

# Union Public Service Commission vs Saumya Pandey & Ors on 28 September, 2020

**Author: Siddharth Mridul**

**Bench: Siddharth Mridul, Talwant Singh**

\$~4

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 1158/2020

UNION PUBLIC SERVICE COMMISSION ..... Petitioner  
Through Mr. Naresh Kaushik, Advocate

versus

SAUMYA PANDEY & ORS. .... Respondents  
Through Mr. Salman Khurshid, Senior  
Advocate along with Mr. Arpit  
Shukla, Advocate for applicants in  
CM APPL.24053/2020 & CM  
APPL.24054/2020  
Mr. Chetan Sharma, ASG along with  
Mr. Anil Dabas, SPC and Mr. Amit  
Gupta and Sahaj Garg, Advocates  
for R-22/UOI  
Dr. Harsh Surana, Advocate for  
R-24

CORAM:  
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL  
HON'BLE MR. JUSTICE TALWANT SINGH  
ORDER

% 28.09.2020 The present matter has been taken up for hearing by way of Video Conferencing on account of COVID-19 pandemic. CM APPL.24055/2020 (Exemption) The present application under Section 151 of the Code of Civil Procedure, 1908, has been instituted on behalf of the applicants namely, Ms. Gargi Srivastava, Mr. Arpit Shukla and Ms, Mitali Chauhan, seeking exemption from filing certified copy of the judgment dated 11.09.2020 and duly attested affidavits in support of the accompanying petition, as well as, application, and also to pay the requisite court fees.

For the reasons stated in the application and in view of the present prevailing situation, the same is allowed. The applicants are allowed to file the duly signed and attested affidavits within a period of one week from the date of resumption of regular functioning of the Court. The applicants are also allowed to file the requisite court fee within a period of one week from today.

Further, the applicants are granted exemption from filing the certified copy of the judgment dated 11.09.2020, subject to all just exceptions.

With the above directions, the present application is disposed of. CM APPL. 24053/2020 (filed by the applicants Ms. Gargi Srivastava, Mr. Arpit Shukla and Ms. Mitali Chauhan, for permission to file an application under Section 151 of the CPC seeking clarification of the judgment dated 11.09.2020 passed in writ petition) & CM APPL. 24054/2020 (for clarification in the judgment dated 11.09.2020 passed in writ petition) By way of the present applications, the applicants, namely, Ms. Gargi Srivastava, Mr. Arpit Shukla and Ms. Mitali Chauhan, who were admittedly not parties to the proceedings culminating with our Judgment and Order dated 11.09.2020 (hereinafter referred to as the 'subject Judgment and Order'), seek permission of this Court to implead themselves as parties in those proceedings, along with a prayer seeking clarification of the said Judgment and Order dated 11.09.2020.

The main thrust of the argument on behalf of the present applicants, as articulated by Mr. Salman Khurshid, learned Senior Advocate, appearing on their behalf is that, this Court fell into error in observing that the subject Economically Weaker Section Certificates (for short 'EWS Certificates'), required for the Civil Services Examination -2019 (for short 'CSE-2019'), conducted by the Union Public Service Commission (for short 'UPSC'), were for the year 2017-2018.

Our attention is drawn in this regard to paragraphs 34, 36, 37, 48 and 50 of the subject Judgment and Order dated 11.09.2020, to urge that the issue whether the subject EWS Certificate was required for the financial year 2017-2018, was neither urged on behalf of the parties nor was it an issue in the subject proceedings.

The said paragraphs of the Judgment and Order dated 11.09.2020 have been reproduced hereinbelow for the sake of felicity:

"34. At this stage, questions to be decided by this Court can be divided in two parts as under:

Question no.1: Whether learned CAT was right in extending the date for obtaining EWS certificates from 1st August, 2019 to 16th August, 2019?

Question no.2: Whether learned CAT was wrong in not extending the period for obtaining and submitting the EWS certificate from 16th August, 2019 till the date when result of the final examination was announced and the scrutiny of the documents submitted by the successful candidates started?

36. As far as question no.1 is concerned, in our view the CAT has given detailed reasons for extending the date for obtaining the EWS certificates from 1st August, 2019 to 16th August, 2019. It is to be noted here that apart from reasons given in the impugned order as detailed above, there is an additional ground for extending the said date from 1st August, 2019 to 16th August, 2019:

(a). It is an admitted fact that the Central Government had notified the rules for grant of EWS certificates in late January, 2019 and detailed instructions in this regard were issued only in February, 2019. The last date for submission of the form for preliminary examination for CSE-2019 was 18th March, 2019 and all the candidates should have the certificates regarding education qualification and being belonging to a reserved class (if applicable) with them as on that date.

The exceptions were carved out only for two categories, i.e., the candidates claiming EWS reservation and the candidates who have appeared or likely to appear in final examinations and their results were not declared. Thereafter, between these two categories, the UPSC intentionally or unintentionally created a distinction as it fixed the date of 1st August, 2019 as the cut-off date for obtaining the EWS certificate, in view of the difficulties being faced by the candidates to obtain the same, as one-time measure but on the other hand the candidates who had appeared or were going to appear in their final examinations in 2019, they were given time till 16th August, 2019 for obtaining the final certificates certifying their educational qualifications. It is pertinent again to note here that the last date for submission of the EWS certificates as well as the educational qualification certificates is the same, i.e., 16th August, 2019.

(b) In case of educational qualifications, there is no cut- off date for obtaining the said certificates meaning thereby that if the University had issued the said certificate on 16th August, 2019 itself, the said educational qualification certificate is valid whereas in case of EWS candidates an artificial date, without any basis, was introduced as 1st August, 2019. Hence benefit was extended to one class of candidates but hardship was caused to other class of candidates belonging to EWS category without any reasonable ground. It is not a case of reasonable classification.

(c) The CAT has rightly observed that the learned counsel appearing for UPSC and UOI were unable to give any justification for fixation of date, i.e., 1st August, 2019 as the date before which candidates should have obtained the EWS certificates pertaining to the financial status of the applicant for the financial year 2017-18. The said artificial cut-off date, which is not grounded in reality and which has no justification but it deprives many eligible candidates from availing the benefit given under the beneficial Constitution provision is unreasonable, unwarranted and is liable to be set aside.

37. In both the cases, i.e. submission of the educational qualifications as well as submission of EWS certificates, the last date for uploading these certificates along with DAF-1 form was 16th August, 2019, hence the certificates issued between 1st August, 2019 to 16th August, 2019 certifying the financial status, i.e., income and assets of the candidates and his family for the financial year 2017-18 are proper and legal and judicial intervention by CAT was warranted and as such the order of the CAT in this regard is upheld. It is to be reiterated here that neither the dates for submission of any form, i.e., the application form for preliminary examination, DAF-1 or DAF-2 have been interfered with by CAT nor the dates of preliminary examination or the final examination or the subsequent interviews have been postponed. These dates are sacrosanct as per various pronouncements of Hon'ble Supreme Court and the different High Courts and CAT while passing the impugned order has followed the said mandate. Neither the process of holding the examinations nor the process of conducting the interviews has been interfered with and the said examinations and

interviews have taken place as per the schedule fixed by the Rules propagated by DoP&T as well as the notification issued by UPSC. Hence, we do not find any infirmity or illegality in the order of learned CAT to that extent.

48. Again, the matter before the Hon'ble Supreme Court was in respect of eligibility of the candidates regarding qualifications on a cut- off date. It is not in doubt that in the present case the eligibility of the candidates belonging to EWS category is to be seen for the year 2017-18, which ended on 31st March, 2018 and the said date remains as it is and the relevant question to be decided in the instant case, is the date on which the certificate from the concerned authorities certifying the financial status of the candidate was required to be obtained.

50. Similarly, Mr. Kaushik has relied upon the judgment in the matter of Ashok Kumar Sonkar vs. Union of India (2007) 4 SCC 54; this case again discusses the matter regarding essential educational qualification but the present case relates to EWS certificates to be obtained from the relevant authorities. The matter of Zonal Manager, Bank of India, Zonal Office, Kochi & Ors. vs. Aarya K. Babu & Ors., (2019) 8 SCC 587 also deals with the minimum qualification for applying for the post, whereas in the present case EWS certificate cannot be equated with essential educational qualification required for qualifying for the said post. The certificate stating an educational qualification is constitutive in nature and it certifies the date when a particular candidate has acquired the minimum education qualification required to sit for an exam but on the other hand, EWS certificate is only cognitive in nature which certifies financial status of a person within a given financial year. In Madras Institute of Development Studies & Anr. vs. Dr. K. Sivasubramanian & Ors. (2016) 1 SCC 454 the Court dealt with the selection process whereas the present writ petitions are with respect to dates of procuring EWS certificates. Hence, this judgment again is not applicable to the facts of this case. The judgment in Municipal Corporation of Delhi vs. Surender Singh & Ors., (2019) 8 SCC 67, deals with the merits of the candidates and not with the issuance of valid EWS certificates after the cut-off date. Union of India vs. Anu Kumari & Anr. Civil Appeal No.3877/2019 dated 11.04.2019, dealt with the non- uploading of cadre preference by the candidate online before certain date, which is nowhere related to the submission of EWS certificate which was obtained after the cut-off date. Again, in Praveen Sharma vs. the Secretary, UPSC, W.P.(C) No.4569/2008 dated 16.12.2008, issue in hand was the eligibility of a candidate based on age or number of attempts; whereas in the present case dispute is regarding EWS status, which is not related to the age or number of attempts. The case of Satish Kumar vs. UPSC & Anr. W.P.(C) 8319/2014 dated 28.11.2014 did not deal with the sanctity of cut-off dates in respect of obtaining the EWS certificate. In the matter of The Secretary, M/o Personnel, Public Grievances and Pensions vs. Tanu Kashyap & Ors. W.P.(C) 16191/2006 dated 05.10.2007 the Court dealt with the creamy layer of OBC and the relevant cut-off date for determining the same, whereas the present matter deals with the date of obtaining the EWS certificate; hence this judgment has no relevance. In the matter of Dr. Shamim vs. Union Public Service Commission & Ors. OA No.1301/2019 dated 21.10.2019, issue was regarding possession of requisite educational qualification and the last date in the matter for submission of applications but here in this case the issue is regarding date of obtaining the EWS certificate for the period 2017-18. In Jyoti Hankey vs. Union Public Service Commission & Ors. W.P.(C) No.2342/2012 dated 17.07.2013, the candidate was dismissed on the basis that the Scheduled Tribe certificate was not in the prescribed format. However, the surviving issue in the

present case is not the faulty format of the EWS certificate, as UPSC has already given concession to two such candidates, who earlier had submitted faulty certificates and later on submitted the certificates in proper format, hence the said issue does not survive. Mr. Kaushik has also referred to Union of India & Ors. vs. Unicorn Industries, (2019) 10 SCC 575, wherein the court observed that the public interest is superior equity, which can overwrite an individual equity. By extending date of obtaining EWS form 1st August, 2019 to 16th August, 2019, the superiority of the public interest has not been undermined as the selection process or the dates of submission of forms or the dates of holding the exams or the interviews has not been interfered with. The superior public interest demands that the exams should be held on time and the forms, duly filled along with documents, should have been submitted on the dates prescribed by UPSC so that no delay is caused in holding the said exams. This Court as well as the learned CAT has not interfered in the dates mentioned for submission of DAF-1 and DAF-2 as well as the examination calendar and the schedule of interview to be held in CSE-2019 in the true sense of the acceptance of superior equity in public interest as held in Union of India & Ors. vs. Unicorn Industries(supra).

We find ourselves unable to agree with the above submissions made on behalf of the applicants in the backdrop of the specific findings recorded in the above extracted paragraphs 37, 48 and 50 of the said judgment and Order dated 11.09.2020, where we have clearly and unequivocally expressed the view that the eligibility of the candidates belonging to EWS Categories is to be seen for the year 2017-2018 and further that the candidates to be eligible of the CSE-2019, were required to obtain EWS Certificates for the period 2017-2018.

Even otherwise, the applicants have approached this Court in this behalf belatedly, since the UPSC has already declared final result for CSE- 2019 and the DoPT has already required the successful candidates to participate in the Foundation Course commencing from 12.10.2020.

In view of the foregoing, in our considered view, the present applications are devoid of merits and the same are accordingly dismissed.

SIDDHARTH MRIDUL, J TALWANT SINGH, J SEPTEMBER 28, 2020/dn/rs Click here to check corrigendum, if any