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**(2008) 03 AHC CK 0121**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 2682 of 2008

Shalini Singh

APPELLANT

Vs

State of U.P.and others

RESPONDENT

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**Date of Decision :** 04-03-2008

**Acts Referred:**

**Citation :** (2008) 03 AHC CK 0121

**Hon'ble Judges :** Rakesh Tiwari, J

**Final Decision :** Dismissed

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## **Judgement**

Rakesh Tiwari, J.—Heard learned Counsel for the parties.

2. The petitioner has graduated from Allahabad University from arts side. An advertisement dated 13.4.2007 for holding Joint Entrance Examination for B.Ed, course for Session 20072008 by the Registrar Chhatrapati Shahuji Maharaj University, Kanpur for filling up 60, 000 (sixty thousand) vacancies and advertised. She applied under the category of dependant of freedom fighter in the aforesaid examination held on 22.7.2007 and secured rank No. 45459 in female category and rank No. 118897 in general category.

3. The advertisement provide that the Rules of reservation of U.P. Government issued in this regard to reservation shall apply but when the result was declared she came to known that no horitizantal reservation of 2% in her vertical category had been determined. Aggrieved she has come up in this petition on the ground that reservation aforesaid not provided for dependants of freedom fighter vitiates the whole proceedings being against the Government policy and the law said to have been laid down by the State Government as well as the guidelines laid down for B.Ed, examination 2006 and C.P.M.T. examination held in 2007 wherein 2% reservation is provided for the category freedom fighter candidates.

4. Aggrieved she filed the writ petition alleging that she has been awarded 216 marks in the entrance examination and if 2% reservation is granted to her then she would undoubtedly be selected for the course. At the time of admission an

order dated 16.1.2008 was passed as under:

"It appears from the advertisement issued that reservation is to be granted to the candidates according to the Government order applicable in the State of U.P.

Sri Neeraj Tiwri, Counsel for the petitioner states that dependent of freedom fighters were given weightage of 15 marks in the examination.

Whether the weightage of 15 marks given by the University to the dependent of freedom fighters amounts to reservation according to various Government orders is to be considered."

5. Counter and rejoinder affidavit have been exchanged.

6. Learned Counsel for the petitioner has relied upon Annexure No. 2 in the rejoinder affidavit, which is a Government Order providing for reservation, (1) Physically handicapped 2%, (2) Dependent on freedom fighters 2%, and (3) Exarmy 1%. Para 2 of the Annexure No. R.A.2 is as under:

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7. He has then relied upon Annexure No. R.A.4 which is said to be clarification of the aforesaid order. According to him, the order is fully applicable to the petitioner, he being a dependent of the freedom fighter.

8. Sri Neeraj Tewari, learned Counsel for the respondents submits that the aforesaid Government order dated 10th May, 1995 and the so called clarification of the same day appended as Annexure Nos. 2 and 4. He relied upon the averments made to the rejoinder affidavit respectively have been framed.

9. In the counteraffidavit wherein it has been averred that the petitioner is only entitled to weightage of 15 marks as provided in Government Order dated 5th May, 1987 published in the Extraordinary Gazette known as U.P. State Universities (Regulation of Admission to Courses on Instructions for Degree in Education in Affiliated and Constituent Colleges) Order, 1987.

10. A perusal of the Government Order annexed as Annexure No. C.A.1 to the counteraffidavit shows that it provides only for grant of 15 marks as weightage for dependent of freedom fighters not for any type of reservation in the degree course of education.

11. It is stated that in the aforesaid circumstances the U.P. Public Service Commission (Reservation for Physically Handicapped Dependents of Freedom Fighters and ExServicemen) Act, 1993 does not apply to the case of the petitioner.

12. A perusal of the Act shows that it has been legislated for the benefit of handicapped dependents of freedom fighters and exservicemen, who apply in public services. It does not apply in the field of education wherein the other Government Order dated 5.5.1987 is applicable.

13. Since the petitioner is neither a handicapped person nor she is appearing in any examination held by the Public Service Commission. She cannot get the benefit of Act No. 4/1993.

14. In the circumstances, the case of the petitioner is being governed by the Government Order dated 5th May, 1987, which provides for grant of 15% marks as weightage. She is not entitled to 2% reservation under the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and ExServicemen) Act, 1993 (U.P. Act No. 4 of 1993).

15. The writ petition is accordingly, dismissed, as such no relief can be granted to the petitioner.