



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 233 of 2026

Bhavna Yadav And 6 Others

.....Appellant(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt.
Appointment And Personnel Lko. And 2 Others

.....Respondent(s)

Counsel for Appellant(s) : Navneet Yadav, Aahuti Agarwal,
Abhishek Khare, Mohd. Yasir
Counsel for Respondent(s) : C.S.C., Raj Kumar Upadhyaya
(R.K.Upadhyaya)

Court No. - 1

**HON'BLE RAJAN ROY, J.
HON'BLE MANJIVE SHUKLA, J.**

1. Heard learned counsel appearing on behalf of the parties.
2. This is an appeal filed by the appellant-petitioners wherein challenge has been raised against judgment and order dated 01.05.2026 passed in Writ-A No. 4502 of 2026. The said judgment reads as under:-

"Heard learned counsel for the petitioner as well as learned Standing Counsel for respondent no. 1 and 2 and Shri R.K. Upadhyaya, learned counsel for respondent no. 3.

Shri R.K. Upadhyaya, learned counsel appearing for respondent no. 3/Uttar Pradesh Public Service Commission, has raised a preliminary objection regarding the maintainability of the present writ petition. He submits that the grievance of the petitioner is against Condition No. 10 at page 61 of Annexure No. 2, which forms part of the advertisement dated 22.12.2025. It is pointed out that as per the said advertisement, the selection process for the post in question is to be conducted in two stages, namely, a written examination (preliminary) and an interview. Clause 10 specifically provides for adjustment of candidates belonging to reserved categories against unreserved vacancies at the stage of final selection, subject to the condition that such candidates have not availed any concession or relaxation in the qualifying standards at the stage of the screening examination (preliminary).

Learned counsel for respondent no. 3 submits that the preliminary examination itself has not yet been conducted. In such circumstances, it is contended that no

cause of action has accrued to the petitioner at this stage. The apprehension expressed by the petitioner that any adverse action may be taken against him is stated to be wholly premature and based on mere speculation. It is further submitted that even the admit card for the preliminary examination has not yet been issued, and therefore, the challenge raised in the present writ petition is not only premature but also misconceived. On these grounds, it is urged that the writ petition is liable to be dismissed with exemplary costs.

The Court has perused the record and considered the submissions advanced on behalf of the parties.

Upon due consideration, this Court finds that the challenge raised by the petitioner is at a stage where the selection process has not even commenced in its entirety, inasmuch as the preliminary examination is yet to be held. The grievance of the petitioner is founded on a contingency which may or may not arise in future. It is well settled that a writ petition cannot be entertained on the basis of mere apprehension, in the absence of an accrued cause of action.

In the facts of the present case, this Court is of the considered opinion that the writ petition is premature and devoid of merit, as no actionable cause has arisen so far. The petition, therefore, appears to be misconceived and not maintainable at this stage.

Accordingly, the writ petition is dismissed.

However, it is observed that in the event any cause of action arises in future, it shall be open to the petitioner to approach this Court in accordance with law."

3. The aforementioned writ petition had been filed by the appellant-petitioners seeking the following relief(s):-

"(a) Issue a writ, order, or direction in the nature of certiorari quashing the notification/ office memorandum No. 343/20/1/S-10ANPARI/2019-20 dated 09.01.2020 (Annexure No. 1) in the interest of justice;

(b) Issue a writ, order or direction in the nature of Certiorari quashing Clause/Paragraph 10 in important instructions of Advertisement No. D-6/E-1/2025 dated 22.12.2025 (Annexure No.2) to the extent it provides that candidates belonging to reserved categories shall be adjusted against the unreserved (open) category only at the stage of final selection, as being arbitrary, unconstitutional, contrary to the U.P. Public Services (Reservation for SC, ST & OBC) Act, 1994, and violative of Articles 14 and 16 of the Constitution of India;

(c) Issue a writ, order or direction in the nature of Mandamus commanding the Respondents to conduct the recruitment process strictly in accordance with the

constitutional scheme of reservation and the law laid down by the Hon'ble Supreme Court, by treating all candidates who secure marks equal to or above the unreserved category cut-off as part of the unreserved (open) category at the stage where merit is first determined, including the stage of shortlisting/screening after written examination."

4. As is evident from the relief clause the notification dated 09.01.2020, by which the Commission decided that migration from the Reserved category to the Unreserved/Open category based on the marks secured on merit will be done only at the stage of final selection and not at the preliminary stage. This notification was under challenge. The other challenge was to the advertisement dated 22.12.2025 wherein similar stipulation, as is contained in the notification dated 09.01.2020, was incorporated at Item No. 10. The other relief sought was to hold this recruitment strictly in accordance with the constitutional scheme of reservation and to treat the Reserved category candidates who secured equal or more marks, as an Unreserved / Open category candidate.

5. The appellant-petitioners filled the form for being considered for recruitment to the post which were advertised by the Commission vide impugned advertisement dated 22.12.2025 but before appearing in the selection, they filed the aforementioned Writ-A No. 4502 of 2026 seeking the aforesaid reliefs.

6. The learned Single Judge has dismissed the writ petition on the ground that at that stage, the appellant-petitioners did not have any right to challenge the aforesaid notification / advertisement and that the petition was pre-mature, as, it was still a contingency whether such a situation, as has been alleged in the writ petition, would arise or not. The writ petition according to learned Single Judge was based merely on apprehension, however, while dismissing it on the ground that it is pre-mature, he also observed that it was devoid of merit, as no actionable cause has arisen.

7. With respect, we find the reasoning given by the Writ Court as erroneous in law. The very notification dated 09.01.2020 and the advertisement containing Item No. 10 clearly prohibiting, treatment of a Reserved candidate as an Open category at the preliminary stage and allowing the same only at the final stage, were specifically under

challenge. There was already a decision by the Commission to that effect, therefore, obviously, the recruitment would be held in terms of the stipulation contained in the office order dated 09.01.2020 and Item No. 10 of the advertisement. There could be no presumption that contrary to its own decision and advertisement, the Commission would hold the selection otherwise. The conditions of recruitment could be challenged if they were contrary to law and the Constitution. We are of the considered opinion that the appellants-petitioners' approached the Writ Court at the right time, before the selection had actually commenced in the sense that before the examinations took place, as, this would avoid complications in future.

8. We wanted to dispose of the the appeal and remand the matter back to the learned Writ Court for consideration on merits, however, on being asked, learned counsel appearing for the Commission stated that he would like to file counter affidavit in the matter, therefore, we entertain the appeal and keep the matter pending.

9. Prima facie, the decision dated 09.01.2020 and condition number 10 of the advertisement dated 22.12.2025 is against the constitutional principles / scheme, as it can lead to a situation such as the one occurred in another Special Appeal No. 200 of 2026 as would be evident from the order passed therein on 08.05.2026. The said order dated 08.05.2026 reads as under:-

"1. Counter affidavit, as also, application for dismissal of the appeal, filed on behalf of Opposite Party No. 5, are taken on record.

2. Heard learned counsel appearing on behalf of the parties.

3. It has been informed on behalf of the Commission that 25 candidates of the Unreserved category had secured lesser marks than the petitioners who had applied under the O.B.C. category for selection and appointment as Review Officer / Assistant Review Officer in various departments of the State Government for which the recruitment was undertaken by the Commission. In spite of having secured lesser marks, they have been permitted to appear in main examination but appellants have not been so permitted. Learned Senior Counsel appearing for the Commission has also fairly submitted that the question of relaxation of concession, if any, granted to the petitioners, all of whom belong to the Reserved category, is not relevant for the preliminary test / shortlisting stage but is relevant only at the final selection stage. The appellants' Counsel informs that except for

one of the appellant's, no other appellant has claimed any relaxation of concession as a Reserved candidate. He relies on **Jitendra Kumar Singh & Another Vs. State of U.P. & others**, passed in **Civil Appeal No. 74 of 2010 [Arising out of Special Leave Petition (C) No. 1952 of 2008]** to contend that even such relaxation / concession would not be very relevant to the issues involved.

4. On the one hand the learned Senior Counsel appearing for the Commission says that reservation is not being applied at the preliminary examination / shortlisting stage and on the other hand he says that the candidates were divided into respective categories i.e. Reserved and Unreserved, and based on the marks secured by them in the preliminary exam / shortlisting as Reserved or Unreserved candidates, they were permitted to appear in the main examination based on the cut off marks prescribed for Reserved and Unreserved candidates, which is apparently incongruous. If reservation was applied at the preliminary stage, then the Reserved candidate who secured a higher mark than the Unreserved category candidate, was entitled to be treated as Unreserved category candidate even at the stage of preliminary examination and shortlisting and should have been allowed to appear in the main examination, if he was otherwise eligible, as, any other understanding of the matter, prima facie, would mean that a Reserved candidate securing higher merit would be excluded from the very zone of consideration for selection and appointment to the post of Review Officer / Assistant Review Officer, which would apparently be violative of Article 16(1) and 14 of the Constitution of India. Moreover, in the same vein, the learned Senior Counsel stated that reservation is not being applied at the preliminary examination / shortlisting stage, though, candidates are being considered groupwise i.e. whether they are Reserved or Unreserved. Apart from the fact that this is incongruous on the face of it, even if it is accepted for a moment that reservation is not being applied at the preliminary / shortlisting stage, then, one fails to understand as to how the petitioner could be ousted by treating him as an Unreserved candidate based on the cut off marks for such category if he has secured more marks than other candidates, because in such a situation all the candidates would be treated as of Unreserved category and on the basis of merit they would be called for main examination.

5. In the case at hand, the appellants even after having secured more marks than the Unreserved category in the preliminary test which is for shortlisting, have not been allowed to appear in the mains examination on the ground that they did not cross the cut off marks prescribed for Reserved O.B.C. category candidates, meaning thereby, though they have secured more marks than the Unreserved category candidates, they have been denied opportunity to appear in the main examination only on the ground that for the O.B.C. category, the cut off mark was higher and they could not secure the same.

6. If this is permitted, prima facie, then such Reserved persons even after securing

more marks than the Unreserved category would not be allowed to appear in the main examination and would be ousted at the preliminary stage itself. This would be in violation of the law declared by Hon'ble the Supreme Court and if there is any Rule contrary to the aforesaid legal position, then it is susceptible to being struck down or ignored. We may in this context refer to the decisions of Hon'ble the Supreme Court in the case of **Indra Sawhney Vs. Union of India** reported in **1992 Suppl. 3 SCC 217**; **R.K. Sabarwal Vs. State of Punjab** reported in **(1995) 2 SCC 745**, as also, the observations in Paragraph No. 26 of the decision in **Saurabh Yadav Vs. State of U.P.**, reported in **(2021) 4 SCC 542** in the context of vertical and horizontal reservation.

7. The rule position which is being relied by learned counsel for the Commission is in the teeth of the very decision of Hon'ble the Supreme Court cited by the learned Senior Counsel appearing for the Commission, in the case of *Jitendra Kumar Singh (Supra)*.

8. Moreover, the learned Single Judge while rejecting the interim relief has proceeded on the premise that the petitioner did not disclose as to whether any relaxation was granted to him as a Reserved category candidate or not, which according to him was essential, whereas, the learned Senior Counsel has stated before us that this question of relaxation would be relevant only at the final stage, therefore, the learned Single Judge has obviously considered an irrelevant aspect of the matter to dismiss the interim relief application.

9. As regards the other issues, we have expressed a *prima facie*, opinion as aforesaid and are of the *prima facie* opinion that there has been violation of Article 16(1) read with Article 14 of the Constitution of India.

10. As regards maintainability of this appeal, in a matter where there are fundamental defects in the selection process in the application of reservation and violation of the fundamental right of fair and equal treatment in the matter of Public employment under Article 16(1) read with Article 14 of the Constitution of India is involved and if the selection is allowed to proceed without interference resulting in complications or a *fait accompli*, then in exceptional circumstances, the Writ Court can and should interfere at the interim stage, as otherwise, further complications will arise. We are, therefore, *prima facie*, of the opinion that this was a case where interference should have been made at the interim stage.

11. We, accordingly, entertain this appeal and further provide that the selection and appointment shall remain in abeyance till the next date of listing, however, those who have already joined, they shall remain unaffected by this order.

12. List/Put up this case on Tuesday i.e. on 12.05.2026, as first case of the day."

10. On 12.05.2026, the aforesaid Special Appeal was disposed of in

the following terms:-

1. Heard Sri Alok Mishra, learned counsel for the appellants, Sri R.K. Raizada, learned Senior Counsel assisted by Sri Ravi Shanker Tewari & Sri Raj Kumar Upadhyay, learned counsel for the Commission-recruiting body and Ms. Isha Mittal, learned Addl. C.S.C. for the State.

2. This is an appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against the orders dated 01.02.2026 and 16.03.2026 passed in Writ-A No.1182 of 2026 [Vivek Yadav & Ors. vs. State of U.P. & Ors.].

3. We had passed a detailed interim order on 08.05.2026 which reads as under:-

"1. Counter affidavit, as also, application for dismissal of the appeal, filed on behalf of Opposite Party No. 5, are taken on record.

2. Heard learned counsel appearing on behalf of the parties.

3. It has been informed on behalf of the Commission that 25 candidates of the Unreserved category had secured lesser marks than the petitioners who had applied under the O.B.C. category for selection and appointment as Review Officer / Assistant Review Officer in various departments of the State Government for which the recruitment was undertaken by the Commission. In spite of having secured lesser marks, they have been permitted to appear in main examination but appellants have not been so permitted. Learned Senior Counsel appearing for the Commission has also fairly submitted that the question of relaxation of concession, if any, granted to the petitioners, all of whom belong to the Reserved category, is not relevant for the preliminary test / shortlisting stage but is relevant only at the final selection stage. The appellants' Counsel informs that except for one of the appellant's, no other appellant has claimed any relaxation of concession as a Reserved candidate. He relies on *Jitendra Kumar Singh & Another Vs. State of U.P. & others*, passed in Civil Appeal No. 74 of 2010 [Arising out of Special Leave Petition (C) No. 1952 of 2008] to contend that even such relaxation / concession would not be very relevant to the issues involved.

4. On the one hand the learned Senior Counsel appearing for the Commission says that reservation is not being applied at the preliminary examination / shortlisting stage and on the other hand he says that the candidates were divided into respective categories i.e. Reserved and Unreserved, and based on the marks secured by them in the preliminary exam / shortlisting as Reserved or

Unreserved candidates, they were permitted to appear in the main examination based on the cut off marks prescribed for Reserved and Unreserved candidates, which is apparently incongruous. If reservation was applied at the preliminary stage, then the Reserved candidate who secured a higher mark than the Unreserved category candidate, was entitled to be treated as Unreserved category candidate even at the stage of preliminary examination and shortlisting and should have been allowed to appear in the main examination, if he was otherwise eligible, as, any other understanding of the matter, prima facie, would mean that a Reserved candidate securing higher merit would be excluded from the very zone of consideration for selection and appointment to the post of Review Officer / Assistant Review Officer, which would apparently be violative of Article 16(1) and 14 of the Constitution of India. Moreover, in the same vein, the learned Senior Counsel stated that reservation is not being applied at the preliminary examination / shortlisting stage, though, candidates are being considered groupwise i.e. whether they are Reserved or Unreserved. Apart from the fact that this is incongruous on the face of it, even if it is accepted for a moment that reservation is not being applied at the preliminary / shortlisting stage, then, one fails to understand as to how the petitioner could be ousted by treating him as an Unreserved candidate based on the cut off marks for such category if he has secured more marks than other candidates, because in such a situation all the candidates would be treated as of Unreserved category and on the basis of merit they would be called for main examination.

5. In the case at hand, the appellants even after having secured more marks than the Unreserved category in the preliminary test which is for shortlisting, have not been allowed to appear in the mains examination on the ground that they did not cross the cut off marks prescribed for Reserved O.B.C. category candidates, meaning thereby, though they have secured more marks than the Unreserved category candidates, they have been denied opportunity to appear in the main examination only on the ground that for the O.B.C. category, the cut off mark was higher and they could not secure the same.

6. If this is permitted, prima facie, then such Reserved persons even after securing more marks than the Unreserved category would not be allowed to appear in the main examination and would be ousted at the preliminary stage itself. This would be in violation of the law

declared by Hon'ble the Supreme Court and if there is any Rule contrary to the aforesaid legal position, then it is susceptible to being struck down or ignored. We may in this context refer to the decisions of Hon'ble the Supreme Court in the case of Indra Sawhney Vs. Union of India reported in 1992 Suppl. 3 SCC 217; R.K. Sabarwal Vs. State of Punjab reported in (1995) 2 SCC 745, as also, the observations in Paragraph No. 26 of the decision in Saurabh Yadav Vs. State of U.P., reported in (2021) 4 SCC 542 in the context of vertical and horizontal reservation.

7. The rule position which is being relied by learned counsel for the Commission is in the teeth of the very decision of Hon'ble the Supreme Court cited by the learned Senior Counsel appearing for the Commission, in the case of Jitendra Kumar Singh (Supra).

8. Moreover, the learned Single Judge while rejecting the interim relief has proceeded on the premise that the petitioner did not disclose as to whether any relaxation was granted to him as a Reserved category candidate or not, which according to him was essential, whereas, the learned Senior Counsel has stated before us that this question of relaxation would be relevant only at the final stage, therefore, the learned Single Judge has obviously considered an irrelevant aspect of the matter to dismiss the interim relief application.

9. As regards the other issues, we have expressed a prima facie, opinion as aforesaid and are of the prima facie opinion that there has been violation of Article 16(1) read with Article 14 of the Constitution of India.

10. As regards maintainability of this appeal, in a matter where there are fundamental defects in the selection process in the application of reservation and violation of the fundamental right of fair and equal treatment in the matter of Public employment under Article 16(1) read with Article 14 of the Constitution of India is involved and if the selection is allowed to proceed without interference resulting in complications or a fait accompli, then in exceptional circumstances, the Writ Court can and should interfere at the interim stage, as otherwise, further complications will arise. We are, therefore, prima facie, of the opinion that this was a case where interference should have been made at the interim stage.

11. We, accordingly, entertain this appeal and further provide that the selection and appointment shall remain in abeyance till the next

date of listing, however, those who have already joined, they shall remain unaffected by this order.

12. List/Put up this case on Tuesday i.e. on 12.05.2026, as first case of the day."

*4. Today, for the first time, we have been informed about an order dated 17.04.2026 passed in Special Leave to Appeal (C) No(s).13460-13461/2026 '**Vivek Yadav & Ors. vs. State of U.P. & Ors.**' by learned counsel for the parties which has been filed after filing of this appeal before condonation of delay in filing the appeal. On being confronted, learned counsel for the parties also accepted the fact that in para no.4, Hon'ble the Supreme Court has allowed this High Court to proceed with the matter pending before it and pendency of the S.L.P. will not come in the way.*

*5. During argument a reference was also made to the judgment of Hon'ble the Supreme Court dated 19.12.2025 passed in Civil Appeal No.14112 of 2024 '**Rajasthan High Court & Anr. vs. Rajat Yadav & Ors.**' wherein a similar issue pertaining to shifting of candidates to open category at the preliminary examination stage was considered.*

6. After arguing the matter at some length, Sri R.K. Raizada, learned Senior Counsel submitted that whatever orders have been passed in this appeal on the last date i.e. 08.05.2026 may continue till disposal of the writ petition and the impugned order of learned Single Judge be set aside so that the writ petition be decided on merits at the earliest.

7. Learned counsel for the State also says that there would be no objections if this order is passed so that the writ petition itself be decided at the earliest.

8. In view of the aforesaid statement, we reiterate and confirm our order dated 08.05.2026 and for the reasons given by us as learned Single Judge committed an error in passing the impugned order, we set aside the same and further request the learned Single Judge to consider and dispose of the writ petition at the earliest. Till such disposal, the interim protection granted by us on 08.05.2026 in this appeal shall continue to operate in the writ petition.

*9. Accordingly, the appeal is **disposed of.** "*

11. Prima facie, although, the preliminary examination is for the purposes of shortlisting but the fact of the matter is that if a Reserved category candidate secures higher marks than the Unreserved category based on the cut-off marks prescribed for the said category but secures less marks than the cut-off for the Reserved category, as

has happened in the aforesaid Special Appeal No. 200 of 2026, then according to the Commission, the said Reserved category candidate would not be treated as Unreserved / Open category candidate, meaning thereby, he will not be permitted to appear in the main examination. This, prima facie, would amount to violation of the rights under Article 16(1) and it is difficult to accept, at least at this stage, that such a person even at the preliminary stage would not be considered as an Unreserved / Open category candidate and would be ousted from the further zone of consideration. This is all the more striking as an Unreserved candidate having secured less marks in the same examination would be allowed to appear in the main examination. In the aforesaid appeal, a situation arose where the cut-off mark for the O.B.C. candidate was higher than the cut-off mark for the Unreserved category. The application of the conditions would lead to such a situation which, even otherwise, is against the constitutional principles and decision of Hon'ble the Supreme Court.

12. We, accordingly, stay Condition No. 10 of the Advertisement and the decision dated 09.01.2020 till the next date of listing.

13. List/Put up this case on **26th May, 2026, as first case of the day.**

May 13, 2026
Lokesh Kumar

(Manjive Shukla,J.) (Rajan Roy,J.)