

(2010) 08 AHC CK 0458**Allahabad High Court****Case No:** None

Rajiv Sharma

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision: Aug. 28, 2010**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16, 16(4B), 226, 335
- Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 - Section 3(1), 3(7)
- Uttar Pradesh Town and Country Planning Service Rules, 1987 - Rule 15(3), 16, 17, 18, 24

Hon'ble Judges: Y.C. Gupta, J; Devi Prasad Singh, J**Bench:** Division Bench**Final Decision:** Allowed**Judgement**

Devi Prasad Singh, J.

The present writ petition under Article 226 of Constitution of India has been preferred against the impugned order rejecting the representation of one Shri Ishwar Dev Singh Yadav holding that out of two posts of Executive Engineer one may be filled up from the Scheduled Caste candidates by applying roaster. The appointment/promotion made vide an order dated 11.06.2001 of the respondent No. 3 applying roaster-cum-reservation under the Scheduled Caste category has been impugned through amendment is discussed hereafter.

2. The petitioner who is an Assistant Engineer in a department of U.P. Town and Country Planning working since 01.02.1992, claimed promotion to the post of the Executive Engineer. His service condition is governed by the U.P. Town and Country Planning Service Rules, 1987 (For Short "Rules"). The seniority list of the post of cadre of Assistant Engineer was circulated by the department by an order dated 09.05.1995. In the seniority list one Ajai Mishra was at Serial No. 1 who according to

the petitioner has been promoted on the post of Associated Planner being qualified for the same. One Ishwar Dev Singh Yadav is at serial No. 2 and the petitioner is at serial No. 3 and respondent No. 3 Ashok Kumar is at serial No. 6. So far as the placement in the seniority list is concerned, the respondent's counsel does not raise any dispute.

3. After retirement of one regular incumbent Shri Ravindra Singh from the office of the Executive Engineer on 01.01.2001, a regular vacancy had arisen. According to the Rules there are two sanctioned posts of Executive Engineers and the respondents out of two sanctioned posts proceeded to fill up one post from the reserved candidate.

4. Feeling aggrieved with the steps taken by the respondents, the petitioner as well as Ishwar Dev Singh Yadav and others have submitted representation dated 25.10.2001. Submission is that one post out of two sanctioned posts of the Executive Engineers cannot be reserved against 21% quota meant for Scheduled Caste candidates. Some other persons have also submitted identical representation as submitted by Ishwar Dev Singh Yadav. The writ petition filed by Ishwar Dev Singh Yadav registered as Writ Petition No. 450(S/B) of 2001 was decided vide judgment and order dated 11.04.2001 directing the respondents/State Government to decide his representation with regard to the controversy in question. However, the writ petition filed by the petitioner registered as Writ Petition No. 591 (S/B) of 2001, was dismissed as pre-mature by this Court vide judgment and order dated 03.05.2001 with the observation that in case the petitioner is aggrieved by any action of the respondents with regard to the reservation policy, an appointment made thereon, can always be challenged.

5. Since while deciding the representation of Ishwar Dev Singh Yadav by office-memorandum dated 05.05.2001 (Annexure No. 1) the State Government expressed its views that out of two posts, one post can be reserved for Scheduled Caste candidate and rejected the representation, the petitioner had challenged the impugned office-memorandum under the present writ petition.

6. While admitting the writ petition on 01.06.2001 an interim order was passed by this Court that if, any appointment is made, it shall be subject to further order passed by this Court. During the pendency of the writ petition, the respondent No. 4 was promoted as Executive Engineer by the impugned order dated 11.06.2001. Hence, the petitioner moved amendment application which was allowed subject to objection of the respondents.

7. The State counsel while filing the counter affidavit admitted that there are two posts of Executive Engineers out of which one post is reserved for Scheduled Caste candidate and against the said vacancy the respondent No. 3 has been promoted. It shall be appropriate to reproduce Paragraphs 7, 8 and 9 of the counter affidavit filed on behalf of the State Government.

7. That it is also necessary to mention here that 02 posts of Executive Engineer, 20 posts of Town Planner/Associate Planner and 01 post of Architect Planner in total 23 posts in the same pay scale and grade are sanctioned. The promotion is being made from the posts of Assistant Engineer, Assistant Planner, Personal Assistant (Technical) and Assistant Architect to the aforesaid posts on the criteria of seniority subject to rejection of unfit. In accordance with the reservation policy from 23 posts 05 posts goes to reserved category officers from which 01 post goes for Executive Engineer and 04 posts goes for Associate Planner/Town Planner.

8. That in the year 2001 all the 05 posts under reserved category were unfilled. The deponent/opposite party No. 3(newly added party) namely; Ashok Kumar was eligible for promotion in reserve category, therefore he was considered by the duly constituted promotion committee, in accordance with rules (U.P., Town and Country Planning Service Rules, 1987) and he was found fit and his name was recommended for promotion to the post of Executive Engineer. It is further submitted that 16 other officers amongst Assistant Engineer, Assistant Planner, Assistant Architect and Personal Assistant (Technical) have been found fit for promotion to the post of Associate Planner and Architect Planner and their names have been recommended for promotion by the duly constituted departmental promotion committee. Sri Ajai Kumar Mishra who was working with the opposite party No. 3 as Assistant Engineer has been given promotion to the post of Associate Planner while opposite party No. 3 is given promotion to the post of Executive Engineer in accordance with reservation policy under that quota which was not exceeded in any manner. The another post of Executive Engineer was already filled by Sri Gyan Prakash, who is a general candidate. At present, against 05 reserve category posts of Executive Engineer/Associate Planner/Architect Planner only 02 officers are working including the opposite party No. 3, and 03 posts are still lying vacant.

9. That in the aforesaid stated circumstances the present application for amendment is misconceived, hence liable to be rejected with cost.

8. Moreover, later on an affidavit has been filed on behalf of the State Government stating therein that the cadre of Executive Engineers collectively consists of Town Planner/Associate Planner, Architect Planner and Executive Engineer and the total number of vacancy is more than two i.e., 23 in number. It shall be appropriate to reproduce paragraph No. 27 of the affidavit dated 31.03.2010.

27. That the contents of para 39(xviii) of the amended portion of the writ petition are denied as stated in view of averments made in earlier paras. It is further submitted that as per law laid down by the Hon"ble Apex Court in case of Post Graduate Institute of Medical Education and Research Chandigarh v. Faculty Association and Ors. reported in Post Graduate Institute of Medical Education and Research, Chandigarh Vs. Faculty Association and Others, if there are plurality of the post in a cadre then the reservation will be applied. It is also relevant to mention here that there are 20 posts of Town Planner/Associate Planner in the department, one post

of Architect Planner and two posts of Executive Engineer thus total i.e. 20+1+2 = 23 on which Assistant Engineer is eligible for promotion who have possess the requisite qualification. It is also relevant to mention here that Sri Ajai Kumar Mishra being Assistant Engineer in the department has been promoted on the post of Associate Planner. So for the purposes of calculation of reservation total 23 posts as stated, be taken into consideration as a unit.

9. Thus, it is evident that the State Government has shifted it's stand by making out a different case to defend the appointment of the respondent No. 3. Though, in the original counter affidavit dated 03.01.2001 as well as the impugned order, it has been unequivocally stated that there are only two posts of Executive Engineers constituting the cadre but in the affidavit of 31.03.2010, the total strength of the cadre claimed is 23.

10. While assailing the impugned order, Shri S.K. Kalia, Senior Advocate appearing for the petitioner relied upon the cases reported in 2008 (26) LCD 1691 (DB) A.V.P. No. 1208 (S/B) of 2008 : Dharam Pal Singh Chauhan v. State of U.P. and Ors. (2009) (4) ALJ 326 (DB) Chakradhar Paswan Vs. State of Bihar and Ors, Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, M.A. Murthy Vs. State of Karnataka and Others, P.V. George and Others Vs. State of Kerala and Others, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, M.S. Gill. v. Chief Election Commissioner.

11. On the other hand Shri Prashant Chandra, Senior Advocate appearing for the respondents as well as learned Standing counsel had relied upon the case reported in S.B. Bhattacharjee Vs. S.D. Majumdar and Others, K. Samantaray Vs. National Insurance Co. Ltd., Director, Lift Irrigation Corporation Ltd. and Others Vs. Pravat Kiran Mohanty and Others, Union of India Vs. K.V. Jankiraman, etc. etc., Union of India and Ors. v. K.V. Jankiraman and Ors.

12. A preliminary objection has been raised by Shri Prashant Chandra that the writ petition is not maintainable and the amendment has been made to challenge the appointment of the respondent No. 3 at belated stage. It has been submitted that the impugned order dated 05.05.2001 has been passed by the State Government while adjudicating the representation of Shri Ishwar Dev Singh Yadav. Hence, the petitioner cannot be an aggrieved party. Further submission is that the writ petition has been amended in the year 2009. Hence, the order of appointment could not have been challenged after nine years.

13. As observed (supra) by the interim order dated 01.06.2001, the Division Bench of this Court has provided that the appointment made shall be subject to further order of this Court. From the perusal of the appointment order also, it is evident that the appointment of the respondent No. 3 has been subjected to final out-come of the present writ petition. Accordingly, even if, the amendment application has been moved in 2009, it shall make no difference and the appointment of the respondent

No. 3 shall be subject to final out-come of the present writ petition.

14. Apart from this, by the office-memorandum dated 05.05.2001 the State Government while deciding the representation of Ishwar Dev Singh Yadav had recorded a conclusive finding that out of two posts one shall be reserved for Scheduled Caste candidates. Finding so recorded would affect the petitioner's future prospect in service career. He seems to be an aggrieved party and the order could have been challenged under the present petition, though, the decision communicated is with regard to his colleague while adjudicating the controversy.

15. A Constitution Bench of Hon"ble Supreme Court in The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others, held that the writ jurisdiction under the Constitution thus does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.

16. In The State of Orissa Vs. Madan Gopal Rungta, their Lordships of Supreme Court has held that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution.

17. In Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, the Apex Court has held that only a person who is aggrieved by an order can maintain a writ petition. The aggrieved person means the person who may show that he has more particular or peculiar interest on his own beyond that of general public in seeing that the law is properly administered.

18. Hon"ble Supreme Court while elaborately considering the question with regard to the aggrieved party in a case reported in M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, Kerala and Ors. held that the Court must examine the issue of locus standi from all angles and the petitioner should be asked to disclose as to what is the legal injury suffered by him.

19. In the case reported in Ghulam Qadir Vs. Special Tribunal and Others, . their Lordship of Supreme Court while reiterating the aforesaid proposition of of law with regard to the aggrieved party, observed that the rights under Article 226 of the Constitution of India can be enforced only by an habeas corpus or quo warranto. However, their Lordships had held that the orthodox rule of interpretation regarding the local standi of a person to reach the Court has undergone a sea Change with the development of constitutional law in our country and the constitutional Courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant but the party had to satisfy as to what is the legal injury caused by that violation of law for the redressal of which the party has approached the Court.

20. In view of the above, the petitioner seems to be an aggrieved party. Moreover in view of the appointment of the respondent No. 3 being subjected to an interim

order, the writ petition seems to be maintainable.

21. While considering the controversy on merit, it shall be appropriate to consider the relevant provisions of the Service Rules.

22. The copy of the Service Rules have been filed as Annexure No. 3 to the rejoinder affidavit. Rule 4 of the Service Rules deals with the cadre and provides that the strength of service and each of the cadre of the post shall be determined by the Government from time to time. For convenience Rule 4 of the Service Rules are reproduced as under:

4.(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Governor from time to time.

(2) The strength of the service and of each category of posts therein shall, until orders varying the same are passed under Sub-rule (1), be as specified in Appendix "A" to these rules.

Provided that;

(a) the Governor may hold in abeyance or the appointing authority may leave unfilled any vacant post without thereby entitling any person to compensation, or

(b) the Governor may create such additional permanent or temporary posts from time to time as he may consider proper.

23. Rule 5 of the Service Rules deals with the source of recruitment through direct recruitment specifying the qualification of reserved posts. Under Rule 7 the qualification given in Rule 5 has been treated as necessary qualification for direct recruitment. For convenience Rules 5 and 7 are being reproduced as under:

5. (1) Recruitment the various categories of posts in the service shall be made from the source given below:

(1) Chief Town and Country Planner. Senior Planners	: By promotion from amongst who have put in atleast 5 years of service as such.
(2) Senior Planner	: By promotion from amongst permanent Town Planners, Associate Planners, Architect Planners, Senior Architects and Executive Engineers (holding degree in civil Engineering) who possess the qualification prescribed in Appendix ''B'' for the post of Senior Planner and who

have put in at least 7 years of service on a gazetted post in U.P. Town and Country Planning Department.

(3) Town Planners/Associate Planner Permanent Assistant Town Personal Assistants(Technical) Assistant Architects and Assistant Engineers who Possess the qualifications prescribed in Appendix ''B'' for the post of Senior Architect and who have put in atleast 7 year of service on a gazetted post in U.P. Town and Country Planning Department.

(4) Senior Architect : By promotion amongst the permanent Assistant Town Planners/Assistant Planners Personal Assistant(Technical) and Assistant Architects who possess the qualifications prescribed in Appendix ''B'' for the post of Senior Architect and who have put in atleast 7 years of service on a gazetted post in U.P. Town and Country Planning Department.

(5) Architect Planner : By promotion from amongst the permanent Assistant Town Planners/ Assistant Planners, Personal Assistant (Technical) Assistant Architects and Assistant Engineers who possess the qualifications prescribed in Appendix ''B'' for Architect Planner and who have put in atleast 7 years of service on a gazetted post

in U.P. Town and Country Planning Department.

(6) Executive Engineer

: By promotion from amongst the permanent Assistant-Town Planners/ Assistant Planners, Personal Assistant (Technical), Assistant - Architects and Assistant Engineers who possess the qualification prescribed for the post of Executive-Engineer in Appendix ''B'' and have put in 7 years of service on a gazetted post in U.P. Town and Country-Planning Department.

GROUP ''B''

(7) Assistant Town Planner

: (i) 75% posts in the cadre by direct recruitment through the Commission, and
(ii) 25% posts in the cadre by promotion in consultation with the Commission from amongst permanent Architectural-cum-Planning Assistants, who possess either a degree or post graduate diploma in Town and Country Planning or equivalent qualifications from a recognised institution and who have put in atleast 5 years continuous service, as such, including temporary service.

(8) Assistant Architect

(i) 75% posts in the cadre by direct recruitment through the Commission, and
(ii) 25% posts in the cadre by promotion in consultation with the Commission from amongst permanent Architectural -cum-Planning Assistants who possess degree in Architecture or equivalent qualification

from a recognised institution and have put in 7 years' continuous service, as such, including temporary service.

(9) Assistant Engineer

: (i) 75% posts in the cadre by direct recruitment through the Commission, and
(ii) 25% post in the cadre by promotion in consultation with the Commission from amongst permanent Junior Engineers and Computers, who have put in 10 years' continuous service as such including temporary service.

Note:

For the purpose of promotion a combined seniority list shall be prepared by arranging the names of persons in order of the date of their substantive appointment.

(10) Assistant Sociologist

: By direct recruitment through the Commission.

(11) Statistical Officer

: By promotion in consultation with the Commission from

(12) Research Officer

amongst the permanent Statistical Assistants who have put in 15 years continuous service but not ad-hoc service as such including temporary service.

24. Rule 16 of the Service Rules deals with the promotion and Rule 17 of the Service Rules relates to the constitution of the selection committee and Rule 18 of the Service Rules relates to the preparation of the list. For convenience Rules 16, 17 and 18 of the Service Rules are being reproduced as under:

16. Recruitment by promotion in the case of Assistant Town Planner, Assistant Planner, Personal Assistant (Technical), Assistant Architect, Assistant Engineer, Statistical Officer and Research Officer shall be made on the basis of merit and in the case of Town Planner, Associate Planner, Senior Planner, Senior Architect, Executive Engineer on the basis of seniority subject to the rejection of the unfit from amongst the eligible candidates in assurance with the Uttar Pradesh Promotion by

selection in consultation with Public Service (Procedure) Rule, 1970 as amended from time to time.

Note:

A copy of the Uttar Pradesh Promotion by selection in consultation with Public Service (Procedure) Rule, 1970 as in force at the time of promulgation of these rules is given in Appendix "C".

17. (1) Recruitment by promotion on the post of Chief Town and Country Planner shall be made on the basis of merit through a Selection Committee comprising:

1. Chief Secretary Chairman
2. Sachiv, Karmik Vibhag.... Member
3. Secretary, Avas E�am Nagar Vikas.... Member

(2) The appointing authority shall prepare a list of the eligible candidates arranged in order of seniority and place it before the Selection Committee along with the character rolls and such other records pertaining to them as may be considered proper.

(3) The Selection Committee shall consider the cases of candidates on the basis of records referred to in Sub-rule (2) and if it considers necessary, it may be interviews the candidates also.

(4) The Selection Committee shall forward the name of the selected candidate to the appointing authority.

18. If appointment has to be made both by direct recruitment and by promotion a combined select list shall be prepared by taking candidates also finally from the list prepared under Rule 15(3) and the list prepared under Rule 16 the first name being from the list prepared under Rule 16.

25. Rule 24 of the Service Rules deals with the pay scale and Rule 26 of the Service Rules is with regard to crossing of efficiency bar. For convenience Rules 24 and 26 of the Service Rules are being reproduced as under:

24. (1) The scales of pay admissible to persons appointed to the various categories of the posts in the service whether in a substantive or officiating capacity or as a temporary measure, shall be such as may be determined by the Government from time to time.

(2) The scales of pay admissible to various categories of posts at the time of commencement of these rules are given below:

Name of Posts	Scales from 1.7.1979
1. Chief Town and Country -	Rs. 2400-100-2800

Planner						
2. Senior Planner						Rs. 1840-6-1900-75-2200-2400
3. Town Planner/Associate- Planner						Rs. 1250- 50-1300-60-1660-EB
						-60-1900-75-2050.
4. Architect Planner						Do.
5. Senior Architect						Do.
6. Executive Engineer						Do.
7. Assistant Town Planner/ Assistant Planner/Personal- Assistant (Technical).						Rs. 850-40-1050-EB-50-1300- -60-1420-60-1720.
8. Assistant Architect						Do.
9. Assistant Engineer						Do.
10. Statistical Officer						Do.
11. Research Officer						Do.
12. Assistant Sociologist						Rs. 690-40-970-EB-40-1050-50- 1200-EB-50-1300-60-1420.

26. Appendix "A" deals with the cadre strength/sanctioned posts upto 1st April, 1985 and Appendix "B" deals with qualification. For convenience both the Appendix "A" and "B" are being reproduced as under:

APPENDIX-A

Group wise strength of posts in Town and Country Planning Department sanctioned upto 1.4.1985

Serial No. Name of the post Scale of Pay No. of No. of Total
No.

1	2	3	4	Permanent Temporary of Posts.	
				Posts.	Posts.
Group ' 'A' '					
1. Chief Town and Country Planner		2400-100-2800	1	....	1
2. Senior Planner		1840-60-1900-	2	2	4
1	2	3	4	5	6
		-75-2200-100			
		-2400			
3. Town Planner/ Associate Planner		1250-50-1300- -60-1660-EB- -69-1900-75- 2050	11	9	20
4. Senior Architect		Do.	1	....	1

5. Architect Planner	Do.	1	....	1
6. Executive Engineer	Do.	2		2
Group ''B''				
7. Assistant Town-	850-40-1050	13	22	35
	-EB-50-1300			
	-60-1420-EB			
	-60-1720.			
8. Assistant Architect	Do.	2	7	9
9. Assistant Engineer	Do.	5	1	6
10. Statistical Officer	Do.	1	....	1
11. Research Officer	Do.	....	1	1
12. Assistant Sociologist	690-40-970-	2	....	2
	EB-40-1050			
	-50-1200-EB-			
	50-1300-60-			
	1420			

APPENDIX "B"

Serial No.	Name of the post	Academic Qualifications and Experience
1.	Senior Planner	<p>1. Degree or Postgraduate Diploma in Town and Country Planning from a recognised Institution.</p> <p>2. Corporate membership of atleast one of the following Institutions-</p> <ul style="list-style-type: none"> (a) Institute of Town Planners (India) (b) American Institute of Town Planners. (c) Institute of Town Planners (London).
2.	Town Planner/ Associate Planner	<p>1. Degree or Postgraduate Diploma in Town and Country Planning from a recognised Institution.</p> <p>2. At least 3 Years' experience in the Town or Regional Planning after obtaining the requisite Degree or Diploma.</p>
3.	Senior Architect	<p>1. Degree in Architecture with special paper in Town Planning from a recognised Institution.</p>
4.	Architect Planner	<p>1. Degree or Postgraduate Diploma in Town and Country Planning from a recognised Institution.</p> <p>2. Degree in Architecture from a recognised Institution.</p>
5.	Executive Engineer	<p>1. Degree in Civil Engineering from a</p>

6. Assistant Planner/ Assistant Town Planner/Personal- Assistant (Technical)	recognised Institution, University or an equivalent qualification.
	1. Degree or Post graduate Diploma in Town and Country Planning from a recognised
	OR
	Associate Membership of at least one of the following Institutions;
	(a) Institute of Town Planners (India). (b) American Institute of Town Planners. (c) Institute of Town Planners (London).
	OR
	Equivalent qualifications recognised by the Institute of Town Planners, India, London, American as an equivalent to its membership.
	Preferential
	Degree in Architecture or Civil - Engineering or an equivalent qualification.
	Preferential
	Degree in Architecture or Civil - Engineering or an equivalent qualification.
7. Assistant Architect:	1. Degree in architecture from a recognised Institution with special paper in Town Planning or an equivalent qualification.
	Preferential
	Persons with professional experience in the field of architecture and Town Planning will be preferred.
8. Assistant Engineer:	1. Degree in Civil Engineering from a recognised Institution or an equivalent Qualification or A.M.I.E.(India) (Section ''A'' and ''B'' Passed).
9. Assistant Sociologist:	1. M.A. in Sociology or Social Works First Class or High Second Class with two years practical experience in Social Works.

Note: High Second Class will be above 55 percent marks in aggregate.

27. A combined reading of Rules shows that the strength of service of each category of posts shall be determined by the Government from time to time. However, unless it is varied the strength shall be as specified in Appendix "A" of the Rules. The reading of Appendix A" shows that there are only two posts of Executive Engineers.

28. Submission of the petitioner's counsel is that the cadre of Executive Engineer consists of only two posts and hence no reservation can be provided by roaster for Scheduled Caste candidate. However, learned Senior counsel for the respondents vehemently argued that the cadre shall include the combined post of Senior Architect, Executive Engineer, Town Planner/Associate Town Planner as stated in the subsequent counter affidavit filed by the State. It is settled law that while interpreting the statutory provisions, the statutes should be read as a whole and not in piece meal. Every Section, every line and every Clause should be read together to find out the intent of legislature.

29. In [District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another](#), Hon'ble Supreme court has held that function of the court is only to expound the law and not to legislate. A statute has to be construed according to the intent of them and make it the duty of the court to act upon the true intention of the legislature. If a statutory provision is open to more than one interpretation, the court has to choose the interpretation which represents the true intention of the legislature.

30. In [Dadi Jagannadham Vs. Jammulu Ramulu and Others](#), Hon'ble Supreme Court held that while interpreting a statute the court must start with the presumption that legislature did not make any mistake and must interpret so as to carry out the oblivious intention of legislature, it must not correct or make up a deficiency, neither add nor read into a provision which are not there particularly when literal reading leads to an intelligent result.

31. In Krishna v. state of Maharashtra (2001) 2 SCC 441: Hon'ble Supreme court has held that, in absence of clear words indicating legislature intent, it is open to the court, when interpreting any provision, to read with other provision of the same statute.

32. In [Grasim Industries Ltd. Vs. Collector of Customs, Bombay](#) : Hon'ble Supreme Court held that while interpreting any word a statute should not be ignored and every word and provision should be looked at generally and in the context in which it is used and not in isolation.

33. In [Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore](#), Hon'ble Supreme Court held that where language is clear, court can not abstain from giving it effect to it merely because it would lead to some hardship.

34. In [Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda](#), Hon'ble Supreme Court held that statute to be read in entirety and purport and object of Act to be given its full effect by applying principle of purposive construction.

35. In [A.N. Roy, Commissioner of Police and Another Vs. Suresh Sham Singh](#), Hon'ble Supreme Court held that court can not enlarge the scope of the legislation

or intention, when the language is plane and unambiguous court should avoid a construction which would reduce the legislation futility.

36. In Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others, While interpreting a statute the entire statute must be first read as a whole then section by section, clause by clause, phrase by phrase and word by word the relevant provision of statute must thus read harmoniously.

37. In view of above, the provisions contained in the Rules (supra) cannot be read in piece-meal. The combined reading of Rules 4, 5, 16, 17, 18, 24, shows that the post of Senior Planner, Town Planner, Architect Planner, Executive Engineer, Senior Architect constitute a different category or cadre. Merely because the salary of the Architect Planner, Senior Architect and Executive Engineer are the same it may not be held that they constitute the same Cadre. The contention of the learned Counsel for the respondents except that the post of Senior Planner, Town Planner, Architect Planner, Senior Architect and executive Engineer should be clubbed as one cadre seems to be not correct interpretation of the Rules. More so when the salary of the Senior Planner is different than that of Town Planner/Associate Planner.

38. Even in the matter of direct recruitment for these posts under Rule 5, the eligibility criteria is different from each other. For the post of Executive Engineer though the promotion may be done from permanent Assistant Planner, Permanent Planner and Assistant Engineer but the qualification should be as given in the Appendix "B". Appendix "B" shows that the qualification for Executive Engineer shall be degree in civil engineering from a recognised Institution/ University or in equivalent qualification, whereas the qualification that the Town Planner, Senior Architect, Architect Planner are degree post degree in Town and Country Planning from a recognised with three years experience. Degree in Architecture, degree or post graduate, country planner respectively.

39. Apart from qualification the nature and duty of Executive Engineer and other discrepancies are entirely different. The Architect or Architect Planner possess the qualification which is not equivalent to the post of Executive Engineer.

40. Accordingly, the combined reading of the Rules shows that the post of Executive Engineer is found to be a separate category or cadre. The interpretation of Rules in such manner seems to be supplemented by the Government Order issued from time to time. The seniority list circulated vide office memorandum dated 09.05.1999 (Annexure No. RA-2) speaks with regard to two posts of the Executive Engineer.

41. The G.O. of June 1970 filed as Annexure No. RA-3 to the rejoinder affidavit shows that with effect from order issued for various posts mentioned in Appendix I has been declared to be a separate cadre. The list attached with the office memorandum shows that the post of the Executive Engineer(Technical) which was one in number at that time has been treated to constitute a separate cadre alongwith other posts.

42. The letter written by the Chief Town Planner (rejoinder affidavit) reveals that the posts of the Senior Architect, Town Planner, Architect Planner, Executive Engineer and Senior Planner have been held to be constituting different cadre. Similarly, five posts in the scale of Rs. 3000-4500, the Executive Engineer constitutes a different cadre.

43. The State Government through the official letter dated 07.06.2001 (Annexure No. RA-5) while directing the authority to fill up the back-log of reserved quota have also treated the posts of Executive Engineer as of different cadre.

44. Shri Prashant Chandra, learned Senior Counsel appearing for the respondents submitted that there is no reservation on the basis of economic planning Varishtha Vastuvid, Vastuvid Niyojak only because they are part and partial of the cadre of the Executive Engineer. Arguments seems to be misconceived. The State has not provided reservation because these posts are clubbed with the cadre of the Executive Engineer but because they constitute a separate cadre where the strength of cadre is of single post and in view of settled provisions of law, no reservation can be provided.

45. With regard to equivalence of post, Hon"ble Supreme Court in the case reported in [Union of India \(UOI\) and Another Vs. P.K. Roy and Others](#), recognised four factors determinative to ascertain the equivalence to post as follows:

1. Nature and duties of post.
2. Responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibility discharged.
3. The minimum qualifications, if any, prescribed for recruitment to the post.
4. Salary of the post.

Hon"ble Supreme Court further held that salary of the post alone may not be determining factor but other three criterion should also be fulfilled.

46. Hon"ble Supreme Court again reiterated the aforesaid principle in the case reported in [State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others](#), and AIR 1996 SC 1200: Vice-Chancellor L.N. Mithila University. v. Dayanand Jha and held that equal status and responsibility have to be taken into consideration for equivalence of the post.

Same view has been affirmed in the case of [S.I. Rooplal and Another Vs. Lt. Governor Through Chief Secretary, Delhi and Others](#),

47. In a case reported in [State of Punjab Vs. Joginder Singh](#), by a majority Constitution Bench of Hon"ble Supreme Court held that the employees doing the same work but under different conditions of service and method of recruitment with different machinery may be treated as distinct service. The provincialised and State

cadre created under the respective rules were held to be different service as the State Cadre in the case before the Hon"ble Supreme Court was borne on a devisionalist, while under the rules, the inter se seniority and promotion of "provincialised" teachers was determined districtwise (paras 21, 22 and 23).

48. In [State of Rajasthan and Another Vs. Shantilal Jain and Others](#), their Lordships of Hon"ble Supreme Court relied upon the judgments reported in [Kishori Mohanlal Bakshi Vs. Union of India, Reserve Bank of India Vs. N.C. Paliwal and Others](#), Reserve Bank of India v. N.C. Paliwal and held that it falls within the domain of the Government to bifurcate or unify a cadre. The creation of cadre in service of the State is a matter which should be left entirely to the government.

49. In a case reported in [Ran Singh Malik Vs. State of Haryana and Others](#), Hon"ble Supreme Court held that where rule does not define the cadre and also does not indicate as to which post would be parent in the cadre, then in such a situation the normal connotation would apply and ordinarily a cadre means the strength of service or the part of service so determined by the government constituting the post therein. It shall be appropriate to reproduce the relevant portion from the case of Ran Singh Malik(supra), to quote:

7. ...The aforesaid rule nowhere defined the cadre or indicated as to which post would be borne in the cadre. In the absence of such definition of cadre in the Rule, the normal connotation would apply, and therefore, a cadre would ordinarily mean the strength of a service or a part of the service so determined by the Government constituting the post therein. Usually if the employer decides to create any ex cadre post which may be necessary for any specialised scheme in keeping with the qualification of the personnel required to man that post, it is so indicated in the order of creation of the post....

50. In [R.K. Sethi and another Vs. Oil and Natural Gas Commission and others](#), their Lordships of Hon"ble Supreme Court held that formation of centralised and regional cadre is justified and direction issued by the High Court for constitution of one centralised cadre was held to be illegal and set aside.

51. In a landmark judgment, reported in [E.P. Royappa Vs. State of Tamil Nadu and Another](#), Hon"ble supreme Court held that the State Government cannot ordinarily create equivalence by saying that a particular non-cadre post, whatever be the nature and responsibilities of the functions and duties attached to it, shall be in the rank or grade of any cadre post it likes. Assessment should be made objectively while deciding such issue. To reproduce relevant portion from the case of R.P. Royappa (supra), to quote:

83. ...The State Government cannot artificially create equivalence by saying that a particular non-Cadre post, whatever be the nature and responsibilities of the functions and duties attached to it, shall be in the rank or grade of any Cadre post it likes. The State Government has to apply its mind and make an objective

assessment of the nature and responsibilities of the functions and duties and determine which is the Cadre post to which such non-Cadre post can be regarded as equivalent in status and responsibility and then only it can make a declaration of equivalence.

In R.P. Royappa(supra), Hon"ble Justice Bhatwati on behalf of the Court while concurring with the judgment of Hon"ble Chief Justice Ray observed that principle ensuring the equality of opportunity in public employment is vital for building up of the new classes egalitarian society envisaged in the Constitution. Article 14 is the genes while Article 16 is a species. To produce relevant portion, to quote:

85. ...In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of "equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

52. Shri Prashant Chandra, learned Senior counsel for the respondents had relied upon the case of [Director, Lift Irrigation Corporation Ltd. and Others Vs. Pravat Kiran Mohanty and Others](#), to submit that all the posts constitute one cadre, hence there should be reservation. In the case of Pravat Kiran Mohanty (Supra) a decision was taken to amalgamate existing cadres by reorganizing two cadres as a policy decision. The Hon"ble Supreme Court held that the decision taken as a policy matter

to meet the exigency of service is not open to judicial review unless it is activated by arbitrariness or malafide. The case seems to be not applicable under the facts of the present case. The reliance has also been placed on the case of S.B. Bhattacharjee Vs. S.D. Majumdar and Others, but it also seems to have got no relevant with regard to the present context. Similarly, the case of K. Samantaray Vs. National Insurance Co. Ltd., also relates to promotional matter and their Lordships had held that no one has right to claim promotion but only a right to be considered for promotion.

53. Similarly, the case of Union of India Vs. K.V. Jankiraman, etc. etc., relates to a matter with regard to the applicability of sealed cover procedure and not with regard to interpretation of cadre of reservation policy.

54. In view of above, there appears to be no doubt that the post of the Executive Engineer constitutes a separate and independent cadre.

55. Much emphasis has been given by the learned Counsel for the respondents with regard to transfer of certain officers from one wing to other wing in a Town and Planning section. The attention was not invited towards any order where the promotion has been done on the post of the Executive Engineer of the person holding other post. Otherwise also Article 14 of the Constitution is a positive concept and in case some illegality has been done for any reason whatsoever by the State Government, it shall not create a precedence and the illegality committed by the State if any cannot be taken into account to record a finding contrary to service Rules and the Government orders (Supra).

56. While filing the counter affidavit as well as while passing the impugned order, it is evident that the State itself has taken the stand that there are only two posts of Executive Engineer but later on it changed the stand which seems to be highly arbitrary. The validity of an order should be looked into from the grounds enumerated therein and neither it can be supplemented nor it can be assailed by the supplementary affidavit, vide Constitution Bench case reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, Learned Counsel for the respondents had tried to distinguish the judgment of Mohinder Singh Gill (Supra) relying upon a recent judgment of the Hon"ble Supreme Court reported in 2010 (10) SCC 614. Chairman of India Recruitment Board and Ors. v. K. Shyam Kumar. In the case of K. Shyam Kumar (Supra) their Lordship while interpreting the judgment observed that in case some relevant material came to light at later stage like vigilance report, it can be looked into in support of the order impugned. However, there appears no material on record which may create a ground to interpret the Rules otherwise. Only in larger public interest and finding out of a material like vigilance report which could not be discussed while passing an order may be taken into account to supplement the order passed by the Government or its" instrumentality to support the decision taken but that too subject to fundamental rights guaranteed by the Constitution of India.

57. It has not been disputed that in the case of Dharm Pal Singh Chauhan (supra) decided by the Division Bench of this Court of which one of us was member (Justice Devi Prasad Singh), it has been held that in the event of conflict between the roster and quota of reservation, the later shall prevail. The finding recorded in Para 121 of the judgment of Dharam Pal Singh Chauhan (supra) is reproduced as under:

CONCLUSION

121. Subject to above, we record our finding as under:

(1) In the event of conflict between the quota of reservation and roster, the former shall prevail over the later, as held by Hon'ble Supreme Court in the case of R.S. Garg (supra). While applying quota for reservation and roster, the State have to confine the outer limit of reservation provided by 1994 Act for SC, ST and OBC category.

(2) The extent of reservation provided by Sub-section 1 of Section 3 of 1994 Act, is mandatory. In the matter of promotion or recruitment reservation cannot exceed the outer limit of 21%, 2% and 27% for SC, ST and OBC.

(3) Under the garb of Sub-section (5) while applying roster or Sub-section (7) of Section 3 of 1994 Act, the State cannot travel beyond the outer limit of reservation provided by Sub-section (1) of Section 3 of 1994 Act. Meaning thereby, even while applying roster for SC, ST or OBC, the outer limit of 21%, 2% or 27% should be adhered to.

(4) The outer limit of 50% provided by Article 16(4B) of the Constitution or by Hon'ble Supreme Court right from M.R. Balaji's case (supra) till date, includes the reservation for all the categories or classes of employees. In case reservation is provided only for one category like in the present case, 21% to SC category, then it does not mean that State has right to enhance reservation upto 50% suo motu exceeding the statutory quota provided by the Act and statute. 50% rider is the outer limit permissible for all categories and in case under the Act or statutes lesser percentage of reservation has been provided to any class, then that will be the outer limit for the respective classes as in the present case, reservation for SC is 21% and it cannot be enhanced to 50%.

(5) While exercising power for purpose of reservation keeping in view the law laid down by the Hon'ble Supreme Court in M. Nagraj's case (supra) to find out the backwardness or inadequacy of representation keeping in view the necessity and efficiency provided by Article 335 of the Constitution, the Government cannot travel beyond the outer limit of quota provided under Sub-section (1) of Section 3 of 1994 Act for SC, ST and OBC i.e., 21%, 2% and 27% respectively in the matter of promotion.

(6) Any reservation made exceeding the outer limit provided under the 1994 Act or the statutes, shall be deemed to be excessive reservation and the reservation so

made, may be struck down by the court as it would amount to derogation of constitutional requirement as held in M. Nagraj's case. (supra).

In the present case since the sanctioned strength of the post of Engineer-in-Chief is two and the quota of scheduled caste is 21% under Sub-section (1) of Section 3 of the 1994 Act, one out of two posts cannot be reserved for scheduled caste.

122. Subject to findings recorded hereinabove, the writ petition deserves to be allowed.

Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the order dated 27.8.2008 contained in Annexure No. 1 to the writ petition. A writ in the nature of mandamus is issued directing the opposite parties to proceed while filling the post/vacancies in question, in the light of observations made in the present judgment. No orders as to costs.

58. The aforesaid proposition of law has been reiterated by Anr. Division Bench of this Court in a case reported in 2009(4) ALJ 326 Vishwajeet Singh and Ors. v. State of U.P.

59. The percentage of reservation for Scheduled Caste was subject matter of dispute before a Full Bench decided vide order dated 09.07.2010 in Writ Petition No. 51617 (S/B) of 2009. Hira Lal v. State of U.P. which ratio of division Bench judgment (supra) has been affirmed.

60. Shri Prashant Chandra, learned Senior counsel for the respondents tried to submit that the judgment of Dharam Pal Singh Chauhan (Supra) and other cases shall not be applicable being prospective in nature. Submission of the learned Senior counsel seems to be not correct. When the court interprets the statutory provisions and declares law, it will have a retrospective effect and shall be deemed to be in operation for all time. The law declared by the Hon'ble Supreme Court shall be prospective only in a case it is made specifically prospective by the court itself.

61. In the case of [Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others](#), their Lordships had held that the law laid down by the High Court and Hon'ble Supreme Court will have retrospective operation unless made prospective. In the case of [M.A. Murthy Vs. State of Karnataka and Others](#), the Hon'ble Supreme Court again reiterated the aforesaid proposition of law and held that what is enunciated by the Supreme Court is a law from inception. The thing would be different in the case of High Court and the Supreme Court declares itself the law with prospective application. The appropriate portion of the judgment is as under:

8. The learned Counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed

that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *L.C. Golak Nath v. State of Punjab*. In *Managing Director, ECIL v. B. Karunakar*, the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta v. State of U.P. and Baburam V C.C. Jacob*). It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs.

62 Again in the case of *P.V. George and Others Vs. State of Kerala and Others*, the Hon'ble Supreme Court ruled that it is for the Court to declare a law to have a prospective effect otherwise it shall be retrospective.

63. In view of above, the submission of Shri S.K. Kalia, learned Senior counsels for the petitioner seems to be correct and the law declared by this Court in the case of *Dharam Pal Singh Chauhan* (supra) and other cases (Supra) shall have binding effect.

64. As held herein-above, since there are only two posts of the cadre of the Executive Engineer, it cannot be filled up by reservation from the Scheduled Caste candidate and the post should be filled up without providing any reservation. Since while passing interim order on 01.06.2001, the respondents were permitted to make appointment through reservation subject to order of Court, the appointment of the respondent No. 3 does not attain finality liable to set aside.

65. Before parting with the case, we record our displeasure with regard to action of the State Government changing the stand while filing supplementary counter affidavit than what is pleaded/stated in the impugned order as well as in the original counter affidavit as discussed (Supra) whereby the stand has been taken that there are two posts of the Executive Engineer, out of which one post may be reserved for the Scheduled Caste candidate by applying roaster. After lapse of eight years and after the judgment of *Dharam Pal Singh Chauhan* and other cases (Supra), the State had changed its" stand with the assertion that the post of the Executive Engineer does not constitute a separate cadre and it is part of combined cadre consisting 23

posts which seem to be incorrect as discussed above. Such action on the part of the State Government /Authority is deprecated. It is fit case where because of such action on the part of the State Government in communicating the false and misleading fact the Court costs may impose costs.

66. More precisely, it is noted that State while changing its stand while filing supplementary counter affidavit dated 31.3.2010, State had not taken care that its own original record, Government orders, circulars filed with the rejoinder affidavit at the face of records, reveal that cadre of Executive Engineer is a separate cadre consisting two posts. Thus, affidavit filed on behalf of the State, seems to be false and against its own record. State authority has tried to conceal material fact while filing supplementary counter affidavit. The writ petition deserves exemplary costs.

67. In view of above the writ petition is allowed with costs. Writ in the nature of certiorari is issued quashing the impugned order dated 05.05.2001 (Annexure No. 1) and the order dated 11.06.2001 (Annexure No. 14) with consequential benefit. Costs of Rs. 1,00000/- (Rs. One Lac Only) is imposed which shall be deposited in this Court within one month, out of which it shall be open to the petitioner to withdraw only Rs. 50,000/- (Rs. Fifty Thousand only) and rest Rs. 50,000/- (Rs. Fifty Thousand Only) shall be remitted to the Mediation Centre, Lucknow. It shall be open to the Chief Secretary, U.P. Government, Lucknow to recover the costs from the person who are responsible in filing false affidavit and changing of stand by concealment of facts.

68. A writ in the nature of mandamus is also be issued commanding the respondents to hold fresh selection of the post of the Executive Engineer in accordance with Rules keeping in view the observations made in the body of the judgment expeditiously preferably within two months from the date of receipt of certified copy of this order.