

U.P. PUBLIC SERVICE COMMISSION

V.

SATYA NARAYAN SHEOHARE & ORS.

Civil Appeal No. 2627 of 2006

FEBRUARY 26, 2009

[R.V. RAVEENDRAN AND H.L. DATTU, JJ.]

*U.P. Public Services (Reservation for Schedule Castes, Scheduled Tribes and other Backward Classes) Act, 1994 – Section 15 – Entitlement to claim benefit of reservation – Recruitment to post of Civil Judge (Jr. Division) – On basis of written test and interview – Respondents filed application as general category candidates – Before the written test commenced, State government issued notification amending the First Schedule to the Act and thus including the castes to which Respondents belonged, in the list of OBCs – Respondents obtained caste certificates and claimed benefit of reservation as candidates belonging to Other Backward Classes – Representations not accepted – Writ petitions – High Court allowed the petitions and directed the Respondents to be treated as OBC candidates – Justification of – Held: Justified – Status of Respondents as on the date when the selection process is deemed to have been initiated, is relevant to decide whether they were entitled to claim the benefit of reservation – Process of selection is deemed to have been initiated when the written test was started – Though Respondents were general category candidates when the recruitment notification was issued, as on the relevant date, namely the date on which the selection process was deemed to have been initiated, they were OBC candidates and became entitled to claim the benefit of reservation.*

**The appellant-Commission issued advertisement inviting applications for filling posts of Civil Judge (Junior Division) under the U.P. Nyayik Niyamavali 1951. The**

- A respondents filed application as general category candidates. Meanwhile, the State Government added the castes of 'kalar' and 'kalal' in the list of Other Backward Classes by amending the First Schedule to the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994.

- The respondents who belonged to the 'kalar'/kalal caste obtained caste certificates and made representations to the Appellant Commission to extend them the benefit of reservation as candidates belonging to Other Backward Classes. The representations were not accepted and the Respondents were considered as general category candidates. The respondents were not selected. Feeling aggrieved, they filed writ petitions before the High Court contending that they ought to have been treated as OBC candidates. The High Court allowed the petitions and directed the respondents to be treated as OBC candidates.

Disposing of the appeals, the Court

- HELD: 1. Section 15 of the U.P. Public Services (Reservation for Schedule Castes, Scheduled Tribes and other Backward Classes) Act, 1994 makes it clear that if selection process had been initiated before the commencement of the Act, that is before 1.12.1993, such selection process had to be dealt with in accordance with the provisions of law and government orders as they stood before such commencement date and not by the provisions of the Act. For this purpose, according to the explanation to the section, the selection process shall be deemed to have been initiated when the written test started (where the recruitment was on the basis of written test and interview). On account of this special deeming provision, reservation provision in the Act became applicable even in regard to recruitment notifications issued prior to the commencement of the Act, provided the written test had not commenced as on the date of

commencement of the Act. Section 2(b) of the Act defines 'other backward classes of citizens' as those backward classes of citizens specified in Schedule I to the Act. Where a particular caste was not included in the list of 'other backward classes' in Schedule I to the Act, when the Act was enacted, and when such caste is subsequently added to the list of other backward classes in Schedule I of the Act by way of an amendment, for all purposes, the Act commences in respect of the newly added caste, from the date when the Amendment Act came into effect. Thus, the principle contained in Section 15 would apply whenever a new caste, which was not an OBC earlier, is added to Schedule I of the Act by an amendment to the Act. Therefore whenever the Act is amended by including new castes/ classes in the list of other backward classes in Schedule I, the date of amendment to the Act would be the date of commencement of the Act in regard to such caste/class inserted by the amendment. [Para 5] [498-A-G]

2. It is evident from the explanation to sub-section (1) of Section 15 that where, under the relevant service rules, recruitment is to be made on the basis of written test and interview, the selection process shall be deemed to have been initiated on the date on which written test has started. In this case, there is no dispute that the written test started on 4.8.2000. It is also not in dispute that before 4.8.2000 when the written test commenced, the state government had issued a notification amending the First Schedule to the Act including the castes to which the respondents belonged, in the list of OBCs. Therefore, though the respondents were general category candidates when the recruitment notification dated 4.3.2000 was issued, as on the relevant date, namely the date on which the selection process was deemed to have been initiated, they were OBC candidates. Having regard to the fact that the notification including their castes in

A the Schedule was issued on 7.7.2000 after the recruitment  
notification, they were not able to show their caste as an  
OBC nor could they claim the benefit of reservation as  
OBC candidates when they made applications. However  
B when the Act was amended on 7.7.2000 before the  
commencement of the written test, they became entitled  
to claim the benefit of reservation, and they secured the  
necessary certificates and gave their representations  
without any delay on 29.8.2000 and 13.9.2000 respectively.  
C Having regard to the principle underlying Section 15 of  
the Act, the decision of the High Court directing that the  
Respondents should be treated as OBC candidates does  
not call for any interference. [Para 6] [498-G-H; 499-A-E]

3. The selections and appointments in regard to the  
2000 advertisement were completed long back and  
D thereafter appointments have been made even in respect  
of subsequent selections in 2003 and 2006. But there was  
no delay on the part of the two candidates, as they had  
approached the Commission, and thereafter the High  
Court, without any delay. There was a bona fide doubt as  
E to whether the respondents should be treated as OBC  
candidates or general category candidates having regard  
to the fact that they had applied as general category  
candidates. Therefore, when the Commission treats the  
respondents as OBC candidates and selects them on  
F account of their marks/rank being more than the last  
selected candidate in the OBC category, their appointment  
should not affect or disturb the appointments already  
made in respect of the 2000 selections or the subsequent  
selections. The appointment of respondents, if found  
entitled for selection and appointment with reference to  
G their rank, will be prospective in nature. [Para 7] [499-F-H;  
500-A-B]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 2627  
of 2006

H From the Judgement and Order dated 27.02.2003 of the

Hon'ble High Court of Judicature at Allahabad in Civil Misc. A .  
Petition No. 42207 of 2001.

WITH

Civil Appeal No. 2632 of 2006

Shail Kumar Dwivedi, Manoj Kr. Dwevedi, Vibha Dwivedi, B  
for the Appellant.

Nagendra Rai, Shantanu Sagar, Shree Pal Singh, Mohd.  
Mannan, Ashok K. Srivastava, Indrajeet Das, Pradeep Mishra,  
Gaurav, Agrawal, Vivek Singh, Vendana Mishra, Shirish Kr. C  
Mishra, for the Respondent.

The Judgement of the Court was delivered by

**R. V. RAVEENDRAN J.**

The appellant Uttar Pradesh Public Service Commission, D  
(‘Commission’ for short) issued an advertisement dated  
4.3.2000 inviting applications for filling 147 posts of Civil Judge  
(Jr. Division) under the U.P. Nyayik Sewa Niyamavali 1951. The  
provisions relating to essential qualifications in the said  
advertisement contained the following note:- E

“Candidate must possess all qualifications prescribed in  
the advertisement by last date for acceptance of  
Application form. Any candidate coming under the  
reservations category, if they want the benefit of  
reservation must indicate their category in the relevant F  
column in the prescribed format and should obtain the  
certificate issued by the Competent Authority in the  
prescribed format printed in the advertisement and annex  
an attested copy of it along with Application form.”

The respective first respondent in each of these two G  
appeals made applications claiming to be general category  
candidates. The written examination was held on 4<sup>th</sup>, 5<sup>th</sup> and  
6<sup>th</sup> August 2000 and the two candidates participated in the said  
examination as general category candidates. H

A           2. In the meanwhile, by notification dated 7.7.2000, the  
state government added the castes of 'kalal', 'kalwar' and 'kalar',  
in the list of other backward classes by amending the First  
Schedule to the U.P. Public Services (Reservation for Schedule  
B   Castes, Schedule Tribes and Other Backward Classes) Act  
1994 ('Act' for short). The first respondent in C.A. No.2627 of  
2006 belongs to caste 'kalar' and the first respondent in C.A.  
No. 2632 of 2006 belongs to the caste 'kalal'. They obtained  
caste certificates dated 2.8.2000 and 24.8.2000. They made  
representations dated 29.8.2000 and 13.9.2000 respectively  
C   to the Commission to accept their caste certificates and extend  
them the benefit of reservation as candidates belonging to other  
backward classes. The same was not accepted. As they had  
applied for the post as general category candidates, their  
applications were considered as general category candidates.  
D   They were not selected. Feeling aggrieved, they filed writ  
petitions before the High Court of Allahabad contending that  
they ought to have been treated as OBC candidates and if they  
had been so treated then they would have been selected as  
they were more meritorious than the last selected candidate in  
the OBC category. The High Court, by orders dated 27.2.2003  
E   and 19.12.2003, allowed their petitions following its earlier  
decision in *Km. Amrita Singh & Ors. v. State of U.P. & Anr.* (Civil  
Misc. Writ Petition No. 28193/2000 decided on 7.5.2001) and  
directed them to be treated as OBC candidates. The said  
judgments are challenged in these appeals by special leave.

F           3. The High Court held that the status of the writ petitioners  
as on the date when the selection process was deemed to have  
been initiated, was the relevant factor to decide whether they  
were entitled to claim the benefit of reservation, in view of the  
special provision contained in Section 15 of the Act, extracted  
G   below :

          "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  
H       shall be dealt with in accordance with the provisions of

law and government orders as they stood before such commencement. A

*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 – B

- (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. C

xxxxx

The High Court held that as the process of selection was deemed to have been initiated when the written test was started and as the Schedule I to the Act was amended prior to the commencement of written test, the writ petitioners should be treated as OBC candidates. D

4. The appellant contends that section 15 of the Act, which is a savings clause, being a transitional provision, was intended to apply only to pending selection processes when the Act came into force on 1.12.1993 and therefore, recourse to such transition provision was impermissible in regard to recruitments notifications issued on or after 1.12.1993. It was submitted that the condition in the advertisement (extracted in para above) made it clear that only candidates who claimed the benefit of reservation in their application and enclose the certificate issued by the competent authority certifying their reservation category status would be considered under the reservation category. It was pointed out that even if a person belonged to a reservation category, if he did not choose to claim the benefit of reservation in his application and applies as a general category candidate, he cannot subsequently claim the benefit of reservation by producing the certificate relating to caste status. It is therefore contended that the two candidates were not entitled to claim the benefit of reservation. E F G H

- A 5. Section 15 is no doubt intended to apply as a transition provision. Section 15 makes it clear that if selection process had been initiated before the commencement of the Act, that is before 1.12.1993, such selection process had to be dealt with in accordance with the provisions of law and government orders as they stood before such commencement date and not by the provisions of the Act. For this purpose, according to the explanation to the section, the selection process shall be deemed to have been initiated when the written test started (where the recruitment was on the basis of written test and interview). On account of this special deeming provision, reservation provision in the Act became applicable even in regard to recruitment notifications issued prior to the commencement of the Act, provided the written test had not commenced as on the date of commencement of the Act.
- D Section 2(b) of the Act defines 'other backward classes of citizens' as those backward classes of citizens specified in Schedule I to the Act. Where a particular caste was not included in the list of 'other backward classes' in Schedule I to the Act, when the Act was enacted, and when such caste is subsequently added to the list of other backward classes in Schedule I of the Act by way of an amendment, for all purposes, the Act commences in respect of the newly added caste, from the date when the Amendment Act came into effect. Thus, the principle contained in Section 15 would apply whenever a new caste, which was not an OBC earlier, is added to Schedule I of the Act by an amendment to the Act. Therefore whenever the Act is amended by including new castes/classes in the list of other backward classes in Schedule I, the date of amendment to the Act would be the date of commencement of the Act in regard to such caste/class inserted by the amendment.
- G

- H 6. It is evident from the explanation to sub-section (1) of Section 15 that where under the relevant service rules recruitment is to be made on the basis of written test and interview, the selection process shall be deemed to have been

initiated on the date on which written test was started. In this A  
case, there is no dispute that the written test started on 4.8.2000.  
It is also not in dispute that before 4.8.2000 when the written  
test commenced, the state government had issued a notification  
amending the First Schedule to the Act including the castes to B  
which the writ petitioners belonged, in the list of OBCs. Therefore,  
though the writ petitioners were general category candidates  
when the recruitment notification dated 4.3.2000 was issued, C  
as on the relevant date, namely the date on which the selection  
process was deemed to have been initiated, they were OBC  
candidates. Having regard to the fact that the notification D  
including their castes in the Schedule was issued on 7.7.2000  
after the recruitment notification, they were not able to show their  
caste as an OBC nor could they claim the benefit of reservation  
as OBC candidates when they made applications. However E  
when the Act was amended on 7.7.2000 before the commen-  
cement of the written test, they became entitled to claim the  
benefit of reservation, and they secured the necessary  
certificates and gave their representations without any delay on  
29.8.2000 and 13.9.2000 respectively. Having regard to the  
principle underlying Section 15 of the Act, we are of the view F  
that the decision of the High Court directing that that the writ  
petitioners should be treated as OBC candidates does not call  
for any interference. G

7. It should be noted that the selections and appointments F  
in regard to the 2000 advertisement were completed long back  
and thereafter appointments have been made even in respect  
of subsequent selections in 2003 and 2006. But it should also  
be noted that there was no delay on the part of the two  
candidates, as they had approached the Commission, and G  
thereafter the High Court, without any delay. There was a bona  
fide doubt as to whether the writ petitioners should be treated  
as OBC candidates or general category candidates having  
regard to the fact that they had applied as general category  
candidates. Therefore, when the Commission treats the writ H

- A petitioners as OBC candidates and selects them on account of their marks/rank being more than the last selected candidate in the OBC category, their appointment should not affect or disturb the appointments already made in respect of the 2000 selections or the subsequent selections. The appointment of
- B writ petitioners, if found entitled for selection and appointment with reference to their rank, will be prospective in nature. The Commission is granted four months' time for compliance.

8. Appeals are disposed of accordingly.

B.B.B.

Appeal disposed of.