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HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 4th July, 2011

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Judgment Pronounced on: 25th July, 2011

+ **WP(C) No.610/ 2011**

DSSSB & ANR. Petitioners

Through: Ms. Zubeda Begum, Ms. Sana
Ansari, Advocates

Versus

MUKESH KUMAR & ORS. Respondents

Through: Mr. Aruneshwar Gupta,
Mr.Manish Raghav, Mr. Nikhil
Singh, Advs. for Respondent Nos.
1 to 19
Mr. Nawal Kishore Jha, Adv. for
Respondent No.20/ MCD

+ **WP(C) No. 1595/ 2011**

DSSSB & ANR. Petitioners

Through: Ms. Zubeda Begum, Ms. Sana
Ansari, Advocates

Versus

KAPIL KUMAR & ORS. Respondents

Through: Dr. K.S. Chauhan, Mr. Tej Singh
Varun, Mr.Ajit Kumar Ekka,
Mr.Kartar Singh, Advs.

+ **WP(C) No.1596/ 2011**

DSSSB & ANR. Petitioners

Through: Ms. Zubeda Begum, Ms. Sana
Ansari, Advocates

Versus

MS. SAROJ & ORS.

....Respondents

Through:

Dr. K.S. Chauhan, Mr. Tej Singh
Varun, Mr.Ajit Kumar Ekka,
Mr.Kartar Singh, Advs. for
Respondent Nos. 1 and 2
Mr. Nawal Kishore Jha, Adv. for
R-3/ MCD

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. | Whether reporters of the local papers be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

DIPAK MISRA, CJ

In the year 2008, as per requisition of Municipal Corporation of Delhi (MCD), the Delhi Subordinate Services Selection Board (hereinafter referred to as 'the Board') issued an Advertisement No. 02/2008 for filling up posts of Assistant Teacher/Teacher (Primary) in MCD under Post Code 16/08. The advertisement in Section B contained the reservation benefits keeping in view the instructions pertaining to the admissibility of benefits of reservation. The procedure for submission of application form mentioned the reservation benefits stating that the reservation benefits will be available to the candidates in accordance with the instructions/order/circulars issued from time to time by

competent/notified authority. The examination for the Post Code 16/08 (Teacher-Primary) was conducted by the Board in two parts, that is, Part I (Objective) Examination and Part II (Descriptive) Examination for final selection. The result of Part I examination for short listing of candidates by evaluation of their Part I answer sheets was declared on 29.5.2009. After evaluation of Part II (Descriptive) answer scripts, final result was declared by the Board on 6.10.2009.

2. When the selection process was continuing, the decision in the case of *Subhash Chandra & Anr. v. DSSSB & Ors., 2009 (11) Scale 278* was pronounced. Because of the said decision, only such Scheduled Caste candidates who had secured marks 94/200 and above and had enclosed Scheduled Caste certificate of Delhi origin issued by the competent authority of the Government of NCT of Delhi were selected. The candidates who had furnished the caste certificates issued on the basis of their parents' caste certificates along with the application form were not extended the benefit of reservation and, hence, their cases were considered under unreserved category and the candidates who had, secured less marks than the last short listed/selected candidate under unreserved category were not found to have been qualified.

3. Being dissatisfied with the aforesaid criteria/condition, the respondents preferred original applications before the Central Administrative Tribunal, Principal Bench, New Delhi (for short ‘the tribunal’) and the tribunal disposed of OA No. 563/2010 (*Mukesh Kumar & Others v. GNCTD & Ors.*) on 6.9.2010 and OA Nos. 1466/2010 (*Kapil Kumar v. DSSSB & Ors.*) and 905/2010 (*Ms. Saroj & Others v. GNCTD & Ors.*) by common order dated 7.9.2010. In OA No. 563/2010, the tribunal has passed the following order:

“Decision of Apex Court in **Subhash Chandra & another v. DSSSB & others** (CA-5092/2009) and its prospectivity thereof is not involved in the present cases, as now in the light of the observations made in paragraph 12 of the decision (*supra*), applicants have produced before us a copy of the list of scheduled casts in Delhi, which, the learned counsel states, have been issued under Article 341(1) of the Constitution of India whereby the casts ‘Chamar’, ‘Jatva’, ‘Koli’ and ‘Pasi’ are included as scheduled castes in Union Territory of Delhi. If the contentions put forth by learned counsel for applicants is correct then the castes are not migratory and have a right to be considered for appointment on reservation basis in schedule caste category.

2. In this view of the matter, we dispose of this OA with a direction to the respondents to verify the aspects of the castes being notified in Delhi by notification under Article 341(1) of the Constitution by an apt methodology within a period of two months from the date of receipt of a copy of this order and on authentication and verification of the aforesaid, consider the claim of the applicants for appointment in accordance with their eligibility within a period of one

month when such a verification and authentication by the respondents is complete.”

4. In the other two original applications, the tribunal referred to the decision rendered in *Mukesh Kumar & Ors.* (supra) and passed the following order:

“Being founded on identical questions of law and grounded on similar facts, these OAs are disposed of by directing the respondents to verify the aspect of their castes being notified in Delhi vide notification under Article 341(1) of the Constitution by an apt methodology within a period of two months from the date of receipt of a copy of this order. On authentication and verification of the aforesaid, the respondents shall also consider the claim of the applicants for appointment in accordance with their eligibility within a period of one month when such a verification and authentication is adopted.”

5. Assailing the aforesaid orders, it is submitted by Ms. Zubeda Begum, learned counsel for the appellant - Board that the tribunal has fallen into grave error in understanding the ratio of the decision in *Subhash Chandra* (supra) inasmuch as the said decision nowhere lays down that a person who has migrated to Delhi and taken a certificate from the authority in Delhi would be treated as a candidate belonging to the reserved category. Learned counsel would submit that the Apex Court has, after referring to the Constitution Bench decisions in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors.,*

(1990) 3 SCC 130 and *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra & Anr. v. Union of India & Anr.*, (1994) 5 SCC 244 has opined that to confer the benefit on a person belonging to a particular caste or tribe can only be done if a caste or tribe is notified in terms of the Scheduled Caste Order or Scheduled Tribe Order and the same must be in terms of Clause (1) of Article 341 as also that of Article 342 of the Constitution of India as the case may be and no deviation from the procedure laid down therein is permissible in law. It is urged by her that the tribunal has flawed by not appreciating the fact in proper perspective that the respondents had produced caste certificates that were granted to them on the basis of caste certificates of their parents who belonged to other States and, therefore, they cannot be treated belonging to Scheduled Castes in Delhi solely because there is a list of Scheduled Castes in Delhi issued under Article 341(1) of the Constitution of India covering their caste.

6. Mr. Aruneshwar Gupta along with Mr. Manish Raghav and Dr. K.S. Chauhan along with Mr. Tej Singh Varun, Mr. Ajit Kumar Ekka learned counsel appearing for the private respondents submitted that the tribunal has appositely appreciated the ratio laid down in the case of *Subhash Chandra* (supra) and, therefore, no fault can be found with the orders of the tribunal. It is further contended that the respondents had

obtained caste certificates in Delhi and their castes, namely, 'Chamar', 'Jatva', 'Koli' and 'Passi' which are covered under the notification issued for Delhi under Article 341 of the Constitution of India and, hence, the order passed by the tribunal is absolutely defensible.

7. At the very outset, we may state that there is no dispute that the Competent Authorities of Govt. of NCT of Delhi had issued Scheduled Caste Certificates in favour of the respondents on the basis of the certificates to their parents by other States. On a perusal of the decision in *Subhash Chandra & Anr.* (supra), it is clear as crystal that the Apex Court has followed the decisions in *Marri Chandra Shekhar Rao* (supra) and the *Action Committee* (supra). The Constitution Bench in *Marri Chandra Shekhar Rao* (supra) has clearly laid down that a candidate recognized as a member of Scheduled Tribe and Scheduled Caste in his original State on his migration to another State, would not be entitled to get the benefit of reservation of seats. After laying down the principles, their Lordships have stated thus:

“23. Having construed the provisions of Articles 341 and 342 of the Constitution in the manner we have done, the next question that falls for consideration, is, the question of the fate of those Scheduled Caste and Scheduled Tribe students who get the protection of being classed as Scheduled Caste or Scheduled Tribes in the States of origin when, because of transfer or movement of their father or guardian's business or service, they move to other States as a matter of voluntary (sic in voluntary) transfer, will they be

entitled to some sort of protective treatment so that they may continue or pursue their education. Having considered the facts and circumstances of such situation, it appears to us that where the migration from one State to another is involuntary, by force of circumstances either of employment or of profession, in such cases if students or persons apply in the migrated State where without affecting prejudicially the rights of the Scheduled Castes or Scheduled Tribes in those States or areas, any facility or protection for continuance of study or admission can be given to one who has or migrated then some consideration is desirable to be made on that ground. It would, therefore, be necessary and perhaps desirable for the legislatures or the Parliament to consider appropriate legislations bearing this aspect in mind so that proper effect is given to the rights given to Scheduled Castes and Scheduled Tribes by virtue of the provisions under Articles 341 and 342 of the Constitution. This is a matter which the State legislatures or the Parliament may appropriately take into consideration.”

8. In the case of the *Action Committee* (supra) another Constitution Bench referred to the decision in *Marri Chandra Shekhar Rao* (supra) has opined thus:

“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for

specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State “for the purposes of this Constitution”.”

9. In the case of *Subhash Chandra & Anr.* (supra) their Lordships were dealing with the notifications and circulars issued by National Capital Territory of Delhi in terms of Clause (1) of Article 341 of the Constitution of India and in that context their Lordships have expressed thus:

“Both the Central Government and the State Government indisputably may lay down a policy decision in regard to reservation having regard to Articles 15 and 16 of the Constitution of India but such a policy cannot violate other constitutional provisions. A policy cannot have primacy over the constitutional scheme.

If for the purposes of Articles 341 and 342 of the Constitution of India, State and the Union Territory are at par on the ground of administrative exigibility or in exercise of the administrative power, the constitutional interdict contained in clause (2) of Article 341 or clause (2) of Article 342 of the Constitution of India cannot be got rid of.”

10. From the aforesaid pronouncement of law, it is vivid that Scheduled Castes or Scheduled Tribes in one State cannot get the benefit in another State. The parents of the respondents may belong to the castes

of 'Chamar', 'Jatva', 'Kali' and 'Pasi and those castes may have been notified in terms of Scheduled Caste Order or Scheduled Tribe Order issued in terms of Clause (1) of Article 341 or Article 342 of the Constitution of India in a particular State but the respondents who have obtained the certificates in Delhi on the basis of the certificates of their parents issued by other States and have migrated to Delhi, cannot avail the benefit. Thus, the view expressed by the tribunal that they belong to Scheduled Castes in the National Capital Territory of Delhi because of the said notification and, hence, what is only required is the authentication and verification of the same is not in consonance with the decisions of the *Marri Chandra Shekhar Rao* (supra), *Action Committee* (supra) and *Subhash Chandra & Anr.* (supra).

11. In view of the aforesaid premised reasons, we allow the writ petitions and quash the orders of the tribunal. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

JULY 25, 2011
Pk/dk