

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

LPA No. 1377 of 2018 (O&M)

Date of Decision: 14.05.2019

Haryana Public Service Commission

.....Appellant

versus

Shweta Kashyap and another

.....Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Kanwal Goyal, Advocate for the appellant .

Mr. Anurag Goyal, Advocate, for respondent No.1.

KRISHNA MURARI, CHIEF JUSTICE

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 12.07.2018 passed by the learned Single Judge.

2. The moot question arising for consideration in this appeal is whether the respondent-petitioner who is scheduled caste in the State where she was born will be entitled to the benefit of reservation in the State where she shifts after getting married even if the caste to which she belongs falls in the same reserved category in the State of migration and she has a domicile from that State. The factual matrix in which the aforesaid question arises for our consideration in brief can be summarized as under:-

The appellant-Haryana Public Service Commission (hereinafter referred to as 'the Commission') issued an advertisement dated 12/16.02.2016 inviting applications for recruitment of 1647 posts of

Assistant Professors (College Cadre) in various subjects in the Department of Higher Education. 50 posts were advertised for the subject History out of which 14 were reserved for scheduled caste category. The respondent-petitioner was an applicant for a post in the subject of History under Scheduled Caste category. She was issued an admit card under Scheduled Caste category and she was successful in the written examination. Vide letter dated 24.11.2017 her candidature was rejected on the ground that she has not submitted the Scheduled Caste Certificate issued by the State of Haryana from parental side. The order was challenged by filing the writ petition. The case set up was that she was issued a Scheduled Caste Certificate dated 25.07.1994 by Tehsildar, Kaul, Aligarh (UP) certifying that she belongs to Jatav caste which was recognized as a Scheduled Caste category under the provisions of the Constitution (Scheduled Caste) Order, 1950 and amendments made therein from time to time. Further case set up was that she was married to one Rajinder Singh in the year 2010, resident of Dhand, District Kaithal, who belongs to Gujjar community which is also a Scheduled caste and thus she migrated to the State of Haryana where also the Jatav caste to which she belongs is recognized as a Scheduled caste.

3. Learned Single Judge noticing the fact that she had a certificate from the State of Uttar Pradesh certifying that she belongs to Jatav caste which is a Scheduled Caste and was also recognized as a Scheduled Caste in the State of Haryana and is married to a person who also belongs to a Scheduled caste in the State of Haryana, held that she is entitled to get the benefit of reservation. It may be relevant to reproduce the observations of the learned Single Judge in this regard which formed the basis of allowing the writ petition:-

*“In the facts of the present case, since as per Caste Certificate (Annexure P-8), petitioner Shweta Kashyap belongs to **Jatav** community, which was approved as Scheduled Caste category in Uttar Pradesh, the proposal of rejection dated 24.11.2017 (Annexures P-5 and P-6) is patently illegal.”*

4. In the backdrop of the above factual matrix and the view taken by the learned Single Judge in the order under appeal we now proceed to consider the core issue raised before us. The question posed before us came up for consideration before the Constitution Bench of the Supreme Court in the case of **Marri Chandra Shekhar Rao v. Dean Seth G.S. Medical College and others 1990(3) SCC 130**. The petitioner therein was born in the State of Andhra Pradesh and belongs to ‘Goudi’ community which was recognized as ‘Scheduled Tribe’ in the Constitution (Scheduled Tribes) Order, 1950 and the father of the petitioner was having a certificate of Scheduled Tribe from Tehsildar on the basis whereof he got employment in the Scheduled Tribes quota in the Government of India Undertaking and was posted in Mumbai, State of Maharashtra. After clearing 12th examination of the Maharashtra State Board of Secondary and Higher Secondary Examination, Bombay Divisional Board, the petitioner therein made an application for admission in a Medical College seeking benefit of reservation in favour of Scheduled Tribes. He was denied admission on the basis of Circular dated 22.02.1985 issued by the Government of India, Ministry of Home Affairs, to the effect that the 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 will be entitled to derive the benefits from the State of origin and not from the State to which he has migrated. The action of denying the

admission was challenged before the Supreme Court. A Constitution Bench after considering the issue observed as under:-

“6. The question, therefore, that arises in this case, is whether the petitioner can claim the benefit of being a Scheduled Tribe in the State of Maharashtra though he had, as he states, a Scheduled Tribe certificate in the State of Andhra Pradesh? Inasmuch as we are not concerned in this application with the controversy as to whether the petitioner correctly or appropriately belongs to the Gouda community or not, or whether the petitioner had a proper certificate, it is desirable to confine the controversy to the basic question, namely, whether one who is recognised as a Scheduled Tribe in the State of his origin and birth continues to have the benefits or privileges or rights in the state of migration or where he later goes.”

5. Noticing the provisions of Articles 341 and 342 of the Constitution of India providing for issuance of a notification by the President with respect to any State [or Union territory], and in case of a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes, which shall for the purposes of this Constitution be deemed to be Scheduled Castes or Scheduled Tribes in relation to that State or Union territory.

6. Analyzing the words ‘for the purposes of this Constitution’ and ‘in relation to that State’ used in the above two Articles of the Constitution, it was observed as under:-

“In this connection, the provisions of Articles 34 1 and 342 of the Constitution have been noticed. These articles enjoin that the President after consultation with the Governor where the States are concerned, by public notification, may specify the tribes or tribal communities or parts of or groups of tribes or tribal communities, which

shall be deemed to be Scheduled Tribes in relation to that State under Articles 341 or 342 Scheduled Tribes in relation to that State or Union Territory. The main question, therefore, is the specification by the President of the Scheduled Caste or Scheduled Tribes, as the case may be, for the State or Union Territory or part of the State. But this specification is 'for the purposes of this Constitution'. It is, therefore, necessary, as has been canvassed, to determine what the expression 'in relation to that state' in conjunction with 'for the purposes of this Constitution' seeks to convey.”

7. Giving a harmonious interpretation to the expression ‘for the purposes of this Constitution’ and ‘in relation to that State’ used in Articles 341 and 342 of the Constitution, the Constitution Bench proceeded to hold as under:-

“13. *It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Venkataramana Devaru v. State of Mysore [1958 SCR 895, 918 : AIR 1958 SC 255] , where Venkatarama Aiyer, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression ‘for the purposes of this Constitution’ in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all — to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating*

but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words “for the purposes of this Constitution” must be given full effect. There is no dispute about that. The words “for the purposes of this Constitution” must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression “in relation to that State” would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will

*denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. **Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution.***

8. The same issue came up for consideration before another Constitution Bench of the Hon'ble Supreme Court in case of ***Action Committee on Issue of Caste Certificate to Scheduled Caste and Scheduled Tribes in the State of Maharashtra and another v. Union of India and another (1994) 5 SCC 244*** wherein a Public Interest Litigation was filed being aggrieved by the denial of State of Maharashtra the benefits and privileges available to Scheduled Caste and Scheduled Tribes specified in relation to that State to the members of the Scheduled Caste and Scheduled Tribes belonging to other State who migrated to the State of Maharashtra. The denial was based on certain letters and circulars issued by the Government of India and consequential instructions issued by the State of Maharashtra which was under challenge in the said Public Interest Litigation. The view expressed by the Hon'ble Apex Court on the issue in the case of ***Marri Chandra Shekhar Rao's*** case (supra) was reaffirmed and reiterated as under:-

"18. We are in respectful agreement with the above view expressed by the Constitution Bench in the aforesaid decision. All the points which were canvassed before us by Mr

Raju Ramachandran were also canvassed by him in the said matter. They were negatived by the Constitution Bench. Nothing has been pointed out to persuade us to think that the view taken by the Constitution Bench requires reconsideration by a larger Bench. In fact we are in complete agreement with the interpretation placed on the various provisions of the Constitution, in particular Articles 341 and 342 thereof, in the said judgment. We, therefore, see no merit in this writ petition and dismiss the same. However, we make no order as to costs.”

9. The issue again came up for consideration before the Hon’ble Apex Court in the case of ***S.Pushpa and others v. Sivachanmugavelu and others 2005(3) SCC, 1***, where the facts of the case were that the Directorate of Education, Government of Pondicherry had issued an advertisement for making recruitment of 350 General Central Service Group “C” posts of secondary grade of which 56 posts were reserved for Scheduled Castes. In response to the advertisement, the employment exchange sponsored the names of candidates of various categories including Scheduled Caste. The employment exchange also sponsored some names of Scheduled Caste candidates from neighbouring employment exchanges as sufficient number of Scheduled Caste candidates were not available in Yanam and Mahe region of the Union Territory of Pondicherry. Out of 55 selected candidates of Scheduled Castes, 29 produced community certificates from the Governments of Tamil Nadu, Andhra Pradesh and Kerala, based on which the Revenue Authority of Pondicherry had issued community certificates to them. The remaining 26 candidates produced community certificates from the Revenue Authority of Pondicherry. The respondents challenged the selection of aforesaid Scheduled Caste candidates mainly on the ground that a migrant Scheduled Caste candidate belonging to another State is not eligible for appointment on a post which is reserved for Scheduled Caste

candidate of the Union Territory of Pondicherry. The Central Administrative Tribunal relied upon the judgments in ***Marri Chandra Shekhar Rao case [Marri Chandra Shekhar Rao v. Seth G.S. Medical College, (1990) 3 SCC 130 : (1990) 14 ATC 671]*** and ***Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India [Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India, (1994) 5 SCC 244]*** and held that the Scheduled Castes who migrated to the Union Territory of Pondicherry after the issuance of Presidential Notification, which has specified Scheduled Castes in terms of Article 341 of the Constitution cannot claim the benefit of reservation in the services of the Government of Pondicherry. Accordingly, the selection and appointment of migrant Scheduled Caste candidates was set aside and a direction was issued to review the selection process.

10. The dispute was taken to the Hon'ble Apex Court and a three Judges Bench referring to Constitution Bench judgments in the case of ***Marri Chandra Shekhar Rao's*** case (supra) and ***Action Committee's*** case (supra) held as under:-

“20. Part XVI of the Constitution deals with special provisions relating to certain classes and contains Articles 330 to 341. Articles 330 and 332 make provision for reservation of seats in the House of the People and Legislative Assemblies of the States respectively, for the Scheduled Castes and Scheduled Tribes. Similar provisions have been made for Anglo-Indian community in Articles 331 and 333. Article 338 provides that there will be a Commission for the Scheduled Castes to be known as National Commission for the Scheduled Castes and it also provides for its composition, powers and duties. Clause (2) of Article 330 provides that the number of seats reserved in the States or Union Territories for the Scheduled Castes or Scheduled Tribes shall bear, as nearly as may be, the same proportion to the number of seats allotted to that

State or Union Territory in the House of the People as the population of the Scheduled Castes in the State or Union Territory or of the Scheduled Tribes in the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory. Similar provision for reservation of seats in favour of SC/ST in the Legislative Assembly of any State is contained in clause (3) of Article 332 of the Constitution. Therefore, in order to ascertain the number of seats which have to be reserved for the Scheduled Castes or Scheduled Tribes in the House of the People or in the Legislative Assembly, it is absolutely essential to ascertain precisely the population of the Scheduled Castes or Scheduled Tribes in the State or Union Territory. A fortiori, for the purpose of identification, it becomes equally important to know who would be deemed to be Scheduled Caste in relation to that State or Union Territory. This exercise has to be done strictly in accordance with the Presidential Order and a migrant Scheduled Caste of another State cannot be taken into consideration otherwise it may affect the number of seats which have to be reserved in the House of the People or Legislative Assembly. Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Articles 341 and 342 after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of a forward caste.

21. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of 'backward classes of citizens' which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or

Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union Territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the Schedule appended to the Presidential Order for that particular State or Union Territory. This article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be 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 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 the Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.”

11. The ratio of decision in the case of ***S.Pushpa v. Sivachanmugavelu*** (supra) was declared to be *per incuriam* by a two Judge Bench in the case of ***Subhash Chandra and another v. Delhi Subordinate Services Selection Board and others*** 2009(15) SCC 458. However, another two Judge Bench in the case of ***State of Uttranchal v. Sandeep K.Singh*** (2010)12 SCC 794, did not agree with the view expressed in the case of ***Subhash Chandra v. Delhi Subordinate Services Selection Board*** case (supra) and referred the matter by observing as under:-

“In our view, a two-Judge Bench of this Court could not have held the decision rendered by a three-Judge Bench in S. Pushpa case [S. Pushpa v. Sivachanmugavelu, (2005) 3 SCC 1 : 2005 SCC (L&S) 327] to be obiter and per incuriam.

A very important question of law as to interpretation of Articles 16(4), 341 and 342 arises for consideration in this appeal. Whether the Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution has any bearing on the State's action in making provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State? The extent and nature of interplay and interaction among Articles 16(4), 341(1) and 342(1) of the Constitution is required to be resolved.

For the aforesaid reasons, therefore, in our view, it would be appropriate that this case is placed before the Hon'ble the Chief Justice of India for constituting a Bench of appropriate strength. The Registry is, accordingly, directed to place the papers before the Hon'ble the Chief Justice of India for appropriate directions.”

12. The specific question arising before us for adjudication as to whether a person who is a Scheduled Caste in the State of her origin will be entitled to the benefit of reservation on shifting to another State on being married where her husband is living and her husband also belongs to the Scheduled Caste and the particular caste to which she belongs falls in the same reserved category in the State of migration, came up for consideration before the two Judges Bench of the Supreme Court in the case of **Ranjana Kumari v. State of Uttranchal 2013(14) SCC 710** and finding that other related matters had already been referred to for adjudication by a larger Bench in the case of **State of Uttranchal v. Sandeep K.Singh** (supra),

referred this specific question as well for consideration by a Larger Bench by making the following observations:-

“The question arising in this appeal is whether a person like the appellant, who is a Scheduled Caste in the State where she was born will not be entitled to the benefit of reservation after marriage in the State where her husband is living despite the fact that the husband also belongs to Scheduled Caste and the particular caste falls in the same reserved category in the State of migration and that she is a permanent resident of that State.

Since the other related matter has been referred to a larger Bench, we think that it would be just and proper to refer this matter also to the larger Bench. Ordered accordingly.”

13. The issue came to be answered by a three Judges Bench in ***Ranjana Kumari v. State of Uttarakhand and others, 2018 SCC OnLine SC 2768***, by observing as under:-

*“Two Constitution Bench judgments of this Court in **Marri Chandra Shekhar Rao vs. Dean, Seth G.S.Medical College and others, and Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another v. Union of India and another**, have taken the view that merely because in the migrant State the same caste is recognized as Scheduled Caste, the migrant cannot be recognized as Scheduled Caste of the migrant State. The issuance of a Caste certificate by the State of Uttarakhand, as in the present case, cannot dilute the rigours of the Constitution Bench judgments in **Marri Chandra Shekhar Rao (supra)** and **Action Committee (supra)**.*

We therefore, find no error in the order of the High Court to justify any interference. The appeal is accordingly dismissed.”

14. The question before us for adjudication thus stands answered by the aforesaid authoritative pronouncements of the Hon'ble Supreme Court. Now we proceed to test the impugned judgment on the touchstone of the parameters laid down by the Hon'ble Apex Court.

15. Learned Single Judge proceeded to allow the writ petition on the ground that since as per the caste certificate, the petitioner-respondent belongs to *Jatav* community which was approved as a Scheduled Caste category in Uttar Pradesh, the proposal of rejection dated 24.11.2017 is patently illegal. We are afraid the learned Single Judge has failed to even address the issue arising in the case. The issue was whether the respondent-petitioner who was a Scheduled Caste in the State of her origin will be entitled to the benefit of reservation after shifting to the State of Haryana on account of her marriage even though the particular caste which she belongs fell in the same category in the State of Haryana where she migrated and was also issued a Domicile Certificate. The view taken by the learned Single Judge in respect of the issue arising for consideration is directly in contrast and in teeth of the pronouncements of the Hon'ble Apex Court.

16. Learned Single Judge while holding that the respondent-petitioner would be entitled for the benefit of reservation in the migrant State of Haryana has relied upon the pronouncement of the Hon'ble Supreme Court in ***Sunita Singh v. State of Uttar Pradesh and others***, Civil Appeal No. 487 of 2018 decided on 19.01.2018 and two judgments of the Rajasthan High Court rendered in the cases of ***Mrs. Sahendra Bai etc. vs. RPSC and another, 2008(4) SCT 222*** and ***Mrs. Mukesh Devi v. State and others*** Civil Writ Petition No. 8385 of 2007 decided on 01.12.2010.

17. Reliance placed by the learned Single Judge on the aforesaid three pronouncements is totally misfounded and the facts of the judgments upon which reliance has been placed are clearly distinguishable from the facts of the case at hand.

18. In the case of **Sunita Singh's case (supra)**, the issue was whether the caste is determined by birth and if a person of a general category marries with a scheduled caste whether he/she would be entitled to be extended the benefit meant for the Scheduled Caste category. The facts were that the lady born in 'Agarwal' family which falls in general category married with a person of a Scheduled caste and was issued a certificate certifying her to be belonging to a Scheduled Caste. In the circumstances, Hon'ble Apex Court held as under:-

"There cannot be any dispute that the caste is determined by birth and the caste cannot be changed by marriage with a person of scheduled caste. Undoubtedly, the appellant was born in "Agarwal" family, which falls in general category and not in scheduled caste. Merely because her husband is belonging to a scheduled caste category, the appellant should not have been issued with a caste certificate showing her caste as scheduled caste."

19. The ratio of the aforesaid judgment of the Supreme Court is on the entirely different issue and cannot said to stand attracted in the facts of the present case.

20. The two judgments referred to above rendered by Rajasthan High Court in our considered opinion are directly in the teeth of the two Constitution Bench judgments of the Hon'ble Apex Court in **Marri Chandra Shekhar Rao's case (supra)** and **Action Committee's case (supra)**, as also

the latest three Judges judgment in the case of ***Ranjana Kumari v. State of Uttaranchal (supra)*** and thus cannot be treated to be laying down a good law.

21. In the wake of the above facts and discussion as also the law settled by the pronouncements of the Hon'ble Apex, impugned judgment rendered by the learned Single Judge is not liable to be sustained and is hereby set aside. As a consequence, the appeal stands allowed.

However, in the facts and circumstances, we do not make any order as to costs.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

14.05.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No