

Neutral Citation No. - 2024:AHC-LKO:47746-DB

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 388 of 2023

Appellant :- U.P. Subordinate Services Commission Thru. Its Secy.

Respondent :- Saurabh Singh And Another

Counsel for Appellant :- Utsav Mishra

Counsel for Respondent :- Vishal Singh,C.S.C.

Along with

Case :- SPECIAL APPEAL No. - 370 of 2023

Appellant :- U.P. Subordinate Services Selection Commission Lko. Thru. Its Secy.

Respondent :- Mufeez Beg And 3 Others

Counsel for Appellant :- Utsav Mishra

Counsel for Respondent :- Santosh Kumar Kanaujia,C.S.C.,Krishana Kumar Singh

Along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 370 of 2024

Appellant :- Harsh Kumar Srivastava And Another

Respondent :- Saurabh Singh And Others

Counsel for Appellant :- Abhinav Trivedi

Counsel for Respondent :- Hemant Kumar Mishra,C.S.C.,Gaurav Mehrotra

Along with

Case :- SPECIAL APPEAL No. - 389 of 2023

Appellant :- U.P. Subordinate Services Selection Commission Lko. Thru. Secy.

Respondent :- Ram Kishore Singh And 3 Others

Counsel for Appellant :- Utsav Mishra

Counsel for Respondent :- Hemant Kumar Mishra,C.S.C.,Krishana Kumar Singh

Along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 460 of 2023

Appellant :- U.P. Subordinate Services Selection Commission Thru. Secy.

Respondent :- Saurabh Singh And 3 Others

Counsel for Appellant :- Utsav Mishra

Counsel for Respondent :- Hemant Kumar Mishra,C.S.C.,Krishana Kumar Singh

Along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 64 of 2024

Appellant :- Krishna Prakash And Others

Respondent :- Saurabh Singh And Others

Counsel for Appellant :- Abhinav Trivedi

Counsel for Respondent :- Hemant Kumar Mishra,C.S.C.,Gaurav Mehrotra,Utsav Mishra

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Jaspreet Singh,J.

1. These are batch of six intra-court appeals wherein judgment and order dated 19.05.2023 passed by the learned Single Judge in the respective separate petitions bearing Writ-A No. 26103 of 2021 (Ram Kishor Singh Vs. State of U.P. and Others), Writ-A No. 26107 of 2021 (Saurabh Singh /o Tez Bahadur Singh Vs. State of U.P. and Others), Writ-A No. 221 of 2022 (Mufeez Beg Vs. State of U.P. and Others) and Writ-A No. 28352 of 2021 (Saurabh Singh S/o Rakesh Bahadur Singh Vs. State of U.P. and Others).

2. Four appeals, bearing (i) Special Appeal No. 388 of 2023 (ii) Special Appeal No. 370 of 2023 (iii) Special Appeal No. 389 of 2023 (iv) Special Appeal (D) No. 460 of 2023 have been filed by the Uttar Pradesh Subordinate Services Selection Commission (hereinafter referred to as “Commission”), wherein a challenge has been made to the order dated 19.05.2023 whereby the learned Single Judge observed that the income certificate furnished by the private respondents/writ-petitioners at the time of verification of documents be treated as valid certificates, if they are found to be genuine and issued by the Competent Authority, irrespective of the format prescribed by the Government and such writ petitioners be given the benefit of reservation under 10% quota for the economically weaker section (hereinafter referred to as EWS) as per merit.

3. Whereas two intra-court appeals bearing Special Appeal (D) No. 370 of 2024 (Harsh Kumar Srivastava and Another Vs. Santosh Singh and Others) and Special Appeal (D) No. 64 of 2024 (Krishna Prakash and Others Vs. Saurabh Singh and Others) have been filed by the selected candidates whose rights are affected by the order dated 19.05.2023 and

since they were not given an opportunity of hearing as they were not impleaded in the writ petitions, hence, they have moved separate applications seeking leave to appeal as well as seeking condonation of delay in filing the said appeals.

4. In Special Appeal (D) No. 64 of 2024, a coordinate Bench of this Court by means of order dated 06.02.2024 had allowed the application seeking leave to appeal and also condoned the delay in filing the appeals and connected it with the batch of four intra-court appeals which have been filed by the Commission. A similar request was made in Special Appeal (D) No. 370 of 2024 and the same has been considered by this Court and the application for leave to appeal and the application for condonation of delay, as they were not contested, are allowed and in this view of the matter, all the appeals have been connected and are being decided by this common judgment.

5. Sri Utsav Mishra, learned counsel appearing for the Commission has challenged the judgment and order dated 19.05.2023 passed by the learned Single Judge primarily on the ground that the learned Single Judge ignored the distinction between an income certificate and a certificate which was required as per the advertisement in question from such candidates who claimed the benefit of 10% reservation under the Economic Weaker Section.

6. It is submitted that the advertisement clearly prescribed conditions which were to be fulfilled in order to adjudge the validity of such certificate and a certificate issued for the purposes of seeking the benefit of EWS quota could not be interchanged by any other certificate which merely certified the income as the purpose of the two certificates i.e. an EWS Certificate and an Income Certificate is quite distinct and separate.

7. It is further urged that none of the writ-petitioners/private-respondents had filed valid certificates as required in terms of the conditions mentioned in the advertisement, hence, their case was not considered under EWS quota. The learned Single Judge holding that the certificate of income furnished by the writ-petitioners be treated to be valid

for the purposes of giving the benefit of 10% quota under the EWS was not justified and the said directions are contrary to the conditions prescribed in the advertisement, hence, the judgment is liable to be set aside.

8. It is also submitted that similar issue was considered by a learned Single Judge in a bunch of petitions at Allahabad and the petitions raising similar issue did not find favour with the Court and the writ petitions came to be dismissed vide judgment dated 22.11.2022 in leading petition bearing Writ-A No. 17095 of 2021 (Bhujang Bhushan Dubey & 12 Others Vs. State of U.P. and Others) connected with other petitions and Special Appeal arising therefrom has also been dismissed and this aspect has not been considered by the learned Single Judge which vitiates the judgment and order dated 19.05.2023, consequently the appeals filed by the Commission be allowed.

9. Sri Hemant Mishra and Sri Vishal Singh, learned counsel appearing for the respective writ-petitioners/private-respondents in the bunch of intra-court appeals filed by the Commission have refuted the aforesaid submissions and have urged that the certificates which were furnished by the writ-petitioners ought to be treated as valid since the certificate which was sought by the Commission in terms of the advertisement was not being issued by the Authorities at the said time. The certificate as issued by the Tehsildar to the writ petitions was furnished before the Commission and it ought to be treated as valid as the writ-petitioners could not be faulted for not furnishing the certificate in the format prescribed since it was not issued by the Authorities of the districts where the writ-petitioners resided and in such circumstances, the learned Single Judge was justified in giving the directions to treat the certificate filed by the writ-petitioners as valid while disposing of the writ petitions and the same does not require any interference in these intra-court appeals.

10. Sri Abhinav N. Trivedi, learned counsel appearing for the appellant in the two intra-court appeals, which have been filed by the selected candidates who were not a party to the writ petitions but have an interest in the outcome of the instant intra-court appeals, has, primarily echoed the same concerns as raised by Sri Utsav Mishra, learned counsel for the

Commission.

11. The Court has heard the learned counsel for the parties and also perused the material on record.

12. In order to appreciate the controversy involved in the instant intra-court appeals, it would be appropriate to notice certain facts giving rise to the instant appeals. For the sake of convenience, this Court shall take the facts from Special Appeal No. 388 of 2023 and the details of the other petitions wherever necessarily required would be noticed in the body of the judgment.

13. The Commission had advertised for filling up 420 posts of Homeopathic Pharmacist by means of Advertisement No. 2 of 2019. The said advertisement indicated the date of commencement of registration as 25.02.2019 and the last date for submission of the on-line registration was 18.03.2019. A window was provided upto 25.03.2019 for the benefit of the candidates to make any amendment in their forms.

14. Clause 6 of the advertisement related to reservations and more particularly sub Clause (ii) of Clause 6 (a) and (b) refer to the reservations of 10% under the EWS Quota. It clearly indicated that in terms of the Government Order dated 18th February, 2019 issued by the State Government, the reservation of 10% would be available to the candidates who fell within the eligibility criteria as mentioned in the said Government Order and it also enumerated that such candidates were required to submit the EWS certificate with the requisite details as enumerated in the aforesaid Government Order..

15. Clause 10 (16) of the Advertisement further clarified that all such candidates claiming the benefit of reservation under the EWS were required to furnish the certificate indicating that the total income of all the members of the family from all their sources of income was under Rs. 8,00,000/- annually and such certificates would be in terms of the Government Order dated 18.02.2019 and should be valid for the year immediately preceding the year in which the applications for recruitment was made.

16. In the instant case, the advertisement was issued in February, 2019,

thus, the certificate of EWS which was required to be furnished by the candidates was for the year immediately preceding the year of the application which would necessarily be referable to the financial year 2017-18 i.e. the year commencing from 01.04.2017 and ending on 31.03.2018.

17. Before proceeding further, it will be worthwhile to take a glance at the Government Order dated 18.02.2019, a copy of which has been brought on record as Annexure No. 1. Clause 4 of the said Government Order mentions the eligibility and it also clearly mentions that an application for seeking a certificate or claiming reservation under the economically weaker section would refer to a year prior from the year, the application is made. For the sake of convenience, the same is being re-produced hereinafter.

“1. ...

2. ...

3. ...

4- *The Constitution (One Hundred and Third Amendment) Act, 2019* के क्रम में भारत सरकार द्वारा सरकारी सेवाओं में नियुक्ति के सम्बन्ध में आर्थिक रूप से कमजोर वर्गों के लिये की गयी आरक्षण की व्यवस्था के अनुसार ही, आर्थिक रूप से कमजोर वर्गों के ऐसे व्यक्तियों, जो अनुसूचित जाति, अनुसूचित जनजाति तथा अन्य पिछड़े वर्गों के लिए आरक्षण की वर्तमान व्यवस्था से आच्छादित नहीं है तथा उत्तर प्रदेश राज्य के ही मूल निवासी है, को राज्याधीन लोक सेवाओं और पदों पर आरक्षण प्रदान करने हेतु निम्नवत् व्यवस्था / मानक निर्धारित किये जाने का निर्णय लिया गया है:-

(क) आर्थिक रूप से कमजोर वर्गों के ऐसे व्यक्तियों जो अनुसूचित जाति अनुसूचित जनजाति तथा अन्य पिछड़े वर्गों के लिए आरक्षण की वर्तमान व्यवस्था से आच्छादित नहीं है, को उत्तर प्रदेश सरकार की लोक सेवाओं और पदों की सभी श्रेणियों में सीधी भर्ती के प्रक्रम पर 10 प्रतिशत का आरक्षण प्रदान किया जाय।

(ख) उत्तर प्रदेश सरकार की लोक सेवाओं और पदों की सभी श्रेणियों में सीधी भर्ती के प्रक्रम पर आर्थिक रूप से कमजोर वर्गों के लिये अनुमन्य किये गये 10 प्रतिशत आरक्षण का लाभ प्राप्त करने हेतु ऐसे व्यक्ति, पात्र अर्ह होंगे:-

i) जिनके परिवार की समस्त स्रोतों से प्राप्त होने वाली कुल वार्षिक आय ₹0-8.00 लाख इसे कम होगी। समस्त स्रोतों से आय में वेतन, कृषि, व्यापार, व्यवसाय आदि से प्राप्त आय सम्मिलित होगी और यह आय आरक्षण हेतु आवेदन करने के वर्ष के पूर्व वर्ष की होगी। इस उद्देश्य के लिये लाभ प्राप्त करने वाले व्यक्ति के परिवार में उसके उसकी माता-पिता व 18 वर्ष से कम आयु के भाई-बहन के साथ-साथ उसका उसकी, पति/पत्नी और 18 वर्ष से कम आयु के उसके बच्चे सम्मिलित होंगे। परन्तु।

ऐसे व्यक्ति, आर्थिक रूप से कमजोर वर्ग की श्रेणी में पात्र नहीं होंगे :-

(अ) जिनके परिवार के स्वामित्व अथवा कब्जे में 05 एकड़ या इससे अधिक कृषि भूमि हो, या

(ब) 1000 वर्ग फीट या इससे अधिक क्षेत्र का आवासीय फ्लैट हो, या

(स) अधिसूचित नगर पालिकाओं में 100 वर्ग गज या अधिक क्षेत्र का आवासीय भू-खण्ड हो, या

(द) अधिसूचित नगर पालिकाओं के क्षेत्र से भिन्न क्षेत्रों में 200 वर्ग गज या अधिक क्षेत्र का आवासीय भू-खण्ड हो।

(iii) परिवार की आय और परिसम्पत्ति का प्रमाण पत्र सम्बन्धित क्षेत्र के तहसीलदार से अनिम्न अधिकारी द्वारा जारी प्रमाणित किया जायेगा।

(iv) उत्तर प्रदेश सरकार की लोक सेवाओं और पदों की सभी श्रेणियों में सीधी भर्ती के प्रक्रम पर आर्थिक रूप से कमजोर वर्गों के लिये नियुक्तियों में आरक्षण की व्यवस्था दिनांक 01.02.2019 या इसके उपरान्त अधिसूचित विज्ञापित होने वाली रिक्तियों पर प्रभावी होगी।”

18. At this juncture, it will be beneficial to notice the Government Order dated 14th March, 2019 as well, a copy of which has been brought on record as part of Annexure No. 2. The said Government Order dated 14.03.2019 directed that the certificate for EWS would be issued and disbursed as per Form 1 and 2 which was annexed and was made part of the aforesaid Government Order.

19. Now upon perusal of the Uttar Pradesh Public Service Reservation for Economically Weaker Sections Act, 2020, which has been placed on record as Annexure No. 9, Section 2 (b) it defines the word ‘Economically Weaker Sections of citizens’. Section 7 of the Act of 2020 provides that the certificate for Economically Weaker Sections shall not be issued by an officer below the rank of the Tehsildar and it also makes a clear reference to the Government Order dated 18.02.2019. Thus, it would reveal that the EWS Certificate which was earlier issued in pursuance of the Government Orders dated 18.02.2019 and 14.03.2019 and later upon the promulgation of the Act of 2020, the same is issued under the provisions of the said Act and the EWS certificate is valid for one financial year.

20. In light of the aforesaid facts, which are borne out from the record, now the stage is set to examine as to whether the certificates furnished by the writ-petitioners/private respondents can be treated to be valid or not.

(i) In Special Appeal No. 388 of 2023, the writ-petitioners/private respondents Saurabh Singh S/o Rakesh Bahadur Singh at the time of verification of documents had furnished his EWS Certificate which has been brought on record at running page 93 of the paper book and is dated 21st April, 2021 which was valid for financial year 2021-22 and it has been issued on the basis of the income of the family relating to the financial year 2020-21.

21. Taking note of the aforesaid certificate, it would be clear that the said certificate was issued on 21.04.2021 whereas as per the advertisement, the said certificate should have been issued latest till the last date of making the application i.e. till 18.03.2019.

22. The certificate as per the advertisement should have been for the financial year preceding the date of the application i.e. for the financial year 2017-18 whereas the certificate in question relates to financial year 2021-22 based on the income of the family for the financial year 2020-21, thus, as per the conditions mentioned in the advertisement, the said certificates could not be treated to be valid as it falls foul of all the requirements as mentioned in the advertisement.

23. It is the case of the writ-petitioners-private respondents that he had furnished an income certificate, a copy of which has been brought on record at running page 95 of the paper-book. The said certificate only states that the income of the family is Rs. 36,000/- per annum and the said certificate is dated 11.11.2017. Even though the said income certificate cannot be interchanged to be used as EWS certificate but nevertheless the said certificate cannot be treated as valid since, it is not in consonance or in exercise of the directions issued by the Government Order dated 18.02.2019.

(ii) In Special Appeal No. 389 of 2023, the writ petitioner-private respondent Ram Kishor Singh at the time of document verification had furnished his certificate which is at running page 97 of the paper-book and is dated 05.01.2021 valid for the financial year 2020-21 and based on the income of the family of the financial year 2020-21. The certificate of the said writ-petitioner also for the aforesaid mentioned reasons which has been noticed by this Court while considering the certificate of Saurabh Singh S/o Rakesh Bahadur Singh, also falls foul of the requirements as per the advertisement.

(iii) In Special Appeal No. 370 of 2023, Mufeez Beg, the writ petitioner-private respondent, his certificate is at running page 102 of the paper-book and is dated 10.08.2021 for the financial year 2021-22 based on the income

of the family for the financial year 2020-21.

(iv) In Special Appeal Defective No. 460 of 2023, the writ petitioner-private respondent Saurabh Singh S/o Tej Bahadur, the certificate furnished by him during document verification is at running page 96 of the paper-book and is dated 18.02.2020 relating to financial year 2020-21 based on the income of the family for the financial year 2019-20.

24. Thus, it would be seen that in case of all the aforesaid writ-petitioners, their certificates did not meet the criteria as required by the Commission in terms of the advertisement in question as in case of all the writ petitioners-respondents their certificates were not only invalid for not being in the prescribed format but they did not relate to the relevant financial year 2017-18 nor they were issued latest by 18.03.2019. On the contrary, the certificate mentioned in their forms were actually Income Certificate and not EWS Certificates and the EWS Certificates which were furnished at the time of document verification were not valid for the reasons as noticed hereinabove.

25. However, what has been argued by the learned counsel for the writ-petitioners/private respondents is that the said certificates as per format were not being issued, to the writ-petitioners, in their particular districts and all that was issued was the income certificates which have been placed on record and they are valid for a period of three years and therefore the income certificates ought to have been considered as valid and this has been so provided by the learned Single Judge considering the difficulty faced by the writ petitioners who cannot be faulted.

26. It has further been urged that this was the very reason that the Government issued the subsequent Government Order dated 14.03.2019 prescribing a format and since the last date for submission of the applications was 18.03.2019, the window was too short for issuance of such certificates as per format. Moreover, the import of the said Government Order dated 14.03.2019 had not been widely received by the Tehsil Authorities and in such circumstances, the writ petitioners could not be blamed and as per the requirement of the EWS certificate, primarily the

income of the family from all sources should not exceed Rs. 8,00,000/- annually and in each case of the writ-petitioners, their family income was much less than Rs. 8,00,000/- annually, hence, they should be granted the benefit of the EWS Quota and should not be ostracised on such technical issues especially where the writ-petitioners were not at fault.

27. From the perusal of the facts above, it is clear that in so far as the EWS certificate furnished by the respective writ-petitioners at the time of verification of documents is concerned, the same do not meet the criteria as mentioned in the advertisement.

28. Even though, if the submission of the learned counsel for the writ-petitioners is noticed yet they could not dispute the fact that they were very well aware upon reading of the advertisement that the certificate which was required for EWS Quota was to be in consonance with the Government Order dated 18.02.2019.

29. Clause 4 of the said Government Order has been reproduced hereinabove and it would indicate that apart from the condition of threshold of income, there are other requirements regarding the assets which was to be disclosed and certified but needless to say that the said income certificates which have been filed did not meet the said criteria as mentioned in the Government Order.

30. It will be fruitful to notice that the Government Order dated 18.02.2019 is prior to the date on which the registration commenced as per the advertisement and the advertisement itself referred to the said Government Order dated 18.02.2019. It would have been a different situation where the details and conditions as prescribed in the Government Order dated 18.02.2019 and the information required would have been present in the certificate issued by the Tehsildar as per the time line of the advertisement and it would have been filed by the writ-petitioners but it may not have been in a prescribed format then perhaps a thought could have been given to the plight of the writ-petitioners but unfortunately it is not so.

31. Moreover, it is also not the case of the writ petitioners that even after

the Government Order dated 14.03.2019 had been issued, they applied for the fresh certificates in the said format within the time i.e. the last date of furnishing of the applications i.e. 18.03.2019 (and even by any stretch of imagination, if it can be stretched till 25.03.2019 i.e. the last date on which the amendments could have been made) but the certificate was not issued by the Authorities in time.

32. As it is not the case of the writ petitioners that they had applied for the said certificate and it was not issued by the Authorities in time, thus, it cannot be said that the income certificate which had been furnished by the writ petitioners be taken as compliance of the conditions of the advertisement for granting the benefits of 10% reservation for EWS. If the EWS certificate furnished by the writ petitioners at the time of document verification are seen, they fall foul of the requisite conditions in the advertisement, hence, they too cannot be treated to be in compliance of the conditions of the advertisement.

33. The learned counsel for writ-petitioners also could not dispute the fact that in a bunch of petitions raising similar issue it was considered by the learned Single Judge at Allahabad in leading petition bearing Writ-A No. 17095 of 2021 (Bhujang Bhushan Dubey & 12 Others Vs. State of U.P. and Others) connected with other petitions which were dismissed by means of judgment dated 22.11.2022 which was assailed before a Division Bench of this Court at Allahabad in Special Appeal No. 839 of 2022 which also was dismissed by means of order dated 01.05.2023.

34. For all the aforesaid reasons, the learned Single Judge was not justified in issuing a direction to the Commission that in case if the certificates filed by the writ petitioners are found to be genuine then they should be treated as compliance with the conditions of the advertisement for grant of 10% quota under the EWS as that would amount to relaxing conditions in favour of the writ petitioners who did not comply with the conditions of the advertisement moreso when there is no provision for grant of such relaxation or deviation from the conditions as prescribed.

35. For the aforesaid reasons, we do not find that the certificate furnished

by the writ-petitioners were in accordance with the advertisement and the arguments to support their contention also does not impress this Court. Accordingly, the four intra-court appeals of the Commission are ***allowed***. The impugned judgment passed by the learned Single Judge dated 19.05.2023 in the respective four writ petitions Writ-A No. 26103 of 2021 (Ram Kishor Singh Vs. State of U.P. and Others), Writ-A No. 26107 of 2021 (Saurabh Singh s/o Tez Bahadur Singh Vs. State of U.P. and Others), Writ-A No. 221 of 2022 (Mufeez Beg Vs. State of U.P. and Others) and Writ-A No. 28352 of 2021 (Saurabh Singh S/o Rakesh Bahadur Singh Vs. State of U.P. and Others) shall stand set aside and the said writ petitions shall stand ***dismissed***. The two intra-court appeals filed by the candidates who were not parties to the writ petitions shall stand ***disposed of*** accordingly. Costs are made easy.

Order Date :- 15.07.2024
Asheesh/-

(Jaspreet Singh, J.) (Arun Bhansali, CJ.)