

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2627 OF 2006

U.P. PUBLIC SERVICE COMMISSION APPELLANT (s)

Vs.

SATYA NARAYAN SHEOHARE & ORS. RESPONDENT (s)

WITH

CIVIL APPEAL NO. 2632 OF 2006

O R D E R

R. V. Raveendran J.

The appellant Uttar Pradesh Public Service Commission, ('Commission' for short) issued an advertisement dated 4.3.2000 inviting applications for filling 147 posts of Civil Judge (Jr. Division) under the U.P. Nyayik Sewa Niyamavali 1951. The provisions relating to essential qualifications in the said advertisement contained the following note:-

"Candidate must possess all qualifications prescribed in the advertisement by last date for acceptance of Application form. Any candidate coming under the reservations category, if they want the benefit of reservation must indicate their category in the relevant column in the prescribed format and should obtain the certificate issued by the Competent Authority in the prescribed format printed in the advertisement and annex an attested copy of it along with Application form."

The respective first respondent in each of these two appeals made applications claiming to be general category candidates. The written examination was held on 4th, 5th and 6th August 2000 and the two candidates participated in the said examination as general category candidates.

2. In the meanwhile, by notification dated 7.7.2000, the state government added the castes of 'kalal', 'kalwar' and 'kalar', in the list of other backward classes by amending the First Schedule to the U.P. Public Services (Reservation for Schedule Castes, Schedule Tribes and Other Backward Classes) Act 1994 ('Act' for short). The first respondent in C.A. No.2627 of 2006 belongs to caste 'kalar' and the first respondent in C.A. No. 2632 of 2006 belongs to the caste 'kalal'. They obtained caste certificates dated 2.8.2000 and 24.8.2000. They made representations dated 29.8.2000 and 13.9.2000 respectively to the Commission to accept their caste certificates and extend them the benefit of reservation as candidates belonging to other backward

classes. The same was not accepted. As they had applied for the post as general category candidates, their applications were considered as general category candidates. They were not selected. Feeling aggrieved, they filed writ petitions before the High Court of Allahabad contending that they ought to have been treated as OBC candidates and if they had been so treated then they would have been selected as they were more meritorious than the last selected candidate in the OBC category. The High Court, by orders dated 27.2.2003 and 19.12.2003, allowed their petitions following its earlier decision in *Km. Amrita Singh & Ors. v. State of U.P. & Anr.* (Civil Misc. Writ Petition No. 28193/2000 decided on 7.5.2001) and directed them to be treated as OBC candidates. The said judgments are challenged in these appeals by special leave.

3. The High Court held that the status of the writ petitioners as on the date when the selection process was deemed to have been initiated, was the relevant factor to decide whether they were entitled to claim the benefit of reservation, in view of the special provision contained in Section 15 of the Act, extracted below :

"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 sub-section 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.

xxxxxx

The High Court held that as the process of selection was deemed to have been initiated when the written test was started and as the Schedule I to the Act was amended prior to the commencement of written test, the writ petitioners should be treated as OBC candidates.

4. The appellant contends that section 15 of the Act, which is a savings clause, being a transitional provision, was intended to apply only to pending selection processes when the Act came into force on 1.12.1993 and therefore, recourse to such transition provision was impermissible in regard to recruitments notifications issued on or after 1.12.1993. It was submitted that the condition in the advertisement (extracted in para above) made it clear that only candidates who claimed the benefit of reservation in their application and enclose the certificate issued by the

competent authority certifying their reservation category status would be considered under the reservation category. It was pointed out that even if a person belonged to a reservation category, if he did not choose to claim the benefit of reservation in his application and applies as a general category candidate, he cannot subsequently claim the benefit of reservation by producing the certificate relating to caste status. It is therefore contended that the two candidates were not entitled to claim the benefit of reservation.

5. Section 15 is no doubt intended to apply as a transition provision. Section 15 makes it clear that if selection process had been initiated before the commencement of the Act, that is before 1.12.1993, such selection process had to be dealt with in accordance with the provisions of law and government orders as they stood before such commencement date and not by the provisions of the Act. For this purpose, according to the explanation to the section, the selection process shall be deemed to have been initiated when the written test started (where the recruitment was on the basis of written test and interview). On account of this special deeming provision, reservation provision in the Act became applicable even in regard to recruitment notifications issued prior to the

commencement of the Act, provided the written test had not commenced as on the date of commencement of the Act. Section 2(b) of the Act defines 'other backward classes of citizens' as those backward classes of citizens specified in Schedule I to the Act. Where a particular caste was not included in the list of 'other backward classes' in Schedule I to the Act, when the Act was enacted, and when such caste is subsequently added to the list of other backward classes in Schedule I of the Act by way of an amendment, for all purposes, the Act commences in respect of the newly added caste, from the date when the Amendment Act came into effect. Thus, the principle contained in Section 15 would apply whenever a new caste, which was not an OBC earlier, is added to Schedule I of the Act by an amendment to the Act. Therefore whenever the Act is amended by including new castes/classes in the list of other backward classes in Schedule I, the date of amendment to the Act would be the date of commencement of the Act in regard to such caste/class inserted by the amendment.

6. It is evident from the explanation to sub-section (1) of Section 15 that where under the relevant service rules recruitment is to be made on the basis of written test and interview, the selection process shall be deemed to have been initiated on the date on which written test was

started. In this case, there is no dispute that the written test started on 4.8.2000. It is also not in dispute that before 4.8.2000 when the written test commenced, the state government had issued a notification amending the First Schedule to the Act including the castes to which the writ petitioners belonged, in the list of OBCs. Therefore, though the writ petitioners were general category candidates when the recruitment notification dated 4.3.2000 was issued, as on the relevant date, namely the date on which the selection process was deemed to have been initiated, they were OBC candidates. Having regard to the fact that the notification including their castes in the Schedule was issued on 7.7.2000 after the recruitment notification, they were not able to show their caste as an OBC nor could they claim the benefit of reservation as OBC candidates when they made applications. However when the Act was amended on 7.7.2000 before the commencement of the written test, they became entitled to claim the benefit of reservation, and they secured the necessary certificates and gave their representations without any delay on 29.8.2000 and 13.9.2000 respectively. Having regard to the principle underlying Section 15 of the Act, we are of the view that the decision of the High Court directing that that the writ petitioners should be treated as OBC candidates does not call for any interference.

7. It should be noted that the selections and appointments in regard to the 2000 advertisement were completed long back and thereafter appointments have been made even in respect of subsequent selections in 2003 and 2006. But it should also be noted that there was no delay on the part of the two candidates, as they had approached the Commission, and thereafter the High Court, without any delay. There was a bona fide doubt as to whether the writ petitioners should be treated as OBC candidates or general category candidates having regard to the fact that they had applied as general category candidates. Therefore, when the Commission treats the writ petitioners as OBC candidates and selects them on account of their marks/rank being more than the last selected candidate in the OBC category, their appointment should not affect or disturb the appointments already made in respect of the 2000 selections or the subsequent selections. The appointment of writ petitioners, if found entitled for selection and appointment with reference to their rank, will be prospective in nature. The Commission is granted four months' time for compliance.

8. Appeals are disposed of accordingly.

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[R. V. Raveendran]

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...J
[H. L. Dattu]

New Delhi.
February 26, 2009.