

4.12.1989 and the termination order dated 17.10.1989 was kept in abeyance. The writ petition was thereafter dismissed as having become infructuous on 17.10.2001. Upon an application moved by the petitioners, the said order was recalled on 8.3.2010 and on the same day, it was got dismissed as not pressed. However, during the intervening period, the appellants had been absorbed on two existing vacancies by means of an order dated 31.3.2006. The appellants having been absorbed on existing vacancies, the irregularity, if any initially in their appointments, would be deemed to have been cured as per the judgments of the Supreme Court cited by learned counsel for the appellants i.e. **Mansaram (supra) and Madras Aluminium Company Limited (supra)**. As per these judgments definitely if any action had to be taken, it ought to have been taken within reasonable time and that having not been taken, the appellants could not now be penalized. Further, the Court is of the view that as per the judgment of the Supreme Court in **Radhey Shyam Yadav (supra)** the appellants definitely were not at fault. As per the judgment of the Supreme Court in **Vinod Kumar (supra) and Jaggo (supra)** we find that definitely when there was an irregularity in the appointments of the appellants, that irregularity had been removed and the appointments were regularized.

15. In the ultimate analysis, we are thus of the view that the writ petitions had to be allowed. The orders of the Joint Director of Education which were passed on the fact that the initial appointment was wrongly made, were erroneously passed.

16. For all the reasons which we have stated above, we are of the considered view that if there was any irregularity in the initial appointment, it was done away with by the State and, therefore, it cannot be said that

the appellants did not come within the purview of the relevant provisions relating to regularisation. The appellants after they were absorbed on regular vacancies, it had to be taken that they were always working on the regular vacancies and since they were throughout teaching till the date when they retired, it could be taken that they were always in continuous service.

17. Thus, for the reasons stated above, Special Appeal No.167 of 2024 and Special Appeal No.200 of 2024 are allowed. The judgment and order of the learned Single Judge dated 16.12.2023 passed in Writ-A No.11129 of 2023 and Writ-A No.11163 of 2023 is set-aside. The writ petitions are allowed and the order dated 2.6.2023 passed by the Joint Director of Education, Jhansi Region, Jhansi is also quashed. The appellants be treated as having been regularized and they be provided with all consequential benefits.

(2025) 5 ILRA 367
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.05.2025

BEFORE

THE HON'BLE ASHWANI KUMAR MISHRA, J.
THE HON'BLE PRAVEEN KUMAR GIRI, J.

Special Appeal No. 259 of 2024
 With
 Other connected cases

Shivam Pandey & Ors. ...Appellants
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellants:
 Seemant Singh

Counsel for the Respondents:
 Archana Singh, C.S.C.

A. Service Law – UP Public Services (Reservation for Economically Weaker Section) Act, 2020 – Sections 1(1), 3(3) & 4 – Office Memorandum dated 18.02.2019 & 13.08.2019 – Reservation for Economic Weaker Section – Advertisement for 69,000 post of Assistant Teachers was issued on 17.05.2020 – Act of 2020 shows that it is to come into force on 01.02.2019 – However, Hon’ble Single Judge opined that Act of 2020 came to be enacted on 31.8.2020, hence the fact that it has been made effective from 18.2.2019 would not be of any help to the appellant – Validity challenged – Held, appropriate legislature can always introduce legislation with retrospective effect – It would be difficult to accept that the EWS reservation will commence from 31.8.2020 and not from 18.2.2019 when office memorandum was issued by the St. providing for EWS reservation in employment of St.. (Para 36 and 37)

B. Constitution of India, 1950 – Article 162 – Executive power, extent thereof – It’s relativity with legislative power – Held, executive powers of St. is co-extensive with its legislative power – Once provision for EWS reservation was made available to the St. by virtue of 103rd Constitutional Amendment, it was open for the St. to implement EWS reservation either by making legislation or by issuing executive instructions – The St. Government was competent to provide for EWS reservation in public employment of St. by issuing office memorandum dated 18.2.2019. (Para 37 and 40)

C. Grant of relief – Process of recruitment was already concluded – None of the selected candidates has been impleaded as a party respondent – Competence of court to issue direction, of which implementation would be a mere impossibility – Held, in the event 10% EWS Reservation is required to be extended a direction will have to be issued to draw a merit list for candidates belonging to EWS Category – It would not be prudent exercise of discretion for this

Court to issue any direction to extend 10% EWS reservation in the recruitment in question, at this stage, as implementation of such direction would be a mere impossibility. It is otherwise settled that without impleadment of persons affected or any challenge made to their appointment no direction can be issued which has the effect of dislodging selected candidates. (Para 47)

Special Appeal disposed of. (E-1)

List of Cases cited:

1. Mahendra Pal & ors. Vs St. of U.P. & ors.; 2023 (3) ADJ 496
2. Raghvendra Pratap Singh Vs St. of U.P. & ors., 2020 (4) ADJ 490 (LB)
3. Devesh Sharma Vs U.O.I. & ors.; (2023) 18 SCC 339
4. Navin Kumar & ors. Vs U.O.I. & ors.; 2024 SCC OnLine SC 2360
5. Assn. of Medical Superspeciality Aspirants & Residents Vs U.O.I.; (2019) 8 SCC 607 : 2019 SCC OnLine SC 1055

(Delivered by Hon’ble Ashwani Kumar Mishra, J.

&

Hon’ble Praveen Kumar Giri, J.)

1. This bunch of special appeals arise out of a composite judgment rendered by the learned Single Judge on 29.02.2024 in a bunch of writ petitions, whereby the reservation to Economically Weaker Sections (for short ‘EWS’) is denied in respect of recruitment undertaken for 69,000 posts of Assistant Teachers. Learned Single Judge has held that recruitment has commenced prior to introduction of reservation in EWS category. Thus aggrieved, the writ petitioners are before us in the present batch of special appeals.

2. Shri Ashok Khare and Shri G.K. Singh, learned Senior Advocates leading the submissions on behalf of the appellants in the present batch of special appeals submit that reservation for EWS was introduced by way of 103rd Constitutional Amendment on 12.01.2019. State legislature thereafter enacted the Uttar Pradesh Public Services (Reservation for Economically Weaker Section) Act, 2020 U.P. Act No. 10 of 2020 for giving effect to such reservation. The Act was given retrospective application vide Section 1(1) of the Act, which is reproduced hereinafter:

“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.”

3. Section 3(3) and (4) of the Act aforesaid are also relevant and are reproduced hereunder :

“(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), roster 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.”

4. Even before U.P. Act No. 10 of 2020 was enacted the State of U.P. issued office memorandum dated 18.2.2019 providing for reservation to Economically Weaker Sections in public employment. Executive power of State was invoked for the purpose. Section 13 of the Act of 2020

contained Savings Clause which is relevant for the present purposes and is reproduced hereinafter :

“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.”

5. According to the petitioners, the process of recruitment for the post of assistant teacher had commenced pursuant to the advertisement published by the respondents on 17.5.2020, by when reservation in public employment under EWS category was already implemented in State of U.P. vide office memorandum dated 18.2.2019. The petitioners, therefore, submit that the benefit of EWS reservation ought to have been extended in the recruitment exercise initiated for appointment to the 69,000 posts of assistant teachers in Basic Institutions.

6. The appointment to the post of assistant teacher in educational institutions of U.P. Basic Education Board (hereinafter

referred to as 'Basic Institutions') is regulated by U.P. Basic Education (Teachers Service) Rules, 1981. These Rules came to be amended from time to time. For the present purposes, it would suffice to refer to the 22nd Amendment and 23rd Amendment made in the Rules of 1981. Rule 14 (1) of 1981 rules as amended vide 22nd Amendment notified on 15.3.2018 read as under :

“14(1)(a) Determination of vacancies. *In respect of appointment, by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, and other categories under Rule 9 and published in at least two leading daily newspapers having adequate circulation in the State as well as in concerned district inviting applications from candidates possessing prescribed training qualification and passed teacher eligibility test, conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government.”*

7. Rule 14 (1) was further amended by virtue of 23rd Amendment, notified on 24.1.2019, which reads as under :

14. Procedure of Selection.-(1) Determination of vacancies. *In respect of appointment, by direct recruitment to the post of Assistant Master of Junior Basic Schools under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also the number*

vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes and other categories under Rule 9 and forward to the Secretary, Uttar Pradesh Basic Education Board, Prayagraj. Information of compiled vacancies as per reservation shall be provided by the Secretary, Uttar Pradesh Basic Education Board, Prayagraj to the Examination Body. For the notified vacancies an Assistant Teacher Recruitment Examination shall be conducted conducted by the Examination Body authorised as such by the Government and result, according to reservation, shall be provided to Secretary, Uttar Pradesh Basic Education Board, Prayagraj.

Thereafter, an advertisement for recruitment will be published in at least two leading daily newspapers having adequate circulation in the State by the Secretary, Uttar Pradesh Basic Education Board, Prayagraj inviting online applications from candidates possessing prescribed educational and trainings qualification and passed teacher eligibility test, conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government, in which cadre wise district option will be filled by the candidates.”

8. Rule 14 of Rules 1981, as amended by 22nd Amendment Rules requires appointment to be made on the post of Assistant Teacher from the persons who possess requisite qualification including passing of Assistant Teacher Recruitment Examination (hereinafter referred to as 'ATRE').

9. A Government Order was issued on 1.12.2018 initiating process of holding

ATRE examination for 69,000 posts of Assistant Teachers in the Basic Institutions. The Government Order dated 1.12.2018 reads as under :

ह०अपठनीय
(डा० प्रगति कुमार)
अपर मुख्य सचिवा

“ संख्या-202056/68-4-2018

प्रेषक,
डॉ० प्रभात कुमार,
अपर मुख्य सचिव,
उ०प्र० शासना
सेवा में,
निदेशक, सचिव,
राज्य शैक्षिक अनुसंधान एवं परीक्षा नियामक प्राधिकारी,
प्रशिक्षण परिषद, उ०प्र०, उ०प्र०, इलाहाबाद
लखनऊ

बेसिक शिक्षा अनुभाग-4 लखनऊ, दिनांक 01 दिसम्बर,
2018

विषय:- "सहायक अध्यापक भर्ती परीक्षा 2019" के
आयोजन हेतु गाइड लाइन्स/दिशा निर्देश।

महोदय,

उपर्युक्त विषयक सचिव, परीक्षा नियामक प्राधिकारी के पत्र संख्या- गोप०/स०अ०भ०प०-10/21556-59/2018-10 दिनांक 01 दिसम्बर, 2018 का संदर्भ ग्रहण करें, जिसके द्वारा "सहायक अध्यापक भर्ती परीक्षा-2019" के संबंध में मार्गदर्शी सिद्धान्त गाइड लाइन्स, प्रक्रिया और समय सारिणी के संबंध में शासनादेश निर्गत किये जाने का अनुरोध किया गया है।

2- इस सम्बन्ध में मुझे यह कहने का निर्देश हुआ है कि शासन द्वारा सम्यक् विचारोपरान्त उ०प्र० बेसिक शिक्षा परिषद द्वारा संचालित परिषदीय प्राथमिक विद्यालयों में "सहायक अध्यापक भर्ती परीक्षा 2019" आयोजित किये जाने हेतु मार्गदर्शी सिद्धान्त, गाइड लाइन्स, प्रक्रिया और समय सारिणी संलग्न कर निर्गत किया जाता है।

3- "सहायक अध्यापक भर्ती परीक्षा 2019" उ०प्र० बेसिक शिक्षा परिषद द्वारा संचालित परिषदीय प्राथमिक विद्यालयों में सहायक अध्यापक के कुल 69000 रिक्त पदों पर भर्ती के लिये आयोजित की जायेगी। यह परीक्षा मात्र इसी भर्ती के लिये ही मान्य होगी।

संलग्नक- यथोपरि।

भवदीय,

संख्या एवं दिनांक तदैव-

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

- 1- समस्त मण्डलायुक्त, उत्तर प्रदेश।
- 2- समस्त जिलाधिकारी, उत्तर प्रदेश।
- 3- राज्य परियोजना निदेशक, सभी के लिए शिक्षा परियोजना परिषद उ०प्र०।
- 4- निदेशक, माध्यमिक/बेसिक शिक्षा/साक्षरता एवं प्रा० शिक्षा उ०प्र०।
- 5- अपर शिक्षा निदेशक, बेसिक/माध्यमिक शिक्षा उ०प्र० इलाहाबाद।
- 6- सचिव, बेसिक शिक्षा परिषद उ०प्र० इलाहाबाद।
- 7- समस्त मण्डलीय संयुक्त शिक्षा निदेशक उ०प्र०।
- 8- समस्त प्राचार्य, जिला एवं प्रशिक्षण संस्थान, उ०प्र०।
- 9- शिक्षा अनुभाग-5
- 11- गार्ड फाइल।

आज्ञा से,
ह० अपठनीय
(चन्द्रशेखर)
विशेष सचिवा”

10. The eligibility for appearing in ATRE is enclosure to the Government Order dated 1.12.2018. Age and minimum qualification for appearing in such examination has been specified. This Government Order also provided for age relaxation to those candidates, who belong to reserved categories. Clause 7 (2) specify that passing of ATRE examination will not create any right of appointment for the post of Assistant Teacher as ATRE is only a qualifying examination. The manner, in which such examination was to be conducted was specified in the enclosure to the Government Order dated 1.12.2018. There is, however, nothing on record to show that with reference to the vacancy of 69,000 posts vertical or horizontal

reservation was worked out. ATRE, accordingly, was conducted on 6.1.2019 and its result was also declared on 12.5.2020. It is thereafter that a fresh Government Order was issued on 16.5.2020 commencing the process of appointment to the post of 69000 assistant teachers, as per the provisions of Rules, 1981, as amended from time to time. The Government Order dated 16.5.2020 reads as under :

“कार्यालय सचिव

उत्तर प्रदेश वेसिक शिक्षा परिषद, प्रयागराज

पत्रांक वे०शि०प०/778/2020-21 दिनांक: 16.05.2020

विज्ञप्ति

शासनादेश संख्या-344/68-5-2020 दिनांक 13.05.2020 के अनुक्रम में उ०प्र० बेसिक शिक्षा परिषद द्वारा संचालित परिषदीय प्राथमिक विद्यालयों में 69000 सहायक अध्यापकों ही भर्ती के लिए आयोजित सहायक अध्यापक भर्ती परीक्षा-2019 में उत्तीर्ण 146060 अभ्यर्थियों में से जनपदवार निर्धारित पदों की संख्या (जो घट बढ़ सकती है) पर चयन/नियुक्ति हेतु उ०प्र० बेसिक शिक्षा अध्यापक सेवा नियमावली-1981 (अद्यतन संशोधित) में उल्लिखित प्राविधानों तथा वांछित शैक्षिक/प्रशिक्षण अर्हताधारी अभ्यर्थियों से जनपद आवंटन हेतु ऑनलाइन आवेदन पत्र आमंत्रित किये जाते हैं।

ऑनलाइन ई-आवेदन पत्र का प्रारूप, आवश्यक दिशा निर्देश एवं जनपदवार रिक्तियों का विवरण वेबसाइट <https://upbasiceduboard.gov.in/> पर दिनांक 18.05.2020 के अपरान्त से दिनांक 06.06.2020 सायं 6 बजे तक उपलब्ध रहेगा। अभ्यर्थी द्वारा दिनांक 18.05.2020 के अपरान्त से दिनांक 26.05.2020 की रात्रि 12 बजे तक निर्धारित वेबसाइट पर ऑनलाइन आवेदन पत्र भरा जा सकेगा। अभ्यर्थी को 69000 सहायक अध्यापकों की भर्ती हेतु आयोजित भर्ती परीक्षा के लिये निर्गत किया गया अनुक्रमांक, जन्मतिथि तथा मोबाइल संख्या को निर्धारित वेबसाइट पर भरना होगा, जिसके उपरान्त आयर्थी के उक्त मोबाइल पर ओ०टी०पी० (वन टाइम पासवर्ड) प्राप्त होगा, जिसे भरने पर ही वह आवेदन पत्र में वांछित प्रविष्टियों को पूर्ण कर सकेगा। विशेष रूप से उल्लेखनीय है कि सहायक अध्यापक पद पर नियुक्ति हेतु अभ्यर्थी को भर्ती परीक्षा हेतु भरे गये आवेदन पत्र की प्रविष्टियां प्रदर्शित हो आयेगी जिसमें किसी

प्रकार का परिवर्तन नहीं किया जा सकेगा। उक्त के अतिरिक्त कतिपय अन्य वांछित प्रविष्टियों को अभ्यर्थियों द्वारा भरते हुए आवेदन पत्र को पूर्ण करना होगा। एक बार आवेदन पत्र पूर्ण करने के उपरान्त उसमें किसी प्रकार का संशोधन नहीं किया जा सकेगा।

उपर्युक्त सहायक अध्यापक भर्ती परीक्षा-2019 में उत्तीर्ण अभ्यर्थियों द्वारा मात्र एक ऑनलाइन आवेदन पत्र भरा जायेगा जिसमें अभ्यर्थी द्वारा प्रदेश के समस्त 75 जनपदों का विकल्प अपनी इच्छानुसार वरीयताक्रम में भरा जाना अनिवार्य होगा तथा वह अपने गुणांक/भारांक एवं वरीयता तथा जनपद हेतु निर्धारित वर्गवार/श्रेणीवार रिक्तियों के अनुरूप आवंटित जनपद में दिनांक 03.06.2020 से 06.06.2020 के मध्य आयोजित काउन्सलिंग में प्रतिभाग कर सकेगा। काउन्सलिंग में प्रतिभाग करने का तात्पर्य यह कदापि नहीं है कि वह नियुक्ति हेतु पात्र है। वांछित अनिवार्य शैक्षिक/प्रशिक्षण योग्यताओं/वर्ग-श्रेणी के सत्यापनोपरान्त अर्ह पाये जाने पर अभ्यर्थी को उनके आवंटित जनपद में नियुक्ति प्रदान की जायेगी। सरकारी/अर्द्धसरकारी/बेसिक शिक्षा परिषद के अधीन पूर्व से कार्यरत अभ्यर्थियों को काउन्सलिंग के समय सक्षम प्राधिकारी से एन०ओ०सी० प्राप्त कर प्रस्तुत करना अनिवार्य होगा।

अभ्यर्थी को नियुक्ति हेतु आयोजित काउन्सलिंग में अपने समस्त शैक्षिक/अन्य मूल अभिलेखों, उसकी दो सेट एक प्रमाणित छायाप्रति, चार पासपोर्ट साइज फोटोग्राफ तथा "सचिव उ०प्र० बेसिक शिक्षा परिषद प्रयागराज" के पदनाम से निर्धारित आवेदन शुल्क (सामान्य/ओ०बी०सी० हेतु रू० 500, अनुसूचित जाति/जनजाति हेतु रू० 200, विकलांगों हेतु निःशुल्क का बैंकड्राफ्ट लेकर प्रतिभाग करना होगा। नियुक्त होने वाले अध्यापक/अध्यापिकाओं का अन्तर्जनपदीय स्थानान्तरण नहीं किया जायेगा। अभ्यर्थियों से यह अपेक्षा की आती है कि संदर्भगत प्रक्रिया के सम्बन्ध में आवश्यक विभागीय निर्देश एवं अन्य जानकारी हेतु वेबसाइट <https://upbasiceduboard.gov.in/> का निर्धारित तिथियों के मध्य अवलोकन करते रहे।

परिषदीय प्राथमिक विद्यालयों में सहायक अध्यापक के पदों पर चयन/नियुक्ति बेसिक अध्यापक सेवा नियमावली-1981 (अद्यतन यथा संशोधित) तथा विद्यालयों में पदस्थापन की कार्यवाही अध्यापक तैनाती नियमावली- 2008 (अद्यतन यथा संशोधित) के अनुसार की जायेगी।"

सचिव

उ०प्र० बेसिक शिक्षा परिषद, प्रयागराज”

11. Since the Cadre of Assistant Teacher under Rules, 1981 is a District Level Cadre sub divided into rural area and urban area, therefore, posts in respect of

different districts were specified with reference to the category of posts and applications were invited. The advertisement was published on 17.5.2020. Online applications could be filled from 18.5.2020 and the last date for filling up such application was 26.5.2020 at 12.00 PM. The instructions appended to the Government Order dated 16.5.2020 provided that the candidate had to fill his registration number and roll number of ATRE examination whereafter information in clauses 1 to 12 was to be auto filled and only remaining clauses relating to preference etc had to be filled online. At this juncture, we may also note that in the advertisement, initially published on 17.5.2020, the eligibility date was specified as the date of holding of ARTE. Clause 1(6) of the advertisement is reproduced in this regard :

“(VI) अर्हता तिथि- अभ्यर्थी के समस्त शैक्षिक अंक पत्र/प्रमाण पत्र तथा अन्य अभिलेखों का निर्धारण सहायक भर्ती परीक्षा हेतु प्रकाशित विज्ञापन की तिथि से होगा।”

12. The aforesaid clause, however, was amended in the modified guidelines issued for recruitment later. The appointment to the posts of Assistant Teacher was to be made on the basis of quality points marks wherein 60% weightage was to be given to the marks secured in ATRE, whereas 10% weightage each was to be given for High School, Intermediate, Graduation and training.

13. Since no examination was to be conducted pursuant to the advertisement issued on 17.5.2020 and the selections were to be made only on the basis of quality points marks, as such the online applications made by the candidates were processed and ultimately the results were declared on 1.6.2020.

14. First writ petition seeking reservation for EWS quota came to be filed by one Shivam Pandey being Writ A No. 4063 of 2020. Subsequent writ petitions were also filed from time to time up to the year 2024. All the writ petitions have been decided by the impugned judgment.

15. The limited issue involved in the present bunch of Special Appeals is with regard to applicability of EWS reservation in the recruitment to 69,000 post of assistant teachers. Other aspects relating to criteria for selection/appointment etc need not detain here. Appointments were offered to 31,277 candidates on 11.10.2020, 36,590 candidates 30.11.2020. Last list of selected candidates was published on 5.1.2022 consisting of 6,800 reserved category candidates.

16. The select list of 5.1.2022 came to be challenged before the Lucknow Bench of this Court in the case of **Mahendra Pal and Others vs. State of U.P. and others**, which has been decided by the learned Single Judge vide judgment reported in **2023 (3) ADJ 496**. Controversy before learned Single Judge did not relate to EWS reservation. The judgment of the learned Single Judge has been reserved in Special Appeal No. 172 of 2023 along with other connected matters. A direction is issued by the Division Bench to redraw the select list. This judgment of Division Bench has been assailed before the Supreme Court in **Ravi Kumar Saxena vs. State of U.P. and others**, SLP Diary No. 38554 of 2024, and direction for redrawing of the list, pursuant to the judgment of the Division Bench, has been kept in abeyance.

17. At this stage, we may also note that another bunch of writ petitions earlier came to be decided by the Lucknow Bench

in Raghvendra Pratap Singh vs. State of U.P. and others, 2020 (4) ADJ 490 (LB), wherein the Government Order dated 7.1.2019 specifying minimum marks for passing ATRE was assailed. It was argued that ATRE was already conducted on 6.1.2019 and, therefore, any subsequent prescription of minimum marks was impermissible. This plea was repelled by the Division Bench in which observations were also made with regard to the commencement of recruitment process. Paragraph 65 and 66 of this judgment is relied upon by the appellants, which are reproduced hereunder :

“(65) From perusal of 1981 Rules, as amended, makes it crystal clear that ATRE is only a qualifying examination and not a part of the recruitment process. The benefit of Anand Kumar Yadav (supra) shall be available to the Shiksha Mitras only during the process of recruitment which will start once they qualify ATRE by scoring the prescribed qualifying marks and until they do so, they cannot stake a claim to such weightage. The statutory guidelines for conducting second ATRE - 2019 issued on 1.12.2018 makes it clear that the ATRE is only a minimum qualification and by qualifying ATRE, no candidate shall stake a claim for appointment on the post of Assistant Teacher.

(66) The exercise of holding the ATRE - 2019 is just for attaining of eligibility in order to be able to apply and to be considered for recruitment, a stage which has not yet been initiate because after declaration of the result ATRE - 2019, on the basis of minimum marks, as mentioned in the Government Order dated 7.1.2019, the result would be declared.”

18. The Division Bench judgment of Lucknow Bench in Raghvendra Pratap

Singh (Supra) has been affirmed by the Supreme Court with dismissal of the SLP filed against it.

19. Learned Single Judge having considered the claim of the appellants came to the conclusion that recruitment process had commenced with issuance of advertisement on 17.5.2020. However, the benefit of EWS reservation has been denied on the ground that U.P. Act No. 10 of 2020 came to be enacted later, on 31.8.2020. Learned Single Judge has also opined that the fact that UP Act No. 10 of 2020 has been made effective from 18.2.2019 would not be of any help to the appellants cause inasmuch as it has merely protected the action already taken pursuant to the notification issued on 18.2.2019. Learned Single Judge, therefore, has dismissed the writ petitions holding that State was not obliged to provide for reservation under EWS quota since process of recruitment had already commenced on 17.5.2020; whereas UP Act No.10 of 2020 got enforced on a subsequent date.

20. Learned Senior Advocates for the appellants argue that learned Single Judge has erred in holding that EWS reservation can be enforced/implemented vide UP Act No.10 of 2020 w.e.f. 31.08.2020. It is asserted that provision for EWS reservation was already implemented pursuant to the 103rd Constitutional Amendment vide office memorandum dated 8.12.2019 and since the Act otherwise was given retrospective effect, as such the interpretation of the learned Single Judge holding the EWS reservation of not to be applicable in the recruitment in question is not based upon the correct interpretation of the statutory scheme.

21. Learned Senior Counsel further argues that the commencement of

recruitment in question is by way of advertisement published on 17.5.2020, by when the EWS reservation was already introduced. It is further contended that the State was under a positive obligation to provide for EWS reservation and since such reservation has been denied, as such the petitioners are entitled to the issuance of writ mandating the State to extend EWS reservation in the recruitment in question.

22. On behalf of the respondents, Sri Kushmondeya Shahi, submits that the recruitment rules have been amended vide 22nd Amendment Rules of 2018, wherein Rule 2(w)(x) have been added, which is reproduced hereinafter:-

“(w) "Assistant Teacher Recruitment Examination" means a written examination conducted by the Government for recruitment of a person in junior basic schools run by Basic Shiksha Parishad;

(x) "Qualifying Marks of Assistant Teacher Recruitment Examination" means such minimum marks as may be determined from time to time by the Government.”

23. It is then urged that the advertisement issued for appointment to 69000 post dated 17th May, 2020 is in continuation to the process of recruitment initiated vide government order dated 1.12.2018, wherein Assistant Teacher Recruitment Examination was held to fill up to 69000 post. It is submitted that the advertisement for appointment on the post of Assistant Teacher is also in respect of 69000 post. Sri Shahi also places reliance upon 23rd Amendment, made to the Rules of 1981, which has been made effective from 1.1.2018. He submits that commencement of recruitment ought to be

treated as 1.12.2018 when ATRE examination was initiated.

24. Reliance is placed upon Rule 14(1) to submit that the procedure of selection commences with determination of vacancy followed with holding of Assistant Teacher Recruitment Examination and the mere fact that a subsequent advertisement was issued for recruitment on 17.5.2020 it would not mean that the recruitment commences only with issuance advertisement dated 17.5.2020.

25. Sri Shahi, also places reliance upon the instructions issued by the Office alongwith advertisement dated 17.5.2020 to show that the candidates were required to fill up registration number and roll number of ATRE examination alongwith mobile number of candidate and that the details furnished in ATRE examination is relied upon for recruitment for the post in question. Clause 2 and 3 of the instructions issued alongwith advertisement dated 17.5.2020 is reproduced hereinafter:-

“2. तदपश्चात् सहायक अध्यापक भर्ती 2019 लिखित परीक्षा हेतु निर्गत अनुक्रमांक, जन्मतिथि एवं मोबाइल नं० (जो सहायक अध्यापक भर्ती लिखित परीक्षा 2019 ऑनलाइन आवेदन में अंकित किया गया हो) पर प्राप्त OTP की सहायता से लॉगिन करेंगे।

3. लॉगिन होने के पश्चात् अभ्यर्थी को ऑनलाइन आवेदन के फार्म में क्रम सं० 1 से 13 तक सहायक अध्यापक भर्ती लिखित परीक्षा 2019 हेतु आनलाइन आवेदन में अंकित प्रविष्टियाँ, अभ्यर्थी की फोटो सहित प्रदर्शित होगी। प्रदर्शित प्रविष्टियों में अभ्यर्थी द्वारा किसी भी प्रकार का संशोधन किया जाना सम्भव नहीं होगा”

26. Sri Shahi also places reliance upon the supplementary counter affidavit filed by the Secretary of the Basic Shiksha Parishad, wherein following assertions are

made in paragraph 4 and 5 of the affidavit. A chart has also been annexed alongwith such affidavit at page 7, which is reproduced hereinafter:-

“4. That pursuant to the select list total 34589 candidates belongs to unreserved category were appointed and 18598 candidates belongs to OBC were appointed. It is relevant to point out here that total 15623 candidates belongs to SC and 190 candidates belongs to ST category were appointed. The details of the breakup of the appointments are being filed as Annexure No. 1 to this affidavit.

5. That out of 69000 vacancies all the posts advertised on 17.05.2020 have been filled up and no posts are vacant in any of the category. On the basis of the facts and circumstances stated in the preceding paragraphs the present supplementary counter affidavit may kindly be taken on record.

क्र० सं०	श्रेणी एवं आरक्षणवार पद	चयनित अभ्यर्थी का विवरण
01	अनारक्षित (34589 पद)	20301 सामान्य श्रेणी 12630 अन्य पिछड़ा वर्ग 1637 अनुसूचित जाति 21 अनुसूचित जनजाति उपरोक्त अभ्यर्थी अनारक्षित के पद के सापेक्ष चयनित हुए हैं।
02	अन्य पिछड़ा वर्ग (18598 पद)	18598
03	अनुसूचित जाति (14459 पद)	15623 1164 अनुसूचित जनजाति के रिक्त पदों को अनुसूचित जाति के अभ्यर्थियों द्वारा भरा गया।
04	अनुसूचित जनजाति (1354 पद)	190

27. On the strength of such affidavit, Sri Shahi submits that all 69000 vacancies have since been filled and as none of the selected candidates have been impleaded as a party, nor anybody's appointment is challenged, as such, even if the claim of appellants are accepted on merits, yet no relief can be granted to them.

28. Sri Shahi also argues that most of the appellants before this Court in this bunch of appeals possess B.Ed. Qualification and do not possess requisite qualification in terms of the NCTE guidelines. Reliance is placed upon the judgment of the Supreme Court in Devesh Sharma Vs. Union of India and others, (2023) 18 SCC 339 and Navin Kumar and others Vs. Union of India and others, 2024 SCC OnLine SC 2360 to submit that such candidates are otherwise ineligible for appointment.

29. In reply to such submission, Sri Khare appearing for the appellants argues that the writ petition of Shivam Pandey was filed in the year 2020 itself and there was no delay on part of appellants in approaching this Court. He further submits that any subsequent circumstance which may arise would not constitute any valid basis to deny consideration to the appellants' claim for grant of EWS reservation pursuant to 103rd Constitutional Amendment. It is also submitted that equities are liable to be adjusted by the Court and in such circumstances, if vacancies are not available, a direction can be issued to adjust candidates of EWS category against unadvertised vacancy.

30. We have heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Umang Srivastava, Advocate; Sri R.K.

Ojha, learned Senior Counsel assisted by Sri Navin Kumar Sharma and Sri Agnihotri Kumar Tripathi, Advocates; Sri Seemant Singh, learned counsel for the appellants; Sri Kushmondeya Shahi, learned counsel for the respondents; learned Standing Counsel for the State and have perused the materials on record.

31. EWS reservation came to be introduced in the Constitution vide 103rd Constitutional Amendment Act, 2019 which is extracted hereinafter:-

*“THE CONSTITUTION (ONE HUNDRED
AND THIRD
AMENDMENT) ACT, 2019*

[12th January, 2019.]

*An Act further to amend the
Constitution of India.*

*BE it enacted by Parliament in
the Sixty-ninth Year of the Republic of
India as follows:—*

*1. (1) This Act may be called the
Constitution (One Hundred and Third
Amendment) Act, 2019.*

*(2) It shall come into force on
such date as the Central Government may,
by notification in the Official Gazette,
appoint.*

*2. In article 15 of the
Constitution, after clause (5), the following
clause shall be inserted, namely:— *

*‘(6) Nothing in this article or sub-
clause (g) of clause (1) of article 19 or
clause (2) of article 29 shall prevent the
State from making,—*

*(a) any special provision for the
advancement of any economically weaker
sections of citizens other than the classes
mentioned in clauses (4) and (5); and*

*(b) any special provision for the
advancement of any economically weaker
sections of citizens other than the classes
mentioned in clauses (4) and (5) in so far*

*as such special provisions relate to their
admission to educational institutions
including private educational institutions,
whether aided or unaided by the State,
other than the minority educational
institutions referred to in clause (1) of
article 30, which in the case of reservation
would be in addition to the existing
reservations and subject to a maximum of
ten per cent. of the total seats in each
category.*

*Explanation.—For the purposes
of this article and article 16, "economically
weaker sections" shall be such as may be
notified by the State from time to time on
the basis of family income and other
indicators of economic disadvantage.’.*

*3. In article 16 of the
Constitution, after clause (5), the following
clause shall be inserted, namely:—*

*"(6) Nothing in this article shall
prevent the State from making any
provision for the reservation of
appointments or posts in favour of any
economically weaker sections of citizens
other than the classes mentioned in clause
(4), in addition to the existing reservation
and subject to a maximum of ten per cent.
Of the posts in each category."*

32. The 103rd amendment made in Article 15 of the Constitution of India permitted the States to provide for EWS reservation. The explanation to Clause 5 of Article 15 specifies that EWS reservation shall be such as may be notified by the State, from time to time, on the basis of family income and other indicators of economic disadvantage. It is pursuant to this power that the State has issued office memorandum dated 18.2.2019 providing for 10% reservation for the EWS category candidates in public employment offered by the State of U.P.

33. In the context of submissions advanced at the Bar following questions arise for our consideration in this bunch of appeals:

(i) What is the date of introduction of EWS reservation in the State of U.P. i.e. is it 18.2.2019 or 31.8.2020?

(ii) What is the date of commencement of recruitment for the purposes of applicability of EWS Reservation?

(iii) Whether appellants are entitled to any relief

34. Learned Single Judge has held that EWS Reservation will not be applicable in the facts of the present case, inasmuch as, U.P. Act No. 10 of 2020 was notified only on 31st August, 2020; whereas the recruitment commenced prior to it. It has also held that the circular issued by the State Government on 18.2.2019 and 13.8.2019 would not have the effect of introducing EWS Reservation in the State when no such statutory provision existed for the purpose.

35. The State of U.P. first issued office memorandum for the purpose on 18.2.2019 and later introduced legislation for the purpose with retrospective effect, clearly protecting office memorandum dated 18.2.2019. Measures taken by the State of U.P. to introduce EWS reservation by exercising its executive power and then clothing it with legislative cover is clearly a permissible course in the eyes of law.

36. U.P. Act No. 10 of 2020 came to be enacted by the State Legislature for giving effect to reservation for economically weaker sections pursuant to 103rd Constitutional Amendment. Section

1(1) has already been extracted in para 3 of this judgment, which clearly shows that the Act is to come into force on February 1, 2019. Section 3(3) & (4) have also been extracted above which clearly show that the office memorandum dated 18.2.2019 shall be deemed to have been issued under the Act. The subsequent office memorandum dated 13th August, 2019 is also treated to have been issued under U.P. Act No. 10 of 2020. Once that be the position, it would be difficult for this Court to accept that the EWS reservation will commence from 31.8.2020 and not from 18.2.2019 when office memorandum was issued by the State providing for EWS reservation in employment of State.

37. Law is well settled that appropriate legislature can always introduce legislation with retrospective effect. We may also note that by 103rd Constitutional Amendment enabling provision was made for the States to provide for reservation to EWS candidates. It is well settled that executive powers of State is co-extensive with its legislative power. Once provision for EWS reservation was made available to the State by virtue of 103rd Constitutional Amendment it was open for the State to implement EWS reservation either by making legislation or by issuing executive instructions.

38. Article 162 of the Constitution of India provides for the extent of executive power of State. Article 162 of the Constitution of India is reproduced hereinafter:-

“Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has

power to make laws: Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof.”

39. Hon’ble Supreme Court in Assn. of Medical Superspeciality Aspirants & Residents v. Union of India, (2019) 8 SCC 607 : 2019 SCC OnLine SC 1055 at page 622 has clarified the law on this aspect in following words:-

“Executive authority of the State Government is co-extensive with that of the legislative power of the State Legislature. Even in the absence of any legislation, the State Government has the competence to issue executive orders under Article 162 of the Constitution on matters over which the State Legislature has the power to legislate.”

40. It would thus be difficult for this Court to hold that the State Government was not competent to provide for EWS reservation in public employment of State by issuing office memorandum dated 18.2.2019 or that this date i.e. 18.2.2019 would not be treated to be the date of implementation of EWS reservation in the employment of State and it shall only be applicable from 31.8.2020 when U.P. Act No. 10 of 2020 got enforced. To such extent, we cannot approve the view of learned Single Judge on this aspect. The conclusion of learned Single Judge, in this regard is consequently reversed.

41. As a sequel to the conclusion aforesaid, we are required to examine as to

what is the date of commencement of recruitment in the facts of the present case. Though learned Single Judge has treated it to be 17.5.2020 but the State/Parishad contends that it ought to be 1.12.2018 when ATRE exam was notified.

42. Much argument has been made on behalf of the respondents stating that the commencement of ATRE vide notification dated 1st December, 2018 would be date of commencement of recruitment herein. The respondents rely upon various instructions issued to submit that the details filled by the candidates at the time of applying for ATRE, including the registration number, enrollment number and mobile number are automatically relied upon for considering the candidature of candidates for selection/appointment pursuant to advertisement dated 17th May, 2020 and, therefore, the commencement of recruitment would be the date of commencement of the ATRE. Reliance is also placed upon Rule 2(w) & 2(x) of 1981 rules, in support of such proposition.

43. Though the submission of Sri Shahi on this aspect may appear attractive, but we are not persuaded to accept it for the simple reason that it is Rule 14 which provides for the procedure for selection under the applicable recruitment rules of 1981. Rule 14(1) is in two parts. The first part relates to determination of vacancy and holding of ATRE. The second part beginning with the expression “thereafter” provides for advertisement for recruitment to be published in two leading daily newspapers. The consequential advertisement is issued on 17.5.2020 only.

44. It is well settled that the date of issuance of advertisement is the date of commencement of recruitment unless

provided otherwise in the rules. In view of the express language contained in Rule 14(1) of the Rules, we have no hesitation in coming to the conclusion that the commencement of recruitment herein is by issuance of advertisement dated 17.5.2020. The view that we take on this aspect is in consonance with the earlier view taken by Lucknow Bench of this Court in Raghvendra Pratap Singh Vs. State of U.P. (supra). Paragraphs 65 and 66 of said judgment has already been quoted above. The judgment although was in the context of a different issue, yet the observations made by the Division Bench in para 65 are relevant for the present purposes with which we are in absolute agreement. In that view of the matter, we hold that the recruitment in question has commenced with issuance of advertisement dated 17.5.2020. We are thus in respectful agreement with the view of learned Single Judge on the aspect of the matter.

45. In view of the discussions aforesaid, we come to the conclusion that the reservation for EWS category was required to have been extended by the State while issuing advertisement for appointment to the 69000 posts of Assistant Teacher in Basic Institutions.

46. Having come to our conclusion on the aforesaid two issues we are required to consider as to what relief can be granted to the appellants in the peculiar facts of this case.

47. Admittedly, the process of recruitment has not only commenced, but has already concluded. The Secretary of the Board has filed his personal affidavit clearly stating that all appointments are made on 69000 advertised vacancies of assistant teachers. None of the selected

candidates has been impleaded as a party respondent in the present bunch. None of the selections already made is under challenge either. In the event 10% EWS Reservation is required to be extended a direction will have to be issued to draw a merit list for candidates belonging to EWS Category. There is nothing on record to show that in the examination form any of the candidate was required to furnish details of his/her EWS status. It would, therefore, be difficult to ascertain, as to who are the persons, who would actually be falling in the EWS Category. In the absence of details in that regard, it would be further difficult to prepare any merit list of the candidate belonging to the EWS category. Even if such details are made available hereinafter the implementation of such reservation would require 10% of candidates belonging to unreserved category to be ousted so as to accommodate these persons. The selected persons are already working for the last several years and their appointment is not under challenge. In such circumstances, it would not be prudent exercise of discretion for this Court to issue any direction to extend 10% EWS reservation in the recruitment in question, at this stage, as implementation of such direction would be a mere impossibility. It is otherwise settled that without impleadment of persons affected or any challenge made to their appointment no direction can be issued which has the effect of dislodging selected candidates. We otherwise are informed that most of the appellants are persons who have B.Ed. Degree and are ineligible for appointment by virtue of law laid down by Supreme Court in Devesh Sharma (supra). In such view of the matter, even though we hold that EWS reservation was liable to be extended in the recruitment made of 69,000 assistant teachers but on account of

subsequent developments which have intervened, as are noticed above, we are not persuaded to grant any relief to the appellants. The submission of Sri Khare that a direction be issued to extend EWS Reservation against unadvertised vacancy, also cannot be countenanced. This would be going contrary to the recruitment rules and may affect rights of other eligible candidates and shall not be in spirit of Article 16 of the Constitution of India.

48. In the peculiar facts of the case, where neither details of EWS candidates have been obtained by the respondents, nor such details are available and all vacancies are otherwise filled, no such omnibus direction can be issued for extending reservation to EWS candidates against unadvertised vacancies. Though for different reasons, we ultimately come to the same conclusion as that of learned Single Judge that the writ petitions are required to be dismissed.

(2025) 5 ILRA 381

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 07.05.2025

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Writ A No. 362 of 2005

Ram Krishna Mishra ...Petitioner

Versus

State of U.P. ...Respondents

Counsel for the Petitioner:

Pankaj Verma, Abhishek Dwivedi, C.L. Yadav, Chote Lal yadav, Dinesh Kumar Tripathi

Counsel for the Respondents:

C.S.C., Ajay Kumar Singh Raj, MA Siddiqui

A. Service Law – Termination – Charge of misconduct – No regular enquiry was conducted – Effect – Service was terminated on the ground of misconduct, but without holding a regular inquiry or affording opportunity of hearing to him – Permissibility – *Brijesh Kumar's case* relied upon – Held, if any punishment order is stigmatic or based on some allegations, the services of an employee may not be dispensed with without following the due procedure of law, therefore, the impugned punishment orders cannot be sustained in the eyes of law – High Court refused to remand back the matter as the petitioner was retired and there is no Rules empowering the respondent to proceed after retirement. (Para 16, 20 and 21)

Writ petition allowed. (E-1)

List of Cases cited:

1. Dr. Vijayakumaran C.P.V. Vs Central University of Kerala & ors., (2020) 12 SCC 426
2. Civil Appeal No. Nil of 2024 (arising out of SLP (C) No. 10546 of 2019), U.P. St. Road Transport Corporation & ors. Vs Brijesh Kumar & anr., decided on 28.08.2024
3. Dipti Prakash Banerjee Vs Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & ors.; (1999) 3 SCC 60;
4. Indra Pal Gupta Vs Managing Committee, Model Inter College, Thora; (1984) 3 SCC 384;
5. D.K. Yadav Vs J.M.A. Industries Ltd.; (1993) 3 SCC 259;
6. S.B.I.& ors. Vs Palak Modi & anr.; (2013) 3 SCC 607;
7. Shasya Singh Vs St. of U.P. & ors.; 2020 SCC OnLine All 106'
8. Writ A No. 31358 of 2021; Dr. Prabhanshu Shrivastava Vs St. of U.P. & ors., decided on 14.11.2024.
9. St. of Uttar Pradesh & anr. Vs Kaushal Kishore Shukla; (1991) 1 SCC 691;
10. Mohd. Nihal Siddiqui Vs St. of U.P. & ors.; (2007) 1 UPLBEC 769