

F. RESERVATION POLICY OF THE UNIVERSITY

i) Statutory provisions

865) Section-60 of the University Act makes it obligatory upon the University to follow the directions of the Government issued from time to time as regards the category of posts in which reservation of posts should be made in favour of members of Scheduled Caste (S.C.), Scheduled Tribes (S.T.), and the members belonging to Other Backward Class (OBC), the percentage of the posts to be reserved for them and any other matter connected with such reservation. As regards the question of reservation for Backward Classes, there is an Act passed by the State legislature viz. Maharashtra State Public Services (Reservation for Scheduled Caste, Schedule Tribes, Denotified Tribes (Vimukta Jati), Nomadic Tribes, Special Backward Category and Other Backward Classes), Act, 2001 (for short, the Reservation Act) Maharashtra Act No.VIII of 2004 which came into force w.e.f. 29.1.2004 as per the Government Notification dated the same i.e. 29.1.2004 issued under section 1(3) of the said **Act Section 2 (i)** of the Reservation Act, 2001, defines the expression “public services and posts” which, in its clause (iv), includes the services and posts in an “University” established by or under the Maharashtra Act. Dr.PDKV, Akola being the University established under the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983, the reservation policy to be followed by it is governed by the provisions of the said Reservation Act. Since the said Act has come into force prior to the date when the advertisement in question dated 14.8.2004 (Ex.2) for filling the posts advertised therein was issued, the said Act is applicable for selection and appointment in the posts of SRA and JRA in question.

866) Section 4 (2) of the Reservation Act provides for reservation of posts for various categories of backward classes in making direct recruitment in public services and posts. The reservation of posts for various backward classes is as under:

Sr. No.	Description of Caste/Tribe/Category/Class	Percentage of vacancies or seats to be reserved
i)	Scheduled Caste	13%
ii)	Schedule Tribe	7%
iii)	Denotified Tribe (A)	3%
iv)	Nomadic Tribe (B)	2.5%
v)	Nomadic Tribe (C)	3.5%
vi)	Nomadic Tribe (D)	2%
vii)	S.B.C.	2%
viii)	OBC	19%
	Total	52%

867) Section-5 then provides that there shall be reservation of posts at all stages of promotions and the Govt. orders, if any, issued in that regard would continue in force till they are modified or revoked. **Section-10** of the said Act which is relevant in this

enquiry provides that the Government may by order provide for nomination of officers belonging to S.C., S.T., and O.B.C. in the Selection Committee, Screening Committee and the departmental Promotion Committee selecting persons for appointment or promotion, as the case may be, to public services and posts. Section 11 of the said Act declares that any appointment made in contravention of the said Act shall be void.

ii) Whether the Selection of SRA/JRA is vitiated for not associating the officer from the Social Welfare Department in the Selection Committee

868) One of the objections raised to the selection process in this case by Ku. Archana Bipte, in writ petition no. 905/2006 and Shri Himmatrao Sukhdeo Bache, in writ petition no. 342/2006 was that the selection process was vitiated because the officer from the Social Welfare department not below the rank of Class-II was not associated with the Selection Committee making selections to the posts of SRA (Agri.) and JRA (Agri.) in question. In support, they had relied upon the Government Circulars GAD No. BCC-1072-ECR-J dated 19.9.1972, No.BCC-1073-J dated 25.5.1973, and no. BCC-1084/177/16B dated 24.5.1984 vide para 4.9 at pages 65 – 68 of the Book Published in 1992 by GAD Maharashtra Government regarding reservations and other concessions for back ward classes in Government, Semi-Government and other Public services including Agricultural and Non-Agricultural Universities. In reply the stand of the University was that the posts of SRA/JRA were academic posts under statute-71 of the Statutes and the Selection Committee constituted for selection to the said posts was a statutory committee being constituted under Statute-76 framed under the Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983. According to the University, the composition of the said committee provided in statute-76 did not include the officer from the Social Welfare department as member and hence he was not called at the time of selection in these posts. However, according to it, in statute-87 which provided for Constitution of Selection Committee in Grade-C and Grade-D posts of Ministerial staff, the District Social Welfare Officer nominated by the Director, Social Welfare department was included.

869) As regards the question which posts are in Groups (Grades) A,B,C and D, after the revised pay-scales were sanctioned by the State Govt. as per the 5th Pay Commission, it issued G.R. dated 2.7.2002 (Ex.656) laying down the criteria of pay to classify the posts in the aforesaid Groups filed by the University with its affidavit dated 07.01.2008 (Ex. 650). As per the advertisement in question dated 14.8.2004 (Ex.2), the posts of SRA / JRA carry the following pay-scales :-

SRA	-	6500 – 10500 (Rs.7450-11500 for P.G.Degree Holder with 5 years experience).
JRA	-	5000 – 8000

Dr.S.A.Nimbalkar, the then Vice-Chancellor of the University, stated in para 54 of his affidavit dated 14/1/2008 (Ex.658) that both the posts of SRA and JRA are Grade-B posts as per the aforesaid G.R. dated 2.7.2002 (Ex.656). However, the pay-scale of the post of JRA given by him i.e. Rs.5500-9000 in the said para 54 is not correct as shown above.

870) As regards the post of SRA, its pay-scale satisfies the criteria given for Grade-B posts at serial no.2 of the aforesaid G.R. dated 2.7.2002 (Ex.646) since the maximum of its pay-scale is more than Rs.9000/- but is less than Rs.11500/-. However, as regards the post of JRA, it satisfies the criteria of Group-C posts given at serial no.3 of the aforesaid G.R. dated 2.7.2007 (Ex.646) since the maximum of its pay-scale is more than Rs.4400/- but is less than Rs.9000/-. On proper interpretation of the criteria given at serial no.3 on reading all the four criteria together, it would mean that in criteria at serial no.3, there is a mistake in using the word “नाही” after the words “रूपये नऊ हजार पेक्षा कमी” and instead the said word should have been “आहे”. Otherwise, there would be no difference but only confusion in criteria at serial nos.2 and 3 and even at serial no.1. Perusal of the copy of the aforesaid GR dated 02.07.2002 (Ex. 656) filed by the University with its affidavit dated 7.1.2008 (Ex.650) would show that there is correction made by it in the said copy and the word “नाही” in clause at S. No. 3 is deleted and instead inserted the word “आहे” in its place. As the post of SRA is Grade-B Post, obviously the said Govt. Circulars about association of the officer of the Social Welfare Dept. in selection of candidates in the said post is not applicable to it.

871) All the Government circulars referred to above requiring officer from the Social Welfare department in respect of Scheduled Caste candidates and the Project officer in respect of schedule tribes candidates to be associated with the Selection Committee constituted for Selection in Grades 3 and 4 posts were issued prior to coming into force of the Reservation Act, 2001 i.e. prior to 29.1.2004. Perusal of section 10 of the Reservation Act, would show that in sub-section-3 thereof the Government orders in force on the date of commencement of the said Act in respect of concessions and relaxations were only saved and they continued to apply unless they were modified or revoked. Section-15 of the said Act provides that the provisions of the said Act would not be applicable to the case in which selection process had already been initiated before commencement of the said Act and such cases would be dealt with in accordance with the provisions of law and the Government orders as they stood before such commencement. The question thus to be considered would be whether the above referred Govt. circulars regarding association of officer of the Social Welfare Department or Project officer as the case may be in Selection Committee constituted for Grade-3 and Grade-4 posts would still be applicable after coming into force of the said Act. It is not necessary to consider the said question in this case, since as rightly submitted by the University, the Selection Committee for selection of candidates for the posts of SRA/JRA is a statutory committee constituted under Statute 76

of the Statues, and the said Govt. Circulars about association of the officer of the Social Welfare Dept. in the Selection Committee are not therefore applicable to it.

iii) G.Rs. prescribing 100 point Roaster and giving guidelines to implement it

872) Shri G.G.Tonde, the Assistant Registrar, Dr.PDKV, Akola, stated in para 1 of his affidavit dated 2.8.2007 (Ex.57) that the University followed Reservation Policy for Backward Classes as decided by the State Government as per the provisions under section-60 of the University Act read with statute-77 (3) of the Statutes framed thereunder. He further stated that the posts in nomination quota were filled in the University as per the G.R. No.BCC-1097/Case No.-63/97/16-B dated 18.10.1997, a copy of which was annexed with his aforesaid affidavit and marked as Ex.no.57-A in this enquiry. He then stated that the procedure prescribed under the said Government Resolution dated 18.10.1997 (Ex.57-A) was followed in the Selection procedure in the University as per which 52% posts were filled in Reserved Categories and 48% posts in Open category. Shri G.G.Tonde, had also annexed to his aforesaid affidavit G.R. No.BCC-1097/Case No.-2/97/16-B dated 29.3.1997, marked as Ex.57-B in this enquiry, which would show that to implement its reservation policy, the Government prescribed 100 point roster as given therein for direct recruitment and 50 point roster for making appointment by promotion. However, by the subsequent G.R. No.BCC-1097/Case No.-63/97/16-B dated 18.10.1997 (Ex.57-A) referred to above 100 point roster as given therein instead of 50 point roster which was prescribed by the above referred G.R. dated 29.3.1997 (Ex.57B) was made applicable to the appointment by promotion but perusal of such roster would show that there was no reservation in promotion for OBC category.

873) After the guidelines/directions were issued by the Central Government in its G.R. no. 36012/2/96-ESTT (RES) dated 2.7.97 in the light of the judgment of the Supreme Court in the case of R.K.Sabharwal & Ors. –Vs- State of Punjab & Ors. (AIR 1995 S.C. 1371), the State Government in para 2 of its G.R. dated 18.10.1997 (Ex.57A) issued inter-alia the following orders for implementing its reservation policy through 100 point roster prescribed by it.

- (i) The reservation of posts for the reserved category candidates should be made according to the percentages prescribed for them on the basis of the total number of posts in the cadre and not on the basis of the posts becoming vacant. 100 point roster should be followed till the prescribed percentages of reservation are achieved but thereafter it is not necessary to follow the said roster. After the prescribed percentages of the posts in reserved categories are fulfilled, the post in any category which becomes vacant should only be filled by the candidate from that category.

- (ii) The candidates belonging to Backward classes appointed on the basis of their merit should not be counted in the posts in their reserved category and their appointment should not be indicated upon the roster points reserved for their reserved category candidates but they should be counted in the posts in open category.
- (iii) 100 Point roster is meant for determining the reservation for backward class candidates and not for determining their seniority.
- (iv) In using 100 point roster, the following basic principles should be borne in mind.
 - (a) Reservation for backward class candidates should be according to the percentages prescribed for their reserved category and the number of posts reserved for backward class candidates should not exceed 52% of the total number of posts in the cadre.
 - (b) Separate 100 point roster should be kept for direct recruitment and promotion.

874) Perusal of the last para 3 of the aforesaid G.R. dated 18.10.1997 (Ex.57-A), would show that the Government orders in the said G.R. would come into force from 2.7.1997 i.e. the date on which the Central Government issued its G.R. laying down the guidelines in this regard. There are also detailed instructions given in the schedule to the said G.R. dated 18.10.1997 (Ex.57-A) about how to implement 100 point roster. It is also made clear in para 3 that the Selection lists finalized before 2.7.1997, should not be disturbed but after the date of this G.R. dated 18.10.1997 while considering the proposals for direct recruitment or promotion, the action should be taken only after taking into consideration the number of posts reserved for each category calculated according to the percentage prescribed for it on the basis of the total number of posts in the cadre.

875) What is material to be seen in the instructions in the schedule of the G.R. dated 18.10.1997 (Ex.57-A), is that in the instruction no.4, it is made clear that the total number of posts in the cadre at that time i.e. on 2.7.1997 from which date the said G.R. came into force should be taken into consideration for determination of reservation points in the roster and in future if there is increase or decrease in the total number of posts, the number of reservation points should accordingly in that proportion be either increased or decreased. As per instruction no.5 if there are more appointments made than the prescribed percentage of reservation in any category such appointments would not be affected in view of the orders issued in the said G.R. dated 18.10.1997 (Ex.57-A).

iv) Note of B.C.Cell showing how to implement the reservation policy of the Government by following 100 point Roster

876) In order to see how the reservation policy of the Government should be implemented by following the roster prescribed for the same in both nomination and promotion quota, the notice was issued to the Assistant Commissioner, Backward Class Cell (for short B.C.Cell) Nagpur Division, Nagpur, to assist in this enquiry in that regard. The Assistant Commissioner, B.C.Cell, was good enough to attend the enquiry and explain how the reservation policy of the Government is implemented by following the roster for the same. In fact, in the Government each of its department is required to obtain the approval of the B.C.Cell to its advertisement for filling the vacant post/s before issuing it. The Assistant Commissioner, B.C.Cell, also submitted in this enquiry the note dated 6.5.2008 in writing marked as Ex.740, explaining with illustrations how the reservation policy of the Government and in particular the 100 point Roster has to be followed in the light of the relevant G.Rs. issued by it. A true copy of the said note dated 6.5.2008 (Ex.740) is annexed to this Report as **Annexure-33** for ready reference

877) In para 3 of the above note dated 6.5.2008 (Ex.740) submitted by the B.C. Cell, Nagpur, the procedure of how to implement 100 point roster with effect from 2.7.1997 as per the guidelines laid down in the G.R. dated 18.10.1997 (Ex.57-A) is described with illustrations annexed to the said note. The concerned officers of the said Cell explained the said procedure orally in this enquiry as follows. After determining the total number of posts in each reserved category as per the percentage prescribed for that category as on 2.7.1997 on the basis of the total number of sanctioned posts in the cadre as on that date, the list of the employees working on 2.7.1997 in each of the Backward Class Categories and in open is prepared on the basis of their seniority i.e. as per the dates of their appointment. Such employees can then be assigned according to their serial numbers in their lists the roster points in their categories as on 2.7.1997 upon the 100 point roster given for direct recruitment in the G.R. dated 29.3.1997 (Ex.57-B). If the number of employees in any particular category is in excess of the roster points assigned to that category in the 100 point roster as per its prescribed percentage, the remaining employees in the list in such category can be assigned the roster point when any employee in that category who is assigned the roster point retires or his roster point otherwise becomes vacant but no new appointment can be made in that category till all the remaining employees in the list are assigned the roster points. On the other hand, if the number of employees in any category is less than the number of roster points assigned to it in the 100 point roster as on 2.7.1997, the backlog in such categories is shown. See illustration (Ex.741) with the note dated 6.5.2008 (EX.740). Such backlog is then filled as per the G.R. dated 11.9.1998 providing for special recruitment drive to fill 100% backlog. However, as soon as all the posts in the reserved categories as per their prescribed percentages are filled, the 100 point roster need not be

used and thereafter, the post which becomes vacant in any category should be filled by appointment of the candidate from that category.

878) The University has produced roster register, with the affidavit of Shri G.G.Tonde, dated 28.3.2008 (Ex.701) marked as Ex.702 in this enquiry meant for direct recruitment as well as promotion in the posts of SRA, JRA, AA and LSS. Perusal of the said roster register (Ex.702) and also the subsequent paras in this Enquiry Report about factual data regarding how the reservation policy was followed by the University, would show that 100 point roster was not properly implemented by it according to the rules and guidelines laid down in the G.R. dated 18.10.1997 (Ex.57-A) issued in the light of the judgment of the Supreme Court in the case of Sabharwal and others –Vs – State of Panjab and others (AIR 1995 S.C. Page 1371).

879) In fact, the said Roster Register (Ex.702) is itself not properly maintained. It does not show that the Lists of employees working on 2.7.1997 according to their seniority i.e. according to the dates of their appointments in each of the backward class categories and in open were prepared. It also does not show that on the basis of the cadre strength of sanctioned posts as on 2.7.2007, the total number of posts in each reserved category according to its prescribed percentage was worked out and the employees in the aforesaid lists were assigned according to their S.No. in the List the points upon the 100 point roster for direct recruitment as described in the above para. No review of the posts in the reserved categories and open is taken every year to ascertain whether the number of posts filled in each of the reserved categories are in excess of their prescribed percentage or less, whether there is a backlog so that corrective steps can be taken in subsequent recruitment in the said posts although some attempt is made to show the position of SRA as on 2.7.97 at pages 1-4 of the said roster register (Ex.702) but the review of posts is taken not as on 2.7.1997 but as on 1.3.1999 (See Abstract at page-2). The total posts of SRA were 157 excluding farm group posts and therefore 50% of the said posts in nomination quota could not be 100 as shown in the said Abstract on page-2. The total of the posts filled comes to 76 and not 77 as shown in the said abstract.

880) The reservation status in the nomination quota of 78 posts of SRA as on 2.7.1997 on the basis of 76 posts of SRA being filled as on the said date i.e. 2.7.1997 as shown on 100 point roster at pages 1 to 4 of the said roster register is prepared by this office and is as follows

100 point Roster for nomination

Reservation Status on the basis of position as on 2nd July, 1997 in 78 posts of SRA in nomination quota

Sr. No.	Category	Percentage as per GR	Percentage calculated on 78 posts	Posts filled in	Difference
1	SC	13	10	7	3
2	ST	7	5	9	-4
3	VJ(A)	3	2	1	1
4	NT (B)	2.5	2	1	1
5	NT (C)	3.5	3	1	2
6	NT (D)	2	2	1	1
7	SBC	2	2	1	1
8	OBC	19	15	8	7
9	OPEN	48	37	47	-10
		100	78	76	2

881) As regards the posts of JRA, the posts shown in nomination quota are 59 at page-5 of the roster register (Ex.702) but no date is given on which the roster is prepared. The Abstract at page-6 i.e. review of the said posts is as on 1.11.1998 and not on 2.7.1997. The said Abstract is thus not properly prepared as no review of posts is taken and backlog worked out in the said post as on 2.7.97. No position of appointees in these posts is shown in the said roster register till 31.7.2004. The position of the candidates appointed in the posts of SRA/JRA is then shown on 100 point roster for nomination and for promotion as on 31st July 2004, 19.9.2005 and as on 28.3.2008 vide pages 33 to 54 of the said Roster Register (Ex. 702). It appears that they are prepared recently and pasted in the said roster register (Ex.702) after the University was directed to file in this enquiry the charts about the appointments made in the posts of SRA/JRA in nomination and promotion quota as on 31.7.2004 i.e. before the advertisement in question dated 14.8.2004 (Ex.2) was issued, 19.9.2005 i.e. after the appointments of SRA / JRA in question were made and the recent position i.e. as on 28.3.2008 which it had submitted in this enquiry. No review of the posts in each reserved category and in open is however, taken to show whether the posts filled are less than their prescribed percentage or more and the action which needs to be taken in that regard in subsequent recruitment in the said posts. The number of posts falling in nomination and promotion quota is also not shown therein as per 50:50 quota prescribed therefore by the Executive Council, vide its Resolution dated 18.3.1991 (Ex. 595) and it is not stated whether the posts are filled therein are less or in excess of the said quota and the action which needs to be taken in that regard. Thus, the roster register is not properly maintained by the University.

882) It may be seen that in the State Government there is B.C. (Backward Class) Cell at each Divisional place and each department of the Govt. is required to get its advertisement for recruitment of the posts approved from the said B.C. Cell for properly following its reservation policy. It is necessary that the University should also get its advertisement approved from the B.C.Cell of the Govt. till it has its own B.C. cell from which it can then get its advertisement approved.

v) Procedure of making vertical as well as Horizontal Reservation in Direct Recruitment

883) In the light of the Judgment of the Supreme Court in Anil Kumar Gupta –Vs- State of U.P. and others, J.T. 1995 (5) SC 505, the State Govt. issued G.R. No.SRV-1097/Case No-31/98/16-A dated 16.3.1999 annexed to the affidavit of the Assistant Registrar, Shri G.G.Tonde, dated 28.3.2008 (Ex.701), marked as Ex.703 in this enquiry, a true copy of which is annexed to this Enquiry Report as **Annexure-34**. The State Government laid down in the said G.R. dated 16.3.1999 (Ex.703), the procedure and the guidelines to be followed in making vertical as well as horizontal reservation in direct recruitment by the establishments mentioned therein including the University. In para 2 of the said G.R. dated 16.3.1999 (Ex.703) the social/vertical reservation to be made in recruitment in service is as follows :

Sr. No.	Description of Caste/Tribe/Category/Class	Percentage of vacancies or seats to be reserved
i)	Scheduled Caste	13%
ii)	Schedule Tribe	7%
iii)	Denotified Tribe (A)	3%
iv)	Nomadic Tribe (B)	2.5%
v)	Nomadic Tribe (C)	3.5%
vi)	Nomadic Tribe (D)	2%
vii)	Special Backward Class	2%
viii)	Other Backward Class	19%
	Total	52%

Besides the above vertical reservation the following special reservation (horizontal reservation) in recruitment in service is also prescribed :

(i)	Ex-Servicemen	15% only in Group-C and Group-D
(ii)	Project Affected Person/ Earthquake Affected Person	5% Only in Group C and D
(iii)	Physically Handicapped	3% for some posts in Group A and B & for posts in Group C and D
(iv)	Women	30%

884) Below the above horizontal reservation it is stated that it is applicable only in direct recruitment. It is further stated that since the horizontal reservation is within the social reservation, it should not be considered as additional reservation. It is then stated in para 4 of the aforesaid G.R. dated 16.3.1999 (Ex.703) that as held by the Supreme Court in its judgment cited supra, the horizontal reservation is compartmentalized reservation and, therefore, before the posts are filled, while determining their number and advertising them for being filled, not only the number of posts in each reserved category of social reservation should be mentioned but the number of posts to be reserved in horizontal reservation in each category of vertical reservation such as S.C, S.T., VJ(A), NT(B), NT(C), NT(D) , SBC, OBC and Open should also be indicated.

885) As regards the horizontal reservation clause-IV under the Head **“Other Conditions”** in the advertisement dated 14.8.2004 (Ex.2), mentions that Reservation of female candidates, physically handicapped, as per the Government Policy would be observed subject to availability of suitable candidates. It however, does not mention two other categories of horizontal reservation viz. Ex-servicemen and Project Affected/Earth Quake Affected Persons for whom also horizontal reservation has to be made as per the G.R. dated 16.3.1999 (Ex.703). Further, it is made obligatory under the aforesaid G.R. dated 16.3.1999 (Ex.703) to indicate the number of posts reserved in horizontal reservation in each category of vertical reservation such as S.C., S.T. , NT (B), NT(C), NT (D), SBC, OBC and Open. Perusal of the advertisement in question dated 14.8.2004 (Ex.2), would show that the reservation of posts in horizontal reservation in each of the above categories of vertical reservation and open is not indicated therein. Had such horizontal reservation been indicated in the advertisement, it would have been as follows in 24 posts of SRA (Agri.) and 37 posts of JRA (Agri.) which were advertised.

**CHART SHOWING THE VERTICAL AND HORIZONTAL RESERVATION IN
THE POSTS OF SRA (Agri.) AND JRA (Agri.) AS ADVERTISED**

SRA (Agri.)				JRA (Agri.)				
Category	No. of Posts	Physically Handicapped	Female	No. of Posts	Ex. Service-Men	Project Affected	Physically Handicapped	Female
SC	4	-	-	5	1	-	-	2
ST	1	-	-	3	-	-	-	1
VJ (A)	1	-	-	VJ, NT* 4	-	-	-	1
NT (B)	1	-	-					
NT (C)	3	-	1					
NT (D)	1	-	-					
SBC	-	-	-	1	-	-	-	-
OBC	6	-	2	7	1	-	-	2
OPEN	7	-	2	17	2	1	1	5
TOTAL	24	0	5	37	4	1	1	11

NOTE : Horizontal Reservation for Ex.- Servicemen and Project Affected Persons are not applicable to the posts of SRA as it is a Grade - B post. Some post/s for physically handicapped in Grade-B i.e. for post of SRA are not indicated by the University

*In case of VJ, NT since no bifurcation is shown horizontal reservation is shown on total no. of 4 posts advertised

886) After determining the requisite number of posts in each reserved category of vertical reservation as per the percentage prescribed for it and in open category on the basis of the total number of posts in the cadre as per the directions given in the G.R. dated 18.10.1997 (Ex.57-A) and not on the basis of the posts becoming vacant then according to para 5 of the above referred G.R. dated 16.3.1999 (Ex.703), the following stages should be considered in filling the posts by direct recruitment so as to ensure their share of posts to the candidates in horizontal reservation as per their prescribed percentages in each reserved category of Social/Vertical Reservation and open category.

- (a) First stage : Selection list of open category candidates should be first prepared according to the criteria of merit. If the number of candidates to be selected in open category as per their percentage in horizontal reservation is adequate, there would not be any question of including such candidates in the selection lists and

the posts in open category can accordingly be filled but if the number of candidates to be selected as per their percentage in each category of horizontal reservation is not adequate then the candidates in each category of horizontal reservation should be included to the extent of its percentage in each category depending upon their availability by excluding the last candidate/s in the Selection list.

- (b) Second stage : After preparing the Selection list for open category, the Selection lists in each reserved category of social/vertical reservation should be prepared. The candidates whose names are already included in the Selection list of Open category should be excluded from the Selection lists of their reserved categories.
- (c) Third stage : In the Selection lists prepared as stated in sub-para (b) according to the prescribed percentage of each category of social reservation adequate number of candidates in horizontal reservation i.e. to the extent of their percentage should be included as per the procedure given in sub-para (a) but in doing so, the number of posts reserved in each category of social reservation should not be exceeded.

887) It is then stated in para 6 of the said G.R. dated 16.3.1999 (Ex.703) that as observed in the judgment of the Supreme Court cited supra the special reservation (Horizontal) should be within the limits of each social /vertical reservation which would mean that the special reservation cannot be transferred from one category of social/vertical reservation to another. It is made clear in para 7 that the orders/ directions in the said G.R. dated 16.3.1999 (Ex.703) should be made applicable to all establishments mentioned therein including the University directing the appointing authorities therein to follow the instructions and the procedure given in the said G.R. dated 16.3.99 (Ex.703).

888) It thus appears from the above referred G.R. dated 16.3.1999 (Ex.703) that the Selection list of Open Category candidates should be first prepared according to the criteria of merit and if any reserved category candidate/s is/are selected on merit in open category then his/their name/s should not be taken into account in selecting the candidate/s in his / their reserved category/ies to the extent of its/their percentage/s. As regards horizontal reservation for ex-servicemen, project/earthquake affected persons, physically handicapped persons, and for women, the posts to be reserved for each of the said categories has to be first calculated in the posts in open and in each reserved category to the extent of their percentage. Since the said horizontal reservation does not constitute additional reservation it has to be within the limits of the prescribed percentage of each category of social reservation. If the candidates in the said categories of horizontal reservation are already included to the extent of their percentages on the basis of their merit in open or in any reserved category, then it is not necessary to make any such reservation in the said

category. In case, their percentage is not satisfied then to the extent of their percentage or any short fall in the same, the candidates belonging to such category of horizontal reservation should be included in the Selection lists of open and / or reserved categories of social reservation, as the case may be, by excluding last candidate/s in such selection lists

vi) Factual Data about how the Reservation policy was followed by the University in making these appointments of SRA (Agri.)/JRA (Agri.) pursuant to the advertisement dated 14.8.2004 (Ex.2)

889) As regards the reservation of posts of SRA/JRA shown in the advertisement dated 14.8.2004 (Ex.2), Shri D.P.Deshmukh, Section Assistant (Estt.), stated in para 4 of his affidavit dated 15.11.2007 (Ex.598) that in giving advertisement for filling 35 vacant posts of SRA, he determined which post/s and how many should be reserved after taking into consideration the position of the said posts at that time, i.e. SRAs in which category were working and which posts were vacant. Perusal of his office note dated 15.7.2004 regarding SRA at page N/1 of the file relating to the advertisement Ex.40 (O), would show that in nomination quota, the total number of posts of SRA were 79 out of which 10 were in S.C., 5 in S.T., 9 in N.T.VJ, 2 in SBC, 15 in OBC and 38 in open category. Out of the said 79 posts, he had shown that 59 were filled and 20 were vacant. He had also shown therein the break-up in various categories such as S.C, S.T, etc. of 59 posts filled in and had given the difference in each category as the number of posts to be reserved in the remaining 20 vacancies to be filled by direct recruitment. According to him, 15 additional posts of SRAs who were working on temporary basis as Assistant Professors would have become vacant by reason of their regular promotion in the posts of Assistant Professors. He had given the categorywise break-up of these 15 posts of SRA as follows :

S.C-1, S.T-1, OBC-3, OPEN-10, = 15

He had then given as follows the resultant position of 35 posts of SRA which were to be advertised.

Name of post	SC	ST	VJ	NT-b	NT-c	NT-d	SBC	OBC	Open	Total
SRA (Computer)	-	-	-	-	-	-	-	1	2	3
SRA (Engineering)	-	-	-	1	-	-	-	-	2	3
SRA (Agri.)	5	2	1	1	3	1	0	6	10	29
Total	5	2	1	2	3	1	0	7	14	35

890) As regards the posts of JRA which were advertised, Shri D.P.Deshmukh, Section Assistant (Estt.), had shown at page N/3 of his aforesaid office note dated 15.7.2004 in the file Ex.40(O), the total number of posts of JRA in nomination quota as 51, out of which 6 were in S.C., 4 in S.T., 6 in N.T (VJ), 1 in S.B.C., 10 in OBC, and 24 in Open category. He

had shown filled in posts as 53 i.e. 2 in excess with no clear vacancy i.e. no vacant post in nomination quota. He had also given the categorywise break-up of 53 posts which were filled. He had however, stated in his aforesaid office note dated 15.7.2004 in the file Ex.40(O) that there were likely to be 40 vacancies in the posts of JRA due to their promotion, whose categorywise break-up was given by him as follows :-

Name of post	SC	ST	NT-VJ	SBC	OBC	Open	Total
JRA (Computer)	-	-	-	-	1	2	3
JRA (Agri.)	5	3	4	1	7	17	37
Total	5	3	4	1	8	19	40

891) Dr.V.D. Patil, the Chairman of the Selection Committee, stated in para 51 of his affidavit dated 25.12.2007 (Ex.645) that as regards the question as to how many posts would fall in each category i.e. S.C., S.T. etc. out of the total 55 posts of SRA (Agri.) and 76 posts of JRA (Agri.) to be filled, they took assistance from the categorywise break-up of 24 posts of SRA (Agri.) and 37 posts of JRA (Agri.) given in the advertisement dated 14.8.2004 (Ex.2). He however, stated in para 73 of his aforesaid affidavit that on the last day of interview i.e. 25.6.2005 when they decided to fill 55 posts of SRA (Agri.) and 76 posts of JRA (Agri.) they had decided the categorywise break-up of the said posts of SRA (Agri.) and JRA (Agri.) for which the then Registrar asked the Assistant Registrar Shri P.V.Behare, to give to him the said categorywise break-up which he had given to him. He further stated that the Assistant Registrar, had given the said break-up on a piece of paper and had not written any office note for that purpose which was approved by the Vice-Chancellor. He then admitted that there was no emergency for not obtaining the sanction officially and properly by following the official procedure i.e. the competent officer of the Registrar's office writing an office note which would be forwarded through proper channel for approval of the Vice-Chancellor

892) Dr. V. D. Patil, the Chairman of the Selection Committee, stated in para 8 of his affidavit dated 25.03.2008 (Ex. 697) that the categorywise break-up of 55 vacancies in the post of SRA (Agri.) and 76 vacancies in the post of JRA (Agri.) was prepared by Dr. Vandan Mohod, the Registrar/Member Secretary of the Selection Committee and he only told him to prepare cautiously the proper chart showing categorywise break-up so that there should not be any grievance made by anybody but he had not verified the said chart to see whether it was proper or not. He, stated in this regard in para 9 of his aforesaid additional affidavit that he would not be able to tell whether in vertical reservation i.e. S.C., S.T. etc. the number of candidates selected in each category were according to its prescribed percentage or not calculated on the basis of 55 posts of SRA (Agri.) and 76 posts of JRA (Agri.) for which the candidates were selected by them, since the categorywise break-up of the said posts according to their prescribed percentages was calculated by

Dr.Vandan Mohod, the Member Secretary. He also admitted in para 8 of his aforesaid affidavit referred to above that they had not seen the 100 point. Roster and did not calculate the categorywise break-up of the post on the basis of the points in the 100 point Roster taking into consideration the number of posts already filled at that time.

893) Dr.Vandan Mohod the then Registrar/ Member Secretary of the Selection Committee, however, stated in para 27 of his affidavit dated 1.12.2007 (Ex.633) that they prepared the chart showing categorywise break-up of 55 vacancies of SRA (Agri.) and 76 vacancies of JRA (Agri.) i.e. S.C., S.T. etc. on computer. According to him, the office had given them relevant G.Rs. about the reservation of posts for Backward Classes and on the basis of the percentages given in the said G.Rs. they had calculated the number of posts reserved for each category i.e. S.C., S.T. etc. He then stated that after thus preparing the categorywise chart they filled in the said chart in descending order of merit, the names of the candidates in various categories such as S.C., S.T., OBC, Open etc. As regards the posts of JRA (Agri.) in S.T. Category, Dr.Vandan Mohod, stated in para 46 of his aforesaid affidavit that although more posts than 3 which were reserved for S.T. category while advertising 37 posts of JRA (Agri.) in the advertisement dated 14.8.2004 (Ex.2) could be filled when 76 posts of JRA were sought to be filled, the reason in selecting only 2 S.T. category candidates in the selection lists of JRA S.T.Category was that the total number of candidates in the list of JRA S.T. category shown in the Marksheet Ex.34(O)-A was 7 out of which two were absent in the interview and out of the remaining 5 candidates, 3 were selected in descending order of merit in the posts of SRA S.T.Category and therefore only 2 remaining candidates were selected in JRA S.T.Category. Dr.V.D. Patil, the Chairman of the Selection Committee, made similar statement about selection of only 2 candidates in JRA S.T.Category in para 76 of his affidavit dated 25.12.2007 (Ex.645).

894) In order to test the veracity of the above statement of Dr.Vandan Mohod, in para 27 of his affidavit dated 1.12.2007 (Ex.633) that they determined the number of posts in each reserved category according to its prescribed percentage and then filled the said posts in each category in descending order of merit, this office calculated the number of posts to be reserved in each backward class category out of 55 vacancies of SRA (Agri.) and 76 vacancies of JRA (Agri.) on the basis of the percentages prescribed in the relevant G.Rs. and prepared a chart showing how the University did not comply with the said percentages prescribed for each reserved category and also open category. The said chart was shown to Dr.Vandan Mohod, during his additional interrogation and statement in this enquiry on the lines of which he filed the affidavit dated 2.4.2008 (Ex.713). He stated in para 9 thereof that he had seen the categorywise chart prepared by this office in accordance with his statement i.e. on the basis of the percentages of reservation prescribed for each category by the relevant G.Rs. He then stated that he had also seen the number of posts in the said chart which could be allotted to each category according to the percentage prescribed for it. He

also stated that the posts filled by them in each category were also given in the said chart. He admitted that the number of posts of SRA (Agri.) and JRA (Agri.) which they had actually filled were not according to the prescribed percentage therefore. He further admitted that in some categories, the posts they filled were in excess of the prescribed percentages of that category and in some other categories they were less than the percentage prescribed for them. The said chart prepared by this office was then marked as Ex.712 in this enquiry. A true copy of the said chart (Ex.712) is already annexed to this Report as Annexure-16.

895) As regards the horizontal reservation, Dr.V.D. Patil, the Chairman of the Selection Committee, stated in para 9 of his additional affidavit dated 25.3.2008 (Ex.697) that he knew that in the horizontal reservation, there was compartmentalised reservation i.e. distribution of the posts in reserved categories and open in accordance with their prescribed percentages. He, however, stated that he would not be able to tell whether the same was observed or not in making selection in the posts of SRA (Agri.) and JRA (Agri.). He then stated that so far as the horizontal reservation for physically handicapped candidates was concerned, there were according to him no such candidates who had applied for the posts of SRA (Agri.) and/or JRA (Agri.).

896) Dr.V.D. Patil, the Chairman of the Selection Committee, stated in para 9 of his additional affidavit dated 25.3.2008 (Ex.697) that as regards the horizontal reservation for female candidates, according to him, there must have been female candidates to the extent of their reservation in the selection lists. When the case of Ku.Bipte Archana R., who was VJ(A) female candidate was pointed out to him on the question of horizontal reservation for women, he stated in para 10 of his aforesaid affidavit that in the said category, 3 candidates were selected in the posts of SRA (Agri.) and two candidates in JRA (Agri.) who were all male candidates selected according to their merit i.e. on the basis of total marks they received. He, however, admitted that he had not given any thought to horizontal reservation in favour of female candidate/s while making selection in the said category. He further admitted that there were no cut off marks laid down in the criteria for evaluation of the candidates in the posts of SRA (Agri.) and JRA (Agri.). He then stated that he found from the Marksheet Ex.34(O)-A that the total marks received by Ku. Bipte Archana R. were 44. He admitted that since no cut off marks were laid down in the criteria of selection, she should have been selected in VJ(A) category.

897) As shown above although the candidates selected in each category of vertical reservation and in open were not according to the prescribed percentages on the basis of the total number of candidates selected in the posts of SRA (Agri.) and JRA (Agri.) even in the number of posts in which the candidates were actually selected, the horizontal reservation in each category of vertical reservation and in open was not indicated according to the percentages prescribed for the classes of persons for whom horizontal reservation was

provided in G.R. dated 16.3.1999 (Ex.703). In fact, as shown above, no selection of candidates in horizontal reservation appears to have been made by the Selection Committee. Had such horizontal reservation been made, it would have been as follows :

CHART SHOWING THE VERTICAL AND HORIZONTAL RESERVATION IN THE POSTS OF SRA (Agri.) AND JRA (Agri.) ACTUALLY FILLED

SRA (Agri.)					JRA (Agri.)					
Category	No. of Posts	Physically Handicapped	Female	Actual posts filled of Female against the reservation	No. of Posts	Ex. Service Men	Project Affected	Physically Handicapped	Female	Actual posts filled of Female against the reservation
SC	11	-	3	2	7	1	-	-	2	1
ST	3	-	1	-	2	-	-	-	-	-
VJ (A)	3	-	1	-	2	-	-	-	-	-
NT (B)	2	-	-	-	3	-	-	-	1	1
NT (C)	5	-	1	-	2	-	-	-	-	-
NT (D)	1	-	-	-	1	-	-	-	-	-
SBC	-	-	-	-	2	-	-	-	-	-
OBC	14	-	4	2	21	3	1	1	6	4
OPEN	16	-	5	4	36	5	2	1	11	4
TOTAL	55	0	15	8	76	9	3	2	20	10

NOTE :1) Horizontal reservation of each special category of persons as per its prescribed percentage is calculated in each category of vertical reservation and open on the basis of actual number of posts allotted to each category of vertical reservation and open by selection and appointment made therein.

2) Horizontal Reservation for Ex.- Servicemen and Project Affected Persons is not applicable to the post of SRA since being a Grade - B post some suitable post/s for physically handicapped in Grade-B i.e. for the post of SRA needed to be but were not indicated by the University

vii) University never followed the Reservation policy of the State Government in making selection and appointment by nomination and promotion in these posts.

898) In order to see whether the reservation policy of the Government in both direct recruitment and promotion quota was properly followed by the University, it was directed to file the list of appointees by promotion and by direct recruitment just before the advertisement in question i.e. as on 31.7.2004, just before making appointment in the posts of SRA (Agri.) and JRA (Agri.) in question i.e. as on 15.9.2005 and the recent position

regarding them i.e. as on 18.3.2008 giving the categorywise break-up of the appointees. Accordingly, the University annexed with its affidavit dated 28.3.2008 (Ex.701) such charts collectively marked as Ex.711 in this enquiry. The information given by the University in the said charts (Ex.711) is as follows :-

899) Position of SRA (Agri.) as on 31.7.2004 in promotion and nomination quota :-

i) Total number of promotees 81, their categorywise break-up as follows :-

OBC	Open	S.C.	Total
45	27	9	= 81

(See pages 14 and 15 of the affidavit dated 28.3.2008 (Ex.701))

ii) Total appointees by direct recruitment 28, their categorywise break-up as follows :-

OBC	Open	S.T	SBC	VJ(A)	Total
19	5	1	1	2	= 28

(See page 16 of the affidavit dated 28.3.2008 (Ex.701)) :

900) Position of JRA (Agri.) as on 31.7.2004 in promotion and nomination quota :-

i) Total number of promotees 28, their categorywise break-up, as follows :-

OBC	Open	S.C.	S.T.	V.J.	Total
10	5	10	2	1	= 28

(See chart at page 17 of the affidavit dated 28.3.2008 (Ex.701))

ii) Total number of appointees by direct recruitment 7; their categorywise break-up as follows :-

OBC	Open	S.C	S.T	VJ(A)	NT(B)	Total
2	1	1	1	1	1	= 7

(See page 18 of the affidavit dated 28.3.2008 (Ex.701))

901) Position of SRA (Agri.) as on 15.9.2005 in promotion and nomination quota :-

i) Total number of promotees 70; their categorywise break-up, as follows :-

OBC	Open	S.C.	Total
45	27	9	81

(See pages 19 and 20 of the affidavit dated 28.3.2008 (Ex.701))

However, the above break-up is not correct the true break-up of 70 promotees is as under :

OBC	Open	SC	S.T.	Total
40	21	7	2	70

ii) Total number of appointees by direct recruitment 21; their categorywise break-up as follows :-

OBC	SBC	ST	VJ(A)	Total
18	1	1	1	= 21

(See Page 21 of the affidavit dated 28.3.2008 (Ex.701))

902) Position of JRA (Agri.) as on 15.9.2005 in promotion and nomination quota

i) Total number of promotees 29; their categorywise break-up, as follows :

OBC	Open	SC	ST	VJ(A)	Total
11	5	11	1	1	= 29

(See Page 22 of the affidavit dated 28.3.2008 (Ex.701))

ii) Total number of appointees by direct recruitment 4, their categorywise break-up, as follows :-

OBC	Open	NT(B)	VJ(A)	Total
1	1	1	1	= 4

(See page 23 of the affidavit dated 28.3.2008 (Ex.701))

903) The present position of SRA (Agri.) and JRA (Agri.) i.e. as on 18.3.2008 is shown in the chart at pages 24 to 31 of the aforesaid affidavit of the Assistant Registrar, Shri G.G.Tonde, dated 28.3.2008 (Ex.701)

904) Position of SRA (Agri.) as on 18.3.2008 in nomination and promotion quota. Total sanctioned posts were 148 including, 5 posts of SRA (Bio-technology/Bio-chemistry). The ratio of nomination and promotion quota being 50:50. there were 74 posts each in nomination and promotion quota. The position of SRA (Agri.) as on 18.3.2008 in nomination quota was that out of 74 posts in the said quota, 52 were filled and 22 vacant. Their categorywise break-up was as follows :-

- i) SRA (Agri.) total sanctioned posts 148 (including 5 posts of SRA biotech & biochem)

Ratio: 50-50 74 Nom + 74 Prom Total 148 posts

	SC 13%	ST 7%	VJ-A 3%	NT-B 5%	NT-C 3.5%	NT-D 2%	SBC 2%	OBC 19%	Open 48%	Total
Required	10	6	2	2	3	1	1	14	35	74
Present	9	3	2	2	5	1	0	15	15	52
Vacant	1	3	0	0	-2	0	1	-1	20	22

(See pages 24 and 25 of the affidavit dated 28.3.2008 (Ex.701))

- ii) In promotion quota of 74, 50 were filled and 24 vacant. Their categorywise break-up was as follows

SRA (Agri.) total sanctioned posts 148 (including 5 posts of SRA biotech & biochem)

Ratio: 50-50 74 Nom + 74 Prom Total 148 posts

	SC 13%	ST 7%	VJ-A 3%	NT-B 5%	NT-C 3.5%	NT-D 2%	SBC 2%		Open 67%	Total
Required	10	6	2	2	3	1	1		49	74
Present	9	1	1	1	0	1	0		38	50
Vacant	1	5	1	1	3	0	1		11	24

(See pages 26 and 27 of the affidavit dated 28.3.2008 (Ex.701))

905) Position of JRA (Agri.) as on 18.3.2008 in nomination and promotion quota

Total number of sanctioned posts 114, the ratio of nomination and promotion quota 50:50 i.e. 57 each in nomination and promotion quota.

i) The position of JRA (Agri.) as on 18.3.2008, in nomination was that 71 posts were filled i.e. 14 in excess of the quota of 57. Their categorywise break-up as follows :

JRA total sanctioned posts 114

Ratio: 50-50

57 Nom + 57 Prom

Total 148 posts

	SC 13%	ST 7%	VJ-A 3%	NT-B 5%	NT-C 3.5%	NT-D 2%	SBC 2%	OBC 19%	Open 48%	Total
Required	7	4	2	2	3	1	1	11	26	57
Present	6	3	2	3	2	0	2	18	35	71
Vacant	1	1	0	-1	1	1	-1	-7	-9	-14

(See pages 28 to 30 of the affidavit dated 28.3.2008 (Ex.701))

ii) In promotion quota of 57 posts, 14 were filled and 43 vacant. Their categorywise break-up, as follows : -

JRA total sanction posts 114

Ratio: 50-50

57 Nom + 57 Prom

Total 148 posts

	SC 13%	ST 7%	VJ-A 3%	NT-B 5%	NT-C 3.5%	NT-D 2%	SBC 2%		Open 67%	Total
Required	7	4	2	2	3	1	1		37	57
Present	1	0	0	0	0	1	0		13	14
Vacant	6	4	2	2	3	0	1		24	43

(N.B. Calculation of the total in 2nd and 3rd row i.e. "Present" and "Vacant" is wrong it should be 15 and 42 respectively)

(See Page 31 of the chart of the affidavit dated 28.3.2008 (Ex.701))

906) The above information given by the University in the charts collectively marked as Ex. 711 annexed to its affidavit dated 28.3.2008 (Ex. 701) would show that the University did not follow the reservation policy at all in making appointments to the posts of SRA (Agri.) and JRA (Agri.) as is clear from the charts about them as on 31.7.2004, 15.9.2005 and 18.3.2008 muchless it has followed the 100 point roster prescribed by the Government to implement its reservation policy. As regards the position of SRAs (Agri.) and JRAs (Agri.) as on 31.7.2004, and 15.9.2005 in both promotion and nomination quota, the

University did not show in the above referred charts relating to them, the requisite number of reserved posts i.e. as per percentages prescribed for them in the total number of sanctioned posts in promotion and nomination quota of the said cadres. However, in the charts as on 18.3.2008, it has shown such requisite number of posts in the reserved categories on the basis of the total number of sanctioned posts in the said cadres. The total sanctioned strength of SRA (Agri.) and JRA (Agri.) as on 31.7.2004, 15.9.2005 and 18.3.2008 is the same. The categorywise break-up of the posts of SRA (Agri.) and JRA (Agri.) which were filled in promotion and nomination quota as on 31.7.2004 and 15.9.2005 and also as on 18.3.2008 would show that the University did not follow the reservation policy of the State Govt. in making recruitment in the posts of SRA (Agri.) and JRA (Agri.) till date muchless by following the 100 point roster prescribed by the Govt. for direct recruitment and promotion.