

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgement delivered on: 02.11.2022

+ **W.P.(C) 5200/2018 & CM APPL. 20177/2018**

ASHU & ORS Petitioners

versus

THE REGISTRAR GENERAL, HIGH COURT OF DELHI
AND ORS. Respondents

AND

+ **W.P.(C) 5240/2018 & CM APPL. 20336/2018, CM APPL.
21367/2018**

RAVI AND ORS. Petitioners

versus

THE REGISTRAR GENERAL, HIGH COURT OF DELHI
AND ORS. Respondents

AND

+ **W.P.(C) 1502/2019 & CM APPL. 6960/2019**

NARENDER AND ANR. Petitioners

versus

THE REGISTRAR GENERAL, HON'BLE HIGH COURT
OF DELHI Respondent

AND

+ **W.P.(C) 1623/2019 & CM APPL. 7477/2019**

RAMOVTAR MEENA & ORS. Petitioners

versus

THE REGISTRAR GENERAL, HON'BLE HIGH COURT
OF DELHI Respondent

AND

+ **W.P.(C) 299/2019**

VIJAY SINGH MEENA & ORS. Petitioners
versus

DELHI HIGH COURT THROUGH THE REGISTRAR
GENERAL Respondent

AND

+ **W.P.(C) 625/2019**

AJAB SINGH S/O SH. DAL CHAND Petitioner
versus

THE REGISTRAR GENERAL DELHI HIGH
COURT Respondent

AND

+ **W.P.(C) 8860/2019 & CM APPL. 36553/2019**

MS. MAMTA SINGHMAR Petitioner
versus

THE REGISTRAR GENERAL, HIGH COURT OF DELHI,
NEW DELHI Respondent

AND

+ **W.P.(C) 6378/2019 & CM APPL. 6344/2020**

SHRI VIJAY PRAKASH Petitioner
versus

THE REGISTRAR, DELHI HIGH COURT Respondent

Advocates who appeared in this case:

For the Petitioners : Mrs. Kavita Jha, Mr. Rajeev Jha & Mr.
Aditeya Bali, Advs.
Mr. B.K. Berera, Adv.
Mr. Nitin K. Gupta, Mr. K.P. Ranjan, Mr.
Anmol Joshi & Ms. Ritika Gautam, Advs.

Mr. Subodh Kr. Pathak & Mr. Akash Swami,
Advs.

Mr. Rajendra Kumar & Mr. Ashutosh Saini,
Advs.

For the Respondents : Mr. Rajesh Kumar, Adv.
Mr. Viraj Datar, Sr. Adv. with Ms. Rashmi
Chopra, Mr. Puneet Rathi & Ms. Sonali
Batra, Advs.
Mr. Viraj Datar, Sr. Adv. with Mr. Rajat
Aneja & Ms. Chandrika Gupta, Advs.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The common question that arises in these petitions is whether the petitioners, who belong to the reserved category (SC/ST), are ineligible to be appointed as the Court Attendant/Room Attendant (Group-C), under the reserved category, in the establishment of this Court on the ground that they are not ordinarily residents of Delhi.
2. The aforesaid question arises in the context of the selection process that was commenced by inviting online applications for the said posts by a notification dated 12.06.2017 (hereafter '**the Notification**').
3. In terms of the Notification, online applications were invited from Indian citizens for filling up the following posts and preparing a panel for future vacancies:-

Sl. No.	Post	Level in Pay-matrix as per 7 th CPC	No. of Vacancies				Total	Reservation for PH and Ex-servicemen	
			Gen	SC	ST	OBC		PH	Ex-servicemen
1.	COURT ATTENDANT (GROUP 'C') ROOM ATTENDANT (GROUP 'C')	3 rd	-	19	09	35	63	02	07
			-	01	01	03	05		

4. The essential qualifications, as stipulated in the Notification, to be eligible for applying to the said posts are reproduced below:-

“Essential Qualification:

Matriculation pass or equivalent from a recognized Board or Industrial Training Institute Pass Certificate from a recognized Institute.

Age:-

Age should not be below 18 years and over 27 years as on 01.01.20:17 (**i.e. he/she must have been born not earlier than 02.01.1990 and not later than 01.01.1999**), The upper age limit for members of Scheduled Castes/Scheduled Tribes shall be 32 years and for Other Backward Classes 30 years. The upper age limit for persons with disability, whose one leg or both legs are affected and have a minimum of 40% of physical defect or deformity, shall be relaxable by 10 years (13 years for OBC & 15 years for SC/ST). For **Ex-servicemen**, there is a relaxation of 3 years for Unreserved/General candidates, 6 years for OBC and 8 years for SC/ST after deduction of the military service rendered from the actual age as on **01.01.2017 subject to maximum age of 50 years**. There shall be no upper age limit for persons serving in this Court and the Courts subordinate to it. The relaxation in upper age limit will not be applicable to the candidates who are working in other Govt. Departments/Public Sector Undertakings etc.

5. The Notification also specified for Reservation and provided as under:

“Reservation:

Consistent with maintenance of efficiency of Administration and subject to availability, 15 per cent posts for Scheduled Castes, 7.5 per cent posts for Scheduled Tribes, 27 per cent for Other Backward Classes shall be reserved. Reservation shall also be available to Persons with Disability(40% and above) and Ex-servicemen in accordance with the Rules, Orders and Notifications issued from time to time by the Government of India.”

6. The eligible candidates were required to appear for a written test based on the pattern of ‘Multiple-Choice Question’, which carried a weightage of 100 (hundred) marks. Those candidates, who qualified the written test, were required to appear for an interview subject to the condition that the number of candidates shortlisted for the interview would not be more than five times the total number of vacancies available in each category. The final merit list of the successful candidates was required to be prepared on the basis of aggregate of their performance in the written tests and interviews. It was further specified that preference would be given to those having any specialized experience/knowledge in cooking/carpentry/electrician job or driving etc.

7. The Notification expressly provided that copies of all the documents, in support of the application, would be sought at the time of interview from those candidates that were shortlisted for appearing for the interview.

8. The petitioners, in these petitions, filled online application forms in the month of June, 2017 and were issued admit cards for appearing in the written examination. The petitioners were successful in securing the qualifying marks in the written examination and were shortlisted for the interview.

9. Whilst some of the petitioners were permitted to appear for the interview but were subsequently not recommended for appointment on the ground that they had failed to submit any proof of being ordinarily residents of Delhi; in some cases, the petitioners were not permitted to appear for the interview on the ground that their caste certificates were issued outside Delhi. In such cases, this Court had passed the direction permitting the concerned petitioners to appear for the interview with the direction that the results be kept in a sealed cover pending the outcome of these petitions. These petitioners appeared for the interview but they were not recommended for appointment on the ground that they had not submitted any proof of being ordinarily resident of Delhi.

REASONS AND CONCLUSIONS

10. Article 15 of the Constitution of India proscribes discrimination on the ground of religion, race, caste, sex or place of birth. Article 15(4) of the Constitution of India carves out an exception; it provides that nothing stated in Article 15 or Article 29 (2) of the Constitution of India shall prevent the State from making special provisions for advancement of any socially and educationally backward classes of citizens or of the Schedules Castes and Schedules Tribes.

11. It is now well settled that providing special treatment for the under-privileged is a facet of equality guaranteed under Part-III of the Constitution of India. Treating unequal as equals is a well recognised form of discrimination. The Constitution of India includes special provisions relating to certain classes including the Scheduled Castes and Scheduled Tribes. Article 330 of the Constitution of India provides for reservations of seats for the Scheduled Castes and Schedule Tribes in the House of Parliament; similarly, Article 332 of the Constitution of India provides for such reservation in the Legislative Assemblies of States. Article 335 of the Constitution of India expressly provides that for appointments to the services and posts in connection with the affairs of the Union or of State, the claims of the members of the Scheduled Castes and Scheduled Tribes would be taken into consideration.

12. Article 341 (1) of the Constitution of India provides powers to the President to specify caste, races, tribes as Scheduled Castes in relation to any Union Territory or State. Similarly, Article 342 of the Constitution of India provides for the President to specify the tribes or tribal communities or parts of or groups within tribes or tribal communities, which shall be deemed to be Scheduled Tribes in relation to State or the Union Territory, as the case may be. Articles 341 and 342 of the Constitution of India are relevant and set out below:-

“341. Scheduled Castes—(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.

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. The question whether a person, who belongs to a Scheduled Tribe in relation to a State, is entitled to avail benefits available to persons belonging to Scheduled Tribes in another State was considered by the Constitution Bench of the Supreme Court in the case of **Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors.: (1990) 3 SCC 130**. This question arose in the context of a petitioner, who belonged to a Scheduled Tribe in the State of Andhra Pradesh and had sought benefits of reservation for admission to a medical college in the State of Maharashtra.

14. The Supreme Court construed the words “*in relation to that State or the Union Territory, as the case may be*” as used in Articles 341 and 342 of the Constitution of India to mean that a member of Scheduled Caste or Scheduled Tribe of particular State would be considered as such in respect the said State and would not be entitled to carry special privileges or rights granted to him in that State to another State.

15. Paragraph 13 of the said decision is relevant and set out below:-

“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.”

16. The said view was reiterated in a subsequent decision of the Supreme Court in ***Action Committee on Issue of Caste Certificate to Scheduled Castes and Schedules Tribes in the State of Maharashtra v. Union of India: (1994) 5 SCC 244***. The Supreme Court considered the import of certain instructions issued by the Ministry of Home Affairs, which permitted issuance of Scheduled Caste or Scheduled Tribe Certificates to members belonging to the said category, who had migrated from other States. In terms of the said instructions, Scheduled Caste/Scheduled Tribe Certificates were required to be issued irrespective of whether a particular caste/tribe was notified in relation to the State/Union Territory to which a member had migrated and sought such certificate. The Court held that issuance of a certificate was a facility extended to persons, who had migrated, and that did not entitle a person to benefits of reservation in that State. The Court observed that “*certificate to be so issued would be in relation to the State/Union Territory from which the person concerned had migrated and not in relation to the State/Union Territory to which he had migrated. Therefore, the migrant would not be entitled to derive benefits in the State to which he had migrated on the strength of such a certificate.*”

17. Insofar as the question whether a member of the Scheduled Caste or Schedule Tribe in a particular State carries the benefit of migration to another State is concerned, the said issue stands concluded by the aforementioned authoritative decisions of the Supreme Court in ***Marri***

Chandra Shekhar Rao v. Dean, Seth G.S. Medical College & Ors. (*supra*) and ***Action Committee*** (*supra*).

18. The question whether a member of the Scheduled Caste or Schedule Tribe would carry the benefits of his/her reservation on migration to a Union Territory was also considered by the Supreme Court in ***S. Pushpa & Ors. v. Sivachanmugavelu & Ors.*** (2005) 3 SCC 1. The said decision was in the case, where the appellants belonged to a Scheduled Caste of another State, who were granted benefit of reservation for appointment to the post of Selection Grade Teachers in the Union Territory of Pondicherry. The Central Administrative Tribunal (Madras Bench), following the decisions in ***Marri Chandra Shekhar Rao v. Dean, Seth, G.S. Medical College & Ors.*** (*supra*) and ***Action Committee*** (*supra*), had allowed the said petitions challenging their selection to the said post inasmuch as the benefits of reservation had been extended to migrants, who did not belong to the Scheduled Castes as notified for the Union Territory of Pondicherry (now known as Puducherry). In the said case the court referred to letter dated 04.02.1974 issued by the Government of India, Ministry of Home Affairs. The said letter, *inter alia*, clarified as under:-

“So far as reservations for SC/ST candidates in posts/services under the Central Government are concerned, the concession is admissible to all SCs and STs which have been recognized as such under the orders issued from time to time irrespective of the State/Union Territory in relation to which particular castes or tribes have been recognized as SCs Tribes. Thus for a reserved vacancy in a Central Government office located in a State, any SC candidate throughout the country would be eligible. Since Pondicherry is a Union Territory all orders regarding reservations for Scheduled Castes/Tribes issued by

the Department of Personnel in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration. Also as such an SC/Tribe candidate from outside Pondicherry should also be eligible for a vacancy reserved for SCs/ST in the Union Territory Administration.”

19. Following the receipt of the aforesaid letter from the Government of India, the General Administration Department of the Government of Pondicherry had issued a government order dated 16.02.1974, which reads as under:-

“In view of the clarifications of the Government of India all Secretariat Departments, Heads of Departments/Offices are informed that SC/Tribe candidates from outside the Union Territory of Pondicherry should also be considered for appointment to posts reserved for SCs/Tribe in this administration. These instructions should be followed strictly.”

20. Subsequently, the Government of Pondicherry had also issued a clarificatory circular dated 06.01.1993. In view of the aforesaid orders/circulars, the Pondicherry Administration extended special benefits to the candidates belonging to Scheduled Tribes and Scheduled Castes as notified in relation to the State of their origin. The Court found that extension of such benefits even to members of Scheduled Castes and Scheduled Tribes, who had migrated from their States, would not fall foul of any law. The relevant extract of the said decision reads as under: -

“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 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."

21. However, in a subsequent decision in the case of ***Subhash Chandra & Anr. v. Delhi Subordinate Services Selection Board & Ors.*** 2009 (15) SCC 458, the Supreme Court found that the observations made in ***S. Pushpa & Ors. v. Sivachanmugavelu & Ors.***

(*supra*) were in conflict with the decision rendered by the Constitution Bench of the Supreme Court in ***Marri Chandra Shekhar Rao v. Dean, Seth, G.S. Medical College & Ors.*** (*supra*). Thus, the Court held that the “*the dicta in S. Pushpa is an obiter and does not lay down any binding ratio*”.

22. Subsequently, in the case of ***State of Uttaranchal v. Sandeep Kumar Singh and Ors.*** (2010) 12 SCC 794, the Supreme Court expressed its reservation regarding the decision rendered by a Bench of two Judges in ***Subhash Chandra & Anr. v. Delhi Subordinate Services Selection Board & Ors.*** (*supra*). The Court held that it was not open for a two Judge Bench of the Supreme Court to hold that a decision of a three Judge Bench [referring to the decision in ***S. Pushpa & Ors. v. Sivachanmugavelu & Ors.*** (*supra*)] as obiter and *per incuriam*. The Court held that it would be apposite that the case be referred to a larger Bench.

23. Whilst the aforesaid reference to a larger bench of the Supreme Court was pending, a Full Bench of this Court was constituted to consider the batch of matters involving the question of granting benefit of reservation to reserved categories from other states. The said batch of petitions was disposed of by the decision rendered in the case of ***Deepak Kumar & Ors. v. District and Sessions Judge, Delhi and Ors.*** (2012) 192 DLT 602 (Full Bench). The Full Bench of this Court had held that the decision of the Supreme Court in ***S. Pushpa & Ors. v. Sivachanmugavelu & Ors.*** (*supra*) is a binding precedent notwithstanding the reservation expressed by the Supreme Court in the

case of *Subhash Chandra & Anr. v. Delhi Subordinate Services Selection Board & Ors.* (*supra*) as the decision in *S. Pushpa & Ors. v. Sivachanmugavelu & Ors.* (*supra*) was rendered by a Bench of three Judges. Accordingly, the benefit of reservation was directed to be extended to the petitioners, who belonged to notified castes/tribes *albeit* in relation to other States and not in relation to the National Capital Territory of Delhi. It is material to note that the petitioners had sought benefit of the reservation for appointments to the posts under the district judiciary. Given the importance of the matter, the Court also granted a certificate of appeal to the Supreme Court under Article 134 of the Constitution of India.

24. The question whether the benefit of reservation would be extended to migrant Scheduled Castes/Scheduled Tribes from another State/Union Territory including the appeals preferred pursuant to the certificate of appeal granted by the Full Bench of this Court under Article 134A of the Constitution of India in *Deepak Kumar & Ors. v. District and Sessions Judge, Delhi and Ors.* (*supra*), was considered by the Constitution Bench of the Supreme Court in *Bir Singh v. Delhi Jal Board & Ors.: (2018) 10 SCC 312*. The Supreme Court, following the decision in *Marri Chandra Shekhar Rao v. Dean, Seth, G.S. Medical College & Ors.* (*supra*), concluded as under: -

“34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions “in relation to that State or Union

Territory” and “for the purpose of this Constitution” used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State ‘A’ cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State ‘A’.”

25. Insofar as granting benefit of reservation in the employment under a Union Territory is concerned, there is divergence of opinion amongst the members of the Bench. The majority decision, delivered by Ranjan Gogoi J, held that insofar as a Union Territory is concerned, it was not necessary to go into the correctness of some of the views expressed by the Supreme Court in *S. Pushpa & Ors. v. Sivachanmugavelu & Ors.* (*supra*).

26. The Supreme Court concluded that the National Capital Territory of Delhi enjoys a special status inasmuch it has the power to enact laws on any of the subjects in List II & List III of the Constitution of India. The Court also examined the scheme of appointment to subordinate services in the National Capital Territory of Delhi and held that insofar as the National Capital Territory of Delhi is concerned, the pan-India reservation rule in force is in accord with the constitutional scheme relating to services under the Union and the States/Union Territories. It is important to note that the appeals preferred pursuant to the certificate granted by the Full Bench of this Court in the *Deepak Kumar & Ors. v. District and Sessions Judge, Delhi* (Civil Appeal no.

1085/2013) was not allowed but disposed of in view of the aforesaid conclusion. The decision rendered by the Full Bench of this Court – which was in respect of appointments to the posts with the district judiciary – was not set aside.

27. It is clear from the above that the controversy with regard to extending the benefit of reservation in employment to the services under the State/Union Territory revolved, essentially, on the question whether the benefit of the Presidential order notifying Scheduled Castes and Scheduled Tribes in relation to a State or a Union Territory could be extended to grant benefits in another State/Union Territory.

28. Insofar as the States are concerned, the decision of the Constitution Bench of the Supreme Court in **Marri Chandra Shekhar Rao v. Dean, Seth, G.S. Medical College & Ors.** (*supra*) and recently in **Bir Singh v. Delhi Jal Board & Ors.** (*supra*) authoritatively concludes the issue. A person who belongs to a Scheduled Caste/Scheduled Tribe in another State is not entitled to benefits extended to the reserved categories in another State as he/she would not belong to Scheduled Caste/Scheduled Tribe in relation to that State.

29. Insofar as the services under the National Capital Territory of Delhi are concerned, the decision in the case of **Bir Singh v. Delhi Jal Board & Ors.** (*supra*) and **Deepak Kumar & Ors. v. District and Sessions Judge, Delhi and Ors.** (*supra*) hold that the rule of pan-India reservation would be applicable. Thus, all candidates belonging to reserved categories notified by the Presidential Order in any State or

Union Territory would be entitled to benefit of reservation in the subordinate services in the National Capital Territory of Delhi.

30. It is relevant to note that in none of the decisions, as referred to above, the question of domicile or the question of disqualifying any member of Scheduled Caste/Scheduled Tribe from the benefits of reservation on the ground of its residential status was in issue.

31. In the present case, the Establishment of the Delhi High Court (the Establishment) had denied the benefit of reservation to the petitioners solely on the ground that they have been unable to produce certificates that they are ordinarily residents of Delhi. It is important to note that in terms of the Notification, applications were invited from all citizens of this Country without any qualification as to their place of residence. It is also not the case of the Establishment that persons belonging to Scheduled Castes and Scheduled Tribes of another State are not eligible to apply to the post of Court Attendant/Room Attendant as advertised in terms of the Notification. Concededly, there is no requirement for a general category candidate to establish that he is an ordinarily resident of Delhi for qualifying for the said appointment. The requirement for a candidate to be an ordinarily resident of Delhi has been carved out only in respect of candidates, who claim reservation by virtue of belonging to the Scheduled Castes and Scheduled Tribes, as notified in relation to a State other than National Capital Territory of Delhi.

32. This Court is unable to find any basis for such disqualification; the Notification did not provide for any such qualification.

33. Mr Dattar, learned senior counsel appearing for the Establishment of the Delhi High Court, submitted that the condition that a candidate, who seeks the benefit of reservation, should be ordinarily resident in Delhi is premised on the decision of this Court in ***Ravindra Devi & Ors. v. Govt. of N.C.T. of Delhi & Ors.: (2013) 139 DRJ 321 (DB)***. He, however, concedes that none of the other decisions qualify that the benefit of reservation be made available only to persons ordinarily resident of Delhi.

34. The decision in the case of ***Ravindra Devi & Ors. v. Govt. of N.C.T. of Delhi & Ors. (supra)*** was delivered by this Court, while the appeal preferred from the decision of the Full Bench of this Court in ***Deepak Kumar & Ors. v. District and Sessions Judge, Delhi and Ors. (supra)*** was pending before the Supreme Court.

35. In ***Ravindra Devi & Ors. v. Govt. of N.C.T. of Delhi & Ors. (supra)***, this Court had had referred to the decisions of the Supreme Court in ***Marri Chandra Shekhar Rao v. Dean, Seth, G.S. Medical College & Ors. (supra)***; ***Action Committee (supra)***; and ***S. Pushpa & Ors. v. Sivachanmugavelu & Ors. (supra)***; and of the Full Bench of this Court in ***Deepak Kumar & Ors. v. District and Sessions Judge, Delhi and Ors. (supra)*** and observed that decision in the case of Deepak Kumar would hold the field. The Court had also referred to Office Memorandum dated 27.08.2003 issued by the Government of NCT of Delhi with regard to extending the benefit of reservation for recruitment of post under the Government of NCT of Delhi.

36. It is relevant to refer to Paragraph nos. 21, 22 and 23 of the said decision, which were dispositive of the controversy before the Court.

The said paragraphs are set out below:-

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

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

"Ministry of Home Affairs, Govt. of India vide letter cited above have clarified that the instructions contained in the MHA, O.M. No. 7/2/55/SCT dated 14.10.55, in accordance with which the percentages of reservation prescribed for recruitment on an All India basis are required to be followed in Delhi continue to be in force and applicable in respect of civil post under the Govt. of NCT of Delhi. Accordingly, the Civil posts under the Govt. of NCT of Delhi reserved for Scheduled Tribes are required to be filled up from amongst Scheduled Tribes candidates irrespective of nativity.

Accordingly, it has been decided that Govt. of NCT of Delhi may continue to reserve the prescribed percentage of Civil posts under the Govt. for appointment of Scheduled Tribes candidates as has been the practice in the past. Therefore, in terms of the aforesaid clarification 7.5% of Civil posts under the Govt may be kept reserved for appointment of Scheduled Tribes candidates irrespective of their nativity and

appropriate action for recruitment may be taken.” (Emphasis Supplied)

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

37. It is apparent from the above that the Court had read in the requirement of being ordinarily resident of Delhi for seeking benefit of reservation on the ground that such benefit also available to migrant Scheduled Castes and Scheduled Tribes. Clearly, there can be no such requirement where recruitment is to a post to which all citizens of India, irrespective of their residence, are eligible to apply. And, more importantly, the rule of pan-India reservation is applicable. Thus, if a candidate is able to furnish a certificate of belonging to a Scheduled Caste or Scheduled Tribe – which may otherwise be issued only by the competent authority where such a candidate is ordinarily resident – he cannot be denied the benefit of reservation as specified under the Notification.

38. The case of ***Bir Singh v. Delhi Jal Board & Ors.*** (*supra*) was rendered subsequent to the decision in ***Ravindra Devi & Ors. v. Govt. of N.C.T. of Delhi & Ors.*** (*supra*). As noted above, the said decision did not allow the appeal preferred against the decision of the Full Bench of this Court in ***Deepak Kumar & Ors. v. District and Sessions Judge, Delhi and Ors.*** (*supra*) and, in unambiguous terms, held that

rule of pan-India reservation would apply to recruitment to posts in the subordinate services in the National Capital Territory of Delhi.

39. These petitions in respect of petitioner nos. 1 and 2 in W.P.(C) 5200/2018; petitioner nos. 1, 2 and 3 in Petition No. W.P.(C) 5240/2018; and petitioner no. 4 in W.P.(C) 1623/2019 were dismissed following the decision of the Full Bench of this Court in ***Deepak Kumar & Ors. v. District and Sessions Judge, Delhi and Ors.*** (*supra*) as they belonged to the category Other Backward Classes and not Scheduled Castes or Scheduled Tribes by various orders passed earlier. These petitions survive only in respect of the other petitioners.

40. In view of the above, these petitions are allowed and the Establishment of the Delhi High Court is directed to consider appointment of the petitioners to the advertised posts under the quota for the reserved category candidates, without insisting that the petitioners establish that they are ordinarily residents of Delhi. This is subject to the petitioners otherwise qualifying for such appointment in the order of merit.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 02, 2022

Ch