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Dr. Brij Mohan Prasad and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-08-2001

Reported in : 2001(2)AWC1199; (2001)2UPLBEC1806

Judge : Pradeep Kant, J.

Acts : Constitution of India - Articles 14, 16(4), (4A), 53(1), 79, 124(4), 154 (1), (2), 162, 163, 166(2), (3), 167, 168(1), 226, 233, 234, 335, 367(1) and 372; General Clauses Act, 1897

Appeal No. : Writ Petition No. 2619 (M/S) of 2000

Appellant : Dr. Brij Mohan Prasad and Others

Respondent : State of U.P. and Others

Advocate for Def. : Sandeep Dixit and ;J.K. Sinha, ;C.S.C.

Advocate for Pet/Ap. : P.N. Gupta, ;Y.S Lohit Shakuntala Rajput and ;Kapil Dev, Advs.

Judgement :

Pradeep Kant, J.

1. The petitioners, who belong to the Scheduled Castes category and have successfully completed their M.B.B.S. course, have approached this Court under

Article 226 of the Constitution of India for fixing 25 per cent marks as minimum qualifying marks for the U. P. Post Graduate Medical Entrance Examination. 2000.

2. The laying down of qualifying marks for the U. P. Post Graduate Medical Entrance Examination has been the subject-matter of controversy even in previous years and is in litigation this year also. The recommendations made by the Medical Council of India and the directions issued by the Court have not yet been able to satisfy some of the candidates in respect of fixation of qualifying marks. The maintenance of high standards particularly in science and professional knowledge like medical profession, giving a chance to the most talented and meritorious students, and selecting the most meritorious candidates and maintaining efficiency in administration or some, out of the many objects for laying down the minimum marks which are propagated every now and then.

3. The reservation in favour of the Scheduled Castes candidates or other candidates who belong to the reserved category, has been made in accordance with the Constitutional mandate and the law propounded by the Supreme Court in various cases. Reference may be made to the case of Indira Sawhney v. Union of india, 1992 Supp (2) SCC 216,

4. The petitioners in the instant case, have sought for issuance of a writ of mandamus by commanding the State Government to conduct the counselling nf U. P. Post Graduate Medical En t ran re Examination (P.G.M.E.E.). 2000 in accordance with the order dated 22.9.2000 said to have been issued by the Governor of the State. Further prayer has been made that a writ of mandamus be issued directing the opposite parties to issue necessary orders in respect of relaxation in qualifying marks as per amended provisions under Article 335 of ihe Constitution.

5. This order which is said to have been passed by the Governor of the State of U. P., is dated 22.9.2000 and has been annexed as Annexure-5 to the wril petition. This order which is in the shape of a letter, starts with the address, 'Priya Mahoday', and further encloses the representation made by the Uttar Pradesh Anusuchit Jati/Janjali Doctors Association, in which relaxation in the qualifying marks for P.G.M.E.E., 2000 has been claimed under Article 335 of the Constitution

in view of the 88th Amendment of the Constitution. The Chief Minister was requested to relax the qualifying marks by fixing them as 25 per cent for reserved category candidates and till such decision is taken by the State Government, the counselling with respect to the reserved seats was stayed.

6. Learned counsel for the petitioners Sarv Sri Kapil Dev. Y. S. Lohit. P. N. Gupta, relied upon the case of Dr. Preeti Sriuastaua and others v. State of Madhya Pradesh. 1999 (7) SCC 120, in respect of matters of reservation in respect of the Scheduled Castes category candidates and for stressing that Article 335 of the Constitution as amended by 88th Amendment of the Constitution, permits the lowering down of marks in the matter of P.G.M.E.E. examination under Article 335 of the Constitution, which is mandatory in character and is necessarily to be followed by the State Government.

7. The next argument of the learned counsel for the petitioner was that the Governor having issued an order on 22.9.2000, the State Government was under constitutional obligation to comply with the said directions given in the said order which the State Government has failed and, therefore, also, the petitioners are entitled for issuance of the writ of mandamus in this regard.

8. The third point urged by the learned counsel for the petitioner is that the letter/order written by the Governor is referable to the executive powers of the State Government which is vested in the Governor and, therefore, his power has been exercised by him under Article 154(1) of the Constitution. In any case, in view of Article 167 of the Constitution, the information asked for and the recommendations made by the Governor has to be given due weight and considered by the Chief Minister.

9. Lastly, the learned counsel for the petitioner raised a ground that minimum qualifying marks of 25 per cent have been pronounced by Supreme Court in the minority judgment in Dr. Preeli Sriiiastava case (supra). Since the majority judgment does not lay down any minimum qualifying marks for reserved category candidates, therefore, the minority Judgment could be and should be taken into consideration for lowering down the marks for reserved category candidates,

10. Besides this. Sri Y. S. Lohit learned counsel submitted, when the inaction of the State Government was under challenge in so far as it did not comply with the directions issued by the Governor of the State of U. P.. the counter-affidavit should not have been filed by a person of the rank of subordinate officer but it should have been filed by some responsible officer of the State Government.

11. In response to it, learned counsel for the opposite parties Sarv Sri Sandeep Dixit and J. K. Sinha submitted that the letter dated 22.9.2000, is not an order of the Governor and even otherwise, it does not fall within the ambit of Article 154 or 167 of the Constitution. Sri Sandeep Dixit further submitted that Article 335 of the Constitution as amended by 88th Amendment of the Constitution, would not be applicable in the case of admissions to the P.G.M.E.E, According in him, the letter dated 22.9.2000 at best. can be said to be a wish expressed by the Governor and the same cannot be treated even as a recommendation for lowering the marks. Recommendations have already been made by the Medical Council of India by means of which the Council has recommended 50 per cent marks as qualifying marks for general category candidates in P.G.M.E.E. and 40 per cent marks for the reserved category candidates. Learned counsel has also relied upon a judgment of this Court passed at Allahabad in C.M.W.P. No. 27424 of 2000 in re : Sandeep Kumar and others v. Slate of U. P. and others, where, the challenge to the laying down of 40 per eent marks as qualifying marks for the reserved category students, has been repelled. The submission is that the petitioners, who had filed the present writ petition, are the same petitioners who had filed the petition at Allahabad for the aforesaid relief apart from one more candidate who has not been impleaded in the present writ petition.

12. In response to the argument of Sri Y. S. Lohit that the view expressed in the minority judgment of the Apex Court in the case of Dr. Preeti Srivastaua (supra) regarding laying down of 25 per cent marks as qualifying marks of the reserved category candidates should be followed, the learned counsel submitted that the same being a view of the minority judgment does not lay down any such rule so as to be followed by the authority concerned. The argument further is that since 40 per cent marks as determined by the High Court in a separate writ petition filed by these petitioners have not been found unreasonable, there cannot be a challenge

to the said marks in the present writ petition.

13. It has also been brought to the notice of this Court that against the interim order passed by this Court dated 6.11.2000. Special Appeal No. 570 of 2000 was filed by one Dr. Narendra Kumar who is not a party in the present writ petition but he being aggrieved by the interim order, has filed the special appeal. The Division Bench of this Court while ordering that the special appeal be listed after the decision of the present writ petition, also directed the matter to be adjudicated by this Court and the interim order dated 6.11.2000 was kept in abeyance.

Thus, there is no interim order existing at the moment.

14. For understanding the controversy raised by the petitioners, it would be necessary to look into certain provisions of the Constitution of India namely. Articles 154, 162, 163. 166 and 167.

15. Article 154(1) deals with the executive powers of the State and provides that the executive powers of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution,

16. Whereas, Article 162 deals with the extent of executive powers of the State and lays down that subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. The proviso attached to the said Article reads as under :

'Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to. and limited by. the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof.'

17. Article 163 specifically provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to

exercise his functions or any of them in his discretion. Sub-clauses (2) and 13) of the aforesaid Article read as under :

'(2) if any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought not to have acted in his discretion.

(3) The question, whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any Court.'

18. Article 166 deals with the conduct of business of the Government of a State and is reproduced below :

'Conduct of business of the Government of a State.--(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.'

19. Duties of Chief Minister as respects the furnishing of information to Governor etc.. have been enumerated in Article 167, which is being quoted below :

'Duties of Chief Minister as respects the furnishing of information to Governor etc.--It shall be the duty of the Chief Minister of each State-

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation ;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for ; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.'

20. Learned counsel for the petitioners relied upon the case of Chandrika Rai v. State of Bihar and others. 1984 (2) SCC 41. In this case, the legality and propriety, in issuing certain directions to extend the term of the first Board of Directors from time to time by the Chief Minister was the subject-matter of consideration by the Apex Court. Laying down emphasis on para 12 thereof, learned counsel Sri Y. S. Lohit submitted that the letter of the Governor has been issued in exercise of executive authority or executive power of the State. Para 12 observes as follows :

'We fail to appreciate the propriety of the Chief Minister passing orders for extending the term of the first board of directors. Under the Cabinet system of Government, the Chief Minister occupies a position of pre-eminence and he virtually carries on the governance of the State. The Chief Minister may call for any information, which is available to the Minister-in-charge of any department and may issue necessary directions for carrying on the general administration of the State Government. Presumably, the Chief Minister dealt with the question as if it were an executive function of the Slate Government and thereby clearly exceeded his powers in usurping the statutory functions of the Registrar under by-law 29 in extending the term of the first board of directors from time to time. The executive power of the Stale vested in the Governor under Article 154(1) connotes the residual or governmental functions that remain after the legislative and judicial functions are taken away. The executive power includes acts necessary for the carrying on or supervision of the general administration of the State including both a decision as to action and the carrying out of the decision. Some of the functions exercised under 'executive powers' may include powers such as the supervisory

jurisdiction of the State Government under Section 65A of the Act. The executive cannot, however, go against the provisions of the Constitution or of any law.'

I fail to appreciate as to in what manner the aforesaid observations of the Apex Court, strengthen the argument of the petitioners.

21. The executive power of the State under Article 154 of the Constitution, vests with the Governor which shall be exercised by him either directly or through orders subordinate to him in accordance with this Constitullon- Clause (21 of Article 154 of the Constitulion provides that nothing in this Article shall be deemed to transfer to the Governor any functions conferred by any existing law or any other authority or prevent the Parliament or the Legislature of the Stale from conferring by law functions on any authority subordinate to the Governor.

22. Learned counsel for the petitioner submitted that in the case of Pashupali Nath Shnknl u. Nem Chandra Jain and others. 1984 (2) SCC 404. It has been held that m our Constitution, which has a federal structure, there are both at the level of the Union and at the level of the States detailed provisions pertaining to the Legislature, the Executive and the Judiciary. All the three organs are concerned with the governance of the country-one organ makes the laws. the second enforces them and the third interprets them though sometimes their functions may be overlapping in this sense all the three organs together constitute the Government at their respective level.

After considering the Articles 79 and 53(1), 154(2), 124(4). 168(1) and 154(1). the Supreme Court observed that a study of these provisions shows that there is no watertight compartment between the three major organs of the State.

23. Regarding the applicability of Article 335 of the Constitution as amended by 88th Amendment, learned counsel for the petitioners relied upon the case of Dr. Preeti Srivastava (supra) in support of his contention that the said provision is mandatory and as such, the State Government ought to have given the desired relaxation in qualifying marks.

24. In the case of Shamsher Singh v. State of Punjab and others. AIR 1974 SC 2192, the Constitution Bench of the Apex Court comprising of 9 Hon'ble Judge, dealing with the powers vested in Article 154(1) of the Constitution held as follows :

The President as well as the Governor is the Constitutional or formal head : The President as well as the Governor exercises his power and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or the Governor but the satisfaction of the President or the Governor in the Constitutional sense in the Cabinet system of Government. I.e., satisfaction of his Council of Ministers on whose aid and advice, the President or the Governor generally exercises all his powers and functions.'

25. In the light of the aforesaid provisions and the law propounded by the Apex Court, the letter/order, which is said to be an order of the Governor by the petitioner, dated 22.9.2000, is to be examined.

26. Article 154(1) of the Constitution specifically mentions that the executive powers of the State shall be vested in the Governor which shall be exercised either by him directly or through officers subordinate to him in accordance with this Constitution. The phrase, 'In accordance with this Constitution', is of significance, as the power has to be exercised by the Governor only in accordance with the provisions of the Constitution and not otherwise. These words give scope and ambit of the powers of the Governor when he is exercising executive powers of the State. On the one hand, it defines the scope of the powers of the Governor and on the other hand, it limits the same with the provisions of the Constitution.

27. Article 162 of the Constitution again starts with a qualifying clause. 'subject to the provisions of this Constitution'. This phrase again qualifies power of the Governor as in respect of its exercise of the executive power of the State.

28. Article 163 of the Constitution lays down that the Governor is to act on the aid and advice of the Council of Ministers with the Chief Minister at the head. The exception is with regard to the functions for which he is by or under the Constitution is required to exercise functions or any of them in his discretion.

29. Article 166 of the Constitution only deals with the conduct of business as to how the business of the Government of the Stale shall be conducted and in what manner the executive actions of the Government of a State shall be expressed. It provides that all the executive action shall expressly be taken in the name of the Governor.

30. Sub-clause (2) of Article 166 of the Constitution provides for the authentication in accordance with the rules and orders made by the Governor and protection to any order so authenticated, from being called in question on the ground that this it is an order made under the executive powers of the Governor.

31. Sub-clause (3) of Article 166 of the Constitution vests the Governor with the power for the more convenient transaction of the business of the Government of the State and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution, required to act in his discretion.

32. In the instant case, the Governor on a representation being made to him directly by an association of special category candidates, while forwarding the said representation to the Chief Minister, expressed his desire that the qualifying marks with respect to the reserved castes candidates to be 25 per cent and for which a decision be taken by the State Government and till the Government considers the reduction of qualifying marks in the case of special category candidates, the Governor also said that till such a decision is taken, the counselling shall remain stayed.

33. It is nobody's case and it is also clear from the record that this letter, which is being treated as an order of the Governor, has not been issued on the aid and advice of the Council of Ministers. As Has been held in the case of Samsher Singh (supra) that the satisfaction required by the Constitution is not the personal

satisfaction of the President or the Governor but the satisfaction of the President or the Governor in the Constitutional sense in the Cabinet system of Government, i.e., satisfaction of his Council of Ministers on whose aid and advice. the President or the Governor generally exercises all his powers and functions. It cannot be said that this document can be said to have been issued under the executive powers of the State on the satisfaction of the Governor .

34. The said letter can also not be brought within the ambit of Article 166 of the Constitution which deals with the conduct of the business of the Government of the State nor any argument has been made on his behalf by the learned counsel for the petitioners that this purported order would fall within the meaning of Article 166 of the Constitution. The only point urged is that it is the discretion of the Governor and he has exercised the executive powers under Article 154(1) of the Constitution and. therefore, it was obligatory upon the State Government to follow the mandate and the same could not have been ignored as has been done in the instant case.

35. On a bare reading of the Constitutional provisions referred to above and the view expressed by the Supreme Court, I am of the considered opinion that such a letter cannot be equated with the exercise of executive powers of the State by the Governor. The protection of either Article 154(1). 162, or Article 166 of the Constitution is not available to such a letter.

36. On the question of applicability of Article 335 of the Constitution, as amended by 88th amendment of the Constitution, the learned counsel for the petitioners Sri Y. S. Lohit relied upon the case of Dr. Preeti Srivastava (supra), by laying down much emphasis on para 25 of the said Judgment which reads as under :

'The speciality and superspeclallty courses in Medicine also entail on-hand experience of treating or operating on patients in the attached teaching hospitals. Those undergoing these programmes are expected to occupy posts in the teaching hospitals or discharge duties attached to such posts. The elements of Article 335. therefore, colour the selection of candidates for these courses and the rules framed for this purpose.'

37. Learned counsel for the petitioners further relied upon the case of Indira Sawhney, 2000 (1) SCC 168. In this case, the Supreme Court was considering the question relating to identification of creamy layer among the backward classes in the State of Kerala and the liberty was given to frame its own provisions by the Supreme Court. The State of Kerala did not implement the judgment even after the lapse of more than 3 years and the creamy layer was not determined. The Apex Court in para 50 of the report, held as follows ;

'It is true there is no specific constitutional provision in relation to the need for maintenance of 'efficiency of administration' so far as the backward classes are concerned (such as special provision in Article 335 in the case of Scheduled Castes and Scheduled Tribes). But such a principle of efficiency of administration, is. In our opinion, equally paramount and is implied in Articles 14 and 16 of the Constitution even so far as the backward classes are concerned. In Indira Sawhney, Sawant. J. pointed out (para 434 of S.C.C.) that while Article 16(4) is an enabling provision. Article 335 iS in mandatory language. Further though there is no specific provision in regard to backward classes, the same principle underlying Article 335 is applicable to backward classes.'

38. Relying on these observations of the Supreme Court, the learned counsel for the petitioners vehemently urged that Article 335 of the Constitution ts applicable in the case where examinations are conducted for admission in higher and specialized educational courses. Reliance on this point has been placed by the learned counsel for the petitioners on the aforesaid cases to buttress his contention that Article 16(4) of the Constitution is an enabling provision whereas Article 335 of the Constitution is mandatory in nature. This argument has been raised in response to the arguments of learned counsel for the respondents that both Article 16(4). 16(4A) and proviso to Article 335 of the Constitution are enabling provisions- While considering this argument, it has to be kept in mind that in both the cases of indira Sawhney, 1992 Supp (2) SCC 217 and 2000 (1) SCC 168, Article 335 as it stood before the Amendment (88th) of the Constitution, was being considered by the Supreme Court.

39. Article 16(4) of the Constitution is an enabling provision as is apparent from the Article itself which gives power to the State for making any provisions for reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the service of the State. The language in Article 16(4) used, is clearly indicative of the said proposition as it provides that nothing in this Article shall prevent the State from making any provision of reservation, if in its opinion, such a class of citizens are not adequately represented in the service of the State- Thus, the said provision is not mandatory, but empowers the State to make provision for reservation in given circumstances, with respect to backward class of citizens. The exercise for making such reservation is again dependant on the opinion of the State Government, which in turn would have to see that whether this particular class of citizens are adequately represented in the State services or not. It has been held in the case of Ajit Singh (111) and others v. State of Punjab and others, (2000) J SCC 430. merely because reservation for backward classes was created as a reasonable classification and justified by the Court, that did not detract from the enabling nature of provision.

40. Similar is the language and intent of Article 16(4A also which deals with reservation in matters of promotion to any class or classes of posts in the service under the State, in favour of the Scheduled Casles and Scheduled Tribes.

41. Article 16(4), 16(4A) and Article 335 of the Constitution are in consonance with letter and spirit and do not run counter to each other. Article 16(4) empowers the State to make special provision for reservation of appointments or posts in favour of any backward class of citizens whereas, Article 16(4A) makes a provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes. Article 335 speaks of maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or a State. While making appointments to the members of the special category under Article 16(4) and promotion under Article 16(4A). Article 335 which speaks of maintenance of efficiency of administration, is mandatorlly attracted in both the cases, i.e., while making special provision for appointment or for promotion. The

Apex Court's observations holding that Article 16(4) is an enabling provision and Article 335 of the Constitution are mandatory in character also speaks of the constitutional mandate and constitutional scheme regarding reservation and making appointment of candidates belonging to Scheduled Castes and Scheduled Tribes and also backward class.

42. It is true that the State Government, if satisfied that such a class of citizens are not adequately represented in the service of the State, can make provisions for reservation but while making such provision for reservation, the mandatory character of Article 335 of the Constitution cannot be ignored.

43. An argument has been raised that after the 88th Amendment of the Constitution, provisions of Article 335 of the Constitution can be attracted in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation which would include the examination known as P.G.M.E.E.E. also.

44. Amended Article 335 which was published in the Extraordinary Gazette of India on 8th September, 2000, added a proviso which reads as under :

'Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matter of promotion to any class or classes of services or posts in connection with the affairs of the Union or a State.'

45. It is settled principle of law that while ' interpreting the Constitution and its provisions, the same standards are adopted which are otherwise adopted in interpreting a statute under Article 367(1) of the Constitution which specifically deals with the interpretation of the Constitution provides that unless the context otherwise requires, the General Clauses Act. 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of Dominion of India.

46. The proviso introduced by 88th Amendment in Article 335 starts with the following words :

'Provided that nothing in this Article shall prevent in making of any provision in favour of the members of the Scheduled Castes and Scheduled Tribes for relaxation.....'

The words 'nothing in this Article shall prevent in making of any provision' makes it amply clear that this proviso is an enabling provision for the Government in the matter of relaxation in qualifying marks in any examination or lowering the standards of evaluation in the matter of promotion to any class or classes of service or posts in connection with the affairs of the Union or a State. In the instant case, it is not necessary for the Court to address itself as to whether Article 335. as amended by 88th Amendment, shall be applicable in the case of P.G.M.E.E. examination, as no such relaxation has been done by the State Government, even then the argument of the learned counsel for the respondent that the proviso, if read as a whole, would mean that the relaxation envisaged in the proviso to Article 335 would only be confined for the examinations or lowering the standards of examinations which are held for the purpose of promotions to any class or classes of service or posts in connection with the affairs of the Union or a State cannot be outrightly rejected. While interpreting the scope of the proviso, the substantive Article by which the proviso has been annexed, has to be kept in mind.

The legislative intent behind the proviso gives a more accurate guidance for its proper interpretation,

47. Article 335 deals with the consideration of the claims of the members of the Scheduled Castes and Scheduled Tribes in the matters of their appointment of services and posts in connection with the affairs of the Union or of a State, which should be consistent with the maintenance of the efficiency of administration. This provision has been held to be mandatory in character. The obvious effect of such consideration is that while protecting the interest of the special category of candidates, namely. Scheduled Castes and Scheduled Tribes in the matters of appointment to services and posts in connection with the State or the Union. the efficiency in administration cannot be compromised. If such appointments

adversely affect the efficiency, the same would not be in consonance with the constitutional obligation of the State. Thus, a balance has to be maintained in between giving of special consideration in the matter of appointments to the special class of services and efficiency in the administration.

48. The proviso, which speaks also for relaxation in qualifying, marks in any examination or lowering the standard of evaluation is related with the promotion to any class or classes of service or posts in connection with the affairs of the Union or the State. The words 'reservation in matters of promotion for any class or posts of service...' are preceded by the words '.....for relaxation in qualifying marks in examination or lowering the standard of evaluation'. Phraseology thus used leaves no room of doubt that relaxation introduced in the proviso to Article 335 can be made available in the matters of promotion to any class or classes of service or posts in the State or the Union Service. Stretching this relaxation for the purposes of holding of examination for admission to higher educational course, which requires specialized professional knowledge would be adding something more than what has been used in the proviso.

49. It is the basic rule that liberal interpretation has to be given to any provision particularly when it relates to giving certain benefit to the socially and educationally backward classes of people for the purpose of bringing them in the main stream of the society. However, such a liberal interpretation cannot go to the extent of conferring right which the Legislature clearly did not intend to confer.

50. In the case of Gautam Paul v. Debt Rani Paul and others, (2000) VIII SCC 330. the Apex Court observed as follows :

'Even though a liberal interpretation may be given, the interpretation cannot be one which gives a right which the Legislature clearly did not intend to confer.'

51. The proviso thus cannot be interpreted in isolation to the substantive Article. The necessary inference, therefore, is that relaxation which has been provided by means of newly added proviso would apply only in the matters of promotion of the special category of citizens which appears to be the true intention of the proviso.

52. The observation made in the judgment of Dr. Preeti Srivastava that speciality and super speciality course in Medicines also entail on-hand experience of treating or operating on patients in the attached teaching hospitals, and. therefore, those undergoing these programmes are expected to occupy posts, in the teaching hospitals or discharge duties attached to such posts, would mean that even for pursuing such courses, the maintenance of efficiency in administration would be a relevant consideration for giving admission. This in turn provides for objectively laying down such standards so as to qualify for being attached to post in teaching hospitals, which would be in consonance with underlying object of Article 335. Article 335 of the Constitution provides regarding maintenance of efficiency in administration. If efficiency in administration is to be maintained, it does not necessarily mean that the standard of examination should be lowered as lowering down the standard of examination or giving relaxation in qualifying marks may not achieve the goal which is enshrined in the substantive provision of Article 335. Such relaxation, from the unambiguous provision of Article 335 can be attracted only in the given circumstances, in the mailers of promotion to a post in the service of the State or the Union.

53. The educational examinations for the purpose of getting a degree or diploma cannot be equated with service or promotion in service to any posl in connection with the affairs of the Union or a State. The educational standards are fixed on different criteria parlicularly in the matter of specialized fields like medical profession, engineering and other science streams. The standards for the purpose of education are laid down keeping in mind the degree of merit, talent and knowledge, which is required for the purpose of awarding the degree. The object of education and awarding degrees in a particular subject for a particular class is to educate the candidate and to make him so knowledgeable so that he or she can attain the required degree of knowledge and education. It is after a student or candidate acquires the said knowledge, which is reflected by the degree, awarded, namely, which certifies about the acquisition of knowledge by such successful candidate, the question of taking such a person into employment or in the service of the Slate arises. Thus, the two standards so fixed, i.e., (i) in the matter of carrying out educational course. and (ii) for seeking employment, are based on two different criteria. Proviso to Article 335 specifically speaks of relaxation in

qualifying marks in any examination of lowering the standards of evaluation with respect to the matters of promotion to any class or classes of service or posts in connection with the affairs of the Union or a State. The object of relaxation in qualifying, marks is thus embodied in the proviso itself which inherently speaks that such relaxation would be only for the purpose of promotion to any class or classes of service or posts in connection with the affairs of the Union or a State. No wider interpretation of the said proviso is possible looking to the scheme of the Constitution, particularly Article 16(4), 16(4A) and Article 335. So far the observations of the Apex Court in the case of Indira Sawhney (supra) with respect to Article 335 being mandatory in character is concerned. It may be noticed that the Apex Court was considering the unamended provisions of Article 335 and not the 88th Amendment and while considering true import and mandatory character of Article 335. the Apex Court found that since the speciality and superspeciality courses in Medicine also entail on-hand experience of treating or operating on patients. In the attached teaching hospitals, those undergoing these programmes are expected to occupy posts in the teaching hospitals, or discharge duties attached to such posts.

54. In the case of State of Bihar v. Bal Mukund Sah. (2000) 4 SCC 640. the Supreme Court had occasion to consider the applicability of the reservation in the subordinate judiciary services which was done violating the constitutional mandate of Articles 233 and 234 of the Constitution.

The Supreme Court observed as follows :

'.....Article 16(4) has to be read with Article 335 and maintenance of efficiency of administration in the making of appointments to services and posts would be a sine qua non before considering the claim for reservation of S.C.s and S.T.s which would also include O.B.C.s as laid down by a Constitution Bench Judgment of this Court in Indira Sawhney case (supra).

55. Thus, that part of Article 335. viz. the substantive Article which provides for maintenance of efficiency in administration, has been held to be mandatory for achieving the object underlying the said provision.

56. However, the proviso annexed by 88th Amendment which empowers the State to lower down the standard of examination or grant relaxation in qualifying marks, is concerned, the same cannot be held to be mandatory

The said proviso is, only, an enabling provision for giving relaxation envisaged in the said proviso.

57. Further, admission to P.G. course cannot be termed as a service in connection with the affairs of the Union or a State, it is an educational course of higher degree which does not even guarantee a service in the Slate under any provisions of rule or law and. therefore, while upholding the mandatory character of Article 335, and its applicability in the matter of pursuing courses of speciality and superspeciallty in Medicine, the applicability of the proviso would only confine to the matters of promotion to any class or classes of service or posts in connection with the affairs of the Union or the State,

58. Article 16(4A) vests in the State the power to make a provision for reservation in matters of promotion in the service of the State in favour of Scheduled Castes and Scheduled Tribes. Since Article 335 in its unamended form did not deal with the matters of promotion and it only dealt with the claims of the appointment to services of the State of such members, the proviso has been added by means of 88th Amendment, which provides for promotion in service specifically. Article 335 as it originally stood did not provide for promotion of the members of the Scheduled Castes and Scheduled Tribes to the service of the State, and therefore, the proviso has been introduced in Article 335 of the Constitution which relaxation otherwise may not have been provided to the special class of citizens under Article 335.

59. Thus, Article 335. which contains a proviso, has to be construed in the following manner. So far as the substantive Article 335 is concerned, that has already been held to be mandatory in character by the Apex Court but the proviso attached to Article 335 by means of 88th Amendment, is only an enabling provision. The power to make relaxation with respect to special class of citizens has been given to the Stale Government, which power is not to be exercised necessarily under the aforesaid proviso. It is the prerogative of the State

Government to grant such relaxation as provided under the proviso in case it forms an opinion to that effect on relevant objective considerations. The Stale is not under constitutional mandate to grant such relaxation compulsorily. The proviso cannot go beyond the scope of substantive provision nor it can run contrary to the substantive Article. Even if such relaxation as provided in the 'proviso' is to be given, the State would be under the legal obligation to act according to the Constitutional mandate of Article 335 meaning thereby that there cannot be a compromise with the maintenance of efficiency in administration and if such a provision is made which runs contrary to the said Article, the same would be impermissible.

60. Learned counsel for the petitioner could not explain as to how the benefit of lowering the standards of evaluation or relaxation in qualifying marks is mandatory under the said provision. Article 335 of the Constitution maintains efficiency in administration and. therefore, that part of Article is mandatory but the 'proviso' is only an enabling provision. It is not disputed that the State Government has not taken any decision and has not made any such law and has not issued any Ordinance or Government Order relaxing the minimum qualifying marks for P.G.M.E.E. examination. 2000 to 25%.

61. The next argument urged on behalf of the petitioner is that the Chief Minister was obliged to take a decision under Article 167 of the Constitution. A bare perusal of Article 167 of the Constitution and clauses (a), (b) and (c) thereof would show that the so-called recommendation or wish expressed by the Governor does not fall in either of the clauses. It was a personal desire that was communicated to the Chief Minister, which cannot fall in realm of Article 167 of the Constitution.

62. A dispute has been raised by the learned counsel for the petitioner that in the writ petition filed at Allahabad bearing No. 27424 of 2000. no challenge was made with respect to the fixation of 40% marks as minimum qualifying marks for reserved category candidates, upon which the judgment passed by the Allahabad High Court at Allahabad in the case of Sandeep Kumar and others v. State of U. P. and others, decided on 25.8.2000, was placed before this Court in which a specific finding has been recorded negating the plea that determination of 40%

marks as minimum qualifying marks was not reasonable.

63. In Dr. Preeii Sriuastaua's case (supra), the Supreme Court while considering the minimum qualifying marks for the reserved category candidates and the general category candidates for the P.G.M.E.E.. examination, 1997, found that there should not be wide discrepancy in the two categorizations. The prescription of 20% minimum marks for reserved category candidates and 45% minimum marks for general category candidates was found to be unreasonable and arbitrary. It has been stated by the learned counsel for the parties that the minimum pass marks for M.B.B.S. examination is 50% and the standard of the test papers in the Post Graduate Entrance Examination is of the standard of the M.B.B.S. course and its syllabus. A candidate who has successfully passed the M.B.B.S. examination with 50% minimum marks is supposed to appear for the entrance examination for the Post Graduate Course. The Medical Council of India, which is an expert body and whose recommendations have to be given due weight, in its wisdom has prescribed 50% marks as minimum qualifying marks for general category candidates and 40% as minimum qualifying marks for reserved category candidates. In the absence of any further relaxation by the State Government, if at all possible, it cannot be said that laying down the aforesaid category of marks is either arbitrary or unreasonable. A candidate who has passed M.B.B.S. examination with 50% minimum marks is supposed to secure 10% less marks of the minimum pass marks, which he had to secure in the M.B.B.S. examination for the purpose of getting admission in the Post Graduate Course.

64. Learned counsel for the respondent has placed before the Court that on receipt of the letter of the Governor, a decision was taken by the State Government that since minimum qualifying marks for the general category candidates and for reserved category candidates have been recommended by the Medical Council of India as 50% and 40% respectively and the said recommendation after due deliberations has been accepted by the State Government, for which a Government Order has been issued, there was no necessity for taking further decision for relaxing the minimum qualifying marks any more in favour of reserved category candidates. It is thus clear that the letter of the Governor was duly considered by the State and the Slate has already taken a

decision not to lower down the minimum qualifying marks with respect to reserved category candidates any further.

65. So far the argument of the learned counsel for the petitioner regarding filing of the counter-affidavit by the responsible officer is concerned, I find that the counter-affidavit has been filed by one Sri R. K. Jauhari who was earlier an Assistant Professor (Radio Therapy) and is presently posted as attached officer. Directorate, Director General Medical Education and Training. Jawahar Bhawan. Lucknow. The counter-affidavit is based on relevant records and thus the same being filed by an officer who is well conversant with the facts of the case, no exception can be taken, on that count also.

66. For the aforesaid reasons, the letter dated 22nd September. 2000. Issued by the Governor can neither be said to be an order nor it can be attributed to the exercise of executive power of the State.

67. For the reasons stated above, no case for interference has been made out by the petitioners under Article 226 of the Constitution of india. The writ petition being devoid of merits deserves to be dismissed.

68. The writ petition is dismissed. No order as to costs.

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