

A ALOK KUMAR SINGH & OTHERS

v.

STATE OF U.P. & OTHERS

(Civil Appeal No. 11370 of 2018)

B NOVEMBER 27, 2018

[KURIAN JOSEPH AND UDAY UMESH LALIT, JJ.]

C *Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2018 – rr.6, 14 and 15 – Selection undertaken in respondent-State pursuant to advertisement for recruiting 4010 posts namely 3698 posts of Sub-Inspectors (Civil Police) and 312 posts of Platoon Commander (Provincial Armed Constabulary or PAC) of Uttar Pradesh – Final results were published seeking to fill up all the posts except 226 posts namely 205 and 21 posts reserved for dependents of freedom fighters – Challenge raised to the selection of certain candidates inter alia on the ground that said candidates had used whitener/blade while answering questions in the main examination – Final results revised excluding names of all such candidates – Challenge to – Direction by Supreme Court in Hanuman Dutt Shukla case that such candidates whose names were excluded as a result of use of whitener or blade in the main examination, would also be accommodated – List of 809 successful candidates declared – Entire selection process and the revised final result again challenged in the High Court – Writ petitions dismissed – In the meantime, another set of petitions challenged the entire selection process – Direction that the result of the main written examination be prepared afresh, affirmed by the Division Bench of the High Court in Special Appeal No.416 of 2016 – On appeal, held: Considering the facts that the present selection has seen various interventions including revision in final list on more than one occasion and considering the large number of vacancies of 607 posts where certain candidates either discontinued training or did not qualify in medical examination/character verification, as a one time exception it is directed that such 607 posts be made available in the present selection itself – Decision of the High Court in Special Appeal No.416 of 2016 was correct – Going by the Rules, only 12030 candidates could have been allowed to participate in Group*

H

Discussion against the number of 14256 – But at this length of time, it would be inappropriate to re-do the exercise and eliminate the excess number from consideration, more particularly when the number of 14256 represents all those who secured 50% or more marks in the written examination and there are still 607 vacancies to be filled up – In terms of the decisions of Supreme Court in Hanuman Dutt Shukla case 809 candidates were given benefit, followed by 24 similarly situated candidates – To this number of 833, 189 similarly situated candidates will have to be added as dealt with in the order passed by Supreme Court – This aspect was repeatedly made clear that those vacancies would be in addition – Therefore, total number of candidates who could be selected in the selection relatable to the year 2011 in any case ought not to be less than 4010+1022 – Directions issued.

Issuing directions, the Court

HELD: 1.1 Considering the facts that the present selection has seen various interventions including revision in final list on more than one occasion and considering the large number of vacancies of 607 posts where certain candidates either discontinued training or did not qualify in medical examination/ character verification, as a one time exception it is directed that such 607 posts be made available in the present selection itself. One more reason for such direction is that large number of posts namely more than 8000 posts are currently available for succeeding selections. Similarly, the decision of the High Court in Special Appeal No.416 of 2016, was correct. Going by the Rules, only 12030 candidates could have been allowed to participate in Group Discussion against the number of 14256. But at this length of time, it would be inappropriate to re-do the exercise and eliminate the excess number from consideration, more particularly when the number of 14256 represents all those who secured 50% or more marks in the written examination and there are still 607 vacancies to be filled up. [Para 25][347-E-H]

1.2 In the order dated 31.10.2017, Supreme Court had emphasized the adherence to eligibility of 50% while the order dated 30.11.2017 had directed completion of Selection process

H

A in the order of merit. Thereafter, the order dated 16.01.2018 categorically stated that three factors namely, merit, reservation and preference should be taken into consideration. Therefore, the submission that the benefit, if any, of the order or directions should be confined to those who are/were before this Court or the High Court alone, in the capacity of either the
B petitioners or the intervenors ignoring merit cannot be accepted. [Para 26][348-A-B]

1.3 Though the number of candidates called for group discussion ought to have been thrice the notified vacancies i.e. 12030, the Board had called 14256 candidates. The first list viz.
C the result notified on 25.06.2015 had named 3784 candidates leaving out 226 unfilled posts as a result of non-availability of candidates in the category of dependents of freedom fighters as stated above. In terms of the decisions of this Court in *Hanuman Dutt Shukla* 809 candidates were given benefit, followed by 24
D similarly situated candidates. To this number of 833, 189 similarly situated candidates as dealt with in the order passed by this Court on 14.08.2018 will have to be added. The decision of this Court in *Hanuman Dutt Shukla* was very clear that the revised final list dated 25.06.2015 ought not to be disturbed but benefit must be
E given to those candidates who were excluded for use of whitener/ blade etc. while answering the main examination. This aspect was repeatedly made clear that those vacancies would be in addition and therefore, the number of 1022 (809 in terms of *Hanuman Dutt Shukla*, 24 in terms of case of *Deepak Kumar* and 189 in terms of the order dated 14.08.2018) have to be reckoned
F in addition to the figure of 4010. Therefore, total number of candidates who could be selected in the selection relatable to the year 2011 in any case ought not to be less than 4010+1022. Status and identity of the candidates who form the group of 1022 candidates is very clear. In this context it is to be noted that the vacancies notified are only approximate and there is
G nothing wrong if the number increases in the exigencies of service. [Para 28][349-C-H]

1.4 In the peculiar fact situation of the present case, as a one time exception, following directions are issued :-

H

A) 607 posts lying vacant as a result of certain candidates having discontinued training or having failed to qualify in medical examination/character verification, shall be offered and made available in the present selection itself, strictly in order of merit and subject to fulfilment of having obtained 50% or more marks.

A

B) There are 226 unfilled posts as a result of non-availability of candidates in the cadre of dependents of freedom fighters. Normally, “freedom fighters” is not a category which, over a period of time, would keep increasing. In any case, there are selections which are round the corner in which more than 8000 posts are available for the candidates. The interest of those candidates who answer the description “dependents of freedom fighters” would therefore be taken care of in the succeeding selections. These 226 posts should also be made available for the present selection.

B

C

C) The State Government and its authorities are therefore directed to make available 833 posts (607+226) for the present selection strictly in order of merit subject to the fulfillment of the criteria that the candidates had obtained 50% or more in the main written examination, in keeping with principles of reservation and preference.

D

D) Direction to fill-up the above 833 posts in terms of this Judgment is in addition to any other directions already issued.

E

E) A group of matters namely SLP (Civil) Nos.10674 of 2018, 10675 of 2018, 12891-12893 of 2018 and 15699 of 2018 are filed by individuals who are either Head Constables or Constables in the police service and are seeking promotion to the post of Sub-Inspectors (Civil Police). Since the nature of controversy and the questions raised therein are completely unconnected with the present selection, said matters are segregated and it is directed that they be listed immediately before the appropriate Bench for consideration. [Para 29][349-C-H; 350-A-B]

F

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11370 of 2018.

From the Judgment and Order dated 29.01.2016 of the High Court of Judicature at Allahabad in Writ-C No. 67748 of 2015.

H

A

With

C. A. Nos. 11372, 11373, 11374, 11375, 11371, 11377, 11378, 11379, 11380, 11381-82, 11383, 11384, 11385, 11402, 11388-90, 11386-87, 11391, 11392, 11393, 11394, 11406, 11407, 11396, 11398 and 11399 of 2018.

W. P. (C) Nos. 735, 736 and 1053 of 2017.

B

T. C. (C) Nos. 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 73, 74, 75, 80, 83, 85, 87, 88, 89, 90, 91, 93, 97, 98, 99, 100, 102, 103, 105, 106, 109, 110, 111, 112, 113, 114, 116, 117, 118, 120, 121, 122, 123, 124, 125, 127, 128, 129, 131, 132, 133, 134, 135, 136, 140, 142, 144, 145, 146, 147, 148, 149, 151, 152, 153, 154, 155, 156, 157,

C

159, 161, 162, 165, 166, 167, 168, 169, 171, 172, 173, 176, 178, 180, 181, 183, 184, 107, 141, 219, 226, 227, 220, 192, 216, 200, 185, 186, 187, 188, 189, 190, 191, 194, 195, 196, 197, 199, 201, 202, 203, 204, 205, 207, 206, 213, 215, 214, 217, 218, 222, 221, 224, 225, 228, 229, 230, 232, 234, 241, 252, 231, 250, 233, 247, 246, 235, 242, 236, 237, 244, 238, 239, 254, 255, 245, 277, 278, 279, 281, 282, 283, 289, 284, 285, 287, 286, 288, 292, 297, 299 and 307 of 2017.

D

W. P. (C) No. 22, 441, 913 and 1059 of 2018

Contempt Petitions (C) No. 815/2018 in SLP (C) No. 16669/2017

MA No. 1297/2018 in T.C. (C) No. 92/2017

E

MA No. 1993/2018 in T.C. (C) No. 210/2017

MA No. 1960/2018 in T.C. (C) No. 293/2017

Contempt Petition (C) No. 1200/2018 in T.C. (C) No. 58/2017

F

Contempt Petition (C) No. 1257/2018 in T.P. (C) No. 283/2017

T. C. (C) No. 53 of 2018

Contempt Petition (C) No. 972/2018 in SLP (C) No. 10468/2018

SLP (C) No. 10674, 10675, 12891-12893 and 15699 of 2018

G

T. C. (C) No. 62/2018 in T. P. (C) No. 1053/2018

Aishwarya Bhati, AAG, R. Venkataramani, V. Shekhar, Parag Tripathi, Manoj Prasad, Anoop G. Chaudhari, Ms. June Chaudhari, Rakesh Khanna, Dushyant Dave, Pallav Sishodia, Ms. Mahalakshmi, Ms. Meenakshi Arora, Sr. Advs., Nagamuthu, Piyush Sharma, Avijit Mishra, Yashraj Bundela, Praveen Vignesh, Anand Nandan,

H

Rohit Ranjan, Sumit Mishra, Amit Pawan, Rajeev Kumar Dubey, A
Vaidruti Mishra, Kamendra K. Mishra, Amit Bose, Hitesh Kumar
Sharma, S. K. Rajora, M. A. Chinnasamy, Dr. Lokendra Malik, Danish
Zubair Khan, Prashant Shukla, Madhumay Misra, Ms. Shreya Mishra,
Dr. Satyendra Kumar Mishra, Satyajeet Kumar, Pradeep Kr. Dwivedi,
Vivek Tiwari, Umesh Dubey, Dr. Vinod Kumar Tewari, Ms. Kausar
Raza Faridi, Prashant Kumar Singh, Jugal Kishore Gupta, Sanjay Rastogi, B
Vivek Vishnoi, Pankaj Kumar Singh, Pawan Kumar Shukla, Markand
Pratap Singh, Raj Singh Rana, Yashpal Dhingra, Ms. Anuradha Mishra,
Vandit Mishra, Ms. Jahnvi Sharma, Raghwendra Tiwari, Ms. Mamta
Tiwari, Abhishek Verma, Navank Shekhar Mishra, Pankaj Kr. Mishra, C
Alok Kumar Misra, Ashutosh Lal, Manoj Kumar Shukla, Shekhar Kumar,
Ms. Ritu Rastogi, R. C. Kaushik, Rakesh Mishra, Sandeep Kumar
Dwivedi, Ms. Leelawati, Ms. Madhubala, Saurabh Ahuja, Dr. Vinod
Tewari, Pradip Kumar Dwivedi, Sandeep Kumar Dwivedi, Satyam
Pandey, Arun Kumar, Vivek Tewari, C. B. Gururaj, K. P. Singh, Prakash
Ranjan Nayak, Susheel Tomar, Ms. Mishika Mishra, Rajesh Srivastav,
Ms. Pooja, Ms. Rani S. Jha, Prabhat Kumar Rai, Christopher D'souza, D
Anurag Dubey, Rajesh Kumar Pandey, Ms. Meenakshi Parihar,
Rajesh Pathak, Abhishek Chakraborty, Shirish Kumar, Bhupender Kumar
Bhardwaj, Sanjay Kumar Dubey, Sumit Kumar, Devvrat, Praveen Kumar
Rai, Hemal Kiritkumar Sheth, Ms. Priyanka Kakkar, Mukesh Sinha,
Amit Kumar, Saurabh Kumar, Devesh Kumar Tripathi, V. Rana, E
S. R. Setia, Krishna M. Singh, Rajiv Kumar, Ms. Rohina Nath,
Vivekanand Rana, Ms. Anu Gupta, Ms. Gouri Karuna Das Mohanti,
Arvind Gupta, Saurabh Mishra, Shiva Kumar, Neelkanth Dhyneshwar,
Mohit Kumar Kaushik, Gurudatta Ankolekar, S. K. Tyagi, Ms. Poonam
Tyagi, Praveen Jain, Pramod Kumar Anurag Kasana, Rupinder Walia, F
Arvind Yadav, Nikilesh Ramachandran, Kislay Komal, Rakesh
Chaurasiya, Sanjeev Kumar, Ms. Shalu Sharma, Suryodaya Prakash
Tiwari, Ms. Shuchi Singh, Krishna Kant Dubey, Dharmendra Kumar
Sinha, Raju Sonkar, Sanveer S. Mehlwar, Arun Adlakha, Mata Prasad
Singh, Sanjaya Kumar Singh, Keshav Rai, S. Premchandra, Ms. Ranjana
R. Singh, Debasis Mishra, R. C. Sharma, Amol Chitale, Nirnimesh Dube, G
Mrs. Pragya Baghel, Anuj Bhandari, Mrinmay Bhattmewara, Hemant
Parmar, Vivek Gupta, Gopal Jha, G. Shreyash Bhardwaj, Manjeet Jha,
G. R. Pandey, Avinash Sharma, F. A. Khan, Adesh Kumar, L. Sarweswar,
M. K. Aswathi, Bijender Singh, Rameshwar Prasad Goyal, Saroj Tripathi,
Pradeep Mishra, Pranay Kumar Mohapatra, Ranjit Kumar Sharma, Shiv H

- A Sagar Tiwari, Ms. Abha R. Sharma, Anirudh Sanganeria, Siddharth Dave, Balraj Dewan, Ravi Prakash Mehrotra, Dhananjai Jain, Sanjeev Malhotra, Sanjay Jain, Ms. K. Sarada Devi, Gyan Prakash Srivastava, Vinay Garg, Abhijat P. Medh, Ashwani Kumar Dubey, Vishnu Shankar Jain, Ms. Susmita Lal, Rabin Majumder, Lakshmi Raman Singh, G. Ramakrishna Prasad, Rajesh Goyal, Yashraj Singh Deora, Shyam Agarwal, Gorkela
- B Law Office, Satpal Singh, Advs. with them for the appearing parties.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

- C 1. Leave to appeal granted in all special leave petitions except those petitions dealt with in para 29(E) hereinafter.
2. These appeals and connected matters arise out of selection undertaken pursuant to advertisement dated 19.05.2011 for recruiting 4010 posts namely 3698 posts of Sub-Inspectors (Civil Police) and 312 posts of Platoon Commander (Provincial Armed Constabulary or PAC)
- D in State of Uttar Pradesh. Since the issues raised in these matters arise from the same selection, they are dealt with together.
3. The provisions of the Uttar Pradesh Sub-Inspector and Inspector (Civil Police) Service Rules, 2018 ('the Rules', for short) contemplate a five phase programme of examinations for direct
- E recruitment to the posts of Sub-Inspector and Platoon Commander. The five phases are: (i) Physical Standard Test (ii) Preliminary Written Examination (iii) Physical Efficiency Test (iv) Main Written Examination and (v) Group Discussion.
4. Part V of the Rules deals with the procedure for recruitment.
- F In terms of Rule 14, the appointing authority is to determine and intimate the number of vacancies to be filled during the course of the year of recruitment, including those which are earmarked for reserved categories. Rule 6 contemplates reservation for candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories. The reservation for other categories is governed by Uttar Pradesh Public Services
- G (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993, (1993 Act, for short)
5. The procedure for direct recruitment after the vacancies are advertised is dealt with in detail in Rule 15. According to Rule 15(h) in
- H order to succeed in the Preliminary Written Examination, the candidates

must secure a minimum of fifty per cent marks. Rule 15 (h) contemplates drawing up of a “Tentative Select List” on the basis of marks obtained in the Main Written Examination and Group Discussion. Such Tentative Select List is to be prepared in respect of each category of candidates in the light of reservation policy and is thereafter sent to Police Head Quarters for further action. Character Verification is thereafter undertaken and in terms of Rule 15(j) if candidates are found unfit in Medical Test or Character Verification, the vacancies are to be carried forward for further selection.

6. After the publication of advertisement on 19.05.2011 for selection of 4010 posts i.e. 3698 posts for Sub-Inspectors (Civil Police) and 312 posts for Platoon Commander (PAC), the selection process was undertaken. After the physical test, the preliminary examination was held on 11.12.2011. The main examination was thereafter held on 14.09.2014 which was followed by Group Discussion. Final results were published on 16.03.2015 seeking to fill up all the posts which were advertised except 226 posts namely 205 and 21 posts reserved for dependents of freedom fighters in the categories of Sub-Inspectors (Civil Police) and Platoon Commander (PAC) respectively, which could not be filled because of non-availability of candidates. According to the authorities, these posts were therefore required to be carried forward for subsequent selection.

7. A challenge was raised to the selection of certain candidates *inter alia* on the ground that said candidates had used whitener/blade while answering questions in the main examination. It was submitted that such candidates ought to have been disqualified and excluded from the final result. The challenge was accepted by the High Court of Allahabad in its decision dated 29.05.2015 in Writ Petition No.67782 of 2014, (Saket Kumar vs. State of U.P.) which directed the authorities to exclude the names of all those candidates who had used whitener/blade in the main examination. In the light of this decision, the authorities then revised the final result on 25.06.2015 and excluded names of all such candidates. As a result, some candidates who were not part of the final result on 16.03.2015 were included in the revised final result. This revised final result thus became the basis and the candidates who figured therein were sent for training, pursuant to subsequent orders passed by this Court.

A

B

C

D

E

F

G

H

A 8. The aforesaid decision of the High Court was subject matter of
challenge before this Court and by its Judgment and Order dated
19.01.2016 in SLP (Civil) No.21843-44 titled as Hanuman Dutt Shukla
vs. State of UP, this Court accepted the contention of those whose names
stood excluded as a result of the High Court decision. However, since
B the revised final result was published by that time, this Court directed
that those candidates whose names were included in the revised result
of 25.06.2015, ought not to be disturbed. It was directed that such
candidates whose names were excluded as a result of use of whitener
or blade in the main examination, would also be accommodated over
and above those who were selected as per revised final result. It is
C common ground that in compliance of said order dated 19.01.2016 of
this Court, a list of 809 successful candidates was declared on 05.12.2016
by the Recruitment Board and appropriate relief in terms of order dated
19.01.2016 passed by this Court was given.

D 9. In the meantime, fresh challenge was raised to the entire
selection process and the revised final result by filing Writ Petition
no.49802 of 2015 and other connected matters in the High Court of
Allahabad. It was submitted that the expression “such vacancies shall
be carried forward for further selection” in Rule 15(j) ought to be
E construed to mean that the vacancies must be offered to the next
available candidates in order of merit regardless whether they had failed
to make the cut off level. This challenge was negated by the High Court
by its Judgment and order dated 29.01.2016 and the writ petitions were
dismissed. It was observed by the High Court as under:

F “In the present case, there is a clear statutory embargo which
provides that such vacancies shall be carried forward for further
selection which is specifically in the context of candidates being
found unfit in the medical test or being invalidated as a result of
the character verification. Rule 15 (h) clearly contemplates drawing
up of a tentative select list on the basis of marks obtained in the
main written examination and group discussion for each category
G of candidates which is then sent to the Head of the Department
with a recommendation, subject to medical test and verification
of testimonials/character. Rule 15(h) specifically contemplates that
no waiting list is to be prepared by the Board. It is in this
background that Rule 15 (j) provided that prior to the issuance of
H letters of appointment, completion of the character verification is

necessary and if any candidate has been found unfit in the medical test or as a result of the character verification, these vacancies shall be carried forward for further selection. The principle that the vacancies which are available should be filled up is subject to statutory rules laying down the method and process of selection. Each of the petitioners admittedly has received marks which are lower than the cut off which was prescribed for the general category of candidates and had been unable to be selected on the basis of the cut off.

A

B

Hence, we find no merit in the submission which has been urged on behalf of the petitioners that Rule 15(h) should be so construed as to require that the vacancies which remain unfilled as a result of unfitness of 104 candidates and the absence of 46 should be offered to the petitioners or to other persons in order of merit. This would be plainly contrary to the provisions contained in the Rules.”

C

Consequently, Writ Petition No.67748 of 2015 was also dismissed on the same date, which decision is subject matter of challenge in Civil Appeal arising out of Special Leave Petition No.12538 of 2016. The aforesaid Special Leave Petition came up along with connected matters on 25.04.2016 before this Court on which date notice was issued.

D

10. It may be mentioned here that in terms of the decision of a Single Judge of the High Court of Allahabad rendered on 16.03.2016 which was confirmed by the Division Bench by its Judgment and Order dated 29.07.2016, in connection with horizontal reservation to be adopted while finalizing the result, another revised final result was published on 29.11.2016. Since no grievance is made on this count, we have refrained from going into the details in respect of such challenge and the consequences as a result of such directions.

E

F

11. In the meantime, another set of petitions challenging the entire selection process and consequential result *inter alia*, on the ground that the “rounding of percentage” adopted by the authorities had violated the principle laid down in Rule 15(d) of the Rules as a result of which ineligible candidates were declared successful, was filed in the High Court of Allahabad. The challenge was accepted by a Single Judge of the High Court by its Judgment and Order dated 24.08.2016 in Writ Petition

G

H

- A No.5158 of 2015 and it was directed that the result of the main written examination be prepared afresh in the light of the observations made therein. This decision of the Single Judge was affirmed by the Division Bench of the High Court in Special Appeal No.416 of 2016. (Dharmendra Kumar and others vs. State of U.P. & Others) and other connected matters by its Judgment and Order dated 06.04.2017. While upholding the decision of the Single Judge, the Division Bench went on to observe :-

- C “It is not in dispute that total number of vacancies was 4010 and thus in terms of the provisions contained in 15(f) of the Service Rules, 2008, the total number candidates, who were required to be selected on the basis of evaluation of written examination would be 12030 for allowing them to participate in group discussion. In the selection, which was under challenge before learned Single Judge, as against 12030 candidates, total number of candidates who were declared successful and were called for and subjected to group discussion was 14243¹. Thus, 2213 candidates in excess were called for group discussion and it was thus, contended by the writ petitioners that the same was violative of rule 15(f) of the Service Rules, 2008.

- E Rule 15(f) of the Service Rules, 2008 prescribes that a candidate who is declared successful in Physical Efficiency Test shall be required to appear in the main written examination carrying 400 marks in the subjects detailed therein. It further categorically prescribes that a candidate, who fails to obtain minimum 50% marks in each subject shall not be eligible for recruitment.”

- F The Division Bench thus dismissed the Special Appeals.

- G 12. The Judgment of the Division Bench dated 06.4.2017 in Special Appeal No.416 of 2016 and other connected matters is under challenge in Civil Appeals arising out of SLP (C) Nos.16669 of 2017 and 22129 of 2017 and other connected matters. These matters came up on 19.06.2017. While issuing notice, this Court declined to stay the implementation of the order of the High Court but directed that any steps taken in pursuance of the decision of the High Court would abide by further orders of this Court. The matters then came up on 21.07.2017 when following order was passed by this Court:

- H ¹The candidates called for Group Discussion were 14256 and not 14243.

“We are informed by all the learned counsel present here that including 37 writ petitioners, 237 persons approached the High Court against the selection at various stages in one capacity or other.

A

We are also informed that 810 candidates also had a grievance with regard to whitener being used. However, for those 810 candidates, additional vacancies were created, therefore, they do not come in the way of the present issue. Since there is no dispute with regard to 810 candidates, who are covered by the Judgment passed by this Court in Civil Appeal Nos. 587-588 of 2016 dated 19.01.2016, we direct the learned Additional Advocate General to ascertain as to what is the impediment in sending them for training since their issue is finally settled by the Judgment of this Court.

B

C

We are informed that pursuant to the directions issued by the High Court regarding reservation, a list of 3784 candidates has been published on 26.11.2016, out of which 3533 have already undergone training. We direct the learned Additional Advocate General to clarify as to what is the impediment in sending the remaining candidates also for training. He will also take instruction as to whether 237 people, who went to the High Court, can also be sent for training in respect of the vacancies which would have arisen subsequent to the advertisement, subject of course to their eligibility.”

D

E

13. In SLP (C) No.12538 of 2016, an affidavit in reply was filed on behalf of the State Government stating that each of the petitioners had secured marks less than the cut off marks. As regards 226 posts which could not be filled up due to non-availability of suitable candidates, attention was invited to the provisions of Section 3(2) of 1993 Act whereunder unfilled vacancies would be required to be carried forward for further two years and the vacancies could be treated to be lapsed only if no sufficient candidates were available in such subsequent selection(s).

F

G

14. Thereafter, both the aforesaid set of Special Leave Petitions along with connected matters came up on 14.09.2017, when following directions were passed by this Court.

“We direct the Additional Advocate General for the State of U.P. to get an affidavit filed by the competent authority as to how

H

A many candidates are remaining to be considered who have obtained the cut-off marks indicated above in the respective categories, after the list is to be revised as per the directions of the High Court. Barring the candidates already selected, the affidavit shall indicate as to how many more candidates are there in the respective categories.

B All the persons who are before this Court on the ground that they were before the High Court on or before 31.12.2016, either as petitioners or as interveners, may submit their particulars to the learned Additional Advocate General, who will verify the particulars and submit a report before this Court before 31.10.2017.”

C 15. An affidavit in compliance of the directions issued by this Court on 14.09.2017, was filed on behalf of the State Government on 27.10.2017. It was submitted as under:

D “11. That as stated above all the candidates who used whitener/ blade etc., and have procured the marks more than the cut-off marks fixed for this category have been declared as selected and as on date no such candidate remains to be selected who had obtained marks more-than the cut-off marks fixed either for those who used whitener/blade etc. or for those who did not adopt whitener/blade etc.

E 12. That as already submitted, out of 165 candidates/petitioners only 95 candidates were selected. The Status Report of these 95 candidates is as hereunder :

F	1.	Candidates sent for training	53
	2.	Candidate whose character verification & medical examination is in process	11
G	3.	Candidates found unfit in medical examination & character verification	31
		Total	95

H

Status of 95 selected candidates

A

13. That a list of 237 candidates (till 21.10.2017) was received from the office of the Learned Additional Advocate General. All these 237 candidates have approached this Hon'ble Court either as petitioner or as intervener. After scrutiny of the records it had been found that none of these candidates have procured the marks upto the cut-off marks. This being so, their result had so far not been declared by the Recruitment Board.”

B

16. All the matters thereafter came up before this Court on 31.10.2017 and following observations were made by this Court in its order :-

C

“In furtherance to our order dated 14.09.2017 an affidavit has been filed on behalf of the Government of U.P., on 27.10.2017. It is stated in the affidavit that a total of 4617 candidates have so far been selected and sent for training. At paragraph 5 it is seen that the selection is based on cut off marks differently applied for the candidates who have used whitener/blade etc.

D

Learned counsel appearing for some of the parties submit that despite their furnishing the particulars, there is no verification by the learned Additional Advocate General. In case any of the names furnished to the State have been left out their particulars will be verified and a further affidavit will be filed within three weeks. In case, any of the candidates would still like to give the particulars they can furnish the same to Ms. Aishwarya Bhati, Additional Advocate General for the State of U.P. on or before 10.11.2017.

E

There will also be a direction to the State of U.P. to file an affidavit as to how many among 4617 candidates already selected have either discontinued the training or left the service. It shall also be clarified in zone of consideration for appointment in case the cut off marks for general candidates are applied to those who used whiteners/blade etc.

F

G

The State is also directed to clarify, going by the original eligibility of 50% marks, how many more candidates would be there in the zone of consideration.”

H

A 17. Accordingly, an affidavit of compliance was filed on behalf of
the State Government on 21.11.2017. It was stated that in terms of the
orders passed by this Court, 911 names were received from the office
of the Additional Advocate General out of which, 11 candidates were
already selected while roll numbers of 11 candidates did not match with
B the data available with the Board. 22 candidates were stated to be
disqualified in physical test and written examination leaving out 867
candidates. It was asserted that the total marks obtained by said 867
candidates were below the cut-off marks and, therefore, their names
did not figure in the Select List. It was further submitted that out of
C 4617 already selected, 102 candidates had discontinued training and 3
candidates had left the service, thus accepting that there were 105
vacancies from and out of 4617 of selected candidates. It was further
submitted that 189 candidates who had used whitener/blade etc. on their
answer sheets had secured marks equal to or above cut-off marks.

D It was further submitted that 14256 candidates had scored 50%
or more marks in each of the four subjects of the main written examination
and had thus qualified for the next stage of recruitment process i.e.
Group Discussion. Those 14256 candidates were accordingly called for
Group Discussion. On the basis of total marks obtained by them in the
Written Examination and Group Discussion and after applying the relevant
E rules of reservation (vertical and horizontal) as per the policy of the
State Government, a select list was prepared by the Recruitment Board.
Thus, all the 14256 candidates who had secured 50% or more marks in
the written examination, were considered for the next stage of the
selection process. It was further stated that no more candidates, who
had obtained 50% or more marks in each of the four subjects of main
F written examination, were now available.

18. All the matters, thereafter, came-up on 30.11.2017 when
following order was passed by this Court.

G “... .. We find that 189 candidates are to be included in view
of the decision of this Court in Hanuman Dutt Shukla Vs. State
of U.P. We also note that more than 100 persons appointed have
left the training/service. The learned counsel appearing for the
individual petitioners have pointed out that the figure would be
more than 200.

H

Be that as it may, we direct the learned AAG appearing for the State to verify as to how many persons are in actual service as on today in the post of Sub-Inspectors and Platoon Commanders out of 4617 candidates already appointed. In respect of such vacancies and in respect of 189 candidates of whitener category, we direct the State to complete the selection process in the order of merit.”.

A

B

19. In its subsequent order dated 16.01.2018 this Court thereafter directed as under:

“... .. Learned counsel appearing for the State submitted that the order dated 30.11.2017 could not be fully implemented because of lack of clarification regarding the candidates who used whitener, blade etc.

C

We make it clear that since the candidates who have used whitener, blade etc. have otherwise been permitted, the State need to follow only one list.

D

It is also clarified that in the matter of appointment pursuant to our order dated 30.11.2017 all the three factors, namely, merit, reservation and preference should be taken into consideration.”.

20. On 16.03.2018 an additional affidavit was filed on behalf of the State Government in compliance of the orders passed by this Court on 30.11.2017 and 16.01.2018. It was stated that as per information received from the Headquarters of the Director General of Police, Lucknow, a total of 3858 persons were in actual service on the posts of Sub-Inspectors and Platoon Commanders out of the 4617 candidates already appointed. It was stated that training orders for 72 selected candidates had also been issued leaving a total of 607 posts (Sub-Inspectors:537 + Platoon Commanders: 70) which were lying vacant. The affidavit stated :-

E

F

“So far as the selection under the orders of this Hon’ble Court is concerned, it is submitted that the answering respondents have received information regarding the aforesaid 607 vacancies along with the relevant reserved categories in which such vacancies exist. It is submitted that the said vacancies would be filled in

G

H

A accordance with the three parameters specified by this Hon'ble Court from time-to-time *viz.* merit, preference and reservation.”

21. The matters then came-up on 22.03.2018. After hearing learned counsel, the following directions were issued by this Court:

B “1. The advertised vacancies of 4010 in the Post of Sub Inspector and Platoon Commanders should be filled up by the State of Uttar Pradesh expeditiously on merits and in terms of the orders passed by this Court, if not already filled up.

C 2. We have been informed by learned counsel for the State of Uttar Pradesh that due to orders passed from time to time by this Court, perhaps more than 4010 posts have been filled up. It that is so, persons occupying posts in excess of 4010 shall not be disturbed until further orders from this Court.

D 3. Whether the persons who have been appointed in excess of 4010 posts are to continue or their services may be dispensed with will have to be argued by learned counsel for the parties and we will certainly consider those submissions and pass appropriate orders.

E 4. We may mention that according to learned counsel for the petitioners a large number of posts are lying vacant and perhaps some persons can be adjusted against those vacant posts over and above 4010 posts. We are not taking any decision on this without hearing learned counsel for the parties.

F 5. Following the order passed on 14th September, 2017, we make it clear and direct that all applications for intervention impleadment, etc. or fresh matters instituted after the cut off date of 31st December, 2016 stand disposed of.”

G 22. When the matters again came-up on 14.08.2018, it was disclosed that 213 candidates were similarly placed as 809 candidates in the whitener category, whose case was dealt with by this Court in its order dated 19.01.2016 in Civil Appeal Nos.587-588 of 2016 (Hanuman Dutt Shukla & Ors. Vs. State of Uttar Pradesh and Ors.). A submission

H

was made on behalf of the State Government that the said 809 candidates as well as similarly situated 213 candidates ought to be taken as part of 4010 vacancies notified for Selection. Said submission was rejected as under:-

“... ..Mr. V. Shekhar, learned senior counsel and Ms. Aishwarya Bhati, learned Additional Advocate General for the State of U.P. submit that 809 vacancies should be part of 4010 vacancies notified for selection.

We find it difficult to appreciate the submission, since it had been made clear in the order of this Court dated 19.01.2016 in Hanuman Dutt Shukla & Ors. Vs. State of Uttar Pradesh & Ors. (Civil Appeal Nos.587-588 of 2016) that on account of accommodation of 809 candidates in the whitener category, nobody should be displaced. There is no dispute that 213 candidates (24+189) are similarly situated, therefore, these 213 candidates are also to be treated as additional vacancies for all purposes and they shall be sent for training forthwith.

Learned counsel for the State submits that in view of the clarification, as above, the candidates will be immediately sent for training, subject to codal formalities. We also make it clear that on account of the implementation of this order, no representation for change in the category (i.e. from Sub Inspector to Platoon Commander) shall be entertained.”

23. On 11.09.2018 a further affidavit was filed on behalf of State Government in response to the queries posed on earlier occasions and it was submitted that as on 07.08.2018 the total vacant posts in the cadres of Sub-Inspector (Civil Police) and Platoon Commander (PAC) were 8260 and 289 respectively. It was further submitted that a requisition for recruitment of 3000 posts was sent to the Recruitment Board on 04.04.2016 pursuant to which the selection was undertaken by the Recruitment Board and said process was in its final stages. Further, another requisition was made in respect of 5234 posts on 30.06.2018 to the Recruitment Board. As regards the present selection it was submitted by the State Government as under :

A	1.	Total number of vacancies as per notification/advertisement (SI 3698 + PC 312)	4,010
	2.	Total number of applications received pursuant to the advertisement	5,31,239
	3.	After scrutiny valid applications	5,01,317
	4.	Physical Standard Test (Document Verification) found qualified	2,77,066
B	5.	Person qualified for preliminary Examination (50%)	2,77,066
	6.	Number of candidates appearing in the examination	2,58,029
	7.	Candidates qualifying the Examination	49,100
C	8.	Persons qualifying Physical Efficiency Test	15,777
	9.	Persons called for Written Examination	15,777
	10.	Persons appeared for Examination	15,295
D	11.	Persons qualified (Non-whitener 11,376 Whitener 2880) (Four subject test – 400 marks Minimum 50% in each subject to qualify for next stage i.e. Group Discussion) As per rule 3 times the notified vacancies is to be called for Group Discussion which means 12030 was to be called but the Board called 14256, who all appeared.	14,256
E	12.	Final list non-whitener for SI 3493 and PC 291 Number of vacancies reserved for ex-servicemen dependent of freedom fighters which were carried forward due to non-availability of candidates Total as per advertisement/notification Persons using whiteners were disqualified pursuant to large number of complaints received alleging unfair practice by the candidates.	3,784 226 4,010
F	13.	Number of candidates using whitener selected in addition to the already selected which was as per the advertisement but in compliance of order dated 19.01.2016 in the case of Hanuman Dutt Shukla pursuant to order of this Hon'ble Court dated 23.08.2017 in the case of Deepak Kumar	809 24
G	14.	Excess number of candidates who were to be considered and deemed to have been selected pursuant to the orders of the Courts (SI 755 + PC 78)	833
	15.	Position as obtained from the above situation (3784+833)	4,617
	16.	Candidates who discontinued training/did not qualify in medical examination/character verification	607
H	17.	Total number of people in service (4617-607)	4,010

24. The matters were thereafter taken-up for final hearing and we heard all the learned counsel. It was submitted by the learned counsel that since number of posts were still lying vacant, appropriate directions be issued to make appointments and the benefit of such direction be confined to those who were before the Court either as Petitioners or Intervenors. On the other hand, it was submitted on behalf of the State Government that, as stated in its various affidavits, all candidates who had secured more than 50% marks were considered at the appropriate stages in the selection process and that no more candidates who had obtained 50% or more marks were now available. It was further submitted that though there were vacancies to the tune of 8260 in the cadre of Sub-Inspector (Civil Police) and 289 in the cadre of Platoon Commander (PAC) but two subsequent selection processes were already undertaken.

25. At the outset, we must deal with the challenges raised to the judgments dated 29.01.2016 and 06.04.2017 passed by the High Court in Writ Petition No.49802 of 2015 and in Special Appeal No.416 of 2016 respectively.

In our view, the High Court was right in negating the submission as regards construction of the expression “such vacancies shall be carried forward for further selection” appearing in Rule 15(j). However, considering the facts that the present selection has seen various interventions including revision in final list on more than one occasion and considering the large number of vacancies of 607 posts where certain candidates either discontinued training or did not qualify in medical examination/character verification, we deem it appropriate, as a one time exception to direct that such 607 posts be made available in the present selection itself. One more reason for such direction is that large number of posts namely more than 8000 posts are currently available for succeeding selections.

Similarly, the decision of the High Court in Special Appeal No.416 of 2016, in our view, was correct. Going by the Rules, only 12030 candidates could have been allowed to participate in Group Discussion against the number of 14256. But at this length of time, it would be inappropriate to re-do the exercise and eliminate the excess number from consideration, more particularly when the number of 14256 represents all those who secured 50% or more marks in the written examination and there are still 607 vacancies to be filled up.

A 26. In the order dated 31.10.2017, this Court had emphasized the adherence to eligibility of 50% while the order dated 30.11.2017 had directed completion of Selection process in the order of merit. Thereafter, the order dated 16.01.2018 categorically stated that three factors namely, merit, reservation and preference should be taken into consideration. We, therefore, cannot accept the submission that the benefit, if any, of the order or directions should be confined to those who are/were before this Court or the High Court alone, in the capacity of either the petitioners or the intervenors ignoring merit.

C 27. We now proceed to deal with the matters concerning vacancies and the directions that are required to be passed, in the facts and circumstances of the present matters.

D 28. According to the chart referred to above, though the number of candidates called for group discussion ought to have been thrice the notified vacancies i.e. 12030, the Board had called 14256 candidates. The first list viz. the result notified on 25.06.2015 had named 3784 candidates leaving out 226 unfilled posts as a result of non-availability of candidates in the category of dependents of freedom fighters as stated above. In terms of the decisions of this Court in *Hanuman Dutt Shukla* (supra) 809 candidates were given benefit, followed by 24 similarly situated candidates. To this number of 833 we will have to add 189 similarly situated candidates as dealt with in the order passed by this Court on 14.08.2018. The decision of this Court in *Hanuman Dutt Shukla* (supra) was very clear that the revised final list dated 25.06.2015 ought not to be disturbed but benefit must be given to those candidates who were excluded for use of whitener/blade etc. while answering the main examination. This aspect was repeatedly made clear that those vacancies would be in addition and therefore we have no hesitation in stating that the number of 1022 (809 in terms of *Hanuman Dutt Shukla* (supra), 24 in terms of case of *Deepak Kumar* and 189 in terms of the order dated 14.08.2018) have to be reckoned in addition to the figure of 4010. Therefore, total number of candidates who could be selected in the selection relating to the year 2011 in any case ought not to be less than 4010+1022. Status and identity of the candidates who form the group of 1022 candidates is very clear. In this context it is to be noted that the vacancies notified are only approximate and there is nothing wrong if the number increases in the exigencies of service.

H

29. We now come to the issue as to what should be the approach in respect of vacant posts on two counts. The tabular chart then states that 226 posts remained unfilled as a result of non-availability of candidates in the category of dependents of freedom fighters etc. and 607 posts are lying vacant as a result of candidates who discontinued training or did not qualify in medical examination/character verification. Theoretically, 226 unfilled posts ought to be carried forward for further selection as those posts were earmarked for dependents of freedom fighters.

In the peculiar fact situation of the present case, as a one time exception, we issue following directions :-

A) 607 posts lying vacant as a result of certain candidates having discontinued training or having failed to qualify in medical examination/character verification, shall be offered and made available in the present selection itself, strictly in order of merit and subject to fulfilment of having obtained 50% or more marks.

B) There are 226 unfilled posts as a result of non-availability of candidates in the cadre of dependents of freedom fighters. Normally, “freedom fighters” is not a category which, over a period of time, would keep increasing. In any case, there are selections which are round the corner in which more than 8000 posts are available for the candidates. The interest of those candidates who answer the description “dependents of freedom fighters” would therefore be taken care of in the succeeding selections. We, therefore, direct that these 226 posts should also be made available for the present selection.

C) The State Government and its authorities are therefore directed to make available 833 posts (607+226) for the present selection strictly in order of merit subject to the fulfilment of the criteria that the candidates had obtained 50% or more in the main written examination, in keeping with principles of reservation and preference.

D) We make it clear that direction to fill-up the above 833 posts in terms of this Judgment is in addition to any other directions already issued.

E) A group of matters namely SLP (Civil) Nos.10674 of 2018, 10675 of 2018, 12891-12893 of 2018 and 15699 of 2018 are filed by individuals who are either Head Constables or Constables in

A the police service and are seeking promotion to the post of Sub-Inspectors (Civil Police). Since the nature of controversy and the questions raised therein are completely unconnected with the present selection, we segregate said matters and direct that they be listed immediately before the appropriate Bench for consideration.

B 30. All appeals, Writ Petitions and Transferred Cases stand disposed of in above terms. All contempt petitions seeking compliance of the orders passed by this Court also stand disposed of as no further orders are called for. There shall be no order as to costs.

C 31. We are grateful for the assistance rendered by all the learned counsel and sincerely appreciate the efforts put in by them.

Divya Pandey

Directions issued.