

Judgment reserved on 28.07.2022
Judgement delivered on 02.08.2022

Case :- WRIT - A No. - 18091 of 2021

Petitioner :- Jwo Satish Chandra Shukla And 3 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- A.B.N.Tripathi,T. Islam

Counsel for Respondent :- C.S.C.,M.N. Singh,Nipun Singh

Hon'ble Mrs. Sangeeta Chandra,J.

(1) This writ petition has been filed by four Junior Commissioned Officers (retired from the Army after completing the required number of years of service) praying for a Mandamus to be issued to the U.P. Public Service Commission through its Secretary (hereinafter referred to as the "Second Respondent"), to implement with necessary follow-up action, the U.P. Act No. 14 of 2021 (the UP Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-servicemen) Amendment Act 2021); in its letter and spirit in the ongoing selection process for Combined State Upper Subordinate Services (PCS) Examination 2021 and Assistant Conservator of Forest/Range Forest Officer Services Examination 2021 (hereinafter referred to as the "ongoing selection").

(2) I have heard Sri A.B.N. Tripathi for the petitioners and Sri Nipun Singh for the second respondent.

(3) The Learned counsel for the petitioners has argued that before 1993, reservation for physically handicapped, dependents of freedom fighters, and ex-servicemen were regulated by various Government Orders issued by the then National Integration Department of the Government of India.

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Several Circulars were issued from time to time by the State of U.P. as well to regulate the percentage of reservation in Group A, B, C and D posts of Public Services. Initially 8% reservation was granted in Group A and B posts each and 3% reservation was granted in group C and D posts each. On 30.12.1993 for the first time the Reservation Policy in the State of U.P. was sought to be codified for providing horizontal reservation to certain categories of persons and the U.P. Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act 1993 was notified (hereinafter referred to as "the Principal Act") and 5% reservation was granted to the persons belonging to the aforesaid Categories in vacancies in Group A, B, C and D posts. On 31.07.1997 the Principal Act was amended to clarify the percentage among different sub-categories of beneficiaries. On 28.07.1999 after the Victory in Kargil War, as a mark of respect for its ex-servicemen, the percentage of reservation for ex-servicemen was increased to 5% but Group A and B posts of Public Services were excluded. The decision was challenged in Writ Petition No. 1413 of 2018 by petitioner no.1 Satish Chandra Shukla. The writ petition was admitted and the Court passed a detailed order on 6.03.2019 wherein the

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Court noted the argument of the petitioners that ex-defence personnel were getting reservation in all categories of posts in Public Services since 1948 through Government Orders but now by way of Amendment in the 1993 Act reservation in Group A and Group B posts had been removed while ex-defence personnel have served the nation with all dedication and integrity in all difficult times.

A counter affidavit was filed in the said writ petition wherein the respondents stated that the matter had been referred to the State Government for its consideration and it was pending at the appropriate level. The said writ petition remains pending.

(4) Later, an Amendment was notified on 10.03.2021 in the Principal Act by UP Act No. 14 of 2021 (hereinafter referred to as “the 2021 Amendment”) and existing Clause (i-a) of sub-section (1) of Section 3 of the Principal Act was substituted and 5% reservation was provided in Public Services on all posts other than Group A posts, on and from the date on which the amendment was published in the Gazette. The Amendment Act was notified in the Gazette on 10.03.2021.

(5) In the meantime on 5.02.2021 an Advertisement no. A-1/E-1/2021 was issued by the Second Respondent for Upper

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Subordinate/ PCS and Assistant Conservator of Forest/Range Forest Officers Services Examination. The last date for submission of online forms was 05.03.2021 which was extended for correction of forms up to 17.03.2021 by way of a press release dated 10.3.2021. The petitioners had applied in general category but specifying that they were ex-Army personnel for the purposes of age relaxation and any other benefits available to them under the Principal Act as amended from time to time.

(6) On 27.08.2021 in a reply sent by the Public Information Officer of the Second Respondent to RTI application, the Second Respondent stated that the Government Order with regard to reservation of ex-servicemen was issued on 16.03.2021 after the last date of 05.03.2021 for submission of application forms, hence implying that they were not going to implement the 2021 Amendment in the PCS Examination 2021.

(7) On 24.10.2021 the petitioners appeared in Preliminary examination at various centres. The result of the Preliminary examination was declared on 1.12.2021. The petitioners failed to qualify. It has been argued by the Learned counsel for the petitioners that if the 2021 Amendment had been applied then they would have qualified and got a chance to

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appear in the Main written examination. While this opportunity was denied to ex Army men for PCS And ACF/RFO exams on 29.12.2021, a corrigendum was issued by the Second Respondent in respect of another similar advertisement No. A - 2/E -1/2021 for Review Officers and Assistant Review Officers Examinations where the last date for submission of forms was 05.04.2021.

(8) It has been argued that just as in the case of PCS examination application forms would have been submitted by all candidates by 05.04.2021, and the corrigendum was issued in October, 2021, before holding the Prelims examination, such opportunity could have been extended to ex-Army personnel in PCS and ACF/RFO Exams, 2021 and a corrigendum could have been issued but it was not issued for reasons best known to the Second Respondent.

(9) It has been argued that under the First Amendment to the Principal Act in 1997 Sub-section (5)(1) stated that the provisions of the First Amendment Act shall not apply to cases in which selection process had been initiated before the commencement of the said amendment and such cases were to be dealt with in accordance with the provisions of the Act as they stood before such amendment. Similarly under the Second Amendment Act of 1999 Sub-clause (1-A)

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was added to Section 5 providing that it shall not apply to cases in which selection process had been initiated before the commencement of the Act of 1999, and such cases would be dealt with in accordance with the provisions of the Act as they stood before such amendment. For the purpose of sub-section (1) and sub-section (1A) of Section 5 an Explanation was added that “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 maybe, has started; or (ii) both written test and interview, the written test has started*”.

(10) It has been argued that no such saving clause has been added under the 2021 Amendment and hence it shall be deemed that the legislature consciously did not exclude the benefits extended for Group B Posts under the 2021 Amendment from ongoing selection processes. This intention of the legislature is also clear from the words “*it shall be applicable on and from the date of notification in the official gazette.*”

(11) The Second Respondent has arbitrarily taken a decision for not extending the benefits of the 2021 Amendment in the PCS Examination 2021. It affects the

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petitioners' opportunity to secure a dignified livelihood through a fair and lawful process.

(12) It has been argued that neither on 10.03.2021 nor on 16.03.2021 the selection process for PCS Examination 2021 had been initiated for the purpose of the Principal Act as the PCS selections are to be held under the relevant Service Rules by way of written examination and interview. No written examination was held till 10.03.2021, i.e. the date of coming into force of U.P. Act No.14 of 2021. The written exams were held on 23.03.2022 and result was declared on 12.7.2022. The interviews have started only on 21.07.2022, and are going on even as this writ petition is being argued before this Court. Even the qualifying Preliminary examination had not been held till 24.10.2021. The Gazette notification of the 2021 Amendment mandates for its implementation "*on and from the date on which it is published in the official gazette*". It was published in the official Gazette on 10.03.2021 therefore not implementing the said amendment in the ongoing process of PCS Examination 2021 amounts to arbitrary denial of opportunity to ex Army personnel of a benefit which was consciously extended to them by the State Legislature.

(13) Sri Nipun Singh appearing for the Second Respondent has referred to the counter affidavit filed in February, 2022 wherein it has been stated that the Second Amendment of 2021 was notified on 10.03.2021, and therefore, it was not applicable to the selection held pursuant to the advertisement for PCS Exam 2021 in which the last date of online submission of application forms was 05.03.2021. The date was extended only for those candidates who could not upload their photos and other details earlier. Any subsequent change in the rules cannot be allowed by the Commission midway in the recruitment process.

(14) With respect to Corrigendum being issued for Review Officer/Assistant review Officer Examination 2021 it has been stated in the Counter Affidavit of the Respondent that the last date for submission of online application forms was 08.04.2021 much after the 2021 amendment was notified on 10.03.2021. The rule applicable on the last date of submission of application forms against the advertisement dated 5.02.2021 has to be treated as final and conclusive.

It has also been stated that sub- clauses (1) and (1A) of substituted Section 5 of the Principal Act would not be applicable in the present case as they were inserted in respect to the then prevailing selection process when the

amended Act of 1997 and 1999 had come into force. No such Clause has been added in the Amendment Act of 2021 and the petitioners cannot claim any change of rules being applicable in the present selection process.

(15) Sri Nipun Singh has also argued that this writ petition ought to be dismissed as not maintainable as once the petitioners have participated in the selection and have taken their chance to succeed they cannot be permitted to turn around and challenge the selection process. He has raised an objection of estoppel by conduct and has referred to Judgement rendered by the Supreme Court in the case of *K.A. Nagamani versus Indian Airlines and others* reported in 2009 (5) SCC 515. The Supreme Court in the aforesaid judgement had observed while placing reliance upon *Madan Lal versus State of Jammu and Kashmir*, 1995 (3) SCC 486 that the appellant having participated in the selection process and competed with all other eligible candidates without any demur or protest could not be allowed to turn around and question the very same process having failed to qualify in the same. If the candidate takes a calculated chance and appears at the selection then only because the result of the selection is not palatable to him, he cannot turn around and subsequently contend that the process of

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selection was unfair. The learned counsel has placed reliance upon *Dhananjay Malik and others Versus State of Uttaranchal and Others* 2008 (4) SCC 171 where again the Supreme Court observed that the petitioners having participated in the selection process without any protest were estopped from complaining that the selection process was not in accordance with the Rules and that the educational qualifications mentioned in the eligibility criteria were contrary to the Rules. The learned counsel for the respondent has also placed reliance upon *Manish Kumar Shahi Versus State of Bihar and Others*, 2010 (12) SCC 576; (Paragraph 16) where the Supreme Court had reiterated the law as settled in *Madan Lal versus State of Jammu and Kashmir* (supra) that the petitioner was not entitled to challenge the criteria or process of selection if being fully aware of such selection procedure he had participated in the same.

(16) The Learned counsel for the Second Respondent has also placed reliance upon the following judgements of the Supreme Court: -

AA Carlton Versus Director of Education and Another
1983 (3) SCC 33; *P Ganeshwar Rao and others*
versus State of Andhra Pradesh and others 1988

supplement SCC 740, and *V Mahendran versus State of Karnataka* 1990 (1) SCC 411.

It has been argued on the basis of said judgements that an amendment in the statutory provisions shall take effect prospectively unless the Amending Act expressly provided that the amendment in question would apply to pending proceedings. No retrospective effect should be given to any statutory provision for it to impair or take away an existing right, unless the Statute either expressly or by necessary implication directs that it should have such retrospective effect. Moreover, if the amending rules have not been specifically made retrospective they could not adversely affect the right of those candidates who are qualified for selection and appointment on the date they applied for the post. As the process of selection had already commenced when the amending rules came into force, the Amended Rules could not affect the existing rights of those candidates who are being considered for selection as they possessed the requisite qualifications prescribed in the unamended Rules. Construction of the Amended Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter. All such judgements have placed reliance

upon *Y. V. Rangaiah versus J Sreenivasa Rao* 1983 (3) SCC 284 where the Supreme Court had observed that the vacancies which occurred prior to the Amended Rules would be filled up through the old rules and not by the Amended Rules.

Such judgments have little or no relevance to the controversy raised in this writ petition

(17) The Learned counsel for the Second Respondent has also placed reliance upon a Full Bench decision of this Court in *Prashant Kumar versus State of U.P. and others*, 2005 SCCOnline Allahabad 543; where the question that was considered by the Full Bench was :-“*at what stage the caste of a candidate should be entered in schedule 1 of the U.P. Public Services (Reservation for Schedule Caste, 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?*”.

The Full Bench was considering the controversy relating to Jat Community being included in OBC category by notification published in the official Gazette on 10.03.2000; and Kalwar community being included in OBC

category by a Notification on 07.07.2000. An Advertisement was issued for Combined State Subordinate Civil Service Examination, 2000 by the U.P. Public Service Commission on 07.01.2000. The last date of submission of forms was 28.01.2000. *It was extended to 08.02.2000.* Before the preliminary written examination was held on 28.05.2000 Jat community was included in OBC category on 10.03.2000. The main written examination was held on 11.10.2000 and before such main written examination could be held, Kalwar community was included in OBC category by Notification on 07.07.2000. Counsel for the Writ petitioners had submitted that the Amending Act contained provision that it would also apply in respect of such recruitments as are pending on the date of commencement of the Amendment and recruitment shall be deemed to be pending if in pursuance of that recruitment no appointment had been made before such commencement. The process of selection if initiated before the date when the Act was notified was required to be dealt with in accordance with the existing law however, the selection process initiated after the commencement of the Act had to be in conformity with the provisions of the Act.

The counsel for the U.P. Public Service Commission had argued that only those candidates were entitled to be

considered as OBC who were recognised as OBC on the last date of submission of application form and had applied in that category. Both Jat community candidates and Kalwar candidates having not been declared OBC before the last date of submission of application forms had not applied in that category. A Full Bench of this Court in *Sarika versus State of UP reported in 2005 (9) ESC 2378* had held that advertised vacancies are required to be filled up as per Rules existing on the last date of submission of application form unless the Rules have been specifically given retrospective effect. Candidates who had applied for selection are liable to be treated for the same category to which they belong as per their application form submitted till the last date of submission of such forms, and any subsequent change will not entitle them to claim any benefit on the ground of change of category or status due to amendment in the relevant Rules. The Supreme Court in *Shankar Kumar Mandal v State of Bihar 2003 (9) SCC 519*, considered several judgements of and culled out the principles of applicability of the cut-off date for prescribed qualification relating to a candidate for appointment as follows:

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

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

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

(18) The Full Bench in Prashant Kumar (Supra) observed that since the relevant Service Rules as well as U.P. Act No. 4 of 1994 did not provide for any cut-off date for application of Rules of Reservation, the cut-off date given in the Advertisement becomes relevant. In the advertisement it was provided that if a candidate belongs to a Reserved Category and wants benefit of such reservation he should clearly state his category/ sub-category in the Reservation Column. Also, the prescribed form in the Main examination provided that certificate in respect of Reserved Category/sub-Category for which the application was made at the time of Preliminary examination should be submitted

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in accordance with the prescribed proforma failing which the application form shall be rejected. The Court observed that since the category for reservation had to be mentioned in the application form, and paragraph 3 of the Advertisement mentioned existing Government Orders, the categories of reservation were applicable up to the last date of filling up of application forms. *The Court observed that the prescribed date for applicability of reservation in the said selection was the last date for filling up the application form i.e. 08.02.2000 which was the extended date.*

(19) In the Rejoinder Affidavit filed by the petitioners they have denied the contents of the counter affidavit saying that they are misleading. The Second Respondent has changed its own rules regarding the ongoing selection at least twice during the process. Firstly, by its own notification dated 10.03.2021 candidates were permitted to make good certain mistakes with regard to uploading of photographs and signatures up to 17.03.2021, whereas the original Para 4 of the Advertisement with regard to correction of errors in online forms stated that the facility will be available to candidates only one time within the last date of submission of application form. Secondly, the original Para 14 sub-clause (4) of the advertisement was changed just three days before

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the preliminary examination by the Second Respondent by their own Corrigendum dated 21.10.2021 whereby it was decided to take 15 times candidates to the number of vacancies as qualified in the Preliminary examination instead of 13 times as mentioned in the original Advertisement. Copies of both the corrigendum issued by the Second Respondent have been filed as Annexures to the affidavit.

In the rejoinder affidavit also, the petitioners have reiterated their case that unlike under the Amended Act of 1997 and Amended Act of 1999, no saving clause has been added in the 2021 Amendment that it would not be applicable to ongoing selection process or a selection process initiated before the commencement of such Amendment. The Gazette notification itself mandates for the implementation of the 2021 *Amendment on and from the date on which it is published in the official Gazette.*

(20) It has been argued by the learned counsel for the petitioners that while issuing a corrigendum dated 29.10.2021 for R.O. and A.R.O. Examination 2021, it was admitted by the Second Respondent that a Gazette notification of the 2021 Amendment had come on 10.03.2021 but in reply to the RTI application of the

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petitioners, the Second Respondent stated that the relevant Government Order came on 16.03.2021. Such action is unfair and discriminatory. The petitioner's legal right to be considered for selection to the posts advertised under PCS Examination 2021 in the ongoing process within the respective reservation percentage determined and applicable to them by the 2021 Amendment, has been arbitrarily denied by the Second Respondent.

(21) It has also been argued by the learned counsel for the petitioners that the petitioners had bona fide believed that the law of the land will be implemented by the Second Respondent and due process shall be followed but after the declaration of the Preliminary examination results, the petitioners became aware that they will have to fight a long legal battle to secure their rights. Hence the writ petition was filed on 8.12.2021 much before the Main written examinations which was held on 23.03.2022.

(22) Having heard the arguments for the learned counsel for the parties, this Court on careful consideration of the judgments cited by the learned counsel for the Second Respondent finds that the last date of submission of application form which is being insisted upon by the Second Respondent is only so far as educational qualification for

eligibility is concerned, and it shall not affect reservation to be applied on vacancies after selection is over and at the time of publication of select list. Finality is attached to the last date of submission of application forms only for the purpose of determining eligibility criteria and not for the purpose of preparing final select list giving reservations.

(23) This Court finds from a perusal of judgement rendered by the Full Bench of this Court in *Prashant Kumar* (supra) that it was dealing with such category of persons who were earlier not notified as OBC and not entitled to reservation but by an amendment in the Schedule to the Act of 1994 Jat community was added in OBC category on 10.03.2000 and Kalwar community was added in OBC category in on 07.07.2000. Such notification having been made after the last date for filling up application forms which was initially 28.01.2000 and later extended to 08.02.2000, they could not be extended the benefit of Reservation.

In the case of the petitioners before this Court they had already claimed benefit of being ex-Army personnel at the time of filing of their application forms in so far as praying for relaxation in age was concerned. Also, the last date for submission of application forms had been extended by the Second Respondent by a Press Release on 10.03.2021 upto

17.03.2021. Group B posts were included by way of Amendment in the Act notified on 15.03.2021 before the extended date of submission of application forms i.e. 17.03.2021. The 2021 Amendment itself made the benefit applicable *on and from the date of publication in the official Gazette*. It did not require any separate Government Order to be issued to make it applicable. The Legislature had consciously avoided adding any sub-clause to Section 5 of the Principal Act saving ongoing selections as it had done on earlier occasion when the Second Amendment was notified in 1997 and the Third Amendment was notified in 1999. The intention of the Legislature being clear, the Second Respondent out of obduracy has refused to extend the benefit to the petitioners of reservation in Group B posts. As per the advertisement issued on 05.02.2021 there are 676 Group B posts and 2 posts in Group C of Naib Tehsildar. If reservation would have been extended before declaration of preliminary examination results at least 10,170 Ex-Army men (i.e. $676 \times 15 = 10140$ and $2 \times 15 = 30$) could have been declared successful in the Preliminary examination as the Second Respondent was to declare a preliminary select list which would have included 15 times the number of vacancies available.

(24) This Court also finds that the judgements rendered by the Supreme Court on estoppel are inapplicable in the facts of the case as the petitioners are not challenging the selection process, they are only challenging the arbitrary action of the Second Respondent in not allowing the petitioners to claim reservation which has already been notified by the State Legislature by the 2021 Amendment. With regard to the objection regarding estoppel, the Supreme Court has observed in the case of *Dr (Major) Mita Sahai versus State of Bihar and others*, 2019 SCC Online Supreme Court 1632. that if it was not for erroneous interpretation of the Rules, with regard to work experience, the appellant would have been selected. It observed in paragraphs 17, 18 and 19 as follows :-

“17. It is well settled that the principle of estoppel prevents the candidate from challenging the selection process after having failed in it as reiterated by this Court in a plethora of judgements including Manish Kumar Shahi versus State of Bihar observing as follows:

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the

criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamt of challenging the selection. The appellant invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."

18. The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

19. However, we must differentiate from this principle in so far as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory Rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or

derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

In the case of the petitioners they had Claimed the benefit of reservation as ex-army personnel while filing their applications and there was no question of change in category. Moreover they had challenged the action of the second respondent in not giving them the benefit of the 2021 amendment as soon as the preliminary examination results were declared. Preliminary examination is only a qualifying examination. The selection process would be deemed to have started As per the explanation given to the terms selection process in the principal act., Only when the main written examination was held on 23 March 2022. Hence it cannot be said that the petitioners would be estopped From challenging the action of the second respondent on their Having taken part in the selection process.

(25) Dan Lipinski once said “on the battlefield the military pledges to leave *no soldier behind. As a nation, let it be our pledge that when they return home, we leave no veteran behind.”.*

(26) The Full Bench in its decision had referred to the judgement of the Supreme Court in *Shankar Kumar Mandal* (supra) culling out the principles for determination of the cut-

off date. The first such principle for determining the cut-off date as mentioned in the judgement of Supreme Court relates to the relevant service rules. In this case, relevant cut-off would be as mentioned in the Principal Act as amended from time to time, which granted the benefit of reservation to ex-Army personnel. The Act itself provided that selection shall be deemed to have begun as per the relevant Service Rules on the date of start of Written examination or interview, or both, as mentioned in the relevant service rules for determination of merit in the Recruitment of candidates.

In *East End Dwellings Company Limited versus Finsbury Borough Council* reported in (1951) 2 All ER 587;

the House of Lords observed: -

“if you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. - - - the Statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollary of that state of affairs.”

In *Ashok Leyland Ltd versus state of Tamil Nadu and Another* reported in (2004) 3 SCC 1, a Constitution Bench of the Supreme Court was considering the case of stock

transfer from manufacturing units of the company to its Regional Offices for warehousing and transfer to consumers thereafter. The Appellant relied on the Amendment carried out in the Central Sales Tax Act as per the recommendations made in the Second Report of the Law Commission. The Parliament with a view to bring in expediency in such matters so that the dispute could be determined as expeditiously as possible, amended Section 6A of the Central Act by Act No.20 of 2002. By adding Section 6-A (2). By this legal fiction certain transactions were kept outside the purview of the Central act with regard to the principles for determining when a sale or purchase of consignment of goods takes place in the course of interstate trade and commerce. A legal fiction had been created for the purpose of the Central Act to the effect that such transaction was occasioned otherwise than as a result of Sale. From addition of Section 6-A(2) the following propositions of law emerged: -

“(1) The initial burden of proof is on the dealer to show that the movement was occasioned by reason of transfer of such goods which was otherwise than by reason of sale. The Assessee may file a declaration. On a declaration so filed an enquiry is to be made by the Assessing Authority for the purpose of passing an order on arriving at a satisfaction that movement

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of goods was occasioned otherwise than as a result of sale. Whenever such an order is passed, a legal fiction is created. And a legal fiction must be given its full effect.”

In *Hindustan Cooperative Housing Building Society Ltd. versus Registrar, Cooperative Societies and Another* reported in (2009) 14 SCC 302, the Supreme Court referred to observation made by the Lords of Chancery Division in *Levy, Re ex p Walton* (1881) 17 Ch D 746 ;thus:-

“- - - when a Statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.

After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate- -”

The Supreme Court also quoted Lord Radcliffe in *Saint Aubyn versus Attorney General* reported in (1951) 2 ALR 473 (HL); as under-

“,..The word ‘deemed’ is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a Statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a

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comprehensive description that includes what is obvious, what is uncertain and what is, indeed in ordinary sense impossible.”

In *R. Vs. Norfolk reported in (1891) 60 LJ QB 379*; it was observed thus:-

“...When a thing is to be deemed something else, it is to be treated as that something else with the attendant Consequences, but it is not that something else..”

When the Principal Act was amended in 1997 and 1999, the Legislature wished to exclude ongoing selections from the purview of the amended provisions and to explain what constituted ongoing selection, An Explanation was added to subsection (1) and subsection (1A) of Section 5 that Selection process shall be deemed to have been initiated where under the relevant Service Rules, recruitment is to be made on the basis of written test or Interview only then when the written test or the interview has started, and where the selection was on the basis of both written test and interview, where the written test has started. Thus the Act itself provided a legal fiction which explained when the Selection process would start. In ordinary course, a selection process would have been interpreted to have started from the last date of submission of application form to determine eligibility for the benefit of reservation, but by

adding an explanation to Section 5 the Legislature made its intention clear that the amending provision would not affect an ongoing selection, till such time as the written test or interview as the case may be, had started.

(27) When the 2021 Amendment was notified, the portal of the Second Respondent was still open and continued to remain open till 17.03.2021. It has been argued by Sri Nipun Singh that the Press Release dated 10.03. 2021 extending the date of correction of online application by uploading correct photographs and signatures of candidates was meant for that purpose only and should not be treated as a general extension of date. However, this Court has carefully perused the Press Release dated 10.03.2021 and finds that although it refers to the last date of submission of application forms online as 05.03.2021 it also mentioned that some candidates' photographs and signatures were found to be incorrectly uploaded details of which can be found on the Public Service Commission's website. Hence such candidates are given last opportunity to upload the correct photographs and signatures in between 10.03.2021 to 17 .03. 2021. After such date, no opportunity to correct their application forms would be given. This Press Release meant that at least till 17.03.2021 the portal of the Second

Respondent remained open for making modifications/correction in application forms submitted by candidates although their numbers maybe few. If the Second Respondent had been careful enough, it could have extended the benefit of Reservation in Group B posts as notified in 2021 Amendment in the Gazette on 10.03.2021, *as the amendment was made applicable on and from the date of its publication in the official Gazette.* However, the Second Respondent was remiss in faithfully carrying out its responsibility and refused to correct its error even when it had time to do so as the actual selection as per the Principal Act was initiated only on 23.03.2022 when the Main written examination was held.

(28) The Results declared for Preliminary examination without giving benefit of Reservation to Ex-Army men are vitiated and **quashed**. Consequently, the Second Respondent is directed to recaliberate the result of the Preliminary examination and give benefit of reservation to Ex-Army Personnel on Group-B and Group-C Posts. After publication of Preliminary examination Results within one month, Admit cards be issued for the Main written examination accordingly and results thereof be declared giving 5% reservation on Group-B posts as well to Ex-

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Army Personnel. Call letters for interview may be issued accordingly.

(29) The Writ Petition stands **allowed**.

Order Date :- 02/08/2022

Rahul

[Justice Sangeeta Chandra]