



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 745/2023

1. Shravan Singh S/o Shri Abhay Singh, Aged About 38 Years, Resident Of Village Kagal, Tehsil Bhopalgarh, District Jodhpur (Rajasthan)
2. Himmat Singh S/o Ganga Singh, Aged About 37 Years, Resident Of Village Rajod, Tehsil And District Nagaur (Raj.)
3. Dharmendra S/o Sh. Narain Ram, Aged About 37 Years, R/o Village Keriya Rawa Sirsana, Tehsil Degana, District Nagaur
4. Naresh Kumar S/o Sh. Mangilal, Aged About 35 Years, R/o Village Jalebi Nayla, Ramganagar, Tehsil And District Jodhpur
5. Suresh Kumar S/o Sh. Suraj Bhan, Aged About 37 Years, R/o Village Dantujala, Bhusa Bara, Sikar, District Sikar
6. Rajendra Singh Rathore S/o Sh. Akhe Singh Rathore, Aged About 36 Years, R/o Village Lunasar, Post Rajdesar, Tehsil And District Churu
7. Punam Chand S/o Sh. Sukharam, Aged About 37 Years, R/o Lotakan Ka Baas, Kathodi, Tehsil And District Nagaur.
8. Premveer Singh Inda S/o Shri Padam Singh Inda, Aged About 39 Years, R/o Village Digadi, Tinwari, Malunga, Jodhpur (Raj.)

-----Petitioners

Versus

1. State Of Rajasthan, Through Secretary, Department Of Personnel, Govt. Of Rajasthan, Secretariat, Jaipur (Raj.)
2. Rajasthan Staff Selection Board, Jaipur, Through Its President, State Agriculture Management Institution Campus, Durgapura, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Narpat Ram.
For Respondent(s)	:	Mr. Ayush Gehlot for Mr. Rajesh Panwar, Sr. Advocate & AAG. Mr. Manvendra Singh Bhati.



HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE MUNNURI LAXMAN

OrderREPORTABLE18/03/2025

1. Heard.
2. By this petition under Article 226 of the Constitution of India, the petitioners, who are general category candidates, have challenged the constitutional validity of sub-rule (3) of Rule 2 of the Rajasthan Civil Services (Absorption of Ex-Servicemen) Rules, 1988 (hereinafter referred to as "Rules of 1988") as amended vide impugned notification dated 07.12.2022.
3. The petitioners are ex-servicemen and aspire to participate in the direct recruitment process initiated vide advertisement dated 16.12.2022 on the post of Upper Primary School Teachers (Level-I and Level-II). Amongst other things, insofar as reservation for ex-servicemen is concerned, the advertisement provided for reservation in the following manner (in vernacular):

"11. भूतपूर्व सैनिकों हेतु:

(क) भूतपूर्व सैनिकों के आश्रितों को भूतपूर्व सैनिकों के आरक्षित पदों का लाभ देय नहीं होगा।

(ख) भूतपूर्व सैनिक:-

(1) प्रतिरक्षा (थल, जल, वायु सेना) सेवाओं से सेवामुक्ति के समय आवेदक का चरित्र "अच्छा" से कम नहीं होना चाहिये जैसा कि उसकी सेवामुक्ति में दर्शाया गया हो।

(2) प्रतिरक्षा सेवा से सेवामुक्ति के पश्चात किसी आवेदक का चरित्र ऐसा होना चाहिये जो उसे नियोजन के लिये अर्हक बना दे।

भूतपूर्व सैनिकों को आरक्षण राजस्थान सिविल सेवा (भूतपूर्व सैनिकों का आमेहन) नियम, 1988 के प्रावधानों के अनुसार भूतपूर्व सैनिकों के लिए 12.5 प्रतिशत पद आरक्षित हैं। कार्मिक विभाग की अधिसूचना दिनांक 07.12.2022 के अनुसार भूतपूर्व सैनिकों के लिये रिक्तियों का आरक्षण सीधी भर्ती में प्रवर्गवार होगा। किसी वर्ष विशेष में पात्र और उपयुक्त भूतपूर्व सैनिकों की अनुपलब्धता की दशा में उनके लिये इस प्रकार आरक्षित रिक्तिया सामान्य प्रक्रिया के अनुसार भरी जायेगी और रिक्तियों की समान संख्या अगले भर्ती वर्ष में अग्रनीत की जायेगी तथा तत्पश्चात ऐसी रिक्तिया व्यपगत हो जायेगी। भूतपूर्व सैनिकों के लिये कार्मिक विभाग की अधिसूचना क्रमांक एफ5(18) कार्मिक/क 2/84



पार्ट-2 दिनांक 17.04.2018 यथा संशोधित एवं 22.12.2020 के अनुसार प्रावधान भी लागू होंगे। कार्मिक विभाग द्वारा जारी अधिसूचना क्रमांक एफ5(18) डीओपी/ए 11/84 पार्ट 4 दिनांक 01.08.2021 के अनुसार "भूतपूर्व सैनिक" के संदर्भ में व्यक्ति जो राज्य में बसे हुए हैं, से व्यक्ति जो राजस्थान का मूल निवासी है, अभिप्रेत है। उक्त अधिसूचना के अनुसार राजस्थान राज्य के मूल निवासी भूतपूर्व सैनिकों को ही भूतपूर्व सैनिक वर्ग का लाभ दिया जायेगा।

"कोई व्यक्ति जो अपनी पेंशन अर्जित करने के पश्चात सेवानिवृत्त हो गया/गयी है या आगामी एक वर्ष के भीतर भीतर सेवानिवृत्त हो रहा/रही है पर उसने सक्षम प्राधिकारी से निराक्षेप प्रमाणपत्र प्राप्त कर लिया है, पद के लिए आवेदन करने का पात्र होगा/होगी, किन्तु पदग्रहण से पूर्व उसे समुचित नियुक्ति प्राधिकारी के समक्ष सेवानिवृत्ति का प्रमाण प्रस्तुत करना होगा। यदि कोई भूतपूर्व सैनिक निराक्षेप प्रमाणपत्र (एन.ओ.सी) के आधार पर आवेदन करता/करती है और वास्तविक सेवानिवृत्ति से पूर्व चयनित हो जाता/जाती है तो नियुक्ति प्राधिकारी पदग्रहण कालावधि को शिथिल कर सकेगा और उसे उसकी सेवानिवृत्ति के दो माह की किसी कालावधि के भीतर भीतर पद ग्रहण करने के लिए अनुज्ञात किया जावेगा।"

"यदि किसी पद के लिए प्रतियोगी परीक्षा अर्हित करने के लिए एक प्रश्नपत्र में न्यूनतम अर्हक उत्तीर्ण अंक/या कुल अंक, जहा कही भी निहित किए गए हो, तो पांच प्रतिशत या भूतपूर्व सैनिक की अनुउपलब्धता की दशा में और पांच प्रतिशत अथवा सुसंगत सेवा नियमों में यथा विहित, जो भी उच्चतम हो, का शिथिलीकरण भूतपूर्व सैनिकों को दिया जायेगा।"

यदि किसी कारणवश भूतपूर्व सैनिक कार्यग्रहण नहीं करता है तो ऐसी स्थिति को नियमानुसार सामान्य प्रक्रिया के अनुसार भरा जावेगा और रिक्तियों की समान संख्या अगले भर्ती वर्ष में अग्रनीत की जायेगी तथा तत्पश्चात ऐसी रिक्तियां व्यपगत (Lapse) हो जायेगी।

किसी भूतपूर्व सैनिक द्वारा राज्य के अधीन किसी भी लोक सेवा में नियोजन स्वीकार कर लेने के बाद वह भूतपूर्व सैनिक के रूप में अपनी प्रास्थिति (Status) खो देगा और वह केवल लोकसेवक (Civil Employee) के रूप में ही माना जाएगा। अर्थात् भूतपूर्व सैनिक के रूप में देय आरक्षण का लाभ प्राप्त करने के उपरान्त लोक सेवा के किसी पद पर पुर्नियोजन स्वीकार करते ही उसका भूतपूर्व सैनिक के रूप में कोई भी लाभ प्राप्त करने का अधिकार सामान्यतः समाप्त समझा जावेगा, परन्तु सीधी भर्ती के ऐसे पदों के संबंध में, जहां नियमों में निम्न पद का अनुभव भी निर्धारित किया गया है, किसी भूतपूर्व सैनिक द्वारा निम्न पद पर नियोजित होने के कारण भूतपूर्व सैनिक के रूप में आरक्षण का अधिकार समाप्त हुआ नहीं समझा जायेगा परन्तु यह और कि यदि कोई भूतपूर्व सैनिक राजस्थान सरकार के अधीन किसी नियोजन को ग्रहण करने से पूर्व, विभिन्न पदों के लिये आवेदन करता है और संबंधित नियोजक को राजस्थान सरकार के अधीन प्रारम्भिक पद ग्रहण करने से पूर्व, विभिन्न पद जिसके लिये उसने आवेदन किया है, के लिए आवेदन की तारीख वार ब्यूरो के बारे में स्वतः घोषणा पत्र/वचनबंध देता है तो ऐसे पदों पर नियुक्ति के लिये उसे भूतपूर्व सैनिक प्रवर्ग के फायदे से विवृजित नहीं किया जायेगा। भूतपूर्व सैनिक जिसे राजस्थान सरकार के अधीन नैमित्तिक/संविदा/अस्थाई/तदर्थ आधार पर पुनर्नियोजित किया गया है को भूतपूर्व सैनिक प्रवर्ग के फायदे से विवृजित नहीं किया जायेगा।"

4. The aforesaid provision in the advertisement is in conformity with and in compliance of the legal requirement of Rule 3 as amended vide impugned notification. The rule as amended vide impugned notification now allows reservation to be provided for



ex-servicemen category-wise with the stipulation that in the event of non-availability of the eligible and suitable ex-servicemen in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and equal number of vacancies shall be carried forward to the next recruitment year and thereafter, such vacancies would lapse. The advertisement clearly provided that the reservation will be provided category-wise.

5. The petitioners have laid challenge to the validity of the rule as also the advertisement incorporating condition in accordance with the impugned rule, on the premise that the object of providing reservation to ex-servicemen having been introduced to ensure their representations in the State services/public employment, the impugned rule frustrates the very object of such reservation for ex-servicemen.

6. Learned counsel for the petitioners argued in extenso. He contended that the rule of reservation, provided for ex-servicemen, has to be provided in such a manner, preferably as vertical reservation so that in the event of non-availability, irrespective of any category, most meritorious ex-servicemen candidates are selected, which will satisfy the requirement of merit as well as adequate representation of ex-servicemen in State services. He would submit that the impugned rule, by making a provision of reservation for ex-servicemen category-wise reduces the chances of adequate representation of ex-servicemen in public employment. Relying upon the Hon'ble Supreme Court decision in the case of **Ramnaresh @ Rinku Kushwah & Ors. Vs. State of Madhya Pradesh & Ors. [AIR 2024 SC 4252]**, he



would submit that such a course of action is not permissible under the law and the impugned amendment is contrary to the verdict of the Hon'ble Supreme Court in the aforesaid case and is accordingly violative of the theory of separation of powers. The amendment, as argued, seeks to set at naught the principle laid down by Hon'ble Supreme Court in the matter of working out reservation.

7. Per contra, learned counsel for the State would submit that the petitioners' claim that ex-servicemen reservation should be made necessarily only as vertical and not as horizontal is without any basis. He would further submit that such a reservation, according to the State policy, has been provided on horizontal basis. He would also submit that policy with regard to manner and extent of reservation for ex-servicemen underwent amendment from time to time by the State. Impugned amendment had to be incorporated by substituting earlier provision to bring it in line with the principle laid down by the Hon'ble Supreme Court in the case of **Saurav Yadav & Ors. Vs. State of Uttar Pradesh & Ors. [(2021) 4 SCC 542]** in the matter of methodology to be adopted for working out horizontal reservation. According to the State counsel, in view of the judgment of Hon'ble Supreme Court in the case of Saurav Yadav (supra), it is now settled that even in the matter of horizontal reservation, made category-wise, a meritorious candidate in horizontal reservation claiming himself entitled to horizontal reservation within a category, has to be migrated in the general category as against the seat reserved on horizontal basis. Therefore, in a case where a candidate belonging to one reserved



category, who happens to be ex-servicemen is able to secure higher marks on the basis of merit as against a general category ex-servicemen, by application of principle and methodology declared by Hon'ble Supreme Court in the case of Saurav Yadav (supra), a candidate is necessarily required to be migrated to ex-servicemen general category. He would submit that earlier rule provided for reservation for ex-servicemen in a restricted manner by providing that such reservation will have to be adjusted in the respective category to which ex-servicemen belongs. Referring to specific averment made in the reply, it has been further submitted that the said scheme was frustrating representation of various marginalized groups, and therefore, to serve the twin purpose of adequate representation to various classes of marginalized sections as also to bring the rule according to the law laid down by the Supreme Court, amendment became necessary. He would further submit that in fact, the judgment in the case of Ramnaresh (supra) has relied upon the verdict in the case of Saurav Yadav (supra).

8. We have heard learned counsel for the parties and perused the records of the case.

9. The provisions with regard to reservation for ex-servicemen in the Rajasthan Civil Services are governed and regulated by the Rules of 1988. The Rules provide for the manner in which ex-servicemen will be provided reservation. Rule 2, as it was placed in the Rules at the time of promulgation, underwent several amendments from time to time. It is not necessary and relevant for us to trace the history of amendments in Rule 2 and 3 and other Rules of the Rules of 1988 from time to time. Prior to



impugned amendment, the provisions contained in Rule 2 provided as below:

"2. Reservation of posts for the ex-servicemen.- (1) Notwithstanding the provisions contained in any rule regulating the recruitment to any post, reservation of posts for the ex-servicemen under the State, to be filled in by direct recruitment, shall be as under,-

- (a) 5% of the posts in the State Services;*
- (b) 12/% of the posts in the Ministerial and Subordinate Services: and*
- (c) 15% of the posts in class-IV service;*

Or

such percentage of posts as reserved under relevant service rules, whichever is higher.

(2) Maximum number of such ex-servicemen in a particular cadre shall also be limited to the percentage as specified in sub-rule (1) above.

3) The reservation for ex-servicemen shall be treated as horizontal reservation and it shall be adjusted in the respective category to which the ex-servicemen belongs.

(4) Where a vacancy reserved for ex-servicemen under these rules, remains unfilled due to non-availability of suitable ex-servicemen in a particular year, the vacancies so reserved for them shall be filled in accordance with the normal procedure and equal number of vacancies shall be carried forward to the next recruitment year and there after such vacancies would lapse.

10. In addition to making provisions with regard to the extent of reservation, Sub-Rule (3) (as unamended) provided for reservation for ex-servicemen shall be treated as horizontal reservation and it shall be adjusted in respective category to which the ex-servicemen belongs. It was coupled with another representation with regard to carry forward rule. The effect of this Rule was that the horizontal reservations were provided with the condition that the ex-servicemen shall be adjusted in their respective category.





11. Vide impugned notification the provisions contained in Rule 3 and 4 underwent substantive changes and after impugned amendment Rule 2 Sub-Rule (3) and (4) now stands as below:

"2. नियम 2 का संशोधन: - राजस्थान सिविल सेवा (भूतपूर्व सैनिकों का आमेलन) नियम 1988 के नियम 2 में, -

(i) विद्यमान उप नियम (3) के सीन पर निम्नलिखित प्रतिस्थापित किया जायेगा, अर्थात् :-

(3) उप नियम (1) में यथा विनिर्दिष्ट भूतपूर्व सैनिकों के लिए रिक्तियों का आरक्षण सीधी भर्ती में प्रवर्गवार होगा। किसी वर्ष विशेष में पात्र और उपयुक्त भूतपूर्व सैनिकों की अनुपलब्धता की दशा में, उनके लिए इस प्रकार आरक्षित रिक्तियां सामान्य प्रक्रिया के अनुसार भरी जायेगी और रिक्तियों की समान संख्या अगले भर्ती वर्ष में अग्रनीत की जायेगी तथा तत्पश्चात् ऐसी रिक्तियां व्यपगत हो जायेगी। और

(ii) विद्यमान उप नियम (4) हटाया जायेगा।"

12. By the impugned amendment, existing Sub-Rule (3) has been substituted and now it has been provided that reservation of vacancies for ex-servicemen, as specified in Sub-Rule (1), shall be category wise in direct recruitment. This prescription of the Rule is under challenge.

13. The Rule, as amended, provides for reservation of vacancies for ex-servicemen category wise in direct recruitment. The submission of learned counsel for the petitioners that this provision providing for reservation of vacancies for ex-servicemen category wise for direct recruitment suffers from manifest arbitrariness, has no legs to stand. The submission that the category wise reservation of vacancies for ex-servicemen is impermissible in law and it could be only vertical reservation, is not supported by any reasoning. Learned counsel for the petitioner could not point out as to how such a policy of providing reservation for ex-servicemen category wise on horizontal basis is



contrary to the provisions of the Constitution or any Act of the State.

14. The only submission to support the argument is essentially based on the judgment of Hon'ble Supreme Court in the case of Ramnaresh (supra).

15. We are afraid, the aforesaid decision does not support the case of the petitioners to say that reservation for ex-servicemen should only be provided on vertical basis and it could not be provided category wise.

16. Hon'ble Supreme Court in the case of Saurav Yadav (supra) dealt with a case where an issue with regard to applicability of the Rule of migration arose in cases relating to the matter of horizontal reservation. The principal applicable and methodology to be adopted for considering and giving effect to both vertical and horizontal reservation were explained. Conflicting views of different High Courts were resolved and the principle that a candidate belonging to any of the reservation category, who, on the basis of his own merit is entitled to be selected in the open or general category, will be selected against the general category and his selection would not be counted against the quota reserved for such reservation category, was applied in cases of horizontal reservation as well. The aforesaid decision is not an authority for the proposition which has been advanced by way of submission of learned counsel for the petitioner.

17. The judgment on which reliance has been placed by learned counsel for the petitioners followed the decision in the case of Saurav Yadav (supra). We may profitably note the observations



made by Their Lordships in the Supreme Court in the case of Ramnaresh (supra).

"10. By now, it is a well-settled principle of law that a candidate belonging to any of the vertical reservation categories who on the basis of his own merit is entitled to be selected in the open or general category, will be selected against the general category and his selection would not be counted against the quota reserved for such vertical reservation categories. Reliance in this respect could be placed on the 9-Judge Bench judgment of this Court in the case of *Indra Sawhney and Others v. Union of India and Others*, and in the cases of *R.K. Sabharwal and Others v. State of Punjab and Others* and *Ritesh R. Sah v. Dr. Y.L. Yamul and Others*.

11. However, this Court, in the case of *Saurav Yadav (supra)*, had an occasion to consider for the first time as to whether the said principle laid down in the case of *Indra Sawhney (supra)* and followed subsequently would also apply to the cases of horizontal reservation. Prior to the said judgment, there were conflicting views of different High Courts. This Court, after surveying various earlier 1992 Supp (3) SCC 217 (1995) 2 SCC 745 : 1995 INSC 108 (1996) 3 SCC 253 : 1996 INSC 258 pronouncements and considering the views as expressed by the High Courts, observed thus:

"43. Finally, we must say that the steps indicated by the High Court of Gujarat in para 69 of its judgment in *Tamannaben Ashokbhai Desai [Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar, 2020 SCC OnLine Guj 2592]* contemplate the correct and appropriate procedure for considering and giving effect to both vertical and horizontal reservations. The illustration given by us deals with only one possible dimension. There could be multiple such possibilities. Even going by the present illustration, the first female candidate allocated in the vertical column for Scheduled Tribes may have secured higher position than the candidate at Serial No. 64. In that event said candidate must be shifted from the category of Scheduled Tribes to Open/General category causing a resultant vacancy in the vertical column of Scheduled Tribes. Such vacancy must then enure to the benefit of the candidate in the waiting list for Scheduled Tribes-Female. The steps indicated by the Gujarat High Court will take care of every such possibility. It is true that the exercise of laying down a procedure must necessarily be left to the authorities concerned but we may observe





that one set out in said judgment will certainly satisfy all claims and will not lead to any incongruity as highlighted by us in the preceding paragraphs."

12. It could thus be seen that, this Court approved the steps indicated by the High Court of Gujarat in paragraph 69 of its judgment in the case of *Tamannaben Ashokbhai Desai v. Shital Amrutlal Nishar*⁶ for considering and giving effect to 2020 SCC OnLine Guj 2592 both vertical and horizontal reservations. In the said case, this Court was considering horizontal reservation for the female candidates. It was observed that a meritorious reserved category candidate who is entitled to the General category of the said horizontal reservation on his own merit, will have to be allotted a seat from the said General category of the horizontal reservation. Meaning thereby such a candidate cannot be counted in a horizontal seat reserved for the category of vertical reservation like SC/ST.

13. It will also be apposite to refer to the following observations made by S. Ravindra Bhat, J. in his concurring judgment:

"66. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the State's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. 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." [emphasis supplied]

14. It could thus be seen that the learned Judge clearly observed that the horizontal as well as the vertical reservation would not be seen as rigid "slots", where a candidate's merit, which otherwise entitles her or him to be shown in the open general category, is foreclosed. It was observed that by doing so, it would result in communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. It was observed 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."



18. The decision in the case of Saurav Yadav (supra) which was explained in the case of Ramnaresh (supra) leaves no manner of doubt that horizontal as well as vertical reservation would not be seen as rigid "slots" where a candidate's merit, which otherwise entitles him or her to be shown in the open general category is foreclosed. It has been observed that in doing so it would result in communal reservation where each social category is confined within the extent of their reservation, thus negating merit. It was further observed 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.

19. The aforesaid decision is with regard to application of methodology in the matter of horizontal reservation and not an authority for the proposition that ex-servicemen reservation has to be only on vertical basis and not category wise.

20. If the very basis of the submission made by learned counsel for the petitioner is not supported by any sound principle of law laid down by the Supreme Court in any case nor it appears to be against the provisions of the Constitution or any other law made by the Parliament or State Legislature, we are unable to accept the submission made by learned counsel for the petitioner that the category-wise reservation should not have been provided but the reservation for ex-servicemen ought to be provided on vertical basis by carving entirely different category. The purpose and object of providing horizontal reservation for ex-servicemen is to ensure proper representation of various categories including



reserved categories like SC, ST and OBC. Horizontal reservation in a particular category seeks to achieve this object of providing representation to ex-servicemen who belong to different categories like SC, ST and OBC. Thus horizontal reservation is within the reservation provided for respective categories.

21. The petitioners' argument essentially seeks issuance of mandamus that reservation ought to be provided for ex-servicemen only on vertical basis and not on horizontal basis. Once horizontal reservation across all the categories is permissible and not found to be against the provisions of the Constitution or any law, the case of the petitioner does not have any merit.

22. We, therefore, are inclined to dismiss the petition and the same is dismissed accordingly.

(MUNNURI LAXMAN),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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