

CWP-24608-2023 (O&M) & connected cases

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112+296

CWP-24608-2023 (O&M)
Date of Decision:01.04.2025

Kamaljeet Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

With

Sr. No.	Case No.	Petitioner(s)	Respondent(s)
2.	CWP-25538-2023	Deepak Bamber	State of Haryana and others
3.	CWP-25597-2023	All India Enquity Forum and others	State of Haryana and others
4.	CWP-28813-2023	Shamsher Singh and others	State of Haryana and others
5.	CWP-28252-2023	Narender Singh and others	State of Haryana and others
6.	CWP-2751-2024 (O&M)	Vijay Singh and another	State of Haryana and another
7.	CWP-1745-2024	Bhajan Singh and others	State of Haryana and others
8.	CWP-1890-2024	Azad Singh and others	State of Haryana and another
9.	CWP-11762-2024 (O&M)	Vandana Arya and another	State of Haryana and others

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Sunil K. Nehra, Advocate,
Mr. Rahil Mahajan, Advocate,
Mr. Robin Lohan, Advocate,
Mr. Viren Nehra, Advocate,
Mr. Arjun Dosanj, Advocate,
Ms. Meghna Nehra, Advocate for the petitioner
(in CWP-24608-2023 & CWP-25538-2023)

Mr. Virender Gill, Advocate for
Mr. Jasbir Mor, Advocate for the petitioner
(in CWP-1745-2024)

Mr. Dinesh Kumar Advocate and
Mr. Dharamjit, Advocate for the petitioner
(in CWP-28813-2023)

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Mr. Satender Kumar, Advocate and
Mr. Vinay Malik, Advocate for the petitioner
(in CWP-11762-2024)

Mr. Saurabh Bhatia, Advocate,
Mr. Manjot S. Khokhar, Advocate and
Ms. Kuljinder S. Billing, Advocate for the petitioner(s)
(in CWP-25597-2023 & CWP-2751-2024)

Mr. Manoj Sharma, Advocate for the petitioner
(in CWP-28252-2023)

Mr. Vishal Aggarwal, Advocate and
Mr. Kritin Jain, Advocate for the petitioner
(in CWP-1890-2024)

Ms. Shruti Jain Goyal,
Senior Deputy Advocate General, Haryana

Dr. K.S. Chauhan, Senior Advocate with
Mr. C.R. Narwal, Advocate,
Mr. Sunil Kumar, Advocate,
Mr. Ajit Kumar Ekka, Advocate,
Mr. Abhishek Chauhan, Advocate,
Mr. Mukesh Kumar Verma, Advocate, and
Mr. Dharampal Saini, Advocate for respondent Nos.4 & 5
(in CWP-24608-2023 and for applicant(s) in CM-20015-CWP-2023)

Mr. Nikhil Sharma, Advocate
for Mr. Rajvir Singh Sihag, Advocate for respondent No.2
(in CWP-2751-2024)

Mr. A.S. Virk, Advocate
for respondents No.4 and 5 in CWP-28252-2023

Mr. Deepam Raghav, Advocate
for applicant in CM-12746-CWP-2024 in CWP-24608-2023

Mr. Abhishek K. Premi, Advocate for applicants
(in CM-10398-CWP-2024 in CWP-24608-2023).

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayers sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from *CWP No.24608 of 2023*.

2. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of instruction dated

07.10.2023 (Annexure P-2).

By aforesaid instructions, the State Government has made provision for reservation in Group 'A' & 'B' posts for Scheduled Castes. For the ready reference, the impugned instructions are reproduced hereinbelow:

*"No.22/56/2023-5HR-III
HARYANA GOVERNMENT
HUMAN RESOURCES DEPARTMENT
(HUMAN RESOURCES-III BRANCH)*

Dated Chandigarh, the 7th October, 2023

To

- 1. All the Administrative Secretaries to Government Haryana*
- 2. All Heads of Departments in the State of Haryana.*
- 3. All the Managing Directors of Boards/Corporations in the State of Haryana.*
- 4. All the Divisional Commissioners in the State of Haryana.*
- 5. All the District & Session Judges in the State of Haryana.*
- 6. All the Deputy Commissioners in the State of Haryana.*
- 7. The Registrars of all the Universities in the State of Haryana.*

Subject *Matter of backwardness and inadequacy of representation of Scheduled Castes in Promotion in Group A & B posts in State Government Services.*

Sir/Madam,

I am directed to invite your attention to the subject cited above and to say that keeping in view the principles laid down by the Apex Court in the case of Jarnail Singh and others Vs Lachmi Narain Gupta and Ors. (I), (2018) 10 SCC 396 & (II), 2022 (10) SCC 595 and Judgement of the Punjab & Haryana High Court order in CWP No. 22475 of 2018 (Same Singh & others Vs State of Haryana & Others), the Government, in exercise of the powers conferred under Article 16 (4A) of the Constitution of India, has decided to grant the benefit of reservation in promotion in all the cadres of Group A & Group B posts, to the employees belonging to the Scheduled Castes, to the extent of 20% of the sanctioned posts of promotional quota subject to the following terms and conditions:-

- (i) This benefit will be admissible on all the posts of*

Group A & Group B but not on the highest promotional post of a cadre. For appointment on the highest promotional post the inter-se seniority, as per the applicable Service Rules, will be taken into account.

- (ii) This benefit will be admissible where the number of sanctioned posts to be filled up through promotion is two or more.*
- (iii) This benefit will be implemented cadre-wise considering the total number of sanctioned posts to be filled up through promotion,*
- (iv) The Departmental Promotion Committee (DPC) and/or the competent authority for promotion to a post of Group A or Group B, as the case may be, shall, on the basis of number of employees belonging to Scheduled Castes already appointed to the promotional posts, come to a conclusive opinion on their current representation on promotional posts being 20% or not.*
- (v) Where the actual representation is less than 20% only the eligible Scheduled Caste employees working on feeder post (s) will be considered first against the vacant posts of promotion quota upto the extent of shortfall. Where the actual representation is already 20% or more, the eligible employees working on feeder post (s) will be considered for promotion in accordance with the applicable Service Rules.*
- (vi) For the purpose of determination of cadre-wise adequacy of the present representation, all employees belonging to the Scheduled Castes who are working on any Group A or Group B post, as the case may be, filled up through promotion will be considered irrespective of the manner of appointment to the said promotional post.*
- (vii) The employees not belonging to the Scheduled Castes who have already been promoted to a post of Group A or of Group B will not be reverted to fulfill any current deficiency of 20% reservation for Scheduled Castes*



employees. The deficiency, if any, will be completed immediately upon availability of a promotional quota post.

- (viii) No employee belonging to a Scheduled Caste, who is otherwise eligible, will be deprived of promotion just because the limit of 20% reservation has already exceeded or would exceed on account of his promotion on seniority-cum-merit.*
- (ix) The Roster Points as already allocated by Government in the instructions issued vide No. 22/10/2013-IGS-III, dated 15.07.2014, or as amended from time to time, for the purpose of direct recruitment against the posts of Group A & Group B reserved for Scheduled Caste candidates will be applicable. Further, the instructions/guidelines already issued by Government for Group C & D employees vide NO.22/33/2007-3GS-I, dated 24.09.2008/22.10.2008, for the purpose of replacement theory or application of roster point, as the case may be, shall also be strictly followed at the time of grant of benefit of reservation in promotion.*
- (x) Where an eligible employee belonging to a Scheduled Caste is not available for promotion against a promotional post reserved as per the roster, an eligible employee of another category may be promoted. Whenever a Scheduled Caste employee upon becoming eligible is promoted against that post, the already promoted employee will be adjusted against a supernumerary post until an unreserved vacancy of promotion quota arises, and without any loss of inter-se seniority.*
- (xi) This benefit will be without consequential seniority in the promotional post.*
- (xii) This benefit will not be admissible for the purpose of grant of ACP Pay Level where the percentage has been fixed for the purpose in a cadre.*
- (xiii) Since the Jarnail Singh batch of cases is pending in the Hon'ble Supreme Court, all promotion orders issued in*

pursuance of these instructions will be subject to any further orders that may be passed by the Hon'ble Supreme Court in the said batch of cases.

(xiv) The Appointing Authority shall issue the promotion orders only after satisfying itself that the conditions mentioned in these instructions have been fully complied with.

2. These instructions will be applicable with immediate effect and will apply to all Departments, Boards, Corporations, Universities and Statutory Bodies etc., under Haryana Government and may please be brought to the notice of all concerned for strict compliance. All the previous instructions already issued by Government for reservation in promotion to Group A & B posts are hereby withdrawn.

Yours faithfully,

*(Satbir Singh)
Deputy Secretary Human Resources,
for Chief Secretary to Government, Haryana”*

3. The petitioners have raised multiple grounds to challenge the instructions dated 07.10.2023 (Annexure P-2). The grounds raised by petitioners are as under: -

- (i) The exercise with respect to assessing the inadequacy of representation of Scheduled Castes is to precede the formulation of opinion by the State Government to provide for reservation.
- (ii) The power to provide for reservation is with the State Government and the same cannot be delegated to the Departmental Promotion Committee.
- (iii) The above-said exercise of providing reservation should also meet the parameters of Article 335 of Constitution of India and the said exercise should be consistent with the maintenance of efficiency of administration.

- (iv) It is necessary to exclude the creamy layer of the employees belonging to Scheduled Castes before providing for reservation in the aforesaid promotional posts.

Note: At the time of filing petitions and disposal of interim prayer, the petitioners were claiming that exercise to collect data should be cadre wise whereas during the course of final hearing, they have changed their stand and are claiming that data should be collected with respect to 'service of the State' and not 'cadre wise'.

4. Mr. Sunil K. Nehra, Advocate elaborating aforesaid issues submitted that as per judgments of the Supreme 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 Supreme Court Cases 396*** [hereinafter referred to 'Jarnail Singh (I)'], the State, before making provision for reservation, is required to show existence of two compelling reasons namely, inadequacy of representation and maintenance of overall administrative efficiency. The Supreme Court in ***Jarnail Singh and others v. Lachhmi Narain Gupta and others, (2022) 10 Supreme Court Cases 595*** [hereinafter referred to 'Jarnail Singh (II)'] has held that collection of quantifiable data for determining the inadequacy of representation of Scheduled Castes and Scheduled Tribes is a basic requirement for providing reservation in promotions to the Scheduled Castes and Scheduled Tribes. As per judgment of Supreme Court in ***The State of Punjab and others v. Davinder Singh and others 2025 (1) SCC 1***, the said exercise ought to be with respect to 'service of the State' and not 'cadre wise' and in the present case, the aforesaid exercise has not been done prior

to the issuance of the impugned instructions.

4.1 As per Article 16(4A) of the Constitution of India, it is the State which is empowered to make reservation and the said power cannot be delegated. A perusal of the instructions (Annexure P-2) would show that the said power has been delegated to the Departmental Promotion Committee and/or competent authority for promotion.

4.2 Hon'ble Supreme Court has repeatedly held that the ceiling of 50%, the concept of creamy layer and the compelling reasons i.e. inadequacy of representation and overall administrative efficiency are constitutional requirements without which the structure of equality of opportunity contemplated by Article 14 and 16 of the Constitution of India would collapse. In **Jarnail Singh (I)**, it was observed that in case the Court was to apply the creamy layer principle to Scheduled Castes and Scheduled Tribes, it would not in any manner tinker with the Presidential list under Article 341 and 342 of the Constitution of India inasmuch as the Constitutional Courts while applying Articles 14 and 16 of the Constitution of India cannot be said to be thwarted in excluding the creamy layer, but that persons stated to be within a particular group or the said group itself in the Presidential list may be kept out on the principle of creamy layer, thus, while applying the doctrine of harmonious interpretation and reading Articles 14 and 16 harmoniously along with Articles 341 and 342, the Constitutional Courts while applying the principle of reservation will be well within their jurisdiction to exclude the creamy layer of groups or sub-groups. It is necessary for the State to exclude creamy layer from the list of eligible Scheduled Castes candidates before providing for reservation to the promotional posts i.e. Group A & B. The respondent has not excluded creamy layer while issuing impugned instructions from the SC candidates

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eligible for promotion to Group A & B posts.

4.3 As per Article 335 of the Constitution of India while granting reservation efficiency of administration must be taken into consideration. The State before issuing the impugned instructions has not taken into consideration the said aspect.

5. *Per contra*, Ms. Shruti Jain Goyal, Senior Deputy Advocate General, Haryana submitted that the State had carried out the necessary exercise prior to the issuance of instructions dated 07.10.2023 and the same has been done cadre wise and group wise. The State has not left the said exercise to be done by the Departmental Promotion Committee or any other authority. She, during course of hearing, produced official record and while referring to the relevant record highlighted the detailed exercise carried out by the State with respect to each cadre of Group A and Group B posts. The data of total posts filled as per parent designation (direct), the total posts filled as per parent designation (Promotion), the total Scheduled Castes working and its percentage, the total Scheduled Castes working (direct) and its percentage and the total Scheduled Castes working (promotion) and its percentage, have specifically been noted after carrying out the entire exercise by the State. The State has come to a positive conclusion that the Scheduled Castes are not being adequately represented in the promotional posts of Group A and Group B and after taking into consideration all the factors has formed an opinion that the reservation to the extent of 20% needs to be provided in the promotional posts of Group A and Group B. After having done the said exercise and upon forming the said opinion, necessary directions have been issued to the Departmental Promotion Committee/competent authority to promote the persons in such a manner that there is representation of Scheduled Castes to the extent of 20%. The

said Departmental Promotion Committee/competent authority has not been asked to see as to whether there is adequacy or inadequacy in representation rather the said task has been carried out by the State and it is the State which has formed the opinion that reservation to the extent of 20% in promotional quota in each cadre of Group A and B post is to be provided. Thus, it cannot be stated that the power under Article 16(4A) which ought to be exercised by the State has been delegated to any authority. It is for the said reason that it has been specifically stated in Clause (iii) of the instructions to implement the benefit cadre wise.

6. As per Article 16(4A) of the Constitution of India, the reservation in promotions can be provided to class or classes of posts in services which would also include Group A and Group B and in case the creamy layer principle is applied to the said promotional post, then the same would strike at the very basis of Article 16(4A). Feeder cadre posts of Group A and Group B posts carry high remuneration/salary, thus, all feeder cadre posts would be required to be excluded which was neither the import nor the intent of the provisions of Section 16(4A). It is submitted that the creamy layer principle cannot practically be made applicable to the promotional posts of Group A and Group B. In support of her arguments, she relied upon judgments of the Supreme Court in *Jarnail Singh (I)* and *B.K. Pavitra and others v. Union of India and others, 2019 (16) SCC 129*.

7. On the aspect of Article 335 of the Constitution of India, learned State counsel submitted that the respondent-State before providing for reservation had taken care of question of efficiency of the administration. The impugned instructions are consistent with the said requirement which is evident from the fact that only those candidates belonging to Scheduled Castes who are actually eligible, have been made eligible for promotion

against the posts reserved as per the roster and no relaxation has been provided for the same in the said instructions. As per Clause (v) and (x) of the instructions if an eligible candidate belonging to the Scheduled Caste is not available for promotion against a promotional post reserved as per roster, an eligible employee of another category may be promoted and the Scheduled Castes employee would only be promoted after he has become eligible and the said aspect in the instructions in addition to the other aspects would clearly demonstrate that the mandate of Article 335 of the Constitution of India has been complied with by the State. Supreme Court in ***B.K. Pavitra (supra)*** has observed that a meritorious candidate is not merely one who is talented or successful but also one whose appointment fulfils the constitutional goals of uplifting members of the SCs and STs. A candidate who is promoted, must meet the criteria and in case he is found non-suitable for promotion during the period of his officiating, he may be reverted back to the original post which ensures that the efficiency of administration is, in any event, not adversely affected e.g. case of promotion to the post of Deputy Superintendent of Police may be noticed. As per Rule 10 of Haryana Police Service Rules, 2002 (as amended) members of service including those appointed by promotion are required to be on probation for a period of 2 years which shall include the period of training at the Police Training College and in the district and that the completion of probation will not *ipso-facto* entitle the person for confirmation which shall be made after the satisfactory completion of probation period on the basis of seniority and availability of vacant permanent posts. It is thus submitted that in case, the person is not found suitable, the said candidate including a Scheduled Castes candidate, who has been promoted can be reverted to his original post. As per Rule 6 of the said Rules, Inspectors are eligible for promotion who have

got 6 years of regular service and those who have been brought on list 'G', which will be a list of officers considered fit for promotion to the rank of Deputy Superintendent of Police and which is prepared by the Government in consultation with the Commission. It is submitted that in the instructions, the word 'eligible' would mean that the Inspector whether belonging to the Scheduled Castes or not has to comply with the provisions of Rules 6 and 10 and the said aspects have been taken into consideration by the State before providing for reservation to meet the requirements of Article 335 of the Constitution of India.

8. From the perusal of pleadings and arguments of both sides, the following questions arise for consideration of this Court: -

- (i) Whether State has collected data with respect to inadequacy of representation of Scheduled Castes in promotional posts of Group A & B?
- (ii) Whether aforesaid data was required to be collected cadre wise or with respect to services of the State?
- (iii) Whether State while issuing impugned instructions has delegated its power to collect quantifiable data to Departmental Promotion Committees?
- (iv) Whether State has examined question of administrative efficiency while issuing impugned instructions?
- (v) Whether principle of creamy layer is required to be applied while granting accelerated promotion to Scheduled Castes to the posts of Group A & B?

9. Legislative History

A Constitution Bench in *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 overruled judgment in *Railways v. Rangachari* 1961 SCC OnLine SC 122. In *Indra Sawhney (supra)*, Court adopted the approach of the minority in *Rangachari*, holding that reservations in promotions would dilute efficiency in administration. Hon'ble Justice Jeevan Reddy, J. writing for four Judges observed that relaxation of qualifying marks in promotion would result in inefficiency of administration. By the Constitution (Seventy-seventh Amendment) Act, 1995, Parliament amended the Constitution to include clause (4-A) into Article 16 permitting reservation for the Scheduled Castes and the Scheduled Tribes in promotion. A proviso was also included in Article 335 by the Constitution (Eighty-second) Amendment Act, 2000 to overcome this aspect of the ruling in *Indra Sawhney*. The proviso provides that Article 335 does not prevent the State from relaxing the qualifying marks in any examination for reservation in promotion.

By the Constitution (Eighty-first) Amendment Act, 2000, the Constitution was amended to include Article 16(4B) by which the States are permitted to carry forward the unfilled seats of the reserved category to be filled up in the succeeding years. The challenge to the constitutional validity of Articles 16(4-A) and 16(4-B) was rejected by the Constitution Bench in *M. Nagaraj v. Union of India*, (2006) 8 SCC 212 wherein it was held that the efficiency of administration is only relaxed and not "obliterated" by the inclusion of Articles 16(4A) and 16(4B).

The correctness of the decision in *M. Nagaraj (supra)* was referred to a Constitution Bench in *Jarnail Singh (I)*. The Constitution



Bench in the said case considered correctness of the view taken in *M. Nagaraj (supra)* about the requirement of collecting quantifiable data showing backwardness and inadequacy of representation of Scheduled Castes and Scheduled Tribes in public employment and applicability of the creamy layer principle even to the Scheduled Castes and Scheduled Tribes. The Court held that the requirement of collection of quantifiable data on backwardness and inadequacy of representation of Scheduled Castes and Scheduled Tribes in public employment is contrary to the nine-Judge Bench judgment in *Indra Sawhney (supra)* and liable to be struck down to that extent. However, regarding making the creamy layer principle applicable even to Scheduled Castes and Scheduled Tribes is concerned, the Court held that there is no need to make reference to Seven Judge Bench and judgment is correct to the extent it applies to creamy layer of SC/ST. The principle of creamy layer test was applied in exercise of application of the basic structure test to uphold the validity of Clauses (4A) and (4B) of Article 16 of the Constitution of India.

In *B.K. Pavitra (supra)*, Supreme Court held that quantifiable data should be collected on the basis of groups and not cadres.

In *Jarnail Singh (II)*, a three Judge Bench held that conclusion in *B.K. Pavitra (supra)* is contrary to the law laid down in *M. Nagaraj (supra)* and *Jarnail Singh (I)*. 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. There is no confusion that the 'cadre' is not synonym with a 'group'.

In *Davinder Singh (supra)*, the question of validity of sub-classification in schedule caste made by State of Punjab was referred to a

seven Judge Bench. Six Hon'ble Judges formed one opinion and there is dissenting opinion of seventh Judge. The majority has held that sub-classification is permissible. It would achieve object of principle of creamy layer.

Findings

10. **Question No. (i) Whether State has collected data with respect to inadequacy of representation of Scheduled Castes in promotional posts of Group A & B?**

10.1 In *Jarnail Singh (I)*, the correctness of judgment of Supreme Court in *M. Nagaraj (supra)* was examined. A Constitution Bench vide judgment dated 26.09.2018 concluded that judgment in *M. Nagaraj (supra)* does not need to be referred to a 7 Judge Bench, however, the conclusion in *M. Nagaraj (supra)* that the State ought to collect quantifiable data showing Backwardness of the Scheduled Castes and Scheduled Tribes, being contrary to 9 Judge Bench judgment in *Indra Sawhney*, is invalid. In view of judgment of Supreme Court in *Jarnail Singh (I)*, the requirement of collection of quantifiable data showing Backwardness of SC and ST stood dispensed with, however, State was required to collect data with respect to inadequacy of representation in relation to specific cadre and not with respect to specific group/service.

10.2 The State Government has reserved 20% seats for SC category candidates in all groups i.e. group A, B, C and D. The reservation is meant for direct recruitment. The State Government issued instructions dated 09.02.1979 whereby it was provided that there would be reservation to the extent of 20% for Scheduled Castes in direct recruitment for all groups, however, in case of promotions, the reservation would be confined to Class-

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Nagaraj (supra) vide order dated 19.02.2013 constituted **R. Raghvendra Rao's** Committee to assess/examine backwardness and inadequacy of representations of Scheduled Castes in promotion in the State Government and Public Sector Undertaking services. The said Committee vide order dated 29.05.2013 was further mandated to assess the impact, if any, of reservation in promotions on the overall administrative efficiency. The Committee submitted its report on 24.12.2013 followed by addendum dated 04.11.2014. It recommended that reservation in promotion for SCs may be allowed in A, B, C and D groups. The State Government pursuant to aforesaid report decided to give 20% reservation in promotion. Accordingly, instructions dated 15.05.2015 came to be issued by Chief Secretary, Haryana wherein 20% reservation in promotion to SC category employees was given. The instructions dated 15.05.2015 came to be challenged before this Court in **CWP No.11073 of 2015, Dinesh Kumar and another v. State of Haryana**. This Court vide order dated 27.05.2015 stayed operation of aforesaid instructions. The petition came to be finally disposed of vide judgment dated 07.12.2019 in view of judgment of Supreme Court in **Jarnail Singh (I)**.

The State Government constituted *Anil Kumar's* Committee to collect quantifiable data regarding representation of Scheduled Castes in all Government departments and Public Sector Undertakings. The Committee submitted its report on 29.08.2017. The Committee collected quantifiable data regarding representation of Scheduled Castes in Public Services in the State as on 17.06.1995 and 31.03.2006 from all Government departments and Public Sector Undertakings. The Committee received data from 53 departments and 51 Public Sector Undertakings as on 17.06.1995 and with reference to 31.03.2006, from 72 departments and 82 Public Sector Undertakings. The data was received group wise. The Committee analysed

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Backwardness of SC with reference to educational and economic status, total BPL household, illiteracy rate, school dropout rates of Scheduled Castes students, area and size of agricultural land holding of SC etc. The Committee found that as per 2011 Census, the population of SC in the State of Haryana was 5,11,3,615 i.e. 20.1% of total population i.e. 2,53,51,462. It was found that there are 37 castes forming part of Scheduled Castes. The Committee with respect to representation of SC as on 17.06.1995 and 31.03.2006 in Government departments and Public Sector Undertakings reported as: -

17.06.1995

*“The analysis of data of various departments, based on filled up strength of employees of State services, revealed that, in **Group-A services, only 4.51 percent employees belong to Scheduled Castes. In Group B category, against the filled up strength, the representation of employees belonging to Scheduled Castes is only 13.70 percent. Even for Group-C filled up posts, the representation of the Scheduled Castes employees is only 16.54 percent for direct recruitment posts and 15.66 percent for promotional posts. In filled up posts of Group-D category of State Government Services, the representation of Scheduled Castes employees is 18.91 percent, for direct recruitment and 16.07 percent, for promotional posts.***

In case of Public Sector Undertakings, the representation of Scheduled Castes employees on the basis of filled up strength in equivalent Group-A & B level posts, is only 4.85 percent and 6.50 percent respectively. For Group C & D level equivalent posts, their representation in direct recruitment is 11.13 percent and 15.33 percent while for promotional quota posts the representation of Scheduled Castes is 14.42 percent and 15.38 percent, respectively.”

31.03.2006

*“The analysis of data of various departments, based on filled up strength of employees of State services, revealed that, in **Group-A services, only 4.01 percent employees belong to Scheduled***

Castes. In Group B category, against the filled up strength, the representation of employees belonging to Scheduled Castes is only 12.17 percent. Even for Group-C filled up posts, the representation of Scheduled Castes employees is only 15.95 percent for direct recruitment posts and 15.22 percent for promotional posts. In filled up posts of Group-D category of State Services, the representation of Scheduled Castes employees is 17.46 percent, for direct recruitment and 17.43 percent, for promotional posts.

In case of Public Sector Undertakings, the representation of Scheduled Castes employees on the basis of filled up strength in equivalent Group A & B level posts, is only 2.12 percent and 3.80 percent respectively. For Group C & D level equivalent posts, their representation in direct recruitment is 12.30 percent and 13.84 percent while for promotional quota posts the representation of Scheduled Castes is 15.01 percent and 14.83 percent, respectively.”

10.4 The aforesaid Committee analyzed data from different angles and submitted its recommendations as below:

“The Committee based on quantifiable data makes the following recommendations:

- a) There is inadequacy of representation of Scheduled Castes indirect recruitment as well as in promotional-posts, in almost all cadres of the Government Departments and Public Sector Undertakings (after excluding contractual employment, as per government directions) when compared with 20 percent percentage reservation provided in jobs for Scheduled Castes. Higher is the group of service greater is the inadequacy. Special efforts need to be made to increase their representation in higher level posts where policy decisions are taken.*
- b) Based on their higher proportion amongst the poor, lower levels of literacy, higher dropout rates, meagre share in landholdings, increasing trends in atrocities against them etc. the Scheduled Castes continue to be the most backward and downtrodden in the State.*
- c) The State Government has not lowered the standards of*



eligibility for promotion for reserved categories in public services. The eligibility-criteria for promotion are the same for General as well as reserved categories hence the administrative efficiency will not get adversely affected if reservation is provided in promotion to the Scheduled Castes in Group (A, B, C and D) public services.

d) The condition laid down by the Hon'ble Supreme Court in M. Nagaraj VS Union of India's case regarding inadequacy of representation, backwardness and maintaining of efficiency in Government Service as per Article 335, are all satisfied from the quantifiable data.

e) Recruitment in Govt. are not regular and delayed for years together. Long delays in recruitment create inconsistency and distortions by disturbing the sequence of creation of vacancies for reserved categories. It is recommended that in all future recruitments the advertisement of vacancies must be published as per the sequence of their creation along with their corresponding category. Vacancies should be filled up from the category to which a vacancy belongs and that should fix the inter-se-seniority of the recruits. Drawing of combined merit list must be discontinued as it totally ignores the sequence of creation of posts. This change will be fair for all categories and provide a precise, workable and permanent solution of the problem and will reduce litigation.

f) There is a need for a strong monitoring mechanism for proper implementation of reservation policies, instructions, procedures etc. At the same time it is recommended to strengthen and improve capacity of the Welfare of Scheduled Castes and Backward Classes Department so as to enable it to collect relevant data on a regular intervals from various departments and suggest policy changes after examining, analysis of the data, defend cases relating to reservation policies and instructions, for the speedy development and Welfare of Scheduled Castes and Backward Classes.”

10.5 From the report of **Anil Kumar's** Committee, it is evident that State Government collected group wise data to ascertain representation of



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SC in Government departments as well as Public Sector Undertakings. The respondent, during course of hearing, produced data showing representation of SC in each cadre of each department of the State Government as well as Public Sector Undertakings. The data indicates that the State Government has collected data with respect to each post in different departments and Public Sector Undertakings. The respondent has noticed name of the posts, total sanctioned posts, total filled as per parent designation, filled through direct recruitment, filled through promotion etc. The aforesaid data has been compiled group wise. Group wise data in the Government department as Public Sector Undertakings is as below:

Group-wise data (Group A, B, C &D in State Govt. Services

Department as on 31.08.2023										
Group Name	Total Sanctioned Post	Total Filled Post	Total Filled Post (Direct)	Total Filled Post (Promotion)	Total SC	Total SC (%)	SC Direct	SC Direct (%)	SC Promotion	SC Promotion (%)
Total	466096	255775	176318	79457	54484	21.3	37653	21.36	16831	21.18
A	11271	7321	4855	2466	1231	16.81	843	17.36	388	15.73
B	68581	35399	23053	12346	6158	17.4	4224	18.32	1934	15.66
C	311848	175213	118370	56843	33742	19.26	22705	19.18	11037	19.42
D	74396	37842	30040	7802	13353	35.29	9881	32.89	3472	44.5

Group-wise data (Group A, B, C & D) in State Govt. Services

Boards/Corporations/Societies/Authorities/Universities										
Group Name	Total Sanctioned Post	Total Filled Post	Total Filled Post (Direct)	Total Filled Post (Promotion)	Total SC	Total SC (%)	SC Direct	SC Direct (%)	SC Promotion	SC Promotion (%)
Total	152387	55714	34895	20786	15444	27.72	10870	31.15	4573	22
A	8414	3340	1307	2032	464	13.89	193	14.77	271	13.34
B	7211	3320	1571	1749	555	16.72	294	18.71	261	14.92
C	94803	34600	18732	15862	7387	21.35	3763	20.08	3623	22.84
D	41959	14454	13285	1143	7038	48.69	6620	49.83	418	36.57

From the record produced during course of hearing and reports of Committees, this Court is of the considered opinion that State before issuing impugned instructions had collected quantifiable data and found that there is inadequate representation of SC in the promotional posts i.e. Group

A & B though there is sufficient representation in Group C & D. There was reservation to the extent of 20% in Group A & B posts for direct recruitment. As number of posts filled through promotion were more than direct recruitment and recruitment through direct mode was not made annually, thus, total representation of the SC was inadequate. The State by collecting quantifiable data has duly complied with requirement of Article 16(4A) of the Constitution of India as well as mandate of the Constitution Bench judgments.

11. **Question No. (ii) Whether aforesaid data was required to be collected cadre wise or with respect to services of the State?**

The petitioners in the writ petition as well as at the time of passing interim order dated 28.11.2023 pleaded that State as per judgment of Supreme Court in **Jarnail Singh (II)** is required to collect cadre wise data, however, during course of final arguments Mr. Nehra pleaded that as per judgment of Supreme Court in **Davinder Singh (supra)** State was required to collect data of entire service of the State, meaning thereby, State should ignore groups as well as cadres. The argument of Mr. Nehra is based upon findings recorded by Hon'ble Justice D.Y. Chandrachud. The relevant extracts of the findings recorded by Hon'ble Justice Chandrachud in **Davinder Singh (supra)** read as:

“(c) The requirement of “effective” representation

179. Conventionally, the State has assessed if the class is adequately represented by comparing the representation of the class in the services to the total population of the State. [See *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745, para 4; *B.K. Pavitra v. Union of India*, (2019) 16 SCC 129, para 107; *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217, paras 807 & 808] However, adequacy of representation when determined purely from a numerical perspective without accounting for factors such as representation vis-à-vis posts would dilute the



purpose of the provision. The objective of Article 16(4) is to ensure effective representation of the class in the services of the State across posts and grades. Classes which are socially backward occupy the lowest of the social strata primarily because of the traditional occupation accorded to the class by social rules. For example, certain Dalit castes are regarded as scavenger castes. Even with the provision of reservation, it is very difficult for the backward classes to shed the traditional occupation that is ascribed to them by society and optimise the opportunities even at the lowest levels. The struggles that the class faces do not disappear with their representation in the lower grades. The endeavour is to ensure true and effective representation of the socially backward classes across posts.

180. *Opportunities for real and effective representation must be created in all posts and grades. The objective of the provision is not to emulate the existing social hierarchy where the low-grade posts are occupied by the socially backward while supervisory and managerial posts continue to be occupied by the advanced classes. If the objective of Article 16(4) is to be achieved in the truest sense, the inadequacy of representation must not be determined only on the basis of the total number of members of the backward class in the services of the State but by assessing the representation of the class across various posts.*

181. *The meaning of the phrase “adequate representation” fell for the consideration of this Court in Rangachari [Railways v. Rangachari, 1961 SCC OnLine SC 122]. Writing for the majority, Gajendragadkar, J. observed that adequate representation means not only numerical representation but qualitative representation as well: (SCC OnLine SC para 25)*

“25. ... This condition precedent may refer either to the numerical inadequacy of representation in the services or even to the qualitative inadequacy of representation. The advancement of the socially and educationally backward classes requires not only that they should have adequate representation in the lowest rung of services but that they should aspire to secure adequate representation in selection posts in the services as well. In the context the expression

“adequately represented” imports considerations of “size” as well as “values”, numbers as well as the nature of appointments held and so it involves not merely the numerical test but also the qualitative one. It is thus by the operation of the numerical and a qualitative test that the adequacy or otherwise of the representation of backward classes in any service can be judged;...”

(emphasis supplied)

183. *Jeevan Reddy, J. also adopted a value-ridden interpretation of the phrase “adequately represented” in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217]. The learned Judge held that the principal test to determine the adequacy of representation is “effective representation or effective voice in the administration” and not mere numerical presence. Effective representation can only be achieved, in this view, when there is adequate representation at all levels or posts in the administration. Sawant, J. also adopted a similar approach. [Indra Sawhney case, 1992 Supp (3) SCC 217, para 517]*

184. *We are in complete agreement with the opinions of Jeevan Reddy, J. in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] and Gajendragadkar, J. in Rangachari [Railways v. Rangachari, 1961 SCC OnLine SC 122] on this aspect which is being discussed in the present segment. Adequate representation means meaningful and effective representation. The sphere of public services is a constitutionally recognised realm for reservation because being a part of the administrative mechanism of the State is itself an indicator of social power. It is for the same reason that the Constitution, when it was adopted, guaranteed reservation in the legislature. However, there exists a hierarchy in social power within the sphere of public service. Positions that are higher up in the pyramid are positions that command greater authority. For example, let us assume a situation where the Class III and Class IV posts in the State are filled by members of a certain class while the higher positions of authority and power are filled by members of a certain class. This demographic of representation, if the service is taken as a whole unit, does not paint a realistic picture*

of the inequality that persists within the sphere. If numerical representation is used as an indicator, provision for representation will have to be made in favour of classes which are unrepresented in Class III and Class IV which does not align with the purpose of the provision. In fact, that would be nothing but another indicator of the existence of unequal social structures where members of the backward classes are subject to the authority and power of the more advanced. Thus, a numeric-representation focused interpretation of the phrase “inadequate representation” does not fulfil the purpose of the provision.

185. *In view of the discussion above, the following principles are summarised with respect to the objective and yardstick for identifying the beneficiary class under Articles 15(4) and 16(4):*

185.1. *The beneficiary class in Article 15(4) must be a socially and educationally backward class. “Socially and educationally backward” are not mutually exclusive concepts. The phrase constitutes a constitutional recognition of the sociological reality that educational backwardness is caused by the social backwardness of the class;*

185.2. *The beneficiary class in Article 16(4), similar to the class under Article 15(4), must predominantly be socially backward. The purpose of both the provisions is to ensure substantive equality of opportunity to the socially backward communities. The beneficiary class in Article 16(4) subsumes the socially and educationally backward classes under Article 15(4);*

185.3. *The qualifier of inadequate representation in Article 16(4) is not mutually exclusive of the requirement of backwardness. The inadequate representation of the class in the services of the State must be because of social backwardness; and*

185.4. *The adequacy of representation must be determined based on the standard of effective representation and not numerical representation.*

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217. *The inference in Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212] that cadre must be taken as a unit to determine inadequacy of reservation based on the above*

observations in *R.K. Sabharwal* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745], in our respectful opinion, is misplaced. The cadre as a unit was considered only for the purpose of preparation of roster to draw a balance between the reserved and open seats. This Court did not hold that cadre must be used as a unit for the purpose of determining the adequacy of representation. In fact, *R.K. Sabharwal* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC] says to the contrary. *R.K. Sabharwal* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745] observed that the State Government may take the total population of a particular Backward Class and its representation in the State Services while determining adequacy of representation: (*R.K. Sabharwal case* [*R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745])

“4. ... It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services.”

218. As observed above, the inadequacy of representation in the services of the State is an indicator to determine the backwardness of the class in the services of the State. When the cadre-strength is used, the inadequacy of representation of the class is not determined. Rather, it determines the inadequacy of representation in a cadre, thereby, merging the distinction between quantitative and qualitative representation. Further, the observations in *Nagaraj* [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212] that adequate reservation of the class or group must be measured against the cadre is contrary to the plain language of Articles 16(4) and 16(4-A). Both the provisions use the phrase “not adequately represented in the services under the State”.

219. Thus, in view of the above discussion, the State for a valid exercise of power to sub-classify under Article 16(4) is required to collect quantifiable data with respect to the inadequacy of representation of the sub-categories in the services of the State. As held in the preceding section, the inadequacy of representation is an indicator of backwardness and thus, to use



the cadre as a unit to determine representation alters the purpose of the indicator itself. The State while deciding if the class is adequately represented must calculate adequacy based on effective and not quantitative representation.”

12. The question of collection of quantifiable data either should be cadre wise or group wise was considered by a three Judge Bench of Supreme Court in **Jarnail Singh (II)**. The Court held:

“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 [M. Nagaraj v. Union of India, (2006) 8 SCC 212]. The unit for the purpose of collection of data is a cadre, according to M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212] and Jarnail Singh [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396]. 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 (2) [B.K. Pavitra v. Union of India, (2019) 16 SCC 129] 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 [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] held that the unit for collection of quantifiable data is cadre, and not services as has been held in B.K. Pavitra (2) [B.K. Pavitra v. Union of India, (2019) 16 SCC 129]. 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 (2) [B.K. Pavitra v. Union of India, (2019) 16 SCC 129]. 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 [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] and Jarnail Singh [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86] .

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 (2) [B.K. Pavitra v. Union of India, (2019) 16 SCC 129] 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 [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] and Jarnail Singh [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86].”*

From the reading of judgment of Supreme Court in **Jarnail Singh (II)**, it is evident that State was required to collect data cadre wise. As noted hereinabove, the State has collected data cadre wise as well as group wise. The State has noticed data of all the Government departments as well as Board/Corporation owned and controlled by State. It is difficult to collect data cadre wise, however, it is not difficult to collect data group wise or

entire service of the State. The State, during course of hearing, produced group wise data of all the departments and corporations which stands reproduced hereinabove. Anil Kumar's Committee collected group wise data as on 17.06.1995 as well as 31.03.2006. Collection of data and to form an opinion with respect to inadequacy of representation of SC/ST is one attribute of the reservation policy and implementation of reservation policy group/cadre wise is another attribute. The State has collected data cadre wise as well as group wise and total of group wise data discloses data of entire State. The different committees as well as State Government on the basis of available data and reports of Committees found that there is policy of reservation to the extent of 20% in the direct recruitment of Group 'A' and 'B' posts, however, representation of SC in Group 'A' and 'B' posts is less than 20% and their representation should be 20% in the total posts of Group 'A' and 'B'. The said purpose can be achieved if benefit of reservation is granted in promotion apart from direct recruitment. By collecting data cadre wise, group wise and of entire service of the State, the respondent has complied with law elucidated by Supreme Court in **Jarnail Singh (II)** as well as **Davinder Singh (supra)**.

The petitioners are relying upon judgment of **Davinder Singh (supra)**. It is apt to notice here that in the said case reference to the Constitution Bench was made with respect to sub-classification within SC. The reference as noted in Para 20 of the judgment is reproduced as below: -

“(iv) *The reference*

20. On 27-8-2020, in *State of Punjab v. Davinder Singh* [*State of Punjab v. Davinder Singh*, (2020) 8 SCC 1 : (2020) 2 SCC (L&S) 728] , a Constitution Bench held that the judgment in *Chinnaiah* [*E.V. Chinnaiah v. State of A.P.*, (2005) 1 SCC 394 : (2008) 2 SCC (L&S) 329] requires to be revisited by a larger Bench of seven Judges because it failed to consider significant



aspects bearing on the issue. These aspects have been formulated thus:

20.1. *In Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 (Reddy, J. para 803; Sawant, J. paras 524 & 525)] this Court held that it is constitutional to classify the backward class into the “backward” and the “more backward” class of citizens. The provisions of Articles 341, 342, and 342-A are pari materia. That being the case, this Court has to analyse how a contrary conclusion to the effect that sub-classification is permissible within the backward class but not within the Scheduled Castes, could be reached. In Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217] the phrase “backward class” in Article 16(4) was interpreted to include both socially and educationally backward classes and the Scheduled Castes and Scheduled Tribes; [State of Punjab v. Davinder Singh, (2020) 8 SCC 1, para 42 : (2020) 2 SCC (L&S) 728].*

20.2. *The Scheduled Castes are not a homogeneous class [Relied on the observation of Reddy, J. in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217]. Preferential treatment can be given to the most downtrodden of the class who are not adequately represented. Such a sub-classification is made to provide equality of opportunity, so as to achieve the purpose of reservation; [Davinder Singh case, (2020) 8 SCC 1, para 50 : (2020) 2 SCC (L&S) 728]*

20.3. *It would be open to the State, under Article 16(4), to grant the benefits of reservation on a rational basis to certain castes within the Scheduled Castes by fixing a reasonable quota of the reserved seats for them if they are inadequately represented; [State of Punjab v. Davinder Singh, (2020) 8 SCC 1, paras 52, 56 : (2020) 2 SCC (L&S) 728] and*

20.4. *Preferential treatment to certain castes would not lead to the exclusion of other castes from the list prepared under Article 341 [Davinder Singh case, (2020) 8 SCC 1, para 35 : (2020) 2 SCC (L&S) 728]. In Jarnail Singh v. Lachhmi Narain Gupta [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396 : (2019) 1 SCC (L&S) 86] , this Court observed that the exclusion of the “creamy layer” from the Scheduled Castes for*



securing the benefit of reservation does not tinker with the Presidential List under Article 341. All the castes included in the list of Scheduled Castes are given the benefit of reservation even if they are sub-classified.”

From the perusal of above reference, it is evident that a Seven Judge Constitution Bench was considering question of sub-classification within SC. The Court was further advertent to reservation in terms of Article 16(4) of the Constitution of India. The present case relates to reservation in promotion which is governed by Article 16(4A) of the Constitution of India. Hon'ble Justice Chandrachud while advertent to question of “effective” representation has noticed that even with the provision of reservation, it is very difficult for the backward classes to shed the traditional occupation that is ascribed to them by society and optimise the opportunities even at the lowest levels. The struggles that the class faces do not disappear with their representation in the lower grades. The endeavour is to ensure true and effective representation of the socially backward classes across posts. Opportunities for real and effective representation must be created in all posts and grades. The objective of the provision is not to emulate the existing social hierarchy where the low-grade posts are occupied by the socially backward while supervisory and managerial posts continue to be occupied by the advanced classes. If the objective of Article 16(4) is to be achieved in the truest sense, the inadequacy of representation must not be determined only on the basis of the total number of members of the backward class in the services of the State but by assessing the representation of the class across various posts.

13. From the observations of Hon'ble Court, it is quite evident that Supreme Court is of the opinion that representation of member of Backward Class in the service of the State should be across various posts. The presence



of backward class in low grade posts would not achieve object of Article 16(4) in a truest sense. The adequacy of representation must be determined based on the standards of effective representation and not numerical representation. If the opinion for the purpose of reservation for SC is formed on the basis of total number of posts of the State, irrespective of Group/Cadre, the object of Article 16(4A) would never be achieved because there are all possibilities of adequate representation of SC and may be more than other castes, in Group 'D' and 'C' posts e.g. on 31.08.2023 in the State of Haryana, the representation of SC in Group 'D' posts was 35.9% whereas their representation in Group 'A' was 16.81%. Their collective representation in all the posts was 21.3%. This shows pyramidal representation of SC in the posts of State Government. Lower the post more the representation. The object of Article 16(4A) can be achieved if adequate representation is granted to SC in Group 'B' and 'A' posts.

In the backdrop, it can be safely concluded that respondent by collecting data cadre wise apart from group wise has duly complied with requirement of Article 16(4A) as well as mandate of Supreme Court.

14. Question No. (iii) Whether State while issuing impugned instructions has delegated its power to collect quantifiable data to Departmental Promotion Committees?

From the above discussion, it is evident that State Government constituted two Committees which submitted their report with respect to status of SC in the State of Haryana. The Committees at length noticed social, economic, financial, educational status of the SC and their representation in Government posts. The total population vis-a-vis SC population was noticed. The reports of Committees were considered by State

Government. The data was further collected from other sources and on the basis of quantifiable data, it is Government which formed the opinion to grant reservation to SC in promotion in Group A and B posts. The Departmental Committees have been asked to implement decision of the Government while making promotion. The role of Committee is confined to implementation of reservation policy of the State, thus, there is no delegation of power to subordinate authorities. It is State which has exercised its power in terms of Article 16(4A) of the Constitution of India.

15. **Question No.(iv) Whether State has examined question of administrative efficiency while issuing impugned instructions?**

Article 335 requires that while considering claim of SC/ST, State shall take into account question of efficiency of administration. The petitioners are claiming that respondent while issuing impugned instructions failed to notice question of efficiency. Out of turn promotion of Group 'C' officers would create resentment and atmosphere is hostility which in turn would affect administrative efficiency. It would be relevant to refer to Article 335 of the Constitution of India which is reproduced as below:

“335. Claims of Scheduled Castes and Scheduled Tribes to services and posts.- The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State:

Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State”

A perusal of the above provision would show that in the proviso to Article 335, it has been specifically noticed that nothing in Article 335 would prevent the State from making any provision in favour of the members of Scheduled Caste and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

It is the case of the State that in spite of the said proviso, the State has taken a conscious decision as is reflected in various clauses of the impugned instructions dated 07.10.2023 more so, clause (x) wherein it has been specifically provided that only an eligible employee belonging to Scheduled Caste would be entitled to be considered for the posts reserved and that in case an eligible employee belonging to Scheduled Caste is not available for promotion against the promotional posts reserved as per the roster then an eligible employee of another category could be promoted. Clauses (v) and (x) of the said instructions at the cost of repetition are reproduced hereinbelow:-

“(v) Where the actual representation is less than 20% only the eligible Scheduled Caste employees working on feeder post (s) will be considered first against the vacant posts of promotion quota upto the extent of shortfall. Where the actual representation is already 20% or more, the eligible employees working on feeder post (s) will be considered for promotion in accordance with the applicable Service Rules.

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(x) Where an eligible employee belonging to a Scheduled Caste is not available for promotion against a promotional post reserved as per the roster, an eligible employee of another category may be promoted. Whenever a Scheduled Caste employee upon becoming eligible is promoted against that post, the already promoted employee will be adjusted against a supernumerary post until an unreserved vacancy of promotion quota arises, and without any

loss of inter-se seniority.”

16. The Supreme Court in ***B.K. Pavitra (supra)*** has held that a meritorious candidate is not merely one who is talented or successful but also one whose appointment fulfills the constitutional goals of uplifting members of the scheduled castes and scheduled tribes and ensures a diverse and representative administration and that once a candidate to be promoted is required to meet the criteria of the Rules therein which requires that the promotion shall be on an officiating basis for a period of one year and the appointing authority after the said period of one year in case finds that the said person is not suitable for promotion then the said person can be reverted back to the post held prior to promotion and thus, the same would ensure that the efficiency of administration is, in any event, not adversely effected. The relevant portion of the said judgment is reproduced hereinbelow:-

“129. An assumption implicit in the critique of reservations is that awarding opportunities in government services based on “merit” results in an increase in administrative efficiency. Firstly, it must be noted that administrative efficiency is an outcome of the actions taken by officials after they have been appointed or promoted and is not tied to the selection method itself.

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133. The Proviso to Article 335 of the Constitution seeks to mitigate this risk by allowing for provisions to be made for relaxing the marks in qualifying exams in the case of candidates from the SCs and the STs. If the government’s sole consideration in appointments was to appoint individuals who were considered “talented” or “successful” in standardized examinations, by virtue of the inequality in access to resources and previous educational training (existing inequalities in society), the stated constitutional goal of uplifting these sections of society and having a diverse administration would be undermined. Thus, a “meritorious” candidate is not merely one who is “talented” or “successful” but also one whose appointment fulfils the

constitutional goals of uplifting members of the SCs and STs and ensuring a diverse and representative administration.

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137. Moreover, even in a formal legal sense, promotions, including those in respect of roster points, are made on the basis of seniority-cum-merit and a candidate to be promoted has to meet this criteria [See in this context Rule 19(3) A and D of the Karnataka Civil Services General Recruitment Rules 1977 which states that subject to other provisions all appointments by promotion shall be on an officiating basis for a period of one year and at the end of the period of officiation, if appointing authority considers the person not suitable for promotion, she/he may be reverted back to the post held prior to the promotion]. A candidate on promotion has to serve a statutory period of officiation before being confirmed. This rule applies across the board including to roster point promotees. This ensures that the efficiency of administration is, in any event, not adversely affected.”

17. The respondent has not provided for out of turn promotion ignoring quality and efficiency of the officers to be promoted e.g. in case of promotion to the post of Deputy Superintendent of Police, as per Rule 6 and Rule 10 of the Haryana Police Services Rules, 2002 (as amended), the members of service including those appointed by promotion are required to be on probation for a period of 2 years which shall include the period of training at the Police Training College and in the district and that the completion of probation will not *ipso facto* entitle the person for confirmation and confirmation in service shall be made after the satisfactory completion of probation period on the basis of seniority and availability of vacant permanent posts. In case, the person is not found suitable, the said candidate including a Scheduled Caste candidate, who has been promoted, can be reverted to his original post. As per Rule 6 of the said Rules only those Inspectors are eligible for promotion who have got 6 years of regular

service and have been brought on list 'G' which will be a list of officers considered fit for promotion to the rank of Deputy Superintendent of Police and which is prepared by the Government in consultation with the Commission. In the instructions, word "eligible" would mean that the Inspector whether belonging to the Scheduled Caste or not, has to comply with the provisions of Rules 6 and 10 and the said aspects have been taken into consideration by the State before providing for reservation to meet the requirements of Article 335 of the Constitution of India.

In the reports submitted by Committees and different official communications, the question of efficiency of administration was considered. From the arguments of the State counsel as well as impugned instructions, it is evident that State while making provision for reservation in promotion has taken care of question of efficiency of administration. The SC employees are going to be promoted out of turn, however, there is no compromise of essential qualification and eligibility. If a person is not eligible for promotion, he is not going to be promoted or would be demoted if does not comply with conditions prescribed for promotion. In such circumstances, it cannot be held that State has not considered or complied with requirement of efficiency of administration in terms of Article 335 while issuing impugned instructions.

18. **Question No. (v): Whether principle of creamy layer is required to be applied while granting accelerated promotion to Scheduled Castes to the post of Group A & B?**

The petitioners lastly pleaded that while making provision for reservation to the Scheduled Caste, there should be exclusion of creamy layer. To adjudicate claim of the parties, it would be appropriate to look at

judicial precedents particularly judgments of Constitution Benches.

In *M. Nagaraj (supra)*, Supreme Court upheld validity of Article 16(4A) and (4B). The Court while upholding aforesaid clauses held 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. The findings of the Court read as:

“121. The impugned constitutional amendments by which Articles 16(4-A) and 16(4-B) 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 OBCs on one hand and SCs and STs on the other hand as held in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217], the concept of post-based roster with inbuilt concept of replacement as held in R.K. Sabharwal [R.K. Sabharwal v. State of Punjab, (1995) 2 SCC 745].

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 above, the main issue concerns the “extent of reservation”. In this regard the State concerned 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 SCs/STs in matters 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 with 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.

124. Subject to the above, we uphold the constitutional validity of the Constitution (Seventy-seventh Amendment) Act, 1995; the Constitution (Eighty-first Amendment) Act, 2000; the Constitution (Eighty-second Amendment) Act, 2000 and the Constitution (Eighty-fifth Amendment) Act, 2001.”

A Constitution Bench in **Jarnail Singh (I)** held that concept of creamy layer is equally applicable to SC/ST. The Court does not tinker with the Presidential List under Article 341/342 while applying creamy layer principle to SC/ST. The Constitutional Courts, applying principles of equality under Articles 14 and 16 of the Constitution of India, are well within their jurisdiction to exclude the creamy layer from SC/ST. It re-affirmed that in *M. Nagaraj* amendments of Constitution by way of insertion of Articles 16(4A) and 16(4B) were upheld while applying creamy layer test to Scheduled Castes and Scheduled Tribes, in exercise of application of the basic structure test. Relevant extracts of the judgment read as:

“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 [Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1] that the creamy layer principle is merely a principle of



identification and not a principle of equality.

28. Therefore, when Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212] 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 [M. Nagaraj v. Union of India, (2006) 8 SCC 212] to a seven-Judge Bench. We may also add at this juncture that Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212] is a unanimous judgment of five learned Judges of this Court which has held sway since the year 2006.”

A seven Judge Bench in **Davinder Singh (supra)** considered question of validity of sub-classification in SC/ST. Hon’ble Justice Gavai, in his judgment, apart from other issues adverted to question of applicability of creamy layer to SC/ST. Hon’ble Judge in his erudite judgment has held that principle of creamy layer is equally applicable to SC/ST and in **M. Nagaraj (supra)** while upholding clauses (4A) and (4B) of Article 16, the Court has applied principle of creamy layer as part of basic structure. Opinion of Justice Gavai with respect to applicability of creamy layer to SC/ST has been approved by other Hon’ble Judges. The relevant extracts of the judgment authored by Justice Gavai read as:

“518. However, I may observe that taking into consideration that the Constitution itself recognises the Scheduled Castes and Scheduled Tribes to be the most backward section of the society, the parameters for exclusion from affirmative action of the person belonging to this category may not be the same that is applicable to the other classes. If a person from such a category, by bagging the benefit of reservation achieved a position of a peon or maybe a sweeper, he would continue to belong to a socially, economically and educationally backward class. At the same time, the people from this category, who after having availed the

benefits of reservation have reached the high echelons in life cannot be considered to be socially, economically and educationally backward so as to continue availing the benefit of affirmative action. They have already reached a stage where on their own accord they should walk out of the special provisions and give way to the deserving and needy. I may gainfully refer to the observations of Dr B.R. Ambedkar as under:

“History shows that where ethics and economics come in conflict, victory is always with economics. Vested interests have never been known to have willingly divested themselves unless there was sufficient force to compel them.” [What Gandhi and Congress have done to Untouchables, Chapter VII.]

519. I am therefore of the view that the State must evolve a policy for identifying the creamy layer even from the Scheduled Castes and Scheduled Tribes so as exclude them from the benefit of affirmative action. In my view, only this and this alone can achieve the real equality as enshrined under the Constitution.

VII. Conclusion

520. I, therefore, hold:

XXXX XXXX XXXX XXXX

520.7. That the finding of M. Nagaraj [M. Nagaraj v. Union of India, (2006) 8 SCC 212], Jarnail Singh [Jarnail Singh v. Lachhmi Narain Gupta, (2018) 10 SCC 396] and Davinder Singh [State of Punjab v. Davinder Singh, (2020) 8 SCC 1] to the effect that creamy layer principle is also applicable to Scheduled Castes and Scheduled Tribes lays down the correct position of law;

520.8. That the criteria for exclusion of the creamy layer from the Scheduled Castes and Scheduled Tribes for the purpose of affirmative action could be different from the criteria as applicable to the Other Backward Classes.”

Hon’ble Justice Vikram Nath concurred with aforesaid opinion in following words:

“523. I am also in agreement with the opinion of Brother Gavai, J. that “creamy layer” principle is also applicable to Scheduled Castes and Scheduled Tribes, and that the criteria for



exclusion of creamy layer for the purpose of affirmative action could be different from the criteria as applicable to the Other Backward Classes.”

Hon’ble Justice Pankaj Mithal concurred with aforesaid view in following words:

“606. In these circumstances my Brother Gavai, J. has rightly concluded that the State must evolve a policy of identifying the creamy layer even from the Scheduled Castes and Scheduled Tribes so as to exclude them from the benefit of reservation.”

Hon’ble Justice Satish Chandra Sharma concurred with aforesaid view in following words:

“610. However, on the question of applicability of the “creamy layer principle” to Scheduled Castes and Scheduled Tribes, I find myself in agreement with the view expressed by Gavai, J. i.e. for the full realisation of substantive equality inter se the Scheduled Castes and Scheduled Tribes, the identification of the “creamy layer” qua Scheduled Castes and Scheduled Tribes ought to become a constitutional imperative for the State.”

The petitioners are relying upon judgments of Supreme Court in **Jarnail Singh (I)**, **M. Nagraj (supra)** and **Davinder Singh (supra)** and respondents are supporting their claim on the basis of judgment in **B.K. Pavitra (supra)**.

The judgment in **Jarnail Singh (I)** was pronounced on 26.09.2018 and the same is subsequent to the judgment in the case of **M. Nagraj (supra)**. In paragraph 34 of **Jarnail Singh (I)**, the Supreme Court apart from Article 16(4A) took into consideration Article 46 of the Constitution of India which was a provision occurring in the Directive Principles of State Policy and it was observed that the same also makes a distinction between the Scheduled Caste and the Scheduled Tribe and the



other weaker sections of the people and came to the conclusion that the scheduled castes and scheduled tribes are most backward or the weakest of the weaker sections of society, and are, therefore, presumed to be backward. The argument raised before the Supreme Court to the effect that as a member of a Scheduled Caste or a Scheduled Tribe reaches the higher posts, then he/she no longer has the taint of either untouchability or backwardness, was rejected by observing that in case the said argument is accepted then the same would amount to striking down Article 16(4A) as the necessity for continuance of reservation for scheduled castes and scheduled tribes members on the higher post would then disappear. Paragraph 34 of the judgment of **Jarnail Singh (I)** is reproduced as below:

"34. We have already seen that, even without the help of the first part of Article 16(4A) of the 2012 Amendment Bill, the providing of quantifiable data on backwardness when it comes to Scheduled Castes and Scheduled Tribes, has already been held by us to be contrary to the majority in Indra Sawhney (1) (supra). So far as the second part of the substituted Article 16(4A) contained in the Bill is concerned, we may notice that the proportionality to the population of Scheduled Castes and Scheduled Tribes is not something that occurs in Article 16(4A) as enacted, which must be contrasted with Article 330. We may only add that Article 46, which is a provision occurring in the Directive Principles of State Policy, has always made the distinction between the Scheduled Castes and the Scheduled Tribes and other weaker sections of the people. Article 46 reads as follows:

"46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.-The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation."

This being the case, it is easy to see the pattern of Article 46 being followed in Article 16(4) and Article 16(4A). Whereas "backward classes" in Article 16(4) is equivalent to the "weaker sections of the people" in Article 46, and is the overall genus, the species of Scheduled Castes and Scheduled Tribes is separately mentioned in the latter part of Article 46 and Article 16(4A). This is for the reason, as has been pointed out by us earlier, that the Scheduled Castes and the Scheduled Tribes are the most backward or the weakest of the weaker sections of society, and are, therefore, presumed to be backward. Shri Dwivedi's argument that as a member of a Scheduled Caste or a Scheduled Tribe reaches the higher posts, he/she no longer has the taint of either untouchability or backwardness, as the case may be, and that therefore, the State can judge the absence of backwardness as the posts go higher, is an argument that goes to the validity of Article 16(4A). If we were to accept this argument, logically, we would have to strike down Article 16(4A), as the necessity for continuing reservation for a Scheduled Caste and/or Scheduled Tribe member in the higher posts would then disappear. Since the object of Article 16(4A) and 16(4-B) is to do away with the nine-Judge Bench in Indra Sawhney (1) (supra) when it came to reservation in promotions in favour of the Scheduled Castes and Scheduled Tribes, that object must be given effect to, and has been given effect by the judgment in Nagaraj (supra). This being the case, we cannot countenance an argument which would indirectly revisit the basis or foundation of the constitutional amendments themselves, in order that one small part of Nagaraj (supra) be upheld, namely, that there be quantifiable data for judging backwardness of the Scheduled Castes and the Scheduled Tribes in promotional posts. We may hasten to add that Shri Dwivedi's argument cannot be confused with the concept of "creamy layer" which, as has been pointed out by us hereinabove, applies to persons within the Scheduled Castes or the Scheduled Tribes who no longer require reservation, as opposed to posts beyond the entry stage, which may be occupied by members of the Scheduled Castes or the Scheduled Tribes."

The respondents are relying upon Paragraphs 147 and 148 of the judgment of the Hon'ble Supreme Court in **B.K. Pavitra (supra)**, which

are reproduced hereinbelow:-

“147.The concept of creamy layer has no relevance to the grant of consequential seniority. There is merit in the submission of the State of Karnataka that progression in a cadre based on promotion cannot be treated as the acquisition of creamy layer status. The decision in Jarnail rejected the submission that a member of an SC or ST who reaches a higher post no longer has a taint of untouchability or backwardness. The Constitution Bench declined to accept the submission on the ground that it related to the validity of Article 16 (4A) and held thus:

“34...We may hasten to add that Shri Dwivedi’s argument cannot be confused with the concept of “creamy layer” which, as has been pointed out by us hereinabove, applies to persons within the Scheduled Castes or the Scheduled Tribes who no longer require reservation, as opposed to posts beyond the entry stage, which may be occupied by members of the Scheduled Castes or the Scheduled Tribes.

(emphasis supplied)

XXXX XXXX XXXX XXXX

148.....This being the true constitutional position, the protection of consequential seniority as an incident of promotion does not require the application of the creamy layer test. Articles 16 (4A) and 16 (4B) were held to not obliterate any of the constitutional limitations and to fulfil the width test. In the above view of the matter, it is evident that the concept of creamy layer has no application in assessing the validity of the Reservation Act 2018 which is designed to protect consequential seniority upon promotion of persons belonging to the SCs and STs.”

In the abovesaid judgment, it was specifically observed that the concept of creamy layer has no relevance to the grant of consequential seniority and that the submission made on behalf of the State of Karnataka to the effect that progression in a cadre based on promotion cannot be treated as the acquisition of creamy layer status was stated to be a meritorious

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submission. It was also noticed that in **Jarnail Singh (I)** the submission that a member of the Scheduled Castes and Scheduled Tribes who reaches the higher post no longer has the taint of untouchability or backwardness was rejected and that the concept of creamy layer had no application in assessing the validity of the provisions of the Reservation Act 2018, which was challenged in the said case, which is designed to protect the consequential seniority upon promotion of persons belonging to Scheduled Castes and Scheduled Tribes.

From the reading of judgment in **B.K. Pavitra (supra)**, it is evident that Court was advertent to question of applicability of creamy layer while granting seniority to SC/ST. By Article 16(4A), provision has been made for reservation in promotion and consequential seniority. The question before Supreme Court in **B.K. Pavitra (supra)** was not relating to applicability of creamy layer in promotion. In **Jarnail Singh (I)**, Supreme Court observed that **M. Nagraj (supra)** is right in applying principle of creamy layer while upholding validity of clauses (4A) and (4B) of Article 16. It needs to be mentioned here that in **M. Nagraj (supra)**, Constitution Bench while upholding validity of clauses (4A) and (4B) of Article 16, clearly held that principle of creamy layer is applicable to SC/ST as it is in compliance of principle of equality enshrined in Articles 14 and 16 of the Constitution. It is part of basic structure of the Constitution. In **Davinder Singh (supra)**, the Supreme Court has held that creamy layer principle is applicable to Schedule Caste and Schedule Tribe also. Application of principle of creamy layer to SC/ST does not in any manner tinker with presidential list under Article 341 and 342 of Constitution of India. Only those persons would be excluded from the benefit of reservation who on account of belonging to the creamy layer have come out of untouchability



and backwardness. The Court has further held that Constitutional Courts would be well within their jurisdiction while applying the principle of creamy layer in reservation because it is part of principles of equality under Articles 14 and 16 of the Constitution.

The respondent is misreading findings of Supreme Court in ***Jarnail Singh (I)*** while claiming that if principle of creamy layer is applied to SC in promotion, the object would be defeated. The respondent is claiming that Court has rejected applicability of creamy layer to SC in promotion. From the reading of judgment of Supreme Court in ***Jarnail Singh (I)*** (Paragraph 34), it is evident that Court has made distinction between backwardness of SC/ST on reaching a particular post and being part of creamy layer. If an employee belonging to SC category reaches to a higher post, he would remain backward and is entitled to further promotion because if on the basis of reaching a particular post, he is deprived from the benefit of reservation, the object of Article 16(4A) would be defeated. At the same moment, if the very same person belongs to creamy layer, he is no more backward and ought not to be extended benefit of reservation. Thus, while considering reservation of SC/ST in promotion, the distinction with respect to post and creamy layer should be taken care of. Both the concepts are different e.g. persons, irrespective of their category, holding post of Inspector of Police get same salary which may be handsome. If an Inspector belonging to SC category is not granted reservation in promotion on the ground of his status as Inspector or promotional post of Deputy Superintendent of Police ('DSP'), the object of Article 16(4A) would be defeated because there would be no reservation for the promotional post of DSP. Question of creamy layer is entirely different. One out of two SC Inspectors may be belonging to creamy layer. The Petitioners are claiming

that every Inspector is getting salary of more than ₹1 Lac per month, thus, everyone belongs to creamy layer. The State is claiming that if this principle is applied, no one would be entitled to benefit of reservation in promotion, thus, object of 16(4A) would be defeated. The Supreme Court in ***Davinder Singh (supra)*** in Paragraph 520 (VIII) has held that criteria for exclusion of the creamy layer from the SC/ST for the purpose of affirmative action would be different from the criteria as applicable to the Other Backward Classes. The State, during course of hearing, produced notification dated 16.07.2024 of creamy layer applicable to BC category. As per said notification, creamy layer is determined on the basis of post/professional qualifications or income or wealth e.g. children of an IAS/IPS irrespective of income/wealth belong to creamy layer and similarly children of persons having annual income or wealth more than notified limit belong to creamy layer. For the ready reference, relevant extract of the notification is reproduced as below: -

“HARYANA GOVERNMENT

***SOCIAL JUSTICE, EMPOWERMENT, WELFARE OF
SCHEDULED CASTES AND BACKWARD CLASSES AND
ANTYODAYA (SEWA) DEPARTMENT***

Notification

The 16th July, 2024

No.40/13/2024-1SW.— In exercise of the powers conferred under clause (d) of section 2 and sub-section (2) of section 5 of the Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 (15 of 2016), and in supersession of the Haryana Government, Welfare of Scheduled Castes and Backward Classes Department, notification No. 491-SW(1)-2021 dated the 17th November, 2021, the Governor of Haryana hereby specifies the following criteria for exclusion of persons within the Backward Classes as Creamy Layer as specified in schedule given below:-

Schedule

	DESCRIPTION OF CATEGORY	TO WHOM RULE OF EXCLUSION SHALL APPLY
1	2	3
I.	CONSTITUTIONAL POSTS	Son(s) and daughter(s) of (a) President of India; (b) Vice President of India; (c) Judges of the Supreme Court and of the High Court's; (d) Chairman and Members of UPSC and of the State Public Service Commission; Chief Election Commissioner; Comptroller and Auditor General of India; (e) Persons holding Constitutional positions of like nature.
XXXX	XXXX	XXXX
VI.	INCOME/ WEALTH TEST	Son(s) and daughter(s) of (a) Persons having gross annual income of Rs.8 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act, 1957 (Central Act 27 of 1957) for a period of three consecutive years; (b) Persons in categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which shall bring them within the income/wealth criteria mentioned in (a) above.



	<i>Explanation:</i> <i>Wherever the expression “permanent incapacitation” occurs in this Schedule, it shall mean incapacitation which results in putting an officer out of service.</i>	<i>Explanation:</i> <i>(i) Income from salaries or agricultural land shall not be clubbed.</i> <i>(ii) The income criteria in terms of rupee shall be modified taking into account the change in its value every three years. If the situation, however, so demands, the interregnum may be less.</i>
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In *M. Nagraj (supra)* as well as *Jarnail Singh (I)*, the Courts were dealing with validity, scope and ambit of Article 16(4A). In *B.K. Pavitra (supra)*, the Court was though dealing with Article 16(4A), however, question was relating to reservation in seniority. Learned State counsel vehemently cited last four lines of Paragraph 34 of *Jarnail Singh (I)*. The State counsel ignored the fact that this judgment has approved judgment in *M. Nagraj (supra)* with respect to applicability of creamy layer to SC in reservation. In *M. Nagraj (supra)*, in so many words and different paragraphs, it was held that Constitutional amendments by which Article 16(4A) &(4B) have been inserted, are confined to SC/ST and they do not obliterate any of the constitutional requirements, namely, ceiling limit of 50%, the concept of creamy layer (qualitative exclusion). In *Davinder Singh (supra)*, the Supreme Court in Paragraph 388 opined that in *M.*

Nagaraj (supra), principle of creamy layer is applicable even to SC/ST.

Paragraph 388 of the judgment reads as:

“388. It could thus be seen that in M. Nagaraj (supra), the Court applied the test of creamy layer and the requirement for collection of quantifiable data showing backwardness of the class and inadequacy of representation of that class even insofar as the Scheduled Castes and Scheduled Tribes are concerned.”

In view of above-cited judgments, the State is required to comply with principle of creamy layer before granting reservation in promotion to SC/ST.

19. In the backdrop, this Court finds that respondent has duly complied with attributes of Article 16(4A) of the Constitution of India as well as law laid down by the Apex Court, thus, impugned instructions dated 07.10.2023 (Annexure P-2) are valid and hereby upheld. Nevertheless, the respondent shall exclude employees belonging to creamy layer before implementing impugned instructions.

20. Disposed of in above terms.

21. Pending application(s), if any, shall stand disposed of.

22. Before parting with the judgment, I deem it appropriate to record appreciation of Mr. Sunil K. Nehra, Advocate and Ms. Shruti Jain Goyal, Senior Deputy Advocate General, Haryana for their fair, sincere and efficient assistance in adjudicating the issue.

(JAGMOHAN BANSAL)
JUDGE

01.04.2025

Ali/Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No