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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 29.07.2013

Judgment pronounced on : 07.08.2013

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W.P.(C) 4748/2013

ANKIT ROY

..... Petitioner

Through: Mr. Lalit Kumar and Mr Deepak Vohra,
Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ORS.

..... Respondents

Through: Mr Mukul Talwar and Mr S. Mohapatra, Adv.

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Judgment reserved on : 31.07.2013

Judgment pronounced on : 07.08.2013

+

W.P.(C) 4823/2013

VINEET @ VINEET KUMAR (MINOR) THROUGH FATHER TEJA RAM

..... Petitioner

Through: Mr R.K. Saini and Mr Vikram Saini, Adv.

versus

GGSSIP UNIVERSITY & ANR.

..... Respondents

Through: Mr Mukul Talwar, Adv for R-1

Judgment reserved on : 05.08.2013

Judgment pronounced on : 07.08.2013

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W.P.(C) 4660/2013

NIKHIL BANGA AND OTHERS

..... Petitioner

Through: Mr Subha Rao and Mr K.L.D.S. Vinober, Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND ANOTHER

..... Respondent

Through: Mr Mukul Talwar, Adv for GGSIP
University
Ms. Zubeda Begum, Standing Counsel with
Ms. Sana Ansari and Mr. Pulkit Aggarwal,
Adv. for R-2

Judgment reserved on : 05.08.2013

Judgment pronounced on : 07.08.2013

+ W.P.(C) 4789/2013
PREETI JAIN

..... Petitioner

Through: Mr Subha Rao and Mr K.L.D.S. Vinober, Advs.
versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND ANOTHER

..... Respondent

Through: Ms Sujata Kashyap, Adv for R-2
Mr. Mukul Talwar with Mr. S. Mohapatra,
Advs. for R-1

Judgment reserved on : 05.08.2013
Judgment pronounced on : 07.08.2013

+ W.P.(C) 4895/2013
KUMARI ANADI SHAKYA & ARN

..... Petitioner

Through: Mr Ashok Agarwal, Adv.
versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

..... Respondent

Through: Mr Mukul Talwar, Adv for GGSIP University

Judgment reserved on : 05.08.2013
Judgment pronounced on : 07.08.2013

+ W.P.(C) 4912/2013
SHEETAL CHAUDHARY

..... Petitioner

Through: Through: Mr Subha Rao and Mr K.L.D.S.
Vinober, Advs.
versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND ANOTHER

..... Respondent

Through: Mr Mukul Talwar, Adv for GGSIP University

Judgment reserved on : 05.08.2013
Judgment pronounced on : 07.08.2013

+ W.P.(C) 4869/2013
PRIYA KUMAR

..... Petitioner

Through: Mr. S.Q. Kazim and Mr. M.H. Usmani, Advs.

versus

GNCT OF DELHI & ANR.

..... Respondents

Through: Mr Shoaid Haider, Adv for GNCTD

Judgment reserved on : 05.08.2013

Judgment pronounced on : 07.08.2013

+ W.P.(C) 4944/2013
RAJ KISHORE

..... Petitioner

Through: Mr Subha Rao and Mr K.L.D.S. Vinober, Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND ANOTHER

..... Respondents

Through: Mr Mukul Talwar, Adv for GGSIP University
Ms Nidhi Raman, Adv for R-2

Judgment reserved on : 06.08.2013

Judgment pronounced on : 07.08.2013

+ W.P.(C) 4977/2013
ABHAY ANAND

..... Petitioner

Through: Mr Subha Rao and Mr K.L.D.S. Vinober,
Advs.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY AND ANOTHER

..... Respondent

Through: Mr Mukul Talwar, Adv for GGSIP
University
Ms Nidhi Raman, Adv for R-2

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The issue involved in these writ petitions is as to whether a person belonging to a community, which is notified to be a Scheduled Caste in another State, is entitled for admission to I.P. University, under the

category of Scheduled Castes candidates (a) if the community to which he belongs is not notified as Scheduled Caste for Delhi, and (b) what would be the position if a community by the same name is notified as a Scheduled Caste for Delhi.

2. The petitioners in these writ petitions have been issued caste certificates by the Office of concerned Deputy Commissioner of Delhi, on the strength of the caste certificates issued to their respective fathers, by the State in which their respective community is notified as a Scheduled Caste. The certificates issued to the petitioners, however, do not disclose where the petitioners or their respective parents were permanently residing at the time of issue of Presidential Notification under Article 341 of the Constitution.

3. In support of their case, the learned counsel for the petitioners rely upon the decision of Supreme Court in **S.Pushpa and Others v. Sivachanmugavelu and Others** (2005) 3 SCC 1 and a Full Bench decision of this Court in **Deepak Kumar and Ors vs. District and Sessions Judge, Delhi and Ors.** 192(2012) DLT 602 (FB). The learned counsel for the University, however, submitted that neither the decision in **S.Pushpa and Others** (supra) nor the decision in **Deepak Kumar and Ors** (supra) applies for admission to a University/institute set up and founded by the Government of Delhi. He also submits that in fact neither **S.Pushpa** (supra) and **Deepak Kumar and Ors** (supra) deals with issue involved in these writ petitions since **S.Pushpa** (supra) dealt with employment under Pondicherry Administration, whereas **Deepak Kumar and Ors** (supra) dealt with employment under Delhi Government in the Office of District & Sessions Judge, Delhi. He further submits that a

person belonging to a community which is notified as a Scheduled Caste/Scheduled Tribe in a State does not carry the aforesaid status on migrating to a State or Union Territory, as far as admission to the State Educational Institutions are concerned, and it is only the candidates belonging to such communities which are notified as Scheduled Caste/Scheduled Tribe for Delhi, are residents of Delhi and are issued certificate to this effect from Delhi, who are entitled to admission to the educational institutions of Delhi Government.

4. Article 15(1) of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Clause (4) of the said Article, however, excludes from the aforesaid general provisions, *inter alia*, any special provision by the State for the advancement of the Scheduled Castes and the Scheduled Tribes. Clause (5) to the extent it is relevant, stipulates that nothing in the said Article shall prevent the State from making any special provision by law, for Scheduled Caste or Scheduled Tribes insofar as such special provisions relates to their admissions to the educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.

5. Article 341 of the Constitution empowers the President to specify, with respect to any State or Union Territory, by public notification, the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be. Clause (2) of the said Article provides that the Parliament may,

by law, include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1), any caste, race or tribe or part of or group within any caste, race or tribe. It also provides that within a notified period clause (1) of Article 341 shall not be varied by any subsequent notification except by law made by the Parliament, making inclusion or exclusion from the said notification. Similar provision is contained in the Article 342 of the Constitution with respect to Scheduled Tribes. On a plain reading of Article 341, it appears that the notification under clause (1) is required to specify the castes or groups within castes in relation to States and/or Union Territories specified in the said notification and thereafter, any inclusion or exclusion from the List of Castes specified in the said notification can be made only by the Parliament by enacting the law in this regard.

6. Article 239 of the Constitution provides that administration of every Union territories by the President who may, if he so thinks fit, through an administrator to be appointed by him. As far as Delhi is concerned, Article 239 AA provides for a Legislative Assembly for the said Territory, which has powers to make law in respect to the matters specified in Clause 3(a) of the said Article i.e. in all the matters enumerated in the State List or in the Concurrent List, as far as any such matters are applicable to Union Territory (Public Order) with respect to Entries 1,2, and 18 (Police Land) of the State List and Entries 44, 65 and 66 of that List in so far as they relate to the said Entries 1,2,and 18 (Land).

7. The Union Territories Scheduled Caste Order of 1951, as amended by the Parliament, to the extent it is relevant for the purpose of this case, reads as under:

APPENDIX-XI

THE CONSTITUTION (SCHEDULED CASTES) UNION TERRITORIES) ORDER, 1951

C.O.32, dated the 20th September, 1951. – In exercise of the powers conferred by Clause (1) of Article 341 of the Constitution of India, as amended by the Constitution (First Amendment) Act, 1951, the President is pleased to make the following order namely:

1. This order may be called the constitution (Scheduled Castes) (Union Territories) Order, 1951.
2. Subject to the provisions of this order, the castes races or tribes or parts or, or groups within, castes or tribes, specified in (paras I to III of the Scheduled to this Order shall, in relation to the (Union Territories) to which those parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that schedule.

It would thus be seen that there are two requirements of the above referred order, the first being that the person concerned should be a resident of Delhi and the second being that he should belong to a caste included in the Schedule to the Order. Therefore, going by the above referred order alone, the benefit of reservation in educational institutions such as IP University which is set up by an Act passed by the Delhi Legislative Assembly, shall be available only to those persons who are residents of Delhi and are members of the Scheduled Castes included in the Schedule, for Delhi.

8. The question whether a person belonging to Scheduled Tribes in a State on migrating to another State would be entitled to benefit of reservation in the State to which he migrates or not came up for consideration before the Supreme Court in Marri Chandrasekhara Rao

versus *The Dean, Seth GS Medical College* [(1990) 3 SCC 130 and the following view was taken:

“7. In this connection, the provisions of Articles 341 and 342 of the Constitution have been noticed. These Articles enjoin that the President after consultation with the Governor where the States are concerned, by public notification, may specify the tribes or tribal communities or parts of or groups of tribes or tribal communities, which shall be deemed to be Scheduled Tribes in relation to that State under Articles 341 or 342 Scheduled Tribes in relation to that State or Union Territory. The main question, therefore, is the specification by the President of the Scheduled Castes or Scheduled Tribes, as the case may be, for the State or Union Territory or part of the State. But this specification is ‘for the purposes of this Constitution’. It is, therefore, necessary, as has been canvassed, to determine what the expression ‘in relation to that state’ in conjunction with ‘for the purposes of this Constitution’ seeks to convey.

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12. It is, however, necessary to give proper meaning to the expressions ‘for the purpose of this Constitution’ and ‘in relation to that State’ appearing in Articles 341 and 342 of the Constitution.

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It, however, appears to us that the expression ‘for the purposes of this Constitution’ in Articles 341 as well as in Article 342 do imply that the Scheduled Castes and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right e.g. it has been argued that right to migration or right to move from one part to another is a right given to all — to scheduled castes or tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof.

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The expression —in relation to that State would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are

carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a comparatively different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection i.e. who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation, to the very purpose and scheme and language of Article 341 read with Article 14(4) of the Constitution.¶

Similar issue came up for consideration before a Constitutional Bench of the Apex Court in **Action Committee versus Union of India** [(1994) 5 SCC 244] and the Court, *inter alia*, held as under:

“3. On a plain reading of Clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under Clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in

relation to a given State or Union Territory. That means a given caste or tribe can be Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.”¹¹

9. In **Kavita Khorwal versus The Delhi University & Ors.** [W.P(C) No.11056/2004, decided on 3.11.2008, the petitioner before this Court, who was originally listed Delhi Scheduled Caste candidate, challenged the decision of Delhi University to treat Scheduled Caste candidates from other States at par with the Scheduled Castes candidates from Delhi. A learned Single Judge of this Court, dealing extensively with the law on the subject including the decision of the Supreme Court in **S.Pushpa and Others** (supra), *inter alia*, held as under:

“25. It therefore becomes clear, that the principle for migrant citizens moving from one State to another and not being entitled to claim benefit of reservation in spite of their belonging to Scheduled Caste in their own State and a caste of that nomenclature being notified in the State when they migrate- is not premised on existence of greater legislative, administrative/executive control over Union Territories by the Union, as opposed to States. Apparently that is not a relevant factor for deciding who can enjoy the benefit of reservation. This is because the authority in the case of both Union Territories and the State to make an order, including communities in the lists for concerned states/ Union Territories is the same, i.e. President, initially and later, Parliament....”

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26.....Therefore, the expansive construction through which Scheduled Castes included in one State are sought to be given benefits in Union Territories, would be contrary to the expression intendment of the Orders in relation to the Union Territories. If Parliamentary intention was that all Scheduled Castes in all States could be considered as Scheduled Castes in all Union Territories, such intention

would have been explicit. By the same analogy if Presidential or Parliamentary intention was to extend the benefit of reservation in Union Territories also to migrants from States from the same Caste nomenclature that is notified in a Union Territory such as Delhi, that intention too would have been explicit. Existence of few Caste groupings only “in relation to Delhi” therefore rules out, the claim of migrants from other States/Union Territories.

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27. ...The confirmation of a benefit to a migrant or denial thereof on the basis of his being a member of Scheduled Caste in the place of his origin cannot, be made to depend upon the existence or otherwise of an administrative unit as a Union Territory or a State. Parliament has the exclusive power to make new States and Union Territories, alter the boundaries of the States/Union Territories, re-organise States/Union Territories, create/destroy States/Union Territories. In the exercise of such power, Parliament does not even have to seek recourse to Article 368 of the Constitution. The law which creates a State of Union Territory or re-organize boundaries can be passed with a simple majority. Such a law can amend the First Schedule of the Constitution of India. Similarly, in exercise of such power, the Union of India has been re-organized as many as 16 times. Through its exercise many former Union Territories namely, Goa, Andhra Pradesh, Mizoram and Himachal Pradesh which had been Union Territories at some point or the other were conferred Statehood. The existence of State or Union Territory boundaries, therefore does not alter the reality about their impermanence.

31. It may be seen that there are only 31 castes listed as scheduled castes in the order, in relation to Delhi; they have to be “residents of” the concerned territory, i.e of Delhi, to avail the benefit. Therefore, as regards entitlement of benefit of reservation to educational institutions within the NCT of Delhi, in educational institutions managed or owned by the Government of NCT, for the purpose of the Constitution, only such members of the SCs who fulfill the requisites spelt out in the Presidential Notification for Delhi can legitimately claim it.

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34. It is therefore, held that in relation to the Union Territory of Delhi, for admissions to institutions managed

and completely controlled by the Government of the National Capital Territory of Delhi, reservation, under Article 15(4) can be enjoyed by only those caste groupings enlisted in the Scheduled Caste (Union Territories) Order, 1951, as regards Delhi, and subject to the conditions spelt out there. Members of castes and tribes who do not fulfil that description, and/or are not described in that Order, would not be entitled to such benefits.

10. As regards **S.Pushpa and Others** (supra), on which reliance has been placed by the petitioners, a perusal of the decision would show that in the aforesaid case, Directorate of Education, Government of Pondicherry invited applications for recruitment to certain posts which included the posts reserved for Scheduled Caste candidates. Out of 55 officially selected Scheduled Caste candidates, 29 had produced community certificates from other governments, based on which the Revenue Authority of Pondicherry had issued community certificates to them. The remaining 26 candidates produced community certificates from the Revenue Authority of Pondicherry. The contesting respondents before the Apex court filed OAs before the Central Administrative Tribunal, challenging the selection of Scheduled Caste candidates who had produced certificates from other governments, on the ground that the migrating Scheduled Caste candidates who belonged to another State were not eligible for appointment on a post which was reserved for a Scheduled Caste candidates in the Union Territory of Pondicherry and also for a direction to appoint the original inhabitants of Scheduled Caste origin belonging to UT of Pondicherry. The Tribunal accepted their contention and held that such candidates cannot claim benefit of reservation in the matter of employment in Pondicherry Government

service. The Scheduled Caste candidates aggrieved from the order of the Tribunal approached the Supreme Court by way of Special Leave. The Apex Court referred to a DO Letter sent by the Joint Secretary, Government of India, Ministry of Home Affairs to the Lt. Governor of Pondicherry on 4.2.1974 intimating that since Pondicherry is a Union Territory, all orders regarding reservations for Scheduled Castes/ Tribes issued by the Department of Personnel in respect of posts/ services under the Central Government are applicable to posts/ services under the Pondicherry Administration and an SC/Tribe candidate from outside Pondicherry should also be eligible for a vacancy reserved for SCs/STs in the Union Territory Administration. Pursuant to the said letter, the Government of Pondicherry issued an order dated 16.2.1974 stating therein that SC/Tribe candidates from outside Pondicherry should also be considered for appointment to posts reserved for SC/Tribes in the State Administration. Subsequently, vide circular dated 6.1.1993, the Government of Pondicherry issued clarification with respect to the Government order dated 16.2.1974 and paragraphs 2 and 3 of the said circular, extracted in para 15.2 of the judgment read as under:

“2. The reference second cited is again brought to notice for information and guidance. It has been stated therein that for a reserved vacancy in a Central government Office located in a State any Scheduled Caste candidate throughout the country would be eligible. It has therefore been clarified that since Pondicherry is a Union Territory, all orders regarding reservation for Scheduled Caste/Scheduled Tribe issued by the Department of Personnel in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration also. Hence, as such, a Scheduled Caste/Scheduled Tribe candidate from outside Pondicherry

would also be eligible for a vacancy reserved for Scheduled Caste/Scheduled Tribe in the Union Territory Administration.”

Referring to the said documents, the Apex Court, *inter alia*, held as under:

“16. These documents show that Government of Pondicherry has throughout been proceeding on the basis that being a Union territory, all orders regarding reservation for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry administration as well. Since all SC/ST candidates which have been recognized as such under the orders issued by the President from time to time irrespective of the State/Union territory, in relation to which particular castes or tribes have been recognized as SCs/STs are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry administration. Consequently, all SC/ST candidates from outside the U.T. of Pondicherry would also be eligible for posts reserved for SC/ST candidates in Pondicherry administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in Pondicherry administration.

18. The contesting respondents (applicants before the Tribunal, who challenged the selection) can derive no benefit from the decision in Marri Chandra Shekhar Rao (*supra*).

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The U.T. of Pondicherry having consistently followed the policy of the Central Government where all scheduled caste candidates were given benefit of reservation, the selection made following the said policy could not be held to be suffering from any legal infirmity on the principle laid down in Marri Chandra Shekhar Rao (*supra*).

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21. ... If a State or Union territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such, in relation to that State or Union territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the schedule to the Presidential Order issued for such Union territory. The U.T. of Pondicherry having adopted a policy of Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.”

11. It would, therefore, be seen that the circular and order issued by the Pondicherry Administration were upheld by the Apex Court considering the consistent policy of the said State to extend the benefit of reservation even to those Scheduled Castes who had migrated from other States, but whose caste was not included in the Schedule to the Presidential Order for Pondicherry. The Apex Court found no illegality in the Pondicherry Administration extending the benefit of reservation to such migrant Scheduled Castes/Tribes. The claim of the appellants before the Apex Court was accordingly upheld. More importantly, even the circular dated 6.1.1993 issued by Government of Pondicherry excluded the benefits such as admission to educational institutions, to the Scheduled Castes migrating from other States to Pondicherry, if their castes was not included in the Schedule to the Presidential Order, to the extent it applied to Pondicherry. The Apex Court nowhere in this judgment has said that

the benefit of reservation to such migrating Scheduled Castes/ Tribes candidates shall also be available in the matter of admission to the educational institutions in the Territory of Pondicherry.

12. In **Deepak Kumar and Ors** (supra), a Full Bench of this Court, after referring to various decisions of the Supreme Court on the subject concluded as under:

“36. The above observations make it clear that in Pushpa, the Supreme Court took a specific view about how scheduled castes notified in a State are to be treated in relation to employment in Union territories....

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51. This court is of the opinion that having regard to the clear judgments of the Supreme Court about the binding nature of the judgment of larger Bench decisions, the law declared by Pushpa could not have been disregarded, even if there were a judgment by a two judgment decision to the contrary. Furthermore, there was no change in the ground reality between the time when the petitioners initially appeared, and were asked to appear in the re-typing test again. The only object of the re-typing test was to see the proficiency of those who had secured between 20 and 29.5 marks. However, that could not have meant that the respondents unilaterally changed the status of the petitioners – in the middle of the recruitment process- to general category candidates.”

52. As a result of the above discussion, it is held that the writ petitioners’ claims to be members of scheduled castes and scheduled tribes, having been accepted on the basis of the prevailing understanding that migrant citizens who fall within the description of one or more scheduled castes, or tribes, somewhere in the country (and might not necessarily fit that description in the list in relation to Delhi), based on Pushpa, have to be considered and their cases processed for the purpose of appointment. In view of the authoritative pronouncements of the Supreme Court mentioned above, it cannot be said that Subhash Chandra overruled Pushpa.

66. This court summarizes its conclusions, as follows:

(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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(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;

In **Deepak Kumar and Ors** (supra), the writ petitioners had applied for appointment to the post of Lower Division Clerks in the Office of District & Sessions Judge, Delhi, against the seats reserved for Scheduled Castes/ Scheduled Tribes/ Other Backward Classes candidates. The claim of the Scheduled Caste candidates was based on their fathers being a member of Scheduled Caste in States/ UTs other than Delhi. They qualified in the written test as well as the typing test, were interviewed and offered appointments. They were also made to resign from the earlier appointments held by them. They were later informed that their applications were withheld on account of the decision of the Hon’ble Supreme Court in **Subhash Chandra versus Delhi Subordinate Services Selection Board** [166(2010) DLT 659 (SC)]. One of their contentions was that having accepted the applications and selected them it was not open to the respondent to deny the benefit of employment to them, after conclusion of the entire recruitment process.

13. It would thus be seen that the Full Bench in **Deepak Kumar and Ors** (supra), was concerned only with the reservation in employment under the Government of Delhi and not with admission to the educational institutions set up by the State Government, such as IP University. Though, it is observed in para 2 of the judgment that the question involved was whether the castes or tribes which do not find mention in the relevant Scheduled Caste or Scheduled Tribes orders issued by the President or the amendment Acts in addition to the Union Territory of Delhi but are so described in relation to other States or UTs can claim the benefit of reservation for the purpose of employment in the services of Union Territory of Delhi or for the purpose of admission to its educational institutions, the Court took no view with respect to admission to the educational institutions of Delhi Government. Therefore, this judgment does not address the issue involved in this writ petition.

14. The learned counsel for the petitioners relied upon a decision of this Court in WP(C) No.4500/2012 decided on 3.10.2012. A perusal of the said judgment would show that it was not brought to the notice of the Court that even the circular dated 6.1.1993, issued by Pondicherry Govt. which came to be considered by the Hon'ble Supreme Court in S.Pushpa(supra), expressly excluded the benefit in the matter of admission to the educational institutions, to those Scheduled Caste candidates whose caste was not in the list of Scheduled Castes notified for Pondicherry. Also, it was not brought to the notice of the Court that both S.Pushpa(supra) and Deepak Kumar(supra) were in respect of employments under the State, and not in relation to admission to the

educational institutions. The attention of the Court was also not drawn to the earlier decision in Kavita Khorwal(supra).

15. For the reasons stated hereinabove, the writ petitions are disposed of with the following directions:-

(i) The candidates belonging to the communities, which are not included in the list of Scheduled Castes for Delhi, in the Presidential order, will not be entitled to admission in I.P. University, against the seats reserved for Scheduled Castes candidates;

(ii) The candidates, belonging to the communities, included in the list of Scheduled Castes, in the Presidential order, in relation to Delhi will be entitled to be considered for admission in I.P. University, against the seats reserved for S.C. Candidates only if they are residents of Delhi, in terms of the Presidential order dated 20th September, 1951, as amended from time to time, by the law made in this regard.

There shall be no orders as to costs.

V.K.JAIN, J

AUGUST 07, 2013

Bg/rd/ks