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HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 19/01/2017****Judgment Delivered on : 14/02/2017****Writ Appeal No. 531 of 2016**

1. State of Chhattisgarh, Through the Secretary, Department of General Administration, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh.
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar, Sector-4, District Raipur, Chhattisgarh.

---- Appellants**Versus**

Dinesh Kumar Sonkusre S/o Shri Pritram Das Sonkusre, aged about 42 years, R/o House No. 112, Manta Nagar, Ponam Colony, District Rajnandgaon (CG) at presently working at Junior Sericulture Inspector, Sericulture Department, Rajnandgaon, Chhattisgarh.

---- Respondent**WA No. 537 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mantralaya Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Secretary, Department Of Agriculture, Mantralaya Mahanadi Bhawan, Naya Raipur, Chhattisgarh
3. The High Power Caste Scrutiny Committee, Through Its President-Cum-Secretary, Scheduled Caste And Scheduled Tribe Development Department, Tribal Research Training Institute, Pt. Dindayal Upadhyay Nagar, Sector-4 Raipur, Chhattisgarh

---- Appellants**Versus**

Kailash Kumar Parate S/o Shri Harchand Parate Aged About 51 Years R/o Behind Ashoka Heights, Aman Nagar, Mova, Raipur, Police Station Pandri (Mova), Raipur District Raipur, Chhattisgarh, Presently Posted As Rural Horticulture Extension Officer, O/o Assistant Director of Horticulture, Principal Garden, Raipur, Chhattisgarh

---- Respondent

WA No. 544 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The District Education Officer, Bastar District Jagdalpur, Chhattisgarh
3. The High Power Caste Scrutiny Committee, Through Its President Cum Secretary, Schedule Caste And Schedule Tribe Development Department, Tribal Research Training Institute, Pt. Dindayal Upadhyay Nagar, Sector-4, Raipur, Chhattisgarh

---- Appellants**Vs**

Smt. Pushpa Kumbhare W/o Shri G.P. Kumbhare Aged About 52 Years R/o Rajeev Gandhi Ward No. 33/1-Frezerpur, Jagdalpur, P.S. Bodhghat, District Jagdalpur, (Chhattisgarh) Presently Posted As Head Master At Government Middle School, Halbakachora, Jagdalpur, Chhattisgarh

---- Respondent**WA No. 536 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mantralaya, Mahanadi Bhawan, New Raipur, Chhattisgarh
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4, District Raipur, (Chhattisgarh)

---- Appellants**Vs**

Smt. Sunita Limje S/o Shri Nandlal Limje Aged About 45 Years R/o Manta Nagar, Rajnandgaon, District Rajnandgaon (Chhattisgarh) At Present Working as Assistant Grade II, Irrigation Department, Rajnandgaon, Chhattisgarh

---- Respondent**WA No. 543 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh

2. The Secretary, Public Health Engineering (P.H.E.), Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh
3. The High Power Caste Scrutiny Committee, Through Its President Cum Secretary, Schedule Caste And Schedule Tribe Development Department, Tribal Research Training Institute, Pt. Dindayal Upadhyay Nagar, Sector-4, Raipur, Chhattisgarh

---- Appellants

Vs

Nitin Kumbhare S/o Late Shri Narayan Kumbhare Aged About 53 Years R/o C/o Shri A.P. Namdev, 4A/2, Nehru Nagar (West), Near Gurudwara, Bhilai, P.S. Supela Bhilai, District Durg, Chhattisgarh, Presently Posted As Executive Engineer Public Health Engineering Department (E/m) Division Rajnandgaon, Chhattisgarh

---- Respondent

WA No. 545 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4 District Raipur, Chhattisgarh

---- Appellants

Vs

Purushottam Kosta S/o Shri Gopal Prasad Kosta Aged About 41 Years Working At Personal Assistant General Administration Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh

---- Respondent

WA No. 546 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mantralaya, New Raipur, Chhattisgarh
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
3. The High Power Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4 District Raipur, Chhattisgarh

---- Appellants

Vs

Ku. Anita Nande D/o Late Shri Shyamlal Nande, Aged about 43 years, R/o Tulsipur Ward No. 18 Behind, Sai Mandir, Rajnandgaon, District Rajnandgaon, Chhattisgarh At Present Working As Cooperative Extension Officer, Rajnandgaon, Chhattisgarh

---- Respondent

WA No. 532 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4, District Raipur, (Chhattisgarh)

---- Appellants

Vs

Jagdish Narayan Kosta S/o Shri Prem Narayan Kosta, Aged About 41 Years Working At Personal Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (Chhattisgarh)

---- Respondent

WA No. 557 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration , Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4, District Raipur, (Chhattisgarh)

---- Appellants

Vs

Dhannu Das Burde S/o Late Shri Saroop Das Barde, Aged About 40 Years R/o Working At Personal Assistant, General Administration Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, (Chhattisgarh)

---- Respondent

WA No. 534 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4, District Raipur, (Chhattisgarh)

---- Appellants**Vs**

Sunil Kumar Sonkusre S/o Shri Babulal Sonkusre, Aged About 39 Years R/o Sector 1, H- 155 Kashiram Nagar, Raipur, District Raipur, (Chhattisgarh), At Present Working As Assistant Grade III, Sericulture, Department, Raipur, (Chhattisgarh)

---- Respondent**WA No. 540 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipu, Chhattisgarh
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4, District Raipur, (Chhattisgarh)

---- Appellants**Vs**

Bhuwan Dekate S/o Shri Rameshwar Dekate Aged About 42 Years Working At Personal Assistant, General Administration Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh

---- Respondent**WA No. 539 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)
3. The High Level Caste Scrutiny Committee, Pandit Deendayal Upadhyay Nagar Sector-4, District Raipur, (Chhattisgarh)

---- Appellants

Vs

Rajendra Dekate S/o Shri Vasudev Dekate Aged About 49 Years
R/o G2/23 EAC Colony Behind Collectorate Raipur, Presently
Posted As Senior Sports Officer, Sports And Youth Welfare, Raipur,
District Raipur, Chhattisgarh

---- Respondent

WA No. 533 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Additional Secretary, Chhattisgarh Government, P.H.E. Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
3. The High Power Caste Scrutiny Committee, Through Its President Cum Secretary, Schedule Caste And Schedule Tribe Development Department, Tribal Research Training Institute, Pt. Dindayal Upadhyay Nagar, Sector-4, Raipur, Chhattisgarh

---- Appellants

Vs

Gyaneshwar Barapatre S/o Late T.M. Barapatre Aged About 52 Years
R/o Rambhata Near Bus Depo Raigarh, Presently Posted
S.E. Office Of Chief Engineer, P.H.E. Jagdalpur, Chhattisgarh

---- Respondent

And

WA No. 542 of 2016

1. State Of Chhattisgarh Through The Secretary, Department Of General Administration, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, Chhattisgarh
2. The Secretary, Law Department, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur, (Chhattisgarh)

---- Appellants

Vs

Kishore Kumar Ninawe S/o Shri Ramesh Ninawe Aged About 37 Years
R/o New Khandelwal Colony, Ward No. 19, P.S. Lalbagh
District Rajnandgaon, Chhattisgarh

---- Respondent

For Appellant/State	:	Shri J.K.Gilda, Advocate General with Shri Y.S.Thakur, Additional Advocate General.
For Respondents	:	Shri Manoj Paranjpe, Shri Amrito Das, Shri Sourabh Dangi, Shri Mateen Siddiqui, Shri Rajesh Ranjan Sinha, Advocates.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Sanjay Agrawal, J.

C.A.V. Judgment

Per Deepak Gupta, Chief Justice

1. There is a delay in filing the writ appeals. For the reasons mentioned in applications for condonation of delay, the same are allowed. Delay is condoned. With the consent of the parties, the appeals were heard finally.
2. These appeals are being disposed of by a common judgment since all the writ petitions out of which the present appeals arise have been disposed of by one judgment dated 01.07.2016 passed by a learned Single Judge of this Court in Writ Petition (S) No. 147 of 2016 and analogous cases.
3. The undisputed facts are that a tribe known as "Halba" in the State of Chhattisgarh and in the erstwhile State of Madhya Pradesh is recognized and declared to be a Scheduled Tribe under Article 342 of the Constitution of India. The original writ petitioners admittedly do not belong to "Halba" tribe. They are "Koshti" but some of them were shown as "Halba-Koshtis". They all obtained jobs in the erstwhile State of Madhya Pradesh by claiming to be Scheduled Tribes belonging to "Halba" tribe.
4. The question whether "Halba-Koshtis" or "Koshti" were entitled to claim that they belong to Scheduled Tribe "Halba" engaged attention of various Courts in the State of Maharashtra as well as State of Madhya Pradesh.

This has been set at rest by the Apex Court in *State of Maharashtra v. Milind & Others* {(2001) 1 SCC 4}. The Apex Court held that persons belonging to "Halba-Koshtis" or "Koshti" caste were not "Halbas" and consequently were not members of "Halba" Scheduled Tribe.

5. Thereafter, in number of cases, the question arose as to whether the protection should be given to those persons who had got admission in professional courses or had been confirmed in service prior to 28.11.2000, the date on which the judgment in *Milind* (supra) has been rendered.
6. Here, it would also be pertinent to mention that the Akhil Bhartiya Parisangh, Branch Chhattisgarh representing the Scheduled Castes and Scheduled Tribes made a complaint to the State of Chhattisgarh and alleged that the Writ Petitioners did not belong to a Scheduled Tribe; that the Petitioners had obtained forged caste certificates showing them to be members of "Halba" Scheduled Tribe and therefore, they should be dismissed from service. The matter was referred to the High Power Caste Scrutiny Committee constituted in accordance with the Scheduled Castes, Scheduled Tribes and Other Backward Classes (Regulation of Social Status Certification) Rules, 2013. The said Committee in its order passed in all these cases held that the Petitioners are "Halba-Koshti" or "Koshti" but are not "Halba", and therefore do not belong to a Scheduled Tribe. However the High Power Caste Scrutiny Committee further held that the Petitioners are entitled for service protection, in view of the office memorandum issued by the Central Government dated 10.08.2010 followed by order passed by the State of Chhattisgarh dated 01.10.2011.
7. On 10.08.2010, the Government of India issued a circular and after making reference to the judgments of the Apex Court, the following directions were issued:

“3. The matter has been examined in consultation with the Department of Legal Affairs and it has been decided that the persons belonging to the 'Halba Koshti/Koshti' caste who got appointment against vacancies reserved for the Scheduled Tribes on the basis of Scheduled Tribe Certificates, issued to them by the competent authority, under the Constitution (Scheduled Tribes) Order, 1950 (as amended from time to time) relating to the State of Maharashtra and whose appointments had become final on or before 28.11.2000, shall not be affected. However, they shall not get any benefit of reservation after 28.11.2000.”

8. Thereafter, the State of Chhattisgarh issued similar directions on 01.10.2011, relevant portion of which reads as follows:

"4. Therefore, it is hereby held that such persons of Halba Koshti / Koshti who have been issued certificate of Scheduled Tribe by competent authority under Constitution (Scheduled Tribe) Order 1950 (amended time to time) issued for the State of M.P. and were appointed against the posts reserved for Scheduled Tribe and whose appointment had become final before 28.11.2000 shall not be affected. However, in future they shall not be treated as Scheduled Tribe and they shall not be entitled to any benefits of belonging to the reserved category after 28.11.2000."

9. The circular under challenge dated 11.01.2016 withdrew the protection given by circular dated 01.10.2011 and after making reference to *Union of India v. Dattatray S/o Namdeo Mendhekar & Others* {(2008) 4 SCC 612}, it was ordered as follows:

"2. In view of the judgment passed by the Hon'ble Supreme Court in *Union of India Vs. Dattatray S/o Namdeo Mendhekar and Ors.* AIR 2008 SC 1678 and in view of the opinion received from Law Department regarding cancellation of Notification No. F13-4/2011/1-3, dated 01.10.11 issued by General Administration Department, said Notification of General Administration Department is hereby cancelled after due consideration. Administrative Department shall ensure that necessary proceedings as per rules are taken in respect of those officers / employees whose services

were protected under said Notification dated 01.10.2011 of GAD".

10. The Writ Petitioners filed their writ petitions apprehending that their services would be terminated in terms of the circular dated 11.01.2016 and therefore, challenged the same. The learned Single Judge held that the order dated 11.01.2016 could not be give retrospective effect and the order was held to be bad qua the writ petitioners and it was held that the Petitioners were entitled to service protection.

11. To appreciate the arguments, it would be apposite to give in tabular form the details of the Petitioners which are as follows:

S.No.	Name of the petitioner	W.P.(S) No.	Date of joining Govt. service.	Date of issuance of caste certificate	Order passed by the Scrutiny Committee invalidating the certificate but granting service protection
1.	Dhannu Das Burde	147/2016	9-12-1997	13-11-1997	16-4-2015
2.	Bhuwan Dekate	148/2016	9-12-1997	3-1-1996	2-4-2015
3.	Purushottam Kosta	164/2016	9-12-1997	29-3-1994	17-8-2015
4.	Jagdish Narayan Kosta	165/2016	16-9-1998	24-7-1995	15-7-2015
5.	Rajendra Dekate	166/2016	18-5-1990	3-7-1989	2-4-2015
6.	Ku. Anita Nande	203/2016	4-8-1994	12-10-1993	17-6-2015
7.	Smt. Sunita Limje	205/2016	14-1-1994	21-9-1993	17-6-2015
8.	Sunil Kumar Sonkusre	209/2016	14-10-1996	26-7-1995	2-4-2015
9.	Rajnarayan Dhaketa	206/2016	29-1-1992	30-9-1989	28-12-2015
10.	Dinesh Kumar Sonkusre	207/2016	9-12-1997	31-5-1995	2-4-2015
11.	Kishore Kumar Ninawe	616/2016	29-4-1998	1-7-1995	The SDM vide its order dated 17-12-2007

					protected the services of the petitioner after having recorded a finding that he belongs to Halba Koshti caste.
12.	Kailash Kumar Parate	305/2016	31-11-1982	19-3-1985	3-10-2015
13.	Nitin Kumbhare	728/2016	9-3-1983	18-10-1990	26-8-2015
14.	Smt. Pushpa Kumbhare	925/2016	3-9-1985	28-8-1993	15-7-2015
15.	Gyaneshwar Barapatre	1110/2016	15-7-1988	1-5-1981	20-8-2015

12. To appreciate the legal issues, it would be apposite to refer Article 342 of the Constitution of India which reads as follows:

“342. *Scheduled Tribes.* - (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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes 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 Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

13. Article 342 of the Constitution of India empowers the President of India to issue a public notification specifying the tribes or tribal communities or parts of or groups within the tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to a State or Union Territory, as the case may be. The laudable object behind this provision was that the Scheduled Tribes who have suffered oppression or with regard to social and educational

backwardness, have been marginalised in society should be given certain benefits under the Constitution. Therefore, a tribe can be considered to be a Scheduled Tribe only if it is included in the Schedule by order of the President issued under Article 342 of the Constitution of India. The Article also clearly indicates that a Scheduled Tribe has to be declared in relation to a particular State or Union Territory.

14. The power to declare a tribe or a part thereof to be a Scheduled Tribe can be exercised only by the President in consultation with the Governor of the State in relation to the State or Union Territory, as the case may be. A notification issued by the President under clause (1) of Article 342 of the Constitution of India, cannot be varied by any subsequent notification except by a law made by the Parliament. It is settled law that the Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in the notifications issued under clause (1) of Articles 341 and 342 of the Constitution of India. It is undisputed case of the parties that Halba/Halbi were declared to be Scheduled Tribe for the State of Madhya Pradesh and after formation of the State of Chhattisgarh in the year 2000, these Halba/Halbi were also Scheduled Tribes for the State of Chhattisgarh.

15. Here, it would be pertinent to mention that for the State of Maharashtra also, “Halba/Halbi” were notified to be Scheduled Tribes. In Maharashtra, it was claimed that “Halba-Koshti, Halbi-Koshti and Koshti” form part of “Halba/Halbi” tribes.

16. A Constitution Bench of the Apex Court as far back as 1965, in *B.Basavalingappa v. D.Munichinnappa* {AIR 1965 SC 1269} had clearly held that the Presidential Order notifying Scheduled Tribes or Scheduled Castes cannot be modified by producing evidence to show that some

other caste or sub-caste is part of the notified caste. It could only be done by Parliament.

17. A Constitution Bench of the Apex Court in *Bhaiya Lal v. Harkishan Singh* {AIR 1965 SC 1557} held that the appellant could not claim the benefit of belonging to the notified caste of "Chamar" on the ground that he belongs to "Dohar" caste which was a sub-caste of "Chamar". This view of the Apex Court holds the field and has not been diluted, till date.

18. In *Prasram v. Shivchand* {(1969) 1 SCC 20}, the issue before the Apex Court was whether the terms "Mochi" and "Chamar" in some parts of the State of Punjab were synonyms. Though, a lot of evidence was placed before the Apex Court to indicate that the assertion of the petitioners was correct, the Apex Court held that in view of the aforesaid two Constitution Bench judgments, it was not open to it to scrutinize whether the person who is described as "Mochi" also falls within the caste of "Chamar". This could be done by the Parliament and not by any other authority.

19. Thereafter, a three Judge Bench of the Apex Court in *Srish Kumar Choudhary v. State of Tripura* {(1999) Supp. SCC 220} held as follows:

"20. The two Constitution Bench judgments indicate that enquiry is contemplated before the Presidential Order is made but any amendment to the Presidential Order can only be by legislation. We do not think we should assume jurisdiction and enter into an enquiry to determine whether the three terms indicated in the Presidential Order include Deshi Tripura which covers the Laskar community; but we consider it appropriate to commend to the authorities concerned that as and when the question is reviewed it should be examined whether the claim of the appellant representing the Laskar community to be included in the scheduled tribes is genuine and should, therefore, be entertained..."

20. Again, a three-Judge Bench of the Apex Court in *Palghat Jila Thandan Samudhaya Samrakshna Samithi v. State of Kerala* {(1994) 1 SCC 359}, held that neither the State Government nor the Court can enquire into this

aspect of the matter and no amount of evidence can be led to show that some other sub-caste or caste is part of the notified caste. It is only Parliament which can amend the law and the Schedule to include or exclude from the Schedule a Tribe or Tribal Community or part or group within the tribe or tribal community. The State or the Court has no power to issue such declaration.

21. As far as the present case is concerned, the issue is identical to that which was agitated before the Constitutional Bench of the Apex Court in the case of *Milind (supra)*. In the State of Maharashtra, "Halba/Halbi" were notified Scheduled Tribes. For a long period of time, people claiming to be belonging to "Halba-Koshti/Halbi-Koshti" tribes or belonging to Koshti tribe were being given Scheduled Tribe certificates. A number of judgments have been rendered by the Bombay High Court and the High Court of Madhya Pradesh wherein it was held that "Halba-Koshti" was included in "Halba-Halbi" tribe.

22. In *Milind (supra)* also, the Bombay High Court held, applying the principle of *stare decisis*, that "Halba-Koshti" are part of "Halba/Halbi". This judgment of the Bombay High Court was challenged before the Apex Court, which held that neither the State Government nor the Court could include "Halba-Koshti" within the tribe of "Halba/Halbi". The conclusions of the Apex Court are as follows:

"36. In the light of what is stated above, the following positions emerge:-

1. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even though it is not specifically mentioned in the concerned Entry in the Constitution (Scheduled Tribes) Order, 1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal

community is synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under Clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by the Parliament. In other words, any tribe or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under Clause (1) of Article 342 only by the Parliament by law and by no other authority.

4. It is not open to State Governments or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification issued under Clause (1) of Article 342.

5. Decisions of the Division Benches of this Court in *Bhaiya Ram Munda vs. Anirudh Patar & others* (1971 (1) SCR 804) and *Dina vs. Narayan Singh* (38 ELR 212), did not lay down law correctly in stating that the enquiry was permissible and the evidence was admissible within the limitations indicated for the purpose of showing what an entry in the Presidential Order was intended to be. As stated in position (1) above no enquiry at all is permissible and no evidence can be let in, in the matter."

23. In the case before the Apex Court, the writ petitioner had obtained admission in a medical college after claiming the benefit of belonging to Scheduled Tribe. The Apex Court protected the rights of the writ petitioner in the following terms:

"38. Respondent no. 1 joined the medical course for the year 1985- 86. Almost 15 years have passed by now. We are told he has already completed the course and may be he is practicing as doctor. In this view and at this length of time it is for nobody's benefit to annul his Admission. Huge amount is spent on each candidate for completion of medical course. No doubt, one Scheduled Tribe candidate was deprived of joining medical course by the admission given to respondent no. 1. If any action is taken against respondent no. 1, it may lead depriving the service of a doctor to the society on whom public money has already been spent. In these circumstances, this judgment shall not affect the degree obtained by him and his practicing as a doctor. But we make it clear that he cannot claim to belong to the Scheduled Tribe covered by the

Scheduled Tribes Order. In other words, he cannot take advantage of the Scheduled Tribes Order any further or for any other constitutional purpose. Having regard to the passage of time, in the given circumstances, including interim orders passed by this Court in SLP (C) No. 16372/85 and other related affairs, we make it clear that the admissions and appointments that have become final, shall remain unaffected by this judgment."

24. Thereafter, in number of cases an issue was raised whether the benefit given to the petitioner – Milind in the case of *Milind (Supra)* should be extended to other persons who were not Halba/Halbi, but were given the certificate of belonging to the Scheduled Tribe by showing them to be “Kosthi” or “Halba-Koshti”.

25. In *Punjab National Bank & Another v. Vilas S/o Govindrao Bokade & Another* {(2008) 14 SCC 545} a two Judge Bench of the Apex Court relying on the last portion of the observations made in *Milind (supra)* held that “Kosthi” or “Halba-Koshti” cannot claim the status of Scheduled Tribes but the persons belonging to “Koshti or Halba Koshti” who had got admission in educational institution or had been appointed to Government jobs prior to 28.11.2000 i.e. the date of judgment in *Milind (supra)* could not be adversely affected by the fact that their caste was not a Scheduled Tribe.

26. A three-Judge Bench in *Dattatray (supra)* distinguished the judgment in *Milind (supra)*. In *Dattatray (supra)*, the writ petitioner claimed that he was “Halba” and was appointed as Assistant Professor by treating him as a Scheduled Tribe candidate. On verification, it was found that he did not belong to “Halba” community. The petitioner filed a writ petition and the High Court held that since he had been appointed on 20.09.1990 much before the judgment given in *Milind (supra)*, he was entitled to this protection. The Apex Court held that the judgment in *Milind (supra)* was not applicable because in this case the petitioner had produced a false

certificate and therefore, was not entitled to protection as laid out in *Milind* (supra).

27.In *Additional General Manager – Human Resource, Bharat Heavy Electrical Ltd. v. Suresh Ramkrishna Burde* {(2007) 5 SCC 336}, the writ petitioner claimed that he belongs to “Halba” a Scheduled Tribe and got an appointment in the year 1982. It was found that he actually belonged to “Koshti” caste and the Apex Court held that the judgment in *Milind* (supra) did not lay down any proposition of law that services of such a person could not be terminated. In paragraph 13, the Apex Court held as follows:

"13. The principle, which seems to have been followed by this Court is, that, where a person secures an appointment on the basis of a false caste certificate, he cannot be allowed to retain the benefit of the wrong committed by him and his services are liable to be terminated. However, where a person has got admission in a professional course like engineering or MBBS and has successfully completed the course after studying for the prescribed period and has passed the examination, his case may, on special facts, be considered on a different footing. Normally, huge amount of public money is spent in imparting education in a professional college and the student also acquires the necessary skill in the subjects which he has studied. The skill acquired by him can be gainfully utilized by the society. In such cases the professional degree obtained by the student may be protected though he may have got admission by producing a false caste certificate. Here again no hard and fast rule can be laid down. If the falsehood of the caste certificate submitted by the student is detected within a short period of his getting admission in the professional course, his admission would be liable to be cancelled. However, where he has completed the course and has passed all the examinations and acquired the degree, his case may be treated on a different footing. In such cases only a limited relief of protection of his professional degree may be granted."

28.In *Kavita Solunke v. State of Maharashtra* {(2012) 8 SCC 430}, the petitioner claiming to be “Halba” applied for the solitary post of Low Grade

Co-Teacher and was appointed on 01.08.1995. After 10 years of service, it was alleged that she did not belong to Scheduled Tribe since she was a “Koshti-Halba” and not a “Halba”. Placing reliance on *Milind* (supra) and distinguishing the judgment in *State of Maharashtra v. Sanjay K. Nimje* {(2007) 14 SCC 481} and *Dattatray* (supra) the Apex Court held as follows:

"14. A careful reading of the above would show that both the High Court as also this Court were conscious of the developments that had taken place on the subject whether ‘Halba-Koshti’ are ‘Halbas’ within the meaning of the Presidential Order. The position emerging from the said circulars, resolutions and orders issued by the competent authority from time to time notwithstanding, this Court on an abstract principle of law held that an inquiry into the question whether ‘Halba-Koshti’ were Halbas within the meaning of the Presidential order was not legally permissible.

16. If ‘Halba-Koshti’ has been treated as ‘Halba’ even before the appellant joined service as a Teacher and if the only reason for her ouster is the law declared by this Court in *Milind*’s case, there is no reason why the protection against ouster given by this Court to appointees whose applications had become final should not be extended to the appellant also. The Constitution Bench had in *Milind*’s case noticed the background in which the confusion had prevailed for many years and the fact that appointments and admissions were made for a long time treating ‘Koshti’ as a Scheduled Tribe and directed that such admissions and appointments wherever the same had attained finality will not be affected by the decision taken by this Court."

29. In *Kavita Solunke* (supra), the Apex Court followed the view taken in *Punjab National Bank* (supra), and distinguished the view taken in *Suresh Ram Krishna Burde* (supra). The relevant portion of the judgment reads as follows:

"22. Applying the above to the case at hand we do not see any reason to hold that the appellant had fabricated or falsified the particulars of being a Scheduled Tribe only with a view to obtain an

undeserved benefit in the matter of appointment as a Teacher. There is, therefore, no reason why the benefit of protection against ouster should not be extended to her subject to the usual condition that the appellant shall not be ousted from service and shall be re-instated if already ousted, but she would not be entitled to any further benefit on the basis of the certificate which she has obtained and which was 10 years after its issue cancelled by the Scrutiny committee."

30. In *Shalini v. New English High School Association & Others* {(2013) 16 SCC 526}, the Apex Court followed the judgment laid down in *Kavita Solunke* (supra) again distinguished *Dattatray* (supra) in the following terms:

"8. A reading of the impugned Judgment requires us to clarify an important aspect of the doctrine of precedence. *Dattatray* is the only Three-Judge Bench decision, and therefore indisputably holds pre-eminence. However, by that time several decisions had already been rendered by Two-Judge Benches some of which have already been discussed above. It was within the competence of *Dattatray* Bench to overrule the other Two-Judge Benches. Despite the fact that it has not done so the per incuriam principle would not apply to the decision because it was a larger Bench. However, no presumption can be drawn that the *Dattatray* Three-Judge Bench decision was of the opinion that the earlier Two-Judge Bench decisions had articulated an incorrect interpretation of the law. That being so, the Two-Judge Bench views may still be relied upon so long as the ratio of *Dattatray* is not directly in conflict with their ratios. It is therefore imperative to distill the ratio of *Dattatray*, which we have already discussed in some detail. We need only reiterate therefore that the Three-Judge Bench was perceptibly incensed with the falsity of the claim of the employee to Scheduled Caste/Scheduled Tribe status. That was not a case where a legitimate claim of consanguinity to a 'Halba Koshti', 'Koshti' or 'Gadwal Koshti' etc. had been made, which was at the inception point considered to be eligible to beneficial treatment admissible to Scheduled Tribes, later to be reversed by the Constitution Bench decision in *Milind* and declared to be the entitlement of Halbas only.

9. It is not the intent of law to punish an innocent person and subject him to extremely harsh treatment. That is why this Court has devised and consistently followed that taxation statutes, which almost always work to the pecuniary detriment of the assessee, must be interpreted in favour of the assessee. Therefore, as we see it, on one bank of the Rubicon are the cases of dishonest and mendacious persons who have deliberately claimed consanguinity with Scheduled Castes or Scheduled Tribes etc. whereas on the other bank are those marooned persons who honestly and correctly claimed to belong to a particular Scheduled Caste/Scheduled Tribe but were later on found by the relevant Authority not to fall within the particular group envisaged for protected treatment. In the former group, persons would justifiably deserve the immediate cessation of all benefits, including termination of services. In the latter, after the removal of the nebulousness and uncertainty, while the services or benefits already enjoyed would not be negated, they would be disentitled to claim any further or continuing benefit on the predication of belonging to the said Scheduled Caste/Scheduled Tribe."

In this case, the Apex Court also considered the scope of the resolution dated 15.06.1995 issued by the Government of Maharashtra and held as follows:

"11. In essence, the Section cancels with preemptive effect any benefit that may have been derived by a person based on a false caste certificate. Whilst "Caste Certificate" has been defined in Section 2(a) of the 2000 Act, "False Caste Certificate" has not been dealt with in the Definitions clause. There is always an element of deceitfulness, in order to derive unfair or undeserved benefit whenever a false statement or representation or stand is adopted by the person concerned. An innocent statement which later transpires to be incorrect may be seen as false in general sense would normally not attract punitive or detrimental consequences on the person making it, as it is one made by error. An untruth coupled with a dishonest intent however requires legal retribution. It appears to us that Section 10 applies in the Dattatray mould only. It was obviously for this reason that in Vilas, Sema J, was of the opinion that the 2000 Act did not apply to the facts before it whereas Sirpurkar J, after concurring with Sema J, granted protection albeit under Article 142 of the

Constitution of India. In Nimje another Two-Judge Bench held that Government Resolution dated 15.6.1995 would continue to apply even after the passing of the 2000 Act so long as the appointment had taken place prior to 1995. There is, therefore, palpable wisdom in the Office Memorandum dated 10.8.2010 of the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training to the effect that "it has been decided that the persons belonging to the 'Halba Koshti/Koshti' caste who got appointment against vacancies reserved for the Scheduled Tribes on the basis of Scheduled Tribe certificates, issued to them by the competent authority, under the Constitution (Scheduled Tribes) Order, 1950 (as amended from time to time) relating to the State of Maharashtra and whose appointments had become final on or before 28.11.2000, shall not be affected. However, they shall not get any benefit of reservation after 28.11.2000."

In this case, the final observations of the Apex Court are as follows:

"15. It requires specialised bodies such as Caste Scrutiny Committees, specialised lawyers, seasoned bureaucrats etc. to decipher which category a relatively backward, or ostracized or tribal person falls in. Can it therefore seriously be contended that a person who has honestly, in contradistinction with falsely, claimed consanguinity with a certain group which was later on found not to belong to an envisaged Scheduled Tribe but to a special backward class be visited with termination of her employment? We think that that is not the intent of the law, and certainly was not what the Three-Judge Bench was confronted with in Dattatray. In our opinion, therefore, the Appellant should have been debarred from any further advantage that would enure to persons belonging to the 'Halba' Tribe."

31. The same Bench of the Apex Court in *R. Unnikrishnan & Another v. V.K.Mahanudevan & Others* {(2014) 4 SCC 434} took the same view and held as follows:

"25. In the case at hand we see no element of fraud in the Order passed by the High Court in O.P.No.9216 of 1986. The order it is evident from a plain reading of the same relies more upon the submissions made before it by the Government

Counsel than those urged on behalf of the writ-petitioners (respondents herein). That there was an enquiry by KIRTADS into the caste status of the writ petitioners (respondents herein) which found his claim of being a Thandan justified hence entitled to a scheduled caste certificate has not been disputed. That the report of KIRTADS was accepted by the Director of Harijan Welfare, Trivandrum is also not denied. That apart, the State Government at no stage either before or after the Order passed by the Single Judge of the High Court questioned the conclusions recorded therein till the full bench in Pattika Jathi's case (supra) expressed doubts about the corrections being made in the records and certificates for the grant of scheduled caste status. That being the case, the High Court could not be said to have been misled or fraudulently misguided into passing an order, leave alone, misled by the writ-petitioners (respondent herein). It is only because the full bench of the Kerala High Court held that anthropological study conducted by KIRTADS may not provide a sound basis for holding Thandan's like the respondent as those belonging to the scheduled caste category that the issue regarding the correctness of the certificate and a fresh investigation into the matter surfaced for consideration. Even if one were to assume that the conclusion drawn by KIRTADS was not for any reason completely accurate and reliable, the same would not have in the absence of any other material to show that such conclusion and enquiry was a complete farce based on wholly irrelevant or inadmissible material and motivated by extraneous considerations by itself provided a basis for unsettling what stood settled by the order passed by the High Court. Suffice it to say that the contention urged on behalf of the appellants that the order passed by the High Court in O.P. No. 9216 of 1986 was a nullity on the ground of fraud has not impressed us in the facts and circumstances of the case.

26. The upshot of the above discussion, therefore, is that the order passed by the High Court in O.P.No.9216 of 1986 which had attained finality did not permit a fresh enquiry into the caste status of writ-petitioner. Inasmuch as the High Court quashed the said proceedings and the order passed by the State Government pursuant thereto, it committed no error to warrant interference.

41. In the instant case there is no evidence of lack of bona fide by the respondent. The protection available under the decision of Milind's case (supra)

could, therefore, be admissible even to the respondent. It follows that even if on a true and correct construction of the expression ‘Thandan’ appearing in The Constitution (Scheduled Castes) Order 2007 did not include ‘Ezhuvas’ and ‘Thiyyas’ known as ‘Thandan’ and assuming that the two were different at all relevant points of time, the fact that the position was not clear till the Amendment Act of 2007 made a clear distinction between the two would entitle all those appointed to serve the State upto the date of the amending Act came into force to continue in service.

32. The latest judgment cited before us is *B.H.Khawas v. Union of India & Others* {(2016) 8 SCC 715}. In this case, the writ petitioner was appointed as Chemical Engineer on 16.06.1995 but the letter of appointment provided that the appointment was provisional subject to verification of the Scheduled Tribe Certificate furnished by the petitioner. The petitioner was found belonging to “Koshti” caste, not being a Scheduled Tribe. The Apex Court after considering the entire law on the subject including the judgments delivered in *Milind* (supra), *Dattatray* (supra), *Kavita Solunke* (supra), *Shalini* (supra) and *R. Unnikrishnan* (supra) held as follows:

"13. In *Kavita Solunke* (supra), it was not in dispute that the appellant had satisfactorily completed the period of probation and was confirmed in service as an Assistant Teacher in due course. Enquiry in respect of her caste claim was insisted upon “after a decade” from her initial appointment, obviously after the decision in *Milind*’s case. The Court held that the appointment of the appellant having attained finality could not be disturbed. Indeed, the Court noted that there was nothing to indicate that the caste certificate of the appellant was false, fabricated or manipulated by concealment or otherwise. That observation is in the context of the matter in issue before the Court, for passing an order in equity. Even in the next case, in *Shalini* (supra) which follows the dictum in *Kavita*’s case, it is seen that the appointment of the appellant as an Assistant Teacher had attained finality as she was in service since 6th November, 1981 and confirmed w.e.f. 1st January, 1984, for which the Court held that the same should not be disturbed. Similarly, in the case of *Unnikrishnan* and *Another* (supra), the Court was dealing with the matter where the caste

claim was already made subject matter of challenge before the Court and was upheld. It was a case where a judicial order passed inter partes had become final on that issue. In that case, the caste claim enquiry was insisted because of the subsequent Presidential Order excluding the concerned caste from the entry notified under notification dated 31st August 2007. The Court, inter alia, opined that it was not open to reconsider the settled judicial pronouncement on the caste claim inter partes.

14. In none of the cases pressed into service by the appellant, the appointment, as in this case, was on provisional basis and subject to verification of caste certificate through proper channel. It necessarily follows that the principle expounded in the three decisions referred to above, can have no application to the case on hand. Indubitably, if the argument of the appellant was accepted, it would inevitably mean that all appointments made before 28.11.2000 must be protected even though it had not become final. That would also mean that all caste certificates issued to persons belonging to “Koshti” community, as being “Halba” Scheduled Tribe in Maharashtra, prior to November 28, 2000 (the day on which Milind’s case was decided by the Constitution Bench), have been validated irrespective of the opinion of the Scrutiny Committee qua those certificates. That cannot be countenanced. For, caste “Koshti” is neither a synonym nor part of a notified Scheduled Tribe “Halba” in Maharashtra."

- 33.** On an analytical consideration of the judgments rendered above, we can deduce different streams of thought even in the Apex Court. In *Milind* (*Supra*), which is the leading case on the point, after holding that writ petitioner – Milind did not belong to the Scheduled Tribe, the Apex Court keeping in view the fact that he had obtained admission in the medical course 15 years earlier and was practicing as a Doctor, held that if any action is taken against the said person, it may lead to depriving society from obtaining the services of a doctor and since large amount of public money had been spent on his education, the Apex Court held that he was entitled to such protection.

34. In *Punjab National Bank (Supra)*, a two Judge Bench of the Apex Court expanded the aforesaid view of the Constitutional Bench in *Milind (Supra)* and held that if a person had been admitted in educational institution or had been appointed to Government job prior to 28.11.2000 and his appointment had become final before the said date i.e. the date of judgment in *Milind (Supra)*, his rights would be protected and he would not be thrown out of the course or from the service on the ground that he did not belong to the Scheduled Tribe. This view was followed in *Kavita Solunke (supra)*, *Shalini (supra)* and *R. Unnikrishnan (supra)*. We have already quoted the observations made in these three cases.

35. The other stream of thought is rendered in the case of *Dattatray (Supra)* wherein the Apex Court held that if the petitioner produces a false certificate, he is not entitled to any protection. In fact, in *Suresh Ramkrishna Burde (Supra)*, the Apex Court went on to hold that the benefit would be restricted only for professional degrees. *Dattatray (Supra)*, *Suresh Ramkrishna Burde (Supra)* and *Sanjay K. Nimje (Supra)*, were distinguished in *Kavita Solunke (Supra)* and *Shalini (Supra)*. The Apex Court was of the view that where a person has not willfully done something wrong and where he obtained a caste certificate showing him to be a member of Scheduled Tribe not by suppressing the fact that he was “Koshti” or “Halba-Koshti” but after disclosing all correct facts but he contended that he was a member of Scheduled Tribe as per understanding of the law prior to the judgment of the Apex Court in *Milind (Supra)*, such person could not be said to have committed any act of deceit. He was *bona fide* under the impression that he is entitled to a Scheduled Tribe certificate. The Apex Court was of the view that since the action was *bona fide* and a long time has elapsed, the person should not suffer. As succinctly stated by the Apex Court an innocent statement

made which later transpires to be incorrect may be seen as false in general sense but normally would not attract punitive or detrimental consequences on the person making it, as the person had made it by error. At the same time, the Apex Court reminded us that where the untruth is coupled with a dishonest intent, then legal retribution is required. On this ground, *Dattatray* (supra) was distinguishable.

36. In *B.H.Khawas* (supra) the judgment delivered in *Kavita Solunke* (supra), *Shalini* (supra) and *R. Unnikrishnan* (supra) have been considered and the Apex Court held that in these cases, the observations were made by the Apex Court in the context of the matter in issue before the Court for passing an order in equity. The judgment rendered in these cases were distinguished mainly on the point that in none of the three cases namely *Kavita Solunke* (supra), *Shalini* (supra) and *R. Unnikrishnan* (supra), there was any clause of provisional appointment subject to verification of the caste certificate as was the case in *B.H.Khawas* (supra).

37. In our opinion, the case of the Petitioners are much nearer to *Kavita Solunke* (supra), *Shalini* (supra) and *R. Unnikrishnan* (supra) and *Dattatray* (supra) does not apply because that was a case where the certificate was false. We are also of the considered view that the judgment in *B.H.Khawas* (supra) may not apply because in that case there was a condition that selection is provisional subject to verification of the caste certificate. In the present case the Petitioners were confirmed in service much earlier.

38. We are also of the view that the law laid down by the Apex Court in the various judgments referred to hereinabove, is the law within the meaning of Article 141 of the Constitution of India and is therefore binding and no Government can issue executive order against the judgments laid down by the Apex Court. Therefore, we are not going into the validity of the

notifications issued by the Government because these notifications have to be read in light of the law laid down by the Apex Court and must be read down to comply with the law of the land.

39. As far as the present cases are concerned, we are of the view, as already indicated above that these cases are covered by *Kavita Solunke* (supra), *Shalini* (supra) and *R. Unnikrishnan* (supra). The Writ Petitioners in all these cases obtained caste certificates much prior to 2000. In fact, in one case, the caste certificate was obtained as far back as on 01.05.1981. All the Petitioners joined service much prior to 2000. In fact one Petitioner joined on 31.11.1982 and the last Petitioner did so on 16.09.1998. They have completed almost 2-3 decades of service. They obtained the caste certificates at a time when all the persons belonging to “Halba-Koshti” or “Koshti” tribe were being given Scheduled Tribe certificates because of the misconception in the States of Maharashtra and Madhya Pradesh that “Halba Koshti” and “Koshti” are part and parcel of “Halba” tribe. It was only after the Apex Court delivered judgment in *Milind* (supra) that the issue was finally resolved. The Petitioners did not falsely claim that they were “Halbas”. The Petitioners are entitled to protection and the learned Single Judge rightly gave them this protection. We accordingly hold that the Petitioners are entitled to be retained in service but with effect from 28.11.2000 they shall be treated to be general category candidates and will not be entitled to claim any benefits of belonging to the Scheduled Tribe.

40. It would be pertinent to mention that the State of Chhattisgarh was formed w.e.f 01.11.2000 and the judgment in *Milind* (supra) was rendered on 28.11.2000 and the protection can only be given to those who were actually “Halba-Koshti” or “Koshti” for the State of Madhya Pradesh and Chhattisgarh prior to 28.11.2000 and were therefore treated as “Halbas”.

41. Having held so, we want to clarify that the notification dated 11.01.2016 is not bad in law. It will however have to be read in the context of the law laid down by the Apex Court in various judgments as explained by us above. This notification may not apply to those Petitioners who have obtained jobs prior to 28.11.2000 provided they have obtained Scheduled Tribe certificate "*bona fide*" and without suppression or misrepresentation of any facts. In case, a person is not a "Halba Koshti" in relation to State of Madhya Pradesh, then that person is not entitled to any protection of law. If a person has obtained a false certificate by misrepresentation of facts or providing wrong information, then that the person is also not entitled to any protection. It is only those who were actually "Halba Koshti" or "Koshti" in the State of Madhya Pradesh and being "Halba Koshti" or "Koshti" believed that they were members of "Halba", a Scheduled Tribe and who got jobs prior to 28.11.2000, are entitled to such protection. This protection cannot be extended to all and sundry. To give an example, if "Halba-Koshti" from the State of Maharashtra had shifted to State of Madhya Pradesh, then he would not be "Halba-Koshti" belonging to Madhya Pradesh and as such, his certificate would be totally false and such a person would not be entitled to any protection.

42. With the aforesaid clarifications, the writ appeals are disposed of.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE