

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	21.12.2023		WPSB No. 389 of 2023 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> <u>Hon'ble Vivek Bharti Sharma, J.</u> 1. Mr. Dushyant Mainali, learned counsel for petitioners. 2. Mr. Amarendra Pratap Singh, learned Additional Advocate General for State of Uttarakhand/ respondent nos. 1 & 3. 3. Mr. Ashish Joshi, learned counsel for respondent no. 2. 4. Petitioner has challenged Section 2(c) of the Uttarakhand (Uttar Pradesh Public Services Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993, insofar as, it provides restrictive definition of 'ex-serviceman', as opposed to notification dated 27.10.1986 issued by the Government of India. 5. It is not in dispute that petitioner retired from Indian Air Force on 31.08.2021, while the last date for submission of application form, pursuant to advertisement issued by Uttarakhand Public Service Commission, was 29.08.2021. In terms of Section 2(c) of the aforesaid Act, petitioner is not eligible, as he was in active service of the Indian Air Force. Therefore, petitioner contends that the restrictive definition of ex-serviceman, as given in Section 2(c), is unconstitutional, as it takes away the benefit, which the Legislature intended for ex-servicemen. 6. Reliance is also placed upon the notification issued by the Central Government on 27.10.1986,

			which provides that defence personnel can apply under the category of 'ex-servicemen', six months before his/her actual discharge from service. 7. The submission made on behalf of petitioner cannot be accepted. The definition of 'ex-serviceman', as given in Section 2(c), cannot be declared to be unconstitutional, merely because it is causing hardship to some individual. How a particular word is to be defined, is decided by the Legislature, and anyone, who is deprived of a particular statutory provision, cannot challenge the definition given in a Statute, merely on the ground that he/ she is left out from the benefit intended for the persons covered by the definition. 8. Moreover, the Hon'ble Supreme Court in <i>Special Leave Petition (Civil) No. 12441 of 2022 'Sudhir Singh and others v. State of U.P. and others'</i>, decided on 30.10.2023, has considered and discussed the validity of Section 2(c) of the aforesaid Act, and upheld the judgment rendered by the Allahabad High Court in a Writ Petition, in which validity of Section 2(c) was questioned on the same ground. Allahabad High Court had upheld the validity of Section 2(c). Therefore, in view of the view taken by the Allahabad High Court, as affirmed by the Hon'ble Supreme Court, we are not persuaded to take a different view in the matter. 9. Accordingly, the Writ Petition fails, and is dismissed. 10. Consequently, pending application(s), if any, also stand disposed of. (Vivek Bharti Sharma, J.) (Manoj Kumar Tiwari, A.C.J.) 21.12.2023 21.12.2023 Rahul
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