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

% *Judgment Reserved on: August 12, 2013*
Judgment Delivered on: November 27, 2013

\+ **WP (C) 3049/2012**

RAVINDRA DEVI ..... Petitioner
Represented by: Mr.Pradeep Kumar, Advocate

versus

GOVT.OF NCT OF DELHI & ORS. ..... Respondents
Represented by: Ms.Anjana Gosain, Advocate

Judgment Reserved on: November 21, 2013
Judgment Delivered on: November 27, 2013

WP (C) 6485/2011

DSSSB ..... Petitioner
Represented by: Ms.Zubeda Begum, Advocate with Ms.Sana Ansari, Advocate

versus

VIKAS KUMAR ..... Respondent
Represented by: Mr.S.Gowthaman, Advocate with Mr.Paari Vendhan and Ms.Arunima Pal, Advocates

Judgment Reserved on: November 21, 2013
Judgment Delivered on: November 27, 2013

WP (C) 6872/2013

PAPPU RAM MEENA & ORS. ..... Petitioners
Represented by: Ms.Aditi Gupta, Advocate with Mr.Prateek Sehrawat, Advocate

versus

DSSSB ..... Respondent

Represented by: Ms.Zubeda Begum, Advocate with
Ms.Sana Ansari, Advocate for
GNCTD & DSSSB
Ms.Mini Pushkarna, Advocate for R-3
with Mr.N.K.Ghai, Assistant Director,
Education Department

Judgment Reserved on: November 25, 2013
Judgment Delivered on: November 27, 2013

WP (C) 7146/2013

LEKH RAJ MAHAR & ANR. ..... Petitioners
Represented by: Ms.Amita Kalkal, Advocate with
Ms.Aditi Gupta and Mr.Denning,
Advocates

versus

DSSSB ..... Respondent
Represented by: Ms.Zubeda Begum, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR.JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. The ills in the Indian society of the caste system rightly compelled the makers of the Constitution to provide for reservations of the backward classes and thus we have the constitutional provisions pertaining to not only reservation but even declaration of those who would be entitled to be declared Scheduled Castes and Scheduled Tribes and hence to avail the benefit of reservation.

2. Since social discrimination and oppression and hence being a backward class, is the result of a social practice adopted in an area by the polity, the declaration of a class of persons being to a Scheduled Caste or a Scheduled Tribe is confined to an area, and the question with which we are

concerned in the above captioned batch of writ petitions is : Whether a Member of a Caste or a Tribe notified as a Scheduled Caste or a Tribe in an area other than the geographical area of Delhi can avail the benefit of reservation in Delhi for appointment to a post under the Government of NCT of Delhi or the Municipal Corporation of Delhi.

3. The Constitution (Scheduled Castes) (Union Territories) Order 1951 as amended in the years 1956, 1976 and 1987 notified the Scheduled Castes in various Union Territories, and pertaining to Delhi we find only 36 castes notified as Scheduled Castes. They are:- *1. Ad-Dharmi, 2. Agria, 3. Aheria, 4. Balai, 5. Banjara, 6. Bawaria, 7. Bazigar, 8. Bhangi, 9. Bhil, 10. Chamar, Chanwar Chamanr, Jatya or Jatav Chamar, Mochi Ramadasia, Ravidasi, Reghgrh or Raigharh, 11. Chohra (Sweeper), 12. Chuhar (Balmiki), 13. Dhanak or Dhanuk, 14. Dhobi, 15. Dom, 16. Gharrami, 17. Julaha (Weaver), 18. Karbirpanthi, 19. Kachhandha, 20. Kanjar or Giarah, 21. Khatik, 22. Koli, 23. Lalbegi, 24. Madri, 25. Mallah, 26. Mazhabi, 27. Meghwal, 28. Naribut, 29. Nat (Rana), Badi, 30. Pasi, 31. Perna, 32. Sansi or Bhedkut, 33. Sapera, 34. Sikligar, 35. Singiwala or Kalbelia and 36. Sirkiband.*

4. Thus, only Members of aforenoted 36 castes, being the residents of Delhi when the presidential notification was issued in the year 1951, including their descendents would be entitled to be treated as Scheduled Castes in Delhi and entitled as a matter of right to the benefit of reservation. But, would others also be?

5. We note that there is no presidential notification notifying any Scheduled Tribe in Delhi.

6. The issue of migrants being entitled to benefit of reservation was considered by the Constitution Bench of the Supreme Court in the decision reported as (1990) 3 SCC 130 *Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Ors*.

7. The petitioner therein, belonging to Gouda/Goudu community, listed as a Scheduled Tribe in the State of Andhra Pradesh as per the Constitution (Scheduled Tribe) Order 1950 as amended from time to time, sought benefit of reservation in the State of Maharashtra on the strength of being a Member of the Scheduled Tribe. The Supreme Court framed the question : *'Whether one who is recognized as a Scheduled Tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the State of migration or wherever he later goes?"*

8. The question was answered in the negative. The reasoning being as under:-

> *"7. In this connection, the provisions of Articles 341 and 342 of the Constitution have been noticed. These articles enjoin that that President after consultation with the Governor where States are concerned, by public notification, may specify the tribes or tribal communities or parts or groups of tribes or tribal communities, which shall be deemed to be Scheduled Tribes in relation to that State under Article 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 pan 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 purpose of this Constitution' seeks to convey.*
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> *x x x*
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> *9. It appears that Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of under development to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of*

untouchability is normally considered as criterion for including a community in the list of Scheduled Castes and Scheduled Tribes. The social conditions of a caste, however, varies from state to state and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country. This, however, is a different problem whether a member of the Scheduled Caste in one part of the country who migrates to another State or any other Union Territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated. That question has to be judged taking into consideration the interest and well-being of the Scheduled Castes and Scheduled Tribes in the country as a whole.

It has, however, to be borne in mind that a man does not cease to belong." to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from inabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem. If one bears this basic approach in mind, then the determination of the controversy in the instant case does not become difficult….

x x x

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. The High Court of Gujarat has taken the view in two decisions, namely, Kum. Manju Singh v. The Dean, B.J. Medical College, AIR 1986 Gujarat 175 and Ghanshyam Kisan Borikar v. L.D. Engineering College, AIR 1987 Guj 83 to which our attention was drawn, that the phrase "for the purposes of this Constitution" cannot be and should not be made subservient to the phrase "in relation to that State" and, therefore, it was held in those two decisions that in consequence, the classification made by one State placing a particular caste or tribe in the category of Scheduled Castes or Scheduled Tribes would entitle a member of that caste or tribe to all the benefits, privileges and protections under the Constitution of India. A similar view has been taken by the Karnataka High Court in the case of M. Muni Reddy v. Karnataka Public Service Commission and Ors., 1981 Lab I.C.1345. On the other hand, the Orissa High Court in the case of K. Appa Rao v. Director of Posts and Telegraphs, Orissa and Ors., AIR 1969 Ori 220 and the full Bench of the Bombay High Court in M.S. Malathi v. The Commissioner, Nagpur Division and Ors., AIR 1989 Bom 138 have taken the view that in view of the expression "in relation to that State" occurring in Articles 341 and 342,, the benefit of the status of Scheduled Castes or Scheduled Tribes would be available only in the State in respect of which the Caste or Tribe is so specified. A similar view has been taken by the Punjab and Haryana High Court in the case of V.B. Singh v. State of Punjab, ILR 1976 (1) P&H 769.

13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Sri Venkatamana Devaru and Ors. v. State of Mysore and Ors., 1958 SCR 895 at 918, where Venkatarama Aiyar, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. 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. If that right is not given in the migrated state it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Articles 14, 16, 19 nor Article 21 are denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which there are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have a right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in its area where he migrates or where he goes. 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.

x x x

22. In that view of the matter, we are of the opinion that the petitioner is not entitled to be admitted to the medical college on the basis of Scheduled Tribe Certificate in Maharashtra. In the view we have taken, the question of petitioner's right to be admitted as being domicile does not fall for consideration." (Emphasis Supplied)

9. The same question was re-agitated before another Constitution Bench of the Supreme Court and the opinion is reported as (1994) 5 SCC 244 *Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India (UOI) and Anr*. The following question was posed : *'Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B'?* The question was posed in view of the fact,

self-evident from the question, two or more castes or tribes were notified as Scheduled Castes or Tribes in two or more States and a member thereof residing in one State and based on residence in said State had obtained a certificate certifying him to be a Member of a Scheduled Caste or a Scheduled Tribe and was claiming benefit of reservation in a State to which he had migrated.

10. Placing reliance upon its earlier decision in *Marri*'s case (supra), the Constitution Bench answered the above question in the negative. In so concluding, the Court observed as under:-

> *3. On a plain reading of Clause (1) of Articles 341 and 342 it is a 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, the Parliament can be 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 a 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.*
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> *15. 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. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution makers as is evident from the choice of language of Articles 341 and 342 of the Constitution.

x x x

17. We are in respectful agreement with the above view expressed by the Constitution Bench in the aforesaid decision. All the points which were canvassed before us by Mr.Raju Ramchandran were also canvassed by him in the said matter. They were negative by the Constitution Bench. Nothing has been pointed out to persuade us to think that the view taken by the Constitution Bench requires reconsideration by a larger Bench. In fact we are in complete agreement with the interpretation placed on the various provisions of the Constitution, in particular Articles 341 and 342 thereof, in the said judgment. We, therefore, see no merit in this writ petition and dismiss the same." (Emphasis Supplied)

11. Pertaining to the Union Territory of Delhi, in relation to Members of Other Backward Classes (OBC), who had migrated to Delhi but were seeking benefit of OBC reservation in Delhi, in the decision reported as 2001 (6) SCC 571 *MCD Vs. Veena*, the following question(s) were posed : *'Whether the certificates of candidates belonging to backward classes in States other than Delhi could hold good for the purpose of recruitment to the post of primary and nursery teachers in Municipal Corporation of Delhi in the National Capital Territory of Delhi? Whether the Other Backward*

Classes (for short 'OBCs') of the States other than Delhi can be treated as OBCs in Delhi and can be extended the benefits related thereto in Delhi'?

12. Placing reliance upon the decisions of Constitution Bench in *Marri* and *Action Committee's* cases (supra) the Supreme Court held as under:-

> *"Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend upon the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belongs thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the consideration on the basis of which they have been specified may be totally different. So the degree of disadvantages of various elements which constitute the date for specification may also be entirely different. Thus, merely because a given caste is specified in one State belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in other State and a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs.*
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> *9. A careful reading of this notification would indicate that the OBCs would be recognized as such in the Government of National Capital Territory of Delhi as notified in the Notification dated 20.01.1995 and further for the purpose of verification of claims for belonging to castes/communities in Delhi as per the list notified by the National Capital Territory of Delhi the certificates will have to be issued only by the specified authorities and certificates issued by any other authority could not be accepted. The Government of India has also issued instructions from time to time in this regard which indicated that a person belonging to OBC on migration from the State of his origin in another State where his caste was not in the OBC list was entitled to the benefits or concessions*

admissible to the OBCs in his State of origin and Union Government, but not in the State to which he has migrated. Thus the High Court lost sight of these aspects of the matter in taking the impugned order in either ignoring the necessary notifications issued in regard to classification of OBC categories or in the matter of verification thereof. Thus the order made by the High Court in this regard deserves to be reversed."

13. A discordant note was struck by a three Bench decision of the Supreme Court reported as (2005) 3 SCC 1 *S. Pushpa vs. Sivachanmugavelu & Ors.* The facts of said case were that the Directorate of Education, Government of Pondicherry, issued an advertisement to effect recruitment of 350 General Central Service Group 'C' posts of Secondary Grade Teachers out of which 56 posts were reserved for SC candidates. In response to the notification, the employment exchange sponsored the names of candidates in respect of various categories including SC candidates. Besides, as envisaged and in conformity with the National Employment Service Manual, the employment exchange also sponsored some names of SC candidates from neighbouring employment exchanges since sufficient number of candidates were not available in the Union Territory of Pondicherry. The final select list of 55 SC candidates included 29 to whom SC certificates were issued by the Governments of Tamil Nadu, Andhra Pradesh and Kerela. The proposed appointment of said 29 candidates was questioned on the ground that only those who were members of Scheduled Castes notified in the presidential order pertaining to Pondicherry were entitled to reservation for Scheduled Castes in Pondicherry. The Constitution Bench decisions in *Marri Chandra*'s case (supra) and *Action Committee*'s case (supra) were relied upon.

14. After examining the provisions of Articles 230, 231, 239, 239A, 239B, 240, 341 and 342 of the Constitution, Section 3(8) of General Clauses

Act, 1987, Section 3 of Pondicherry (Administration) Act, 1962 and Section 50 of Government of Union Territory Act, 1963 the Court held as under:-

> *"14. The effect of these provisions is also that the Administrator (Lt. Governor of Pondicherry) and his Council of Ministers act under the general control of and are under an obligation to comply with any particular direction issued by the President. Further, the administrator (Lt. Governor of Pondicherry) while acting under the scope of the authority given to him under Article 239 of the Constitution would be the Central Government.*
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> *x x x*
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> *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.*
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> *17. We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in Marri Chandra Shekhar Rao (supra) cannot have application here as U.T. of Pondicherry is not a State. As shown above, a Union territory is administered by the President through an administrator appointed by him. In the context of Article 246, Union territories are excluded from the ambit of expression "State" occurring therein. This was clearly explained by a Constitution Bench in T. M. Kanniyan vs. Income Tax Officer 1968 (2) SCR 103 : AIR 1968 SC 367. In*

New Delhi Municipal Council vs. State of Punjab 1997 (7) SCC 339 the majority has approved the ratio of T. M. Kanniyan and has held that the Union territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of Marri Chandra Shekhar Rao in setting aside the selection and appointment of migrant SC candidates.

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). In this case the writ petitioner Mari Chandra was born in Gouda community in the State of Andhra Pradesh, which is recognized as a Scheduled Tribe in the Presidential Order issued for the said State. For getting admission in a medical college in the State of Maharashtra, he claimed benefit of reservation being an ST. Gouda community was not recognized as Scheduled Tribe in the Presidential Order issued for the State of Maharashtra and on this ground he was denied the benefit of reservation. He then filed the writ petition claiming that he is entitled for benefit of reservation being a member of ST. It was in these circumstances that it was held that his community having not been included as an ST in the Presidential Order issued for State of Maharashtra, he had no legal right to claim benefit of reservation in State of Maharashtra. The U.T. of Pondicherry having consistently followed the practice 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).

x x x

20. Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Art. 341 and 342 after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of forward caste.

21. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the above rule

of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of "backward classes of citizens" which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the schedule appended to the Presidential Order for that particular State or Union territory. This Article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognized as backward classes of citizens and none else. 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.

22. For the reasons discussed above, we are of the opinion that there has been no violation of any constitutional or any other legal provision in making selection and appointment of migrant Scheduled Caste candidates against the quota reserved for Scheduled Castes on the post of Selection Grade Teachers. The view to the contrary taken by the Tribunal cannot, therefore, be sustained and has to be set aside." (Emphasis Supplied)"

15. The ratio laid down in *Pushpa*'s case can be summarized as under: *'There would be no infraction of any constitutional or legal provision if a Union Territory by virtue of its peculiar position of being governed by the President extends the benefit of reservation to all* ***migrant*** *Scheduled Caste/Scheduled Tribe* ***who are residents of said Union Territory, irrespective of their nativity****'*. In so concluding, one of the factors which weighed in the mind of the Court was that since inception, the policy which was followed by the Union Territory of Pondicherry was that all such migrant SC/ST who are eligible for appointment to reserved posts/services under the Central Government shall also be eligible for appointment to reserved posts/services under the Pondicherry Administration, irrespective of their nativity.

16. But, in the decision of a two Judge Bench of the Supreme Court reported as 2009 (15) SCC 458 *Subhash Chandra & Anr. Vs. DSSSB & Ors.*, the correctness of the law declared in *S.Pushpa*'s case was doubted and the reasoning was opined to be obiter. The same is apparent from the undernoted paragraphs :-

> *"63. Can it be said that Marri Chandra Shekhar Rao does not apply to Union Territory? The answer thereto, in our opinion, is a big emphatic 'no'. Both Articles 341 and 342 not only refer to the State but also to the Union Territory.*
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> *x x x*
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> *65. If the principle applied in S.Pushpa (supra) is to be given a logical extension, it will lead to an absurdity, that the Scheduled Caste in a State brought under the control of President under Article 356 could be altered by virtue of a notification issued in pursuance under Article 16(4) of the Constitution.*
>
> *66. Clause (4) of Article 16 of Constitution, as noticed hereinbefore, cannot be made applicable for the purposes of grant of benefit of reservation for Scheduled Castes or*

Scheduled Tribes in a State or Union Territory, who have migrated to another State or Union Territory and they are not members of the Scheduled Castes and Scheduled Tribes.....

x x x

95. The only question which survives is as to whether S.Pushpa (supra) constitutes a binding precedent.

96. A decision, as is well known, is an authority for what it decides and not what can logically be deduced there from.....

x x x

106. We have noticed hereinbefore that the premise on which S.Pushpa (supra) was rendered namely, Marri Chandra Shekhar Rao (supra), had no application to Union Territories was not correct.....

x x x

110. Should we consider Pushpa to be an obiter following the said question which arises herein. We think we should. The decisions referred to hereinbefore clearly suggest that we are bound by a Constitution Bench decision. We have referred to two Constitution Bench decisions, namely Marri Chandra Shekhar Rao and E.V. Chinnaiah. Marri Chandra Shekhar Rao had been followed by this Court in a large number of decisions including Three Judge Bench decisions. Pushpa, therefore, could not have ignored either Marri Chandra Shekhar Rao or other decisions following the same only on the basis of an administrative circular issued or otherwise and more so when the Constitutional scheme as contained in Clause (1) of Articles 341 and 342 of the Constitution of India putting the State and Union Territory in the same bracket. Following Dayanand (supra), therefore, we are of the opinion that the dicta in Pushpa is an obiter and does not lay down any binding ratio."

17. In the decision reported as (2010) 12 SCC 794 *State of Uttaranchal vs. Sandeep Kumar Singh*, a two Judge Bench of the Supreme Court noted the observations aforenoted in *Subhash Chandra*' case pertaining to the

decision in *S.Pushpa*'s case and referred the matter to a Constitution Bench in the following words:-

> *"A two Judge Bench in Subhash Chandra and Anr. v. Delhi Subordinate Services Selection Board and Ors. (2009) 15 SCC 458 held that the dicta in S. Pushpa case is an obiter and does not lay down any binding ratio. We may notice that a three Judge Bench in S. Pushpa case relied on Marri Chandra Shekhar Rao & Action Committee cases and understood the ratio of these judgments in a particular manner. In our considered opinion, it was not open to a two Judge Bench to say that the decision of a three Judge Bench rendered following the Constitutional Bench judgments to be per incuriam.*
>
> *9. In our view, a two Judge Bench of this Court could not have held the decision rendered by a three Judge Bench in S. Pushpa case to be obiter and per incuriam.*
>
> *10. A very important question of law as to interpretation of Articles 16(4), 341 and 342 arises for consideration in this appeal. Whether Presidential Order issued under Article 341(1) or 342(1) of the Constitution has any bearing on the State's action in making provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State? The extent and nature of interplay and interaction among Articles 16(4), 341 and 342 of the Constitution is required to be resolved.*
>
> *11. For the aforesaid reasons, therefore, in our view, it would be appropriate that this case be placed before the Hon'ble Chief Justice of India for constituting a Bench of appropriate strength. The registry is, accordingly, directed to place the papers before the Hon'ble Chief Justice for appropriate directions." (Emphasis Supplied)*

18. We find that the question(s) referred to the larger Bench in *Sandeep Kumar*'s case (supra) are still pending consideration before a larger Bench of the Supreme Court.

19. Noting conflicting decisions by different Benches, some following the law declared by the Supreme Court in *S.Pushpa*'s case and some following

the law declared in *Marri*'s and *Action Committee*'s case, the matter was referred to a Full Bench of this Court and we have the decision of the Full Bench reported as 2012 (132) DRJ 169 *Deepak Kumar & Ors. Vs. District & Sessions Judge Delhi*.

20. After examining the historical background leading to framing of provisions relating to equality and reservation enshrined in the Constitution; relevant provisions of the Constitution such as Articles 15, 16, 341 and 342; decisions rendered by the Supreme Court on the point, more particularly the decisions in *Marri, Action Committee* and *Pushpa*' cases (supra) and binding nature of decision of 3-Judge Bench in *Pushpa*'s case (supra) doubted by a two Judge Bench of the Supreme Court in *Subhash Chandra*'s case as also the matter being referred to a larger Bench in *Sandeep Kumar*'s case, the Full Bench concluded its opinion as under:-

> *"39. In view of the above discussion, this Court holds that whatever reservations may exist and might have even been voiced in Subhash Chandra about the holding in S. Pushpa being contrary to earlier Constitution Bench rulings in Marri, Action Committee, Milind etc, it was not open to a Division Bench of this court, in Delhi and State Subordinate Selection Board v Mukesh Kumar (supra) to say that Subhash Chandra prevailed, particularly since S. Pushpa was by a larger three member Bench. It is true that the concerns and interpretation placed by Subhash Chandra flow logically from a reading of the larger Supreme Court Constitution Bench rulings. Nevertheless, since this Court is bound by the doctrine of precedent, and by virtue of Article 141 has to follow the decision in Pushpa, as it deals squarely with the issue concerning status of citizens notified as scheduled castes from a state to a Union Territory, it was not open, as it is not open to this court even today, to disregard Pushpa. The Court further notices that the correctness of Subhash Chandra has been referred for decision in the State of Uttaranchal case; the matter is therefore at large, before the Constitution Bench, which will by its judgment show the correct approach. Till then, however, Pushpa prevails.*

x x x

56. The Supreme Court had occasion to consider the claim of reservation for OBCs under the Constitution in Veena's case. The Court was alive to the fact that OBCs are notified in respect of each State. The Court had to consider the facts from an almost identical fact situation where candidates from one State claimed to be OBCs in another State or in another Union Territory. Veena (supra) pertained to the Union Territory of Delhi. The Court held that the OBC certificate issued by one State authority or in respect of a resident of a State with his origins in that State would be inadmissible in another State or Union Territory, for purposes of employment etc., and that the candidate cannot claim be an OBC in the other State. The Court pertinently held as follows:

> *"6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given case is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs."*

57. It is also clear that in the case of OBCs, the considerations which weigh with the executive government in issuing notifications are different than in the case of the Scheduled Castes and Tribes. The power to issue Notifications is not rigidly conditioned as in the case of Articles 341 and 342; Parliament also does not have exclusive jurisdiction. The degree of backwardness in the case of OBCs is of an entirely different kind than in the case of Scheduled Castes and Tribes. In view of the above discussion, this Court is of the opinion that the above three writ petitions W.P.(C) 816/2011, 1713/2011 and 8368/2010 have to fail.

x x x

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.

(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 341(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;

(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;

(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.

(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;

(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."

21. Thus, as far as this Court is concerned, till it holds the field, the decision of the Full Bench in *Deepak Kumar*'s case would hold the field and would have to be enforced.

22. We may additionally note that much before the decision of the Supreme Court in *S.Pushpa*'s case which was pronounced in the year 2005, on August 27, 2003 the Government of NCT of Delhi issued an Office Memorandum on the subject of reservation for Scheduled Tribes for

recruitment to civil posts under the Government of NCT of Delhi, which reads as under:-

> *"Ministry of Home Affairs, Govt. of India vide letter cited above have clarified that the instructions contained in the MHA, O.M. No.7/2/55/SCT dated 14.10.55, in accordance with which the percentages of reservation prescribed for recruitment on an All India basis are required to be followed in Delhi continue to be in force and applicable in respect of civil post under the Govt. of NCT of Delhi. Accordingly, the Civil posts under the Govt. of NCT of Delhi reserved for Scheduled Tribes are required to be filled up from amongst Scheduled Tribes candidates irrespective of nativity.*
> *Accordingly, it has been decided that Govt. of NCT of Delhi may continue to reserve the prescribed percentage of Civil posts under the Govt. for appointment of Scheduled Tribes candidates as has been the practice in the past.*
> *Therefore, in terms of the aforesaid clarification 7.5% of Civil posts under the Govt. may be kept reserved for appointment of Scheduled Tribes candidates irrespective of their nativity and appropriate action for recruitment may be taken."* *(Emphasis Supplied)*

23. The position would be that in Delhi it would be a case of a conscious decision taken, as was taken by the appropriate Government in the Union Territory of Pondicherry, to extend benefit of reservation to, if we may use the expression migrant Scheduled Castes and Scheduled Tribes, provided the holder of the certificate is otherwise an ordinary resident of Delhi.

24. We had repeatedly asked learned counsel for the Government of NCT Delhi to explain as to what would be the rationale for the Government of NCT of Delhi to reserve posts for Scheduled Tribes in Delhi in the teeth of the fact that no presidential order notifies a Scheduled Tribe in Delhi and yet we find advertisements after advertisements inviting applications to fill up posts under the Government of NCT Delhi, the Municipal Corporation of Delhi, the New Delhi Municipal Council reserving 7.5% posts for members belonging to Scheduled Tribes. There was no answer.

25. We now note the facts of each case.

26. Ravindra Devi, the writ petitioner of WP(C) No.3049/2012 has been unsuccessful before the Tribunal. She claims benefit of reservation on the strength of a certificate issued by the competent authority in the State of Haryana certifying she belonging to the Scheduled Caste *'Chamar'*.

27. The reason given by the Tribunal to deny her relief is wrong, being that the certificate produced by her has been issued by an authority in Haryana. But she would not be entitled to any relief because admittedly she resides in Haryana and it had not her case that she is ordinarily a resident of Delhi. The law declared in *S.Pushpa*'s case (supra) is that a person who is a member of a Scheduled Caste in a particular State would be entitled to reservation in a Union Territory provided he is ordinarily a resident of the Union Territory.

28. WP(C) No.3049/2012 is accordingly dismissed.

29. Challenge in WP(C) 6485/2011 is to the order dated March 23, 2011 allowing TA No.73/2010 filed by Vikas Kumar, the respondent in the writ petition.

30. It is not in dispute that Vikas Kumar is ordinarily a resident of Delhi. In fact, his parents migrated to Delhi. He was born in Delhi and has studied in Delhi all throughout. The Senior Secondary School Examination has been cleared by him as a student of a Government Senior Secondary School. He has obtained a Graduate degree at a college at Delhi. He is a member of a caste which is a Scheduled Caste not only in Delhi but even his parent State where his ancestors resided before his father migrated to Delhi i.e. the State of Uttar Pradesh. The Tribunal has correctly opined in his favour of being entitled to the benefit of reservation in Delhi.

31. We accordingly dismiss WP(C) 6485/2011.

32. As regards WP(C) 6872/2013 the three writ petitioners who have been denied relief by the Tribunal were a part of original eight. We find that

the reasoning of the Tribunal is a lack of pleading in the Original Application that the eight petitioners before it were ordinarily residents of Delhi.

33. We are of the opinion that the writ petition must fail on account of delay and laches alone for the reason the recruitment relates to a selection process which culminated in a declaration of results on May 29, 2009 and OA No.761/2010 filed by the three writ petitioners along with five others who have not approached this Court was dismissed on January 28, 2011 and WP(C) 6872/2013 has been filed after one year and nine months i.e. on October 22, 2013. The recruitment process has been completed in the meanwhile and hence closed. No justifiable reasons have been given as to why the writ petitioners waited for one year and ten months.

34. Accordingly, WP(C) 6872/2013 is dismissed.

35. Same is the fate of WP(C) 7146/2013 which lays a challenge to the order dated October 10, 2011 denying relief to the two writ petitioners. WP(C) 7146/2013 has been filed after a little over two years on October 21, 2013.

36. WP(C) 7146/2013 is accordingly dismissed.

37. All four writ petitions stand disposed of as above.

38. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

NOVEMBER 27, 2013
mamta/skb