In the High Court of Judicature at Madras

Reserved on : 25.08.2015

Delivered on : 04.09.2015

Coram:

The Honourable Mr.Justice SATISH K. AGNIHOTRI
AND
The Honourable Mr.Justice K.K.SASIDHARAN

W.A.Nos.1225, 1257 of 2015 and W.P.No. 19558 of 2015
& connected MPs.

W.A.Nos.1225 and 1257 of 2015:

The Pondicherry Scheduled Caste People's
Welfare Association (Reg. No.456/02)
Rep. by its General Secretary
No.5, II Street
Thirubuvanai Chinnapet
Puducherry-605 107. ... Appellant in W.A.No.1225 of 2015/Petitioner

Minor K.R. Shanmukeshwar
Rep. by his father and natural guardian
K. Rajasekaran ... Appellant in W.A.No.1257 of 2015/Petitioner

vs.

1. Union of India
   Rep.by the Government of Pondicherry
   Through its Chief Secretary
   Chief Secretariat
   Puducherry-605 001.

2. The Secretary
   The Department of Education
   Government of Puducherry
   Chief Secretariat
   Puducherry-605 001.

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3. Centralised Admission Committee (CENTAC)
Rep. by the Convener
CENTAC
Pondicherry Engineering College Campus
Pillaichavadi, Puducherry-605 014.

4. The District Collector
Office of the District Collectorate
Revenue Complex
Saram
Puducherry-605 013. ... Respondents 1 to 4 in W.A.Nos. 1225 and 1257 of 2015/Respondents 1 to 4

5. Puducherry Poorveega Adhi Dravida Aasiriyargal
Urimai Paadhukappu Matrum Nalachangam
rep. by its President K. Deivanayagam
No.16, Kanda Reddy Street
Reddiyar Palayam
Puducherry.

6. A. Ajitha (Minor),
rep.by her father and natural Guardian
Anandan

7. R. Raman (Minor),
rep.by his father and natural Guardian
Ramesh

8. G. Surgeethkuaran (Minor),
rep.by his father and natural Guardian
Gajararthan

9. S. Harshini (Minor),
rep.by her father and natural Guardian
Siva pouchane

10. J. Vasudevaraj (Minor),
rep.by his father and natural Guardian
Jayakumar

11. G. Anandh (Minor),
rep.by his father and natural Guardian
Gunasekaran

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12. B. Nivedha(Minor),
rep.by his father and natural Guardian
Balasubramanian

13. I. Sivanandam (minor)
rep.by his father and natural guardian
Iyyanar

14. A. Arunkumar (Minor)
rep.by his father and natural guardian
Adhikesavan

15. M. Janani (Minor)
rep.by her father and natural guardian
Marimuthu

16. N. Rajarajan(Minor)
rep.by his father and natural guardian
Narasingam

17. V. Akshaya(Minor)
rep.by her father and natural guardian
Velmurugan

18. S. Roginth (Minor)
rep.by his father and natural guardian
Sivasubramanian

19. A. Haripriya Darshini (Minor)
rep.by her father and natural guardian
Ayyanar

20. S. Vigneshwari (Minor)
rep.by her father and natural guardian
Subramanian

21. A. Arun (Minor)
rep.by his father and natural guardian
Arulappan

22. I. Ajithkumar (Minor)
rep.by his father and natural guardian
Iyyanar.

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23. L.Bhavadharani

24. T. Janay (Minor),
rep.by his father and natural Guardian
Thulasingam

25. A. Abiramidhazene ... Respondents 5 to 25 in W.A.No.1225 of 2015/Respondents 5 to 25

W.P.No.19558 of 2015

Sunitha ... Petitioner

-Vs.-

1. State
Rep. by Chief Secretary to Government
Union Territory of Pondicherry
Pondicherry.

2. The Convener
CENTAC
Centralised Admission Committee
Pondicherry Engineering College Campus
Pondicherry-605 014.

3. The Medical Council of India
Pocket-14, Sector 8, Dwaraka
New Delhi-110 077. ... Respondents

Prayer in W.A.No.1225 and 1257 of 2015: Writ Appeals filed under Clause 15 of the Letters Patent against the order of this Court dated 13 August 2015 in W.P.Nos.17987 and 20675 of 2015 respectively.

W.P.No.17987 of 2015 is filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the Biology Based Course Merit List (2015-2016), dated 19.06.2015 issued by the third respondent read with the order No.CENTAC/47/2015, dated 17.06.2015 issued by the first respondent, quash the same and direct the third respondent to issue a fresh Merit Selection List after considering the 23 candidates, whose details are enclosed herewith as Annexure-I, under Scheduled Caste category, in admission to Professional and other Courses of higher education pursuant to the

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issuance of the G.O.No.27 dated 01.04.2015 by the first respondent as published in the Gazette of Puducherry dated 02.04.2015.

ANNEXURE - I

Sl.No.	Name and Registration number	Candidate's cut of Mark on Merit	Sl.No. in General Category
1	Yogesh Kanna V. 33168	185.33	383
2	Sujitha S. 30045	180.33	662
3	Thilipkumaran L. 31351	177	845
4	Bharani Praba R. 36910	175	940
5	Prabhahari V. 34363	173.33	1044
6	Archanadevi C. 35777	173	1051
7	Sheethalkumar A. 32880	171	1174
8	Niveditha K.R. 36203	170.33	1204
9	Sathishkumar S. 30859	169.67	1260
10	Nikkitha S. 30483	168	1357
11	Charumathi A 35827	161	1740
12	Sangeetha G. 31249	159	1854
13	Komalavalli M. 32756	158.33	1887
14	Joys Narkis C. 33228	155	2080
15	Shilpa S. 30190	153.33	2150

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Sl.No.	Name and Registration number	Candidate's cut of Mark on Merit	Sl.No. in General Category
16	Karunya K. 33212	152.33	2208
17	Priyadharshini M.P. 36983	152	2215
18	Sreemathi S. 31216	151.67	2235
19	Kanimozhi D. 32824	149.67	2325
20	Subhashini K. 33957	149.67	2329
21	Keerthana J. 32356	149.33	2342
22	Aathirai S. 36705	135.67	2947
23	K.Harini	166.67	1424

(Prayer amended as per order of this court dated 26.06.2015 in M.P.No.3 of 2015 in W.P.No.17987 of 2015)

W.P.No.20675 of 2015 is filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the Biology Based Merit List (2015-2016), dated 19.06.2015 issued by the third respondent, quash the same and direct the third respondent to issue a fresh Merit Selection List after considering the petitioner herein under Scheduled Caste category, in admission to Professional and other Courses of higher education pursuant to the issuance of the G.O.No.27 dated 01.04.2015 by the first respondent as published in the Gazette of Puducherry dated 02.04.2015.

Prayer in W.P.No.19558 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the second respondent to consider the petitioner's son Mr.V. Daveshwaran in the category of Schedule Community (SC) for the professional degree of MBBS for the year of 2015-2016 as he is eligible and entitled in the said category and to direct the second respondent to send counselling call letter for the same in the category of Schedule Community (SC).

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Ms.R. Vaigai
for Ms. S. Meenakshi : For Appellant in W.A.No.1225/2015

Mr.K.M. Ramesh : For Appellant in W.A.No.1257/2015

Mr.S. Arivazhagan : For Petitioner in W.P.No.19558/2015

Mr.G.Rajagopalan
Addl.Solicitor General
Assisted by
Mrs.N. Mala
AGP (Pondicherry) : For RR 1 to 4 in both W.As.1225 and 1257 of 2015 and RR1 to 3 in W.P. 19558 of 2015

Mr.V. Ajay Kumar : For RR6 to 24 in W.A.No.1225/2015

COMMON JUDGMENT

SATISH K. AGNIHOTRI & K.K.SASIDHARAN, JJ

Introductory:

The Supreme Court in Marri Chandra Shekhar Rao v. Dean, S.G.S. Medical College[1] and Action Committee on Issue of Caste Certificate to SC/ST in the State of Maharashtra and another v. Union of India and another[2] declared the Law that a member of the Schedule Caste migrating from one State to another would not get the benefits ear marked for the Scheduled Caste of the migrated State.

In S.Pusha v. Sivachanmugavelu[3] while upholding the legality of the policy adopted by the Government of Pondicherry extending the benefit of reservation in public employment to migrant Schedule Castes, the Supreme Court once again re-iterated the legal position that in case a State or Union Territory makes a provision whereunder the benefits of reservation is extended only to such Scheduled Castes or Scheduled Tribes, which are recognised as such in that State or Union Territory, then such a provision would be perfectly valid.

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1 (1990) 3 SCC 130
2 (1994) 5 SCC 244
3 (2005) 3 SCC 1

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Most recently in Puducherry Scheduled Caste People Welfare Association v. Union Territory of Pondicherry[4] while setting aside the Government Order issued by the Government of Pondicherry conferring reservation benefits to the Schedule Caste Origin of the Union Territory of Pondicherry, the Supreme Court indicated that the Scheduled Castes for the purposes of the Constitution in relation to the Union Territory of Podicherry, so far as regards members thereof are "resident" in the Union Territory. (The Government Order was quashed on account of using the term "Origin" in the place of "resident" as it would amount to altering the Presidential order). Even after these authoritative judicial pronouncements, the Scheduled Castes from Tamil Nadu who have migrated to Pondicherry after the Presidential Order (notified on 5 March 1964) are claiming the benefits earmarked for the Scheduled Castes of Pondicherry while retaining their social status as Scheduled Castes in their State of Origin.

Facts:

2(a) The Pondicherry Scheduled Caste People's Welfare Association along with a student aspiring for admission to the Biology based professional course against the seats reserved for Scheduled Caste candidates filed Writ Petitions in W.P.NOs.17987, 19369 and 20675 of 2015 challenging the Biology Based Merit List published by the Centralised Admission Committee ("CENTAC" in short), Pondicherry in respect of reserved candidates and prayed for issuing a writ of Mandamus to extend the benefit of reservation to the children of migrated Scheduled Castes.

(b) The learned Single Judge by following the decision of the Supreme Court in Marri Chandra Shekhar Rao (supra) and Action Committee on Issue of Caste Certificate to SC/ST in the State of Maharashtra and another (supra) dismissed the writ petitions. Feeling aggrieved, the unsuccessful writ petitioners have come up with these two intra-court appeals.

(c) The writ petition in W.P.No.19558 of 2015 is again at the instance of a candidate, who was denied medical admission under the reserved category on the ground that she is a migrated Scheduled Caste.

(d) The appellants made a claim that the Government of Pondichery had been following the circulars issued by the Central Government treating both Scheduled Caste Origin and migrants alike. The

4 (2014) 9 SCC 236

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Government extended the benefit of reservation in the matter of employment to those who have migrated to Pondicherry from the neighbouring States. There was no discrimination between Scheduled Caste Origin and Scheduled Caste migrant in Pondicherry. The policy adopted by the Government of Pondicherry to treat both Scheduled Caste Origin and Migrants equally was challenged before the Central Administrative Tribunal. The Tribunal accepted the case of the Scheduled Caste origin of Pondicherry and set aside the appointments of migrated Scheduled Caste Candidates. The said order was taken up before the Supreme Court in S.Pusha (supra). The Supreme Court upheld the policy decision taken by the Government of Pondichery and made it very clear that by issuing such a policy, the Government have not flouted the provisions of the Constitution. Thereafter in Puducherry Scheduled Caste People Welfare Association (supra), the Supreme Court set aside the orders issued by the Government of Pondicherry making a distinction between the Scheduled Caste Origin and Scheduled Caste Migrants. In view of the judgments of the Supreme Court in (i) S.Pusha and (ii) Puducherry Scheduled Caste People Welfare Association the Scheduled Caste Candidates, who have migrated to Pondicherry subsequent to the Presidential Notification are also entitled to the benefits of reservation. The appellants therefore wanted the Government of Pondicherry to re-draw the merit list by extending the benefits of reservation to the candidates originally belonging to the neighbouring State and migrated to Pondicherry after the notification issued by the President under Article 341(1) of the Constitution of India.

(e) The writ petitions were opposed by the Government of Pondicherry. The Government of Pondicherry contended that the policy regarding extension of benefits of reservation to the migrants was confined to public service and it was never extended to education. According to the State, even in the policy considered by the Supreme Court in S.Pushpa, the benefit of reservation was not extended in the field of education. The Government of Pondicherry placed reliance on Constitution (Pondicherry) Scheduled Castes Order, 1964 and Article 341 of the Constitution of India and contended that only those Scheduled Castes who were residing in Pondicherry as on 5 March 1964 and their children alone are entitled to the benefits of reservation in the field of education.

(f) The learned Single Judge considered the issue raised by the appellants in the light of the Constitution Bench judgments in Marri Chandra Shekhar Rao and Action Committee. The subsequent judgments in S.Pusha and Puducherry Scheduled Caste People Welfare Association were also considered by the learned Single Judge while answering the

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contentions raised by the appellants. The learned Single Judge held that the word "resident" will have to necessarily mean to apply to such of the Scheduled Caste members residing at the relevant point of time i.e. 5 March 1964 in the Union Territory of Pondicherry. It was further held that merely because a person resides for various reasons in the Union Territory of Pondicherry, he cannot be given the status and cannot be allowed to be brought under the umbrella of Presidential Order. It was further held that such a person does not lose his right to be considered for the purpose of availing the benefit under Article 15(4) of the Constitution in the State in which he is a permanent resident. The learned Single Judge negatived the contentions taken by the appellants on the strength of S.Pusha and Puducherry Scheduled Caste People Welfare Association and dismissed the writ petitions.

Rival Contentions:

3. Ms.R. Vaigai, learned counsel for the appellants made the following submissions:

(i) The learned Single Judge proceeded on the basis that the judgments of the Supreme Court in S.Pusha and Puducherry Scheduled Caste People Welfare Association have nothing to do with the issue raised by the appellants. The finding recorded by the Writ Court goes contrary to the Law laid down by the Supreme Court in those two judgments.

(ii) The Government of Pondicherry has been following the policy adopted by the Central Government giving the benefit of reservation to the Scheduled Castes across India. The policy is evident from the circulars issued by the Central Government dated 4 February 1974 and 16 February 1974 and the related circular issued by the Government of Pondicherry dated 6 January 1993. The learned Single Judge was therefore not correct in denying the benefits of reservation to the migrated Scheduled Castes.

(iii) The Government of Pondicherry has been treating the Migrant Scheduled Castes as Scheduled Castes of Pondicherry and the same is proved by the circular dated 6 January 1993. The very same circular was the subject matter in S. Pushpa. The Supreme Court made it very clear that by extending the benefits to the migrated Scheduled Castes, there would be no infraction of Article 16(4) of the Constitution by the Government of Pondicherry. Such being the policy approved by the Supreme Court, the Government of Pondicherry was not correct in restricting the benefits to the Scheduled Castes of Pondicherry.

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(iv) The Supreme Court in S. Pushpa made it very clear that the principle enunciated in Marri Chandra Shekhar Rao has no application to the Union Territory of Pondicherry as it is not a State. Even then the learned Single Judge followed the judgment in Marri Chandra Shekhar Rao and Action Committee and dismissed the writ petitions.

(v) The Supreme Court in Puducherry Scheduled Caste People Welfare Association was pleased to set aside the Government Order in G.O.Ms.No.12 dated 5 August 2005 as it was contrary to the Presidential Order. It was therefore not correct on the part of Government of Pondicherry once again to introduce the very same policy giving benefit of reservation only to the Scheduled Caste origin.

(vi) The Government of Pondicherry has not taken a position that their policy is at variance with the Central Government. When it is made out that the Government of Pondicherry has been following the policy adopted by the Central Government it was not correct on the part of the learned Single Judge to arrive at a conclusion that the Scheduled Castes of Pondicheerry alone are entitled to the benefit of reservation.

(vii) This is the case of an involuntary migration. The Government of Pondicherry offered employment to the Scheduled Castes from other States. The Government is therefore bound to extend the benefit of reservation to the children of migrated employees taking into account the spirit of the observation made by the Supreme Court in paragraph 18 of the judgment in Marri Chandra Shekhar Rao.

4. Thiru G. Rajagopalan, learned Additional Solicitor General while supporting the common order passed by the Writ Court made the following submissions on fact and law:

(i) The prospectus issued by CENTAC clearly provided that the reservation would be confined to the Pondicherry Scheduled Castes. The terms of the prospectus are binding both on the candidates as well as on Government of Pondicherry. The appellants have not challenged the prospectus and as such it is not open to them to make a claim that the migrated Scheduled Castes students should also be given benefits of reservation ignoring the mandatory condition of the prospectus.

(ii) The concerned students have obtained caste certificates from the constituted authority in Tamil Nadu. The caste certificates

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were issued under the Constitution (Scheduled Castes) Order, 1950 and on the basis of such certificate the Government of Pondicherry issued caste certificates. The Scheduled Caste Order in respect of Pondicherry was issued in 1964. The very fact that the concerned students have obtained their certificates from the neighbouring State of Tamil Nadu indicating that they are Scheduled Castes within the meaning of Constitution (Scheduled Castes) Order, 1950 clearly shows that they are migrant Scheduled Castes entitled to the benefits of reservation only in the State of Origin.

(iii) The policy adopted by the Government of Pondicherry as contained in the circular dated 6 January 1993 clearly shows that the benefit of reservation is not extended in the field of education. It was only the said circular which was put in challenge before the Supreme Court in S.Pushpa. The Supreme Court in paragraph 21 of the judgment held that if a Sate or Union Territory makes a provision for reservation to the Scheduled Castes of that State, such a provision is completely valid. The policy adopted by the Government of Pondicherry that it would give the benefit of reservation only to the Scheduled Caste of Pondicherry is therefore unassailable.

(iv) As per Section 3(58)(v) of the General Clauses Act, the word "State" would include even a Union Territory and as such all the references made to a State are equally applicable to the Union Territory of Pondicherry.

(v) The decision in Puducherry Scheduled Caste People Welfare Association has nothing to do with the issue raised in the writ petitions filed by the appellants. The Supreme Court in the said case quashed the impugned order only on the ground that instead of "Resident" the Government used the term "Origin", which is not found in the Presidential Order. The said judgment is not an authority for the proposition that the migrant Scheduled Castes are entiled to the benefits of reservation in the migrated State.

(vi) The Constitution Bench judgments of the Supreme Court in Marri Chandra Shekhar Rao and Action Committee concluded the issue with regard to misgration. Therefore, only those who have resided in Pondicherry as on the date of notification and their decendants alone are entitled to the benefits of reservation. The learned Single Judge was therefore perfectly correct in accepting the policy decision taken by the Government.

5. Sri. V. Ajay kumar, learned counsel for respondents 6 to 24 in W.A.No.1225 of 2015 referred to the Circulars issued by the Central

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Government from time to time, the policy adopted by the Government of India restricting the benefits of reservation to the Scheduled Castes of Pondicherry and the Law laid down by Supreme Court in two Constitution Bench judgments and contended that in case the migrant Scheduled Castes are given the benefits of reservation, by treating them as Scheduled Castes of Pondicherry, it would be an infraction of the Presidential Order in relation to Pondicherry. The learned counsel placed reliance on the observation made by the Constitution Bench in Marri Chandra Shekhar Rao and Action Committee and distinquished the judgments in S.Pusha and Puducherry Scheduled Caste People Welfare Association. According to the learned counsel, the Writ Court very correctly analysed the constitutional provisions and the policy adopted by the Government of Pondicherry and rightly dismissed the writ petitions.

The issue:

6. The core question that arises for consideration is whether the members of Scheduled Castes migrated to Pondicherry after the Presidential Order (Dated 5 March 1964) are entitled to the social status of Scheduled Castes of Pondicherry, and the benefits conferred on the members of Scheduled Castes, who are deemed to be the Scheduled Castes for the purposes of the Constitution in relation to the Union Territory of Pondicherry, by virtue of their residence in the Union Territory as on 5 March 1964.

Analysis:

7. There is no factual dispute involved in the subject litigation. The members of the Appellant Association in W.A.No.1225 of 2015 are admittedly Scheduled Castes from the State of Tamil Nadu. The appellant in W.A.No.1257 of 2015 and the petitioner in W.P.No.19558 of 2015 are also Scheduled Castes of Tamil Nadu Origin and later migrated to Pondicherry for employment. The Scheduled Caste students in these cases were all issued Scheduled Caste Certificates by the Revenue Authorities of Pondicherry based on the Community Certificate issued by the competent authority in the State of Tamil Nadu. It is also worth mentioning here that in all these certificates, it is clearly indicated that Community Certificates were issued under the provisions of the Constitution (Scheduled Castes) Order, 1950 meaning thereby it was not on the basis of the Constitution (Pondicherry) Scheduled Castes Order, 1964. The children of these Scheduled Castes migrated from Tamil Nadu were not given the benefits of Reservation earmarked for the Scheduled Castes of Pondicherry. The denial of such benefits of reservation made them to file the writ petitions.

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8. The learned Single Judge considered S.Pusha and Puducherry Scheduled Caste People Welfare Association cases relied on by the appellants and interpreted the judgments in tune with the views expressed by the Constitution Bench in Marri Chandra Shekhar Rao and Action Committee.

The Constitutional Provision:

9. Article 341 of the Constitution confers power on the President of India to notify the castes, races or tribes who shall be deemed to be the Scheduled Caste of the State or Union Territory. It reads thus:

> "(1) The President [may with respect to any State [or Union territory], and where it is a State ***, after consultation with the Governor *** thereof,] by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State [or Union territory, as the case may be].
>
> (2) 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, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

10. Similarly, Article 342 deals with Scheduled Tribes.

Presidential Order with respect to Pondicherry:

11. The President in exercise of the powers conferred by Clause (1) of Article 341 of the Constitution of India notified the Constitution (Pondicherry) Scheduled Castes Order, 1964. The notification published on 5 March 1964 reads thus:

> "In exercise of the powers conferred by clause (1) of Article 341 of the Constitution of India, the President is pleased to make the following order, namely :-
>
> 1. This Order may be called the Constitution (Pondicherry) Scheduled Castes Order, 1964.
>
> 2. The castes, races or tribes or parts of or groups within castes, races or tribes specified in

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the Schedule to this Order shall for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to the Union Territory of Pondicherry so far as regards members thereof resident in that Union Territory.

Provided that no person, who professes a religion different from the Hindu or the Sikh religion, shall be deemed to be a member of a Scheduled Caste."

12. The Constitution (Pondicherry) Scheduled Castes Order, 1964 was amended in 2002 by inserting one entry in Schedule V.

The Relevant Circulars:

13. The Ministry of Home Affairs, Government of India issued several circulars in the matter of issuance of Scheduled Caste/Scheduled Tribe Certificates. The circulars and relevant clauses are extracted below:

(a) Circular dated 2 May, 1975

Cases of Migration

"(ii) Where a person migrates from one State to another, he can claim to belong to a Scheduled Caste or a Scheduled Tribe only in relation to the State to which he originally belonged and not in respect of the State to which he has migrated."

(b) Circular dated 22 March 1977

"2. As required under Articles 341 and 342 of the Constitution, the President has, with respect to every State and Union Territory and where it is State after consultation with the Governor of the concerned State, issued orders notifying various Castes and Tribes as Scheduled Castes and Scheduled Tribes in relation to that State or Union Territory from time to time. The inter-state area restrictions have been deliberately imposed so that the people belonging to the specific community residing in a specific area, which has been assessed to qualify for the Scheduled Caste or Scheduled Tribe status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different State/Union Territories may not necessarily suffer from the same disabilities, it is possible that two persons belonging to the same caste but residing in different

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States/U.Ts may not both be treated to belong to Scheduled Caste/Schedule Tribe or vice-versa. Thus the residence of a particular person in a particular locality assumes a specific significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other hand, it connotes the permanent residence of a person on the date of the notification of the Presidential Order scheduling his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the Presidential Order applicable in his case, say, for example, to earn a living or seek education, etc., can also be regarded as a Scheduled Caste or a Scheduled Tribe, as the case may be, if his caste/tribe has been specified in that Order in relation to his State/UT. But he cannot be treated as such in relation to the place of his temporary residence not withstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order.

3..... In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribes status, is the place of permanent abode of their parents at the time of the notification of the Presidential Order under which they claim to belong to such a Caste/Tribe. "

(c) Circular dated 22 February 1985:

"2. It is also clarified that a Scheduled Caste/Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment etc., will be deemed to be a Scheduled Caste/Tribe of the State of his origin and shall be entitled to derive benefits from the State of Origin and not from the State to which he has migrated."

(d) Circular issued by Government of Pondicherry dated 6 January 1993.

The Government of Union Territory of Pondicherry took a policy decision to extend the benefits of reservation to the migrant

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Scheduled Castes in the matter of public employment. Since the said policy was the subject matter in S. Pusha, we extract the circular below:

"Government of Pondicherry
Revenue Department

No.7503/91/C2 Pondicherry, the 6 Jan, 1993

C I R C U L A R

Sub: Issue of Scheduled Caste/Scheduled Tribe Certificates to migrants from other States/ Union Territories - Reg.

Ref: 1. This Department's Circular No.12038/89/C2, dated 8.11.89, communicating Government of India National Commission for Scheduled Castes and Scheduled Tribes (Ministry of Welfare) letter No.BC.16014/1/82-SC &SCD-I dated 22.2.1985.

2. G.O.Ms.No.24, dated 16.2.74 of the General Administration Department of the Administration communicating an extract of the D.O.letter No.14016/2/74-GP, dated 4.2.1974 from the Joint Secretary, Government of India, Ministry of Home Affairs, New Delhi.

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Kind attention is invited to the reference first cited, wherein it has been clarified that a scheduled caste/scheduled tribe person who has migrated from the State of origin to some other state for the purpose of seeking education, employment, etc., will be deemed to be a Scheduled Caste/Scheduled Tribe of the State of his origin and will be entitled to drive benefits from the State of origin and not from the State to which he has migrated.

2. The reference second cited is again brought to the notice for information and guidance. It has been stated therein for a reserved vacancy in a Central Government Office located in a State any Scheduled Caste candidate

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

3. However, in the case of other benefits like scholarships, admission to educational institutions etc., the benefits should be confined to the scheduled caste of this Union Territory.

4. The receipt of this circular may please be acknowledged.

(G.George)
Joint Secretary (Revenue)"

14. Starting point of litigation:

(i) The policy adopted by the Government of Pondicherry to treat the Pondicherry Scheduled Castes and the Scheduled Castes migrated from other States alike for Public employment was put in issue by the Pondicherry Scheduled Castes Association before the Central Administration Tribunal ("CAT" in short) in O.A.Nos.199 of 1996 and 214 of 1996 by challenging the selection of migrated Scheduled Castes as Secondary Grade Teachers.

(ii) Before the CAT, the Pondicherry Scheduled Castes contended that those who have migrated to Pondicherry after the publication of the Presidential Notification on 5 March 1964 are not entitled to be treated as Scheduled Castes in relation to Pondicherry. The Government of Pondicherry defended its policy by taking shelter under Article 16(4) of the Constitution.

(iii) The CAT rejected the contention taken by the Government of Pondicherry and after setting aside the selection, directed the Government to appoint the Scheduled Castes of Pondicherry origin against the reserved posts.

(iv) The common order dated 5 November 1996 in O.A.Nos.199 of 1996 and 214 of 1996 on the file of CAT (Madras Bench) was

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challenged before the Supreme Court in Civil Appeal Nos.6 and 7 of 1998 (S. Pushpa case). The Supreme Court allowed the Civil Appeal and observed that no legal infirmity can be ascribed to the policy adopted by the Government of Pondicherry extending the benefits of reservation in public service to the migrated Scheduled Castes.

15. Great emphasis has been laid by the appellants on the decision in S. Pushpa and Puducherry Scheduled Caste People Welfare Association to demonstrate that the view taken by the learned Single Judge is wrong. We therefore deem it fit and proper to consider those two judgments at the first instance before proceeding further.

16. The Case Law

A. Case of S. Pushpa:

(i) The issue before the Supreme Court in S.Pushpa was whether there was any infirmity in the policy adopted by the Government of Pondicherry to extend the benefits of reservation to the migrant Scheduled Castes in the matter of Public Employment.

(ii) The Supreme Court found on a perusal of the circulars, Government letters and Government policy that the Government of Pondicherry has throughout been proceeding on the basis that being a Union Territory, all orders regarding reservation of Scheduled Castes/Scheduled Tribes in respect of posts/services under the Central Government are applicable to the posts/services under the Pondicherry Administration as well.

(iii) The policy referred to in S. Pushpa was in relation to reserved post. It was not made applicable to other benefits like admission to educational institutions. The Supreme Court in para 15.2 of S. Pusha extracted the circular dated 6 January 1993 which includes the following clause with regard to admission in educational institutions and scholarships.

> "3. However, in case of other benefits like Scholarships, admission to educational institutions etc., the benefits should be confined to the Scholarships of this Union Territory.
>
> (emphasis supplied)"

(iv) It was only this policy, contained in the circular dated 6 January 1993 which was upheld by the Supreme Court in S. Pushpa.

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(v) The appellants now wanted to extend the benefits of reservation in the field of education also, by mis-interpreting the judgment of the Supreme Court in S. Pushpa.

(vi) The observation in paragraph 21 of the S. Pushpa would make the position very clear that the Supreme Court considered the legality and correctness of the policy adopted by the Government of Pondicherry in the light of Article 16(4) of the Constitution.

(vii) Paragraph 21 of S. Pushpa is extracted below:

> "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 recognised 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 recognised 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

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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 UT of Pondicherry having adopted a policy of the 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."

(viii) The concluding paragraph of the judgment in S. Pushpa make it clear that the said decision was only in relation to posts and it was not in any way concerned with admission in educational institutions.

"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."

(ix) The Supreme Court recognised the right of State/Union Territory to extend the benefits of reservation only to such Scheduled Castes/Scheduled Tribes which are recognised in relation to such State/Union Territory. The following observation in S.Pushpa is in conformity with the policy adopted by the Union Territory of Pondicherry reserving the seats in Educational Institutions only to the Pondicherry Scheduled Castes.

"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 recognised as such in relation to that State or Union Territory then such a provision would be perfectly valid."

(Emphasis Supplied)

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(x) S. Pushpa is therefore not an authority for the proposition that those migrated from other States after the Presidential Order are also entitled to be treated as Scheduled Castes of the State/Union Territory.

B. Case of Puducherry Scheduled Caste People Welfare Association.

The appellants have placed heavy reliance on this judgment to contend that the Supreme Court has deprecated the policy adopted by Union Territory of Pondicherry to confer the benefit of reservation to the Scheduled Caste Origin alone. According to the appellants, paragraph 11 of the judgment makes the legal position clear that migrants are also entitled to the benefits of reservation along with Scheduled Caste Origin. We are not in a position to subscribe to the said view for the following reasons:

(i) The challenge in Puducherry Scheduled Caste People Welfare Association was in relation to two Government Orders giving benefits to the Scheduled Caste Origin. The Supreme Court found that the Presidential Order does not contain the term "Origin" and "migrant". The Presidential Order used only the term "Resident". However the Government of Pondicherry used a different term, which is not found in the Presidential Order.

(ii) The Supreme Court was of the view that by interpreting the term "Resident" in the Presidential Order as "Origin", the Government attempted to alter the Presidential Order. The Supreme Court nowhere stated that the policy as found in the circular, giving the benefits of reservation to the Scheduled Castes, who were resident in Pondicherry as on 5 March 1964 is bad. The failure on the part of Government of Pondicherry to use the term "Resident" as contained in the Presidential Order and its adoption of a different term alone made the Supreme Court to set aside the Government Orders.

(iii) The Government Orders quashed by the Supreme Court in Puducherry Scheduled Caste People Welfare Association has not defined the term "Scheduled Caste Origin". It was capable of misinterpretation. The Presidential Order recognised all those Scheduled Castes who were residing in Pondicherry as on 5 March 1964 as Scheduled Castes of Pondicherry. In case the term "Origin" is used in the place of "Resident" it would proceed as if only those who were born and brought up in

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Pondicherry prior to 5 March 1964 alone would qualify for the social status. In case the term "Resident" is used it would cover all those who were residing in Pondicherry (either by birth or by migration from other States) as on 5 March 1964. The judgment in Puducherry Scheduled Caste People Welfare Association requires to be considered in this background.

(iv) In Puducherry Scheduled Caste People Welfare Association there is no declaration of Law with regard to the status of those who have migrated to Pondicherry after the Presidential Order. In fact there was no reference to Marri Chandra Shekhar Rao and Action Committee in Puducherry Scheduled Caste People Welfare Association. The case of the appellants therefore would not be strengthened by the judgment in Puducherry Scheduled Caste People Welfare Association.

C. Chandigarh Administration and another v. Surinder Kumar and others[5]

(i) The issue before the Supreme Court in Chandigarh Administration was whether the Administration was correct in following the Government of India Circular dated 26 August 1996 to the effect that in respect of employment under the Central Government, there should not be any kind of discrimination between Scheduled Castes and Scheduled Tribes of one State or another. The Central Government clarified that in respect of Union Territory also the position would be the same. The Chandigarh Administration followed this circular and considered all the Scheduled Castes/Scheduled Tribes alike irrespective of their State of Origin. The Supreme Court observed that there was nothing wrong in the said policy.

(ii) In Chandigarh Administration the issue was more or less similar to the one considered in S. Pushpa. Both cases relate to reserved posts in Union Territory. It has nothing to do with reservation for admission in educational institutions which is the point of dispute in the subject litigation.

(iii) By following the Government of India circular with regard to service, it cannot be said that the Government of Union Territory of Pondicherry is bound to extend the benefit of reservation in the field of professional education.

5 (2004) 1 SCC 530

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17. There are two constitution Bench Judgments governing the field. Both these judgments contain a declaration of law with regard to the status of migrant Scheduled Castes.

A. Case of Marri Chandra Shekhar Rao.

(i) The core question that arose in Marri Chandra Shekhar Rao was whether the petitioner can claim the benefit of being a Scheduled Tribe in the State of Maharashtra, notwithstanding the fact that he is a Scheduled Tribe in the State of his origin namely, Andhra Pradesh.

(ii) In order to decide this question, the Supreme Court placed reliance on the Presidential Order issued under Articles 341 and 342 and the circular dated 22 February 1985 issued by the Ministry of Home Affairs, Government of India clarifying the position that a Scheduled Caste of the State of Origin will be entitled to the benefits of reservation only from the State of Origin and not from the State to which he has migrated.

(iii) The Supreme Court after analysing the matter, particularly with reference to the proceedings of the Constituent Assembly dated 17 September 1949 dealing with draft Articles 303 and 304 which later on became Articles 341 and 342 and the views of Dr.B.R. Ambedkar and Prof. K.T. Shah, held 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.

(iv) The following observation made in Marri Chandra Shekhar Rao is relevant to decide the subject appeals.

> "12.....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.
>
> .....

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> 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 15(4) of the Constitution."

(v) The Supreme Court was of the view that it is for the Parliament to consider legislations to extend the benefit to those whose migration was involuntary. The Supreme Court said:

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

(vi) Marri Chandra Shekhar Rao is therefore the first Constitution Bench Judgment declaring the Law that migrant Scheduled Castes are not entitled to the benefits of reservation in the migrated State.

B. Case of Action Committee on Issue of Caste Certificate to SC/ST in the State of Maharashtra and another

(i) The issue decided in Marri Chandra Shekhar Rao was once again considered by another Constitution Bench in Action Committee.

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(ii) The Constitution Bench in Action Committee framed the following issue for consideration.

> "Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a 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? — is the neat question raised in this petition brought under Article 32 of the Constitution...."

(iii) The Constitution Bench considered the string of circulars issued by the Central Government and more particularly the circulars dated 22 March 1977 and 29 March 1982.

(iv) The Supreme Court indicated the reason for denying the benefits of reservation to the migrants in the migrated State in the following words:

> "16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule 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

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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."

(v) The Constitution Bench agreed with the views expressed in Marri Chandra Shekhar Rao and the interpretation given to Articles 341 and 342 of the Constitution.

(vi) Therefore, it is clear that both the Constitution Benches have unanimously arrived at a view that migrants are not entitled to the benefits of reservation in the Migrated State/Union Territory.

C. Subhash Chandra v. Delhi Subordinate Services Selection Board[6]:

(i) The Supreme Court in Subhash Chandra held that Article 16(4) of the Constitution cannot be made applicable for granting the benefits of reservation to the Scheduled Castes/Scheduled Tribes, who have migrated to another State or Union Territory.

(ii) The Supreme Court in Subhash Chandra while following Marri Chandra Shekhar Rao and Action Committee made the following observation with regard to the views expressed in S.Pushpa.

"63. Can it be said that Marri Chandra Shekhar Rao Shekar 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."

110. Should we consider Pushpa to be an obiter following the said decision is the

6 (2009) 15 SCC 458

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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 Shekhar Rao and E.V. Chinnaiah Marri Chandra Shekhar Rao Shekhar Rao had been followed by this Court in a large number of decisions including the three-Judge Bench decisions. Pushpa, therefore, could not have ignored either Marri Chandra Shekhar Rao 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, therefore, we are of the opinion that the dicta in Pushpa is an obiter and does not lay down any binding ratio."

D. State of Uttaranchal v. Sandeep Kumar Singh[7] (Civil Appeal No.4494 of 2006)

While considering a similar issue in Civil Appeal No.4494 of 2006, two Judges Bench of the Supreme Court observed that another Two Judges Bench (Subhash Chandra) could not have held that the decision in S.Pushpa case is obiter and not binding. The Civil Appeal was therefore referred to a three-Judge Bench by order dated 7 October 2010 (2010 (12) SCC 794). The three-Judge Bench dismissed the Civil Appeal without answering the reference by order dated 6 August 2014 {(2014) 9 SCC 236}.

18. The Constitutional Status of Union Territory:

(i) The Union Territories are centrally administered under the provisions of Article 239 of the Constitution. The President of India in his capacity as the Head of Union Territory administers the

7 (2010) 12 SCC 794

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Territory through an Administrator. The Administrator is therefore a delegate of the President. While functioning as the Executive Head of the Union Territory, the President is not acting as the Executive Head of the Central Government. The position of Administrator appointed under Article 239 of the Constitution to administer a Union Territory is different from the position of a Governor appointed under Article 153 of the Constitution.

(ii) The Union Territory of Pondicherry is administered by a Lieutenant Governor acting as its Administrator. The Territory has got a full fledged Legislature and Council of Ministers headed by a Chief Minister created by the Act of Parliament in accordance with Article 239-A of the Constitution of India.

(iii) The Legislative Power was conferred on the Union Territory of Pondicherry by the Government of Union Territories Act, 1963.

(iv) In Mahe Beach Trading Co. v. Union Territory of Pondicherry[8] the Supreme Court held that the Legislature of Union Territory of Pondicherry is vested with powers like any other State to enact Laws. The Supreme Court said:

> "19. By virtue of [The] Government of Union Territories Act, 1963, the Pondicherry Legislature was given the powers which any other State Legislature had to enact laws with respect to the matters enumerated in the State List or the Concurrent List. Of course, sub-section (2) of Section 18 provides that the powers conferred under sub-section (1) shall not derogate from the powers conferred on Parliament by the Constitution to make laws with respect to any matter for the Union Territory. But, there is no such law relating to the imposition of sales tax on diesel and petrol which has been enacted by Parliament, while the Validation Act has imposed such a tax. It is not in dispute, and now it is well settled, that the State Legislature as well as Parliament has the power to legislate with retrospective effect and also to pass a Validation Act. This being so, and the powers of the legislature of Pondicherry being coextensive with the powers of a State Assembly, by virtue of Section 18 of [The] Government of Union Territories Act, 1963, there

8 (1996) 3 SCC 741

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is no reason for this Court to hold that the Pondicherry Legislature could not enact a law with retrospective effect. In other words, by virtue of Section 18 of [The] Government of Union Territories Act, 1963, Parliament vested with the Pondicherry Legislature the plenary powers to legislate with respect to the matters in List II and List III of the Seventh Schedule and the said power has been validly exercised with the enactment of the Validation Act."

(v) The position of the Administrator in a Union Territory and the mechanism for resolution of dispute between the Administrator and the Council of Ministers, etc., were elaborately discussed by the Supreme Court in Devji Vallabhbhai v.Administrator, Goa, Daman & Diu[9].

(vi) In Government of NCT, Delhi v. All India Central Civil Accounts[10], the Supreme Court indicated the position of President and Administrator in the following words:

"2. By the Constitution (Seventh Amendment) Act, 1956, the States in Part C and Territories in Part D of the First Schedule were replaced by the "Union Territories", which, under Part II of the First Schedule, as amended, inter alia, include the Union Territory of Delhi. The administration of the Union Territories is carried on by the Union, through an Administrator. As stated by this Court in New Delhi Municipal Council v. State of Punjab the President who is the executive head of a Union Territory does not function as the head of the Central Government, but as the head of the Union Territory under powers specially vested in him under Article 239 of the Constitution thereby occupying a position analogous to that of a Governor in a State. Though the Union Territories are centrally administered under the provisions of Article 239 they do not become merged with the Central Government as has been stated by this Court in Satya Dev Bushahri v. Padam Dev."

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9 AIR 1982 SC 1029
10 (2002) 1 SCC 344

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(vii) The Supreme Court in Satya Dev v. Padam Dev[11] while rejecting the contention that Executive Action of the Central Government is vested in the President and the President is also the Executive Head of Part C States, and consequently the contracts entered into with Part C States are, in law, contracts entered into with the Central Government, observed thus:

> "The fallacy of this reasoning is obvious. The President who is the executive head of the Part C States is not functioning as the executive head of the Central Government, but as the head of the State under powers specifically vested in him under Article 239. The authority conferred under Article 239 to administer Part C States has not the effect of converting those States into the Central Government. Under Article 239, the President occupies in regard to Part C States, a position analogous to that of a Governor in Part A States and of a Rajpramukh in Part B States. Though the Part C States are centrally administered under the provisions of Article 239, they do not cease to be States and become merged with the Central Government."

(viii) In Ram Kishore Sen v. Union of India[12], the Constitution Bench of the Supreme Court in the context of Article 2 of the Constitution of India and taking into account Section 3(58)(v) of the General Clauses Act held that the word "State" would include Union Territory also. The Supreme Court said:

> "8.....Under Section 3(58)(b) of the said Act, "State" as respects any period after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a State as specified in the First Schedule to the Constitution and shall include a Union territory. This provision of the General Clauses Act has to be taken into account in interpreting the word "State" in the respective clauses of Article 3, because Article 367(1) specifically provides that unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any

11 AIR 1954 SC 587
12 (1966) 1 SCR 430

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adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. Therefore, the assumption made in the opinion that Article 3 in its several clauses does not include the Union territory is misconceived and to that extent, the incidental reason given in support of the main conclusion is not justified."

Conclusion:

19. The Constitution (Pondicherry) Presidential Order, 1964, published on 5 March 1964 provides that the castes, races or tribes specified in the Schedule for the purpose of the Constitution shall be deemed to be the Scheduled Castes in relation to the Union Territory of Pondicherry so far as members thereof resident in the said Union Territory. The two Constitution Benches in Marri Chandra Shekhar Rao and Action Committee very clearly indicated the true meaning of the term "In relation to that State or Union Territory" and "Resident". The circular issued by the Ministry of Home Affairs, Government of India to the effect that the place of residence for the purpose of acquiring Scheduled Caste or Scheduled Tribe Certificate is the place of permanent abode of the parents at the time of the notification of Presidential Order has already been upheld by the Supreme Court in Action Committee. The difficulty experienced by the persons belonging to Scheduled Caste/Scheduled Tribe to obtain Caste/Tribe Certificate from the State where they have migrated made the Central Government to permit the prescribed authorities of the State/Union Territory to issue certificates based on the related caste certificate issued by the State of origin. The circular dated 22 March 1977 made it very clear that a migrant would not be entitled to derive benefits in the State to which he has migrated on the strength of such caste certificate. This part of the circular was specifically adverted to in paragraph 9 of the judgment in Action Committee and the Constitution Bench negatived the challenge made to the said circular.

20. Even though in Marri Chandra Shekhar Rao the Supreme Court has indicated that in case migration is involuntary, it is open to the Parliament or Legislature to consider appropriate legislation to extend the benefits to the persons migrated from other States, without prejudicially affecting the rights of Scheduled Castes/Scheduled Tribes in those States or Areas, the fact remains

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that Government of Pondicherry at no point of time extended the benefits to the migrated Scheduled Castes in the field of education by passing a legislation.

21. The Government of Pondicherry taking into account the fact that the Central Government permits the Scheduled Castes/Scheduled Tribes of all States and Union Territory to apply for the posts reserved for Scheduled Castes/Scheduled Tribes, took a policy decision to extend the benefits of reservation to those who have migrated to Union Territory after the notification of Presidential Order. The policy was translated into action by issuing the circular dated 6 January 1993. Even in the said policy, Government of Pondicherry made it very clear that in case of other benefits like Scholarships, and admission in Educational Institutions, the benefit would be confined to the Scheduled Castes of the Union Territory meaning thereby, those who were residing in Pondicherry as on 5 March 1964 and their children. It was this policy which was upheld by the Supreme Court in S.Pushpa.

22. The aforesaid view taken by us is fortified by a decision of a Constitution Bench of the Supreme Court in Bhaiya Lal Vs. Harikishan Singh[13] that before identifying the castes, races, tribes for the area on a State or Union Territory, proper survey was conducted. The relevant observation reads thus :

> "10.....The object of Article 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within them should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and educational are backwardness of the race, caste or tribe

13 AIR 1965 SC 1557

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> justifies such specification. In fact, it is well known that before a notification is issued under Article 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness in regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question."

23. The appellants having got the benefits of reservation in Government service on account of the concession given by the Government of Pondicherry, now wanted even benefits like admission in educational institutions, which is earmarked exclusively for the Scheduled Castes of the Union Territory.

24. The individual appellants and members of the association are all Scheduled Castes belonging to the State of Tamil Nadu. They are entitled to the benefits of reservation in the State from where they have migrated to Pondicherry. There is no question of considering them as Scheduled Castes in relation to the Union Territory of Pondicherry, in view of their migration after the cut off date. Even if the Government of Pondicherry wanted to extend other benefits to those who have migrated to the Union Territory from other States, it would be possible only by way of passing appropriate legislation as indicated in Marri Chandra Shekhar Rao. Such extension of benefits should not affect prejudicially the rights of Scheduled Castes of Pondicherry. No body can compel the Government to initiate such legislation.

25. The appellants have not produced any material to prove that Government of Pondicherry have taken a policy to extend the benefits in the field of education to the migrants. The prospectus issued by the CENTAC for admission to Professional courses for 2015-2016 contain the policy of the Government of Pondicherry, restricting the benefits of reservation to the Scheduled Castes of Pondicherry. The policy is in order in view of the Presidential notification and the

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Judgement in Marri Chandra Shekhar Rao and Action Committee. Even in S. Pushpa the Supreme Court upheld the policy reflected in the circular dated 6 January 1993. The present policy is nothing but continuation of the policy as indicated in Sl.No.3 of the circular dated 6 January 1993.

The Settled Legal Position:

26. We reiterate the legal position that where a Scheduled Caste person migrates from one State or Union Territory to another, he can claim to belong to the Scheduled Caste or Scheduled Tribe only in relation to the State/UnionTerritory from which he has migrated.

Government Policy Valid:

27. The Union Territory of Pondichery by adopting a policy in the light of Article 341 of the Constitution and the Constitution (Pondicherry) Scheduled Caste Order, 1964 and in accordance with the Law declared by the Constitution Benches in Marri Chandra Shekhar Rao and Action Committee has not committed any illegality by restricting the benefits of reservation in education to the Scheduled Castes of Pondicherry.

28. We, therefore hold that the policy adopted by the Government of Pondicherry as indicated in the Prospectus issued by CENTAC for the year 2015-2016 is in consonance with the Constitution.

Disposition:

29. The learned Single Judge cosidered the issue raised by the appellants in the light of the Law laid down by the Supreme Court and rightly dismissed the writ petitions. The petitioner in W.P.No.19558 of 2015 has taken identical contentions to invalidate the reservation made in favour of the Pondicherry Scheduled Castes. We therefore do not find any merit in the contention taken by the appellants in these intra-court appeals and the petitioner in W.P.No.19558 of 2015.

30. In the upshot, we dismiss the intra-court appeals and the writ petition. Consequently, the connected MPs are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Tr/

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To

1. The Chief Secretary
   Government of Pondicherry Union of India
   Chief Secretariat
   Puducherry-605 001.

2. The Secretary
   The Department of Education
   Government of Puducherry
   Chief Secretariat
   Puducherry-605 001.

3. The Convener
   Centralised Admission Committee (CENTAC)
   CENTAC
   Pondicherry Engineering College Campus
   Pillaichavadi, Puducherry-605 014.

4. The District Collector
   Office of the District Collectorate
   Revenue Complex
   Saram
   Puducherry-605 013.

5. The Medical Council of India
   Pocket-14, Sector 8, Dwaraka
   New Delhi-110 077.

+1cc to Ms.S.Meenakshi, Advocate, S.R.No.47822
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.47722
+1cc to Mr.S.Arivazhagan, Advocate, S.R.No.47833
+1cc to Mr.V.Ayayakumar, Advocate, S.R.No.47725
+3cc's to the Senior Government Pleader Cum Senior Public Prosecutor for Puducherry, S.R.No.47808, 47809 & 47811

W.A.Nos.1225, 1257 of 2015
and
W.P.No. 19558 of 2015

GR(CO)
CA(14/09/2015)

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