



2026:AHC:40046

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 17088 of 2025 (leading)

Ashwani Tiwari And Another

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Harsh Dwivedi, Kamlakar Dwivedi, Mohd. Saleem Khan
Counsel for Respondent(s)	:	Fuzail Ahmad Ansari, C.S.C., Mahendra Narain Singh

::with::

WRIT - A No. - 2169 of 2026 (connected)

Manish Tiwari And 2 Others

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Krishna Datta Tiwari, Yogesh Tiwari
Counsel for Respondent(s)	:	Fuzail Ahmad Ansari, C.S.C., Mahendra Narain Singh

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Shri Kamlakar Dwivedi and Shri Yogesh Tiwari, learned counsel for the writ petitioners in the leading and the connected petition, Shri Pramod Kumar Shrivastava, learned Additional Chief Standing Counsel for the State, and Shri F.A. Ansari for the UP Public Service Commission.

2. Since counter and rejoinder affidavits have been exchanged and parties do not propose to file any further affidavit, the writ petition is being decided at the fresh stage.

3. The case of the petitioner is that an advertisement came to be published bearing number A-8/E-1/2025 dated 16.02.2025 by the UP Public Service Commission inviting applications for recruitment on the post of Assistant Prosecution Officer. The writ petitioners in the leading as well as in the connected writ petition happen to be the law graduates who are aspirants for recruitment on the post of Assistant Prosecution Officer (APO).

According to the writ petitioners, the impugned advertisement is ultra vires and is in violation of the Constitutional Bench judgment in **Indira Sawhney vs Union of India** reported in (1992) Supp 3 SCC 210, as the reservation ought to have been resorted to vacancy-wise and not post-wise. Learned counsel for the writ petitioners have submitted that there are glaring infirmities in the advertisement, particularly when, though as per para 814 of the judgment of the Hon'ble Apex Court in **Indira Sawhney (supra)**, the reservation ought to have been applied vacancy-wise, but in the teeth of the law laid down by the Hon'ble Apex Court, in the said judgment, the reservation has been applied post-wise. Further submission is that due to wrong criteria being adopted in applying reservation, the advertisement not only becomes defective but also there happens to be imbalance in earmarking of the vacancies/posts. It is contended that though under the Economically Weaker Sections (EWS) category, reservations have been made vacancy-wise, but with regard to Unreserved, SC, ST, and OBC categories, the same has been made post-wise based upon cadre strength. Reliance has been placed on the judgment of the Hon'ble Apex Court in **R.K. Sabharwal and others vs State of Punjab and others**, (1995) 2 SCC 745 so as to buttress the said submission in that regard.

4. Shri Pramod Kumar Shrivastava, learned Additional Chief Standing Counsel for the State, along with Shri Ansari for the Commission, while countering the submissions so made by learned counsel for the writ petitioner have submitted that none of the contentions so raised by the counsel for the writ petitioners has any legs to stand for the simple reason that the reservation is to be applied post-wise based upon cadre strength and according to them with respect to the same advertisement dated 16.09.2025, which is subject matter of challenge herein, similar grounds was raised before the Lucknow Bench of this Court in **Writ A No. 11747 of 2025, Vindheshwari Pandey vs State of UP**, then the coordinate Bench of this Court had opined that reservation is to be made on the basis of cadre strength post-wise, and the concept of vacancy has no relevance in operating percentage of reservation. Further submission is that so far as the reservation pertaining to EWS category is concerned, the same stands regulated by the Uttar Pradesh Public Services (Reservation of Economically Weaker Section) Act, 2020, according to which the 10% reservation is relatable to the vacancies, to which recruitment are to be made and further there is no concept of carrying forward in EWS category. However, so far as, the reservation for SC, ST, and OBC is concerned, the same is governed by another set of enactment being UP Public Services (Reservation for Scheduled Castes, Scheduled Tribes, and Other Backward Class) Act, 1994, according to which, reservation is to be made, roster-wise, post-based and further there is a concept of carry forward.

5. I have heard the submissions so made across the Bar and perused the record carefully.

6. Records reveal that there are 580 sanctioned strength of Assistant Prosecution Officer in the Prosecution Department of State of Uttar Pradesh. However, as per the pleadings set forth in para 4 of the counter affidavit filed on behalf of the second respondent, sworn by Joint Director (Prosecution), High Court, Allahabad dated 28.01.2026, a government order came to be issued on 25.01.2007 according to which 2% of sanctioned vacancies stood reduced, being 569, break up whereof: $580 \times 2 \div 100 = 11$, totaling to 569 vacancies.

7. A chart has been referred to in para 4 showing the details of the posts and the vacancies under various parameters, which is quoted hereinunder:

Sl. No.	Details	Unreserved	OBC	SC	ST	EWS	Total
1.	Requisite status of reservation against the determined 580 sanctioned posts of Assistant Prosecution Officer.	232	157	122	11	58	580
3.	Requisite status after deducting 2 percent from the 580 sanctioned posts of Assistant Prosecution Officer, as per Government Order No. 15/20/95-Ka-4-2002 dated 05.03.2002 and Government Letter No. 2938/ Chha-Pu-9-06-31(28)/91 dated 25.01.2007 ($580 \times 2\% = 580 - 11 = 569$).	228	154	120	11	56	569
4.	Expected category-wise details on inclusion of remaining candidates who are working, under process of appointment and have taken charge, as on 01.01.2025.	237	93	53	2	2	387
	Status after difference (Column 2-3), as on 01.01.2025 against the direct recruitment of the Assistant Prosecution Officer.	+9	61	67	9	-54	182
5.	Available vacancy	00	61	67	9	45	182
6.	Requisitioned Posts	27	61	67	9	18	182

8. As per the counter affidavit filed by the State respondents, now the total sanctioned posts of Assistant Prosecution Officer is 569, 50% whereof would fall under the Unreserved category and 50% under Reserved category. It has been demonstrated that 50% of 569 sanctioned posts of Assistant Prosecution Officer would be 284.5, and as per the chart, 237 Assistant Prosecution Officers under Unreserved category and 2 under EWS category, totaling to 239 are working. Deducting the said 239 posts, which are filled up by Assistant Prosecution Officers, the remaining posts which would come would be 45.5, which would be rounded off to 45. As per the chart, there are 9 Assistant Prosecution Officers under Unreserved category in excess, who are working, and in so far as the total number of posts so earmarked for EWS category, treating it to be 569, only 2 Assistant Prosecution Officers under EWS category are working, thus there is residue of 54. Since the total number of posts which are already filled under unreserved OBC, SC, ST and EWS (237+93+53+2+2 totaling to 387) are already filled up and deducting the same from the sanctioned posts of APO being 569, 182 posts are liable to be filled under different categories and thus now 182 posts are being advertised by virtue of the advertisement dated 16.09.2025 showing break whereof for unreserved, OBC, SC, ST and EWS (27+61+67+9+18 totaling to 182). As regards the issue as to what would be the criteria adopted for determining the reservation, the same stands specified in the statutory enactments which holds the field. Though U.P. Public Services (Reservation for Schedule Castes, Schedule Tribes and Other Backward Classes) Act, 1994 is concerned, the same deals with reservation for schedule castes and schedule tribes and OBC under 21%, 2% and 27% quota. The provision of carry forward itself finds place in Section 3 of the Act itself which reads as under:

"(1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentage of vacancies to which recruitment's are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, -

(a)

in the case of Scheduled Castes

Twenty-one per cent;

(b)

in the case of Scheduled Tribes

Two per cent;

(c)

in the case of Other Backward Classes of citizens

Twenty-seven per cent:

Provided that the reservation under clause (c) shall not apply to the category of Other

Backward Classes of citizens specified in Schedule II:

Provided further that reservation of vacancies for all categories of persons shall not exceed in any year of recruitment fifty per cent of the total vacancies of that year as also fifty per cent of the cadre strength of the service to which the recruitment is to be made;

(2) If, in respect of any year of recruitment any vacancy reserved for any category of persons under sub-section (1) remains unfilled, such vacancy shall be carried forward and be filled through special recruitment in that very year or in succeeding year or years of recruitment as a separate class of vacancy and such class of vacancy shall not be considered together with the vacancies of the year of recruitment in which it is filled and also for the purpose of determining the ceiling of fifty per cent reservation of the total vacancies of that year notwithstanding anything to the contrary contained in sub-section (1);

(3) Where a vacancy reserved for the Scheduled Tribes remains unfilled even after three special recruitments made under sub-section (2), such vacancy may be filled from amongst the persons belonging to the Scheduled Castes;

(b)(i) sub-section (3-A), (3-B) shall be omitted;

(ii) sub-section (4) shall be omitted;

(c) for sub-section (5), the following sub-section shall be substituted, namely :-

(5) The State Government shall for applying the reservation under subsection (1), by a notified order, issue a roster comprising the total cadre strength of the public service or post indicating therein the reserve points and the roster so issued shall be implemented in the form of a running account from year to year until the reservation for various categories of persons mentioned in sub-section (1) is achieved and the operation of the roster and the running account shall, thereafter, come to an end, and when a vacancy arises thereafter in public service or post the same shall be filled from amongst the persons belonging to the category to which the post belongs in the roster.

"

9. Furthermore with respect to Uttar Pradesh Public Services (Reservation for Economically Weaker Sections Act, 2020 is concerned, Section 3 reads as under:

"3. Reservation in favour of Economically Weaker Section

(1) In public services and posts, at the stage of direct recruitment, ten percent of vacancies to which recruitment are to be made, they shall be reserved in favour of the persons belonging to Economically Weaker Sections of citizens: Provided that the reservation shall not apply to the category of Economically Weaker Sections of

citizens specified in the Schedule to this Act: Provided further that the candidates from out of the State of Uttar Pradesh shall not be eligible for benefits of reservation under this Act.

(2) The reservation under this section shall be in addition to the reservation provided under the Uttar Pradesh Public Services (Reservation for Schedule Castes, Scheduled Tribes and Other Backward Classes) Act, 1994.

(3) The office memorandum issued by Karmik Anubhag-2 wide no.1/2019/4/1/2002/ka-2/19T.C.II, dated 18.02.2019 shall be deemed to have been issued under this section.

(4) For applying the reservation under sub-section (1), roaster has been issued by notification O.M. No.5/2019/4/1/2002/ka-2/2019T.C.-I, dated 13th August, 2019 by the State Government which shall be continuously applied till it is exhausted.

(5) If a person belonging to Economically Weaker Sections of citizens gets selected on the basis of merit in an open competition with unreserved candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1).

(6) Where in any particular recruitment year any vacancy earmarked under sub-section (1) for Economically Weaker Sections cannot be filled up due to non availability of a suitable candidate belonging to Economically Weaker Sections such vacancies shall not be carried forward to the next recruitment year as backlog and the said vacancy shall be filled by the eligible candidates of unreserved category."

10. A bare look of the Section 3(1) of the 2020 Act would reveal that in public services and the post at the stage of direct recruitment 10% of the vacancy to which recruitment are to be made shall be reserved in favour of the personnel belongings to economically weaker sections and Section 3(6) of the 2020 Act itself provides that bearing in mind in particular recruitment year, any vacancy earmarked under sub-section (1) of the economically weaker sections cannot be filled up due to non-availability of suitable candidates belonging to economically weaker sections such vacancy shall not be forwarded to next recruitment year as backlog and the said vacancy shall be filled by eligible candidates of unreserved category.

11. Pertinently, the constitutional framers were not oblivious of the grounds realities and the practical difficulties which would arise in the matter of implementation of the reservation policies and that is why two separate enactments came to be introduced pertaining to the reservation for different categories.

12. Further the observations made in the distinguished decision in **Indira Sawhney (supra)** came to be followed and considered in R.K. Sabarwal (supra) and following was observed:-

"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 Castes/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 *Indira Sawhney v. Union of India* MANU/SC/0104/1993 : AIR1993SC477, observed as under :-

Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes 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 Castes 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 Castes 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 choked 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 years because the 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 strength 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 a unit and not the 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 *Indira 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. *Indira 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.

9. A Division Bench of the Allahabad High Court in J.C. Malik and Ors. v. Union of India and Ors. (1978) 1 SLR 844 interpreted Railway Board's circular dated April 20, 1970 providing 15% reservations for the Scheduled Castes. The High Court held that the

percentage of reservation is in respect of the appointment to the posts in a cadre. On the basis of the material placed before the High Court it reached the conclusion that if the reservation is permitted in the vacancies after all the posts in a cadre are filled then

serious consequences would ensue and the general category is likely to suffer considerably. We see no infirmity in the view taken by the High Court.

10. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster-points are filled from amongst the Scheduled Castes/Scheduled

Tribes candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category retire. The position which would emerge would be that the Scheduled Castes and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve Categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled and thereafter the vacancies falling in the cadre are to be filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the even of non-availability of a reserve candidate at the roster-point it would be open to the State Government to carry forward the point in a just and fair manner.

11. We, therefore, find considerable force in the second point raised by the learned Counsel for the petitioners. We, however, direct that the interpretation given by us to the working of the roster and our findings on this point shall be operative prospectively.

12. The writ petition is, therefore, disposed of in the above terms. No costs."

13. Notably, the concept, which stands applied for reservation under EWS category cannot be injected while providing reservation under SC, ST and OBC category, since the concept of vacancy nowhere finds place under 1994 Act. Moreover, the argument so raised by the learned counsel for the writ petitioners that 10% reservation is to be applied upon the total cadre strength of Assistant Prosecution Officer being 569 is concerned, the same is also misplaced, particularly when Section 3(6) of the 2020 Act does not

provide for vacancies to be carried forward. In any view of the matter, since 182 posts were being advertised and after rounding up, only 18 posts are available under EWS category. In **Vindheshwari Pandey (supra)**, a coordinate Bench of this Court was confronted with the challenge raised to the Advertisement published on 16.09.2025, which is also challenged in the present proceedings and in paragraphs-6 and 7, the following was observed:-

"6. Upon consideration of submissions of learned counsel for parties and perusal of material on record, it is evident that advertisement has indicated number of vacancies under reservation as described here-in-above. The entire aspect has been adjudicated by Hon'ble Supreme Court in the case of R.K.Sabharwal and others (supra) in the following manner:-

"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 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. In view thereof, it is quite evident that reservation is required to be taken in the context of cadre-strength and the concept of vacancy has no relevance in operating percentage of reservation."

14. No good ground has been made out for interference. Resultantly, the writ petitions are **dismissed**.

February 23, 2026

N.S.Rathour

(Vikas Budhwar,J.)