

AFR
Reserved

Case :- SERVICE SINGLE No. - 3597 of 2020

Petitioner :- Mohit Kumar son of Sri Ranvir Singh and others

Respondent :- State Of U.P. Through Prin. Secy. Karmik Anubhag-2, Lko& Ors

Counsel for Petitioner :- Badrish Kumar Tripathi

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,Jogendra Nath Verma

AND

Case :- SERVICE SINGLE No. - 11886 of 2020

Petitioner :- Mohit Kumar son of Sri Rajaram Singh

Respondent :- State Of Up Thru Prin. Secy. Karmik Anubhag-2 Lko And Ors.

Counsel for Petitioner :- Badrish Kumar Tripathi

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,Jogendra Nath Verma

Hon'ble Chandra Dhari Singh,J.

1. Petitioners of both the writ petitions have approached this Court challenging the order dated 15.01.2020 by which the Commissioner, Sugarcane and Sugar, Lucknow (opposite party no.3) has clarified that the candidates who possess equivalent qualification to 'CCC' Certificate issued by DOEACC Society are not entitled to participate in the interview held for the post of Cane Supervisor in pursuance to the advertisement No.20-Examination/2016.
2. Vide order dated 12.02.2020 passed in Writ Petition No.3597 (SS) of 2020, the Co-ordinate Bench of this Court had directed that if the final result is declared during pendency of the writ petition, the same shall be subject to final outcome of this writ petition.

3. Submission of learned Counsel for the petitioners is that an advertisement was issued on 05.10.2016 by U.P. Subordinate Service Selection Commission inviting online applications for various posts including the post of Cane Supervisor. The essential qualification for the post of Cane Supervisor is graduation in Agricultural Science or any equivalent qualification along with 'CCC' Certificate issued by DOEACC Society.
4. Learned Counsel for the petitioner has further submitted that earlier the State Government vide order dated 3/6.05.2016 and order dated 23.09.2016 had issued clarification with regard to the recognition of equivalent qualifications with 'CCC' Certificate for appointment on the post of Junior Assistant and the Stenographer and thereafter vide order dated 05.07.2018, it was clarified that the persons who possess Diploma in Computer, Degree in Computer, PGDCA, BCA, MCA and Graduation with B.A., B.Sc, B.Tech. , M.Sc., M.B.A., wherein Computer is one of the subjects or where computer is a course in one semester of the courses shall be deemed to be equivalent qualification to 'CCC' Certificate and shall be eligible for selection on the post of Junior Assistant, Stenographer and all other posts of public service of State Government.
5. Learned Counsel for the petitioners has further submitted that the petitioner no.1, 6, 8 and 9 have possessed the qualification of B.Sc. Agricultural Science with Computer subject in VIIIth Semester, petitioners no.2 has possessed the qualification of B.Tech. Agricultural Science with Computer subject in Ist and Vth Semesters, petitioners no.3 and 4 have possessed the qualification of B.Sc. Agricultural Science with Computer subject in VIIIth and VIIth semesters. The petitioner no.5 has possessed the qualification of B.Tech. Agricultural Science with

Computer Subject in IInd and Vth Semesters and petitioner no.7 and 10 have also possessed the qualifications of B.Sc. Horticulture with Computer Subject in VIIIth Semester whereas the petitioner of connected Writ Petition No.11886 (SS) of 2020 is B.Sc. Agricultural Science and having post graduate one year diploma in computer applications.

6. It has again been submitted by learned Counsel for the petitioners that all the petitioners being eligible candidates have submitted online applications for the post of Cane Supervisor and after qualifying in written examination, they were called for interview in the office of U.P. Subordinate Service Selection Commission, Gomti Nagar, Lucknow but they were refused to participate in the interview on the ground that they do not have requisite qualification. Being aggrieved, the petitioners filed a Writ Petition No.1970 (SS) of 2020, which was disposed of vide order dated 22.01.2020 with direction to submit representation before the competent authorities and the same shall be decided in accordance with law. Thereafter, a review application against the order dated 22.01.2020 was filed by the petitioner, which was rejected by this Court vide order dated 29.01.2020.
7. Learned Counsel for the petitioners has contended that the opposite party no.3 being subordinate legislature is not competent to clarify or elaborate the Government Orders dated 3/6.05.2016, 23.09.2016 and 05.07.2018 issued by the opposite party no.2 and, therefore, the impugned order dated 15.01.2020 is illegal, arbitrary and without jurisdiction and the same is liable to be quashed. He has further contended that the candidate with higher qualification is deemed to fulfill the lower qualification prescribed for a post provided that such higher qualification must be in the same channel with the lower

qualification. In the instant case, the advertisement was issued on 05.10.2016 for the post of Cane Supervisor for which the requisite qualification is 'CCC' Certificate from DOEACC Society but vide Government Order dated 05.07.2018, the State Government had clarified/ explained the earlier Government Orders dated 3/6.05.2016 and 23.05.2016 by which the petitioners are eligible to participate in the interview but opposite parties have not permitted them to participate in the interview though the petitioners participated in the written examination and qualified the same.

8. It has again been contended by learned Counsel for the petitioners that the Government Orders issued by the State are in the nature of clarification and, therefore, a clarificatory/ explanatory amendments will have retrospective effect. Hence, the respondents have committed an error while denying the claim of the petitioners to participate in the interview. In support of his submissions, learned Counsel for the petitioners has placed reliance to para 32 of *Commissioner of Income Tax Vs. Vatika Township Pvt. Ltd.; (2015) 1 SCC 1*, which reads as under:

"32. Let us sharpen the discussion a little more. We may note that under certain circumstances, a particular amendment can be treated as clarificatory or declaratory in nature. Such statutory provisions are labelled as "declaratory statutes". The circumstances under which provisions can be termed as "declaratory statutes" are explained by Justice G.P. Singh [Principles of Statutory Interpretation, (13th Edn., Lexis Nexis Butterworths Wadhwa, Nagpur, 2012)] in the following manner:

"Declaratory statutes

The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES [W.F. Craies, Craies on Statute Law (7th

Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [Ed.: The reference is to Central Bank of India v. Workmen, AIR 1960 SC 12, para 29] : 'For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word "declared" as well as the word "enacted".' But the use of the words 'it is declared' is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the Constitution came into force, the amending Act also will be part of the existing law."

The above summing up is factually based on the judgments of this Court as well as English decisions."

9. Learned Counsel has also invited attention to para 33 of the ***State Bank of India Vs. Ramkrishnan and another; (2018) 17 SCC 394***. Para 33 quoted below:

"33. The Report of the said Committee makes it clear that the object of the amendment was to clarify and set at rest what the Committee thought was an overbroad interpretation of Section 14. That such clarificatory amendment is retrospective in nature, would be clear from the following judgments:

33.1. CIT v. Shelly Products [CIT v. Shelly Products, (2003) 5 SCC 461] : (SCC p. 478, para 38)

"38. It was submitted that after 1-4-1989, in case the assessment is annulled the assessee is entitled to refund only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee. But before the amendment came into effect the position in law was quite different and that is why the legislature thought it proper to amend the section and insert the proviso. On the other hand the learned counsel for the Revenue submitted that the proviso is merely declaratory and does not change the legal position as it existed before the amendment. It was submitted that this Court in CIT v. Chittor Electric Supply Corpn. [CIT v. Chittor Electric Supply Corpn., (1995) 2 SCC 430] has held that proviso (a) to Section 240 is declaratory and, therefore, proviso (b) should also be held to be declaratory. In our view that is not the correct position in law. Where the proviso consists of two parts, one part may be declaratory but the other part may not be so. Therefore, merely because one part of the proviso has been held to be declaratory it does not follow that the second part of the proviso is also declaratory. However, the view that we have taken supports the stand of the Revenue that proviso (b) to Section 240 is also declaratory. We have held that even under the unamended Section 240 of the Act, the assessee was only entitled to the refund of tax paid in excess of the tax chargeable on the total income returned by the assessee. We have held so without taking the aid of the amended

provision. It, therefore, follows that proviso (b) to Section 240 is also declaratory. It seeks to clarify the law so as to remove doubts leading to the courts giving conflicting decisions, and in several cases directing the Revenue to refund the entire amount of income tax paid by the assessee where the Revenue was not in a position to frame a fresh assessment. Being clarificatory in nature it must be held to be retrospective, in the facts and circumstances of the case. It is well settled that the legislature may pass a declaratory Act to set aside what the legislature deems to have been a judicial error in the interpretation of statute. It only seeks to clear the meaning of a provision of the principal Act and make explicit that which was already implicit.”

...
..."

10. Again learned Counsel has placed reliance to para 14 of **Zile Singh Vs. State of Hariyana and others; (2004) 8 SCC 1**. Para 14 is extracted below:

"14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69)."

11. Learned Counsel for the petitioners has next contended that in similar circumstances petitioners having one subject of computer in Writ-A No.10518 of 2018 and Writ-A No.11412 of 2018, which were disposed of vide orders dated 04.07.2018 and

08.05.2018 repetitively, were allowed by the respondents to participate in the interview but the petitioners of instant writ petitions have been denied. Such action of the respondent authority is arbitrary and illegal and is not sustainable in the eyes of law.

12. Per contra, learned Counsel appearing on behalf of the State has submitted that the selection/ appointment for the post of Cane Supervisor, only 'CCC' Certificate issued by the DOEACC Society is mandatory and compulsory requirement. The other certificate issued by other agency equivalent to the 'CCC' Certificate is not acceptable. The petitioners have not possessed 'CCC' Certificate issued by the DOEACC Society and, therefore, they could not be allowed to participate in the interview of the cane supervisor.
13. Learned Counsel appearing on behalf of the State has further submitted that the orders dated 08.05.2018 and 04.07.2018 passed in Writ-A No.11412 of 2018 and Writ-A No.10518 of 2018 respectively relates to an Advertisement No.03-Examination/ 2016 of Village Development Officer whereas the petitioners are applied for Cane Supervisor, therefore, the petitioners cannot claim the benefits of the said orders. At the time of sending requisition, the Government Order dated 06.05.2016 was in force which was issued for the selection of the Junior Assistant and Stenographer whereas the present matter relates to the selection of the Cane Supervisors and, therefore, the same is not applicable in the case of the petitioners.
14. It has next been submitted learned Counsel appearing on behalf of the State that Rule 9 of the U.P. Cane Supervisor (Category-III) Service (Second Amendment) Rules, 2015 provides that for

the post of Cane Supervisor, only 'CCC' Certificate issued by DOEACC Society is mandatory and, therefore, the authority has rightly denied the petitioners to participate in the interview as the petitioners have not possessed 'CCC' Certificate issued by DOEACC Society. The State Government has issued the Government Order dated 05.07.2018 in respect of selection of the Junior Assistant and Stenographer in which the guidelines have been provided with regards to equivalency of 'CCC' Certificate issued by DOEACC Society with other certificates and courses whereas in the instant case, no such guidelines have been issued. Hence, the impugned order dated 15.01.2020 has rightly been passed by the Commissioner, Sugar Cane and Sugar, Lucknow. The writ petition is devoid by merit and is liable to be dismissed.

15. I have considered the submissions of learned Counsel for the parties and perused the record.
16. Before coming to the merits of the case, it would be appropriate to bring in box some of necessary facts in chronological order.
17. On 05.10.2016, an advertisement was issued by U.P. Subordinate Service Selection Commission for filling up the post of 437 Cane Supervisor. For the post of Cane Supervisor, the candidates were required to possess the qualification of graduation in Agricultural Science or any equivalent qualification along with 'CCC' Certificate issued by DOEACC Society. For ready reference, paras 8 and 9 of the advertisement is extracted below:

"8. अनिवार्य अर्हता (शैक्षिक) :-

उपर्युक्त सारणी-1 में उल्लिखित गन्ना पर्यवेक्षक पद पर भर्ती हेतु विहित अनिवार्य शैक्षिक अर्हता निम्नलिखित सारणी-3 में दी गयी है, आवेदन की अंतिम

तिथि तक इच्छुक अभ्यर्थी जो उक्त अनिवार्य अर्हता धारित करते हो, वे ऑनलाइन आवेदन कर सकते हैं:-

सारणी-3

पद क्रमांक पद नाम अनिवार्य अर्हता/अधिमानी अर्हता

1-गन्ना पर्यवेक्षक 1. भारत में विधि द्वारा स्थापित किसी विश्वविद्यालय से कृषि विज्ञान में स्नातक उपाधि अथवा सरकार द्वारा मान्यता प्राप्त उसके समकक्ष कोई अर्हता।

2-कम्प्यूटर संचालन में डी०ओ०ई०ए०सी०सी० (डोएक) सोसाइटी द्वारा प्रदान किया गया "सी०सी०सी०" प्रमाणपत्र

9. अधिमानी अर्हता :- उपर्युक्त पदों के लिए अन्य बातों के समान होने पर ऐसे अभ्यर्थी को अधिमान दिया जाएगा जिसने,

1- प्रादेशिक सेना में न्यूनतम दो वर्ष की अवधि तक की सेवा की हो, या

2- राष्ट्रीय कैडेट कोर का 'बी' प्रमाण-पत्र प्राप्त किया हो।"

18. Before issuance of the advertisement, vide Government Order dated 3/6.05.2016, the State Government had recognised the qualifications equivalent to 'CCC' Certificate for the post of Junior Assistant and Stenographer. The Government Order dated 3/6.05.2016 reads as under:

" प्रेषक,
किशन सिंह अटोरिया,
प्रमुख सचिव,
उत्तर प्रदेश शासन।
सेवा में,
समस्त प्रमुख सचिव/सचिव,
उत्तर प्रदेश शासन।

कार्मिक अनुभाग-2 लखनऊ, दिनांक 06 मई, 2016
विषय :- डी.ओ.ई.ए.सी.सी. (डोएक) सोसाइटी द्वारा प्रदत्त सी.सी.सी. प्रमाण-पत्र की समकक्षता निर्धारित करने के सम्बन्ध में।

महोदय,

कनिष्ठ सहायक एवं आशुलिपिक के पदों पर चयन हेतु डी.ओ.ई.ए.सी.सी. (डोएक) सोसाइटी द्वारा प्रदत्त सी.सी.सी. प्रमाण-पत्र की समकक्षता के सम्बन्ध में शासन द्वारा निम्नवत् निर्णय लिया गया है :-

(1) माध्यमिक शिक्षा परिषद, उत्तर प्रदेश के साथ-साथ केन्द्र अथवा किसी राज्य सरकार द्वारा स्थापित किसी संस्था/शिक्षा बोर्ड/परिषद द्वारा संचालित हाईस्कूल अथवा इण्टरमीडिएट परीक्षा में पृथक विषय के रूप में कम्प्यूटर साइन्स विषय को लिया गया हो।

(2) यदि किसी अभ्यर्थी द्वारा कम्प्यूटर साइन्स में डिप्लोमा अथवा डिग्री प्राप्त की गई हो तो वह भी कनिष्ठ सहायक/आशुलिपिक के पदों पर भर्ती हेतु पात्र होगा।

- 2- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि कनिष्ठ सहायक एवं आशुलिपिक के पदों पर चयन हेतु उपर्युक्तानुसार कार्यवाही सुनिश्चित कराने का कष्ट करें। मान्यता प्राप्त शिक्षा बोर्डों/परिषदों की सूची संलग्न है, साथ ही ऐसी संस्थाएँ, जो माध्यमिक शिक्षा परिषद, उ०प्र० इलाहाबाद द्वारा मान्य नहीं है, की सूची भी संलग्न है। संलग्नक- यथोक्त।

भवदीय,

ह० अपठनीय

(किशन सिंह अटोरिया)

प्रमुख सचिव।"

19. Again on 23.09.2016, the State Government had issued another Government Order for the purpose of recognising the equivalency of 'CCC' Certificate and modified the earlier Government Order dated 3/6.05.2016 to the extent of that clause (1) of the Government Order dated 3/6.05.2016 shall be applicable for all the public services/ posts of the State Government which require 'CCC' Certificate issued by DOEACC Society (Now known as 'NIELIT'). The Government Order dated 23.09.2016 is quoted below:

"प्रेषक,

किशन सिंह अटोरिया,

प्रमुख सचिव,

उत्तर प्रदेश शासन।

सेवा में,

समस्त प्रमुख सचिव/सचिव,

उत्तर प्रदेश शासन।

कार्मिक अनुभाग-2 लखनऊ, दिनांक 23 सितम्बर, 2016
विषय :- डी.ओ.ई.ए.सी.सी. (डोयक) सोसाइटी द्वारा प्रदत्त सी.सी.सी. प्रमाण-पत्र की समकक्षता निर्धारित करने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक समसंख्यक शासनादेश दिनांक 03/06 मई, 2016 का कृपया संदर्भ ग्रहण करें, जिसके माध्यम से कनिष्ठ सहायक एवं आशुलिपिक के पदों पर चयन हेतु डी.ओ.ई.ए.सी.सी. (डोयक) सोसाइटी द्वारा प्रदत्त सी.सी.सी. प्रमाण-पत्र की समकक्षता के सम्बन्ध में शासन द्वारा निम्नवत् निर्णय लिया गया था :-

(1) माध्यमिक शिक्षा परिषद, उत्तर प्रदेश के साथ-साथ केन्द्र अथवा किसी राज्य सरकार द्वारा स्थापित किसी संस्था/शिक्षा बोर्ड/परिषद द्वारा संचालित हाईस्कूल अथवा इण्टरमीडिएट परीक्षा में पृथक विषय के रूप में कम्प्यूटर साइन्स विषय को लिया गया हो।

(2) यदि किसी अभ्यर्थी द्वारा कम्प्यूटर साइन्स में डिप्लोमा अथवा डिग्री प्राप्त की गई हो तो वह भी कनिष्ठ सहायक/आशुलिपिक के पदों पर भर्ती हेतु पात्र होगा।

2- इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि ऐसी समस्त राज्याधीन लोक सेवाओं और पदों, जिन पर, डी.ओ.ई.ए.सी.सी. (डोयक) सोसाइटी (परिवर्तित नाम छप्पू छंजपवदंस प्देजपजनजम वि म्ममबजतवदपवे दंके प्दवितउंजपवद ज्मबीदवसवहलद्ध द्वारा प्रदत्त सी.सी.सी. प्रमाण-पत्र अपेक्षित है, के संदर्भ में भी उपर्युक्त प्रस्तर-1 में उल्लिखित व्यवस्था प्रभावी होगी। तत्कम में मान्यता प्राप्त शिक्षा बोर्डों/परिषदों की सूची पुनः संलग्न की जा रही है, साथ ही ऐसी संस्थाएँ, जो माध्यमिक शिक्षा परिषद, उ०प्र०, इलाहाबाद द्वारा मान्य नहीं हैं, की सूची भी संलग्न की जा रही है।

संलग्नक- यथोक्त।

भवदीय,
ह० अपठनीय
(किशन सिंह अटोरिया)
प्रमुख सचिव।"

20. It is relevant to note that after issuance of the Advertisement No.20 - Examination/ 2016, the State Government again on 05.07.2018 issued another Government Order and modified/ clarified the earlier Government Orders dated 3/6.05.2016 and 23.09.2016 to the extent that those persons who are having qualifications in computer i.e. Diploma in Computer, Degree in Computer, PGDCA, BCA, MCA and Graduation (B.A., B.Sc., B.Tech., M.Sc., M.B.A.) wherein Computer is one of the subjects or where the computer is course in one semester of the

courses shall be deemed to possess equivalent qualifications to 'CCC' Certificate and shall be eligible for selection. The Government Order dated 05.07.2018 is quoted below for ready reference:

“प्रेषक,
मुकुल सिंहल
अपर मुख्य सचिव,
उत्तर प्रदेश शासन।
सेवा में,
समस्त अपर मुख्य सचिव/प्रमुख सचिव/सचिव,
उत्तर प्रदेश शासन।
कामिर्क अनुभाग-2 लखनऊ, दिनांक 05 जुलाई, 2018
विषय:- डी0ओ0ई0ए0सी0सी0(जोयक) सोसाइटी द्वारा प्रदत्त
सी0सी0सी0 प्रमाण पत्र की समकक्षता के सम्बन्ध में।
महोदय,
कनिष्ठ सहायक, आशुलिपिक एवं ऐसी समस्त राज्याधीन
लोक सेवाओं और पदों, जिन पर (Electronics and
information Technology) द्वारा प्रदत्त सी0सी0सी प्रमाण
पत्र अपेक्षित है, की समकक्षता के सम्बन्ध में समसंख्यक
शासनादेश दिनांक 03/06 मई 2016 एवं 23 सितम्बर,
2016 निर्गत किये गये हैं।
2. समकक्षता के सम्बन्ध में हो रही व्यावहारिक कठिनाईयों के
दृष्टिगत सी0सी0सी प्रमाण पत्र एवं उसकी समकक्ष अर्हता
को और स्पष्ट करने हेतु सम्यक विचारोपरान्त शासन द्वारा
यह निर्णय लिया गया है कि कम्प्यूटर में उच्च योग्यता
धारी यथा कम्प्यूटर में डिप्लोमा, डिग्री, पी.जी.डी.सी.ए.,
बी0सी0ए0, एम0सी0ए0 तथा ग्रेजुएशन अथवा उच्च डिग्री
(बी0ए0, बी0एस0सी0, बीटेक, एम.एस.सी. एम0बी0ए) में
कम्प्यूटर एक विषय के रूप अथवा एक सेमेस्टर में
कम्प्यूटर कोर्स धारित करने वाले अभ्यर्थियों को भी प्रश्नगत
पदों के चयन हेतु अर्ह माना जायेगा।
3. इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि
शासन द्वारा लिए गए उक्त निर्णय का अनुपाल सुनिश्चित
किया जाय।

भवदीय
मुकुल सिंहल
अपर मुख्य सचिव।”

21. Petitioners of the present writ petitions have applied for the post of Cane Supervisor. They appeared in written examination and after declaring successful, they were directed to appear in interview but they have been denied to appear before the

Interview Board on the ground that they have not possessed the requisite qualification as required by the advertisement.

22. A deep consideration of the facts and circumstances of the case and the discussions including the submissions advanced by learned Counsel for the parties, the crux of the matter is *whether the petitioners are entitled for the retrospective benefit of equivalence of 'CCC' Certificate as provided in the Government Order dated 05.07.2018 issued for all the public services/ posts of the State Government read with Government Orders dated 3/6.05.2016 and 23.09.2016 issued for the posts of Junior Assistant and Stenographer?*
23. While keeping in mind the fact stated above, I deem it appropriate to understand nature of 'CCC' conducted by DOEACC. As per the details available available on the official website of the NIELIT, the details of the Course on Computer Concepts (CCC) is as follows:

Introduction: This course is designed to aim at imparting a basic level IT Literacy programme for the common man. This programme has essentially been conceived with an idea of giving an opportunity to the common man to attain computer literacy thereby contributing to increased and speedy PC penetration in different walks of life. After completing the course the incumbent should be able to the use the computer for basic purposes of preparing his personnel/business letters, viewing information on internet (the web), receiving and sending mails, preparing his business presentations, preparing small databases etc. This helps the small business communities, housewives, etc. to maintain their small accounts using the computers and enjoy in the world of Information Technology. This course is, therefore, designed to be more practical oriented.

Eligibility: The candidates can appear in the NIELIT CCC Examination through following

three modes and the eligibility criteria for each mode are indicated against each:

2.1 Candidates sponsored by NIELIT approved Institutes permitted to conduct CCC Course - irrespective of any educational qualifications;

2.2 Candidates sponsored by Government recognized Schools/ Colleges having obtained an Unique Identity number from NIELIT for conducting CCC - irrespective of any educational qualifications; and

2.3 Direct Applicants (without essentially undergoing the Accredited Course or without being sponsored by a Govt. recognised School/ College) - irrespective of any educational qualification;

Duration: The total duration of the course is 80 hours, consisting of

i) Theory	25	hours
ii) Tutorials	5	hours
iii) Practicals	50	hours

The course could ideally be a two weeks intensive course."

24. The introduction quoted above indicates that the Course on Computer Concepts (CCC) is designed to fulfill the beginner level computer literacy and that can be undertaken by a person at his own also. The only requirement is that he must get the same verified by NIELIT (formerly known as "DOEACC Society").
25. The qualification of CCC as an expertise in the computer application which, as matter of fact, is nothing but a most preliminary knowledge in the field concerned. In other words, it can be said that requirement of the employer was to have the persons at least with minimum knowledge of computer concepts and the person applying must be computer literate. In present days, computer literacy is just equivalent to letter literacy in earlier days.

26. In the case of ***Parvaiz Ahmad Parry vs State of Jammu and Kashmir and others; (2015) 17 SCC 709***, Hon'ble Supreme Court in paras 13, 14 and 15 held as under:

"13. As would be clear from the undisputed facts mentioned above, the minimum qualification prescribed for applying to the post of Jammu and Kashmir Forest Service Range Officers Grade I was "BSc (Forestry) or equivalent from any university recognised by ICAR". It is not disputed that the appellant had to his credit a qualification of BSc with Forestry as one of the major subjects and Masters in Forestry i.e. MSc (Forestry), on the date when he applied for the post in question, which satisfied the eligibility criteria so far as the qualification was concerned.

14. We do not agree with the reasoning of the High Court that in order to be an eligible candidate, the appellant should have done BSc in Forestry and since he had not done so, he was not considered as an eligible candidate. This reasoning, in our view, does not stand to any logic and is, therefore, not acceptable insofar as the facts of this case are concerned.

15. In our considered view, firstly, if there was any ambiguity or vagueness noticed in prescribing the qualification in the advertisement, then it should have been clarified by the authority concerned in the advertisement itself. Secondly, if it was not clarified, then benefit should have been given to the candidate rather than to the respondents. Thirdly, even assuming that there was no ambiguity or/and any vagueness yet we find that the appellant was admittedly having BSc degree with Forestry as one of the major subjects in his graduation and further he was also having Master's degree in Forestry i.e. MSc (Forestry). In the light of these facts, we are of the view that the appellant was possessed of the prescribed qualification to apply for the post in question and his application could not have been rejected treating him to be an ineligible candidate for not possessing prescribed qualification."

27. In the present case, the petitioners have been denied to participate in the interview only on the ground that even the petitioners have possessed equivalent qualification of 'CCC' Certificate, they are not entitled to participate in the interview as they did not have possessed 'CCC' Certificate issued by DOEACC Society. During the course of the argument, learned Counsel appearing on behalf of the State has vehemently contended that the clarificatory Government Order dated 05.07.2018 will not have retrospective effect in the case of petitioners as the same was not issued for the post of Cane Supervisor.
28. In the case of *S.B. Bhattacharjee vs S.D. Majumdar and others; (2007) 10 SCC 513*, Hon'ble Supreme Court has held that clarificatory or explanatory order have retrospective effect. In paras 32, 33, 35 and 36 of the said judgment reads as under:

"32. The clarification issued by the State is not in the teeth of the illustration given in Clause (g) of Para 3.4 of the office memorandum. The clarification having been issued, the same should be taken into consideration by this Court irrespective of the fact as to whether it was available to the Public Service Commission on 16-3-2004 when the DPC held its meeting which, in our opinion, was not of much significance.

33. The clarification being explanatory and/or clarificatory, in our opinion, will have a retrospective effect.

34. In S.S. Grewal v. State of Punjab [1993 Supp (3) SCC 234 : 1993 SCC (L&S) 1098 : (1993) 25 ATC 579] this Court stated the law thus: (SCC pp. 240-41, para 9)

"9. ... In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See Craies on Statute

Law, 7th Edn., p. 58.) It must, therefore, be held that all appointments against vacancies reserved for Scheduled Castes made after May 5, 1975 (after May 14, 1977 insofar as the service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980.”

35. *Yet again in CIT v. Podar Cement (P) Ltd. [(1997) 5 SCC 482] this Court referring to a large number of authorities including that of G.P. Singh's Principles of Statutory Interpretation, observed: (SCC p. 506, para 51)*

“51. ... ‘... An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.’ ”

36. *This Court in Allied Motors (P) Ltd. v. CIT [(1997) 3 SCC 472] observed: (SCC pp. 479-80, para 13)*

“13. Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In R.B. Jodha Mal Kuthiala v. CIT [(1971) 3 SCC 369] this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.”

29. In the case of **Ashok Lanka vs Rishi Dikshit and others; (2006) 9 SCC 90**, the Apex Court in para 67, 68 and 69 held as under:

"67. Ordinarily, a subordinate legislation cannot be given a retrospective effect. The notification dated 5-7-2005, however, is said to be clarificatory in nature. A clarificatory notification can be given retrospective effect. Such a clarification, according to the State, was necessary to be issued as there was an apparent conflict between the Hindi version and the English version of the notification.

68. It may be true that before the High Court such a contention has not been raised but we are satisfied about the bona fide of the State in this behalf. In that view of the matter, it was not necessary for the District-Level Committee or the State to verify the criminal background of the family members of the applicants.

69. Presumably, character certificates were required to be issued by the respective Superintendents of Police in respect of the candidates concerned. Of course, if they had been residing at different places at different points of time, such character certificates were required to be issued by the Superintendent of Police of each such place. But the same would not mean that character certificates were required to be produced by the candidates in respect of their family members also particularly when it was not certain as to who would come within the purview of the said term. It was in that sense the notification dated 5-7-2005 was a clarificatory one, and, therefore, could be given a retrospective effect."

30. In the case of ***Union of India and others vs Martin Lottery Agencies Limited; (2009) 12 SCC 209***, in paras 43, 44 and 49, the Hon'ble Supreme Court has held as under:

"43. The question as to whether a subordinate legislation or a parliamentary statute would be held to be clarificatory or declaratory or not would indisputably depend upon the nature thereof as also the object it seeks to achieve. What we intend to say is that if two views are not possible, resort to clarification and/or declaration may not be permissible.

*44. This aspect of the matter has been considered by this Court in *Virtual Soft Systems Ltd. v. CIT [(2007)**

9 SCC 665] , holding: (SCC pp. 687-88, paras 50-51)

“50. It may be noted that the amendment made to Section 271 by the Finance Act, 2002 only stated that the amended provision would come into force with effect from 1-4-2003. The statute nowhere stated that the said amendment was either clarificatory or declaratory. On the contrary, the statute stated that the said amendment would come into effect on 1-4-2003 and therefore, would apply only to future periods and not to any period prior to 1-4-2003 or to any assessment year prior to Assessment Year 2004-2005. It is the well-settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statute itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such clear statement in the statute itself, the amendment will not be considered to be merely declaratory or clarificatory.

51. Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods.”

49. *Reverting to the decision of a Kerala High Court in CIT v. S.R. Patton [(1992) 193 ITR 49 (Ker)] wherein the Gujarat High Court's judgment was followed, this Court noticed that the Explanation was not held to be a declaratory one but thereby the scope of Section 9(1)(ii) of the Act was widened. The law in the aforementioned premise was laid down as under: (Sedco case [(2005) 12 SCC 717] , SCC pp. 724-25, paras 17-19)*

“17. As was affirmed by this Court in Goslino Mario [CIT v. Goslino Mario, (2000) 10 SCC 165] a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. (See also Reliance Jute and Industries Ltd. v. CIT [(1980) 1 SCC 139 : 1980 SCC (Tax) 67] .) An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section. (See Sonia Bhatia v. State of U.P. [(1981) 2 SCC 585] , SCC at p. 598.) If it is in its nature clarificatory then the Explanation must be read into the main provision with effect from the time that the main provision came into force. [See Shyam Sunder v. Ram Kumar [(2001) 8 SCC 24] (SCC para 44); Brij Mohan Das Laxman Das v. CIT [(1997) 1 SCC 352] (SCC at p. 354) and CIT v. Podar Cement [(1997) 5 SCC 482] (SCC at p. 506).] But if it changes the law it is not presumed to be retrospective, irrespective of the fact that the phrases used are ‘it is declared’ or ‘for the removal of doubts’.

18. There was and is no ambiguity in the main provision of Section 9(1)(ii). It includes salaries in the total income of an assessee if the assessee has earned it in India. The word ‘earned’ had been judicially defined in S.G. Pgnatale [(1980) 124 ITR 391 (Guj)] by the High Court of Gujarat, in our view, correctly, to mean as income ‘arising or accruing in India’. The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, ‘income payable for service rendered in India’.

19. When the Explanation seeks to give an artificial meaning to ‘earned in India’ and bring about a change effectively in the existing law and in addition is stated to come

into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively.”

31. In ***Channan Singh vs Jai Kaur (Smt.); (1969) 2 SCC 429***, it was held that it is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. In ***Punjab Traders v. State of Punjab; (1991) 1 SCC 86***, it was observed that an amendment Act may be purely clarificatory when it clears a meaning of the provisions of the principal Act which was already implicit therein.
32. In determining the nature of the Act, regard must be had to the substance rather than to the form of amendment. A declaratory, clarificatory or explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.
33. As per the judgments rendered by Hon'ble Supreme Court, it is substantially clear that ordinarily a subordinate legislation cannot be given retrospective effect but a clarification/ notification can be given retrospective effect. The Government Order dated 05.07.2018 is clarificatory in nature and, therefore, it can be given retrospective effect. In the present case, The petitioners are the persons who possessed equivalent certificate of 'CCC' issued by other recognized institution wherein basic knowledge of computer operation is warranted, but that has not been taken into consideration.
34. If a new Government Order/ Office Order/ Memorandum/ Act/ Rule is 'to explain' an earlier Government Order/ Office Order/ Memorandum/ Act/ Rule, it would be without object unless construed retrospective. An explanatory/ clarificatory

Government Order is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Government Order. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language 'shall be deemed always to have meant' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Government Order is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Government Order may be purely clarificatory to clear a meaning of a provision of the principal Government Order which was already implicit. A clarificatory amendment of this nature will have retrospective effect.

35. Hon'ble Apex Court in the case of *Mukul Kumar Tyagi vs The State of Uttar Pradesh and others; (2020) 4 SCC 86* has held that the candidates who were covered under the guidelines dated 03.05.2016 were also treated as equivalent to 'CCC' Certificate. In this case, while issuing clarificatory Government Order dated 05.07.2018 in pursuance to the Government Orders dated 3/6.05.2016 and 23.09.2016, the State Government had clarified that the candidates who applied for all the public services/ posts shall be entitled for the benefit of equivalence to 'CCC' certificate. In paras 71 and 72 of *Mukul Kumar Tyagi's case (supra)*, the Apex Court has held as under:

"71. The above direction indicates that select list insofar as the candidates, who had certificates from NIELIT/DOEACC was not quashed, their position in the select list was not disturbed and select list was partly quashed only with regard to those candidates, who did not have CCC or NIELIT certificate. The object or purpose of the direction was to scrutinise the qualifications of those candidates, who have claimed equivalent certificate. The above direction of the learned

Single Judge was only for the purpose to scrutinise the qualification of those candidates, who are found possessing equivalent computer qualification so as to retain their names in the select list. After the judgment of the learned Single Judge dated 7-10-2017 [Prashant Kumar Jaiswal v. State of U.P. Writ A No. 41750 of 2015, order dated 7-10-2017 (All)] , the Commission in revising the merit list accepted the guidelines given under the Government Order dated 3-5-2016. The guidelines prescribed under the Government Order dated 3-5-2016 are as follows:

“(a) The qualification of High School or intermediate examination with an independent subject or Computer Science from Madhyamik Shiksha Parishad, Uttar Pradesh or from any Institution/Education Board/Council established by the Central or any State Government.

(b) If any candidate has obtained diploma or degree in Computer Science then he shall also be eligible to be recruited as Junior Assistant/Stenographer.”

72. Thus, in the revised select list apart from candidates, who had CCC certificates from DOEACC/NIELIT, the candidates who were covered under guidelines dated 3-5-2016 were also treated as equivalent to CCC and were given place in the merit list subject to marks secured by them in the written test and interview.”

36. The intention of the legislature/ employer in providing requirement of 'CCC' Certificate for the said post is to recruit the candidates suitable to work efficiently in the changing work environment of Government Offices which aims to make government services available to citizens electronically. It also aims to empower the country digitally in the domain of technology. The objective of the 'CCC' Course is to enable a student to acquire the knowledge pertaining to fundamental of information technology. In the present case, admittedly, the petitioners does not have possessed the 'CCC' Certificate but

they have possessed the equivalent qualifications issued by other recognized institutions which makes them suitable to fulfill the requirements of employer for the posts in question.

37. The candidates who can provide conclusive evidence that they have education or experience at least equal to what is required by the minimum qualifications deserve careful consideration, even if their degrees have titles different from those recognized in the disciplines list or if they acquired their qualifications by a route other than a conventional one, if equivalency were not an option, some fully qualified candidates would not receive consideration. The authority to determine equivalent qualifications is not a license for a State or Employer to waive or lower standards and accept less than qualified individuals. The fact that a particular candidate is the best does not change the requirement and he/ she possess qualifications at least equal to the published minimum qualifications.
38. For the discussions made hereinabove, a writ of certiorari is issued quashing the impugned order dated 15.01.2020 passed by the Commissioner, Sugarcane and Sugar, U.P., Lucknow.
39. The respondents are directed to allow the petitioners to participate in the interview to be held in pursuance of the Advertisement No.20-Examination/2016 and consider the candidature of the petitioners on merit in accordance with law.
40. Accordingly, the writ petitions are *allowed*. No order as to costs.

Order Date:10.03.2021

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(Chandra Dhari Singh, J)