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

\+ **W.P.(C) 4501/2012 & CM 9319/2012**

% **Judgment dated 03.10.2012**

SANDEEP SINGH (MINOR) S/O SH. DHAN SINGH ..... Petitioner
Through : Mr. Deepender Hooda, Adv.

versus

GOVT. OF NCT DELHI THROUGH SECRETARY & ORS ..... Respondents
Through : Mrs. Avnish Ahlawat, Ms. Latika Choudhary and Mr. Nitesh Kumar Singh, Advs. for R-3&4.

G.S.SISTANI, J (*ORAL*)

1. Present writ petition has been filed by petitioner under Article 226 of the Constitution of India seeking a writ, order or direction to set aside the order dated 23.7.2012 passed by respondent no.3, whereby the admission of the petitioner was cancelled. The petitioner also seeks a direction to respondents no.3 and 4 to grant readmission to him in the first year B.E Course (CE) under Scheduled Caste category.
2. Rule. With the consent of counsel for the parties present writ petition is set down for final hearing and disposal.
3. As per the petition, petitioner applied for All India Engineering Entrance Examination-2012 (AIEEE-2012). Petitioner secured a State rank of DL 102 in the Scheduled Caste category. Petitioner thereafter applied for admission to the first year B.E. Course in Computer Engineering as his first choice with respondent no.3 Netaji Subhash Institute of Technology. On 29.6.2012, petitioner was allotted a seat in Information Technology in

the National Institute of Technology. Petitioner immediately deposited the requisite fee with the institute to secure his seat in the said branch. On 2.7.2012 the petitioner was allotted a seat in Computer Engineering under the scheduled caste category. The petitioner immediately deposited the requisite fee for the course during the counselling conducted on 4.7.2012, against which respondent no.4 issued a receipt to the petitioner. Since the petitioner had been allotted a branch of his choice he withdrew his admission at National Institute of Technology on 13.7.2012. On 23.7.2012 petitioner received a call from the Chairman of Netaji Subhash Institute of Technology, who asked the petitioner to visit respondent no.4 institute. Petitioner was handed over the order dated 23.7.2012 whereby the admission of the petitioner was cancelled on the ground that the scheduled caste certificate submitted by the petitioner was not valid on account of the fact that he had obtained the reservation certificate in Delhi on the basis of certificate issued to his father by another State and, thus, he could not avail the benefit.

4. Learned counsel for the petitioner submits that the case of the petitioner is fully covered by a decision rendered by a Full Bench of this Court on 12.9.2012 in the case of ***Deepak Kumar and Others v. District and Sesssions Judge, Delhi***, W.P. (C) 5390/2010.
5. Learned counsel for respondents no.3 and 4 submits that while disposing of WP(C)No.5390/2010 on 12th September, 2012 in the case of ***Deepak & Others vs. District and Sessions Judge, Delhi*** a Full Bench of this Court having regard to the pubic importance of the questions which have arisen, has granted certificate to appeal and the Department has decided to file an appeal against the decision of the Full Bench.
6. I have heard learned counsel for the parties. The admission of the petitioner was cancelled only on account of the fact that he had obtained

Caste Reservation Certificate in Delhi on the basis of a Caste Certificate issued to his father by another State and, thus, he could not avail of the benefit of being a scheduled caste candidate. The case of the petitioner is fully covered by the decision rendered by a Full Bench of this Court in the case of ***Deepak Kumar and Others*** (supra). Para 66 of the judgment reads as under:

> "66. This court summarizes its conclusions, as follows:
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> > (1) The decisions in Marri, Action Committee, Milind and Channaiah have all ruled that scheduled caste and tribe citizens moving from one State to another cannot claim reservation benefits, whether or not their caste is notified in the state where they migrate to, since the exercise of notifying scheduled castes or tribes is region (state) specific, i.e " in relation" to the state of their origin. These judgments also took note of the Presidential Notifications, which had enjoined such citizens to be "residents" in relation to the state which provided for such reservations.
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> > (2) The considerations which apply to Scheduled Caste and Tribe citizens who migrate from state to state, apply equally in respect of those who migrate from a state to a union territory, in view of the text of Articles 341 (1) and 342 (1), i.e. only those castes and tribes who are notified in relation to the concerned Union Territory, are entitled to such benefits. This is reinforced by the Presidential Notification in relation to Union Territories, of 1951. Only Parliament can add to such notification, and include other castes, or tribes, in view of Articles 341 (2), Article 342 (2) which is also reinforced by Article 16 (3). States cannot legislate on this aspect; nor can the executive – Union or state, add to or alter the castes, or tribes in any notification in relation to a state or Union Territory, either through state legislation or through policies or circulars. Differentiation between residents of states, who migrate to states, and residents of states who migrate to Union Territories would result in invidious discrimination and over-classification thus denying equal

access to reservation benefits, to those who are residents of Union Territories, and whose castes or tribes are included in the Presidential Order in respect of such Union Territories. The Pushpa interpretation has led to peculiar consequences, whereby:

> (i) The resident of a state, belonging to a scheduled caste, notified in that state, cannot claim reservation benefit, if he takes up residence in another state, whether or not his caste is included in the latter State's list of scheduled castes;
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> (ii) However, the resident of a state who moves to a Union Territory would be entitled to carry his reservation benefit, and status as member of scheduled caste, even if his caste is not included as a scheduled caste, for that Union Territory;
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> (iii) The resident of a Union Territory would however, be denied the benefit of reservation, if he moves to a State, because he is not a resident scheduled caste of that State.
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> (iv) The resident of a Union Territory which later becomes a State, however, can insist that after such event, residents of other states, whose castes may or may not be notified, as scheduled castes, cannot be treated as such members in such newly formed states;
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> (v) Conversely, the scheduled caste resident of a state which is converted into a Union Territory, cannot protest against the treatment of scheduled caste residents of other states as members of scheduled caste of the Union Territory, even though their castes are not included in the list of such castes, for the Union Territory.

(3) The ruling in Pushpa is clear that if the resident of a state, whose caste is notified as Scheduled caste or scheduled tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in relation to the

Union Territory, even though if he moves to another state, he is denied such benefit (as a result of the rulings in Marri and Action Committee). The ruling in Pushpa, being specific about this aspect vis-à-vis Union Territories, is binding; it was rendered by a Bench of three judges.

(4) The later ruling in Subhash Chandra doubted the judgment in Pushpa, holding that it did not appreciate the earlier larger Bench judgments in the correct perspective. Yet, Subhash Chandra cannot be said to have overruled Pushpa, since it was rendered by a smaller Bench of two judges. This approach of Subhash Chandra has been doubted, and the question as to the correct view has been referred to a Constitution Bench in the State of Uttaranchal case.

(5) By virtue of the specific ruling applicable in the case of Union Territories, in Pushpa, whatever may be the doubts entertained as to the soundness of its reasoning, the High Courts have to apply its ratio, as it is by a formation of three judges; the said decision did notice the earlier judgments in Marri and Action Committee. Article 141 and the discipline enjoined by the doctrine of precedent compels this Court to follow the Pushpa ruling.

(6) In matters pertaining to incidence of employment, such as seniority, promotion and accelerated seniority or promotional benefits, flowing out of Articles 16 (4A) and (4B) of the Constitution, there may be need for clarity, whichever rule is ultimately preferred – i.e the Pushpa view or the Marri and Action Committee view. In such event, it may be necessary for the guidance of decision makers and High Courts, to spell out whether the correct view should be applied prospectively. Furthermore, it may be also necessary to clarify what would be meant by prospective application of the correct rule, and whether such employment benefits flowing after recruitment, would be altered if the Marri view is to be preferred."

7. While deciding ***Deepak & Others*** (supra), Full Bench of this Court has relied upon a decision in the case of ***S.Pushpa & Ors. v. Sivachanmugavelu & Ors.***, reported at 2005 (3) SCC 1, wherein it has been held that if the resident of a state, whose caste is notified as Scheduled caste or scheduled tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in relation to the Union Territory, even though if he moves to another state, he is denied such benefit (as a result of the rulings in Marri and Action Committee). The ruling in ***S.Pushpa*** (supra), being specific about this aspect vis-à-vis Union Territories, is binding; it was rendered by a Bench of three judges.
8. Accordingly, present writ petition is allowed. The order of cancellation dated 23.7.2012 is quashed. Learned counsel for the respondents no.3 and 4 has informed this court that the seat allotted to the petitioner is still lying vacant. Petitioner shall be granted admission which shall relate back to the date of cancellation.
9. Writ petition and application stand disposed of in view of above.
10. Dasti under the signature of Court Master to counsel for the parties.

G.S.SISTANI, J

OCTOBER 03, 2012
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