

Court No. - 20

Case :- WRIT - A No. - 879 of 2024

Petitioner :- Dr. Sanjay Kumar Bhat And 5 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Medical Education U.P. Lko. And 5 Others

Counsel for Petitioner :- Gaurav Mehrotra, Anant Khanna, Ritika Singh, Vivek Kumar Rai

Counsel for Respondent :- C.S.C., Anupras Singh

Hon'ble Shree Prakash Singh, J.

1. Heard Shri Satish Chandra Mishra, learned Senior Advocate assisted by Shri Gaurav Mehrotra, learned counsel for the petitioners, Shri Anupras Singh, learned counsel for Dr. Ram Manohar Lohia University, Shri Shailendra Kumar Singh, Chief Standing Counsel, Vivek Shukla, Additional Chief Standing Counsel and Shri Tushar Verma, learned counsel for the State.

2. Challenge is made to the advertisement bearing no. DrRMLIMS/ER/Rect-F/2023/1217 dated 01.12.2023 (hereinafter referred to as 'impugned advertisement') issued by the Dr. Ram Manohar Lohia Institute of Medical Sciences (hereinafter referred to as 'Institute') thereby, applications have been invited from eligible candidates for appointment of faculty on regular/deputation basis, vide the special recruitment drive for the post of Professors/Associate Professors and Assistant Professors in various departments and further the order bearing no. DrRMLIMS/ER/Estb.1-F2/2024/1589 dated 19.01.2024 is also assailed whereby, the application of the petitioners has impliedly been rejected.

3. Contention of counsel for the petitioners is that ‘the Institute’ is an autonomous super specialty post graduate institute, fully aided by the Government of U.P. The institute is creation of statute namely, Dr. Ram Manohar Lohia Institute of Medical Sciences Act 2015 (hereinafter, referred to as the ‘Act 2015’) and it is discharging public function.

4. Further submission is that the petitioners are not the outsiders, but are the faculty members working on the post of the Professors(Junior Grade)/Additional Professors in the institute whose description are given as follows:-

Sr No.	Name	Present Post
1.	Dr Sanjay Kumar Bhatt	Professor(Jr Grade)
2.	Dr Vineet Kumar	Professor(Jr Grade)
3.	Dr Neetu Singh	Professor(Jr Grade)
4.	Dr Rajni Bala Jasrotia	Professor(Jr Grade)
5.	Dr Abhilash Chandra	Professor(Jr Grade)
6.	Dr Manish Kulshrestha	Professor(Jr Grade)

5. Next submission is that the work and conduct of the petitioners were always above-board as they perform their duties to the best of their ability, sincerity and commitment to the institution.

6. Vide impugned advertisement dated 01.12.2023, applications were invited from eligible persons for the appointment of faculty on regular/deputation basis through special recruitment drive, however, there are various anomalies in the advertisement. He argued that prior to promulgation of *Uttar Pradesh Educational Instructions* (Reservation in the Teachers Cadre) Act 2021 (hereinafter referred to as the ‘Act 2021’), the department concerned of the Universities and statutory medical institutes were taken as a unit for applying reservation however, after coming into the existence of the aforesaid new enactment i.e. the Act 2021, the institute is taken as a unit for applying reservation on the various faculty position and further section 3(1) of the Act 2021

categorically provides that the reservation on the post of direct recruitment in the institution is to be provided to the extent and in a manner 'prescribed' by the State Government, but the State Government never prescribed any procedure regarding reservation of post in direct recruitment out of sanctioned strength in the teacher cadre which creates great anomaly and this goes to the root of the matter.

7. He further argued that the recruitment exercise initiated by the respondent institute vide impugned advertisement dated 01.12.2023 is not incongruence with the existing guidelines of the Medical Council of India and the same is based on the old guidelines of the Medical Council of India of year 2020 whereas, in year 2023, the guideline of National Medical Commission (hereinafter referred to as 'NMC') (erstwhile MCI) reduced the strength of faculty and therefore, the strength of faculty members in the institute is liable to be re-determined as per the 2023 guidelines of NMC and therefore, the advertisement is published ignoring the new guidelines.

8. Further contention of counsel for the petitioners is that there was no need of applying EWS category reservation for the post so advertised in the impugned advertisement dated 01.12.2023 as the same would affect right of such person who can get the benefit of reservation as per the roster prescribed under the Act 1994.

9. He added that though, the institute has received a huge amount of Rs. 2,885 lacs from the Prime Minister Ayushman Bharat Health Infrastructure Managemnet for construction of 100 beds critical care block, but no post has been advertised to fill up, including Assistant Professor, Associate Professor or Professor whereas, fact remains that on 06.06.2018 one Dr Chandra Kant Pandey (unreserved category) was appointed as professor in the department of critical care as a permanent faculty member in the institute and when he resigned, no regular appointment is made and even at this time when the post of all the

faculties are advertised, the critical care department has been left, the reason best known to the responsible authorities of the institute though, the same would adversely affect the right of those candidates who could have been considered if, the post would have been advertised for critical care department.

10. It has further been submitted that the standardization of Government Order dated 30.11.2022 is out dated for the reason that it is based on old MCI guidelines however, subsequently, the aforesaid guidelines have been superseded and new guidelines have been promulgated vide order dated 16.08.2023 issued by NMC and thus, in this view of the matter also, the impugned advertisement is faulty.

11. While continuing with his arguments, he submits that the advertisement is named as the Special Recruitment which only can be done for the backlog seats, but so far as the act meant for the EWS category, known as ‘Constitution (One Hundred and Third Amendment) Act, 2019 do not provide any mechanism for filling the vacancy while carrying out special drive, contrary it is provided in the act that if, there would be no candidate in the EWS category those will be treated as seats of General Category, which is not pari-materia to the provisions prescribed in the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994 (hereinafter referred to as ‘Act 1994’).

12. Concluding his arguments, he submits that since, the advertisement is hit by various anomalies, as no procedure prescribed by the State under Act 1921, no mode is prescribed for EWS category and since, the teachers of the faculty starting form Assistant Professor are getting more then 8 lacs of salary and therefore, applying EWS category reservation, is wholly unjustified and therefore, the advertisement dated 01.12.2023 as well as the impugned rejection order dated 19.01.2024 may be quashed and the respondents may be directed to issue afresh advertisement in accordance with law.

13. Refuting the contention of counsel for the petitioners, the counsel appearing for the respondent-institute submitted that from perusal of section 3 of the Act 2021, discloses the purpose of legislation, for applying reservation, treating the State Educational Institutions as one unit. The reservation under this Act, is to be done as per existing norms laid down by the State Government however, the prescription regarding extent and manner of the reservation has been provided by the legislature in Act 1994 and the Act 2021 and they are in consonance with each other and there is no contradiction at all. He added that section 3(1) of the Act 2021 provides reservation of post in direct recruitment in Teachers' cadre in State Educational institution to the extent and in a manner as prescribed by the State Government, which clearly indicates the conscious decision is taken by the State Legislature by putting the word as '*prescribed*' not the words 'may be prescribed' or 'shall be prescribed' or 'to be prescribed' and therefore, the procedure which has already been prescribed for applying the reservation would be taken care of nothing else and that too has been done while publishing the advertisement by the institution.

14. In support of his contention, he has place reliance on the full bench judgment of the Allahabad High Court, in case of **Rajjan Lal Vs. State and another**, reported in **AIR 1961 ALL 139 (FB)**, wherein, it has been held that unless the word 'prescribed' is qualified by appropriate words, it means prescribed by any law. Further, the Hon'ble Supreme Court in case of **Bharat Sanchar Nigam Limited and Another Vs. BPL Mobile Cellular Limited and Others** reported in **(2008) 13 SCC 597** has held that when the word 'prescribed' is not defined, the same would mean that 'prescribed' in-accordance with law and not otherwise.

15. Adding his arguments, he submits that the law rendered by Apex Court in case of **Nawal Kishore Mishra and Others versus High Court of Judicature of Allahabad (2015) 5SCC 479**, it has categorically been held that section 3(1) of

the Act 1994 specifically provides for the extent of reservation for SC/ST/OBC and the absence of any other prescription regarding application of reservation, the Act 1994 would apply.

16. He submits that the reservation in favour of economically weaker section (EWS) candidates came into existence vide the U.P. Public Services (Reservation for Economically Weaker Sections) Act 2020 which provides that 10% of the vacancies shall be reserved in favour of the persons belonging to EWS therefore, the post which are reserved for EWS category in the impugned advertisement, are according to the reservation roster as prescribed by the State Government and that has to be necessary reserved for the EWS category and it is not open to 'the institute' to take any other view on its own, while taking a decision not to reserve the post in favour of EWS category.

17. He has also clarified that the vide Government Order dated 09.09.2016, the State Government keeping in view the need of Institute and requirement of the patient, sanctioned one post of Professor(Critical Care Medicine) in the institute and the Institute appointed Professor Chandra Kant Pandey against the sanctioned post of Professor, while duly publishing the advertisement on 19.05.2017 and Mr Pandey joined on 06.06.2018, however, he submitted his resignation and was relieved from the institute on 30.11.2019. Adding his arguments, he submits that the clause 2(12) of the G.O. dated 05.09.2022 provides that if, any post is previously sanctioned and is not included in the standardization(Mankikaran) then, those posts will be treated as nil/surrendered, after the incumbent occupying these posts, demit the office, though, subsequently the post of professor (Critical Care) is stated to be nil as the same was not included in the standardization however, looking into the interest and need of patient care one Dr. Sashi Srivastava who had superannuated form Sanjay Gandhi Postgraduate Institute of Medical Sciences, Lucknow, was appointed as a Professor on re-employment basis in the department of Anesthesiology, who joined on 04.07.2023 and thus,

there is neither any post of Professor in Critical Care Medicine nor there is any person working as a Professor(Critical Care Medicine) in the institute.

18. Replying the contention of counsel for the petitioners, he submits that all though, the number of post sanctioned in the Government Medical Institution is based on minimum recommendations made by statutory bodies like MCI/NMC, but it is not the sole criteria for determining the number of post sanctioned by the Government for proper functioning of Institute as well as for providing the patient care, as required, but in addition, the requirement for patient care, training, research, teaching and administration are also the ancillary ground of consideration.

19. He submits that the number of posts advertised by the institute is based on the number of posts available with the institute and further, keeping in view the requirement of the institute while, controverting the plea taken by the petitioners he submits that the special recruitment cannot be carried out while, special recruitment has been undertaken to balance the reservation for faculty position, considering the institute as a unit and the seats reserved for the candidates belonging to the SC/ST/OBC/EWS categories have been balanced out by the advertising seats vide advertisement for special recruitment and those are not the backlog seats, as the advertisement also do not speak like that. He next added that the post of Professor, Department of Clinical Hematology has been advertised under the special recruitment and not as backlog post. He sum up his arguments while submitting that the advertisement dated 01.12.2023 issued by the institute for appointment of faculty on regular basis is strictly in-accordance with the statutory provisions as well as the directions issued by the state Government, regarding reservation which is perfectly in-accordance with law therefore, submission is that no interference is warranted.

20. Having heard learned counsels for the parties, the following questions arises for consideration.

a. Whether, the respondent-institute could have proceeded to apply the reservation in the impugned advertisement dated 01.12.2023, without there being any manner 'as prescribed' by the State Government' as provided under section 3(1) of the Act 2021?

b. Whether, there could have been any applicant belonging to EWS category, who would have applied for the post of Assistant Professor, Associate Professor and Professor, admittedly, having more than 8 lacs of income?

c. Whether, there can be any special recruitment drive for EWS or other categories without there being any procedure prescribed under the Act 2020 and the Act 2021?

d. Whether, the standardization Government Order dated 30.11.2022 is outdated for the reason that it is based on old MCI guidelines of 2020, however, subsequently, those have been superseded vide order dated 16.08.2023, issued by NMC?

21. Before enactment of U.P. Educational Instructions (Reservation in the Teachers Cadre) Act 2021 the department concerned of the University and the Statutory Medical Institutes were taken as a unit for applying reservation, but now the Institute is taken as a unit for applying reservation.

22. Section 3(1) of the Act 2021 provides that there shall be reservation of post in direct recruitment out of the sanctioned strength in Teachers Cadre in a State Educational Institution to the extent and in the manner as prescribed by the State Government.

23. Section 3(1) of the Act 2021 is extracted as under:-

“Notwithstanding anything in any other law of the State of Uttar Pradesh for the time being enforced, there shall be reservation of posts in direct recruitment out of the sanctioned strength in Teachers cadre in a State Educational institution to the extent and in the manner as prescribed by the State Government”.

24. The above noted provision do not speak about any ‘manner already prescribed’, but it says ‘as prescribed’.

25. The statement of objects and reasons of the Act 2021 make the intention of legislature amply clear that it has been decided that the previous Government Order for application of reservation for teaching post be replaced by the Act 2021, so far as the definition of word prescribed given under section 33-A of the U.P. General Clauses Act 1904 is concerned, it says that the word prescribed shall mean prescribed by the rules made under the Act in which the word occurs. As the word prescribed occurs in the Act 2021 therefore, the rules for prescribing the extent and manner ought to have been made under the Act 2021 and which could have been made only after the promulgation of the Act 2021 however, admittedly no such rules have ever been made by the State under the Act 2021, till date. Section 33-A of U.P. General Clauses Act 1904 is extracted as under:-

"prescribed" shall mean prescribed by rules made under the Act in which the word occurs.

26. This Court has also noticed that in counter affidavit filed by the respondent-institute as well as the State, no rules, Government Order or the Prescription has been brought on record which could show that any rule or procedure is prescribed, further section 6 of the Act 2021 also provides that every notification made by the State Government under the Act shall be laid as soon as after it is made before both houses of the State Legislature. Section 6 of the Act 2021 is transcribed as under:-

“Every notification made by the State Government under this Act shall be laid, as soon as may be after it is made, before both Houses of the State Legislature.”

27. The U.P. Public Services (reservation for Scheduled Caste, Scheduled Tribe and Other Backward Classes) further, section 3(5) of the Act 1994 provides that the State Government for applying the reservation under sub-section (1) by a notified order issue a roaster comprising total cadre strength of the public service. Section 3(5) of the Act 1994 is reproduced hereinunder:-

“The State Government shall for applying the reservation under subsection (1), by a notified order, issue a roster comprising the total cadre strength of the public service or post indicating therein the reserve points and the roster so issued shall be implemented in the form of a running account from year to year until the reservation for various categories of persons mentioned in sub-section (1) is achieved and the operation of the roster and the running account shall, thereafter, come to an end, and when a vacancy arises thereafter in public service or post the same shall be filled from amongst the persons belonging to the category to which the post belongs in the roster.”

28. In the provision of section 29-A of the U.P. General Clauses Act 1904, it is provided that the word ‘notification’ or ‘public notification’ shall mean a notification published in the Gazette of the State and the word ‘notified’ shall be construed accordingly. Section 29A of the Act 1904 is reproduced hereinunder:-

"notification" or "public notification" shall mean a notification published in the Gazette of the State, and the word "notified" shall be construed accordingly;

29. Thus, it emerges that the prescription is to be made by the State Government by promulgating Rules made under the Act 2021 by virtue of provision contained in section 6 of the Act and needs to be laid before both the houses of legislature. It is also borne out that as per the provision of section 3(1) of the Act 2021 read with section 29A of the U.P. General Clauses Act 1904, the prescription ought to have published by a notified order in an official gazette.

30. This Court is also aware about the judgment and order rendered in case of **Bharat Sanchar Nigam Limited and Another Vs. BPL Mobile Cellular**

Limited and Others (Supra), wherein, it has been held that ordinarily the word ‘prescribed would mean prescribed by Rules.’ When the word prescribed is not defined, the same would mean that prescribed in-accordance with law and not otherwise. Paragraph 45 of the above-said judgment is reproduced hereinunder:-

“For invoking Clauses 4.1 and 19.5 of the licence agreement, we may notice that the word "prescribed" is not defined. It has not been defined even in the Telegraph Act. It has not been defined in the licence. The said provision unlike Clause 18.14 does not use the words "from time to time". A contract entered into by the parties, it will bear a repetition to state, must be certain. It must conform to the provisions of the Contract Act. Ordinarily, the word "prescribed" would mean prescribed by rules. Section 7(2)(ee) of the Telegraph Act provides for the rule-making power for the purpose of laying down the tariff. We may not be understood to be laying down a law that in absence of any statutory rule framed under the Telegraph Act, no contract can be entered into. In absence of any statutory rule governing the field, the parties would be at liberty to enter into any contract containing such terms and conditions as regards the rate or the period stipulating such terms as the case may be. The matter might have been different if the parties had entered into an agreement with their eyes wide open that the circular letter shall form part of the contract. They might have also been held bound if they accepted the new rates or the periods either expressly or sub silentio. When on the basis of terms of the contract, different rates can be prescribed, the same must be expressly stated. When the word "prescribed" is not defined, the same, in our opinion, would mean that prescribed in accordance with law and not otherwise.”

31. Further in full bench of this Court in Case of **Rajjan Lal Vs. State and another (Supra)**, it has been held that unless the word prescribed is explained in the provision, the general sense, as a meaning would be, ‘prescribed by any law whatsoever.’ Thus, reply to the issue no. (a) is that the respondent-institute proceeded for appointment, without being any State prescription, regarding the manner and extent of applying reservation as per section 3(1) of the Act 2021 more so, the opposite parties have failed to demonstrate any procedure or manner as is prescribed by notified any Rules in the Gazette, as is prescribed under sections 5 and 6 of the Act 2021, thus, the issue (a) is replied in negative.

32. Coming to the issue (b) as framed above, it is apparent that posts advertised vide impugned advertisement dated 01.12.2023 of the Assistant Professors, Associate Professors and Professors, which are higher in ranking than that of a Senior Resident and experience of three year as a senior resident is essential eligibility for the post to become Assistant Professor and three years as Assistant

Professor experience is mandatory to be eligible for Associate Professors, while three years as Associate Professor experience is mandatory to be eligible for Additional Professors and further the experience of four years as Additional Professor is required for the post of Professor.

33. Fact remains that the salary of the Senior Resident is around 1 lakh per month, in all most every Government/Private institution and therefore, there can be no applicant belonging to EWS category, who would be eligible for applying for the post of Assistant Professor. As per the provision of Section 2(b) of the Act 2020, it is provided that ‘Economically Weaker Section of Citizens’ means persons belonging to Economically Weaker Section as defined in the office memorandum dated 19.01.2019 of DoPT, Ministry of Personnel and Public Grievance and Pension, Government of India and as per the same, the persons whose family has gross annual income is below Rs.8 lacs are to be identified as Economically Weaker Section for the benefit of reservation. Paragraph 2 of the office memorandum dated 19.01.2019 is extracted as under:-

“Persons who are not covered under the existing scheme of reservations for the Scheduled Castes, the Scheduled Tribes and the Socially and Educationally Backward Classes and whose family has gross annual income below Rs. 8.00 lakh are to be identified as EWSs for the benefit of reservation. Family for this purpose will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years as also his/her spouse and children below the age of 18 years. The income shall include income from all sources i.e. salary, agriculture, business, profession etc. and it will be income for the financial year prior to the year of application. Also persons whose family owns or possesses any of the following assets shall be excluded from being identified as EWSs, irrespective of the family income

- i 5 acres of Agricultural Land and above;*
- ii. Residential flat of 1000 sq. ft. and above;*
- iii. Residential plot of 100 sq. yards and above in notified municipalities;*
- iv. Residential plot of 200 sq. yards and above in areas other than the notified municipalities.”*

34. In fact, the respective applicants for the aforesaid positions of the Associate Professors, Additional Professors and Professors cannot belong to EWS category, by virtue of the experience required for the same, thus, there is no occasion of advertising the EWS category post for Assistant Professors, Associate Professors and Professors.

35. The circular bearing no. M.I.-3/2023 dated 24.11.2023 issued by the Director General Medical Education and Training, with regard to employment of candidates under the compulsory government service bond was laid down, which categorically provides that annual income of the Junior Resident/Senior Resident, working in the Government/Autonomous Medical Colleges/Institutes of the State is more than Rs. 8 lacs, which is the eligibility prescribed by the Government Orders related to EWS category, therefore, they do not fall within the EWS category thus, the seats reserved for EWS category of the vacant post of the Senior Resident have been included in the unreserved category and the benefit of reservation of EWS category will not be allowed to any candidate. The circular dated 24.11.2023 is extracted as under:-

"शासनादेश संख्या-85 / 2019/2625/71-1-2019-जी-71/2011 टी०सी० दिनांक 16 अक्टूबर 2019 द्वारा प्रदेश के राजकीय मेडिकल कालेजों में कार्यरत जूनियर एवं सीनियर। रेजीडेण्ट चिकित्सकों के वेतनमान अभिवृद्धि / संशोधन करते हुए जूनियर रेजीडेण्ट को ग्रेड वेतन ₹0 5400/- तथा सीनियर रेजीडेण्ट को ग्रेड वेतन ₹0 6600/- तथा अन्य अनुमन्य भते राज्य सरकार द्वारा निर्धारित दरों पर अनुमन्य किया गया हैं।

उक्त से स्पष्ट है कि प्रदेश के राजकीय / स्वशासी मेडिकल कालेजों / संस्थानों में कार्यरत जूनियर रेजीडेण्ट / सीनियर रेजीडेण्ट की वार्षिक आय रु 8.00 लाख से अधिक होती है, जो आर्थिक रूप से कमजोर श्रेणी (E.W.S.) से संबंधित शासनादेश द्वारा निर्धारित अर्हता की परिधि में नहीं आते हैं। अतः उक्त वर्णित तथ्यों के दृष्टिगत सीनियर रेजीडेण्ट के रिक्त पदों की ई०डब्लू०एस० श्रेणी हेतु आरक्षित सीटों को अनारक्षित श्रेणी में सम्मिलित किया गया है तथा एउक्त काउंसिलिंग हेतु किसी भी अभ्यर्थी को ई०डब्लू०एस० श्रेणी के आरक्षण का लाभ अनुमन्य नहीं होगा।"

36. Further the Government Order bearing No. I/475904 of 2024 dated 18.01.2024 is also issued wherein, it is provided that the seats reserved for the EWS category of Assistant Professors in DM/MCH occurs, will be filled up by the candidates of unreserved category and the reason is assigned that such students of DM/MCH or having more than 8 lacs of annual income. It is noticeable that the Government Order dated 18.01.2024 and circular dated

24.11.2023 have been issued by the Director General Medical Education himself and therefore, there can be no any other view that these orders are irrelevant for the purposes of considering the EWS reservation in the institute.

37. Ultimately, the reservation for EWS category is not only creating unnecessary confusion in the mind of the candidates, but it also changes the texture of the roster so applied in the impugned advertisement dated 01.12.2023, so the reply to issue no. (b) is that the EWS reservation ought not to have been applied in the impugned advertisement dated 01.12.2023 on account of peculiar eligibility criteria for the post, so advertised, which per-supposes gross annual income to be more than almost Rs. 12 lacs, while any candidate having gross annual family income of more than eight lacs, is not covered within the definition of EWS as per the Act 2020, more so, in the event that the institute is proceedings in absence of any procedure or manner prescribed by the State Government, including the applications of EWS category, while notifying any rule, resultantly, the issue no. (b) is also decided in negative.

38. While coming to the issue no. (c), section 3(2) of Act 1994 is reproduced herein under:-

“If, in respect of any year of recruitment any vacancy reserved for any category of persons under sub-section (1) remains unfilled, such vacancy shall be carried forward and be filled through special recruitment in that very year or in succeeding year or years of recruitment as a separate class of vacancy and such class of vacancy shall not be considered together with the vacancies of the year of recruitment in which it is filled and also for the purpose of determining the ceiling of fifty per cent reservation of the total vacancies of that year notwithstanding anything to the contrary contained in sub-section (1);] 23 where a suitable candidate belonging to the Scheduled Tribes or Scheduled Castes, as the case may be, is not available in a recruitment either under sub-section (1) or sub-section (2) the vacancy reserved for him may be filled in such recruitment, from amongst the suitable candidates belonging to the Scheduled Castes or Scheduled Tribes, as the case may be, and as soon as a vacancy earmarked in the roster referred to in sub-section (5) for the Scheduled Castes or Scheduled Tribes, as the case may be, arises such person belonging to Scheduled Castes or Scheduled Tribes, as the case may be, shall be adjusted against such vacancy of his own category.]”

39. The above-said provision speaks that for the unfilled vacancies the employer state is at liberty to fill up the backlog vacancies by means of special drive. However, there is no pari-materia provision in the U.P. Public Services, Reservation for EWS Act 2020 which inter-alia governs the manner in which EWS reservation is to be provided, rather section 3(6) of Act 2020, categorically provides that the unfilled vacancies of the EWS category are not ought to be left vacant and ought to be filled up by unreserved candidates. Section 3(6) of the Act 2020 is reproduced hereinunder:-

“section 3 (6) Where in any particular recruitment year any vacancy earmarked under sub-section (1) for Economically Weaker Sections cannot be filled up due to non availability of a suitable candidate belonging to Economically Weaker Sections such vacancies shall not be carried forward to the next recruitment year as backlog and the said vacancy shall be filled by the eligible candidates of unreserved category.”

40. From perusal of the advertisement dated 01.12.2023, it indicates that the same is an special recruitment advertisement, but in absence of any provision of the Special Recruitment drive in the Act 2020, the same is unsustainable and against the law therefore, the reply to the issue no. (c) is that along with the backlog vacancies (Special Recruitment) for reserved categories i.e. SC,ST and OBC vacancies, but the vacancies for EWS category could not have been advertised in the Special Recruitment carried out vide impugned advertisement dated 01.12.2023 and further, without there being any rules or any procedure prescribed with respect to the ‘Special Recruitment,’ the same could not have been done.

41. Now dealing the issue no. (d), it is apparent that there is anomaly which makes the recruitment exercise initiated by the respondent institute vide impugned advertisement dated 01.12.2023, faulty, as in the year 2020 guidelines were issued by the then Medical Council of India and later on re-constituted as National Medical Commission (hereinafter referred to as ‘NMC’) and based on the 2020 guidelines, the respondent no. 3, vide Government Order dated 30.11.2022 determined the sanctioned strength of various faculty positions in the

respondent institute subsequently, the above noted guidelines are superseded and new guidelines have been issued vide the order dated 16.08.2023 and if, those are applied, there would be material changes as per the guideline of 16.08.2023. The sanctioned strength of institute needs to be reconsidered by the State Government as the earlier Government Order dated 30.11.2022 has been superseded and therefore, the standardization Government Order issued subsequently, would materially change the sanctioning strength of the faculty members. Thus, this Court finds that applying the standardization Government Order dated 30.11.2022, which is said to be based on old MCI guidelines of 2020 is an incorrect and erroneous approach as subsequently, the new guidelines have been issued on 16.08.2023, while superseding the earlier one.

42. Apart from above, this Court also noticed that on 06.08.2018, Dr Chandra Kant Pandey was appointed as Professor in the department of critical care against an unreserved category post of Professor and after some period of time, Dr Pandey resigned and the fact has not been denied that huge grant has been accepted for construction of Critical Care Unit, but no post is advertised for Critical Care Unit department, though, the aforesaid fact is disputed by counsel for the Institute, while stating that there is no sanctioned post in critical care department in the institute and therefore, the institute is not empowered to advertise any vacancy, without being any sanctioned post .

43. In view of the aforesaid submissions and discussion, this Court finds merit in the writ petition, thus, the impugned advertisement dated 01.12.2023 and the rejection order dated 19.01.2024 issued by respondent no. 6 are hereby quashed.

44. The writ petition is **allowed** accordingly.

45. It is open to the 'Institute' to issue a fresh advertisement, while strictly following the provisions, relevant laws and seeking instructions from the State

Government regarding the procedure and manner, mandated to be prescribed under section 3(1) of the 'Act 2021.'

Order date:- 31.05.2024

Mayank