each college is treated to be a separate unit, the reservation is to be applied by clubbing all the sanctioned posts of Lecturers in a college or the reservation",,,,,,,,,,,,,,

for applying the rules of reservation. As noticed above, the petitioners have advocated for applying",,,,,,,,,,,,,,

the same principle regarding reservation, which has been accepted in a University, whereas learned Advocate General appearing for the respondents have made two alternative",,,,,,,,,,,,,,

submissions firstly; different posts in different colleges in each subject are to be clubbed together and thereafter reservation has to be applied in the manner as mentioned in the,,,,,,,,,,,,,

affidavit of Principal Secretary, Higher Education, quoted above and in alternative if a college is treated to be a unit, all the posts of Lecturers in a college have to be clubbed",,,,,,,,,,,,,,

together and reservation has to be applied as is being applied in the Secondary institutions governed by the provisions of U.P. Secondary Education Services Selection Board Act," ,,,,,,,,,,,,,,

1982. For coming to a correct conclusion, it has to be first found out as to whether concept of Faculty, department and subject is also present in Degree colleges or post graduate",,,,,,,,,,,,,,

colleges as it exists in a University,,,,,,,,,,,,,

â?|â?|â?|â?|â?|â?|â?|â?|â?|. ,,,,,,,,,,,,,,

â?|â?|â?|â?|â?|â?|â?|â?|â?|. ,,,,,,,,,,,,,,

A person, who acquires a qualification for appointment in one particular subject has right to participate in the selection only against the said subject. Not applying the reservation",,,,,,,,,,,,,,

subject-wise, will lead to uncertainty and violation of the rights under Articles 14 and 16 of the Constitution of India. The Division Bench of our Court in the case of Dr. Dina Nath",,,,,,,,,,,,,,

Shukla v. State of U.P., reported in 1996 ALJ 1579 have laid down in paragraph 8, quoted above, that subject wise reservation if not applied, uncertainty and serious",,,,,,,,,,,,,,

consequences including violation of Article 16 of the Constitution of India shall be the result. Thus, the submission that provisions of 1994 Act shall be frustrated by accepting the",,,,,,,,,,,,,,

submission of learned counsel for the petitioner, cannot be accepted. 1994 Act is fully applicable in the post of lectures in a college and its full effect shall be given but while",,,,,,,,,,,,,,

applying the reservation, college-wise subject-wise unit is to be followed in view of the law laid down by the apex court in the above mentioned

(ii) Clause 8 (a) (v):,,,,,,,,,,,,,,,,,,,,,

The roster, department-wise, shall be applied to the total number of posts in each of the categories [(e.g.) Professor, Associate Professor, Assistant Professor] within the",,,,,,,,,,,,,,,,,,,,,,

Department/Subject.â??,,,,,,,,,,,,,,,,,,,,,

42. On 19.07.2018, UGC informed all the concerned Universities that the judgment of the Allahabad High Court was challenged in the Supreme Court and upheld by the Court. It directed the",,,,,,,,,,,,,,,,,,,,,,

Universities to postpone the recruitment process if already underway till further orders.,,,,,,,,,,,,,,,,,,,,,,

43. Subsequent thereto the Government of India Notified on 07.03.2019 â??the Central Educational Institutions (Reservations in Teachersâ?? Cadres) Ordinance, 2019â??. The UGC vide",,,,,,,,,,,,,,,,,,,,,,

letter dated 08.03.2019 thereafter advised all Central Universities to start recruitment immediately. Finally, on 09.07.2019 â??the Central Educational Institutions (Reservations in Teachersâ??",,,,,,,,,,,,,,,,,,,,,,

Cadres) Act, 2019â?? was published and Section 3(2) is as under:-",,,,,,,,,,,,,,,,,,,,,,

â??3(2) For the purpose of reservation of posts, a Central Educational Institution shall be regarded as one unit.â??",,,,,,,,,,,,,,,,,,,,,,

44. In exercise of power conferred under Section 3(1) of the said Act, MHRD issued a Notification specifying that there shall be reservation of posts in direct recruitment out of the sanctioned",,,,,,,,,,,,,,,,,,,,,,

strength in teachersâ?? cadre in Central Educational Institutions in the manner specified in DOPT OM dated 31.01.2019 namely, 15% for SCs, 7.5% for STs, 27% for Socially and",,,,,,,,,,,,,,,,,,,,,,

Educationally Backward Classes and 10% for EWS.,,,,,,,,,,,,,,,,,,,,,,

45. Having traced the law on the reservation for the SC/ST categories relating to appointments through direct recruitment, I may now examine the rival contentions of the parties herein. Broadly",,,,,,,,,,,,,,,,,,,,,,

summarised, contentions of the Petitioners are that there has been a drastic reduction in the total number of teaching posts / vacancies reserved for SCs/STs and the number of vacancies",,,,,,,,,,,,,,,,,,,,,,

advertised in the impugned Advertisement are far below the prescribed percentages of reservation; post-based roster system has not been followed in accordance with the judgment in the case,,,,,,,,,,,,,,,,,,,,,

of R.K. Sabharwal (supra) and the DOPT OMs dated 02.07.1997, 06.11.2003 and

the 2016 reservation Brochure; â??Backlogâ?? rule has not been followed as per law in as much as the",,,,,,,,,,,,,,

carry forward vacancies have not been treated as a separate group but treated as one homogenous group with current vacancies thereby striping backlog reserved SC/ST posts of their,,,,,,,,,,,,,,,,,

reserved status as also treating them to constitute the 50% ceiling on reservation; in an attempt to include EWS roster points through interpolation as per the provisions of DOPT OM dated,,,,,,,,,,,,,,,,,

31.01.2019, Respondent No.1 has changed the existing SC/ST roster points, effecting the roster points of the posts in the two Centres, whereby in Centre I SC point has shifted to ST and in",,,,,,,,,,,,,,,,,,

Centre II, ST point is de-reserved and this has adversely affected the Petitioners, who were aspiring to apply against the said posts.",,,,,,,,,,,,,,,,,,

46. The stand of the Respondents per contra, put in a nutshell is that recasting of the reservation rosters was carried out due to the judgement of Allahabad High Court and the UGC Regulation,",,,,,,,,,,,,,,,,,,

2018 followed by 2019 Ordinance, Gazette Notification dated 07.03.2019, UGC letter dated 08.03.2019 and MHRD Notification dated 12.07.2019 and the inclusion of EWS category due to",,,,,,,,,,,,,,,,,,

DOPT OM dated 31.01.2019. The roster points issued after recasting of rosters, caused interpolation with previous roster points / earmarked posts which resulted in change of several roster",,,,,,,,,,,,,,,,,,

points. It is on this count that the roster position of post no. 135 under Advertisement RC/61/2019 and post no.60 under Advertisement RC/60/2019 changed. The change did not cause loss of,,,,,,,,,,,,,,,,,

reservation but only shifting of points. There is no de-reservation of the reserved category and neither have any points been exchanged between the SC and the ST categories. Any shortfall in,,,,,,,,,,,,,,,,,

the two categories shall however be made up by recruitment in the coming years as expeditiously as possible.,,,,,,,,,,,,,,,,,,

47. The foundation of the manifold arguments of the petitioners has been laid on the observation of the Supreme Court in R.K. Sabharwal (supra) and the several OMs of the DOPT issued,,,,,,,,,,,,,,,,,

thereafter including the 2016 Brochure. The arguments were primarily structured and sought to be substantiated by drawing a comparison between the 2017 and 2019 rosters. Learned senior,,,,,,,,,,,,,,,,,

counsel for the Petitioners has labored hard to demonstrate that the number of reserved vacancies advertised under the 2016 Advertisements were far more in

number than those under the,,,,,,,,,,,,,,,,,,,,,

2019 impugned Advertisements. Petitioners have also heavily relied on the information in the Academic Branch Statement dated 28.02.2017 and 20.02.2020 to argue that the numerical data,,,,,,,,,,,,,,,,,,,,,

reveals that the number of posts advertised have reduced to nearly half from 94 in 2017 to 57 (38 for SC and 19 for ST) in 2019. A tabular representation to bring out a comparison in the 2017,,,,,,,,,,,,,,,,,,,,,

and 2019 roster has been made in the various pleadings filed on record. Additionally, the Petitioners have made a very comprehensive comparative chart in an attempt to demonstrate the SC/ST",,,,,,,,,,,,,,,,,,,,,

posts which have been de-reserved or changed to OBC/EWS and the SC posts exchanged to ST etc. in support of their contentions.,,,,,,,,,,,,,,,,,,,,,,

48. In so far as the contention of the Petitioners that the University was not entitled to recast the 2017 roster despite several developments that took place between 2017 and 2019, is concerned,",,,,,,,,,,,,,,,,,,,,,

in my opinion, the same only deserves to be rejected. It is true that the 2017 roster and the 2019 roster are at variance with each other but the reason for the difference is not far to seek. In",,,,,,,,,,,,,,,,,,,,,

2017, the Allahabad High Court in Vivekanand Tiwari (supra) had held that the rosters should be prepared taking department wise and subject wise as the â?? unitâ?? and not the University as",,,,,,,,,,,,,,,,,,,,,

a â??unitâ??. This led to the UGC issuing Guidelines amending the earlier Clauses 6(c) and 8(a)(v) to follow the department wise and subject wise preparation of rosters. Subsequent thereto,,,,,,,,,,,,,,,,,,,,,

the 2019 Ordinance was issued followed by the 2019 Act, followed by the MHRD Notification dated 12.07.2019. Respondent No.1 has taken a categorical stand in all its pleadings that on",,,,,,,,,,,,,,,,,,,,,

account of these developments, the rosters had to be recast and the 12 roster registers had to be merged leading to reduction in the number of posts as well as shifting of the points on account",,,,,,,,,,,,,,,,,,,,,

of interpolation of the EWS category. University was bound to follow the provisions of the Notifications of the Government and in doing so if the roster had to be recast, the action cannot be",,,,,,,,,,,,,,,,,,,,,

faulted with. It is thus not open to the Petitioners to argue that the roster of 2019 should be mirror image of 2017 roster and the only argument that can be raised is that the redrawing of the,,,,,,,,,,,,,,,,,,,,,

reservation roster must conform to the policy of post-based roster and the law on the subject. It needs to be highlighted that the Petitioners have not laid a

challenge to any of the Notifications or,,,,,,,,,,,,,,,,,,,,,

the OM's issued by the Government on the basis of which the roster has been recast.,,,,,,,,,,,,,,,,,,,,,,

49. The only question that now arises is whether the recasting of the rosters is in accordance with the dicta of the Supreme Court in R.K. Sabharwal (supra) and the subsequent OM's issued,,,,,,,,,,,,,,,,,,,,,

with respect to reservations of SC/ST categories. In this context, it needs a mention that the University has filed counter affidavit, additional affidavits, written submissions and an Explanatory" ,,,,,,,,,,,,,,,,,,,,,,

Note. However, the stand of Respondent No.1 is inconsistent on the core issue of how the roster has been prepared qua the reservation points in relation to the two posts in question. In the" ,,,,,,,,,,,,,,,,,,,,,,

counter-affidavit filed to the writ petition the stand is that the University after publication of Ordinance, 2019 and the MHRD letter dated 07.03.2019 and Notification dated 12.07.2019 as well as" ,,,,,,,,,,,,,,,,,,,,,,

UGC letter dated 07.03.2019, carried out recasting of the existing reservation rosters by plotting and including the already issued roster points and posts sanctioned/ vacated in the mean time in" ,,,,,,,,,,,,,,,,,,,,,,

the University. The reservation roster points as per registers, for the posts of Professors and Associate Professors were accordingly issued in accordance with the judgment in R.K. Sabharwal" ,,,,,,,,,,,,,,,,,,,,,,

(supra) and DOPT OM's dated 02.07.1997 and 31.01.2019, as per reservation percentages prescribed in MHRD Notification dated 12.07.2019, treating University as a single unit." ,,,,,,,,,,,,,,,,,,,,,,

Relevant paras are as under:,,,,,,,,,,,,,,,,,,,,,

â??E. The reservation roster points as per registers (for the posts of Professor & Associate Professor) were accordingly issued in accordance with the principles laid down in the,,,,,,,,,,,,,,,,,,,,,

judgment of a Constitution Bench of the Honâ??ble Supreme Court in R.K. Sabharwal v. State of Punjab (1995) 2 SCC contained in DoPT OM dated 02.07.1997 and the,,,,,,,,,,,,,,,,,,,,,

guidelines issued in DoPT O.M. No. 36039/1/2019-Estt. (Res.) dated 31.01.2019 by incorporating reservation percentages as prescribed each for SCs, STs, OBCs and EWSs in" ,,,,,,,,,,,,,,,,,,,,,,

MHRD Gazette Notification 12th July, 2019 by treating University as a single Unit. A copy of the OM dated 02.07.1997 is annexed as Annexure-F." ,,,,,,,,,,,,,,,,,,,,,,

F. In order to comply with the provision for reservation for EWSs and OBCs, in

addition to the reservation of SCs and STs at the level of Associate Professor and Professor, the" ,,,,,,,,,,,,,,

recasting of reservation roster register has caused interpolation with the previous roster points which resulted into change of category of several roster points. Reservation share is ,,,,,,,,,,,,,,

calculated with regard to total number of sanctioned posts in a cadre but reservation points are issued having due regard to 50% limit of available vacant posts. In fact, the share" ,,,,,,,,,,,,,,

of reserved category shall, practically and in all likelihood, be usually equal to or less than what is prescribed and shall be completed only when the entire roster is rationalized" ,,,,,,,,,,,,,,

(entire roster posts of a cadre are filled as per reservation share). This is because reservation has been implemented in CUs at a later stage. No post of SCs and STs has been ,,,,,,,,,,,,,,

converted/de-reserved into UR post though the reservation categories has been changed in respect of some roster points due to interpolation, as stated above.â??" ,,,,,,,,,,,,,,

50. In stark contrast to this, the stand in another part of the affidavit is that the recruitment initiated in the year 2016-17 was put on hold due to communication received from the UGC regarding" ,,,,,,,,,,,,,,

implementation of reservation policy for recasting the roster department wise, subject wise instead of cadre wise in compliance of the judgment of Allahabad High Court. However, once the" ,,,,,,,,,,,,,,

new UGC Regulations 2018 were received, the vacancies were advertised afresh in 2019 on the basis of said Regulations." ,,,,,,,,,,,,,,

â??In the meanwhile Respondent University received the New UGC Regulations and the University after adopting the new UGC Regulations, 2018, advertised all the vacancies" ,,,,,,,,,,,,,,

afresh in 2019, after cancelling the faculty positions advertised earlier in 2016/2017. The copy of the notification issued and after the implementation of the reservation roster, as" ,,,,,,,,,,,,,,

per Govt. of India directions vide Advertisements No. RC/59/2019, RC/60/2019, RC/61/2019 & RC/61/2019 is annexed as Annexure-L.â??" ,,,,,,,,,,,,,,

51. In the written submissions the stand is that the recasting of the rosters was carried out on the basis of Ordinance 2019 and the subsequent Notifications. In the additional affidavit ,,,,,,,,,,,,,,

subsequently filed reliance is placed on the DOPT OM dated 31.01.2019 to explain the method followed to give reservation to OBCs and EWSs in addition to

the reservations of,,,,,,,,,,,,,,,,,,,,,

SCs/STs/PWDs. Support is taken from this OM to explain that various rosters were merged into single rosters and the serial numbers of earlier rosters got renumbered. As an illustration, it is",,,,,,,,,,,,,,,,,,,,,

stated that there were 12 rosters prior to July, 2019 and on change it became one roster per cadre, thereby resulting in 3 rosters. Explanatory Note filed does not shed any light on how the roster",,,,,,,,,,,,,,,,,,,,,

was recast and/or the shift of reservation points due to interpolation,,,,,,,,,,,,,,,,,,,,,

52. Petitioners filed the writ petition bringing forth that the rosters were not being prepared as per the dicta of the Supreme Court and the University was continuing to make vacancy-based,,,,,,,,,,,,,,,,,,,,,

reservation rosters. Petitioners have also repeatedly averred that the short-fall in prescribed reservation percentages has resulted in shift of roster points in addition to the exchange of,,,,,,,,,,,,,,,,,,,,,

reservation and de-reservation. The response of the University aptly put is one of simple denial. While the pleadings are replete with averments that roster has been prepared as per post-based,,,,,,,,,,,,,,,,,,,,,

reservation policy and there is no loss of reservation or exchange/ de-reservation, but the stand is unsubstantiated and as held above self contradictory at places. In so far as the alleged short-",,,,,,,,,,,,,,,,,,,,,

fall is concerned, the University has at several places admitted that there is a short-fall and efforts shall be made to carry out recruitment drives expeditiously.",,,,,,,,,,,,,,,,,,,,,

53. The Petitioners have discharged their onus in providing the limited information they had received from the administrative statements and have made calculations collating the data based on,,,,,,,,,,,,,,,,,,,,,

the earlier rosters and advertisements. To practically demonstrate the contentions raised, Petitioners relied on the following tables prepared by them:",,,,,,,,,,,,,,,,,,,,,

54. In response the University filed an additional affidavit and stated the following:,,,,,,,,,,,,,,,,,,,,,

â??2. These 80 posts which were reserved for SCs/ STs became 91 posts in the advertisement in 2016-2017. In the year 2016-17, these 91 posts were advertised for SC/ST",,,,,,,,,,,,,,,,,,,,,

categories and interviews were held for 18 posts and none was found suitable so declared NFS (Nobody Found Suitable) and hence, remained unfilled and thus, calculated as",,,,,,,,,,,,,,,,,,,,,

backlog. For the remaining posts, the interview never took place hence, it was not their case that they remain unfilled as suitable candidate were not available and as such they" ,,,,,,,,,,,,,,

were not backlog vacancies.,,,,,,,,,,,,,,,,,,,,,,

XXXX XXXX XXXX, ,,,,,,,,,,,,,,,,,,,,,,

5. The DoPT OM dated 31.01.2019 (Page No. 49 of Counter Affidavit) described the method to be followed by HEIs on how to give reservations to OBCs and EWSs in addition to, ,,,,,,,,,,,,,,,,,,,,,,

reservation of SCs/STs/PwDs. This OM is also directed HEIs to recast earlier existing rosters into one roster for each cadre. Thus, the various rosters were merged into single" ,,,,,,,,,,,,,,,,,,,,,,

rosters and serial nos. of earlier rosters got renumbered. For example, if earlier there were 04 rosters for every 200 points, then, 04 X 03 (cadres) = 12 rosters prior to July, 2019," ,,,,,,,,,,,,,,,,,,,,,,

now, it became 01 roster per cadre, so now, there are 03 rosters. Obviously, it was natural that posts will be renumbered." ,,,,,,,,,,,,,,,,,,,,,,

6. DoPT OM dated 02.07.1997 of Counter Affidavit (Page No.71 Point No. 1) states that these rosters are only an aid to determine the entitlement of different categories with, ,,,,,,,,,,,,,,,,,,,,,,

regard to the quota reserved for them. DoPT OM dated 02.07.1997 also states that the rosters have been drawn up keeping in mind two fundamental principles â?" (i) the, ,,,,,,,,,,,,,,,,,,,,,,

reservation for the entitled categories is to be kept within the prescribed percentage of reservation and (ii) the total reservation should in no case exceed 50% of the cadre. This is, ,,,,,,,,,,,,,,,,,,,,,,

based on order of Constitutional Bench of Supreme Court in the case R.K. Sabharwal vs State of Punjab which is as follows â?"that the reservation of jobs for the backward, ,,,,,,,,,,,,,,,,,,,,,,

classes SC, ST, OBC should apply to posts and not to vacanciesâ??", meaning thereby that vacancy based rosters are to be replaced by Post based rosters.â??" ,,,,,,,,,,,,,,,,,,,,,,

55. Finally an Explanatory note was filed by the University bringing forth the following facts:, ,,,,,,,,,,,,,,,,,,,,,,

â?"Explanatory Notes, ,,,,,,,,,,,,,,,,,,,,,,

Ã Statement dated 28.02.2017 (Page No.77 of W.P.), ,,,,,,,,,,,,,,,,,,,,,,

It is clarified that the correct figure for SCs and STs in the cadre of Professor is 19 and 14 respectively as shown in the vacant positions as on 28.02.2017 which

means that the,,,,,,,,,,,,,,,,,,,,,

vacant positions for SCs and STs worked out to 92 both for SCs and STs in the cadre of Professor and Associate Professor (Annexure-A-total page-01).,,,,,,,,,,,,,,,,,,,,,

Ã Vacancy based rosters OR post based rosters :,,,,,,,,,,,,,,,,,,,,,

1. The University has been operating its reservations rosters on the basis of posts based rosters as per GOI mandate enunciated in DoPT OM dated 02.07.1997;,,,,,,,,,,,,,,,,,,,,,

2. This will be evident from the fact that 80 roster points were issued for SCs and STs out of 169 roster points in 2011. These roster points were calculated and issued on the basis,,,,,,,,,,,,,,,,,,,,,

of total sanctioned strength of the entire cadre, not on the basis of vacancies in hand;" ,,,,,,,,,,,,,,,,,,,,,,

3. The same method has continued followed scrupulously till date. In fact, all the roster points for SCs and STs have been issued according to the method prescribed for Post based" ,,,,,,,,,,,,,,,,,,,,,,

Reservation roster.,,,,,,,,,,,,,,,,,,,,,,

Ã The following statements for attached below â?" ,,,,,,,,,,,,,,,,,,,,,,

1. Statement of Fresh teaching positions 2010-2020 (Annexure-C-total page-01).,,,,,,,,,,,,,,,,,,,,,

2. Details of all previous vacancies, Roster Points issued and posts filled-in for year 2011 onwards (Annexure-D-total page-01).",,,,,,,,,,,,,,,,,,,,,,

3. Details of fresh vacancies, Roster Points issued and posts filled in for period 2012-2018 (Annexure-D).",,,,,,,,,,,,,,,,,,,,,,

4. Details of vacancies position and Roster Points issued in 2019 after recasting of Reservation Roster Registers in Cadre-wise (Annexure-E-total page-01).,,,,,,,,,,,,,,,,,,,,,

5. Details of vacancies available and Roster Points to be issued in 2020 (Annexure-E).,,,,,,,,,,,,,,,,,,,,,

6. Details of posts advertised, filled and not filled / carry forward (Annexure-F).",,,,,,,,,,,,,,,,,,,,,,

The statement on 89 posts (78+11) advertised in RC/02/2016 and RC/57/17 â?" (Annexure-G-total pages-10).,,,,,,,,,,,,,,,,,,,,,

Ã Supplementary comments :,,,,,,,,,,,,,,,,,,,,,

1. The share of SCs/STs in the cadre of Professor and Associate Professor works out to 129 (@22.5%) of total sanctioned 573 posts. Out of these, 45 posts have

been filled and 57" ,,,,,,,,,,,,,,,,,,,,,,

posts have been advertised RC/60/2019 and RC/61/2019 (Annexure â?? Bâ??) ,,,,,,,,,,,,,,,,,,,,,,

2. The remaining 27 posts shall be filled in future from vacant posts for which 31 posts are available at present with the University ,,,,,,,,,,,,,,,,,,,,,,

3. The recruitment of SCs/STs in the cadre of Professor and Associate Professor will further narrow down the backlog of SCs/STs ,,,,,,,,,,,,,,,,,,,,,,

4. It is pertinent to mention here that there is no shortfall for SCs in the cadre of Professor as out of there shall of total 30 posts, there are 14 in positions and 16 posts have been" ,,,,,,,,,,,,,,,,,,,,,,

advertised ,,,,,,,,,,,,,,,,,,,,,,

5. It is further pertinent to mention here that the main reason for shortfall / backlog for SCs/STs in the cadre Associate Professor has been that despite sincere efforts made to fill ,,,,,,,,,,,,,,,,,,,,,,

up these posts, these posts have remained vacant mainly due to non-availability of suitable candidates, no application having been received for many posts." ,,,,,,,,,,,,,,,,,,,,,,

6. It is respectfully submitted that JNU has traditionally adopted a very affirmative policy for implementation of reservations and the outcome of these efforts has been very ,,,,,,,,,,,,,,,,,,,,,,

encouraging in that the University has achieved almost full representation of SCs/STs in the cadre of Assistant Professor and other non-teaching posts ,,,,,,,,,,,,,,,,,,,,,,

7. However, for reasons beyond the control of University, some posts reserved for SCs/STs could not be filled." ,,,,,,,,,,,,,,,,,,,,,,

8. But the University is determined to fill up all reserved vacancies gradually in future recruitment drives.â?? ,,,,,,,,,,,,,,,,,,,,,,

56. The burden to rebut and prove that the reservation rosters were correctly recast was on the University, which in my view, it has failed to discharge. Mere statements and denials that there" ,,,,,,,,,,,,,,,,,,,,,,

has been no de-reservation or exchange of reservation points would not be enough for the University to rebut the data/tables placed on record by the Petitioners. The table extracted and ,,,,,,,,,,,,,,,,,,,,,,

referred to above, filed by the Petitioners have not been seriously controverted. The dicta of the Supreme Court is clear and binding. The reservation rosters have to be post-based and there" ,,,,,,,,,,,,,,,,,,,,,,

cannot be exchange of reservation points or de-reservation. The latter is

permissible only in very exceptional cases and that too by following a very rigorous process. Ample opportunities were,,,,,,,,,,,,,,,,,,,,,

given to the University to file affidavits but despite a host of affidavits and written submissions, it was unable to demonstrate that the shifting of the points in the two Centres with which this",,,,,,,,,,,,,,,,,,,,,

petition is concerned was a mere result of interpolation resulting from recasting of the rosters as per the new OMs and/or the UGC Guidelines,,,,,,,,,,,,,,,,,,,,,

57. Petitioner No.1 is working as Assistant Professor and his specific grievance is that post No. 135 under the Advertisement No. RC/61/2019 against which he was proposing to apply as SC,,,,,,,,,,,,,,,,,,,,,

candidate has been converted into ST post. Petitioner No.2 is aggrieved by the fact that post No.60 under Advertisement No. RC/60/2019 against which he was desirous of applying has been,,,,,,,,,,,,,,,,,,,,,

de-reserved while it was earlier a post reserved for ST candidate. In view of the unclear stand of the University, this Court has no option but to direct the University to revisit the issue and work",,,,,,,,,,,,,,,,,,,,,

out the roster points afresh with regard to post No. 135 and post No.60,,,,,,,,,,,,,,,,,,,,,

58. It may be noted at this stage that aggrieved by the denial of interim relief to stay the process pursuant to the Advertisement, Petitioners had approached the Division Bench in LPA",,,,,,,,,,,,,,,,,,,,,

No.180/2020. Noting the grievance of the Petitioners as extracted in para 5 of the order, the Division Bench, amongst various other directions had restrained the University from making any",,,,,,,,,,,,,,,,,,,,,

appointments to post Nos. 135 and 60, which are the subject matter of the present petition. It is obvious that the Petitioners are confining their claim only to the two posts in the impugned",,,,,,,,,,,,,,,,,,,,,

Advertisement and there is no reason why the entire Advertisement should be quashed. The second relief sought by the Petitioners is to direct the Respondents to prepare the roster as per the,,,,,,,,,,,,,,,,,,,,,

post-based reservation policy,,,,,,,,,,,,,,,,,,,,,

59. In view of the observations made above, Advertisement Nos. RC/61/2019 and RC/60/2019 dated 19.08.2019 are quashed to the extent applications were invited for appointments against",,,,,,,,,,,,,,,,,,,,,

post Nos.135 and 60, respectively.",,,,,,,,,,,,,,,,,,,,,

60. Respondent No.1 University is directed to re-visit and re-examine the roster and recast the roster points, if so warranted, with respect to the above two

points, in accordance with the post-" ,,,,,,,,,,,,,,,,,,,,,,

based reservation system as enunciated in the judgment of R.K. Sabharwal (supra); provisions of DOPT OMs dated 02.07.1997, 06.11.2003 and the 2016 Brochure on reservations including the" ,,,,,,,,,,,,,,,,,,,,,,

subsequent OMs as referred to above. The said exercise shall be completed within 3 months from today.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

61. It is open to the University to initiate fresh recruitment process and advertise the two posts after the above exercise is completed.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

62. Petition is partly allowed in the above terms. Pending application stands disposed of.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,