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Onkar Dutta Sharma and Others Vs. State of U.P. and Others

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SooperKanoon Citation : sooperkanoon.com/468479

Court : Allahabad

Decided On : Apr-13-2001

Reported in : 2001(2)AWC1494; (2001)2UPLBEC1149

Judge : S.R. Singh and ;D.R. Chaudhary, JJ.

Acts : Uttar Pradesh Public Services (Reservation for S.Cs/S.Ts./O.B.Cs.) Act, 1994 - Sections 2, 3 and 3(1), (2), (4), (5), (6) and (7); Uttar Pradesh Higher Education Service Commission Act, 1980 - Sections 12, 12(2) and (3), 13, 14 and 15; Uttar Pradesh State Universities Act, 1973; Uttar Pradesh Higher Education Services (Procedure for Selection of Teachers) Regulations, 1983 - Regulations 5 and 6; Constitution of India - Articles 16 and 30; Uttar Pradesh Higher Education (Group 'A') Service Rules, 1985; Uttar Pradesh Intermediate Education Act, 1921; Uttar Pradesh Secondary Education Services Commission Act, 1982 - Sections 10

Appeal No. : C.M.W.P. No. 15510 of 1999 with 16 other Writ Petition

Appellant : Onkar Dutta Sharma and Others

Respondent : State of U.P. and Others

Advocate for Def. : Kripa Shankar Singh, ;H.R. Misra, ;Manish Goel, ;J.J. Munir and ;N. Mishra, Advs. and ;S.C.

Advocate for Pet/Ap. : R.B. Singhal, ;R.C. Shukla, ;R.C. Srivastava, ;R.N. Singh, ;Ashok Khare and ;Shailendra, Advs.

Judgement :

S. R. Singh, J.

1. Bottom-line common questions of seminal importance that surface of determination in this bunch of writ petitions are two fold : firstly, whether the posts of Principal in Government Aided Private Degree Colleges/Post Graduate Colleges affiliated or associated under the provisions of the U.P. State Universities Act. 1973, can be subsumed within the sweep of the U.P. Public Services (Reservation for Scheduled Castes. Scheduled Tribes and Other Backward Classes) Act, 1994 (abbreviated to 'U.P. Reservation Act. 1994) and secondly, whether methodology adopted by the U.P.Higher Education Services Commission for screening out candidates, suffers from the taint of arbitrariness.

2. The reliefs recapitulated in substance, arc that the advertisement No. 25 of 1998, the selections made pursuant to the said advertisement, and the guidelines formulated by the U.P. Higher Education Services Commission, be quashed and the Commission be enjoined to re-advertise the posts sans applying there the rule of reservation as embodied in the U.P, Reservation Act. 1994 and prepare fresh guidelines for screening out the candidates taking into reckoning the qualifications as amended by the University Grants Commission.

3. Besides Sri R. B. Singhal and Sri R,C. Shukla, we have also heard Sarvsri R.C. Srivastava, R.N. Singh and Sri Ashok Khare, learned Senior Advocates appearing for petitioners in their respective cases and Sri Kripa Shanker Singh, standing counsel appearing for the State authorities. Sri H.R. Misra, standing counsel appearing for Higher Education Services Commission, and Sri Manish Goel appearing for the private respondents in one of these writ petitions.

In re-application of the U.P. Reservation ACC. 1994

4. It has been canvassed by the counsel appearing for the petitioners that there is only one post of Principal in each college and therefore, application of the rule of reservation to the single post cadre, would be permitting 100% reservation which will be over-reaching the doctrine of equality as engrafted in clauses

(1) and

(2) of Article 16 of the Constitution. To enforce the contention that there could be no reservation in relation to a single post cadre, credence has been placed mainly on Chakradhar Paswan (Dr.) v. State of Bihar. 1998

(2) SCC 214 ; Bhinde Girls Education Society v. Education Officer, 1993 Suppl.

(3) SCC 527 ; Post Graduate Institute of Medical Education and Research v. Faculty Association, 1998

(4) SCC

1. For the respondents, it has beencanvassed that the expression 'Public Services and Posts' as defined in Section 2 (c) (iv) of the U.P. Reservation Act, 1994 includes posts of Principals of Degree Colleges/Post Graduate Colleges affiliated or associated to any State University under the provisions of the U.P. State Universities Act. 1973. Being services and posts in connection with the affairs of the State, disparate colleges cannot be treated as a conjoint unit so as to make the post of Principal as a Single post cadre. Various provisions embodied in the U.P. Higher Education Services Commission Act. 1980 and the U.P. Higher Education Services Commission Regulations, 1983, have also been called in aid by the learned counsel for the respondents to give prop to the contention that vacancies on the posts of Principals notified to the Commission under Section 12 of the U.P. Higher Education Services Commission Act, 1980 read with the U.P. Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983, ought to be read in juxtaposition for the purposes of applying the U.P. Reservation Act, 1994.

5. For proper appraisal of the contentions raised at the bar, we consider it necessary to refer to the provisions of the U.P. Act 4 of 1994 and the related provisions contained in the U.P. Higher Education Services Commission Act. 1980. The U.P. Reservation Act, 1994, has been enacted to provide for the reservation in public services and posts in favour of persons belonging to the SC/ST and OBC of citizens and for matters connected therewith or incidental

therefor. Clause (c) of Section 2 of the Act, defines 'Public Services and Posts' to signify 'the services and posts in connection with the affairs of the State and includes inter-alia. services and posts in educational institution owned and controlled by the State Government or, which receives the granls-in-aid from the State Government, including a University established by or under a Uttar Pradesh Act except an institution established and administered by minorities referred toin clause (1) of Article 30 of the Constitution of India. (Section 2 (c)(iv))'.

6. Section 3 of the U.P. Act 94 that provides the quantum of reservation and methodology of its application is excerpted below :

'3. Reservation in favour of Scheduled Castes. Scheduled Tribes and Other Backward Classes.--(1) in public services and posts, there shall be reserved at the stage of direct recruitment. the following percentages of vacancies to which recruitment are to be made in accordance with the roster referred to in subsection (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of cllizens.

(a) in the case of Scheduled Castes--twenty one per cent,

(b) in the case of Scheduled Tribes--two per cent,

(c) in the case of Other Backward Classes of Citizens--twenty-seven per cent :

Provided that the reservation under Clause tc) shall not apply to the category of Other Backward Classes of citizens specified in Schedule II.

(2) If, even in respect of any year of recruitment, any vacancy reserved for any category of persons under sub-section (1) remains unfilled. special recruitment shall be made for such number of times, not exceeding three, as may be considered necessary to fill such vacancy from amongst the persons belonging to that category.

(3) if, in the third such recruitment referred to in subsection [2) suitable candidates belonging to the Scheduled Tribes are not available to fill the vacancy reserved for them, such vacancy shall be filled by personsbelonging to the Scheduled Castes.

(4) Where due to nonavailability of suitable candidates any of the vacancies reserved under sub-section (1) remains unfilled even after special recruitment referred to in subsection (2) it may be carried over to the next year commencing from first of July, in which recruitment is to be made subject to the condition that in that year total reservation of vacancies for all categories of persons mentioned in sub-section (1) shall not exceed fifty per cent of the total vacancies.

(5) The State Government shall, for applying the reservation under sub-section (1) by a notified order issue a roster, which shall be continously applied tilt it is exhausted.

(6) If a person belonging to any of the categories mentioned in sub-section (1) by a notified order, issue a roster, which shall be continuously applied till it Is exhausted.

(7) If on the date of commencement of this Act, reservation was in force under Government orders for appointment to posts to be filled by promotion such Government Orders shall continue to be applicable till they are modified or revoked.'

7. It would be borne out from the provisions aforesaid that the rule of reservation in 'public services and posts' as the term is defined in clause (c) of Section 2 of the U.P. Reservation Act 4 of 1994, will have to be applied in accordance with the roster notified by the State Government under sub-section (5) of Section 3 till it is exhausted. The notified order issued by the State Government vide notification No. 481/Ka-1-94-1.1.94 Lucknow, March, 29, 1994 Indisputably prescribes a 100 point roster. The Degree Colleges and Post Graduate Colleges in question herein are admittedly on grants-in-aid list of the StateGovernment. Therefore, the services and posts in these colleges come within the purview of the expression 'public services and posts' as defined in clause (c) of the Section 2 of the said Act- The term 'services' used in Section 2 (c) (iv) of the U.P. Reservation Act 4 of 1994, in the context, means teaching and non-teaching services in educational institutions receiving grants-in-aid from the State Government and the word 'posts' shall, in the context, have relation to posts of Principal in affiliated and/or associated colleges receiving grants-in-aid from the State Government. The service of

Principal comes within teaching services in educational institutions, for the word Teacher', as defined in Section 2 (h) of the U.P. Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 means a person employed for imparting instruction in a college and includes a Principal. From this reckoning, the post of Principal being a post in an educational institution receiving grants-in-aid from the State Government comes within the purview of the U.P. Reservation Act, 1994, unless it is held excluded therefrom by any principle of law.

8. The post of Principal is. however, sought to be reckoned out from the purview of the U.P. Reservation Act, 1994, on the premise that it is a single post cadre in relation to a particular educational institution and the law well-settled is that the rule of reservation does not apply to a post which is the solitary one in the entire cadre. Reliance has been placed on Dr. Chakradhar Paswan v. State of Bihar. 1998 (2) SCC 214. In Dr. Chakradhar Paswan, it has been laid down that 'rule of reservation, directly or by applying roster, will come into play only in the case of plurality of posts. The Directorate of indigenous medicine, a para-medical service in that case, consisted of Director as its head and three Dy. Directors belonging to three distinct and separate discipline, viz. Homeopathic. Unani, and Ayurvedic under him. The Apex Court held therein that in para-medical system, three posts of Dy. Directors pertainedto three distinct systems and, therefore, each of them is an isolated post by itself. The Apex Court, however, 'refrained' from expressing any opinion on the 'moot point' whether the isolated posts like those of the Dy. Directors can be subjected to the 50 point roster by the rotational system.;' The view taken by the Apex Court in Chakradhar Paswan has received reinforcement in Chetan Dilip Motghare v. Bhide Girls Educational Institution. 1995 (Suppl) 1 SCC 157 and P.G. Institute of Medical Education and Research v. Faculty Association and others. JT 1998 (3) SC 223 and contrary view in State of Bihar and others v. Bhageshwari Prasad and another, 1995 (Suppl) 1 SCC 432 ; Sri Suresh Chand v. Sri J.B. Agarwal and others. JT 1997 (5) SC 72. Union of India and another u. Madhav, 1997 (2) SCC 32, and Union of India and others v. Brij Lal Thakur, JT 1997 (4) SC 195, was held not to be a good law.

9. Thus, the law as it stands is that when there Is a solitary post in a cadre, the rule of reservation and that of roster and the carry-forward scheme underlying any reservation policy cannot come into play. The question, however, is whether the cadre of Principals of Degree Colleges or Post-graduate Colleges, as the case may be. is a single post cadre. The question does not have an easy answer. If each college is treated as an independent unit for determining the cadre strength the cadre of Principal would certainly be a single-post cadre but if posts in all the affiliated/associated colleges receiving grants-ln-aid from the State Government are grouped together in order to determine the strength of the service of Principals, the cadre would become a cadre with plurality of posts. The number of posts would depend on the number of colleges receiving grants-in-ald from the State Government at a given time. The P.G. Institute of Medical Education and Research (supra) and the decisions relied on therein, cannot be taken aid of as an authority to bolster up the contention that the posts of Principals in various affiliated /associated colleges receiving grants-in-aid cannot be banded together for their fusion so as to apply the law of reservation. As noticed above, the P.G. Institute of Medical Education and Research has approved Dr. Chakradhar Paswan but the Apex Court in Dr. Chakradhar Paswan forbore from pronouncing any opinion on the question as to whether isolated posts like those of Dy. Directors in three distinct disciplines viz. Homeopathic. Unani and Ayurvedic in the Para-medical Services of Bihar could be subjected to 50 point roster by the rotational system for in the fact situation of that case, the question did not arise.

10. As noticed above, the services of teachers including Principal in affiliated or Associated Degree Colleges/Post Graduate Colleges come within the purview of 'Services and Posts' as the term is defined in Section 2 (c) of the U.P. Act 4 of 94. Upon regard being had to the object sought to be achieved by the U.P. Act of 1994. the centralised method of selection for appointment through a statutory body and State agency, as the Commission and Director are, and equality in the scale of pay, power, duty and responsibility, we are of the considered view that the post of Principal in Government aided private colleges cannot be treated to be an isolated single post in the cadre. The cadre of Principals would not become a single-post cadre merely because there is only one post of Principal in each college. Equality of status, uniformity in service conditions, centralised State level

'forum of selection through a statutory body and appointment by Management pursuant to placement orders issued by the Director are the unifying elements necessary to constitute the cadre of Principals as a State level cadre with plurality of posts. It cannot be repudiated that in service jurisprudence, the term 'cadre' has a definite legal connotation and is not synonymous with 'service'. The term 'service' is a term of a wider connotation. There cannot be a cadre without there being a service though in a given service, there may be more cadres 'than one. The word 'cadre' asdefined in Fundamental Rule 9 (4) means the strength of a service or part of a service sanctioned as a separate unit. e.g.. the U.P. Higher Education (Group 'A) Services comprises 'Group A' posts as defined in the U.P. Higher Education (Group 'A') Service Rules, 1985 wherein various categories of posts falling in the Higher Education Group 'A' service, are enumerated. The post of the Director of Higher Education falls in Category 1. while the post of Principal of Post-Graduate College. Joint Director of Higher Education, and College Development Officer, fall in Category II. The Principal of a Degree College, Regional Higher Education Officer. Dy, Director of Higher Education come in Category III, while Professor. Asstt. Professor and Asstt, Director of Higher Education come in Category IV and post of Head of Department comes in Category V and while those of Senior Lecturers, Asstt. Dy. Director of Higher Education and Lecturers come in Category VI. but all these categories grouped together, constitutes Higher Education (Group 'A') Service. The service of Principals and that of teachers in affiliated/ associated colleges together, constitute one service, i.e., the teaching service albeit the cadre of Principals is distinct from that of teachers. Statutes made under the U.P. State Universities Act, 1973, prescribe different qualifications and different scales of pay are admissible to the posts of Principals and teachers. Again the qualifications and pay scales of Principals of a Degree Colleges are different from those of Principals of post graduate colleges. Among the teachers other than Principals, there may be grades and cadres of Lecturer. Reader, and Professor. Statutes also envisage that the Principal shall be deemed to be senior to other teachers in the college and the Principal of a Post-graduate College shall be deemed senior to the Principal of a Degree College, The post of Principal of a Degree College will thus constitute one cadre and post of Principal in Post-graduate Colleges would form another cadre in

the same service.

11. It hardly needs repudiationthat there is only one post of Principal in each college but that by itself furnishes no foundation to hold that the U.P. Act 4 of 1994 will not come into play in so far as post of Principal of affiliated or associated degree/post graduate colleges are concerned. By legal fiction created in Section 2 (c) (iv) of the U.P. Reservation Act, 1994, services and posts of Principals are to be treated as 'public services and posts' in connection with the affairs of the State and unlike the appointments of teachers in the State Universities where the concerned University is the unit for selection and appointment, the affiliated/associated colleges throughout the State together constitute a unit for purpose of the U.P. Reservation Act. 1994. In other words, in case of selection and appointment of teachers including Principals in Degree/Post Graduate Colleges receiving grants-in-aid from the State Government, the whole State is treated as a unit. In this view of the matter, it is of little or no significance that the State is not directly the appointing authority in relation to the posts of Principals of Degree/Post Graduate Colleges. Mere fact that Managing Committees constituted in accordance with the schemes and by-laws of the Society running these colleges, happen to be the Appointing Authorities, is not enough for deducing that vacancies for the posts of Principals in different colleges cannot be assimilated for the purposes of applying the U.P. Reservation Act. 1994.

12. Section 12 (2) of the U.P.Higher Education ServiceCommission Act, 1980, requires themanagement of a college to Intimatethe existing vacancies and thevacancies likely to be caused duringthe course of ensuing academic yearto the Director in the mannerprescribed and sub-section (3)enjoins a mandatory duty on theDirector to notify to the Commissionin such manner as may beprescribed. 'a subject-wiseconsolidated list of vacanciesintimated to him from all colleges.'The manner of determination,intimation and notification of vacancies is prescribed by the U.P. Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983. For the purposes of making selection of teachers other than Principals, all the vacancies 'subject-wise' are piled up together and panel of selected candidates is prepared without indicating therein any particular college for which selection has been made and it is for the Director of Higher

Education to apportion selected candidates to different colleges. Similarly all the vacancies in the post of Principal of Degree Colleges and those in post-graduate colleges are separately consolidated and panels are drawn in the like manner. Though appointment letter is to be formally issued by the management of the college, yet the appointment is regulated and controlled by instrumentalities of the State under the U.P. Higher Education Services Commission Act. 1980. read with the U.P. Higher Education Services (Procedure for Selection of Teachers) Regulation, 1983. The management of a college has no hand in the selection and is rather duty bound to issue appointment letter under Section 13 of the Act to the person whose name has been Intimated by the Director. It is postulated in sub.-section (2) of Section 14 of the U.P. Higher Education Services Commission Act, 1980, that when a person referred to in sub-section (1) fails to Join the post within the time allowed or within such extended time as the management may allow in this behalf or when such a person Is not otherwise available for appointment, the Director shall on the request of the management, intimate fresh names from the list sent by the Commission under sub-section (1) of Section 15 in the manner prescribed. Section 13 of the U.P. Higher Education Services Commission Act. 1980, empowers the Director to hold an enquiry in case a person who is not appointed by the management despite recommendations made in his favour and order the management to appoint such person and to pay himsalary from the date specified in the order. The candidates who apply for appointment, are no doubt entitled to give choice of not more than five colleges in order of preference as envisaged in Regulation 5 of the U.P. Higher Education Services (Procedure for Selection of Teachers) Regulations. 1983. but the Commission is not fettered by the restraint of choice given by the candidates and may, in its discretion, recommend them for a college other than one indicated by the candidates in their choice. It would thus be eloquent that though the selection is made in relation to the vacancies in colleges referred to in the advertisement but the same is nevertheless not a selection college-wfse.

13. The law and the Society have always adapted to each other in several ways. 'Every citizen is born equal but gets chained within impregnable walls of social, sectional and religious barriers and is made a victim of discrimination and denuded of human rights'. U. P. Slate Road Transport Corporation v. Dr. Dina Nath Shukla,

(1997) 9 SCC 662. The U.P. Reservation Act. 1994, which provides for 'protective discrimination' and 'gives practical context to implement the constitutional mandate of equality of opportunity and status to Dallits. Tribes and O.B.C. In the matter of appointment to a public service or a post under the State of U.P. including the appointment in a University or educational institution'. U. P. State Road Transport Corporation v. Dr Dina Nath Shukla, (1997) 9 SCC 662, must be so interpreted as to advance its object and purpose. This is one of the ways in which the law and the society adapt to each other. The construction we beg to put upon the related statutory provisions will strike a reasonable balance between contending claims of privileged and under privileged classes of society.

14. In Suresh Chandra Verma (Dr.) v. Chancellor Nagpur University, (1990) 4 SCC 55, the rules of subject-wise reservation in the posts of Professors, Readers and Lecturers has been expounded. The decision has been followed in Dr. Dina NathShukla's case (supra) wherein it has been observed that the enforcement of the U.P. Reservation Act. 1994, 'hinges upon logistic interpretation and not on legalistic orientation. pragmatic and not pedantic approach so that all candidates get equality of opportunity to hold an office or post under the State' ; and further that 'the rule of reservation should be applied for recruitment in each service, post, grade or cadre as per the percentage prescribed in subsection (1) of Section 3 in compliance with sub-sections (2) to (4) and (6) to (7) ; so also the rule of rotation as per the roster adumbrated in sub-section (5) of Section 3 of the Act.' The only modification to this rule that has been made in P-G. Institute of Medical Education and Research is that the cadre must have a plurality of posts as a condition precedent to applicability of the rule of reservation. These decisions came up for consideration before this Bench in Dr. Poonam Khare v. State of U.P. and others, 2001 AWC 299. We have held : 'Nothing in these decisions preclude linking of posts in the same grade/cadre, though in different subjects, for the purpose of working out th'e quota for reserved category candidates. It must also be borne in mind that selection Is made in respect of vacancies at the State level. Subsection (3) of Section 12 of U.P. Higher Education Services Commission Act. 1980, provides for notification to the Commission 'a subject-wise consolidated list of vacancies--from all colleges.' This also suggests Integration of vacancies in a grade/cadres for the purpose of working out the number of reserved posts.'

15. In fact the words 'post-wise' and 'subject-wise' have been used in Dr. Suresh Chand Verma's case in the same sense. The core and essence of the ratio decldendt of the above case Is that notice for recruitment should not be vague and rather it must specifically state the post for reserved category. It does not rule against clubbing of posts belonging to a given cadre/ grade so as to work out thetotal number of reserved posts. 'Cadre' in the case of Dr. Poonam Khare was the cadre of 'lecturer'. In the instant case. It is the cadre of 'Principal'. The rule of reservation is applied in relation to posts in a cadre. The cadre of Principal is regarded for all practical purposes including fixation of pay and qualification etc. as a separate cadre in the teaching services. What is relevant is the number of posts in the cadre. The fact that there exists a solitary post of Principal in a college is immaterial.

16. In A.P. Scheduled Caste Welfare Association and another v. Government of A. P. and others, 1998 (5) SLR, a question intruded itself for consideration before a Division Bench of the A.P. High Court as to whether reservation on roster point by grouping of subjects for the purposes of recruitment in order to give effect to reservation would be permissible. In that case, the rule of reservation group-wise was being followed for filling up the posts of Lecturers and Readers. The relevant rule therein contained 100-point roster system by rotation and was applied to the posts of lecturers and readers though belonging to different disciplines. The A. P. High Court considered various decisions Including Dr. Chakradhar Position to veer around the view that grouping of departments and subjects for the purposes of recruitment in order to give effect to reservation worked out cannot be said to be in antagonism of the law laid down by the Apex Court.

17. So far as Bhinde Girls Education on Society's case is concerned, suffice it to say that appointment to the post of Head Mistress of High School in that case was not based upon any centralised method of selection as is the case under the provisions of U.P. Higher Education Service Commission Act. 1980. The decision in Bhinde Girls Education Society's case is based upon consideration of the 'prevailing system' of appointment as Head Mistress. Provisions like those contained in Section 3 of the U.P. Reservation Act, 1994. were not up for consideration in that case. In suchview of the matter, decision in Bhinde Girls

Education Society's case will not be very helpful in construing the provisions of U.P. Reservation Act. 1994.

18. Reference may also be made to a recent decision by a learned single Judge of this Court in Civil Misc. Writ Petition No. 31880 of 1998. Anand Narain Stngh v. U.P. Secondary Education Services Selection Board, Allahabad and others. In that case, a question arose : should there be reservation in relation to the post of heads of the institutions governed by the U.P Intermediate Education Act, 1921 and U.P. Secondary Education Services Commission Act, 1982 The learned Judge noticed the language used in Section 10 of the U.P. Secondary Education Service Commission Act, 1982 and held that though the Section 'provides reservation amongst the teachers of an institution' but 'it does not provide any reservation for heads of institutions'. 'Among the teachers also', observed the learned Judge. 'there is no reservation on total number of vacancies of all institutions'. Reliance has been placed on Rule 11 of the Rules as well which is headed as 'determination and notification of vacancies' and according to which the District Inspector of Schools is to verify the vacancies from the record and prepare the statements of vacancies 'subject-wise' in the grade of Lecturer and group-wise in respect of trained graduate grade teachers (L.T. grade teachers).

19. The conclusion arrived at by the learned Judge that no reservation is provided for the posts of heads of institutions, is based on the construction of the related provisions of U.P. Secondary Education Service Commission Act, 1982, particularly Section 10 which provides that for the purpose of making appointment of a teacher, the management shall determine the number of vacancies existing or likely to fall vacancy during the year of recruitment and 'in the case of a post other than the post of Head of the Institution', also the number ofvacancies to be reserved for the candidates belonging to the Scheduled Castes. Scheduled Tribes and Other Backward Classes of citizens in accordance with the provisions of the U.P. Public Services (Reservation for Scheduled Castes and Scheduled Tribes and Other Backward Classes) Act, 1994 and notify the vacancies to the Commission in such manner and through such officer or authority as may be prescribed. The expression 'in the case of a post other than the post of Head of the institution' occuring in Section 10 of the U.P. Secondary Education Service

Commission Act, 1982 was taken aid of by the learned Judge in deducing that the post of the head of the institution cannot be subjected to the rule of reservation. The decision is unavailing firstly, because no such expression is used in Section 12 of the U.P. Higher Education Services Commission Act. 1980. and secondly, because it proceeds on admission of the Advocate General that the post of the head of institution is a single-post cadre and reservation is provided for the post of teachers only and not for the post of the heads of the institutions. On the contrary, subsection (3) of Section 12 enjoins a duty upon the Director to notify to the Commission, in the manner prescribed a 'subject-wise' list of vacancies intimated to him 'from all colleges' The definition of the word 'teacher' includes a Principal - vide Regulation 2 (h) of the U.P. Higher Education Services Commission [Procedure for Selection of Teachers) Regulations, 1983. The language used in Section 12 of the U.P. Higher Education Service Commission Act. 1980 and the U.P. Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983, is different from the one used in Section 10 of the U.P. Secondary Education Services Commission Act, 1982. Thirdly, we are of the view that the U.P. Reservation Act. 1994 being a special law on reservation and also being a latter enactment will prevail over the general law and earlier enactment, namely. the U.P. Secondary Education ServicesCommission Act, 1982 and to the extent of inconsistency on the point of reservation, the former would be deemed to have been repealed. Thus, the expression 'in the case of a post other than the post of Head of the Institution' occurring in Section 10 of the U.P. Secondary Education Service Commission Act. 1982. shall be deemed to have been impliedly repealed by U.P. Reservation Act, 1994, which provides for reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward Classes in 'public services and posts'. The rule of statutory construction well-settled is that in case of contradictions between two sections of an Act, the latter is preferred, the provision, which stands last in the enactment 'speaks the last intention of the makers' Lord Tenderden C.J. In Rex. v. Justices quoted in King v. Dominion Engineering Company Limited. The same principle will apply while construing and resolving the conflict between U.P. Act 5 of 1982, and U.P. Act 4 of 1994. On the question of reservation, the U.P. Reservation Act, 1994, is the leading provision whereas the U.P. Secondary Education Service Commission

Act, 1982. has been enacted not for providing reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes but to establish Secondary Education Service Commission for the selection of teachers in institutions recognised under the U.P. Intermediate Education Act, 1921 and from this reckoning also the expression 'in the case of a post other than the post of Head of the Institution' occurring in Section 10 of the Act shall have to be ignored being contrary to the last intention of the Legislature as expressed in the U.P. Reservation Act, 1994, which provides for reservation in favour of Scheduled Castes. Scheduled Tribes and Other Backward Classes in all 'public services and posts' We, therefore respectfully have to dissent from the view taken by the learned Judge in Anand Narain Singh v. U.P. Secondary Education Services Selection Board, Allahabad and others decided on 14.2.2001.

20. It has been then contended for the petitioners that even if the U.P. Reservation Act, 1994. is held applicable to the post of Principal, there exists no rule to determine as to which institution is to be treated reserved. The argument Is that neither (he U.P. Reservation Act. 1994. nor the U.P, Higher Education Services Commission Act, 1980. lay down any criterion in this regard. It is true that the advertisement bespeaks of total number of posts reserved without specific reference as to ar.y institution but that by itself will not exclude the applicability of the U.P. Reservation Act, 1994, nor will it invalidate the process of selection. The rule of reservation is applied to the cadre of Principals and not to the Individual colleges. Concededly there exists a 100 point roster and the Director in making placement of different categories of candidates is guided by the roster notified under Section 3 (5) of the U.P. Reservation Act. 1994. Separate select list of candidates belonging to each category-General. Scheduled Castes, Scheduled Tribes and Other Backward Classes is prepared and on receipt of these four separate lists, the Director after applying the roster as notified under Section 3 (5) of the U.P. Reservation Act, 1994. prepares a combined select list wherein the first point is given to the Scheduled Caste candidate securing highest merit among the Scheduled Caste candidates and so on. Options given by individual candidates are taken Into account having due regard to their merits. The process of selection would not be vitiated merely because there is no indication in the advertisement as to which college will go to the reserved candidate.

21. Before parting with the issue regarding applicability of the U.P. Reservation Act No. 4 of 1994 in respect of posts of Principals, it may be observed that on an earlier occasion, the question was remitted to a Division Bench of this Court for consideration by the State Government. The judgment in this regard was passed by the Division Bench in Civil Misc. Writ Petition No. 17274 of 2000. Dr. Satya PrakashSingh Chauhan v. State of U.P. and others connected with Civil Misc. Writ Petition No. 17892 of 1097, Dr. Laiji Pandey v. U.P. Higher Education Services Commission, Allahabad and others and Civil Misc Writ Petition No. 17448 of 2000, Dr. Govind Singh v. Director of Education (Higher Education) U.P. Allahabad and others. The State Government delved into the matter pursuant to the directions given by this Court vide judgment and order dated 11.4.2000 and held vide its order dated June 8.2000 that the U.P. Reservation Act 4 of 1994 would apply in relation to the post of Principals as well. The legality of the order passed by the State Government is sought to be quashed in Writ Petition No. 27373 of 2000. For the reasons aforestated, we find no infirmity or illegality permeating the view taken by the State Government in its order dated June 8,2000 that the U.P. Reservation Act 4 of 1994 would apply in relation to the post of Principals as well.

In Re ', Methodology of Screening :

22. For the petitioners it has been submitted that the methodology adopted by the U.P Higher Education Service Commission for screening out candidates suffers from the taint of arbitrariness. The submission, in our opinion, has no merits. Sub-section (4) of Section 12 of the U.P. Higher Education Service Commission Act, 1980, provides that the manner of selection to the posts of teachers of a college shall be such, as may be determined by Regulations. Regulation 6 of the U.P. Higher Education (Procedure for Selection of Teachers) Regulations, 1983, which lay down the procedure for selection, reads thus :

'(6) Procedure for selection-Commission shall scrutinise the applications and call for interview such number of candidates to be called for Interview, It may -

Provided that, if on account of excess number of applications or for any other reasons, the Commission considers it desirable to limit the number of candidates to be called for interview, it may ;

(i) in the case of the post of a teacher, not being the post of Principal either hold preliminary screening on the basis of academic record or hold a competitive examination, so however that no competitive examination shall be held before the recruitment year 1984.

(ii) in the case of the post of the Principal, hold preliminary screening on the basis of academic record, teaching and the administrative experience :

Provided further that the number of candidates to be called for interview for any category of post shall, as far as possible, be between three to eight times the vacancies as the Commission may consider proper.

(2) The Commission shall interview the candidates in accordance with the criteria, minimum standards and guidelines set out by it. The Commission may, if it considers necessary, hold practical test also as part of interview.

(3) No candidate shall be recommended unless at least one expert concurs with the selection.

(4) The Commission shall prepare two separate lists of selected candidates, one of the women candidates only and the other a 'general list' of all the candidates including women candidates included in the first list. The names of women candidates who specifically opt not to be posted in women's colleges shall not be included in the list of women candidates. The names of the candidates in the two lists shall be arranged in order of merit and the number of names shall not be more than three times the number of vacancies or the number of vacancies plus four whichever is more.'

23. The Commission too have framed guidelines for selection and these guidelines have been upheld by this Court in C.P. Pandey v. U.P. Higher Education Service Commission and others. 1988 AWC 863. The Commission in its 464th meeting held on 20.8.1998 have framed certain guidelines tn exercise of powers under Regulation 6 of the Regulations aforesaid also for screening out candidates. A copy of the Minutes of Meeting held on 20.8.1998 has been annexed as Annexure-4 to the Writ Petition No- 15510 of 1999. Onkar Dutt Sharma and other

v. State of U.P. and others. A perusal of the criteria laid down by the Commission for screening out the candidates would show that separate maximum marks are prescribed on the count of experience, academic record, and administrative experience for the post of Principal in Degree Colleges and those in the Post Graduate Colleges. The validity of these norms have been upheld in Civil Misc. Writ Petition No. 52271 of 2000, Dr. Shushma Chauhan v, U.P. Higher Education Service Commission and others decided on 6.12.2000. In our opinion, therefore. the methodology adopted by the Commission for selection and/or screening out candidates does not suffer from any taint of arbitrariness.

24. In Writ Petition Nos. 15510 of 1999, 13259 of 1999, 22830 of 1999, 13405 of 1998, 4152 of 1999, 9507 of 1999, 15858 of 1999, 4008 of 1999, 19804 of 1999, 27207 of 1999, 23692 of 1999 and 16073 of 1999 the petitioner or petitioners, as the case may be, therein were short listed on one or the other ground. We find no ground made for interference with the decision of the Commission in short listing such candidates.

25. In view of the above discussion, we find no merits in any of the writ petitions. Writ petitions, accordingly, fail and are dismissed with costs on parties. Interim orders, if there be any, stand discharged.

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