

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) No. 1028/2011

% **Judgment reserved on: 18th April, 2011**
Judgment pronounced on: 25th April, 2011

HARIOM CHAUHAN Petitioner

Through: Mr. S.K. Gupta, Adv.

versus

UOI AND ORS. Respondents

Through: Ms. Ruchi Sindhwani with
Ms.Megha Brara, Adv. for R-1 to 3

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

The petitioner applied for the post of TGT (Hindi) under the Directorate of Education in response to the advertisement No. 06/2006 by Delhi Subordinate Services Selection Board (for brevity 'the DSSSB'). In the application for the said post, he claimed to be of reserved category being

a Scheduled Caste candidate. The examination was held in the year 2007 but his name did not find place in the selection list that was published on 30.03.2008.

2. The petitioner challenged his non-selection in two Original Applications before the Central Administrative Tribunal (for short 'the tribunal') being OA No. 2036/2009 and 2488/2009. The tribunal, considering its earlier decision in *Anil Dahiya v. Union of India & Ors.* (OA No. 1054/2008) decided on 15.9.2008, vide its orders dated 10.9.2009 and 24.9.2009 directed the respondents to offer the post to the petitioner on deemed eligibility to the post of TGT (Hindi). The tribunal had further directed that the other eligibility criteria were also to be considered. Be it noted, the case of the petitioner, as pleaded, was that he was not considered on the ground that he had not studied Hindi at an elective level in the graduation.

3. After the tribunal disposed of the applications, the DSSSB found that in view of the decision of the Apex Court in *Subhash Chandra & Anr. v. Delhi Subordinate Services Selection Board*, (2009) 15 SCC 458, the

petitioner was not found eligible for the benefit of reservation in Scheduled Caste category being a Scheduled Caste of the State of Haryana. It was also noticed that in view of the unreserved category, the marks obtained by him were much below the marks of the last selected candidate and, therefore, the case for selection was not feasible. Being grieved by the non-selection on the said score, the petitioner approached the tribunal in Original Application No.677/2010. The singular question that arose before the tribunal pertained to the applicability of the decision in *Subhash Chandra & Anr.* (supra). It was contended before the tribunal that the decision in *Subhash Chandra & Anr.* (supra) had prospective applicability and further as the community of Chamar of the State of Haryana is included in the list, he was entitled to get a similar benefit in the State of National Capital Territory of Delhi. The said stand and stance of the petitioner was combated by the respondents contending, inter alia, that the decision in *Subhash Chandra & Anr.* (supra) only reiterate the principle laid down in the Constitution Bench decision of the Apex Court in *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors.*, (1990) 2 SCC 130. It was also put forth that the controversy was covered by the decision of the Delhi High Court in *Naraish*

Kumar & Ors. v. GNCTD & Anr., decided on 11.12.2009. The tribunal referred to the decision in ***Marri Chandra Shekhar Rao*** (supra) wherein it had been held that a Scheduled Caste/Schedule Tribe in his original State would be entitled to all the benefits under the Constitution in that State alone and not in all parts of the country wherever he migrates. The tribunal placed reliance on the case of ***Subhash Chandra & Anr.*** (supra) wherein the said principle was reiterated. The tribunal also referred to the order dated 13.11.2009 of the Apex Court whereby the decision in ***Subhash Chandra & Anr.*** (supra) was clarified. The tribunal, relying on the said decision, came to hold that the petitioner was not entitled for the post in question and, accordingly, dismissed the Original Application.

4. We have heard Mr.S.K. Gupta, learned counsel for the petitioner and Ms. Ruchi Sindhwani, learned counsel for the respondents.

5. To appreciate the controversy, we have carefully perused the order passed by the DSSSB on 2.12.2009. The relevant part of the said order reads as follows:

“In compliance of order of Hon’ble C.A.T., the candidature of Sh.Hariom Chauhan, Roll No.11012286

Applicant in OA 2488/09 was duly considered but keeping in view the judgment dated 04.08.2009 of Hon'ble Supreme Court of India as passed in Civil Appeal No.5092 of 2009 arising out of Petition(s) for Special Leave to Appeal (Civil) No(s). 24327/05 Subhash Chandra & Anr. V/s DSSB & Ors. relating to admissibility of benefit of reservation in SC/ST categories, applicant Sh. Hariom Chauhan was not found eligible for benefit of reservation in SC category being SC of the State of Haryana. In UR category his marks were much below the marks of last selected candidate.”

6. The said factual position is not disputed. What is urged is that the petitioner being a Scheduled Caste in the State of Haryana, he should be treated as such in the State of National Capital Territory of Delhi. In the case of *Subhash Chandra & Anr.* (supra), the question arose for interpretation and/or application of the notifications and/or circulars issued by the National Capital Territory of Delhi in terms of clause (1) of Article 341 of the Constitution of India. In the said case, the private respondents and/or their parents are migrated to Delhi and in their native places, they are declared to be members of the Scheduled Caste. The question that emerged for consideration was whether a person belonging to a caste notified as Scheduled Caste in one State can automatically claim the benefit of a

notification specifying a similar caste in another State or Union Territory. Their Lordships, after referring to Article 341 of the Constitution of India and *Marri Chandra Shekhar Rao* (supra) and other decisions in the field came to hold that if a caste or tribe is notified in terms of Scheduled Castes order or the Scheduled Tribes order, the same must be done in terms of Article 341(1) as also Article 342(2) of the Constitution of India, as the case may be and no deviation from the procedure laid down therein is permissible in law. Their Lordships further opined that if any amendment/alteration thereto is required to be made, recourse to the procedure laid down under Articles 341(1) or 342(2) must be resorted to. It has been further held therein that the Constitutional scheme seeks to identify the social and economic backwardness of people having regard to the State or Union Territory as a unit. As a circular was not issued under Article 341 of the Constitution of India, the decision of this Court was dislodged.

7. It is apt to note here that a clarificatory application was filed by the Government of National Capital Territory of Delhi and Delhi Technological University before the Apex Court. The Apex Court referred to the background facts and the decision rendered in *Subhash Chandra & Anr.*

(supra) and proceeded to state as follows:

“The present application filed by the Government of N.C.T. of Delhi is for clarification as to whether the judgment delivered in the Civil Appeal would also cover those Scheduled Tribes students who were successful in the written examination and had been selected for counselling before the judgment was delivered. Therefore, in the said application, the following reliefs have been prayed for:

"a) Pass an order clarifying that the observations made and decision taken by this Hon'ble court in its judgment dated 04.08.2009 in Civil Appeal No. 5092 of 2009 {Subhash Chandra v Delhi Subordinate Services Selection Board & Ors.} would not come in way of hinder the admission process of the Appellant-University & other Delhi Government run colleges and polytechnics in filling up seats reserved in favour of Scheduled Tribe candidates for the academic session 2009-2010 only, and can be filled up by Scheduled Tribe candidates immigrating from places outside Delhi; or, in the alternative;

b) Pass an order directing the manner in which the seats reserved for Scheduled Tribe candidates in the Applicant-University be filled up for the academic session 2009-2010 only."

Learned Additional Solicitor General appearing in support of the application filed by the Government of NCT of Delhi, submitted that although a notification had not been issued in terms of Article 341 of the Constitution, by way of past practice, students from the Scheduled Tribes

category from other States had also been considered for admission in Delhi University. The learned ASG sought further clarification as to whether the judgment was intended to be prospective or whether it intended to cover those candidates who have already been selected for. Two other applications filed by the students who were successful and have been selected for counselling also pray for the same clarification and for a direction that they be admitted into the institutions for which they had applied and were successful.

In this situation, we had requested the learned ASG, Mr.Mohan Parasaran, to take instructions from the Government of NCT of Delhi in its Department of and Technical Education as to whether the Scheduled Tribes students, referred to hereinabove, could be accommodated although the first semester was to be completed soon. The learned ASG has produced a copy of instructions received by him from the OSD, DTU & Deputy Director(TTE) Mr.O.P.Shukla, wherein it has been mentioned that if the Delhi Category of Scheduled Tribes students who were successful and had been selected for counselling were to be admitted, special classes would be arranged for them to complete the mandatory teaching requirements of 13 weeks for one semester and thereafter they could catch up with the other students for the second semester in March, 2010. It has also been indicated that loss of study of these students in January and February, 2010 of second semester will be compensated by holding special/extra classes on Saturdays and Sundays and other vacations. It was also indicated that while issuing directions, the Court should not extend the benefit to Scheduled Tribes candidates who have already taken admission in any Institute/University in Delhi as that would disturb to the entire admission process.

Apart from the learned ASG, we have also heard Mr.Naresh Kaushik, learned counsel, in support of I.A.Nos.9 and 10 and Ms.Lata Krishnamurthy, learned counsel, in respect of I.A.Nso.11 and 12. In addition, we have also heard Mr.D.N. Goburdhan, learned counsel, who had appeared for the appellant in the Civil Appeal. While learned counsel for the applicants were all ad idem in their approach to the matter, Mr.Goburdhan had reservations and submitted that any order that may be passed in these applications would amount to violation of provisions of the Constitution itself.

Having considered the submissions made on behalf of the parties, it should first be clarified that we are only considering whether the judgment and order passed in the Civil Appeal intended to cover even those Scheduled Tribes candidates who had not only participated in the selection process but had also been selected for counselling prior to the delivery of the said judgment. We are of the view that this does not entail invocation of our power under Article 142 of the Constitution and, accordingly, Mr.Goburdhan's submission, has no merit.

We clarify that the judgment delivered in C.A.No. 5092/2009 was intended to take effect prospectively and it was not the intention of the Court that the students who had already applied and had been selected for counselling should also be covered by the same. The High Court had in its judgment indicated that there were no materials on record to prove that the S.T. applicants were migrants. In our view such a consideration is immaterial for our purpose since despite the fact that the notification had been issued under Article 341 of the Constitution, as per past practice, S.T. candidates were being given admission in Delhi educational institutions. Unfortunately, although the applications were made soon after the judgment was

delivered, the same could not be taken up for final disposal before the first semester has almost come to an end. In such circumstances, we accept the recommendations of the Department of Training & Technical Education, Government of NCT of Delhi, and direct that the successful students who had been called for counselling and have not already taken admission in any institution or University in Delhi, would be entitled to admission in the respective institutions for which they had applied for and also direct that special classes be arranged for the students to enable them to catch up with those who are in the process of completing the final semester. Such admission process should be completed, if possible, within a week from date.”

8. The submission of learned counsel for the petitioner that when the Apex Court has clarified that the judgment in *Subhash Chandra & Anr.* (supra) would take effect prospectively, the tribunal has erred in expressing the view that it would have retrospective applicability. We have reproduced the clarificatory order in extenso to understand that the Apex Court has clarified that it was not the intention of the Court that the students who have already applied and had been selected for counselling should also be covered by the same. In the case at hand, it is not a case of admission. It is a case of selection to a post. That apart, the petitioner was not selected and had joined. His case was remitted by the tribunal for re-consideration. He

was treated as an unreserved category candidate and that is why a rank was given. In view of the decision rendered in *Subhash Chandra & Anr.* (supra), the petitioner has to be treated as an unreserved category candidate. Thus, his name featured below the person in the reserved category and thereby he lost his right to be selected. Process of selection remained inchoate and pending and not completed. The clarificatory order passed by the Apex Court does not assist the petitioner.

9. In view of the aforesaid, we find that the non-selection of the petitioner to the post in question cannot be found fault with and the concurrence with the same by the tribunal cannot be flawed.

10. Ergo, there is no merit in this writ petition and, accordingly, the same stands dismissed without any order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

APRIL 25, 2011

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