

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL DEFECTIVE No. - 323 of 2022

(Arising out of Writ - A No. 18091 of 2021)

Decided on : October 18, 2022

Public Service Commission, Uttar Pradesh
through its Secretary

..... Appellant

Through :- Mr. Rakesh Pande, Senior Advocate with Mr.
Nipun Singh

v/s

JWO Satish Chandra Shukla and others

..... Respondents

Through :- Mr. Ajay Mishra, Advocate General with Mr.
K.R. Singh, Chief Standing Counsel for
Respondent No. 5, Mr. A.B.N. Tripathi, Advocate
and Mr. T. Islam, Advocate for Respondent Nos.1
to 4

CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE J.J. MUNIR, JUDGE

ORDER

1. This Special Appeal by the Uttar Pradesh Public Service Commission is directed against a judgment and order dated August 2, 2022, allowing Writ - A No. 18091 of 2021.

2. The writ-petitioners, who are respondent nos. 1 to 4 to this Appeal, are all Ex-Servicemen, who have retired or been discharged from different positions in the Armed Forces of the Union, such as the Army or the Navy.

3. The grievance of the writ-petitioners is that they are entitled to be considered under The Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Act, 2021 (for short, '2021 Act'), entitling them to a 5% reservation in the ongoing selection/ recruitment, held pursuant to Advertisement No. A-1/E-1/2021 dated February 5, 2021 to the “Combined State/ Upper Subordinate Services (PCS) Examination, 2021 and Assistant Conservator of Forest (A.C.F.)/ Range Forest Officer (R.F.O.) Services Examination - 2021” (for short, 'the PCS Examination, 2021').

4. The learned Single Judge has set out in copious detail the facts of the case, including the rival stands of the writ-petitioner-respondents (for short, 'the writ petitioners') and the Uttar Pradesh Public Service Commission (for short, 'the Commission'), which need not be recapitulated here, except the essentials on which the event in the cause turns.

5. Prior to the enactment of The Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 (U.P. Act No. 4 of 1993) (for short, 'the 1993 Act'), reservation for Ex-Servicemen in different services of the State was governed by circulars and government orders issued by the State Government under the directions and control of the Government of India. In the days prior to enforcement of the 1993

Act, reservation for Ex-Servicemen existed in all categories of posts under the State, including Group A, B, C and D. Upon enactment and enforcement of the 1993 Act, however, there was codification of the State's Policy regarding horizontal reservation *inter alia* for the Ex-Servicemen. A total of 5% of vacancies at the stage of direct recruitment in favour of the Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen were reserved under Section 3(1) of the 1993 Act by virtue of Section 3(2). The *inter se* quota of each category was entrusted to be fixed by the State Government from time to time by notified order. The 1993 Act came into force on December 11, 1993. The 1993 Act, however, suffered an amendment *vide* U.P. Act No. 6 of 1997 (for short, 'the First Amendment Act'), enforced w.e.f. July 31, 1997. The First Amendment Act brought about the change that the *inter se* percentage of reservation to the three categories of horizontal reservation, that was left to the State Government to determine by notified order, was specified by the 1993 Act itself substituting the existing sub-Section (1) of Section 3. The First Amendment Act provided that in posts to be filled up by direct recruitment, 2% of vacancies shall be reserved for dependents of Freedom Fighters and 1% for Ex-Servicemen.

6. A second amendment to the 1993 Act was made by U.P. Act No. 29 of 1999 and enhanced the percentage of reservation for the Ex-Servicemen within the 5% horizontal reservation quota from 1% to 2%. However, by clause (i-a) of sub-Section (1) brought in through

the amendment to the existing Section 3 of the 1993 Act, it was provided in the following terms:

“3. In section 3 of the principal Act, in sub-section (1) for clause (i) the following clauses shall be *substituted*, namely—

“(i) in public services and posts two per cent of vacancies for dependents of freedom fighters:

(i-a) in public services and posts other than group ‘A’ posts or group ‘B’ posts on and from May 21, 1999 two per cent of vacancies, and on and from the date on which the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Act, 1999 is published in the *Gazette* five per cent of vacancies, for Ex-servicemen;”

7. Section 5 of the 1993 Act was also amended by U.P. Act No. 29 of 1999 (for short, 'the Second Amendment Act'), providing in the following terms:

“4. In section 5 of the principal Act, *for* sub-section (1), the following sub-sections shall be *substituted*, namely:

“(1) The Provisions of this Act as amended by the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Act, 1997 shall not apply to cases in which selection process has been initiated before the commencement of the said Act of 1997 and such cases shall be dealt with in accordance with the

provisions of this Act as they stood before such commencement.

(1-A) The Provisions of this Act as amended by the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-servicemen) (Amendment) Act, 1999 shall not apply to cases in which selection process has been initiated before the commencement of the said Act of 1999 and such cases shall be dealt with in accordance with the provisions of this Act as they stood before such commencement.

Explanation-For the purposes of sub-sections (1) and (1-A) the selection process shall be deemed to have been initiated where, under the relevant service 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."

8. It must be remarked that for extension of the benefit of reservation of the lesser 1% reduced by the First Amendment Act, there was an identical provision to amend Section 5 of the 1993 Act. A look at the provisions of the Second Amendment Act would show that while it enhanced the percentage of reservation for Ex-Servicemen in the Public Services and posts in connection with affairs of the State, where vacancies were to be filled by direct recruitment, from 1% to 5%, but excluded the applicability of this horizontal reservation

insofar as Group A and B posts were concerned. Earlier it was applicable for posts of all categories. The other feature of seminal importance to both the First and the Second Amendment Acts is how the relative amendments would affect the ongoing recruitment at the relevant time. Both the First and the Second Amendment Acts said in unequivocal terms that the relative Amending Act shall not apply to cases, where the selection process was initiated before commencement of the Amendment Act concerned. It was also made explicit that all cases, where the selection process had been initiated before commencement of the Amendment Act concerned, such cases shall be dealt with in accordance with the provisions of the 1993 Act, as these stood immediately before the enforcement of the relevant Amendment Act. The appended explanation to the amended provisions introduced through both the First and the Second Amendment Acts to the existing provisions of Section 5 of the 1993 Act carried an explanation, also identical in terms in both the amendments. The explanation appended to the amended provisions of Section 5 stipulates when the selection process shall be deemed to have been initiated and provides in the terms that the amended provisions of Section 5 extracted hereinabove show. In case of a recruitment made on the basis of a written test or interview alone, the written test or the interview, as the case may be, once started, would be regarded as initiation of the selection process. In cases where both written test and interview are envisaged under the Service Rules, the

selection process would be regarded as initiated when the written test has started.

9. Now, by a further amendment to the 1993 Act made through U.P. Act No. 14 of 2021, which has been published in the Official Gazette on March 10, 2021, the existing clause (i-a) of sub-Section (1) of Section 3 has been amended to provide as follows:

“2. In section 3 of the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 in sub-section (1) for the existing clause (i-a), the following clause shall be *substituted*, namely:-

(i-a) in public services and posts other than Group 'A' posts, on and from the date on which the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Act, 2021 is published in the *Gazette*, five, percent of vacancies for ex-servicemen.”

U.P. Act No. 14 of 2021, for the sake of convenience, shall hereinafter be called as 'the Third Amendment Act'.

10. It may also be mentioned here in the passing that the Amendment Acts were preceded by ordinances to the said effect about which there is no issue in the writ petition, giving rise to this Appeal. Advertisement No. A-1/E-1/2021 was issued by the Commission on February 5, 2021, inviting applications for recruitment to posts through the PCS Examination, 2021. The last date for submission of

online form was March 5, 2021. By the notification bearing No. 48/01/ई-1/2020-21 dated March 10, 2021, it was provided as under:

"उ० प्र० लोक सेवा आयोग, प्रयागराज द्वारा सम्मिलित राज्य / प्रवर अधीनस्थ सेवा परीक्षा, 2021 तथा सहायक वन संरक्षक / क्षेत्रीय वन अधिकारी सेवा परीक्षा, 2021 से संबंधित विज्ञापन संख्या- ए-1 / ई-1/2021 दिनांक 05.02.2021 को जारी किया गया था जिसके संबंध में अभ्यर्थियों से आनलाइन आवेदन पत्र निर्धारित अन्तिम तिथि दिनांक 05.03.2021 तक प्राप्त किये जा चुके हैं।

उक्त विज्ञापन से संबंधित कतिपय अभ्यर्थियों के फोटो व हस्ताक्षर त्रुटि पूर्ण पाये गये हैं, जिनकी सूचना आयोग की वेबसाइट <http://uppsc.up.nic.in> पर उपलब्ध है। अतः उक्त विज्ञापन के अभ्यर्थियों को दिनांक 10.03.2021 से 17.03.2021 तक सही फोटो व हस्ताक्षर पुनः अपलोड करने का अन्तिम अवसर प्रदान करते हुए उनसे अपेक्षा की जाती है कि वे नियत तिथि तक फोटो व हस्ताक्षर आयोग की उक्त वेबसाइट पर अपलोड कर दें। नियत तिथि के उपरान्त इस हेतु कोई अवसर नहीं प्रदान किया जाएगा तथा इस सम्बन्ध में किसी प्रत्यावेदन पर विचार किया जाना सम्भव नहीं होगा।"

(emphasis by Court)

11. The writ petitioners, who applied for recruitment through the PCS Examination, 2021, with the last date for submission of the application form being March 5, 2021, claimed that they are entitled to the benefit of reservation for Ex-Servicemen regarding Group B posts, that has been introduced by the Third Amendment Act. The Commission have denied the benefit of horizontal reservation to the writ petitioners in the category of Ex-Servicemen based on the Third Amendment Act on ground that the third amendment is expressly

made effective from the date of publication of the Third Amendment Act in the Official Gazette on March 10, 2021, whereas the last date for submission of the online application form was March 5, 2021. The Commission, therefore, took a stand that the writ petitioners cannot be extended the benefit of the Third Amendment Act.

12. It is the writ petitioners' case that they were informed by the Commission on August 27, 2021 through a reply sent by their Public Information Officer that the Government Order with regard to reservation for the Ex-Servicemen was issued on March 16, 2021, after the last date for submission of online application forms for the PCS Examination, 2021 i.e. March 5, 2021. As such, the amended provisions would not enure to the writ petitioners' benefits. It appears that on October 24, 2021, the writ petitioners appeared in the preliminary examination and the results of the preliminary examination were declared on December 1, 2021. The writ petitioners failed to qualify. Accordingly, the writ petitioners instituted the present writ petition some times in December, 2021, seeking extension of the benefit of the Third Amendment Act. It is, therefore, the writ petitioners' case that if they were extended the benefit under the Third Amendment Act, the PCS Examination, 2021 being one for a Group B posts, the writ petitioners, who were Ex-Servicemen, would qualify the preliminary examinations in the reservation category and get a chance to appear in the main written test. It is on this cause of action that the writ petitioners have instituted the writ

petition asking for the issue of a mandamus to the Commission to implement the necessary follow-up action, in terms of the provisions of the Third Amendment Act to the ongoing selection process for the PCS Examination, 2021, insofar as it relates to the writ petitioners.

13. The Commission contested the aforesaid claim put forward by the writ petitioners and urged for a principle that the Third Amendment Act being prospective, would not apply to a case, where the last date of submission of the online application form had already gone by, when the Third Amendment Act was introduced. The Commission, therefore, contended before the learned Single Judge that the benefit of the Third Amendment Act cannot be extended to the writ petitioners. The learned Judge, however, has allowed the writ petition, quashed the decision of the Commission to deny benefit of the Third Amendment Act to the writ petitioners and issued a mandamus to re-determine the preliminary examination results, giving benefit of reservation to Ex-Servicemen on Group B and C posts. The learned Judge has further ordered that after publication of the preliminary examination results within one month, admit cards be issued for the main written examination based on the results of the preliminaries, and further, the results of the main examination be declared giving 5% reservation on Group B posts to Ex-Servicemen. Call letters for interview have been directed to be issued accordingly.

14. Aggrieved, the Commission have preferred this Appeal under Chapter VIII Rule 5 of the Rules of Court, 1952.

15. Heard Mr. Rakesh Pande, learned Senior Advocate assisted by Mr. Nipun Singh, learned Counsel on behalf of the Commission, Mr. Ajay Mishra, learned Advocate General assisted by Mr. K.R. Singh, learned Chief Standing Counsel appearing on behalf of the State of U.P. and Mr. A.B.N. Tripathi and Mr. T. Islam, learned Advocates for the writ petitioners.

16. It is submitted by the learned Senior Advocate appearing for the Commission that the learned Single Judge has failed to take into account the fact that the last date of submission of online application form was March 5, 2021 and the Third Amendment Act came to be published in the Official Gazette on March 10, 2021. As such, the provisions of reservation with regard to Group B posts for Ex-Servicemen, introduced through the Third Amendment Act, cannot enure to the writ petitioners' benefit. It is further pointed out that the writ petitioners were informed by the Commission on August 27, 2021, prior to the preliminary examination that the Third Amendment Act would not enure for their benefit, but they chose to sit the examination without challenging the action of the Commission at that stage, and once they have failed to clear the preliminary examination held on October 24, 2021, the results whereof were declared on December 1, 2021, they have brought the writ petition, giving rise to

this Appeal. It is contended that the writ petitioners are estopped from challenging the result of the selections, once they have sat the preliminary examinations after due communication of the fact that the benefit of the Third Amendment Act would not be available to them.

17. It is argued that the learned Single Judge has failed to appreciate that the amendments to Section 5 of the 1993 Act, introducing amended sub-Sections (1) and (1-A) by the First and the Second Amendments to the existing Section 5 of the 1993 Act is different from that introduced by the Third Amendment Act, inasmuch as it does not carry any explanation of the kind found in sub-Sections (1) and (1-A), introduced through the First and the Second Amendment Acts. In the absence of the decisive explanation in the Third Amendment Act, the applicability of the 1993 Act would depend on the last date mentioned in the advertisement for receipt of the application forms online. Here, the last date of application forms online was March 5, 2021, whereas the Third Amendment Act was published in the Official Gazette on March 10, 2021. It is also said in criticism of the learned Single Judge's judgment that the learned Single Judge has misconstrued the notification dated March 10, 2021 as an extension of date for submission of the online application forms, whereas it was an extension of date for certain corrections to forms, already uploaded, on or before the last date fixed for receipt of the online forms. It is also urged that the learned Judge has failed to take into consideration the fact that the entire selection process has almost

concluded and August 5, 2022 is the last date for interview, whereafter results would be declared. Interference with the selection process at this stage is not warranted. It is emphasized that the writ petitioners are four in number, whereas other similarly circumstanced do not object. To allow the writ petition at this stage would throw the entire selection process out of gear.

18. The learned Advocate General has supported the submissions advanced by the learned Senior Counsel appearing for the Commission.

19. On the other hand, the learned Counsel for the writ petitioners have supported the impugned order and the reasoning of the learned Single Judge.

20. Upon hearing the learned Counsel for parties, we are unable to agree on any of the counts that the learned Single Judge has found for the writ petitioners.

21. The remarks of the learned Single Judge that the last date for submission of online application forms as the determining criteria for eligibility bear reference to eligibility as such, say with reference to the essential qualifications etc., but has no bearing for the purpose of applying reservation in an ongoing recruitment appear to be based on unaccepted reasoning. The learned Judge has distinguished the decision of the Full Bench of this Court in **Prashant Kumar v. State of U.P. and others, 2005 (4) E.S.C. 2395 (All)** on ground that the

case dealt with eligibility for persons, who were not notified as O.B.C. until the last date for filling up of the online application forms, but thereafter. It has been remarked by the learned Judge that here the writ petitioners are Ex-Servicemen and at the time of submission of the application forms, they have claimed that category for the purpose of age relaxation. It has also been remarked by the learned Judge that the last date for submission of the application forms had been extended by the Commission through a Press Release dated March 10, 2021 from the said date to March 17, 2021 and that Group B posts were included by way of the Third Amendment Act, notified on March 15, 2021. In fact, the Third Amendment Act was notified by publication in the Official Gazette on March 10, 2021. It has been observed that the Third Amendment Act made the benefit applicable on and from the date of publication in the Official Gazette. It did not require any separate Government Order to make it applicable. It has then been observed by the learned Judge that the legislature had consciously avoided introducing any sub-clause to Section 5 of the 1993 Act, saving the ongoing selections as it had done on earlier occasions when the Second and Third Amendment Acts were notified. According to the learned Judge, the intention of the legislature was clear and it was the obduracy on the Commission's part in declining to extend the benefit of reservation in Group B posts to the writ petitioners under the Third Amendment Act.

22. So far as these findings of the learned Judge are concerned, we are not in agreement with them except for the remarks that the Third Amendment Act did not require a separate Government Order to be issued to make it applicable. In fact, no Government Order appears to have been issued to enforce the Act. The mention of the Government Order has figured in some communication by the Commission on account of a poor forensic understanding of their functionaries, but nothing here turns upon it.

23. The Third Amendment Act is clear in its intendment and that it is applicable from the date when it was notified in the Official Gazette. It is clearly prospective in nature; not retrospective by any principle of construction. It is a well settled principle of statutory construction that any substantive law, particularly one creating, curtailing, enlarging an existing right or providing for a new one, is deemed to be prospective, unless expressed to be retrospective. Reverse principle may apply in case of procedural laws. Here, the Third Amendment Act introduces a new right and that is provision of reservation to Ex-Servicemen on posts under the State in Group B. Earlier by the Second Amendment Act, reservation for Ex-Servicemen though increased in numerical percentage, had withdrawn it *vis-a-vis* Group B posts. Thus, the Third Amendment Act brought in a new right i.e. reservation in Group B posts under the State for Ex-Servicemen. A statute of this kind, creating a new right, can hardly be regarded as retrospective. Moreover, the Third Amendment Act

expressly says *vide* clause (i-a), introduced by Section 2 of that Amendment Act, that it would be applicable from the date that the Amendment Act is published in the Gazette, granting 5% reservation to Ex-Servicemen. It is also not in dispute that the Third Amendment Act was published in the Official Gazette on March 10, 2021.

24. The general principles about the prospective operation of laws, including amendments that introduce or affect substantive rights, have been the subject matter of elucidation in **Principles of Statutory Interpretation**, Thirteenth Edition by Justice G.P. Singh, where on the basis of judicial authority, the learned Commentator has expounded:

“2. RETROSPECTIVE OPERATION

(a) General principles

“(i) x x x x

(ii) *Statutes dealing with substantive rights.*— It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is “deemed to be prospective only ‘*nova constitutio futuris formam imponere debet non prae teritis*’ [2 c. Int. 392]” In the words of LORD BLANESBURG, “provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence

of express enactment or necessary intendment. “Every statute, it has been said”, observed LOPES, L.J., “which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect”. As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.

“..... An amending Act is, therefore, not retrospective merely because it applies also to those to whom pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date. But this does not mean that a statute which takes away or impairs any vested right acquired under existing laws or which creates a new obligation or imposes a new burden in respect of past transactions will not be treated as retrospective. Thus to apply an amending Act, which creates a new obligation to pay additional compensation, or which reduces the rate of compensation, to pending proceedings for determination of compensation for acquisitions already made, will be to construe it retrospective which cannot be done unless such a construction follows from express words or necessary implication. Similarly, a new law enhancing compensation payable in respect of an accident arising

out of use of motor vehicle will not be applicable to accidents taking place before its enforcement and pending proceedings for assessment of compensation will not be affected by such a law unless by express words or necessary implication the new law is retrospective. It makes no difference in application of these principles that the amendment is by substitution or otherwise...”

25. One principal limb of the reasoning that the learned Judge has adopted to apply the Third Amendment Act to the ongoing selection is the conscious omission of a clause similar to sub-Sections (1) and (1-A) of Section 5, with the appended explanation as finds place in the First and the Second Amendment Acts. Those clauses, amending Section 5 of the 1993 Act, introduced through the First and the Second Amendment Acts, indicating that the relative amendments would not be applicable to the ongoing selection process and then explaining what ongoing process means, has in fact made those amendments applicable to ongoing selections that had not reached the stage of the written test or the interview, or the written test alone, as the case may be, as per the contingencies there. In more specific terms, the amendments to the changed horizontal reservation in Public Services, including those for Ex-Servicemen by the First and the Second Amendment Acts, would apply to a selection process, where the last date of receipt of application forms had gone by, but in a case where the selection was to be made through written test or interview, the written test or interview, as the case may be, had not commenced. The

omission of a similar clause in the Third Amendment is not to be understood the way the learned Single Judge has done. The learned Single Judge has interpreted the omission virtually to mean that the Third Amendment would apply to cases in which the process of selection had already been initiated, the absence of a clause similar to sub-Sections (1) and (1-A) of Section 5 of the 1993 Act, relative to the Third Amendment Act, makes the Third Amendment Act prospective on its own terms.

26. The learned Single Judge has held that in the 1993 Act, by the First and the Second Amendments, the legislature has introduced a fiction, which explains when the selection process would start. In the opinion of the learned Judge, the fiction introduced by sub-Sections (1) and (1-A) to Section 5 of the 1993 Act, by the First and the Second Amendment Acts, would also apply to the substituted clause (i-a) of sub-Section (1) of Section 3 of the 1993 Act, brought in by means of the Third Amendment Act. This Court has noticed above that there is no corresponding amendment to Section 5 *vis-a-vis* clause (i-a) of sub-Section (1) of Section 3, as substituted by the Third Amendment Act, in the manner that the provision was introduced by amending sub-Sections (1) and (1-A) of Section 5 of the 1993 Act, through the First and the Second Amendment Acts. Therefore, the fiction about what selection process would mean for the purpose of clause (i-a) of sub-Section (1) of Section 3, substituted by the Third Amendment Act, is not at all relevant. The learned Single Judge has clearly erred in

applying the provisions of sub-Sections (1) and (1-A) of Section 5 of the First and the Second Amendment Acts or the Second Amendment Act alone to the amendment brought in by the Third Amendment Act, which does not carry a corresponding clause creating a fiction about what commencement of the selection process would mean.

27. Now, the question arises, what would be the date or the point of time or the event, when the amendment would become applicable on a prospective basis.

28. The learned Single Judge has taken note of the decision of the Supreme Court in **Shankar K. Mandal and others v. State of Bihar and others, (2003) 9 SCC 519**, where it has been held:

“5. What happens when a cut-off date is fixed for fulfilling the prescribed qualification relating to age by a candidate for appointment and the effect of any non-prescription has been considered by this Court in several cases. The principles culled out from the decisions of this Court (see *Ashok Kumar Sharma v. Chander Shekhar* [(1997) 4 SCC 18 : 1997 SCC (L&S) 913] , *Bhupinderpal Singh v. State of Punjab* [(2000) 5 SCC 262 : 2000 SCC (L&S) 639] and *Jasbir Rani v. State of Punjab* [(2002) 1 SCC 124 : 2002 SCC (L&S) 107]) are as follows:

(1) The cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for applications.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.”

29. There are remarks by the learned Single Judge, particularly in Paragraph No. 22 of the impugned judgment that show that the principles in **Shankar K. Mandal** (*supra*) had not been held applicable because the learned Judge has thought that the principles in **Shankar K. Mandal** are referable to eligibility of a candidate with reference to his/ her educational qualifications etc. These principles do not apply to the case of reservation.

30. The decision of the Full Bench in **Prashant Kumar** (*supra*) had the following question for consideration before their Lordships:

“At what stage the caste of a candidate should be entered in the Schedule-I of the U.P. Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994 for him to get benefit as an O.B.C. candidate. Should it be before the notification/advertisement of the selections, or the written test, or the oral test (in case of oral test only), or the declaration of the result?”

31. It was answered in the following terms:

“30. We consequently answer the question as follows:

“The benefit of reservation to ‘Other Backward Class’ candidates in selection in Public Services by direct recruitment as provided by U.P. Public Service (Reservation for Scheduled Caste/Scheduled Tribes and Other Backward Class) Act, 1994, is applicable, to only those categories or castes which are notified as Other Backward Classes entered in Schedule-I of the Act, upto the last date of filling up of the application form for such selections, provided there is no contrary provision in the Service Rules, the terms and conditions of recruitment, or in the advertisement.””

32. The decision of the Full Bench also pegs down the date of eligibility to the last date for the filing of the application form. The decisions that indicate the last date of submission of application forms to be the date by which the eligibility qualification for declaration of a reservation category must come into existence, would also apply on principle to the present case. Here, what is sought in substance is a reservation category, may be horizontal, that was not available to the writ petitioners until the last date of submission of their application forms. It became available under the Third Amendment Act w.e.f. the date it was published in the Official Gazette i.e. March 10, 2021. The last date for submission of the application forms was clearly March 5, 2021. On principle, therefore, the eligibility under the Third

Amendment Act has to be judged with reference to the last date for submission of the application forms for the PCS Examination, 2021.

33. The learned Single Judge has also held that the last date of submission of the application forms must be deemed to be extended until March 17, 2021, because a perusal of the Press Release dated March 10, 2021 shows that the Portal of the Commission remained open for making modification/ corrections to application forms submitted by candidates. It has been opined that if the Commission was careful enough, it could have extended the benefit of reservation in Group B posts to the writ petitioners in terms of the Third Amendment Act, that was published in the gazette on March 10, 2021, inasmuch as the amendment was made applicable on and from the date of its publication in the Official Gazette. We do not agree. A perusal of the Press Note dated March 10, 2021 indicates that the Commission have clearly mentioned therein that it has received application forms from candidates for the PCS Examination, 2021 in response to the advertisement dated February 5, 2021 by the last date fixed i.e. March 5, 2021. It is then said that in some cases, mistakes about the photographs or in the signatures of the candidates made, have been found, the information regarding which has been posted on the Commission's website. The Notification/ Press Note then goes on to say that the candidates who have uploaded their application forms carrying defects relating to their photographs or signatures, would have last opportunity between March 10, 2021 and March 17, 2021,

to upload their correct photographs and signatures. Thereafter, there would be no further opportunity.

34. The said Notification/ Press Note dated March 10, 2021, in our opinion, has been patently misconstrued by the learned Single Judge to be an extension of the last date for receipt of the application forms for the PCS Examination, 2021. It is no more than extension of a limited facility to those candidates, who had applied by the last date fixed i.e. March 5, 2021, but had some errors or discrepancy about their uploaded photographs or signatures, to rectify those errors. There was no extension of the last date for submission of the application form. Contrary to the opinion of the learned Single Judge, we think that the Notification/ Press Note dated March 10, 2021 reinforces the position that the last date for receipt of the application forms from eligible candidates was March 5, 2021.

35. Having found the legal position obtaining in the case that the rule about the date by which eligibility under the Third Amendment Act has to be considered is the last date, on which the application forms for the examination in question have to be submitted, the benefit of the Third Amendment Act, which came into force after the last date for receipt of application forms for the PCS Examination, 2021, would not enure to the writ petitioners' benefit.

36. So far as the application of the principle of estoppel after sitting the examination is concerned, the learned Single Judge has discarded

it for reason that it would not be applicable to a case, where it is a question of discrimination based on misapplication of the Rules. We do not disagree with that part of the reasoning of the learned Judge, but the same would be of no consequence in view of the other findings of ours in this judgment.

37. In the result, this Appeal succeeds and is allowed. The impugned judgment and order dated August 2, 2022 passed by the learned Single Judge is set aside and the writ petition stands dismissed.

Allahabad
18.10.2022
Anoop

(J.J. Munir)
Judge

(Rajesh Bindal)
Chief Justice

Whether the order is speaking :

Yes/No

Whether the order is reportable :

Yes✓/No