

employee to be retained on medical grounds, then authorities ceased with such matter are hide-bound in law to apply their mind to the request made and discuss medical ground and medical papers so as to find out to as to whether case falls in genuine and exceptional category cases or not as per Retention Policy.

14. It is true that the transfer policies are not to be enforced by Courts ordinarily but it is equally true that if the employer rolls out a transfer policy giving benefit of exceptional circumstances, it should honour to its own policy as it should not be a waste paper document. Authorities are expected to go by it as far as possible.

15. Very recently in the judgment, this Court in the case of **Jitendra Singh v. State of U.P and Another (Special Appeal No. 564 of 2024)** has held that when the government has framed transfer policy through government order, it is bound to follow the same, however, there may be exceptional circumstances where for the reasons to be recorded employee may take stand that transfer policy though laid down but provisions cannot be invoked in public interest or administrative exigency. The relevant portion of the judgment is reproduced hereunder:

“6. Learned Single Judge also erred in law when he held in the order that the transfer policy is only directory in nature and, therefore, it did not bind the officials who were passing the order impugned in the writ petition. We are of the view that when there is a Government Order/Transfer Policy of the State then there is a legitimate expectation of the employee that the advantages which flowed from the Government Order would be made applicable to that employee. Definitely as per the law laid down in A.L. Kalra (supra), a Government Order had a binding force on the Authority which had issued it and which was taking advantage of it.”

16. In the given facts and circumstances of this case, therefore, the Court considers it appropriate to remit the matter to the authority to reassess the medical papers of the petitioner in the matter of his request for benefit under the Retention Policy. The authority is also directed to consider the sympathetic request of the petitioner to be retained for another one year at his current police station if he undertakes before the competent respondent to retain him at Prayagraj itself to another year i.e. 2025-26.

17. Thus, this writ petition is disposed of with above observations and directions. In the circumstances the order dated 7.5.2025 transferring the petitioner from Prayagraj to Visakhapatnam impugned as annexure 7 to the petition is quashed.

18. The petition is accordingly disposed of.

(2025) 5 ILRA 500
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.05.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
 SHAMSHERY, J.**

Writ A No. 7118 of 2022
 With other connected cases

Neha Sharma & Ors. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Sri Alok Mishra, Sri Durvesh Kumar

Counsel for the Respondents:

Sri Rajeshwar Tripathi, C.S.C., Sri Awadhesh C. Srivastava, Addl. C.S.C., Brijesh Narayan, Mewa Lal Gupta, Brijendra

Mani, Ravi Prakash Singh, R.S. Umrao,
Standing Counsel

A. Practice & Procedure - Writ Petition - Non-joinder of necessary parties - If none of the selected candidates, who are likely to be affected, are impleaded even in a representative capacity, the writ petition is not maintainable. (Para 7)

B. Service Law - Reservation - Horizontal Reservation - Women candidates - Constitution of India, 1950 - Article 15(3), 16(1) & 16(6) - U.P. Public Services (Reservation for Women) Act, 1993 - Section 3(3) - In the instant case, the first set of petitioners were women belonging to the Economically Weaker Section (EWS), who claimed that the 20% horizontal reservation for women should be applied independently within the EWS quota, which comprised 902 seats (10% of the total 9027 seats advertised), thereby entitling them to 181 seats (20% of 902) reserved for women under the EWS category - State admitted that 722 seats for women under the Open Category and 181 seats for women under the Economically Weaker Section (EWS) were clubbed together, and a total of 903 seats were allotted to women. On this basis, the State claimed that the entire women's reservation in both categories was satisfied. However, the State could not point to any provision, order, or Government Order (G.O.) that allowed such clubbing. *Held* : Women's reservation must be applied independently and separately in each category. Because of this unlawful clubbing, only 34 women in the EWS quota actually benefited, instead of the 181 seats reserved for them. Court Held that the grievance raised by the first set of petitioners has merit. (Para 3, 4)

Allowed. (E-5)

(Delivered by Hon'ble Saurabh Shyam
Shamshery, J.)

1. In the present case there are two sets of petitioners, who have participated in a recruitment for the selection of Sub Inspector (Civil Police)/Platoon Commander PAC/FSSO Fire Service and remained unsuccessful, whereas selected candidates, after completing their training, are posted at their respective places. None of the likely affected selected candidates was made party respondent in present bunch of writ petitions, despite pending for last 3 years.

2. First set of petitioners are woman, who belongs to Economical Weaker Section and are claiming complete and independent 20 percent horizontal women reservation (181 seats) under total EWS reservation i.e. 10 percent vertical reservation of entire EWS quota (902 seats) out of of total (9027 seats) advertised. Details of Writ Petitions of first set are as follows:-

“Writ A No. 7118/2022 (Neha Sharma and 53 others)

Writ A No. 10654/2022 (Anjali Singh and another)

Writ A No. 11002/2022 (Richa Singh)

Writ A No. 11279/2022 (Km. Himanshi Chaudhary)

Writ A No. 18753/2022 (Sadhana Saraswat and another)”

3. The State has accepted that seats for woman horizontal reservation under Open Category (722) and seats from woman horizontal reservation under Economical Weaker Section Category (181) were clubbed together and in total 903 seats were allotted to woman and thus claimed that entire reservation of women in both said categories was satisfied.

4. During arguments respondent State was failed to show any provision, order or G.O. that instead of applying reservation for woman independently and separately under Open Category and EWS, they could club both reservations, which could lead a situation as in present case that only 34 women under EWS quota were benefited with horizontal reservation instead of 181 i.e. reserved seats, therefore, grievance of petitioners of first set has substance. Woman reservation in other categories was provided correctly. A chart provided by the State is mentioned herein after, which would make the position very explicit :-

S. No.	Category	Sub Inspector Civil Police	Platoon Commander PAC	FSSO Fire Service	Total	Horizontal Reservation Vacancy		
						DEF (2%)	Ex-SM (5%)	Female (20%)
1	OC	3613	194	11	3818	4770		
2	EWS	902	48	2	952		95	238
3	OBC	2437	131	6	2574		50	129
4	SC	1895	101	4	2000		40	150
5	ST	180	10	0	190		4	9
Total		9027	484	23	9534	389	476	1805

Vacancy position of Sub Inspector (Civil Police)

S. No.	Category	Sub Inspector Civil Police	Horizontal Reservation Vacancy		
			DEF (2%)	Ex-SM (5%)	Female (20%)
1	OC	3613			
2	EWS	902	90	225	903
3	OBC	2437	48	122	487
4	SC	1895	38	95	379
5	ST	180	4	9	36
Total		9027	180	451	1805

5. In aforesaid circumstances S/Sri Alok Mishra and Durvesh Kumar, learned advocates for petitioners (first set) have placed reliance upon judgments of Supreme Court passed in the cases of **Indra Sawhney and others vs. Union of India and others, AIR 1993 SC 477, Rajesh**

Kumar Daria vs. Rajasthan Public Service Commission and others, (2007) 8 SCC 785 and Anil Kumar Gupta and others vs. State of U.P. and others, (1995) 5 SCC 173.

6. Second set of petitioners are Ex-Service Men, belonging to Economical Weaker Section. According to them reservation in said category was also not correctly applied. The State has not taken any specific stand so far as present set of petitions is concerned. The details of writ petitions of this set are as follows :-

“Writ A No. 7119/2022 (Ravi Shankar Tripathi)

Writ A No. 7072/2022 (Vineet Kaushik)

Writ A No. 8243/2022 (Yuvraj Upadhyay)

Writ A No. 12550/2022 (Rajeev Mishra)”

7. The Court also takes note that if selected candidates even in representative capacity are not impleaded as parties, the writ petition itself may be not maintainable. In **Prabodh Verma & Ors. v. State of Uttar Pradesh & Ors. [(1984) 4 SCC 251, the Supreme Court has held that :-**

“The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties - not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under

Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties." See also All India SC & ST Employees Assn. & Anr. etc. v. A. Arthur Jeen & Ors. etc., 2001(2) SCT 737 (SC) : [(2001) 6 SCC 380] and Indu Shekhar Singh & Ors. v. State of U.P. & Ors., 2006(2) SCT 808 (SC) : [2006(5) Scale 107].}

8. The Punjab and Haryana High Court in a recent judgment of **Sunaina Delu vs. State of Punjab and others, 2025:PHHC:001998** has considered allotment of seats in horizontal reservation and held as follows :-

"7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16(4) are 'vertical reservations Special reservations in favour of physically handicapped, women etc., under Articles 16(1) or 15(3) are 'horizontal reservations' Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of

SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R. K. Sabharwal vs. State of Punjab (1995 (2) SCC 745), Union of India vs. Virpal Singh Chauhan (1995 (6) SCC 684 and Ritesh R. Sah vs. Dr. Y. L. Yamul (1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up 3 of 6 Neutral Citation No: 2025: PHHC:001998 CWP-8069-2021 4- the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

8. If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the

successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. [But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC-women' have been selected in excess of the prescribed internal quota of four.

9. In this case, the number of candidates to be selected under general category (open competition), were 59, out of which 11 were earmarked for women. When the first 59 from among the 261 successful candidates were taken and listed as per merit, it contained 11 women candidates, which was equal to the quota for 'General Category'

Women' There was thus no need for any further selection of woman candidates under the special reservation for women. But what RPSC did was to take only the first 48 candidates in the order of merit (which contained 11 4 of 6 Neutral Citation No: 2025: PHRC:001998 CWP-8069-2021-5 women) and thereafter, fill the next 11 posts under the general category with woman candidates. As a result, we find that among 59 general category candidates in all 22 women have been selected consisting of eleven women candidates selected on their own merit (candidates at Sl.Nos.2, 3, 4, 5, 9, 19, 21,

25, 31, 35 & 41 of the Selection List) and another eleven (candidates at Sl. Nos. 54, 61, 62, 63, 66, 74, 75, 77, 78, 79 & 80 of the Selection List) included under reservation quota for 'General Category Women This is clearly Impermissible. The process of selections made by RPSC amounts to treating the 20% reservation for women as a vertical reservation, instead of being a horizontal reservation within the vertical reservation.

10. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC Women', instead of adding only two which was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman.”

9. The Supreme Court in **Saurav Yadav and others vs. State of U.P. and others, (2021) 4 SCC 542** has held as follows :-

“59. The features of vertical reservations are:

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

(ii) Mobility ('migration') from the reserved (specified category) to the unreserved (open category) slot is possible, based on meritorious performance;

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

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

60. Horizontal reservations on the other hand, by their nature, are not inviolate pools or carved in stone. They are premised on their overlaps and are 'interlocking' reservations. As a sequel, they are to be calculated concurrently and along with the inviolate 'vertical' (or "social") reservation quotas, by application of the various steps laid out with clarity in paragraph 11 of Justice Lalit's judgement. They cannot be carried forward. The first rule that applies to filling horizontal reservation quotas is one of adjustment, i.e. examining whether on merit any of the horizontal categories are adjusted in the merit list in the open category, and then, in the quota for such horizontal category within the particular specified/ social reservation.

61. The open category is not a 'quota', but rather available to all women and men alike. Similarly, as held in Rajesh Kumar Daria²², there is no quota for men. If we are to accept the second view [as held by the Allahabad High Court in Ajay Kumar v. State of UP²³ and the Madhya Pradesh High Court in State of Madhya Pradesh & Anr. v. Uday Sisode & Ors²⁴, referred to in paragraph 20 of Justice Lalit's judgement], the result would be confining the number of women candidates, irrespective of their performance, in their social reservation categories and therefore, destructive of logic and merit. The second view, therefore – perhaps unconsciously supports- but definitely results in confining the number of women in the select list to the overall numerical quota assured by the rule.”

10. As referred above, State has not followed dictum of Supreme Court and wrongly clubbed reservation for women in Open Category and EWS. Therefore, following directions are issued :-

(i) The concerned respondent will prepare a separate merit list for EWS candidates (women) providing 20% horizontal reservation.

(ii) Thereafter, prepare a list of likely to be disturbed selected candidates.

(iii) Thereafter, vacant seats, if any, be identified and accommodate women candidates (EWS) from above prepared list according to merit, already not part of 903 selected women, however, none of already selected candidates will be displaced.

(iv) In upcoming selection processes, State will follow correct and legal method to apply all reservations including horizontal reservation.

(v) The second set of petitioners are 4 in numbers and since number of vacant seats are not on record, therefore, no relief could be granted to them.

11. All writ petitions are **disposed of**.

(2025) 5 ILRA 505

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 30.05.2025

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 14182 of 2024

Vivek Yadav	...Petitioner
State of U.P. & Ors.	...Respondents
Versus	

Counsel for the Petitioner:
Vinay Kumar Singh