

(1995) 04 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6143 of 1995

Narendra Pratap Shahi and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 13-04-1995

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 — Section 3

Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 — Section 15, 3

Citation : (1995) 04 AHC CK 0055

Hon'ble Judges : Palok Basu, J and R.K.Singh, J

Final Decision : Partly Allowed

Judgement

Palok Basu, J.—These three writ petitions raise common questions and looking at the extreme urgency of the matter, affidavits were permitted to be exchanged and as requested by various counsel for the respective parties these are being decided finally at the admission stage. The challenge in all these petitions is to the additional result declared by the U. P. Public Service Commission on 22.11.1995 whereby 1452 (one thousand four hundred fiftytwo only) candidates belonging to backward classes and schedule caste have been called for written examination alongwith other successful candidates who had appeared at the preliminary Test for Combined State/Upper Subordinate Services Main) Examination 1992.

2. Before delving into the various important questions of facts and law argued in these writ petitions, it may be mentioned that the questions raised herein are not likely to arise in any future publicServices examination and therefore this judgment will be confined to the facts involved in the examinations which have been held in the year 1992 ; and that in the future public Services examinations to be conducted, the change in the reservation quota brought about by the two enactments to be referred hereinafter, have to be followed from the very beginning and therefore the genesis for the grievances raised in these petitions

are not likely to arise in the future examination to be conducted by Public Service Commission. The questions have cropped up because of the transition from one quota to another quota of reservation after the posts were initially advertised.

3. Detailed arguments have been advanced by Sri Ashok Khare, Sri B. K. Tripathi and Sri Janardan Sahai on behalf of the petitioners in these writ petitions and Sri R. K. Saxena, Sri D. R. Chaudhary and Sri Ganga Prasad, learned Standing Counsel on behalf of the State of U. P., and Sri V. M. Sahai, learned counsel for the U. P. Public Service Commission in all these writ petitions.

4. The facts lie in a narrow compass. In March, 1992 the U. P. Public Service Commission (For short the Commission) advertised certain vacancies calling for applications from candidates by 25/1/1992. These were described as Combined State/Upper Subordinate Services (Main) Examination, 1992. A large number of candidates applied and therefore, in accordance with the Rules known as U. P. Direct Recruitment through Public Service Commission (Prel.) Examination Rules, 1986 (For short the Rules) and after holding the preliminary test, 5533 (Five thousands five hundred thirty three only) general candidates and 4218 (Four thousands two hundred eighteen only) candidates in the reserved category were called for appearing in the final examination. This result was declared on 24/4/1994.

5. This is the relevant place to mention that the reservation under various Rules and Regulations then in vogue was as follows :

18% Scheduled Castes

2% Scheduled Tribes

15% Backward Classes

2% Physically Handicapped

5% Dependents of Freedom Fighters

8% Ex. Servicemen.

6. The total of these percentage figures would bring total percentage to 50% of the vacancies.

7. Two enactments passed by the State Legislature came into existence in the meantime. U. P. Act No. 4 of 1993 known as U. P. Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 came to be passed on 29/12/1993, but by virtue of Section 2 thereof it was made to come into force on 1/12/1993. Section 3 of the said Act may be relevant for the discussion to follow and therefore, is quoted for ready reference :

"3. Reservation of vacancies in favour of physically handicapped etc. (1) In public services and posts in connection with the affairs of the State there shall be reserved five per cent of vacancies at the stage of direct recruitment in favour of

- (i) physically handicapped,
- (ii) dependents of freedom fighters, and
- (iii) exservicemen.

(2) The respective quota of the categories specified in subsection (1) shall be such as the State Government may from time to time determine by a notified order.

(3) The persons selected against the vacancies reserved under subsection (1) shall be placed in the appropriate categories to which they belong. For example, if a selected person belongs to Scheduled Castes category he will be placed in that quota by making necessary adjustments ; if he belongs to Scheduled Tribes category, he will be placed in that quota by making necessary adjustments if he belongs to Backward Classes category, he will be placed in that quota by making necessary adjustments. Similarly if he belongs to open competition category, he will be placed in that category by making necessary adjustments.

(4) For the purposes of subsection (1) an year of recruitment shall be taken as the unit and not the entire strength of the cadre or service, as the case may be :

Provided that at no point of time the reservation shall, in the entire strength of cadre, or service, as the case may be, exceed the quota determined for respective categories.

(5) The vacancies reserved under subsection (1) shall not be carried over to the next year of recruitment."

8. The other enactment came to be passed on 2231994 which is known as the U. P, Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, (1994 U. P. Act 4 of 1994) which was made was made to come into force on 11121993. Section 3 and Section 15 of the said enactment have been referred to during the arguments of other side and therefore those two sections are quoted here for ready reference :

"3. Reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward Classes.(1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following percentages of vacancies to which recruitments are to be made in accordance with the foster referred to in subsection (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes of citizens

- (a) in the case of Scheduled Castes 20%
- (b) in case of Scheduled Tribes 2%
- (c) in the case of other backward classes of citizens 27%

Provided that the reservation under clause (c) shall not apply to the category of other backward classes of citizens specified in Schedule II.

(2) If, even in respect of any year of recruitment, any vacancy reserved for any category of persons under subsection (1) remains unfilled, special recruitment shall be, made for such number of times not exceeding three, as may be considered necessary to fill such vacancy from amongst the persons belonging to that category.

(3) If, in the third such recruitment referred to in subsection (2), suitable candidates belonging to the Scheduled Tribes are not available to fill the vacancy reserved for them, such vacancy shall be filled by persons belonging to the Scheduled Castes. .

(4) Where, due to nonavailability of suitable candidates any of the vacancies reserved under subsection (1) remains unfilled even after special recruitment referred to in subsection (2), it may be carried over to the next year commencing from first of July, in which recruitment is to be made subject to the condition that in that year total reservation of vacancies for all categories of persons mentioned in subsection (1) shall not exceed fifty percent of the total vacancies.

(5) The State Government shall, for applying the reservation under subsection (1) by a notified order, issue a roster which shall be continuously applied till it is exhausted.

(6) If a person belonging to any of the categories mentioned in subsection (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under subsection (1).

(7) If, on the date of commencement of this Act, reservation was in force under Government Orders for appointment to posts to be filled by promotion, such Government Orders shall continue to be applicable till they are modified or revoked."

"Section 15 Savings.(1) The provisions of this Act shall not apply to cases in which selection process has been initiated before the commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and Government Orders as they stood before such commencement.

explanation.For the purposes of this subsection the selection process shall be deemed to have been initiated where, under the relevant services rules, recruitment is to be made on the basis of

(i) written test or interview only, the written test or the interview, as the case may be, has started, or

(ii) both written test and interview, the written test has started.

(2) The provisions of this Act shall not apply to the appointment, to be made under the Uttar Pradesh Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974."

It was contended on behalf of the learned counsel for the petitioners that the aforesaid declaration of the supplementary result on 22/11/1995 whereby an additional number of 1452 (One thousand four hundred fifty-two) candidates belonging to backward classes and scheduled castes (Backward classes 1380 plus S.C. 72 = 1452) have been called for final test is impermissible for two specific reasons. First reason is that by virtue of what is contained in Section 15 quoted above, it was not permissible for the respondents to apply the provisions of both the enactments and referred to above and therefore, the additional result is ultra vires the provisions of the Act, having been arbitrarily declared the said additional result should be quashed. The second reason is that in view of the proviso contained in Section 3 of the Physically Handicapped Act (Act 4 of 1993) the "cremylairs" sought to be excluded as having been mentioned in the Schedule II has not been adhered to and, therefore, the said additional result is void.

9. Apart from these two arguments it was further argued that even if it is said that reduction in the 15% total reservation for Physically Handicapped, plus D.F.F plus Ex. Servicemen is reducible to 5%, the corresponding advantage or disadvantage should have been extended to all classes of candidates whose result was declared originally on 24/11/1994. But the general candidates stand discriminated because those candidates who are now summoned or called to appear in the final test, belonging only to reserved category and all of them have secured less number than the last one securing in the general category.

10. During the course of argument attention of the Court was drawn to the decision of Hon'ble Supreme Court in *Swati Gupta v. State of U. P.*, JT 1995 (2) SC 438 i 1995 LBESR 701 (SC) and also to a full bench decision of this court report in 1994 UPLBEC *Uma Shankar Singh v. Chairman, Public Service Commission, U. P. and others*, This Court's decision in *Awadhesh Rai and others v. State of U. P.*, and other, passed in Civil Misc. Writ Petition No. 41243 of 1994 has also been cited,

11. It may be mentioned here that preliminary examination is permissible only as a method of short listing of the large number of candidates who seek to appear at the final examination to compete with each other for being ultimately selected to the various posts advertised through the commission. This being the factual position as held by this Court in *Awadhesh Rai* (supra), the Commission screens out larger number of candidates by fixing a minimum "qualifying mark" at the preliminary examination. Therefore, the explanation of Section 15 quoted above has to be interpreted to mean that selection process would begin only when the final written test has started or interview had begun. Preliminary screening cannot, therefore, indicate the beginning of the "Written test" for the competition.

12. The contention on behalf of the learned counsel for the petitioners is that the words "Selection process shall be deemed to have been initiated" should be interpreted to mean even preliminary examinations would in fact amount to putting something in subclauses (i) and (ii) of the said explanation which the

Legislature has deliberately omitted. "Writtentest" by itself stands completely distinguished from the "preliminary examination" which is conducted by the Commission in accordance with the provisions contained in the Rules. It is thus obvious that screening out the undeserving candidates can by no stretch of imagination be equated with the "Written test" for selecting a candidate for the post. Therefore, this argument is not acceptable.

13. In Swati Gupta (supra) the Hon"ble Supreme Court has interpreted that by the Government Order issued on behalf of the Government regarding the admission to the Medical College, vertical reservation has been replaced and therefore, there was no reservation in the general category. In this connection learned counsel for the petitioner criticized Annexure 7 which is a copy of the letter issued by Special Secretary on 8111994 which contains a request to the Public Service Commission that the result of the preliminary examination should not be taken as part of the written test for the said examination. The argument proceeds that the aforesaid direction is not permissible. As noted above, the preliminary examinations have totally different perspective. Therefore if screening is done before a candidate can appear in the final test his appearing at the preliminary test does not make written test going. Therefore there is nothing in the aforesaid letter dated 8111994 which can be said to be contrary to law.

14. Coming to the questions as to what is the effect of reducing the 15% total reservation of Physically Handicapped plus D.F.F. plus Ex. Servicemen candidates from 15% to 5% some serious arguments have been advanced from both sides.

15. There is no doubt that by provisions contained in Act No. 4 of 1993 a total percentage of 5% of vacancies at the stage of direct recruitment in favour of Physically Handicapped, D.F.F. and Ex.Servicemen have been earmarked thus in effect reducing 15% reservation in favour of these three categories as it stood before Act No. 4 of 1993 was promulgated. The respondents have pleaded that the additional number of 1452 candidates belonging to reserved category have been called because of corresponding increase in the percentage of reservation in favour of scheduled castes and backward classes to the extent of reducing the reservation for these three categories. However, the petitioners argument was that a combined reading of sections noted above go to make the total reservation to 55%. It is argued that 21% reservation for Scheduled Castes and 27% reservation for Backward Classes which are the changed percentages through Act No. 4 of 1994, 48% reservation is already reached. If unchanged 2% reservation of Scheduled Tribes is added, 50% reservation is already achieved. It is argued that in these circumstances the 5% reservation for the aforesaid three categories earmarked by the provisions of Act No. 4 of 1993 would take the reservation figure to 55% and that will go against the very mandate laid down by Hon"ble Supreme Court in another Indira Sahani case reported in JT 1992(6) SC 273. This argument fails to notice an inherent falacy. As has been held by Supreme Court and also as has been provided by Section 3 of aforesaid Act of 1993 the said 5% reservation of the three categories mentioned above would go

to the respective classes to which those candidates belong. Since this interpretation appears to be the only one permissible keeping in view decisions of the Supreme Court and the provisions in the two enactments noted above, the argument that the additional result be declared as void and inoperative, must be rejected. Thus by a combined reading of the provisions contained in Section 3 of the Act No. 4 of 1993 as well as Sections 3 and 15 of Act No. 4 of 1994 the reservation target fixed for direct recruitment does not exceed 50% under any circumstances. If any other interpretation is put by any respondent, it will go against the verdict of Supreme Court in Indira Sahani and Swati Gupta and any followup action them may have to be held ultra vires. However, there is no such action or order of the respondents which may invite the said criticism in these writ petitions.

16. The argument with regard to the manner of calculation applied by the Commission while calling 1452 persons through the additional result has much force. There appear to exist some obvious error. From the averments made in the counteraffidavit of the Commissions and statement of Sri V. M. Sahai made at the Bar on the institutions obtained and on examining the concerned record, the total number of general candidates called for final test is 5533 (Five thousands five hundred thirtythree only). By the original result, 4218 (Four thousands two hundred eighteen only) candidates of reserved category were called for the final test. Now 1452 (One thousand four hundred fiftytwo only) additional number of reserved candidates have been called by the supplementary result. These two figures totaled make the reserved category candidates 5670 (Five thousands six hundred seventy only) in number. If the aforesaid number of general candidates is kept in view, there is excess of 137 candidates called from the reserved quota.

17. The learned counsel for the commission as well as the standing Counsel for the State made a valiant attempt to justify the excess of 137 candidates. The argument proceeded that since while summoning candidates less than 0.5% is not added towards the reservation side while summoning, 0.5% figure is added to the general category, this may have created the aforesaid discrepancy. If this method of calculation would have been correct then there was more likelihood of less number of reserved candidates having been called rather than 137 more. Therefore, viewed from any angle the calling of aforesaid 137 candidates of reserved category cross the limit of 50% quota and hence cannot be permitted.

18. The question however remains, that those 137 candidates who have already been called should be checkmated at this stage by this Court when they are not parties to this proceeding or should some suitable alternative be found out, so that justice is not only done, it should appear to have been done. As stated at the very outset the type of controversy arising herein is not likely to repeat. Under the circumstances it appears desirable to direct that 137 candidates from the general candidates must be called by Public Service Commission so that the command of the Supreme Court of 50% reservation is maintained and followed. If as per the norms of the Commission in calling candidates or the Rules

regarding it, the number of candidates to be called for final test increases the number of 137 by some more, that would be permissible being according to norms and Rules. The adherence to the figure 137 shall be subject to the aforesaid norms and Rules only and under no circumstances, fixed figure of 137 shall be altered and exceeded in any manner whatsoever. Those candidate will be picked up only o the basis of merit and the norms fixed. None of the petitioners will have any preference just because they happen to be petitioners. If any one of them gets chance on merit and the norms, he alone will be called by the Public Service Commission.

19." In view of the aforesaid discussions these writ petitions are partly allowed. The Commission is directed to call 137 candidates from the generalside subject to the Norms and Rules and consideration of merit alone for final test at the Combined State/Upper Subordinate Services Examination, 1992 for which 2941994 has been fixed as the date. If it is not possible for the Public Service Commission to complete the formalities before the date fixed, it will be open to it to take all suitable actions including postponement of the aforesaid examination. Parties will bear their costs.

20. The writ petitioners will be supplied copies of this judgment by Monday i.e. 1741995 so as to produce it before Public Service Commission for doing the needful.