

# **The U.P. Public Services (Reservation For Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993**

UTTAR PRADESH

India

## **The U.P. Public Services (Reservation For Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993**

### **Act 4 of 1993**

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The U.P. Public Services (Reservation For Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993(U.P. Act No. 4 of 1993)Statement of Objects and Reasons. - The Uttar Pradesh public service (Reservation for Physically Handicapped, Dependants of Freedom Fighters and Ex-Servicemen) Act, 1993 (U.P. Act No. 4 of 1993) has been enacted to provide for the reservation of post in favour of physically handicapped, dependants of freedom fighters and ex-servicemen. In Sub-section (5) of Section 3 of the said Act, it is provided that where, due to non-availability of suitable candidates, any of the vacancies reserved under sub-section (1) remains unfilled, it shall be carried forward for further two selection years, where after it may be treated to be lapsed.The said provision has been challenged before the Hon'ble High Court, Allahabad through WP No. 49778 of 2015, Alok Kumar Singh v. State of U.P alleging it unconstitutional. Keeping in view of the relief prayed in the said writ petition it has been decided to amend the aforesaid Act to omit sub-section (5) of Section 3 thereof.The Uttar Pradesh Public Services (Reservation for physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Bill, 2016 if introduced accordingly.Statement of Objects and Reasons - (U.P. Act No. 32 of 2018). - The Uttar Pradesh Public Services (Reservation for Physically Handicapped. Dependents of Freedom Fighters and Ex-servicemen) Act, 1993 has been enacted to provide for reservation of posts in favour of physically handicapped, dependents of freedom fighters and ex-servicemen. In clause (e) of Section 2 of the said Act the words "physically handicapped" have been defined and clause (if) of sub-section (1) of Section 3 of the said Act provides that in such public services and posts in connection with the affairs of the State, the State Government may, by notification, identify one per cent of vacancies each for person suffering from (a) blindness and low vision, (b) hearing impairment; and (c) locomotors disability or cerebral palsy.The Rights of Persons with Disabilities

The U.P. Public Services (Reservation For Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 Act, 2016, has been enacted by the Government of India in which the words "persons with disability" have been defined. It has been decided to amend the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 to make the provisions of the said Act identical to the provisions of the said Central Act with respect to the persons with disabilities. Since the State Legislature was not in session and immediate Legislative action was necessary to implement the aforesaid decision, the Uttar Pradesh Public Services (Reservation For Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Ordinance, 2018 (U.P. Ordinance 11 of 2018) was promulgated by the Governor on July 23, 2018. This Bill is introduced to replace the aforesaid Ordinance. (As passed by the U.P. Legislature) [December 29, 1993] Received the assent of the President on 29.12.1993, and Published in the U.P. Gazette, Extraordinary, Part I, (Ka), dated 30.12.1993. An Act to provide for the reservation of posts in favour of physically handicapped, dependents of freedom-fighters and ex-servicemen and for matters connected therewith or incidental thereto. It is hereby enacted in the Forty-fourth year of the Republic of India as follows :

## **1. Short title and commencement. -**

(1) This Act may be called the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen), Act, 1993. (2) It shall be deemed to have come into force on December 11, 1993.

## **2. Definitions. -**

In this Act - ["(a) "blindness" refers to a condition where a person suffers from any of the following conditions, namely : [Substituted by U.P. Act No. 6 of 1997.] (i) total absence of sight; or (ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses; or (iii) limitation of the field of vision subtending an angle of 20 degree or worse; (aa) "cerebral palsy" means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development;] (b) "dependent" with reference to a freedom fighter means, -(i) son and daughter (married or unmarried), (ii) grandson (son of a son) and unmarried granddaughter (daughter of a son), of the freedom-fighter. (c) "ex-serviceman" means a person who has served in any rank, as combatant or non-combatant, in the Indian Army, Navy or Air Force, and -(i) has retired from such service after earning his pension, or (ii) has been released from such service on medical grounds, in accordance with the requirements of such service, or because of circumstances beyond his control and has been granted medical or disability pension, or (iii) has been released, otherwise than on his own request, as a consequence of reduction in the establishment of such service, or (iv) has been released from such service after a fixed specific period, but has not been released on his own request or has not been dismissed or, discharged on account of misconduct or inefficiency and has been granted gratuity; and includes the following categories of territorial Army personnel who -(i) get pension for continuous embodied service, (ii) have become medically unfit owing to military service, and (iii) are winners of gallantry award. (d) "freedom fighter" means a person domiciled in Uttar Pradesh who had participated in the freedom struggle of India and had -(i) laid down his life; or (ii) undergone sentence of imprisonment for a period of at least two months; or (iii) been detained

in prison as an undertrial or detained for a period of at least three months; or(iv)been sentenced with at least ten canes; or(v)been declared as an absconder; or(vi)sustained bullet injuries; or(vii)participated in 'Peshawar Kand', or(viii)been a member of Indian National Army; or(ix)been a certified member of Indian Independence League; or(x)been released under the 'Gandhi Irwin Pact'.Explanation. - For the purposes of this clause, a person who had sought and had been pardoned shall not be deemed to be a freedom fighter.(dd)[ "hearing impairment" means loss of sixty decibels or more in the better ear in the conversational range of frequencies; [Inserted by U.P. Act No. 6 of 1997 (w.e.f. 09.07.1997).](ddd)"locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy;(dddd)"low vision" refers to a condition where a person suffers from impairment of visual functioning even after treatment or standard refractive correction but uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device;"](d1)[ "Group A post" or "Group B Post" means the post specified as such by the State Government from time to time] [Inserted by U.P. Act No. 29 of 1999 (w.e.f. 21.05.1999).](e)[ Physical disability means the disabilities as specified in the schedule appended to this Act.] [Substituted by U.P. Act No. 32 of 2018, dated 1.9.2018.](f)[ words and expressions used but not defined in this Act and defined in the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 shall have the meaning assigned to them in that Act.] [Substituted by U.P. Act No. 6 of 1997.]

### **3. Reservation of vacancies in favour of physically handicapped etc. -**

[(1) There shall be reserved at the stage of direct recruitment] [Substituted by U.P. Act No. 6 of 1997.],-(i)[ in public services and posts two percent of vacancies for dependents of freedom fighters; [Substituted by U.P. Act No. 29 of 1999 (w.e.f. 21.05.1999).](ia)in public services and posts other than Group 'A' posts or Group 'B' posts, on and from May 21, 1999 two per cent of vacancies, and on and from the date on which the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-servicemen) (Amendment) Act, 1999 is published in the Gazette, five per cent of vacancies for Ex-servicemen.][((ii) In such public services and posts as the State Government may, by notification, identify not less than four per cent, of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, one per cent each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and one per cent for persons with benchmark disabilities under clauses (d) and (e), namely- [Substituted by U.P. Act No. 32 of 2018, dated 1.9.2018.](a)blindness and low vision;(b)deaf and hard of hearing;(c)locomotor disability including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;(d)autism, intellectual disability, specific learning disability and mental illness;(e)multiple disabilities from amongst persons under clauses (a) to (d) including deaf blindness in the posts identified for each disabilities.](2)[\* \* \*] [Omitted by U.P. Act No.6 of 1997.](3)The persons selected against the vacancies reserved under subsection (1) shall be placed in the appropriate categories to which they belong. For example, if a selected person belongs to Scheduled Castes category he will be placed in that quota by making necessary adjustments; if he belongs to Scheduled Tribes category, he will be placed in that quota by making necessary adjustments; if he belongs to[Other Backward Classes of Citizens] [Substituted by U.P. Act No. 6 of 1997], category, he will be placed in that quota by making

necessary adjustments. Similarly if he belongs to open competition category, he will be placed in that category by making necessary adjustments.

**4. [\* \* \*] [Omitted by U.P. Act No. 6 of 1997.]**

**5. [\*\*\*] [Omitted by U.P. Act No. 12 of 2016, dated 7.4.2016.]**

**4. Removal of difficulties. -**

(1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by a notified order make such provisions not inconsistent with the provisions of this Act as appears to it to be necessary or expedient for removing the difficulty. (2) [\* \* \*] [Omitted by U.P. Act No. 6 of 1997.] (3) Every order made under sub-section (1) shall be laid, as soon as may be, before both the Houses of State Legislature and the provisions of subsection (1) of Section 23-A of the Uttar Pradesh General Clauses Act, 1904 shall apply as they apply in respect of rules made by the State Government under any Uttar Pradesh Act. [5. Savings. - [(1) The provisions of this Act as amended by the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-servicemen) (Amendment) Act, 1997 shall not apply to cases in which selection process has been initiated before the commencement of the said Act of 1997 and such cases shall be dealt with in accordance with the provisions of this Act as they stood before such commencement. (1A) The provisions of this Act as amended by the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) (Amendment) Act, 1999 shall not apply to cases in which selection process has been initiated before the commencement of the said Act of 1999 and such cases shall be dealt with in accordance with the provisions of this Act as they stood before such commencement. Explanation. - For the purposes of sub-sections (1) and (1-A) 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 the appointment to be made under the Uttar Pradesh Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974. [Schedule] [Inserted by U.P. Act No. 32 of 2018, dated 1.9.2018.][See clause (e) of Section 2] Specified Physical Disability

**1. Physical disability.-**

A. Locomotor disability (a person's inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal or nervous system or both), including-(a) "leprosy cured person" means a person who has been cured of leprosy but is suffering from-(i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eyelid but with no manifest deformity; (ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity; (iii) extreme physical deformity as well as advanced age which prevents him/her from undertaking any gainful occupation, and the expression "leprosy cured" shall construed accordingly; (b) "cerebral palsy"

means a group of non-progressive neurological condition affecting body movements and muscle coordination, caused by damage to one or more specific areas of the brain, usually occurring before, during or shortly after birth;(c)"dwarfism" means a medical or genetic condition resulting in an adult height of 4 feet 10 inches (147 centimeters) or less;(d)"muscular dystrophy" means a group of hereditary genetic muscle disease that weakens the muscles that move the human body and persons with multiple dystrophy have incorrect and missing information in their genes, which prevents them from making the proteins they need for healthy muscles. It is characterised by progressive skeletal muscle weakness, defects in muscle proteins, and the death of muscle cells and tissues;(e)"acid attack victims" means a person disfigured due to violent assaults by throwing of acid or similar corrosive substance.B. Visual impairment.-(a)"blindness" means a condition where a person has any of the following conditions, after best correction-(i)total absence of sight; or(ii)visual acuity less than 3/60 or less than 10/200 (Snellen) in the better eye with best possible correction; or(iii)limitation of the field of vision subtending an angle of less than 10 degree.(b)"low-vision" means a condition where a person has any of the following conditions, namely-(i)visual acuity not exceeding 6/18 or less than 20/60 upto 3/60 or upto 10/200 (Snellen) in the better eye with best possible corrections; or (it) limitation of the field of vision subtending an angle of less than 40 degree up to 10 degree.C. Hearing impairment.-(a)"deaf" means persons having 70 DB hearing loss in speech frequencies in both ears;(b)"hard of hearing" means person having 60 DB to 70 DB hearing loss in speech frequencies in both ears.D. "Speech and language disability" means a permanent disability arising out of conditions such as laryngectomy or aphasia affecting one or more components of speech and language due to organic or neurological causes.

## **2. Intellectual disability, a condition characterised by significant limitation both in intellectual functioning (reasoning, learning, problem solving) and in adaptive behaviour which covers a range of every day, social and practical skills, including-**

(a)"specific learning disabilities" means a heterogeneous group of conditions wherein there is a deficit in processing language, spoken or written, that may manifest itself as a difficulty to comprehend, speak, read, write, spell, or to do mathematical calculations and includes such conditions as perceptual disabilities, dyslexia, dysgraphia, dyscalculia, dyspraxia and developmental aphasia;(b)"autism spectrum disorder" means a neuro-developmental condition typically appearing in the first three, years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviours.

## **3. Mental behaviour,-**

"mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, but does not include retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence.

#### **4. Disability caused due to.-**

(a)chronic neurological conditions, such as-(i)"multiple sclerosis" means an inflammatory, nervous system disease in which the myelin sheaths around the axons of nerve cells of the brain and spinal cord are damaged, leading to demyelination and affecting the ability of nerve cells in the brain and spinal cord to communicate with each other;(ii)"parkinson's disease" means a progressive disease of the nervous system marked by tremor, muscular rigidity, and slow, imprecise movement, chiefly affecting middle-aged and elderly people associated with degeneration of the basal ganglia of the brain and a deficiency of the neurotransmitter dopamine.(b)Blood disorder-(i)"haemophilia" means an inheritable disease, usually affecting only male but transmitted by women to their male children, characterised by loss or impairment of the normal clotting ability of blood so that a minor wound may result in fatal bleeding;(ii)"thalassemia" means a group of inherited disorders characterised by reduced or absent amounts of haemoglobin;(iii)"sickle cell disease" means a hemolytic disorder characterised by chronic anemia, painful events, and various complications due to associated tissue and organ damage.Explanation. - "hemolytic" refers to the destruction of the cellmembrane of red blood cells resulting in the release of haemoglobin.

**5. Multiple Disabilities (more than one of the above specified disabilities) including deaf blindness which means a condition in which a person may have combination of hearing and visual impairments causing severe communication, developmental, and educational problems.**

**6. Any other category as may be notified by the State Government.**

[Substituted by U.P. Act No.6 of 1997.]