

super-speciality, it would be difficult for the candidate to know as to which of the posts would be available either to the general or reserved candidate or whether or not they fulfil or qualify the requirements so as to apply for a particular post and seek selection. Necessarily therefore the Court approved a part of the earlier judgment of Allahabad High Court in Ram@@
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Niwas Pandey case (supra) even though that judgment had not@@
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been cited, by holding that the reservation has to be applied subject-wise and the Professors of all Departments cannot be clubbed together and treated as one cadre. The Court, however, interfered with the conclusion of the Allahabad High Court on the question as to whether there can at all be a reservation on a single post. The Court was of the opinion that if there exists any isolated post, rule of rotation be applied and by application of roster for appointment and for achieving the said objective the Vice Chancellor, who is responsible authority under Section 4 has to enforce the Act, would ensure that single post in each category of Professors, Readers or Lecturers carrying the same scale of pay would be subject to reservation by applying principle of rotation . This conclusion of the Court in the aforesaid case of Dr.@@
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Dina Nath Shukla (supra) is no longer a good law in view of@@
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the Constitution Bench judgment of this Court in the case of Post Graduate Institute of Medical Education and Research,@@
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Chandigarh since reported as JT 1998 (3) SC 223. Dr. Dina@@
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Nath Shukla relied upon the judgment in Madhav's case [JT@@
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1996(9) SC 320]

It has been unequivocally held in the aforesaid Constitution Bench decision that there cannot be any reservation in respect of an isolated post and the judgment of this Court in Union of India & Anr. v. Madhav s/o. Gajanan@@
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Chaubal & Anr. [JT 1996 (9) SC 320] has been overruled on@@
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which judgment the Court had relied upon in the case of Dr.@@
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Dina Nath Shukla (supra).@@
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Under the Uttar Pradesh State Universities Act, 1973 Section 2(19) defines the expression 'teacher' to mean 'a teacher employed by the University for imparting instruction and guiding or conducting research either in the University or in an Institute or in constituent college maintained by the University'.

A look at the provisions of Sections 31(10), 31(3), 31(9) and 31-AA would indicate that the Act provides for recruitment to the post of Professor directly and there is a provision for promotion only in personal cases depending upon the pre-conditions prescribed under Section 31-AA. The Statute of the University prescribes the procedure for direct recruitment as well as for personal promotion to the posts of Reader and Professor (See 10.02, 11.04, 11.12B). It thus appears that the statute conceives of, posts of Professor belonging to a single cadre. Under the provisions of the Reservation Act promulgated in the State of U.P. called the Uttar Pradesh Public Services (Reservation for Scheduled

Castes, Scheduled Tribes and other Backward Classes) Act, 1994, "public services and posts" have been defined in Section 2(c) and clause (iv) thereof would bring within its sweep a University established by or under a Uttar Pradesh Act. Section 3 of the Reservation Act provides for reservation in

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all public services and posts. It also says that the percentage of vacancies to which recruitments are to be made in accordance with roster referred to in sub-section (5) of Section 3 shall be reserved in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens. Sub-section (5) of Section 3 stipulates that the State Government shall, for applying the reservation under Sub-section (1), by a notified order, issue a roster which shall be continuously applied till it is exhausted. It would thus be apparent that the principle of reservation could be applied to a post of Professor in accordance with a roster that has been issued by the State Government.

In course of the arguments before us, Mr. Dwivedi, learned senior counsel appearing for the appellants submitted that there has been a 100 point roster in the State of U.P. which has been published by the Governor in exercise of power under sub-section (5) of Section 3 of the Reservation Act. It may be borne in mind that in implementation of a roster as notified by the Governor, the principles enunciated in R.K.@@

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Sabharwal & Ors. v. State of Punjab & Ors. [JT 1995(2) SC@@
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351] case have to be followed. We are not in a position to come to a conclusion on the basis of informations available on record to hold whether the principles enunciated in Sabharwal's case have been followed while issuing the@@
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advertisement in question and that apart the advertisement

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which was the subject matter of challenge, never considered the case of reservation on the subject-wise basis. Mr. Dwivedi, strenuously urged before us that there should not be a reservation on the subject-wise basis particularly taking into the definition of "cadre" in the Act and Statute already referred to and it should be left to the discretion of the Vice Chancellor to decide the question as to which one of the given posts at a given point of time could be reserved. We are unable to accept the said submission of the learned counsel as, in our opinion, that would lead to uncertainty and no candidate would be able to know as to which post is being reserved and under what consideration.

While, therefore, we are of the considered opinion that there can be a reservation in respect of post of Professor and the provisions of the reservation Act would apply, but the same cannot be applied taking all the Professors as a Cadre and it has to be made subject-wise, as has been earlier construed and held by this Court. We are also of the opinion that there cannot be a reservation on an isolated post. We further observe that in deciding the question of reservation the appropriate Authority must follow the roster as has been published in exercise of power under Section 3(5) of the Reservation Act and then the roster should be duly complied with in accordance with the principles enunciated by this Court in Sabharwal's case.@@

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The conclusion of the impugned judgment on the basis

of the earlier Division Bench judgment in the case of Ram@@
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Niwas Pandey (supra) is possibly not a correct reading of the@@
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aforesaid judgment. We are told that the very advertisement
that was issued in the year 1995 which came up for
consideration before this Court in the case of Dr. Dina Nath@@
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Shukla (supra) was the judgment which was under consideration@@
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before the Allahabad High Court in the impugned judgment.
This Court in paragraph 16 having held that the law is
declared and the Vice Chancellor would work out the details
and make a fresh advertisement and have the selection done in
accordance with law and appointments made accordingly, we
really fail to understand how anything survived for the High
Court in the impugned judgment to give any direction contrary
to the same. Be that as it may, since we have already
indicated and explained the position of law, the Vice
Chancellor of the University would act accordingly.
These appeals are disposed of with the aforesaid
observations and directions.

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(G.B. PATTANAİK)@@
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(S.N. PHUKAN)@@
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New Delhi;
February 27, 2002

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(S.N. VARIAVA)@@
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ITEM No.102 COURT No.3 SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 39 of 1998@@
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State of U.P. & Ors. ...Appellant (s)

Versus

M.C. Chattopadhyaya & Ors. ...Respondent(s)

With

Civil Appeal Nos. 40/98, 635/98, 849/98, 850/98.

(With office report)

Date :27/02/2002 The appeal(s)/matter(s) was/were called on for
hearing today.

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAİK
HON'BLE MR. JUSTICE S.N. PHUKAN
HON'BLE MR. JUSTICE S.N. VARIAVA

For Appellant (s) Mr. Dinesh Dwivedi, Sr. Adv.
 Mr. Ajay K. Agrawal, Adv.
 Ms. Anamika Agrawal, Mrs. Alka Agrawal,
 Mr. C. Siddharth, Advs.

For Respondent (s) Ex parte

UPON hearing counsel, the Court passed the following
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Mr. Dwivedi, the learned senior counsel appearing for the appellants started his arguments at 11 a.m. and concluded at 12.15 p.m.

The appeals are disposed of in terms of the signed order.

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(J.S. Rawat)
Court Master

(Suneet Bala Sharma)
Court Master

(Signed order is placed on the file)