



**HIGH COURT OF CHHATTISGARH, BILASPUR**

Judgment reserved on: 05-03-2024

Judgment delivered on: 16-04-2024

**WPPIL No. 91 of 2019**

S. Santosh Kumar S/o V. Sridhar Aged About 35 Years R/o LIG - 305, Housing Board Face - 3, Village Khilora, Tahsil Abhanpur, District Raipur Chhattisgarh.

---- **Petitioner**

**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Law And Legislative Affairs, Mahanadi Bhavan, Mantralaya Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.
2. State of Chhattisgarh Through The Secretary, General Administration Department, Mahanadi Bhavan, Mantralaya, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.

---- **Respondents**

**WPS No. 9778 of 2019**

1. Vishnu Prasanna Tiwari S/o Vansh Raj Tiwari Aged About 59 Years Suprintendent Engineer (Et-1) HTPP Chhattisgarh State Power Generation Co. Ltd Korba West , R/o B- 31, HTPS Colony CSPGCL, P.S.- Darri, District : Korba, Chhattisgarh
2. Gopal Prasad Soni S/o Late Shri G.L. Soni Aged About 58 Years Superintendent Engineer , HBHPS, Machadoli, Bango R/o B-47, HTPS Colony CSPGCL, P.S. - Darri, District : Korba, Chhattisgarh

---- **Petitioners**

**Versus**

1. State of Chhattisgarh Through The Secretary General Administration Department, Mantralaya , Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District : Raipur, Chhattisgarh
2. The Secretary Department of Energy, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District : Raipur, Chhattisgarh
3. Chhattisgarh State Power Holding Co. Ltd. Through The Chairman, 2nd Floor, Vidyut Sewa Bhawan , Danganiya, Raipur Distt - Raipur Chhattisgarh.
4. Chhattisgarh State Power Generation Co. Ltd. Through The Managing Director, 2nd Floor Vidyut Sewa Bhawan, Danganiya, Raipur, District : Raipur, Chhattisgarh
5. Chhattisgarh State Power Generation Co. Ltd. Through The Managing Director, 2nd Floor , Vidyut Sewa Bhawan , Danganiya, Raipur, District : Raipur, Chhattisgarh

---- **Respondents**

**WPS No. 839 of 2020**

1. Ashish Agnihotri S/o Prakash Agnihotri Aged About 40 Years R/o MIG 1/1A, Sector 3, D.D Nagar, Raipur, Chhattisgarh



2. Ganesh Ram Jaiswal S/o Shri Ramadhar Jaiswal Aged About 36 Years R/o Rama Valley Township, R9/12, Bodri, District Bilaspur, Chhattisgarh
3. Manish Singh Thakur S/o Shri Bodhan Singh Thakur Aged About 33 Years R/o 27 Kholi, Near Jyoti Kirana Store, Bilaspur, Chhattisgarh

---- **Petitioners**

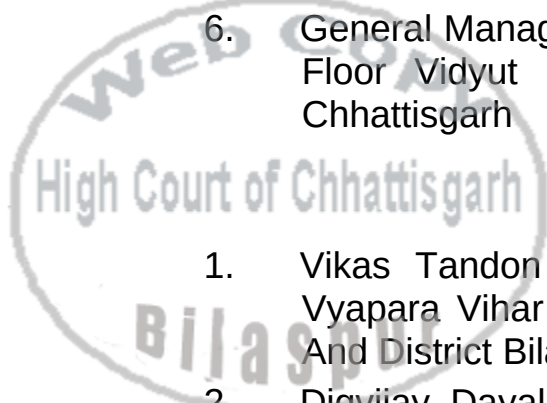
**Versus**

1. The State of Chhattisgarh Through Its Secretary General Administration Department Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. The Secretary Department of Energy, Mantralaya, Naya Raipur, District : Raipur, Chhattisgarh
3. Chhattisgarh State Power Holding Company Ltd. Through Its Chairman, 2nd Floor Vidyut Sewa Bhawan, Danganiya Raipur District Raipur, Chhattisgarh
4. Chhattisgarh State Power Holding Company Ltd. Through Its Managing Director, 2nd Floor Vidyut Sewa Bhawan, Danganiya Raipur, District Raipur, Chhattisgarh
5. Chhattisgarh State Power Transmission Ltd. Through Its Managing Director, 2nd Floor Vidyut Sewa Bhawan, Danganiya Raipur, District : Raipur, Chhattisgarh
6. General Manager Chhattisgarh State Power Holding Company Ltd., 2nd Floor Vidyut Sewa Bhawan, Danganiya Raipur, District : Raipur, Chhattisgarh

---- **Respondents**

**WPS No. 3600 of 2020**

1. Vikas Tandon S/o Shri Ganga Prasad Aged About 40 Years R/o Vyapara Vihar Road, Nagdoni Colony, Bilaspur, P.S. Civil Line Tehsil And District Bilaspur Chhattisgarh.
2. Digvijay Dayal S/o Late Shri D.R. Dayal Aged About 42 Years R/o Village Karhi, P.S. And Tahsil Mungeli, District Mungeli Chhattisgarh.
3. Mukti Prakash Ekka S/o Late Shri Simon Ekka Aged About 50 Years R/o Village Khadijhariya Ambatoli, Post Baranjor, Tahsil Kunkuri District Jashpur Chhattisgarh.
4. Smt. Shiksha Meshram (Before Marriage Shiksha Lonhare) W/o Shri Sushil Kumar Meshram Aged About 35 Years R/o CSPGCL Colony, Basantpur, Post Basantpur, P.S. And Tahsil Raigarh, District Raigarh Chhattisgarh.
5. Parmehswar Singh Dhruv S/o Shri Sukhiram Dhruv Aged About 44 Years R/o Village Bodhapara, Post Kanteli, P.S. Lalpur, Tahsil Mungeli, District Mungeli Chhattisgarh.
6. Satya Prakash Mahilane S/o Shri Hari Ram Mahilane Aged About 39 Years R/o Village Raigarh, Post Raigarh, Tahsil Raigarh, District Raigarh Chhattisgarh.
7. Yamuna Madile W/o Manesh Chandra Banjare Aged About 39 Years R/o Vidyanagar, Ward No. 02, P.S. And Tahsil Bemetara District Bemetara Chhattisgarh.
8. Shivshankar Banjare S/o Late Shri G.P. Banjare Aged About 47 Years R/o Adarsh Chowk, Raja Talab, P.S. Civil Line, Tahsil Raipur, District Raipur Chhattisgarh.





9. Tulsi Ram Bharti D/o Late Shri Pitambar Bharti Aged About 48 Years R/o Rajendra Nagar, Ward No. 21, Bahadurguda, Jagdalpur, P.S. And Tahsil Jagdalpur, District : Bastar (Jagdalpur), Chhattisgarh
10. Uttam Kumar Gore S/o Shri Bhupat Singh Ghore Aged About 42 Years R/o Village Jhalmala, Ward No. 10, P.S. And Tahsil Balod, District Balod Chhattisgarh.
11. Krishna Pratap Singh S/o Shri Sanman Singh Aged About 38 Years R/o Sheetla Ward No. 16, Shikaripara, P.S. And Tahsil Balod, District Balod Chhattisgarh.
12. Mahendra Singh Dahriya S/o Shri M.L. Dahriya Aged About 42 Years R/o Quarter No. 42, Sector 02, Vidyanagar, Amlidih, Tahsil Raipur, P.S. New Rajendra Nagar, Raipur, District Raipur Chhattisgarh.
13. Albert Toppo S/o Biasiyus Toppo Aged About 47 Years R/o Village Surjula, Post - Kalakh, Tahsil Manora Jashpur, District Jashpur Chhattisgarh.
14. Rajneesh Kumar Tekam S/o Shri Chabbilal Tekam Aged About 44 Years R/o Village Haarampara, Geedam, Tahsil Geedam, District South Bastar, Dantewada Chhattisgarh.

---- **Petitioners**

**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Home, Mahanadi Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
2. The Director Public Prosecution Directorate, Part III, 4th Floor, Indravati Bhawan, Naya Raipur, District : Raipur, Chhattisgarh
3. The Joint Director Public Prosecution Directorate, Part III, 4th Floor, Indravati Bhawan, Naya Raipur, District : Raipur, Chhattisgarh

---- **Respondents**

**WA No. 286 of 2021**

1. Kirti Kumar Rathia S/o Shri Gajendra Singh Aged About 33 Years Village Khamhar, Tehsil Kharsia, District Raigarh Chhattisgarh. Pin 496661
2. Smt. Chitrangana Rahi W/o Nitesh Solanki Aged About 32 Years R/o H.No. C - 3, Shanti Nagar Sri Ram Parisar, District Bilaspur Chhattisgarh Pin 495001
3. Dev Singh Kanwar S/o Late Pratap Singh Kanwar Aged About 40 Years Quarter No. D - 77, R.K. Residency, Yadunandan Nagar, Tifra, District Bilaspur Chhattisgarh Pin 495223
4. Sanjay Diwan S/o Shri Baboo Ram Diwan Aged About 44 Years O/o Junior Engineer C S P D C L Gariaband (T) D / C, Near Balak High School Road, Ward No. 01, District Gariaband Chhattisgarh Pin 493885
5. Neelam Poya D/o Shri B.L. Poya Aged About 30 Years House No. 644, Adarsh Chowk, Sunder Nagar, District Raipur Chhattisgarh. Pin 492013
6. Ashish Lakra S/o Shri Ashok Kumar Lakra Aged About 31 Years Ward No. 11, Sai Mandir, Baikunthpur District Koriya, Chhattisgarh Pin 497335
7. Purnima Thakur W/o Shri Komal Singh Thakur Aged About 30 Years House No. 2157, Ward No. 68 Nishad Para, Raipura District Raipur Chhattisgarh Pin 492013



8. Yachana Kathel W/o Shri Mukend Kumar Dudhkaurav Aged About 31 Years House No. 591, Near Govt. Primary School V I P Colony, Changorabhata District Raipur Chhattisgarh
9. Jostin Lakra S/o Norbet Lakra Aged About 31 Years House No. 132/8, New Patrapara, Dharamjaigarh, District Raigarh Chhattisgarh Pin 496116.
10. Vandana Nikunj W/o Shri Jostin Lakra Aged About 31 Years House No. 132/8, New Patrapara, Dharamjaigarh, District Raigarh Chhattisgarh Pin 496116.
11. Gajadhar Prasad Sidar S/o Lt. Shri Ramlal Aged About 43 Years Mission Chowk Near Church Kalmi Malkharouda, District Janjgir Champa, Chhattisgarh Pin 495692
12. Anubha Lakra D/o Simon Lakra Aged About 35 Years Dingapur I, I T I Rampur, District Korba, Chhattisgarh Pin 495677
13. Vikas Kunjam S/o Shri D.L. Kunjam Aged About 33 Years Qtr. No. G - 6, Sales Tax Colony, Khamardih District Raipur Chhattisgarh
14. Chhattisgarh Rajya Vidhyut Mandal Aarakshit Varg Adhikari Karmachari Sangh Through Its Member Sunil Kumar Chouhan, Aged 39 Years, House No. 201, B - 8, Sai Sanil Sindhiya Nagar, District Durg Chhattisgarh. Pin 491001.

---- Appellants

**Versus**

1. State of Chhattisgarh Through Its Secretary, Department of Energy, Govt. of Chhattisgarh, Irrigation Colony, Shanti Nagar, District Raipur Chhattisgarh
2. State of Chhattisgarh Through Its Secretary, General Administration Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur District Raipur Chhattisgarh. Pin 492002
3. M/s Chhattisgarh State Power Holding Co. Ltd. Through Its General Manager (H.R.), C S P H C L, Vidyut Seva Bhawan Campus, Post Office Danganiya, District Raipur, Chhattisgarh, Pin 492013

---- Respondents

(Cause Title taken from Case Information System)

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For Petitioner : Mr. Yogeshwar Sharma, Advocate  
in WPPIL No.91/2019

For Petitioners : Mr. Anand Dadariya, Ms. Ayushi Agrawal,  
in WPS No. 9778/2019 Mr. Abhishek Gupta & Amiya Bhushan,  
Advocates

For Petitioners  
in WPS No. 839/2020 : Mr. Parag Kotecha, Advocate

For Petitioners  
in WPS No. 3600/2020 : None appears

For Appellants : Mr. Tribhuwan Das, Advocate  
in WA No.286/2021



- For Respondents/State : Mr.Sanjay Hegde, Senior Advocate assisted by Mr. Dr. Manoj Gorkela, Special Counsel, and Mr. Pranjal Kishore, Advocate
- For Respondent Nos. 3 to 5 : Mr. Arvind Panda holding the brief of in WPS No. 9778/2019 and Mr. D.L. Dewangan, Advocate  
For Respondent Nos. 3 to 6 in WPS No. 839/2020
- For Respondent No.3 in : Mr. Jitendra Pali, Advocate  
WA No. 286/2021
- For Intervenors : Dr. K.S. Chauhan, Senior Advocate assisted by Mr. Nasimuddin Ansari, Mr. Ajit Kumar Ekka, Mr. Alhilesh Dalpat, Mr. Tribhuwan Das, Mr. Anchal Kumar Matre, Mr. Ravi Maheshwari and Mr. Piyush Bhoi, Advocates

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**Hon'ble Shri Ramesh Sinha, Chief Justice and  
Hon'ble Shri Ravindra Kumar Agrawal, Judge**

**C.A.V. Judgment**

**Per Ramesh Sinha, Chief Justice**

1. Heard Mr. Yogeshwar Sharma, learned counsel for the petitioner in WPPIL No. 91/2019, Mr. Anand Dadariya, Ms. Ayushi Agrawal, Mr. Abhishek Gupta & Mr. Amiya Bhushan, learned counsel for the petitioners in WPS No. 9778/2019, Mr. Parag Kotecha, learned counsel for the petitioners in WPS No. 839/2020 and Mr. Tribhuwan Das, learned counsel for the appellants in WA No. 286/2021. Also heard Mr. Sanjay R. Hegde, Senior Advocate assisted by Dr. Manoj Gorkela, Special Counsel, Government of Chhattisgarh and Mr. Pranjal Kishore, learned counsel, appearing for the State/respondents, Mr. Arvind Panda holding the brief of Mr. D.L. Dewangan, learned counsel, appearing for respondent Nos.3 to 5 in WPS No. 9778/2019 and respondent Nos. 3 to 6 in WPS No. 839/2020, Mr. Jitendra Pali, learned counsel, appearing for respondent No.3 in WA No. 286/2021 and Dr. K.S.



Chauhan, learned Senior Advocate assisted by Mr. Nasimuddin Ansari, Mr. Ajit Kumar Ekka, Mr. Akhilesh Dalpat, Mr. Tribhuwan Das, Mr. Anchal Kumar Matre, Mr. Ravi Maheshwari and Mr. Piyush Bhoi, learned counsel, appearing for the respective intervenors.

2. Since all these writ petitions i.e. WP(PIL) No. 91/2019, WP(S) Nos.9778/2019, 839/2020 and 3600/2020 and writ appeal i.e. WA No.286/2021 arise out of similar issues, they are being clubbed and heard together and are being disposed of by this common order.
3. WP(S) No. 9778 of 2019 is taken as the lead case and the parties & proceedings are referred to as given therein except where it is separately mentioned, depending on the context.
4. The Challenge in this writ petition are the Notification dated 31.10.2019 (Annexure-P/1), Notification dated 22.10.2019 (Annexure-P/2) and Notification dated 30.10.2019 (Annexure-P/3) to be declared as ultra vires to the provisions contained under Article 14 and 16(4A) of the Constitution of India and also in contravention of the orders passed by the Hon'ble Supreme Court as well as this Court. The reliefs claimed in the writ petition are as follows :

*“10.1. To call for the records of the case for the kind perusal of this Hon'ble Court.*

*10.2. To issue an appropriate writ or order and declare that the notification dated 31.10.19 (Annexure P-1), 22.10.19 (Annexure P-2) and notification dated 30.10.19 (Annexure P-3) are bad in law and ultra vires to the provisions contained under Article 14 and 16 (4A) and in contravention of orders passed by Hon'ble Supreme Court as well as this Hon'ble Court.*

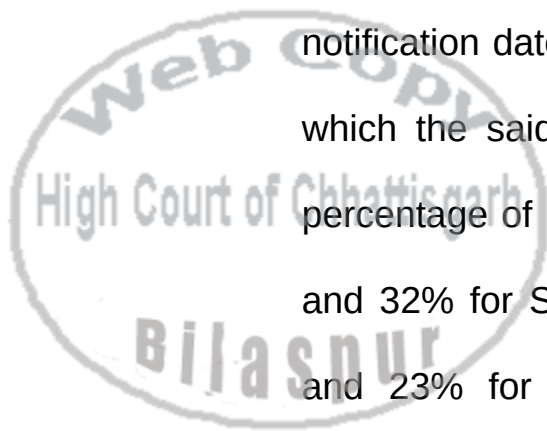


*10.3. To issue an appropriate writ or order and quash the notification dated 31.10.19 (Annexure P-1), 22.10.19 (Annexure P-2) and notification dated 30.10.19 (Annexure P-3) and grant all other consequential benefits.*

*10.4. Any other relief deemed fit in the facts and circumstances of the case may also be granted.”*

5. The notification dated 31.10.2019 (Annexure P-1) is issued by the respondent No.3 Chhattisgarh State Power Holding Company Limited by which they have adopted with immediate effect the Chhattisgarh Civil Services (Promotion) Rules, 2003 (hereinafter referred to as ‘Promotion Rules, 2003’) as amended by its notification dated 22.10.2019. The notification dated 22.10.2019 is issued by the State of Chhattisgarh, by which the said Promotion Rules, 2003 has been amended and the percentage of reservation was amended as 13% for Scheduled Castes and 32% for Scheduled Tribes in place of 15% for Scheduled Castes and 23% for Scheduled Tribes. The notification dated 30.10.2019 (Annexure P-3) is also issued by the State of Chhattisgarh in furtherance of the notification dated 22.10.2019, by which the 100 point reservation roster has also been amended in view of the amendment in percentage of the reservation to Scheduled Castes and Scheduled Tribes. These three notifications and its consequential benefits are challenged in the present writ petition.

6. The facts pleaded by the petitioner in the writ petition are that on 03.09.2003, The State of Chhattisgarh framed rules for reservation and promotion in civil services for SC and ST categories, which was named as Chhattisgarh Civil Services (Promotion) Rules, 2003. On 24.06.2004,





the respondent Nos.3 to 5 i.e. C.G. State Power Holding Company Limited and C.G. State Power Generation Company Limited, exercising the powers under Section 79(C) of the Electricity Supply Act, 1948 have adopted the said Promotion Rules, 2003, for all the cadres. The said action was challenged by some of the employees of the respondent Nos. 3 to 5 by filing Writ Petition No. 2024/2024. The said writ petition was allowed on 06.05.2013 by the learned Single Judge of this Court holding that notification dated 24.06.2004, by which the respondent Nos. 3 to 5 have adopted the Promotion Rules, 2003 is without any authority of law. The order dated 06.05.2013 passed in W.P No.2024/2004 was challenged by the respondent Nos. 3 to 5 before this Court in W.A No. 471/2013, whereas the petitioners therein preferred W.A. No. 409/2013 against some of the observations made in the said order. The Rule 5 of the said Promotion Rules, 2003 was again adopted by the respondent Nos. 3 to 5 on 24.09.2013, which was again challenged by the petitioners by filing writ petition bearing W.P.(S) No. 812/2016 and W.P.(S) No.4239/2013. The W.A. No. 409/2013 alongwith other connected matters of similar issue were came up for hearing on 04.02.2019 and after hearing the parties the Rule 5 of the Promotion Rules, 2003 was quashed by the Co-ordinate Bench of this Court with following observations :

*“2. Various arguments were made initially both against the decision of the State to extend such benefit as well as in support thereof. However, the occasion for the High Court to decide such issue in the cases did not arise because the matter got adjourned for one reason or the other including the fact that such issue was also awaiting the outcome of a*





decision from a Constitutional Bench of the Hon'ble Supreme Court which was the case of **Jarnail Singh and others v. Lachhmi Narain Gupta and others** reported in **(2018) 10 SCC 396**.

3. In view of the opinion expressed by the Constitutional Bench of the Hon'ble Supreme Court, all these writ appeals and writ applications stand disposed off and Rule 5 of the Chhattisgarh Civil Services Promotion Rules, 2003 stands quashed. The State Government however is given liberty to rework the Rules or the Policy within the framework of the law laid down by the Hon'ble Supreme Court in **Jarnail Singh** (supra).

4. If any other statutory body or Corporation in the State of Chhattisgarh has provided for or adopted the Promotion Rules, the same will also be hit by the decision in **Jarnail Singh** (supra).

5. The consequences of quashing of the Rule to the extent of providing reservation in promotion to the extent it falls foul of **M. Nagaraj and Others v. Union of India and Others** reported in **(2006) 8 SCC 212** and **Jarnail Singh case** (supra) will follow.”

7. In compliance of the order dated 04.02.2019 passed by the Co-ordinate Bench of this Court in W.A. No.409/2013, the respondent Nos. 1 and 2 State of Chhattisgarh issued a notification on 22.10.2019, which is the amendment in Rule 5 of the Promotion Rules, 2003, which is against the Article 14 and 16 (4A) and (4B) of the Constitution of India and also against the law laid down by Hon'ble Supreme Court in **M.Nagaraj and Others Vs. Union of India and Others**, reported in **(2006) 8 SCC 212** and **Jarnail Singh and Others Vs. Lachhmi Narain Gupta and Others**, reported in **(2018) 10 SCC 396**. The present writ petition has been filed by the petitioners challenging the aforesaid notifications on



the ground that the observations made by the Co-ordinate Bench of this Court in W.A. No. 409/2013 has not been followed and without collecting the quantifiable data first, they have issued the notification on 22.10.2019, whereas for collecting the quantifiable data the Committee has been constituted on 17.07.2020, which is against the law laid down by the Hon'ble Supreme Court in the aforesaid cases.

8. In the present writ petition, on 29.11.2019, this Court had passed the following order :

*“Shri Prafull N. Bharat and Shri Vivek Sharma,  
Advocates for the Petitioners.*

*Shri Vikram Sharma, Deputy Government Advocate for  
the State.*

*Shri Prafull N. Bharat the learned counsel appearing for  
the Petitioners submits that despite quashing the Rule 5 of  
the Chhattisgarh Civil Services Promotion Rules, 2003 with  
regard to the reservation and promotion without making  
proper classification by placing reliance on the verdicts  
passed by the Apex Court in **M. Nagaraj and Others v.  
Union of India and Others, (2006) 8 SCC 212 and Jarnail  
Singh and Others v. Lachhmi Narain Gupta and Others,  
(2018) 10 SCC 396** as ordered by the Division Bench of this  
Court as per Anenxure P/5 dated 04.02.2019, at the same  
time, granting liberty to the Government to frame the  
promotion Rules, strictly in conformity with the law declared  
by the Apex Court in **Nagaraj's case (supra)** and **Jarnail  
Singh's case (supra)**, a new set of Rules have been  
formulated exactly in similar manner, without saying anything  
with regard to the creamy-layer position. The learned counsel  
submits that in **Nagaraj's case (supra)** two aspects were  
specifically dealt with; the first one with regard to the  
necessity to have 'quantifiable data' for representation of the*





*Schedule Castes / Schedule Tribes, and the second one with regard to the 'Creamy-layer principle'. In the subsequent judgment i.e. in **Jarnail Singh's case** (supra), the Apex Court held in paragraph 24 that the collection of data ordered in **Nagaraj's case** (supra) appeared to be contrary to the law declared in **Indra Sawhney and Others v. Union of India and Other, 1992 Supp (3) SCC 217** (which is by majority of 5:2). However, the second aspect with regard to i.e. the 'Creamy-layer principle' laid down in **Nagaraj's case** (supra) has been reiterated by the Co-ordinate Bench in **Jarnail Singh's case** (supra) as revealed from paragraph 26 of the judgment. It was with reference to above legal position declared by the Apex Court, that verdict was rendered by the Division Bench of this Court as per Annexure P/5 setting aside the earlier Rule. The State was given liberty to frame Rules in conformity with the law as above, which apparently is not seen done when the new Rules have been framed; a copy of which has been produced as Annexure P/2. The above Rules have been virtually adopted by the Respondent-Company vide Annexure P/1 and hence both the Rules and proceedings are under challenge.*

*The State Government has issued a fresh Notification on 30.10.2019 vide Annexure P/3, stipulating the course of action to be pursued in identifying the slots in the 100 point roster. Two separate tables have been given; the first one, as to the posts to be filled up on the basis of "Seniority-cum-fitness" and the second one, as to the posts to be filled up on the basis of "Merit-cum-seniority". In respect of both the instances, automatic vertical elevation is provided to the persons stated as eligible for reservation, without any classification and further instructing that all the vacant posts even in the unreserved segment shall be kept and identified for being filled up from the reserved segment, based on the impugned Rules, which made the Petitioner to feel aggrieved,*





*who has challenged the said Notification as well.*

We are of the view that a prima facie case is made out by the Petitioners. With regard to granting of interim relief, considering the persuasive submissions made by Shri Vikram Sharma, the learned counsel representing the State and also to enable Shri Abhishek Sinha one of the penal counsel appearing for the Respondent-Company who is required by this Court to get instructions and make appropriate submissions on Monday i.e. 02.12.2019, this matter shall be listed for further consideration on 02.12.2019.”

9. On 02.12.2019, this Court had passed the following order :

*“Shri Yogeshwar Sharma and Shri Vivek Sharma, Advocates for the Petitioners.*

*Shri Satish Chandra Verma, Advocate General with Shri Vikram Sharma, Deputy Government Advocate for the State.*

*The learned Advocate General submits that some inadvertent mistake has crept in respect of the Rules under challenge and that steps are being taken on war footing to have the same rectified. The learned Advocate General seeks to have posting on Monday to make appropriate submissions in this regard.*

*Post both these matters on Monday i.e. 09.12.2019.”*

10. On 02.12.2020, this Court had passed the following order :

*“Shri Yogeshwar Sharma, Shri Mayank Chandrakar, Shri Vivek Sharma, Shri Parag Kotecha and Shri Prateek Sharma, counsel for the respective petitioners.*

*Shri Sudeep Agrawal, Deputy Advocate General for the State.*

*Shri Manoj Gorkela, Shri Karan Arora, Shri Rohit Sharma along with Vatan Sahu, Shri GM Hasan, Shri Tribhuvan Das, Shri Anchal K Matre, Shri Abhishek Sinha,*





*Shri DL Dewangan, Shri Akhilesh Dalpati, Shri Ravi Maheshwari, Ms Ankita Shriwas on behalf of Shri Kishore Narayan, Shri Lalit Jangde, Shri Naveen Nirala, Shri UR Koshley, Shri Avit Lakra, Shri DK Vishwakarma, Shri I Lakra, Ms Ankita Shriwas, Nasimuddin Ansari, Shri CP Lahrey, Shri Basant Dewangan, Shri VK Tondey, Smt Laxmi Tondey and Shri Ghanshyam Kashyap Advocates for the respective respondents/Intervenors.*

*Issue urgent notice to the respondents in WPS-839 of 2020 and WPS-3600 of 2020. PF as per rules.*

*The respondents are required to put forth their version with regard to the pleadings and prayers raised in these Writ Petitions.*

*It is brought to the notice of this Court that an interim order has already been passed in the connected matters to the effect that promotion will be subject to the decision of the Writ Petition.*

*In the said circumstance, the said order will equally govern the position as far as this case is also concerned.*

*With regard to the Writ Petition-(PIL) 91 of 2019, Shri Manoj Gorkela, Advocate submits that he has been specially engaged by the State of Chhattisgarh as 'Special Counsel' to represent the State and authorities concerned and to address the Court in these matters.*

*It is brought to the notice of this Court by the learned counsel that a Special Committee has been constituted by the State as per proceedings No. एफ 13-3/2020/आ०प्र०/1-3 dated 17.07.2020 to collect the data with regard to the particulars of representations of the SC/ST in the State service, so as to decide the extent of reservation. Learned counsel submits that he has already met the members of the Committee yesterday and ascertained the further course of action including the time requirement for collecting such data and to bring them on record.*





*Learned counsel submits that a minimum time of one to two months will be necessary to have the matter finalised and seeks for a posting accordingly.*

*List the matter for further consideration on 27.01.2021.*

*The pleadings shall be completed by that time.*

*Interim order passed by this Court shall continue.”*

11. On 27.01.2021, this Court had passed the following order :

*“Shri Yogeshwar Sharma, Shri Mayank Chandrakar, Shri Vivek Sharma, Shri Parag Kotecha and Shri Prateek Sharma, Advocates for the respective Petitioners.*

*Shri Manoj Gorkela, Special counsel and Shri Sudeep Agrawal, Deputy Advocate General for the State.*

*Dr. K.S. Chauhan, Shri Karan Arora, Shri Rohit Sharma alongwith Shri Vatan Sahu, Shri G.M. Hasan, Shri Tribhuwan Das, Shri Anchal K. Matre, Shri Abhishek Sinha, Shri D.L. Dewangan, Shri Akhilesh Dalpati, Shri Ravi Maheshwari, Shri Kishore Narayan, Shri Lalit Jangde, Shri Naveen Nirala, Shri U.R. Koshley, Shri Avit Lakra, Shri D.K. Vishwakarma, Shri I Lakra, Shri V.K. Tondey, Smt. Laxmi Tondey and Shri Ghanshyam Kashyap Advocate for the respective Intervenors.*

*Shri Manoj Gorkela, the learned Special Counsel appearing on behalf of the State submits that pursuant to the orders passed by this Court earlier and the submissions made, steps were taken on the war footing to collect the data and as per the instructions gathered from the Secretary to the General Administration Department on the last Monday, it is stated that almost 50% of the entire data has been collected.*





*It is pointed out by the learned counsel that the matter requires some more time in view of the District-wise roster and such other aspects to be looked into. The learned counsel submits that a further period of one more month is necessary to have it collected and placed before this Court.*

*Dr. K.S. Chauhan, the learned Senior counsel appearing for the Intervenor submits that there is no need or necessity to go for the data sought to be collected by the State. This is more so, since the factual position with regard to the inadequacy of representation of the community concerned has been brought on record by virtue of the various materials procured and presented by the Intervenors. The learned counsel submits that in the said factual scenario, it is necessary to provide for reservation in promotion as well, in view of the law declared by the Supreme Court.*

*After hearing both the sides, we do not have any doubt in mind that the importance of data collection has been highlighted by the Apex Court with regard to the process of granting reservation in promotions. Whether the exercise now being done by the Government or the data which is now being procured is relevant or not will be decided in due course.*

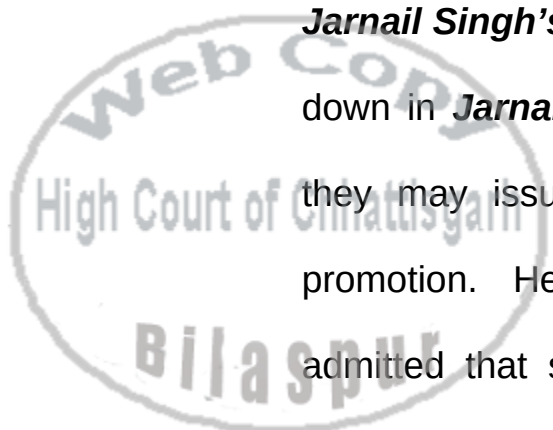
*In view of the submissions made by the Special Counsel appearing for the State, we grant further time for collecting the data and to put all the factual details as part of the record.*

*List this matter for further consideration after six weeks.”*





12. Mr. Anand Dadariya, learned counsel for the petitioners would submit that without collecting quantifiable data first, the State has directly issued the notification dated 22.10.2019, which is in violation of Article 14 and 16(4A) and (4B) of the Constitution of India and the orders passed by this Court as well the Hon'ble Supreme Court. He would further submit that when the Co-ordinate Bench of this Court has quashed the Rule 5 of the Promotion Rules, 2003 vide order dated 04.02.2019 passed in WA No. 409/2013, liberty was granted to the respondents-State to rework the Rules or the Policy within the framework of the law laid down by the Hon'ble Supreme Court in **Jarnail Singh's case** (supra), the State has to strictly follow the law laid down in **Jarnail Singh's case** (supra) in its letter and spirit and then they may issue the notification with respect to the reservation in promotion. He would also submit that on 02.12.2019, the State has admitted that some inadvertent mistake has crept in respect of the Rules under challenge and that steps are being taken on war footing to have the same rectified and since the Rules have not been rectified, on 09.12.2019, the notifications dated 31.10.2019 (Annexure P-1), 22.10.2019 (Annexure P-2) and 30.10.2019 (Annexure P-3) have been stayed. On 02.12.2020 also, the State has submitted that a Special Committee has been constituted by the State on 17.07.2020 to collect the data with regard to the particular of representation of SC/ST in the State service so as to decide the extent of reservation, which itself proves that without collecting the quantifiable data, the State has issued notification dated 22.10.2019 for reservation in promotion. In support of his submission, he is placing reliance in the judgments passed by the

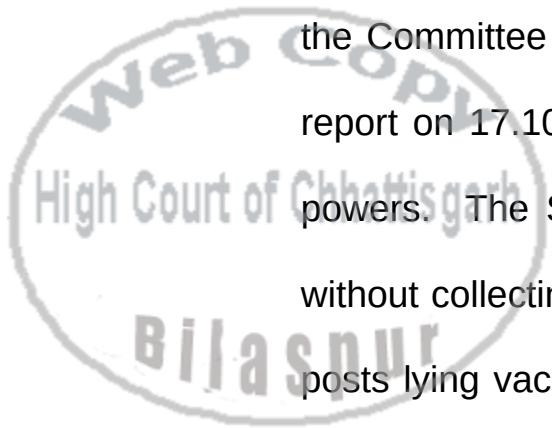






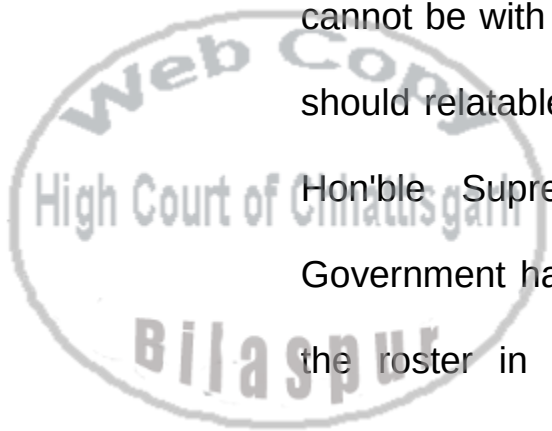
Hon'ble Supreme Court in ***M. Nagaraj's case*** (supra), ***Jarnail Singh's case*** (supra) and ***Jarnail Singh vs Lachhmi Narain Gupta***, reported in (2022) 10 SCC 595.

13. He would also submits that the respondents-State have based the census of 2011 to initiate the proceedings and to determine the percentage of reservation for SC and STs. With respect to the Electricity Department no data have been collected, the State has collected the data vacancy wise and not the cadre wise, which reflects from the report dated 17.10.2021 submitted by the Committee. He would further submits that during pendency of the present writ petition, the Committee was constituted on 17.07.2020, who have submitted its report on 17.10.2021, which itself shows the arbitrary exercise of their powers. The State has to collect the data based on the cadres, but without collecting the necessary data, merely on the basis of number of posts lying vacant against the reserved posts in SC and ST categories in direct appointment as well as in promotion, the Committee has taken its decision. The data is procured on the basis of class, but not on the basis of cadre and population, which is against the mandate of ***M.Nagaraj's case*** (surpa), ***Jarnail Singh – I*** (supra) and also ***Jarnail Singh – II*** (supra).
14. Mr. Dadariya further submits that the State Government in the amended notification dated 22.10.2019 had only changed the percentage of reservation in promotions to SCs and STs from that of the earlier Promotion Rules, 2003 against the mandate of ***M. Nagaraj's case*** (supra) and ***Jarnail Singh's - I case*** (supra). It is also submitted by





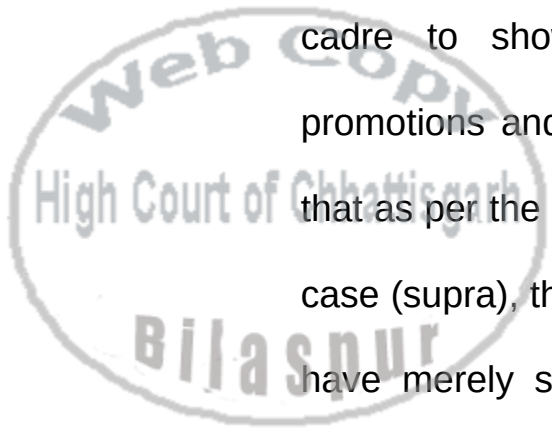
learned counsel for the petitioners that there should be compelling circumstances with respect to backwardness and inadequacy of representation of SCs and STs in the services while keeping in mind the overall efficiency in admiration. The State has to show inadequacy of representation of SCs and STs based on quantifiable data for the cadres in which promotion is to be given and should justify the reservation in promotions with respect to the cadre to which the promotion is made. Further the State is obligated to collect quantifiable data regarding inadequacy of representation of SCs and STs. Collection of informations regarding inadequacy of representation of SCs and STs cannot be with reference to the entire service or "class" / "group", but it should be related to the cadre of posts to which promotion is given. The Hon'ble Supreme Court has clearly held that the appropriate Government has to apply cadre strength as an unit in the operation of the roster in order to ascertain whether the given class/group is adequately represented in the service and that the roster has to be post-specific and not vacancy based. In the earlier proceedings in the case, the learned Advocate General, representing the State had on 02.12.2019, admitted that some inadvertent mistake has crept in respect of rules under challenge and that steps are being taken on war footing to have the same rectified and since the mistake has not been rectified by the State, the impugned notifications Annexures- P/1, P/2 and P/3 were stayed by the Hon'ble Court on 09.12.2019 and on 02.12.2020, the special counsel, appearing on behalf of the State brought to the notice of the Hon'ble Court that a Special Committee has been constituted by the State on 17.07.2020 to collect data with regard





to the particulars of representations of SCs and STs in the State service to decide the extent of reservation.

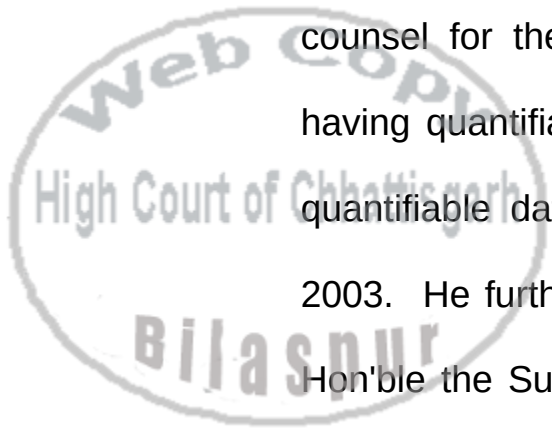
15. Mr. Dadariya also submits that it is an admitted position in this case that firstly, the State framed rules and notified it on 22.10.2019 and 31.10.2019 and thereafter, the Committee was constituted on 17.07.2020 and came up with data in the report dated 17.10.2021. The said data has been collected and presented by the Committee in the report after the framing of the rules and during pendency of the present writ petition as also after granting of the stay by this Hon'ble Court where as the State first has to collect the quantifiable data as per the cadre to show inadequacy of representation for reservation in promotions and then rules have to be framed. He would also submit that as per the case of **M. Nagaraj's** case (supra) and **Jarnail Singh's-I** case (supra), the State have to collect data based on cadres. The State have merely showing the number of posts lying vacant against the reserved posts of SCs and STs in direct appointments as well as in promotions. The contention of the State that posts are lying vacant and therefore, there is inadequacy of representation of SCs and STs is misconceived and it is the failure of the State Government to fill up the posts due to which such vacancies are arising. If all reserved posts are filled up at the initial appointment levels, the persons of reserved class working in the services will automatically get promoted like every other person. The data presented by the State for the 47 departments are based on class and not on cadres. The State and respondents Company have also failed to consider that creamy layer principle has to be applied while giving promotions only because the reserved category





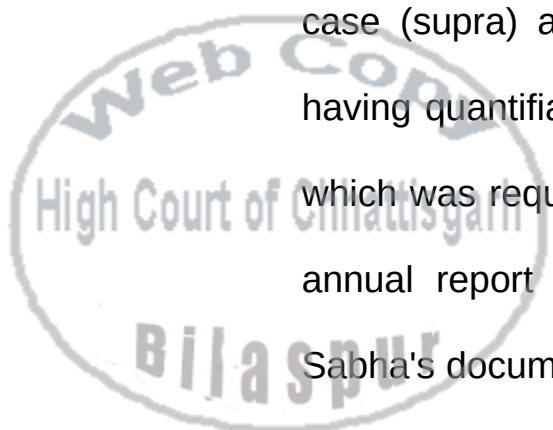
candidates who have already availed the benefit of reservation at the time of appointment, the person who had come out of backwardness by virtue of creamy layer they are to be excluded from the benefit of reservation and therefore, Annexures - P/1, P/2 and P/3 are contrary to the directions given by the Hon'ble Supreme Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra). He would further rely upon the **Jarnail Singh's - II** case (supra).

16. Per contra, Mr. Sanjay Hegde, learned Senior Advocate assisted by Mr. Manoj Gorkela, learned special counsel, appearing for respondents/State opposes the submissions advanced by learned counsel for the petitioner and submitted that the State was already having quantifiable data and it is not the case that without having the quantifiable data, the State has enacted the said Promotions Rules, 2003. He further submitted that much before the judgment passed by Hon'ble the Supreme Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra), there is an Act of 1994 i.e. Chhattisgarh Public Service (Reservation for Scheduled Caste, Scheduled Tribe & Other Backward Classes) Act, 1994 (for short 'the Act of 1994') with respect to what is the vacancy position, how many peoples were employed within the State and Section 19 of the said Act of 1994 talks about the preparation of annual report and submission of annual report before the Vidhan Sabha. The State was well acquaintance with the special needs of various classes and now being formally compiled and bring the data in the form of a report, which has been submitted before this Hon'ble Court. The State position is on affidavit that what is placed before this Hon'ble Court in the Pingua Committee is a compilation. He also





submitted that the impugned notification was issued on 22.10.2019 and on that point of time, the prevailing law on the State was the judgment of the Hon'ble Supreme Court in **B. K. Pavitra Vs. Union of India - II** reported in **(2019) 16 SCC 129**, in which grouping of cadres become approved and it is in that context the Pingua Committee report has come. The Cabinet has also accepted the report of Pingua Committee on 08.09.2021. He also contended that **Jarnail Singh's - II** case (supra) does not over ruled the entirety of **B.K. Pavitra's - II** case (supra), it over ruled only one specific class. The State Government was given liberty to rework the rules in accordance with **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra). The State was having quantifiable data, but it was not compiled together in the format which was required and therefore, it may be a deficiency and since the annual report was produced before the Vidhan Sabha and Vidhan Sabha's documents cannot be produced before the Court and therefore, the data could not be produced before this Court. It has been further submitted that the scope of judicial review in these matters has been dealt with in **B.K. Pavitra's - II** case (supra) in paragraphs 104 and 106. It has been also submitted that the entire structure of equality and opportunity given under Article 16 (4A) and (4B) of the Constitution of India is not discarded. The observations in **M. Nagaraj's** case (supra) were in the context of upholding the constitutional amendment, thereafter how it is to be worked out has been clarified in several judgments of the Hon'ble Supreme Court. In **M. Nagaraj's** case (supra), the Hon'ble Supreme Court has held that the State must have the data and in subsequent Constitutional Bench's decision in **Jarnail**





**Singh's - I** case (surpa), the Hon'ble Supreme Court considered that in view of the Scheduled Caste community the Constitution proceeds on the footing that they are backward.

17. The learned counsel for the respondent Nos. 3 to 5, while adopting the arguments advanced by learned counsel for the State, have submitted that while exercising the powers under Section 79C of the Electricity Supplies Act, 1948, the respondent Nos. 3 to 5 have adopted the Promotions Rules, 2003 framed by the State of Chhattisgarh for all cadres. The action of respondent Nos.3 to 5 was challenged by some of the employees by filing the Writ Petition No. 2024/2004. The said writ petition was allowed on 06.05.2013, which ultimately came up under challenge in WA No. 471/2013, WA No.409/2013 and other connected matters, which were decided by a Co-ordinate Bench of this Court on 04.02.2019, taking WA No. 409/2013 as lead case, quashing the Rule 5 of the Promotion Rules, 2003 and the State was directed to rework the rules or the policy within the framework of law laid down by Hon'ble the Supreme Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra). Thereafter, on 22.10.2019, the State has issued a notification with respect to amended Promotion Rules, 2003 and vide notification dated 31.10.2019, the respondent Nos. 3 to 5 have adopted the said Promotion Rules, 2003 as notified on 22.10.2019 with immediate effect, which is strictly in accordance with law and based on quantifiable data already available to the State and therefore, the impugned notifications are not required to be interfered with and the writ petition is liable to be dismissed.





18. Dr.K.S.Chauhan, learned Senior Advocate, appearing for the intervenors has also submitted that after passing of the order dated 04.02.2019 in WA No. 409/2013 and other batch of matters, the State Government has taken a policy decision to uplift the social and economical status of the weaker sections of the society such as the people belonging to the SCs and STs. Based on the data available with the respondents/State, as also considering the law laid down by the Hon'ble Supreme Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra), the State Government has issued a notification amending the Promotion Rules, 2003, which is based on relevant and requisite data already available with the State. The rules framed by the State Government relating to the promotion, which has been adopted by the respondent Nos. 3 to 5 are proper and justified. He further submitted that after **Jarnail Singh's - II** case (supra), the requirement of collection of data is not there. Whenever the post will arise every time the data will be analysed for a particular post or for a particular vacancy and on that basis it will be analysed whether they have been properly represented or not. He also submitted that by the reliefs claimed by the petitioners, the rights of the intervenors in promotion in service would prejudicially be effected and therefore, he also prayed for dismissal of the writ petition.
19. We have heard learned counsel for the parties and gone through the records of the writ petition and other connected matters.
20. Way back in the year 1995, in **R.K. Sabharwal and Others Vs. State of Punjab & Others**, reported in **(1995) 2 SCC 745**, the Hon'ble



Supreme Court has discussed the reservation in promotion and appointment as also the computation of percentage therein and held that reservation in promotions and appointments, the computation of percentage has to be done in view of the number of posts available in the cadre and not in relation to the vacancies. In paragraph 6, 7 and 8, the Hon'ble Supreme Court deals with the matter and after considering the ***Indra Sawhney Vs. Union of India***, reported in **1992 Supp (3) SCC 217** held as under :

*"6. The expressions "posts" and "vacancies", often used in the executive instructions providing for reservations, are rather problematical. The word "post" means an appointment, job, office or employment. A position to which a person is appointed. "Vacancy" means an unoccupied post or office. The plain meaning of the two expressions make it clear that there must be a 'post' in existence to enable the 'vacancy' to occur. The cadre - strength is always measured by the number of posts comprising the cadre. Right to be considered for appointment can only be claimed in respect of a post in a cadre. As a consequence the percentage of reservation has to be worked out in relation to the number of posts which form the cadre-strength. The concept of 'vacancy' has no relevance in operating the percentage of reservation.*

*7. When all the roster-points in a cadre are filled the required percentage of reservation is achieved. Once the total cadre has full representation of the Scheduled Casts/Tribes and Backward Classes in accordance with the reservation policy then the vacancies arising thereafter in the cadre are to be filled from amongst the category of persons to whom the respective vacancies belong. Jeevan Reddy, J. speaking for the majority in *Indra Sawhney vs. Union of India**





(AIR 1993 SC 477) observed as under:-

"Take a unit/service/cadre comprising 1000 posts. The reservation in favour of scheduled Tribes Scheduled Casts and other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e- 270 by Other Backward Classes, 150 by Scheduled Casts and 80 by Scheduled Tribes. At a given point of time, let us say the number of members of OBC in the unit/service/ category is only 50, a shortfall of 220. Similarly the number of members of scheduled Casts and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be chocked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. This may take quite a number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire of the cadre, service or the unit as the case may be"

8. The quoted observations clearly illustrate that the rule of 50 % a year as unit and not entire strength of the cadre has been adopted to protect the rights of the general category under clause (1) of Article 16 of the Constitution of India. These observations in Indra Sawhney's case, are only in relation to posts which are filled initially in a cadre. The operation of a roster, for filling the cadre strength, by itself ensures that the- reservation remains within the 50 % limit. Indra Sawhney's case is not the authority for the point that

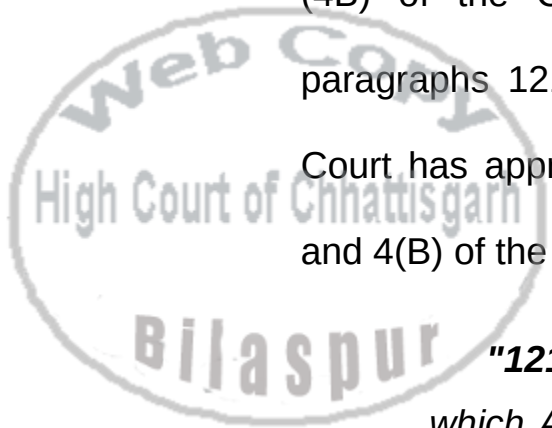




*the roster survives after the cadre-strength is full and the percentage of reservation is achieved.”*

21. The consideration of **R.K.Sabharwal's** case (supra) had been reiterated in **M. Nagaraj's** case (supra). The Constitutional Bench of the Hon'ble Supreme Court has elaborately dealt with the situation and discussed the mandatory requirements of making reservation in promotions, extent of reservation, need of quantifiable data and the process of collecting the quantifiable data showing the backwardness of the class and vacancy of representations of that class in public employment. Ceiling limit of 50% for reservation quota, as provided under Article 16 (4A) and (4B) of the Constitution of India, has also been discussed. In paragraphs 121, 122 and 123 of its judgment, the Hon'ble Supreme Court has approved the Constitutional amendments of Article 16 (4A) and 4(B) of the Constitution of India and held as under :

*"121. The impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling-limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBC on one hand and SCs and STs on the other hand as held in Indra Sawhney<sup>5</sup>, the concept of post-based Roster with in-built concept of replacement as held in R.K. Sabharwal's case.*





**122.** We reiterate that the ceiling-limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.

**123.** However, in this case, as stated, the main issue concerns the "extent of reservation". In this regard the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

22. The mandate of **M. Nagaraj's** case (supra) has been further upheld by Seven Judges Bench of the Hon'ble Supreme Court in **Jarnail Singh's -I** case (supra). The Hon'ble Supreme Court has considered the necessity of revisiting the **M. Nagaraj's** case (supra). In paragraph 23, it has been held that the State Government has to collect quantifiable data showing backwardness of SCs and STs which is as under :





"23. This brings us to whether the judgment in Nagaraj (supra) needs to be revisited on the other grounds that have been argued before us. Insofar as the State having to show quantifiable data as far as backwardness of the class is concerned, we are afraid that we must reject Shri Shanti Bhushan's argument. The reference to "class" is to the Scheduled Castes and the Scheduled Tribes, and their inadequacy of representation in public employment. It is clear, therefore, that Nagaraj (supra) has, in unmistakable terms, stated that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes. We are afraid that this portion of the judgment is directly contrary to the nine-Judge Bench in Indra Sawhney (1) (supra). Jeevan Reddy, J., speaking for himself and three other learned Judges, had clearly held :

"[t]he test or requirement of social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes, who indubitably fall within the expression "backward class of citizens"." (See paragraphs 796 to 797).

Equally, Dr. Justice Thommen, in his conclusion at paragraph 323(4), had held as follows:

"323. Summary xxx xxx xxx

(4) Only such classes of citizens who are socially and educationally backward are qualified to be identified as backward classes. To be accepted as backward classes for the purpose of reservation under Article 15 or Article 16, their backwardness must have been either recognised by means of a notification by the President under Article 341 or Article 342 declaring them to be Scheduled Castes or Scheduled Tribes, or, on an objective consideration, identified by the State to be socially and educationally so backward by reason of identified prior discrimination and its continuing ill effects as to be comparable to the Scheduled Castes or the Scheduled Tribes. In the case of the Scheduled Castes or the Scheduled Tribes, these conditions are, in view of the notifications, presumed to be satisfied."

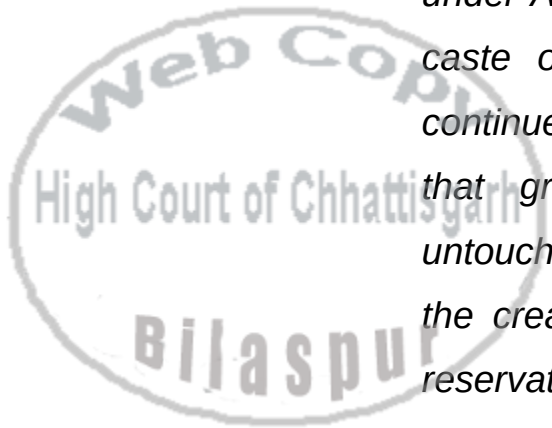




23. It has been further held in paragraphs 26, 27, 28, 30, 31, 35 and 36 as under :

*"26. The whole object of reservation is to see that backward classes of citizens move forward so that they may march hand in hand with other citizens of India on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. This being the case, it is clear that when a Court applies the creamy layer principle to Scheduled Castes and Scheduled Tribes, it does not in any manner tinker with the Presidential List under Articles 341 or 342 of the Constitution of India. The caste or group or sub-group named in the said List continues exactly as before. It is only those persons within that group or sub-group, who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. Even these persons who are contained within the group or sub-group in the Presidential Lists continue to be within those Lists. It is only when it comes to the application of the reservation principle under Articles 14 and 16 that the creamy layer within that sub-group is not given the benefit of such reservation.*

*27. We do not think it necessary to go into whether Parliament may or may not exclude the creamy layer from the Presidential Lists contained under Articles 341 and 342. Even on the assumption that Articles 341 and 342 empower Parliament to exclude the creamy layer from the groups or sub-groups contained within these Lists, it is clear that Constitutional Courts, applying Articles 14 and 16 of the Constitution to exclude the creamy layer cannot be said to be thwarted in this exercise by the fact that persons*





*stated to be within a particular group or sub- group in the Presidential List may be kept out by Parliament on application of the creamy layer principle. One of the most important principles that has been frequently applied in constitutional law is the doctrine of harmonious interpretation. When Articles 14 and 16 are harmoniously interpreted along with other Articles 341 and 342, it is clear that Parliament will have complete freedom to include or exclude persons from the Presidential Lists based on relevant factors. Similarly, Constitutional Courts, when applying the principle of reservation, will be well within their jurisdiction to exclude the creamy layer from such groups or sub-groups when applying the principles of equality under Articles 14 and 16 of the Constitution of India. We do not agree with Balakrishnan, C.J.'s statement in Ashoka Kumar Thakur (supra) that the creamy layer principle is merely a principle of identification and not a principle of equality.*

*28. Therefore, when Nagaraj (supra) applied the creamy layer test to Scheduled Castes and Scheduled Tribes in exercise of application of the basic structure test to uphold the constitutional amendments leading to Articles 16(4-A) and 16(4-B), it did not in any manner interfere with Parliament's power under Article 341 or Article 342. We are, therefore, clearly of the opinion that this part of the judgment does not need to be revisited, and consequently, there is no need to refer Nagaraj (supra) to a seven-Judge Bench. We may also add at this juncture that Nagaraj (supra) is a unanimous judgment of five learned Judges of this Court which has held sway since the year 2006. ....*

*30. In fact, the tests laid down in Nagaraj (supra) for judging whether a constitutional amendment violates basic structure have been expressly approved by a nine-Judge Bench of this Court in I.R. Coelho (Dead) by LRs. v. State*





*of Tamil Nadu and Ors., (2007) 2 SCC 1 (See paragraphs 61, 105, and 142). The entirety of the decision, far from being clearly erroneous, correctly applies the basic structure doctrine to uphold constitutional amendments on certain conditions which are based upon the equality principle as being part of basic structure. Thus, we may make it clear that quantifiable data shall be collected by the State, on the parameters as stipulated in Nagaraj (supra) on the inadequacy of representation, which can be tested by the Courts. We may further add that the data would be relatable to the cadre concerned.*

**31.** *Dr. Dhavan referred to the judgment in U.P. Power Corporation Ltd. (supra), and placed before us the Constitution (One Hundred Seventeenth Amendment) Bill, 2012. This Bill was passed by the Rajya Sabha on 17.12.2012 but failed to get sufficient number of votes in the Lok Sabha and, therefore, could not become an Act. This Bill was tabled close upon the judgment in U.P. Power Corporation Ltd. (supra), and would have substituted Article 16(4-A) as follows:*

*“16. (4-A) Notwithstanding anything contained elsewhere in the Constitution, the Scheduled Castes and the Scheduled Tribes notified under article 341 and article 342, respectively, shall be deemed to be backward and nothing in this article shall prevent the State from making any provision for reservation in matters of promotions, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes to the extent of the percentage of reservation provided to the Scheduled Castes and the Scheduled Tribes in the services of the State.”*

*The Statement of Objects and Reasons for the said Bill read as follows:*

*“The validity of the constitutional amendments was challenged before the Supreme Court. The*





*Supreme Court while deliberating on the issue of validity of Constitutional amendments in the case of M. Nagaraj v. UOI & Ors., observed that the concerned State will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation in promotion.*

*Relying on the judgment of the Supreme Court in M. Nagaraj case, the High Court of Rajasthan and the High Court of Allahabad have struck down the provisions for reservation in promotion in the services of the State of Rajasthan and the State of Uttar Pradesh, respectively. Subsequently, the Supreme Court has upheld the decisions of these High Courts striking down provisions for reservation in respective States.*

*It has been observed that there is difficulty in collection of quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment. Moreover, there is uncertainty on the methodology of this exercise.”*

**35.** *The learned Attorney General also requested us to lay down that the proportion of Scheduled Castes and Scheduled Tribes to the population of India should be taken to be the test for determining whether they are adequately represented in promotional posts for the purpose of Article 16(4-A). He complained that Nagaraj (supra) ought to have stated this, but has said nothing on this aspect. According to us, Nagaraj (supra) has wisely left the test for determining adequacy of representation in promotional posts to the States for the simple reason that as the post gets higher, it may be necessary, even if a proportionality test to the population as a whole is taken into account, to reduce the number of Scheduled Castes and Scheduled Tribes in promotional posts, as one goes*







upwards. This is for the simple reason that efficiency of administration has to be looked at every time promotions are made. As has been pointed out by B.P. Jeevan Reddy, J.'s judgment in *Indra Sawhney (1)* (supra), there may be certain posts right at the top, where reservation is impermissible altogether. For this reason, we make it clear that Article 16(4-A) has been couched in language which would leave it to the States to determine adequate representation depending upon the promotional post that is in question. For this purpose, the contrast of Article 16(4-A) and 16(4-B) with Article 330 of the Constitution is important. Article 330 reads as follows:

**“330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.—**(1) Seats shall be reserved in the House of the People for—

(a) the Scheduled Castes;

(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and]

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2) The number of seats reserved in any State or Union territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory or part of the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory.

(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the People for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of the Scheduled Tribes in the said





*autonomous districts bears to the total population of the State.*

*Explanation.—In this article and in Article 332, the expression “population” means the population as ascertained at the last preceding census of which the relevant figures have been published:*

*Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.”*

*It can be seen that when seats are to be reserved in the House of the People for the Scheduled Castes and Scheduled Tribes, the test of proportionality to the population is mandated by the Constitution. The difference in language between this provision and Article 16(4-A) is important, and we decline the invitation of the learned Attorney General to say any more in this behalf.*

*36. Thus, we conclude that the judgment in Nagaraj (supra) does not need to be referred to a seven–Judge Bench. However, the conclusion in Nagaraj (supra) that the State has to collect quantifiable data showing backwardness of the Scheduled Castes and the Scheduled Tribes, being contrary to the nine-Judge Bench in Indra Sawhney (1) (supra) is held to be invalid to this extent.”*

24. In **Jarnail Singh's-I** case (**supra**), the Hon'ble Supreme Court has overruled the **M. Nagaraj's** case (**supra**) only to the extent that the State has to collect quantifiable data showing backwardness of the SCs and STs being contrary to the Nine Judges Bench in **Indira Sawhney-I** case (**supra**) is held to be invalid.
25. In the year 2022, **Jarnail Singh's - II** case (**supra**) has been decided by a Three Judges Bench of the Hon'ble Supreme Court which approved



the law laid down by Hon'ble Supreme Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra) regarding collection of data on the basis of groups and not cadres and the consideration of **B.K. Pavitra's - II** case (supra) is held as contrary to the law laid down by Hon'ble Supreme Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra). Various considerations have been made in **Jarnail Singh's - II** case (supra), which are given herein below :

*"7. The validity of the above amendments made to Article 16 (4) was considered by this Court in M. Nagaraj & Ors. v. Union of India & Ors.<sup>3</sup>. The key issue that was identified and decided in M. Nagaraj (supra) is whether any constitutional limitation mentioned in Article 16(4) and Article 335 stood obliterated by the constitutional amendments resulting in Articles 16(4-A) and 16(4-B). This Court upheld the constitutional amendments. The amendments were held to be enabling provisions. This Court observed that the State is not bound to make reservation for SCs and STs in matters of promotion. However, if it wishes to exercise its discretion, the State has to collect quantifiable data showing the backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution of India.*

**11.** After considering the issues identified by the learned Attorney General and other learned counsel and hearing them, the following six points are formulated for determination:-

**11.1.** (1) What is the yardstick by which, according to M. Nagaraj (supra), one would arrive at quantifiable data showing inadequacy of representation of SCs and STs in public employment?





**11.2. (2)** *What is the unit with respect to which quantifiable data showing inadequacy of representation is required to be collected?*

**11.3. (3)** *Whether proportion of the population of SCs and STs to the population of India should be taken to be the test for determining adequacy of representation in promotional posts for the purposes of Article 16(4-A)?*

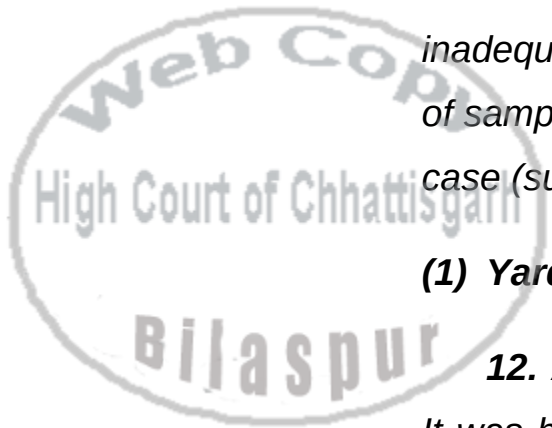
**11.4. (4)** *Should there be a time period for reviewing inadequacy of representation?*

**11.5. (5)** *Whether the judgment in M. Nagaraj (supra) can be said to operate prospectively?*

**11.6. (6)** *Whether quantifiable data showing inadequacy of representation can be collected on the basis of sampling methods, as held by this Court in B.K. Pavitra II case (supra) ?*

**(1) Yardstick for arriving at quantifiable data**

**12.** *Articles 16(4) and 16(4-A) are enabling provisions. It was held in M. Nagaraj (supra) that the discretion of the State to provide reservation is subject to the existence of backwardness and inadequacy of representation in public employment. It was further held that backwardness has to be based on objective factors whereas inadequacy has to factually exist. There is no fixed yardstick to identify equality, justice and efficiency which are variable factors and it depends on the facts and circumstances of each case. This Court was of the further opinion that the concepts of efficiency, backwardness, inadequacy of representation are required to be identified and measured on the basis of data. In case of a challenge made to reservations provided by the State Government, it is incumbent on the State Government to satisfy the Court*

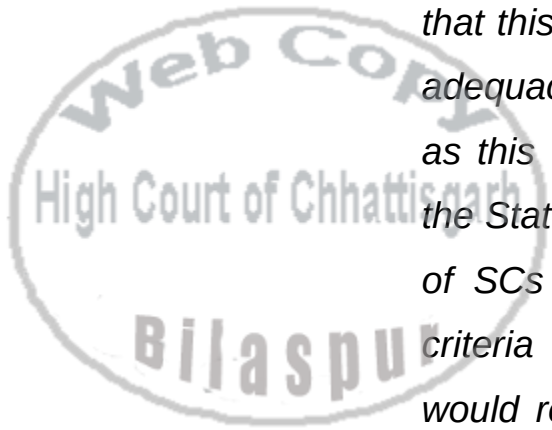




*that the decision is supported by quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335 of the Constitution of India.*

**17.** *Determination of inadequate representation of SCs and STs in services under a State is left to the discretion of the State, as the determination depends upon myriad factors which this Court cannot envisage. A conscious decision was taken by this Court in M. Nagaraj (supra) and Jarnail Singh (supra) to leave it to the States to fix the criteria for determining inadequacy of representation. The submission of the learned Attorney General for India that this Court has to lay down the yardstick for measuring adequacy of representation did not yield a favourable result as this Court in Jarnail Singh (supra) found it befitting for the States to have the liberty to evaluate the representation of SCs and STs in public employment. Laying down of criteria for determining the inadequacy of representation would result in curtailing the discretion given to the State Governments. In addition, the prevailing local conditions, which may require to be factored in, might not be uniform. Moreover, in M. Nagaraj (supra), this Court made it clear that the validity of law made by the State Governments providing reservation in promotions shall be decided on a case-to-case basis for the purpose of establishing whether the inadequacy of representation is supported by quantifiable data. Therefore, we are of the opinion that no yardstick can be laid down by this Court for determining the adequacy of representation of SCs and STs in promotional posts for the purpose of providing reservation.*

**21.** *In M. Nagaraj (supra), this Court observed that the appropriate Government has to apply cadre strength as*





*a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. Cadre strength as a unit also ensures that the upper ceiling limit of 50 per cent is not violated. Following the law laid down in R.K. Sabharwal (supra), this Court in M. Nagaraj (supra) further held that the roster has to be post-specific and not vacancy based.*

**22.** *In M. Nagaraj (supra), this Court held that it is open to the State to provide for reservation in promotions subject to limitation that there must exist compelling reasons for backwardness, inadequacy of representation in a class of post(s) keeping in mind the overall administrative efficiency. While referring to the roster, this Court observed that the appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. Collection of quantifiable data regarding inadequacy of representation as stipulated by M.Nagaraj (supra) is relatable to the cadre concerned, according to Jarnail Singh (supra).*

**36.** *In R.K. Sabharwal (supra), this Court held that the right to be considered for appointment can only be claimed in respect of a post in a cadre and that the concept of 'vacancy' has no relevance in operating the percentage of reservation. It was further held that the cadre strength is always measured by the number of posts comprising the cadre.*

**38.** *In the Office Memorandum dated 02.07.1997, the Union of India set out the principles for making and operating post-based rosters, in which it has been expressly stated that cadre is to be construed as the number of posts in a particular grade. It is made clear that rosters have been prepared grade-wise which are reviewed*





*on a yearly basis and that reservation in promotions is implemented on the basis of these rosters, which operate grade-wise. In M. Nagaraj (supra), this Court approved that the percentage of reservation in promotions was to be applied to the entire cadre strength, as held in R.K. Sabharwal (supra). While doing so, this Court in M. Nagaraj (supra) made it clear that the unit for operation of the roster would be the cadre strength. Before providing for reservation in promotions to a cadre, the State is obligated to collect quantifiable data regarding inadequacy of representation of SCs and STs. Collection of information regarding inadequacy of representation of SCs and STs cannot be with reference to the entire service or 'class'/'group' but it should be relatable to the grade/category of posts to which promotion is sought. Cadre, which should be the unit for the purpose of collection of quantifiable data in relation to the promotional post(s), would be meaningless if data pertaining to representation of SCs and STs is with reference to the entire service.*

**39.** *In R.K. Sabharwal (supra), it was observed that State Governments may take the total population of a particular Backward Class and its representation in the State services for the purpose of coming to a conclusion that there is inadequate representation in the State services.*

**41.** *This Court in Jarnail Singh (supra) found no fault with M. Nagaraj (supra) regarding the test for determining the adequacy of representation in promotional posts in the State. While emphasising the contrast in the language used between Article 330 and Articles 16(4-A) and 16(4-B) of the Constitution, this Court declined the invitation of the learned Attorney General for India to hold that the proportion of SCs*

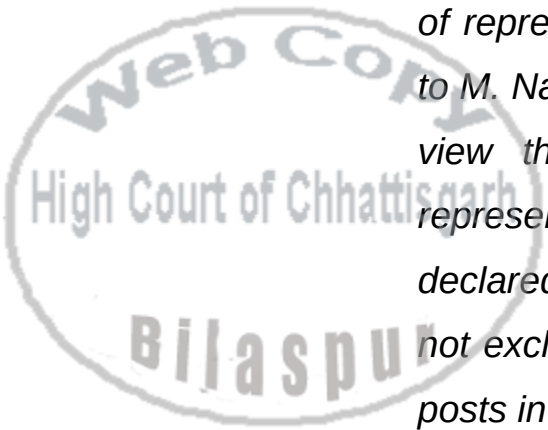




*and STs to the population of India should be the test for determining inadequacy of representation in promotional posts. Therefore, we are not persuaded to express any opinion on this aspect. It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors.*

**66.** *This Court in B.K. Pavitra II found the challenge to the Report on the ground of data having been collected on the basis of Groups A, B, C and D as opposed to cadres, to be without merit. The basis of the said conclusion of the Court was that there is no fixed meaning ascribed to the term 'cadre' in service jurisprudence. Further, this Court held that collection of quantifiable data on the inadequacy of representation is in the services of the State, according to M. Nagaraj (supra). In addition, this Court was also of the view that Article 16(4- A) referred to inadequacy of representation in the services of the State. It was further declared that collection of data on the basis of groups does not exclude data pertaining to cadres, as a group includes posts in all the cadres in that group.*

**67.** *Collection of quantifiable data for determining the inadequacy of representation of SCs and STs is a basic requirement for providing reservation in promotions, as laid down by this court in M. Nagaraj (supra). The unit for the purpose of collection of data is a cadre, according to M. Nagaraj (supra) and Jarnail Singh (supra). For the purpose of collection of quantifiable data for providing reservation in promotions, the entire service cannot be taken to be a unit and treated as a cadre, as already stated. The structure of services in the State of Karnataka is along the same lines as that of services in the Central Government. Services are divided into 'groups', which are further bifurcated into cadres. There is no confusion that a cadre is not*







*synonymous with a 'group'.*

**68.** *The first term of reference for the Ratna Prabha Committee was to collect data cadre-wise. The conclusion of this Court in B.K. Pavitra II (supra) that the expression 'cadre' has no fixed meaning in service jurisprudence is contrary to the judgments of this Court, which have been referred to above while answering point 2. In clear terms, M. Nagaraj (supra) held that the unit for collection of quantifiable data is cadre, and not services as has been held in B.K. Pavitra II (supra). Article 16(4-A) of the Constitution enables the State to make reservation in promotions for SCs and STs, which are not adequately represented in the services of the State. However, the provision for reservation in matters of promotion is with reference to class or classes of posts in the services under the State. That 'groups' consist of cadres is a fact which was taken into consideration by this Court in B.K. Pavitra II (supra). The conclusion that the collection of data on the basis of 'groups' is valid, is contrary to the decisions of this court in M. Nagaraj (supra) and Jarnail Singh (supra).*

**69.** *The State should justify reservation in promotions with respect to the cadre to which promotion is made. Taking into account the data pertaining to a 'group', which would be an amalgamation of certain cadres in a service, would not give the correct picture of the inadequacy of representation of SCs and STs in the cadre in relation to which reservation in promotions is sought to be made. Rosters are prepared cadre-wise and not group-wise. Sampling method which was adopted by the Ratna Prabha Committee might be a statistical formula appropriate for collection of data. However, for the purpose of collection of quantifiable data to assess representation of SCs and STs for the purpose of providing reservation in promotions,*

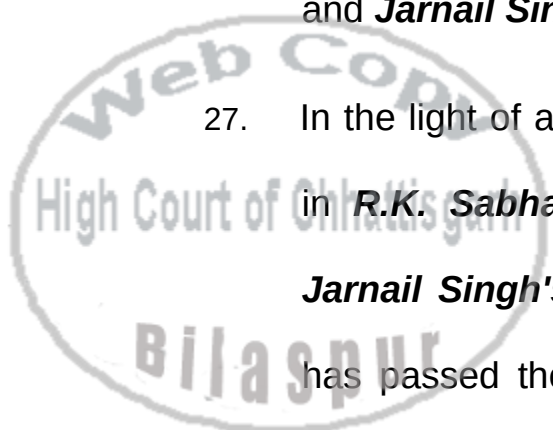




*cadre, which is a part of a 'group', is the unit and the data has to be collected with respect to each cadre. Therefore, we hold that the conclusion of this Court in B.K. Pavitra II (supra) approving the collection of data on the basis of 'groups' and not cadres is contrary to the law laid down by this Court in M. Nagaraj (supra) and Jarnail Singh (supra)."*

26. The learned counsel for State based their submission on **B.K. Pavitra - II** case (supra) which has already been considered in **Jarnail Singh's - II** case (supra) and held that the approving the collection of data on the basis of groups and not cadres in **B.K. Pavitra - II** case (supra) is contrary to the law laid down by this Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra).

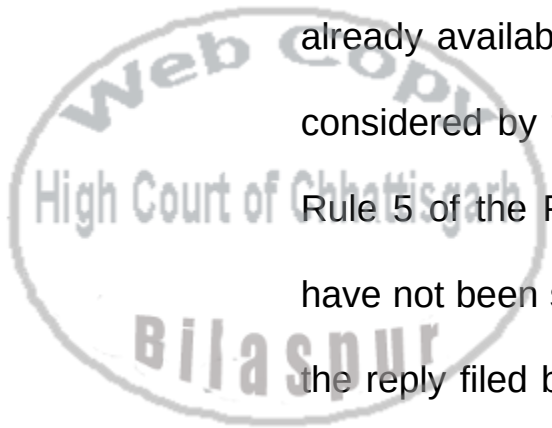
27. In the light of aforesaid pronouncements of the Hon'ble Supreme Court in **R.K. Sabharwal's** case (supra), **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra), the Co-ordinate Bench of this Court has passed the order on 04.02.2019 in WA No. 409/2013 and other batch of connected cases and quashed the Rule 5 of the Promotion Rules, 2003 and directed the State Government to rework the rules or the policy within the framework of law laid down by the Hon'ble Supreme Court in **M. Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra). The order dated 04.02.2019 was not challenged by any of the parties in any higher forum and thus, the order dated 04.02.2019 was attained its finality saying that prior to 04.02.2019, whatever data or informations available to the State Government had gone with the order dated 04.02.2019 and after that the State Government has to rework and recollect the quantifiable data for determination of the percentage of reservation based on law laid down by the Hon'ble Supreme Court in





**M.Nagaraj's** case (supra) and **Jarnail Singh's - I** case (supra).

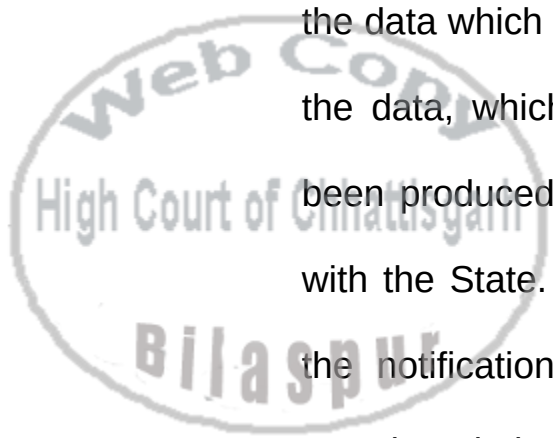
28. Learned counsel for the respondents have vehemently argued that they were having the relevant data prior to issuance of notification dated 22.10.2019 and after its compilation, the notification was issued. The Co-ordinate Bench of this Court, considered the over all material produced before it and also hearing the learned counsel for the parties, had passed the order dated 04.02.2019. The quantifiable data available with the State, if any, have already been considered by the Co-ordinate Bench while passing the order dated 04.02.2019 quashing the Rule 5 of the Promotion Rules, 2003. So, the quantifiable data which is said to be already available with the State prior to 04.02.2019 have already been considered by this Court and after considering the same, quashed the Rule 5 of the Promotion Rules, 2003. What data they have collected have not been shown in the present petition, but as per paragraph 34 of the reply filed by the State dated 17.10.2021, they are saying that they are already having the quantifiable data and the State was always been well acquainted with the local condition, special needs of various classes and persons and the data already available with the State has now been formally compiled and given in a form of report which has been submitted by the Pingua Committee on 17.10.2020 and accepted/ approved by the Cabinet on 08.09.2021 that too during pendency of the present writ petition.
29. From the facts available on record and also the report dated 17.10.2020 submitted by the State, it appears that admittedly Rule 5 of the Promotion Rules, 2003 was quashed by Co-ordinated Bench of this





Court vide order dated 04.02.2019 in WA No. 409 of 2013 and other batch of cases with a direction to rework the rules. On 22.10.2019, the amended rules is notified. After publication of the notification of amended rules of Promotion Rules, 2003, the Committee for collection of quantifiable data was constituted on 17.07.2020, who submitted its report on 17.10.2010, which has been accepted/approved by the Cabinet on 08.09.2021. If the State was having the necessary data, there would be no necessity to constitute the Committee on 17.07.2020 for collection of quantifiable data, but here the Committee has been constituted, who inspite of collecting the quantifiable data, only compiled the data which has already been available with the State. Further more, the data, which are said to already available with the State, has not been produced in the present case that these are the data's available with the State. Speaking in simple term that the State has first issued the notification of amended Promotion Rules, 2023 and thereafter, constituted the Committee to collect the quantifiable data, which is against the law laid down by Hon'ble Supreme Court in the aforesaid cases as also the order dated 04.02.2019 passed by Co-ordinate Bench of this Court in WA No. 409 of 2013 and other batch of matters. Therefore, the stand taken by the State cannot be said to justified.

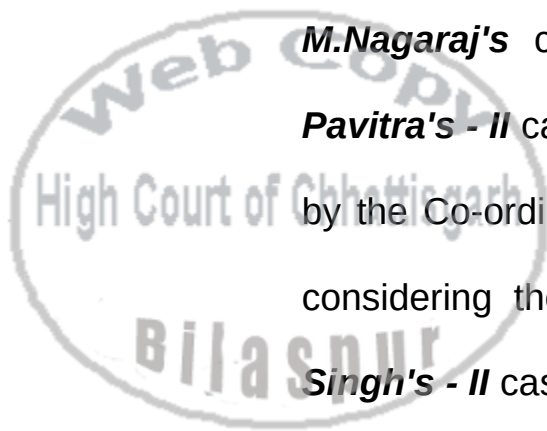
30. Further on 02.12.2019, the learned Advocate General had accepted that some inadvertent mistake has been crept in respect of the rules under challenge and that steps are being taking on war footing to have the same rectified. By the statement made by the learned Advocate General of the State, the State is required to rework in the Promotion Rules, 2023 after collecting the required quantifiable data on the basis





of various authoritative pronouncements of the Hon'ble Supreme Court and then to notify the amended Promotion Rules, 2003. In view of the stand taken by the State Government in the present writ petition, the impugned notifications are held to be not justified and are liable to be interfered with.

31. For the foregoing discussions, this Court is of the view that the impugned notification dated 22.10.2019 (Annexue - P/1) is perverse and declared to be ultra vires to the provisions contained under Article 14 and 16 (4A) and (4B) of the Constitution of India and is issued in contravention of orders passed by the Hon'ble Supreme Court **M.Nagaraj's** case (supra), **Jarnail Singh's - I** case (supra), **B.K. Pavitra's - II** case (supra) as well as the order dated 04.02.2019 passed by the Co-ordinate Bench of this Court in W.A.No. 409/2013. Further considering the judgment of the Hon'ble Supreme Court in **Jarnail Singh's - II** case (supra), the notifications dated 30.10.2019 (Annexure - P/3) and 31.10.2019 (Annexure- P/1) have also losses its efficacy and are hereby quashed. Consequently, **WPS No. 9778/2019** is allowed.
32. The State Government is directed to rework / re-frame the subject Promotion Rules and to notify the same within a period of three months from the date of receiving a copy of this order in the light of judgment passed by the Hon'ble Supreme Court in **M. Nagaraj's** case (supra), **Jarnail Singh's - I** case (supra), **B.K. Pavitra's - II** case (supra) and **Jarnail Singh's - II** case (supra).
33. **WPS No. 839 of 2020** : In this writ petition filed by the petitioners, they are claiming for quashment of Notifications dated 31.10.2019





(Annexure-P/1), 22.10.2019 (Annexure-P/2) and 30.10.2019 (Annexure-P/3) which have also been under challenged in WPS No. 9778 of 2019 and similar grounds have been raised in this petition also and argument advanced in WPS No. 9778 of 2019 has been adopted by both the parties, there is no other argument in the present petition to that of WPS No. 9778 of 2019. Since WPS No. 9778 of 2019 has already been considered and decided by this judgment, there is no necessity to pass any separate order in this writ petition and the judgment passed in WPS No. 9778 of 2019 is also applicable to WPS No. 839 of 2020 and consequently, the instant writ petition is allowed in terms of paragraph 31 of this judgment.

34. **WPIL No. 91/2019** : This is the Public Interest Litigation filed by the petitioner challenging the Notification dated 22.10.2019 issued by the State Government with respect to amendment in Rule 5 of the Chhattisgarh Public Service (Promotion) Rules, 2003 and prayed for the following reliefs :

*“10.1. That, this Hon’ble Court may kindly be pleased to quash impugned notification no. 4-1/2019/1-3 dated 22.10.2019.*

*10.2. That, this Hon’ble Court be further pleased to call documents having data, accordingly to which respondents have issued impugned notification, and which exhibits fulfillment of requirements, framed by Hon’ble Apex Court for reservation in promotion.*

*10.3. That, the Honorable Court be further pleased to grant such relief(s) as may be deemed fit and proper in the interest of justice.”*

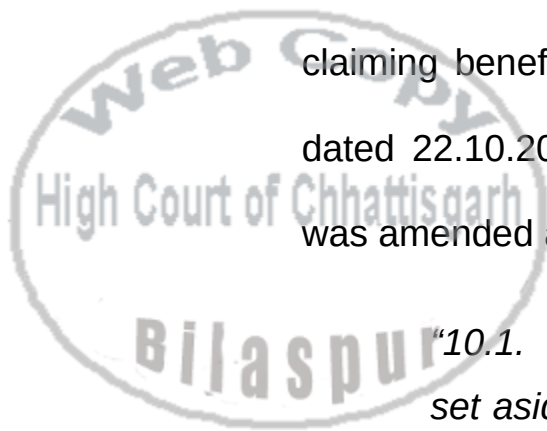


35. The facts and grounds mentioned in the PIL are almost similar to that of WPS No. 9778 of 2019 and the learned counsel for the parties have adopted the arguments advanced by the learned counsel for the parties in WPS No. 9778 of 2019.
36. In view of the order passed in WPS No. 9778 of 2019, whereby the impugned Notification dated 22.10.2019 issued by the State Government has already been quashed, the present PIL also stands disposed of in terms of the order passed in WPS No. 9778 of 2019 to the extent of quashment of the Notification dated 22.10.2019.
37. **WPS No. 3600 of 2020** : This is the writ petition filed by the petitioners claiming benefit of reservation of promotion in view of the Notification dated 22.10.2019 by which the Rule 5 of the Promotion Rules, 2003 was amended and prayed for the following reliefs in their writ petition :

*10.1. That, this Hon'ble Court may kindly be pleased to set aside order dated 09.06.2020 & 03.07.2020 (Annexure P/3) and further be pleased to direct the respondents to keep 13% & 32% posts of District Prosecution Officer vacant for SC/ST category candidates i.e. petitioners.*

*10.2. That, this Hon'ble Court may kindly be pleased to direct the respondents to grant promotion to the petitioners in the SC/ST reserved posts of DPO, with all consequential benefits, after dismissal of WP(S) No. 9778/2019 and WP(PIL) No. 91/2019 or after fresh formulation of Rule 5 by the respondent State, in accordance with law, in the interest of justice.*

*10.3. That, any other relief which this Court finds just and proper may also be granted to the petitioner, in the interest of justice."*





38. In the writ petition the petitioners' claim is that they are duly selected candidates by way of competitive examination in the post of Assistant District Prosecution Officer (ADPO) and appointed in the year 2010-2011 under the SC/ST categories. Their services have regularized and after completion of eight years of their services, they are entitled for promotion on the post of District Prosecution Officer (DPO). On 09.06.2020 and 03.07.2020, the respondent department proposed for promotion of 36 ADPOs in the vacant posts of DPO which includes the proposed vacancy also, but there is no reserved post kept vacant for ADPOs belonging to SC/ST categories. Subsequently the Promotion Rules, 2003 was quashed by Co-ordinate Bench of this vide order dated 04.02.2019 passed in WPS No. 6199 of 2016 and thereafter an amended Rules of Promotion Rules, 2003 was published on 22.10.2019 and Circular dated 30.10.2019. Since total 42 posts of DPO is sanctioned and as per the amended Rules which has been notified on 22.10.2019, 13% reservation is granted to SC category candidates and 32% reservation is granted ST category candidates in promotion and if the present action will continue then no post will remain vacant for the petitioners i.e. SC/ST category and therefore, they are claiming that they be given benefit of amended Promotion Rules, 2003 which has been notified on 22.10.2019 by setting aside the orders dated 09.06.2020 and 03.07.2020.

39. As held in earlier paragraphs of this judgment, the Notification dated 22.10.2019 itself is quashed and the State Government is directed to rework / re-frame the subject Promotion Rules and to notify the same





within stipulated period, the benefit of the amended Promotion Rules, 2003 notified on 22.10.2019 cannot be extended to the present petitioners because of the reasons that the Notification on which they are claiming their right has already been quashed by order passed in WPS No. 9778 of 2019.

40. In view of the foregoing reasons, the instant writ petition i.e. WPS No. 3600 of 2020 is dismissed.

41. **WA No. 286 of 2021** : This is the writ appeal filed by the appellants against the impugned order dated 09.07.2021 passed by the learned Single Judge in WPS No. 3420 of 2021, whereby the writ petition filed by the appellants / petitioners was disposed of reserving the rights of the petitioners either to intervene in the pending writ petitions before the Division Bench of this Court and seeking for appropriate modification of the interim directions and the right of the petitioners was also remain open to challenge the order of promotion, if any, passed by the authorities depriving or denying the rights of the petitioners.

42. The appellants / petitioners had filed the writ petition challenging the order dated 19.03.2021, whereby after interim order dated 09.12.2020 passed in WPS No. 9778 of 2019, the Chhattisgarh State Power Holding Company Limited has issued the order to give provisional promotion to the employees subject to the final outcome of the writ petition in which the interim order of stay has been passed by the Co-ordinate Bench of this Court. It is submitted that in the WPS No. 9778 of 2019 an interim order of stay was passed on 09.12.2019 and Co-





ordinate Bench of this Court has stayed the further proceedings pursuant to Notifications dated 31.10.2019 (Annexure-P/1), 22.10.2019 (Annexure-P/2) and 30.10.2019 (Annexure-P/3), but it has been observed that the interim order of stay will not place any hurdle with regard to regular promotion and it will be applicable only with regard to extent of reservation to the eligible lots. The said writ petition was disposed of vide order dated 09.07.2021 against which the present writ appeal has been filed.

43. Various intervention applications have been filed in WPS No. 9778 of 2019 and the respective parties have put forth their claims before this Court and after hearing the parties, the WPS No. 9778 of 2019 is allowed and impugned Notifications dated 31.10.2019 (Annexure-P/1), 22.10.2019 (Annexure-P/2) and 30.10.2019 (Annexure-P/3) have been quashed. After final disposal of WPS No. 9778 of 2019, the interim order merged in the final order and now the challenge of the present appellants has already been rendered infructuous in view of the fact that the Notifications dated 31.10.2019 (Annexure-P/1), 22.10.2019 (Annexure-P/2) and 30.10.2019 (Annexure-P/3) have already been quashed and the interim order dated 09.12.2019 has already come to an end and therefore, the respondent CSPHCL is required to issue promotion order in accordance to the existing promotion rules applicable to the department. After passing of the orders in WPS No. 9778 of 2019, WPS No. 839 of 2020, WPPIL No. 91 of 2019 and WPS No. 3600 of 2020, nothing survives in this writ appeal for passing of any separate order.





44. In view of the above, this writ appeal is also stands disposed of. However, the petitioner/appellants are at liberty to avail their remedy, if occasion so arises in appropriate proceeding.

Sd/-  
**(Ravindra Kumar Agrawal)**  
Judge

Sd/-  
**(Ramesh Sinha)**  
Chief Justice

**Judgment Date : 16/04/2024**





### **Head-Note**

Reservation Policy for SC and ST in Promotion can be framed only on the basis of yardstick fixed for collecting quantifiable data by the Hon'ble Supreme Court in various authoritative pronouncements and also based on the provisions contained in Article 16(4A) and (4B) of the Constitution of India.

पदोन्नति में अनुसूचित जाति और अनुसूचित जनजाति के लिए आरक्षण नीति केवल माननीय सर्वोच्च न्यायालय द्वारा विभिन्न आधिकारिक घोषणाओं में मात्रात्मक डेटा एकत्र करने के लिए निर्धारित मानदंडों के आधार पर और भारतीय संविधान के अनुच्छेद 16 (4 ए) और (4 बी) के तहत निहित प्रावधानों के आधार पर बनाई जा सकती है।

