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Reserved- 15.02.2024

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Neutral Citation No. 2024:AHC:36085

Court No. - 36

Case :- WRIT - A No. - 4063 of 2020

Petitioner :- Shivam Pandey And 11 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- WRIT - A No. - 4382 of 2023

Petitioner :- Durgawati Dwivedi And 13 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Abhishe Pandey,Irshad Ali

Counsel for Respondent :- CSC,Archana Singh,Arun Kumar

with

Case :- WRIT - A No. - 6624 of 2022

Petitioner :- Abhay Mishra And 7 Others

Respondent :- State Of U.P. And 2 Others

**Counsel for Petitioner :- Anand Kumar Tiwari,Agnihotri Kumar
Tripathi**

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

with

Case :- WRIT - A No. - 1180 of 2022

Petitioner :- Shiva Kant Chaturvedi And 19 Others

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Navin Kumar Sharma

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

with

Case :- WRIT - A No. - 11883 of 2023

Petitioner :- Ranjan Dwivedi And 4 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Abhishe Pandey,Irshad Ali

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

with

Case :- WRIT - A No. - 1322 of 2024

Petitioner :- Abhishek Kumar And Another

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Abhishe Pandey,Irshad Ali

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 13225 of 2020

Petitioner :- Onkar Nath Tiwari And 48 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 13603 of 2022

Petitioner :- Tousif Ahamad And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Abhishe Pandey,Irshad Ali

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

with

Case :- WRIT - A No. - 1595 of 2021

Petitioner :- Raj Kishor Shukla And 5 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anil Kumar Singh Bishen

Counsel for Respondent :- C.S.C.,Arun Kumar

with

Case :- WRIT - A No. - 19493 of 2022

Petitioner :- Mohit Singh And 19 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anurag Tripathi
Counsel for Respondent :- C.S.C.,Archana Singh
with

Case :- WRIT - A No. - 20948 of 2022

Petitioner :- Bhanu Pratap Singh Chandel And 13 Others
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Abhishe Pandey,Irshad Ali
Counsel for Respondent :- C.S.C.,Archana Singh
with

Case :- WRIT - A No. - 3522 of 2023

Petitioner :- Sri Krishna And 15 Others
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Seemant Singh
Counsel for Respondent :- C.S.C.,Archana Singh
with

Case :- WRIT - A No. - 3573 of 2022

Petitioner :- Karuna Shankar Shukla And 34 Others
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Seemant Singh
Counsel for Respondent :- C.S.C.,Archana Singh
with

Case :- WRIT - A No. - 4634 of 2023

Petitioner :- Dheeraj Kumar Mishra And 12 Others
Respondent :- State Of Uttar Pradesh And 2 Others
Counsel for Petitioner :- Abhishe Pandey,Irshad Ali
Counsel for Respondent :- C.S.C.,Archana Singh
with

Case :- WRIT - A No. - 4701 of 2020

Petitioner :- Vinay Kumar Pandey And 42 Others
Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 5048 of 2020

Petitioner :- Sandeep Tiwari And 151 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.,Vikram Bahadur Singh

with

Case :- WRIT - A No. - 506 of 2023

Petitioner :- Pratima Pandey

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ashutosh Pandey

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 5385 of 2020

Petitioner :- Km. Sangeeta Bhadauria And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Satya Prakash Tripathi

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 5673 of 2023

Petitioner :- Satyendra Singh And 5 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Abhishe Pandey,Irshad Ali

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

with

Case :- WRIT - A No. - 5806 of 2023

Petitioner :- Mohit Kumar Gupta And 7 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anurag Tripathi
Counsel for Respondent :- C.S.C., Archana Singh

with

Case :- WRIT - A No. - 5867 of 2020

Petitioner :- Sandeep Pandey And 4 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Rajan Tripathi, Alok Kumar Srivastava

Counsel for Respondent :- C.S.C., Vikram Bahadur Singh

with

Case :- WRIT - A No. - 6022 of 2023

Petitioner :- Brijesh Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Deo Prakash Singh

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

with

Case :- WRIT - A No. - 7859 of 2020

Petitioner :- Veeresh Pandey And 18 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - A No. - 916 of 2023

Petitioner :- Anshul Kumar Mishra And 4 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Abhishe Pandey, Irshad Ali

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

with

Case :- WRIT - A No. - 2722 of 2024

Petitioner :- Naincy Sharma And 7 Others

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Abhishe Pandey, Irshad Ali

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

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Issue before this Court for consideration are :-

(i) “Whether in pursuance of 103rd Amendment in Constitution of India dated 12.01.2019, whereby provision for 10% reservation to Economically Weaker Sections (for short “EWS”) and adopted by State of Uttar Pradesh through Office Memorandum dated 18.02.2019) would be applicable to a Notification dated 16.05.2020 issued by State Government in regard to selection on 69000 posts of Assistant Teachers?”

(ii) “Whether selection process would consider to be commenced when on 01.12.2018 (i.e. before Constitutional Amendment), when State Government issued a Government Order for conducting Assistant Teachers Recruitment Examination-2019 (for short “ATRE-2019”), a qualifying examination to participate in above referred selection process? and;

(iii) “What would be effect of Uttar Pradesh Public Services (Reservation for Economically Weaker Section) Act, 2020?”

2. It is case of petitioners that on 01.12.2018, the State Government issued a Government Order for conducting “ATRE-2019”, which was conducted on 06.01.2019. The petitioners have participated in said examination under Unreserved (General)

category and result thereof was issued on 12.05.2020, wherein all petitioners were qualified i.e. have scored more than minimum qualifying marks.

3. It is further case of petitioners that on 16.05.2020, the State Government initiated further process of selection of 69000 posts of Assistant Teachers for appointment in primary education in State of U.P. Meanwhile, in pursuance of 103rd Amendment in Constitution, petitioners have got their EWS certificate issued by competent Authority and they have represented before concerned respondents to provide 10% reservation of EWS.

4. The petitioners approached this Court in June, 2023. During pendency of their writ petition, process of selection was completed and petitioners were not selected since they were placed lower in merit.

5. Sri G.K. Singh, learned Senior Advocate assisted by S/Sri Seemant Singh, Anurag Tripathi, Irshad Ali and Rahul Kumar Mishra, learned counsel for petitioners in all writ petitions have vehemently submitted that State was under obligation to provide 10% EWS reservation in examination in question since it was held after above referred 103rd Constitutional Amendment was notified as well as subsequent to Office Memorandum dated 18.02.2019, whereby in principal EWS reservation was adopted by the State of Uttar Pradesh.

6. In order to substantiate his arguments, learned Senior Advocate for petitioners has referred a notification issued by State of U.P. dated 13.08.2019, whereby in pursuance of O.M. dated 18.02.2019, a roster system was published.

7. Learned Senior Advocate for petitioners in order to further substantiate his argument has vehemently placed reliance on a judgment passed by the Full Bench of this Court in **Prashant Kumar vs. State of U.P. and others, 2005 (4) ESC (All) 2395**, wherein following question was referred for consideration -:

“At what stage the caste of a candidate should be entered in the Schedule I of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 for him to get benefit as an OBC 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.”

8. Above referred question was answered by the Full Bench in following terms -:

“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 Castes/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 I 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.”

9. Further argument of learned counsel for petitioners are summarized in written submissions and relevant being are extracted hereinbelow -:

“1. That, bare perusal of the result declared on 13.05.2019 it is clear that result of Assistant Teachers Recruitments Examination has not been declare as per the reservation schedule i.e. for S.C./S.T., OBC/General Category, rather declaration has been made that candidates has been declared as a whole without disclosing their category, who

have qualified as per the percentage fix by the Government of U.P.

2. That, the advertisement begins only when the post are advertised as per District wise and that has been made only by the notification dated 16.05.2020, wherein it has also been mention that the reservation Rule will be apply as per the Act and G.O. implemented in State of U.P. on that day i.e. 16.05.2020 (Clause- 3 of Guideline issued along with G.O. dated 16.05.2019).

3. That, since the EWS reservation in U.P. has been adopted on 18.02.2019 itself, so the EWS reservation is apply in the vacancy in question.”

10. Per contra, Ms. Shruti Malviya, S/Sri L.M. Singh, Manvendra Dixit, Suresh Srivastava and Ritesh Kumar Singh, learned counsel for respondents has referred following paragraphs of counter affidavit -:

“5. That, in reply to the contents of paragraph nos. 13 and 14 of the writ petition, it is stated that, pursuant to the Government Order dated 01.12.2018, process for selection on the post of 69000 vacancies of Assistant Teacher was started by initiating the Assistant Teachers Recruitment Examination 2019. At that point of time, there was no provision for granting horizontal reservation to economically weaker section, as such there was no provision for categorization of EWS candidates in the Assistant Teacher Recruitment Examination- 2019. As the process for recruitment on the vacancies of 69000 Assistant Teacher had started on 01.12.2018, the provision of providing 10% reservation to EWS candidates, was not provided when the Government Order dated 13.05.2020 and 16.05.2020 was issued. The averments to the contrary are denied.

6. That, in reply to the contents of paragraph nos. 15 and 16 of the writ petition, it is stated that when the Government Order dated 13.08.2019, providing 10% reservation to the persons belonging to EWS was issued, the process for recruitment on 69000 vacancies of Assistant

Teacher had already commenced. In view of the aforesaid fact any change in the reservation Policy subsequent to the start of recruitment process could not be introduced at any intermediate stage of the proceedings. The averments to the contrary are denied.

7. That, in reply to the contents of paragraph nos. 17, 18 and 19, of the writ petition, it is stated that in the selection of Assistant Teachers for appointment in Basic Schools run by the Parisahd, manual interference has been completely done away with, as the entire process of selection right from the submission of application form, declaration of result and allocation of Districts according to merit, is carried out through a Software developed by the National Informatics Centre. At the time of Development of the Software, inviting application for recruitment of Assistant Teacher 2019, pursuant to the Government Order dated 01.12.2018, there was no provision providing reservation in favour of candidates from EWS category. The process of selection was delayed due to unavoidable circumstances, in the meantime the Government Order dated 13.08.2019 was issued providing 10% reservation to the EWS. The Government Order dated 13.08.2019 has no retrospective effect, it could not be applied in the present selection of 69000 vacancies of Assistant Teachers. The averments to the contrary are denied.

8. That, in reply to the contents of paragraph nos. 20 and 21 of the writ petition, it is stated that the provision of providing 10% reservation to the candidates belonging to the EWS category was introduced in the State of Uttar Pradesh by the Government Order dated 13.08.2019. As the recruitment process for filling up 69000 vacancies of Assistant Teachers had already started by the Government Order dated 01.12.2018, hence the benefit of the Government Order dated 13.08.2019 could not be introduced at the intermediate stage. The averments to the contrary are denied.”

11. Learned counsel for respondents have also placed reliance upon a judgment passed by the coordinate Bench of this Court in

case of **Mahendra Pal and others vs. State of U.P. and others, Writ A No. 13156 of 2020** decided on **13.03.2023**.

12. In rejoinder, learned Senior Advocate for petitioners has placed reliance upon a judgment of Division Bench of this Court in case of **Raghvendra Pratap Singh and others vs. State of U.P. through Principal Secretary, Basic Education, U.P., Lucknow, Special Appeal No. 156 of 2019** decided on **06.05.2020** that ATRE-2019 examination was only a qualifying examination which could not be considered to be part of selection process and selection process was initiated only by the Notification dated **16.05.2020** i.e. subsequent to aforesaid 103rd Constitutional Amendment.

13. Learned Senior Advocate for petitioners has also submitted that law is well established that the reservation would apply from the date of issuance of the advertisement dated **16.05.2020** issued by the Secretary, U.P. Basic Education Board, Prayagraj for making recruitment of 69,000 posts of Assistant Teacher inviting online application from the eligible candidates having all the essential qualifications including the qualification of having qualified ATRE-2019 also.

14. Heard learned counsel for parties and perused record.

15. In present case, I have heard counsel for parties at length, however, they have not placed on record that State of U.P. has enacted an Act for implementation of EWS reservation by way of enactment of Uttar Pradesh Public Services (Reservation for EWS) Act, 2020 (U.P. Act No. 10 of 2020) published in Gazette on **31.08.2020**. The said Act being relevant for consideration of rival submissions is reproduced hereinafter in its entirety -:

“THE UTTAR PRADESH PUBLIC SERVICES (RESERVATION FOR ECONOMICALLY WEAKER SECTIONS) ACT, 2020

(U.P. Act No. 10 OF 2020)

[As Passed by the Uttar Pradesh Legislature]

AN

ACT

to provide for the reservation in public services and posts in favour of the persons belonging to the Economically Weaker Sections of citizens in addition to the existing reservation applicable in the State and for matters connected therewith or incidental thereto.

IT IS HEREBY enacted in the Seventy-First Year of the Republic of India as follows :-

Short title and commencement -:

1. (1) This Act may be called the Uttar Pradesh Public Services (Reservation For Economically Weaker Section) Act, 2020. (2) It shall be deemed to have come into force on February 01, 2019.

Definitions

2. In this Act unless the context otherwise requires,-

(a) "appointing authority" in relation to public services and posts means the authority empowered to make appointment to such services or posts ;

(b) "Economically Weaker Sections of citizens" means the persons belonging to Economically Weaker Sections as defined in the Office Memorandum F.No. 36039/1/2019 Estt.(Res), dated 19.01.2019 of D.O.P.T. Ministry of Personnel and Public Grievance and Pension Government of India for the time being in force.

(c) "public services and posts" means the services and posts in connection with the affairs of the State and includes services and posts-

(i) a local authority ;

(ii) a co-operative society as defined in clause (f) of section 2 of the Uttar Pradesh Co-operative Societies Act, 1965 in which not less than fifty-one percent of the share capital of the society is held by the State Government ;

(iii) a Board or a corporation or a statutory body established by or under a Central or Uttar Pradesh Act which is owned and controlled by the State Government, or a Government company as defined in section 617 of the Companies Act, 1956 in which not less than fifty-one percent of the paid up share capital is held by the State Government ;

(iv) an educational institution owned and controlled by the State Government or which receives grants 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 to in clause (1) of Article 30 of the Constitution ;

(v) in respect of which reservation was applicable by the Government orders on the date of commencement of this Act and are not covered under sub-clauses (i) to (iv) ;

(d) "Reservation" means reservation for economically Weaker Sections in vacancies of posts and services in the State of Uttar Pradesh.

(e) "year of recruitment" in relation to a vacancy means a period of twelve months commencing on the first of July of a calendar year within which the process of direct recruitment against such vacancy is initiated.

Reservation in favour of Economically Weaker Section

3. (1) In public services and posts, at the stage of direct recruitment, ten percent of vacancies to which recruitment are to be made, they shall be reserved in favour of the persons belonging to Economically Weaker Sections of citizens:

Provided that the reservation shall not apply to the category of Economically Weaker Sections of citizens specified in the Schedule to this Act:

Provided further that the candidates from out of the State of Uttar Pradesh shall not be eligible for benefits of reservation under this Act.

(2) The reservation under this section shall be in addition to the reservation provided under the Uttar Pradesh Public Services (Reservation for Schedule Castes, Scheduled Tribes and Other Backward Classes) Act, 1994.

(3) The office memorandum issued by Karmik Anubhag-2 wide no.1/2019/4/1/2002/ka-2/19T.C.II, dated 18.02.2019 shall be deemed to have been issued under this section.

(4) For applying the reservation under sub-section (1), roaster has been issued by notification O.M. No.5/2019/4/1/2002/ka-2/2019T.C.- I, dated 13th August, 2019 by the State Government which shall be continuously applied till it is exhausted.

(5) If a person belonging to Economically Weaker Sections of citizens gets selected on the basis of merit in an open competition with unreserved candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1).

(6) “Where in any particular recruitment year any vacancy earmarked under sub-section (1) for Economically Weaker Sections cannot be filled up due to non availability of a suitable candidate belonging to Economically Weaker Sections such vacancies shall not be carried forward to the next recruitment year as backlog and the said vacancy shall be filled by the eligible candidates of unreserved category.”

Responsibility and powers for compliance of the Act

4. (1) The State Government may, by notified order, entrust the appointing authority or any officer or employee with the responsibility of ensuring the compliance of the provision of this Act.

(2) The State Government may, in the like manner, invest the appointing authority or officer or employee referred to in sub-section (1) with such powers or authority as may be

necessary for effectively discharging the responsibility entrusted to him under sub-section (1).

Penalty

5. (1) Any appointing authority or officer or employee entrusted with the responsibility under sub-section (1) of section 4 who willfully acts in a manner intended to contravene or defeat the purpose of this Act shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend one thousand rupees or with both.

(2) No court shall take cognizance of an offence under this section except with the previous sanction of the State Government or an officer authorized in this behalf by the State Government by an order.

(3) An offence punishable under sub-section (1) shall be tried summarily by a Metropolitan Magistrate or a Judicial Magistrate of the first class and the provision of sub-section (1) of section 262, section 263, section 264 and section 265 of the Code of Criminal Procedure, 1973 shall mutatis mutandis apply.

Power to call for record

6. If it comes to the notice of the State Government, that any person belonging to Economically Weaker Sections mentioned in subsection (1) of section 3 has been adversely affected on account of non compliance of the provisions of this Act or the rules made thereunder or the Government orders issued in this behalf by the appointing authority, it may call for such records and take such action as it may consider necessary.

Income and Assets certificate

7. For the purpose of reservation provided under this Act, income and assets certificate shall be issued by such authority or officer not below the rank of Tehsildar in the State and in such manner and in such form as the State Government may, by order, provide.

The office memorandum no.1/2019/4/1/2002/ka-2/19T.C.II, dated 18 February 2019 shall be deemed to have been issued under this section.

Removal of difficulties

8. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by a notified order, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

Protection of action taken in good faith

9. No suit, prosecution or other legal proceedings shall lie against the State Government or any person for anything which is done or intended to be done in good faith in pursuance of this Act or the rules made thereunder.

Power to make rules

10. The State Government may, by notification, make rules for carrying out the purposes of this Act.

Power to amend the Schedule

11. The State Government may, by notification amend the Schedule and upon the publication of such notification in Gazette, the Schedule shall stand amended accordingly.

Laying of Order etc.

12. Every order made under sub-sections (4) of section 3 and section 4 and 8 shall be laid as soon as may be, before each House of the State Legislature and the provisions of sub-section (1) of section 23- A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act.

Savings

13. The provisions of this Act shall not apply to cases in which selection process has been initiated before commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and

Government order as they stood before the commencement.

Explanation: For the purposes of this 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 appointment, to be made under the Uttar Pradesh Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974.”

16. To decide issue involved in present case, Sections 1, 2(c), 3, 7 and 13 would be relevant which have already been emphasized hereinabove.

17. U.P. Act No. 10 of 2020 was published in Gazette on August 31, 2020. According to Section 1(2), this Act shall be deemed to have come into force on February 01, 2019. Section 13 provides savings that “the provision of this Act shall not apply to cases in which selection process has been initiated before commencement of this Act and such cases shall be dealt with in accordance with the provisions of law and Government Order as they stood before commencement. The O.M. dated 18.02.2019 and 13.08.2019 shall be deemed to have been issued under this Act.

18. In the present case, ATRE Examination (a qualifying examination) was held on 06.01.2019 i.e. prior to 103rd Constitutional Amendment. Further selection process of appointment of 69000 posts of Assistant Teachers was commenced

from 16.05.2020 i.e. after 103rd Constitutional Amendment but before enactment of U.P. Act No.10 of 2020 i.e. on 31.08.2020, therefore, as per savings clause (Section 13), provisions of U.P. Act No. 10 of 2020 would not be applicable and it would be governed by provisions of law and Government Order as they stood before the commencement of U.P. Act No. 10 of 2020.

19. Now I proceed to consider effect of Office Memorandum dated 18.02.2019 issued by State of U.P. and effect that U.P. Act No. 10 of 2020 deemed to have come into force on 01.02.2019. I have carefully perused the said O.M. It notes that Social Welfare Department of State of U.P. has decided to provide 10% reservation to EWS in all State services as well as in Educational Institutions and also determine factors for granting benefits to EWS which are as follows :-

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

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

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

(i) जिनके परिवार की समस्त स्रोतों से प्राप्त होने वाली कुल वार्षिक आय ₹०-8.00 लाख से कम होगी। समस्त स्रोतों से आय में वेतन, कृषि, व्यापार, व्यवसाय आदि से प्राप्त आय सम्मिलित होंगी और यह आय आरक्षण हेतु आवेदन करने के वर्ष के पूर्व वर्ष की होंगी। इस उद्देश्य के लिये लाभ प्राप्त करने वाले व्यक्ति के परिवार में उसके/उसकी माता-पिता व 18 वर्ष से कम आयु के भाई-बहन के साथ-साथ उसका/उसकी, पति/पत्नी और 18 वर्ष से कम आयु के उसके बच्चे सम्मिलित होंगे। परन्तु:

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

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

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

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

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

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

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

20. At this stage, it would be apposite to refer Section 7 of U.P. Act No. 10 of 2020 that -:

“For the purpose of reservation provided under this Act, income and assets certificate shall be issued by such authority or officer not below the rank of Tehsildar in the State and in such manner and in such form as the State Government may, by order, provide.

The office memorandum no.1/2019/4/1/2002/ka-2/19T.C.II, dated 18 February 2019 shall be deemed to have been issued under this section.”.

21. Now, I have to consider scope of above referred clause 4 (IV) of O.M. dated 18.02.2019 that since selection process for

recruitment of 69000 Assistant Teachers was commenced (if the argument of petitioner is deemed to be accepted) with a G.O. dated 16.05.2019 i.e. after 18.02.2019, whether State of U.P. was under a legal obligation to provide reservation for EWS or not?

22. The above referred part of O.M. states that arrangement of reservation to EWS will be applicable on notification issued after 01.02.2019 for recruitment of State services, however, at that stage, no Act was enacted in State of U.P. and above arrangement was provided by an Office Memorandum. Later on, it was validated by way of enactment of U.P. Act No. 10 of 2020.

23. As referred above, later on U.P. Act No. 10 of 2020 was enacted on 31.08.2020 with a specific saving clause that provisions of this Act shall not apply to cases which were initiated before commencement of Act and admittedly in present case, process of selection was initiated prior to 31.08.2020 (as per stand of both parties). An Act has always more legal value in compare to any Office Memorandum, therefore in case of any ambiguity, provisions of Act No. 10 of 2020 would prevail. Section 7 of U.P. Act No. 10 of 2020 provides that O.M. dated 18.02.2019 shall be deemed to have issued under said scheme and O.M. was provided legal sanctity only after aforesaid Act was come into force and not before it and since procedure for selection for 69000 posts of Assistant Teachers was commenced prior to 31.08.2020, therefore, State of U.P. was not legally bound to provide EWS reservation in said recruitment process.

24. By validating O.M. dated 18.02.2019, the Act has validated if any reservation was provided to EWS on basis of said O.M. prior to enactment of U.P. Act No. 10 of 2020, but it could not

be correct to hold that on basis of said O.M., State was bound to provide reservation to EWS in all selection process, even prior to commencement of U.P. Act No. 10 of 2020 and it was only after enactment of said Act, the State is under a legal obligation to provide reservation to EWS and not before it.

25. In aforesaid circumstances, this Court is not entering to the dispute whether ATRE Examination is a starting point of recruitment process of Assistant Teacher or not as in view of above discussion, it does not require as well as in view of above discussion, other argument of petitioners' side has no legal basis as well as judgments cited are distinguishable on facts as well as on law.

26. The outcome of above discussion is that relief sought could not be granted, accordingly, all writ petitions are **dismissed**.

Order Date :- February 29, 2024

N. Sinha

[Saurabh Shyam Shamsbery, J.]