

**Prashant Kumar Vs. State of U.P. and anr.**

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**Court :** Allahabad

**Decided On :** Jul-19-2005

**Reported in :** 2005(3)AWC2738; 2005(4)ESC2395; [2006(2)JCR31(All)]

**Judge :** Yatindra Singh, ;Sunil Ambwani and ;D.P. Singh, JJ.

**Acts :** Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994 - Sections 13, 15 and 15(1); Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) (Amendment) Act, 2001 - Sections 6; Uttar Pradesh Urban Building (Regulation of Letting Rent and Eviction) Act, 1972 - Sections 2, 9.3(4), 20(2), 39, 40, 57 and 57(5); Public Services Commission Business Rules - Rule 37; Uttar Pradesh Recruitment of Dependent of Government Servant Dying-in-Harness Rules, 1974; Service Rules

**Appeal No. :** C.M.W.P. Nos. 20476, 34731 of 2001 and 15116 of 2002

**Appellant :** Prashant Kumar

**Respondent :** State of U.P. and anr.

**Advocate for Def. :** D.K.S. Rathor, ;M.A. Qadeer, ;Kamlesh Shukla, ;B.N. Singh, ;S.P. Kesharwani, ;D.P. Singh, ;Pushpendra Singh and ;Sudhir Agarwal, A.G.A., S.C.

**Advocate for Pet/Ap. :** V.K. Shukla, ;Prakash Podia, ;R.P. Singh and ;B.R. Misra, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Sunil Ambwani, J.**

1. On a reference dated 20.3.2002, made by the Division Bench in Writ Petition No. 20476 of 2001, Prashant Kumar v. State of U. P. and Ors., we have framed the following question to be decided in the matter :

'At what stage the caste of a candidate should be entered in the Schedule-I of the U.P. Public Services (Reservation for Scheduled Caste, Scheduled Tribes and Other Backward Classes) Act, 1994 for him to get benefit as an O.B.C. candidate ; should it be before the notification/advertisement of the selections, or the written test, or the oral test (in case of oral test only), or the declaration of the result?'

2. All the petitioners and private respondents appeared in the Combined State Subordinate Civil Service Examination, 2000, held by U.P. Public Service Commission. The Advertisement No. A-1/E-1/2000 inviting applications for selections was published by the Commission on 7.1.2000. The last date of submission of the forms was 28.1.2000. It was extended to 8.2.2000. The preliminary written examination was taken on 28.5.2000. The main written examination was taken on 11.10.2000 and 17.10.2000. The interviews were held on 21.4.2001, and the final result was declared on 16.5.2001.

3. In Writ Petition No. 6250 (M/B) of 2000, Pramod Kumar and Anr. v. State of U.P. and Ors., the petitioners had claimed the benefit of the reservation as they belong to 'Jaat' community which was notified on 10.3.2000 as 'Other Backward Class' (In short O.B.C.) vide Notification amending the Schedule-I appended to the U.P. Public Services (Reservation for Scheduled Caste/Scheduled Tribes and Other Backward Class) Act, 1994 (in short U. P. Act No. 4 of 1994). A Division Bench by its judgment dated 26.3.2001, dismissed the petition on the ground that the petitioners had appeared as general candidates. The recruitment process had started, when the notification amending the Schedule-I was published. The petitioners had participated in the selection as general candidate. Their status

could not be altered during the process of selections, and that the process cannot be bifurcated by the Court.

4. In Writ Petition No. 23193 of 2000, Km. Amrita Singh and Anr. v. State of U. P. and Ors., the same benefit of reservation as 'Jaat' as Other Backward Class vide Notification dated 10.3.2001, was claimed in the same examination. The Bench hearing the matter at Allahabad relied upon the provisions of Section 15 of U.P. Act No. 4 of 1994, and held that the process for selection shall be deemed to be initiated when the written test was taken. The preliminary written test was held on 28.5.2000, hence the petitioners were entitled to the benefit of reservation of 'Other Backward Class'. It was observed that if there are O.B.C. candidates, who are more meritorious than the petitioner, then obviously the petitioners can be appointed only if such more meritorious candidates are absorbed and there are still some vacancies left in the reserved category of O.B.C.

5. In the cases at hand the petitioner in Civil Misc. Writ Petition No. 20476 of 2001, Prashant Kumar v. State of U. P. and Ors., claims the benefit of the judgment in Km. Amrita Singh's case. The same Bench which had decided the Writ Petition No. 23193 of 2000, Km. Amrita Singh and Ors. v. State of U. P. and Ors. on 7.5.2001, found that the judgment in Pramod Kumar Singh's case by which the benefit of reservation to 'Jaat' community, was denied to the petitioners in the same selections, was not noticed by them, and that since there is a conflict between the two Division Benches, the matter should be decided by a larger Bench. By the referring order dated 20.3.2002, the Division Bench directed that in the meantime one post of Sub-Divisional Magistrate shall be kept vacant.

6. Before proceeding to deal with the question it would be appropriate to give in brief the facts of all the three writ petitions. In Writ Petition No. 20476 of 2001, the petitioner Prashant Kumar filled up his form for the Combined Civil Service Examination (Provincial), 2000 as a general candidate. He was declared successful in preliminary written examination, main written examination and was called for interview. He belongs to 'Jaat' community. By a notification dated 10.3.2000, issued under Section 13 of the U.P. Act No. 4 of 1994 the 'Jaat' community was included in Schedule-I in 'Other Backward Class' category vide

entry No. 78. The petitioner made a request on 8.8.2000 at the time of filling his main examination form, to be treated in the Other Backward Classes category. He secured 1092 marks. He was not given the benefit of reservation, and treating him in general category, he was given placement as a Trade Tax Officer. He has prayed for a direction to be treated as Other Backward Class category candidate in the examination and to be placed as per the merit of Other Backward Class candidates. In the counter-affidavit of Sri Subhash Chandra, Officer on Special Duty, Department of U. P., Lucknow and Sri Radhey Lal, Section Officer, U. P. Public Service Commission the petitioner's claim has been denied. In paragraph 5 of the counter-affidavit of Sri Radhey Lal, it is stated that the last date of receipt of application form was 8.2.2000 and that since a notification including 'Jaat' community as 'O.B.C.' was published on 10.3.2000, the petitioner is not entitled to the benefit of reservation. He has relied upon the judgment in Pramod Kumar Singh's case decided on 26.3.2001. Km. Smrita Singh belonging to Other Backward Class category with 1,096 marks and placed at Sl. No. 6 in the merit list has sought impleadment in this writ petition. It is contended by her that there were five vacancies for the post of Sub-Divisional Magistrate in general category and one vacancy in O.B.C. category. She is the first in order of merit in O.B.C. category after five general category candidates and was sent for medical examination. The Writ Petition No. 1352 (S/B) of 2002 filed by her at Lucknow Bench of this Court, her entitlement to be sent for medical examination and training was accepted. She was, however, not sent for training because of the interim orders passed in the referring order. She claims that even if the writ petition filed by Sri Pramod Kumar succeeds, he cannot be given placement as Sub-Divisional Magistrate as, she has secured higher marks than him.

7. In Writ Petition No. 34731 of 2001, the petitioner Sri Sujeet Kumar Jaiswal had applied as a general category candidate. The 'kalwar' caste was included in Schedule-I of U.P. Act No. 4 of 1994 vide notification dated 7.7.2000 as Other Backward Class vide insertion of entry No. 79. A certificate that he belongs to kalwar community was issued by Tahsildar, Ghoshi on 11.8.2000. The preliminary examination was conducted on 28.5.2000. He was declared successful, in both the preliminary and main written examination and was called for interview. He was not treated as belonging to O.B.C. category and was not selected as the 'kalwar'

caste was notified after the last date of submission of application forms for the examination. He has prayed for a direction to consider him in O.B.C. category candidate and to give him placement as such. In the counter-affidavit of Sri Radhey Lal, Section Officer, U.P. Public Service Commission, his claim is disputed, on the ground that the petitioner appeared as general category candidate. The last date of filling up the application form for the examination was 8.2.2000. The notification including 'kalwar' caste as Other Backward Class was published on 7.7.2002 and did not have retrospective effect.

8. In Writ Petition No. 15116 of 2002, the petitioner Suraj Pal had appeared in the examination as general category candidate. He also claims to be belonging to 'jaat' community which was notified as Other Backward Class category vide amendment of Schedule-I and addition of entry No. 78 by Notification dated 10.3.2000. He has also claimed the benefit of O.B.C. category candidate in the examination and consequent placement in the select list and has relied upon Km. Amrita Singh's case. No counter-affidavit has been filed by the respondents in this writ petition.

9. Sri Prakash Padia learned counsel for Sri Prashant Kumar in Writ Petition No. 20476 of 2001 submits that the advertisement was published on 7.1.2000. The notification including 'jaat' as O.B.C. in Schedule-I of the U.P. Act No. 4 of 1994 was issued on 10.3.2000. The petitioner made a request to the Commission on 8.8.2000 to treat him in the O.B.C. category. Similar benefit was given to one Sri Gyanendra Prakash in Writ Petition No. 4707 of 2000 decided on 7.5.2001. The result was published on 16.5.2001. On the same day the petitioner made a representation on 16.5.2001, to treat him as a candidate belonging to O.B.C. The petitioner was recommended for the post of Trade Tax Officer. By an order dated 20.3.2002 passed in this writ petition noticing the conflict between the Division Benches of this Court and referring the matter to Full Bench, an interim order was passed for keeping one post of Sub-Divisional Magistrate to be vacant.

10. Sri Padia submits that the U. P. Act No. 4 of 1994 defines the recruitment in paragraph 2 (d). It applies in relation to a vacancy for a period of twelve months commencing from the 1st day of July of the year when the process of direct

recruitment against the vacancies is initiated. In the present case since the advertisement was issued on 7.1.2000 and the last date of filing the form was 8.2.2000, the notification including 'jaat' in O.B.C. category, dated 10.3.2000, is applicable to the recruitment. The benefit of this notification is to apply to the vacancies between 1.7.1999 upto 30.6.2000. He has also relied upon Section 15 of the U.P. Act No. 4 of 1994 which provides as follows :

'15. Savings. -- (1) The provisions of this Act shall not apply to cases in which selection process has been initiated before the commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and Government orders as they stood before such commencement.

Explanation. -- For the purposes of this sub-section the selection process shall be deemed to have been initiated where, under the relevant service rules, recruitment is to be made on the basis of -

(i) Written test or interview only, the written test or the interview, as the case may be, has started, or

(ii) Both written test and interview, the written test has started.

(2) The provisions of this Act shall not apply to the appointment, to be made under the Uttar Pradesh Recruitment of Dependent of Government Servant Dying-in-Harness Rules, 1974.'

11. Sri Padia further submits that U.P. Act No. 4 of 1994 was amended by U. P. Public Services (Reservation for Scheduled Caste/Scheduled Tribes and Other Backward Classes) (Amendment) Act, 2001 (U. P. Act No. 21 of 2001) Section 6 of this Amendment Act provides as follows :

'6. Special Provision for pending recruitments. -- The provisions of the principal Act as amended by this Act, shall also apply in respect of such recruitments to public services and posts as are pending on the date of the commencement of this Act.

Explanation. -- For the purposes of this section,--

(a) recruitment shall be deemed to be pending if in pursuance of that recruitment no appointment has been made before such commencement ;

(b) the expression 'public services and posts' shall have the meaning assigned to it in the principal Act.'

12. It is submitted that by yet another amendment vide U. P. Act No. 1 of 2002, the U.P. Act No. 4 of 1994 was again amended but the provisions of Section 6 were left intact, and accordingly, the recruitment which was pending on the date of commencement of U. P. Act No. 21 of 2001, will apply to the recruitment. He has relied upon the judgments of this Court in Writ Petition No. 23193 of 2000 decided on 7.5.2001, *Km. Amrita Singh and Ors. v. State of U. P. and Ors. and Vice Chancellor University of Allahabad and Ors. v. Dr. Anand Prakash Misra and Ors.* (para 12) holding that Legislature is competent to make laws with retrospective effect. The Reservation Act applies to the existing vacancies on the date when the Act came into force. The process of selection was not started on that date. There is no vested right to any vacancy in a post. A person has a right only to be considered according to Rules in force as on the date of consideration. The process of selection, if it has started prior to that date, is required to be dealt with in accordance with the existing law. The selection process initiated after commencement of the Act has to be in conformity with the provisions of the Act. The vacancies which existed as on that date shall be required to be filled up, applying Sub-section (1) of Section 15 of the U.P. Act No. 4 of 1994.

13. Sri Padia has relied upon *Ashok Kumar Sharma and Anr. v. Chandra Shekhar and Anr.*, 1993 Supp (2) SCC 611, in which the Supreme Court was faced with the question about the eligibility of the candidates for B.E. Examination. The result was declared on 21.8.1982, and the interviews were taken on 24.8.1982, and on the subsequent dates. It was held that where the appellant was qualified for being selected prior to the date of interview he could not be held ineligible. Reliance is placed upon Rule 37 of Public Services Commission Business Rules, which are quoted as below :

'37. Applications of candidates, who have appeared in the examination, the passing of which may make them eligible to appear in an interview for recruitment

to a post to be made otherwise than by a competitive examination, but results whereof have not been declared upto the date of making of the application, may be entertained provisionally, but no such candidate shall be permitted to take the interview, if he is declared as having failed in the examination, or if the results are not available on the date the viva voce test is held.'

14. Sri D.K.S. Rathor, learned counsel for Km. Smrita Singh, impleaded as respondent No. 3, submits that the claim of Sri Prashant Kumar for benefit of reservation in O.B.C. category, after completion of selection process is not legally sustainable. The amendment to the Schedule 1 of the U.P. Act No. 4 of 1994, is not retrospective in nature. The amended rule cannot affect the existing rights of the candidates who have been considered for selection. It does not affect substantive and vested rights of the parties, unless the amendment is made retrospective expressly or by necessary implication. Section 15 of U.P. Act No. 4 of 1994 provides that the selection process shall be deemed to have been initiated where the written test or interview has started or both the written test and interviews have started.

15. Sri Rathor has relied upon the judgment in the A.V. Rangaiah v. J. Shreeniwasa Rao and Ors., : (1983)ILLJ23SC ; Shyam Sunder and Ors. v. Ram Kumar and Ors.. (Constitution Bench), : AIR 2001 SC2472 ; A.A. Calton v. Director of Education and Anr., : (1983)ILLJ502SC ; P. Mahendra v. State of Kerala and Ors., : AIR 1990 SC405 , and submits that the petitioner Pramod Kumar had secured 1,092 marks. Km. Smrita Singh was placed at Sl. No. 6 immediately after general category candidates, and was first position in O.B.C. category with 1,096 marks, and thus even if the writ petition filed by Pramod Kumar succeeds, he cannot secure the only Other Backward Class Category vacancy of Sub Divisional Magistrate. The writ petition, according to Sri Rathor, is liable to be dismissed on this ground alone.

16. Sri M. A. Qadeer, learned counsel, appearing for U. P. Public Service Commission submits that only those candidates are entitled to be considered in O.B.C. category who were recognized as O.B.C. on the last date of submission of application form, and had applied in that category. In this examination the last date



for receipt of application form was 8.2.2000. Since the petitioner's caste was notified to be included as O.B.C. on 10.3.2000 (Jaat) and 7.7.2000 (kalwar/kalar), and that the preliminary written examination was held on 28.5.2000, they cannot be given the benefit and place in the select list as O.B.C. candidates. Sri Qadeer submits that the provisions of Section 15 (1) of the Act, have one time application. These cannot be extended to the selection which was not pending on the date of commencement of U.P. Act No. 4 of 1994. He has relied upon the judgment of Supreme Court in Suresh Chandra v. Gulam Chisti, 1991 (1) ARC (SC) 415, in which while interpreting the provisions of Section 39 of U. P. Urban Building (Regulation of Letting Rent and Eviction) Act, 1972, the Supreme Court held that the benefit of Sections 39, 40 and 2 (ii) of the Act, by which, the tenants in suits pending on that date of the commencement of the Act, in respect of the building to which the old Act did not apply could claim the protection of the Act by depositing the rent and other amounts within thirty days, were of one time application.

17. Sri Qadeer further submits that the eligibility or qualification of the candidates has to be reckoned on the last date of submission of application form. He has relied upon the judgment in State of U. P. v. Vijay Kumar Misra, : AIR 2003 SC4411 . Sri Qadeer further submits that the advertisement clearly provided that 'reservation shall be provided in accordance with the provisions of the then relevant Government orders to Scheduled Caste/Scheduled Tribes/Other Backward Classes'. Under the heading of 'Important Instructions' in the advertisement, it was also provided that no change in the category, optional subject or of Centre (District) is permissible after receipt of application form in the office of Commission.

18. Sri Sudhir Agarwal, learned Additional Advocate General, appearing for the State, has relied upon Section 9.3 (4) of the advertisement in which it was specifically provided that the benefit of reservation shall be applicable in accordance with the existing Government orders and if any candidate wants the benefit of reserved category, he must mention such category in the application form. He submits that there is nothing in U.P. Act No. 4 of 1994 to suggest that where the schedule is amended during the continuance of the process of direct recruitment, such amended schedule will apply to the selection. In the absence of

any specific provisions in the Act, the directions in the advertisement have to be considered. The petitioner was not a candidate belonging to O.B.C. Category on the date of submission of application form and hence he cannot be allowed to take the advantage for recruitment in service on the basis of subsequent amendment to the Rules. Relying upon the judgment in A. V. Rangaiah (supra), A. A. Calton (supra), P. Mahendra (supra) and P. Gyaneshwar Rao and Anr. v. State of Andhra Pradesh, : AIR 1988 SC2068 , N.T. Devin Kutti v. Kerala Public Service Commission, : (1990)ILLJ456SC , P. Murugen v. State of Tamil Nadu, 1993 (2) JT 115 (para 7), Ramesh Kumar Chaudhary v. State of Madhya Pradesh, : (1996)11SCC242 and a Full Bench of this Court in Writ Petition No. 55266 of 2003 ; Sarika v. State of U.P., decided on 24.2.2005, he submits that the advertised vacancies are required to be filled up as per rules existing on the last date of submission of application form, unless the Rules have been specifically given retrospective effect.

19. Sri Agarwal further submits that Section 15 of U. P. Act No. 4 of 1994 has no application whatsoever to any selections initiated after the commencement of the Act. The Explanation to Section 15 shows that the same is applicable only with respect to a situation given in Sub-section (1) of Section 15 and not to any selection in future and for all time to come. The judgment dated 7.5.2001 in Amrita Singh's case does not lay down correct law. He submits that the candidates who had applied for the selection are liable to be treated for the same category to which they belong as per their application form submitted till the last date of submission of such forms and any subsequent change will not entitle them to claim any benefit on the ground of change of category or status due to amendment in the relevant rules.

20. In A. C. Caltan v. Director of Education, : (1983)ILLJ502SC ; A.V. Rangaiah v. J. Shreenivasa Rao, AIR 1983 SC 853 ; N.T. Bevin Kutti v. Kerala Public Service Commission, : (1990)ILLJ456SC ; P. Gyaneshwar Rao v. State of Andhra Pradesh, 1988 Supp SCC 740 and P. Mahendran v. State of Karnataka, : AIR 1990 SC405 , the Supreme Court has reiterated the well accepted principles of applicability of statutory Rules to the selections as follows :

'It is a well accepted principle of construction that a statutory rule or Government order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government orders and any amendment of the rules or the Government order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections. See P. Mahendra v. State of Karnataka, : AIR 1990 SC405 '.

21. In State of U. P. v. Vijay Kumar Misra, : AIR 2003 SC4411 , the Supreme Court held in paragraph 7 as follows :

'7. The position is fairly well-settled that when a set of eligibility qualifications are prescribed under the rules and an applicant who does not possess the prescribed qualification for the post at the time of submission of application or by the cut off date, if any, described under the rules or stated in the advertisement is not eligible to be considered for such post.'

22. In Mohan Kumar Lal v. Vinoba Bhave University and Ors., : (2002)10SCC704 , the appointment to the posts was advertised on 10.1.1990, and the last date of submission of application was 30.1.1990. The High Court was of the view that since the appointments were not factually made, the reservation policy introduced on

22.8.1993 could not apply. The Supreme Court held that the High Court erred in applying the reservation as the provisions of Section 57 which governed the fields did not contain any class for reservation and Sub-section (5) of Section 57 provide for reservation was introduced only on 22.8.1993.

23. In Shanker Kumar Mandal v. State of Bihar, : [2003]3SCR796 , the Supreme Court was faced with the recruitment of 2000 Primary Teachers in Bihar. The High Court had not considered as to what were the applicable rules so far their eligibility

was concerned. There was a concession made before the High Court that the appointees were over age on the date of initial appointment. There was no definite material as to what was the eligibility criteria so far as the age is concerned. The Supreme Court relying upon the judgment in Ashok Kumar Sharma v. Chander Shekhar, : (1997)ILLJ 1160 SC ; Bhupenderpal Singh v. State of Punjab, : (2000)5SCC262 and Jasbir Rani v. State of Punjab, : AIR 2002 SC60 , culled out the principles of the applicability of the cut off date for the prescribed qualification relating to age by a candidate for appointment as follows :

'(1) The cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules.

(2) If there is no cut-off date appointed by the rules then such date shall be as appointed for the purpose in the advertisement calling for application.

(3) If there is no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received by the competent authority.'

24. With these settled principles in hand, we find that in the present case the relevant service rules as well as U. P. Act 4 of 1994, do not provide for any cut off date for application of rules of reservation. In such cases the cut off date given in the advertisement becomes relevant. Here, the advertisement clearly stipulates in para 3 as well as 'Important Instructions' contained in the advertisement, that the reservation for Scheduled Caste/Scheduled Tribes/Other Backward Classes, Physically Handicapped, Dependents of Freedom Fighters, Ex-service-man and Woman Candidates shall be given as per existing Government orders for such reservation, and in Clause 9 (4), it was clearly stated that if a candidate belongs to reserved category, wants the benefit of such reservation, he should clearly state his category/sub-category (one for more than one as the case may be) in the reservation column. The 'Important Instruction' also clearly stated that no change in category, optional subject or of Centre (District) is permissible after receipt of application form in the office of Commission.

25. Clause (3) of the prescribed form in the main examination provided that the certificates in respect of the reserved category/sub-category for which the application was made at the time of preliminary examination should be submitted in accordance with the prescribed proforma in the advertisement A-1/E-1/2000 published on 1.1.2000 failing which the application form shall be rejected by the Commission. The advertisement, as such, clearly provided that the reservation shall be applicable in accordance with the existing Government orders. Since the category for reservation had to be mentioned in the application form, and para 3 of the advertisement mentioned 'existing Government orders', the existing reservations were applicable upto the last date of filling up of application forms. We thus find that the prescribed date for applicability of reservation in the subject selection was the last date of filling up the application form, i.e., 8.2.2003, which was the extended date.

26. The reservation to any category under U. P. Act No. 4 of 1994 also provides some additional benefits namely relaxation in age. If the benefit of notification including any community in Schedule 1 of the Act, is to be given after the date of filling up of application forms, all those persons who could have applied taking the benefit of the relaxation in age, will be deprived of this benefit. In case the submission made by the petitioners are to be accepted and the reservation is made applicable to the candidates of those community who are included in Schedule 1 of the Act after the last date of filling up of the application form, the persons who could also apply will be discriminated.

27. This brings up to the applicability of Section 15 of U. P. Act No. 4 of 1994 and Section 6 of the U. P. Act No. 21 of 2001 amended U. P. Act No. 4 of 1994. The savings clause in Section 15 is applicable to selection process which was initiated before the commencement of the Act. The Explanation to Section 15 cannot stand on its own. It explains the expression, 'initiated before the commencement of this Act', and Sub-section (1) of Section 15. It has no application to the pending Selections which may be initiated after the commencement of the Act. The U. P. Act No. 4 of 1994 came into force on 22.3.1994, when it received the assent of the Governor. The object and the purpose of the saving clause in Section 15 was to apply the provisions of reservation to selection process which were initiated before

the commencement of the Act, and such cases were to be dealt with in accordance with the provisions of the Act and Government orders as they stood before such commencement. It only means that the reservations were to be applied to pending selections for direct recruitment on 22.3.1994. Similarly Section 6 of the U. P. Act No. 21 of 2001 makes the provisions of the Principal Act as amended by the Act No. 21 of 2001 to apply to such recruitment to Public Service and posts and were pending on the date of commencement of the Act. The Explanation in this case is not the same as in Section 15 (1) of the parent Act and provides for a deeming clause for the pendency of the recruitment namely that the recruitment shall be deemed to be pending if in pursuance of that recruitment no appointment has been made before such commencement (commencement of the U. P. Act No. 21 of 2001, October 5, 2001). Section 6 of the U. P. Act No. 21 of 2001 as such is a special provision for pending recruitment, and by deeming clause it makes the amended provisions of the Act applicable, where no appointment have been made before commencement of the amended Act. This Section 6 was not amended by the U. P Act No. 1 of 2002, which subsequently amended U. P. Act No. 4 of 1994.

28. Section 39 of U. P. Urban Buildings (Regulation of Letting Rent and Eviction Act), 1972, provided for the applicability of the Act to such cases in respect of which suit of eviction was pending on the date of commencement of the Act. It gave protection from eviction, if the tenant deposited the entire amount of, rent and damages for use and occupation together with interest at 9% and full cost of suit within one month from the date of such commencement, and in that case no decree for eviction could be passed except on the ground other than the ground mentioned in proviso to Sub-section (1) or in Clauses (b) to (g) of Sub-section (2) of Section 20 of the Act. The Supreme Court held that the provisions of Section 39 will be applicable only where the suit is pending on the commencement of the Act and will not apply to those suits which are filed after such commencement. Ordinarily the rule of construction is that the same expression when it appears more than once in the same statute more-so, the same provision, must receive the same meaning unless the context suggests otherwise. The use of prefix 'before the commencement' will become redundant if the benefit is to be extended beyond one month or till the date the suits are filed, subsequent to that date. We are thus

of the opinion that the provisions of Section 15 of U. P. Act No. 4 of 1994 were applicable only to those selections for direct recruitment which were initiated before the commencement of the Act No. 4 of 1994. We are further fortified in this view by the use of words 'this Act' in Section 15 (1) after the words 'commencement of, and thereafter again the use of the words as 'provision of law and Government orders as they stood before such commencement'. Further we find that the Explanation is confined only to the Sub-section (1) of Section 15 of the Act.

29. We thus find that the judgment in Km. Amrita Singh relying only upon the provisions of Section 15 (1) of U. P. Act No. 4 of 1994, for giving benefits of the reservations to 'jaat' community, which was declared as O.B.C. and added to the Schedule-1 of the Act by notification dated 10.3.2000, was incorrectly decided, and that the judgment in Pramod Kumar Singh's case is correct but not on the reasons given in the judgment. For the same reasons the benefit of inclusion of the 'kalwar/kalar' caste in the Schedule-1 as Other Backward Class by notification dated 7.7.2000 also will not give benefit to such candidates as this notification was also published, after the last date of filling up of the application form for the selections.

30. We consequently answer the question as follows :

'The benefit of reservation to 'Other Backward Class' candidates in selection in Public Services by direct recruitment as provided by U. P. Public Service (Reservation for Scheduled Caste/Scheduled Tribes and Other Backward Class) Act, 1994, is applicable, to only those categories or castes which are notified as Other Backward Classes entered in Schedule-1 of the Act, upto the last date of filling up of the application form for such selections, provided there is no contrary provision in the Service Rules, the terms and conditions of recruitment, or in the advertisement.'

31. It is admitted to the parties that the merit position of Km. Smrita Singh with 1,096 marks was higher than the merit position of Prashant Kumar with 1,092 marks for the only vacancy on the post of Sub-Divisional Magistrate reserved for 'O.B.C.' in the selections and as such Km. Smrita Singh is entitled for appointment.

32. We consequently, dismiss all the petitions, with no order as to costs. The interim orders are discharged.

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