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Court : Delhi

Decided On : Sep-12-2012

Judge : The Honourable Acting Chief Justice Mr. a.K. Sikri, the Honourable Mr. Justice S. Ravindra Bhat &Amp; Rajiv Sahai Endlaw

Appeal No. : W.P.(C) 5390,7717, 7878, 8368 OF 10, 816, 1205, 1513, 1713, 3278 & 3223 OF 11

Appellant : Deepak Kumar and Others

Respondent : District and Sessions Judge, Delhi and Others

Judgement :

S. RAVINDRA BHAT

1. The Constitution makers fervently hoped to usher a society committed to equality, where barriers of race, gender, domicile, descent and the unforgiving marginalization of a large section of the society as a result of the ills of the caste system and the practise of untouchability, would eventually be eliminated. The commitment has remained largely an unrealized promise. The strategy of the State to bridge the social gulf through affirmative action has thrown up constant challenges which Courts are called upon to resolve. This is one such challenge, where the Court has to grapple with the interpretation of Articles 341 and 342 read with Article 16, in the context of differing standards of what is the permissible reservation standard applicable on the one hand to residents of states who take up

residence in one state, as opposed to residents of states who take up residence in Union territories. This judgment seeks to answer a reference made to the Full Bench, constituted for the purpose of deciding the appropriate course which this Court should adopt in regard to the interpretation of Articles 341 and 342 of the Constitution of India, in the light of conflicting decisions of the Supreme Court, and whether the field is covered by larger, Constitution Bench judgments of that Court.

2. The Court would discuss the facts of each case later, in the course of judgment, after considering the legal position, and seek to apply the principles deducible. At this stage, it would be necessary to state that the precise question involved is whether castes or tribes which do not find mention in the relevant Scheduled Castes or Scheduled Tribes orders issued by the President or the Amendment Acts (by Parliament) in relation to the Union Territory of Delhi, but are so described in relation to other states or Union Territories or such castes who are separately notified as scheduled castes in relation to other states, can claim the benefit of reservation for the purpose of employment in the service of the Union Territory of Delhi, or for the purpose of admission to its educational institutions. The reference arose in the context of the previous decision of a two judge Bench of this Court, in Delhiand State Subordinate Selection Board v Mukesh Kumar (decided on 25th July, 2011, in WP 610/2011). It was held there that:

“10. From the aforesaid pronouncement of law, it is vivid that Scheduled Castes or Scheduled Tribes in one State cannot get the benefit in another State. The parents of the respondents may belong to the castes of “Chamar”, “Jatva”, “Kali” and “Pasi” and those castes may have been notified in terms of Scheduled Caste Order or Scheduled Tribe Order issued in terms of Clause (1) of Article 341 or Article 342 of the Constitution of India in a particular State but the respondents who have obtained the certificates in Delhi on the basis of the certificates of their parents issued by other States and have migrated to Delhi, cannot avail the benefit. Thus, the view expressed by the tribunal that they belong to Scheduled Castes in the National Capital Territory of Delhi because of the said notification and, hence, what is only required is the authentication and verification of the same is not in consonance with the decisions of the Marri Chandra Shekhar Rao (supra), Action Committee (supra) and Subhash Chandra and Anr. (supra).”

3. During the hearing before the Division Bench (which initially heard the present cases), it was submitted that the above decision, as it was premised on the judgment in Subhash Chandra v. Delhi Subordinate Services Selection Board (2009) 15 SCC 458 is not a binding precedent, because a larger, three judge decision in S.Pushpa and Ors. v. Sivachanmugavelu and Ors. 2005 (3) SCC 1 (hereafter “Pushpa”) had held that unlike in the case of States, Union Territories are within the administrative control of the Union Government, in view of the express provisions of the Constitution. Consequently, any Scheduled Caste or Scheduled Tribe notified as such by the President, can be classified as such caste or tribe, under Article 16 (4) of the Constitution, and once that is done, each member of such caste or tribe, who answers that description would be entitled to the benefit of reservation in all Union Territories. In the case of States, however, having regard to separate administrative arrangements under the Constitution, such a position would not apply and those castes or tribes, notified in relation to those state(s) as Scheduled Castes or Scheduled Tribes, alone would be entitled to the benefits, and those migrating from one state to another, cannot enjoy such benefits. The decision in Pushpa being rendered by a larger bench of three judges, could not be characterized as obiter dicta. Counsel for some of the petitioners (who relied on the benefits of the Pushpa decision) further argued that the Supreme Court itself has stated that the decision in Subhash Chandra could not have said that Pushpa was not binding, and the proper course should have been to refer the matter for decision by a larger Bench. In this context, it was submitted that such course has been adopted precisely in State of Uttaranchal vs . Sandeep Kumar Singh and Ors (2010) 12 SCC 794. In the latter decision, it was observed that:

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 where under 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.

A two Judge Bench in Subhash Chandra and Anr. vs. Delhi Subordinate Services Selection Board and Ors. held that the dicta in S. Pushpa case is an obiter and does not lay down any binding ratio. We may notice that a three Judge Bench in S. Pushpa case relied on Marri Chandra Shekhar Rao; Action Committee. cases and understood the ratio of those judgments in a particular manner. In our considered opinion, it was not open to a two Judge Bench to say that the decision of a three

Judge Bench rendered following the Constitution Bench judgments to be per incuriam.

8. In Central Board of Dawoodi Bohra Community and Anr. vs. State of Maharashtra and Anr. (2005) 2 SCCC 673 a Constitution Bench of this Court in categorical terms held that the law laid down by the Supreme Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. A Bench of lesser Coram cannot disagree or dissent from the view of the law taken by a Bench of larger Coram. In case of doubt all that the Bench of lesser Coram can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger Coram than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a Coram larger than the one which pronounced the decision laying down the law the correctness of which is doubted.

9. In our view, a two Judge Bench of this Court could not have held the decision rendered by a three Judge Bench in S. Pushpa case to be obiter and per incuriam.

10. A very important question of law as to interpretation of Articles 16 (4), 341 and 342 arises for consideration in this appeal. Whether Presidential Order issued under Article 341(1) or 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.

11. 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."

As a result of the above submission, the Division Bench was of the opinion that it would be appropriate that these writ petitions are considered by a Full Bench.

Provisions of the Constitution of India

4. The relevant provisions to be considered in this case are Articles 16, 341, 342 and Article 366 of the Constitution of India. They read as under:

“16. Equality of opportunity in matters of public employment.-

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any 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.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.

(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause

(4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

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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 of 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.

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366. Definitions**.-**In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

XXXXXX XXXXXX XXXXXX (24) “Scheduled Castes” means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 to be Scheduled Castes for the purposes of this Constitution;

(25) “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution…”

Submissions on behalf of Petitioners in WP No. 5390/2010, WP No. 3223/2011 3278/2011, 7717/2010 and WP 1513/2011 in line with the decision in Pushpa.

5. The Petitioners, who seek directions of the Court that the judgments in Pushpa is binding and that the judgment in Subhash Chandra ought not to be followed, urged that the two previous decisions in Marri Chandrasekhara Rao Vs. The Dean, Seth GS Medical College, (1990) 3 SCC 130 and Action Committee vs. Union of India, (1994) 5 SCC 244, while considering the question held that the benefits of reservation to migrant Scheduled Caste candidates of one State against quotas reserved for Scheduled Caste candidates in the other states cannot be given reservation benefit, would not apply in the case of Union Territories. They argued that Pushpa considered the scheme of the Constitution as well as the said two judgments (Marri and Action Committee) and held as follows:

“the Government of Pondicherry has throughout been proceeding on the basis that being a Union Territory, all orders regarding reservation for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry Administration as well. Since all SC/ST candidates which have been recognised as such under the orders issued by the President from time

to time irrespective of the State/Union Territory, in relation to which particular castes or tribes have been recognised as SCs/STs are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry Administration. Consequently, all SC/ST candidates from outside the UT of Pondicherry would also be eligible for posts reserved for SC/ST candidates in the Pondicherry Administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry Administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in the Pondicherry Administration.

17. We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in Marri Chandra Shekhar Rao cannot have application here as UT of Pondicherry is not a State. As shown above, a Union Territory is administered by the President through an Administrator appointed by him. In the context of Article 246, Union Territories are excluded from the ambit of the expression “State” occurring therein. This was clearly explained by a Constitution Bench in T.M. Kanniyan v. ITO [AIR 1968 SC 637]. In New Delhi Municipal Council v. State of Punjab [(1997) 7 SCC 339] the majority has approved the ratio of T.M. Kanniyan and has held that the Union Territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of Marri Chandra Shekhar Rao in setting aside the selection and appointment of migrant SC candidates.;

20. .... 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.

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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..”

It is argued that the position of law being clear, this Court is bound by Pushpa, and cannot, having regard to the imperative of Article 141, follow Subhash Chandra,

which was rendered by a Bench composition of two judges. Moreover, submitted learned counsel, Subhash Chandra has been doubted and referred for decision by a larger Bench in Sandeep Kumar Singh (supra).

6. Counsel argued that unlike States, the Union Territories are not federating units, and have a position subordinate to the Union Government. In view of this, it is open to the Union Government, exercising its independent powers under Article 16 (4), to declare which of the castes are to be treated as Scheduled Castes for the purpose of recruitment to Union Territories. Furthermore, the power to classify what castes are Scheduled Castes is that of the President, as provided under Articles 341 and 342 of the Constitution. Having regard to this undeniable position, and the constitutional structure which envisages ultimate administrative control of the Union Territories by the Union Government, the Pushpa rule is sound, and has to be accepted. The view of the Division Bench, preferring Subash Chandra?s ratio, is unsustainable in law.

7. It was further argued that the Pushpa rule is binding on this Court, which has no discretion in the matter of interpretation. Counsel argued that the previous decisions in Marri and Action Committee were considered in Pushpa; moreover, those previous decisions dealt with migration from states of scheduled castes and scheduled tribes (some of the castes or tribes being mentioned in the Presidential orders in respect of more than one state). However, the Court in those two cases did not have the occasion to consider the question from the perspective of the Union Territories.

8. Learned Senior counsel contended that Article 141 and the decisions reported bind this Court into applying the Pushpa rule which has not been overruled till date, and continues to be the law on the subject as far as the Union Territories are concerned.

9. It was argued that in any event, the Subhash Chandra decision had been given only prospective application or effect by virtue of the Supreme Court’s order dated 13.11.2009. Therefore, wherever vacancies arose, or selection processes began prior to that decision, Courts were bound to apply the rule in Pushpa. Any contrary administrative instructions relied on by the official respondents, i.e the Government

of NCT of Delhi, and the Delhi Jal Board, were invalid. Contentions on behalf of parties who support the application of Subhash Chandra judgment, (Petitioners in WP 7878/2010 and Respondents in WP 1513/2011)

10. Ms. Geeta Luthra, Senior counsel for the writ petitioners in cases where Subhash Chandra is relied on, argued that the decision in Marri and Action Committee were by larger, five judge Bench formations. They spelt out the law clearly that irrespective of the identity of a caste or tribe across a state, a member of such caste or tribe in one state could not claim the benefit of reservation in another part of the territory of India, as far as State or Union Territory service or access to resources was concerned. In other words, under the scheme of the Constitution, the expressions “for the purposes of this Constitution” a tribe or caste would “be deemed to be Scheduled Tribes in relation to that State or Union Territory, as the case may be” only if that concerned state notified it to be so. Further, the scheme of the Scheduled Caste Orders and Scheduled Tribe Orders, (which were inviolate and could not be touched by anyone except Parliament through law made in that regard), directed that such benefits would accrue to the residents of the concerned state or Union Territory only. Learned counsel emphasized that if it were held that an independent power to classify exists under Article 16 (4), as the decision in Pushpa suggests, the mandate of Articles 341 (2) and 342 (2) would be negated. Therefore, argued counsel, the Supreme Court’s decision in Subhash correctly deduced that Pushpa could not be followed, since it was contrary to the decisions in Marri and Action Committee.

11. It was argued that by virtue of Articles 341 and 342 of the Constitution of India and the notifications issued under those provisions, only Delhi listed Scheduled caste candidates could be considered for admission in the Scheduled Caste categories for the purposes of reservations under the Constitution. Counsel submitted that by treating SC candidates from other States at par with SC candidates from Delhi, the Union Territory would be giving privileges that violate the legitimate rights of Scheduled caste applicants and candidates under the Constitution. This would be so because such treatment would equate dissimilar persons as being equally entitled under law to receive benefits of affirmative action policies in a specific State, with others who are given similar status, though in

different States or Union Territories.

12. Placing reliance on the decisions in Marri Chandrasekhara Rao and Action Committee, learned counsel argued that is it not possible for someone belonging to an SC category in one State or Union Territory to avail of reservation in another State if that caste is not categorized as SC in that State or Union Territory. Nor is it possible for her (or him) to avail of benefits, even if the caste of the same nomenclature is mentioned as a Scheduled Caste in state to which she (or he) has migrated. Reliance was also placed on State of Maharashtra v. Milind, (2001) 1 SCC 4 to say that the order of the President under Article 341, enlisting castes as beneficiaries of reservations policies, is specific to geographical regions, i.e. specific States and Union Territories or even regions within the States. It is only Parliament that can amend the Presidential order. The Executive cannot extend such benefits to any class of persons other than those on whom it was intended to be conferred. This is further borne out from the decision of the Supreme Court in Shree Surat Valsad Jilla KMG Parishad v. Union of India, (2007) 5 SCC 360, where the Court held that inclusion of a caste as a scheduled one in respect of a particular area within a state is an exercise for the President and the Parliament to conduct and cannot be gone into by the Courts. Historical background

13. Before the advent of the Constitution, the concept of disadvantaged castes was recognized. Disadvantaged castes were those who suffered multiple challenges and disabilities in their social acceptance. An attempt was made by virtue of provisions of the Government of India Act, 1935 to enable reservations for the “Depressed classes”, as they were then known. The Government of India (Scheduled Castes) Order, 1936, drawn up under the First, Fifth and Sixth Schedule to the Government of India Act, (read with Section 309) was the first notification which conferred and confined scheduled caste status only to “residents” in “the localities specified in relation to them respectively in those parts of that Schedule”. The Supreme Court traced this background in Soosai V. Union Of India (1985) Supp. SCC 590, while commenting on the pernicious effect of caste and the practise of untouchability:

“This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness. And though most of Indian history the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self-respect and even some of the attributes of the human personality. Both history and latter day practice in Hindu society are heavy with evidence of this oppressive tyranny, and despite the efforts of several noted social reformers, especially during the last two centuries, there has been a crying need for the emancipation of the depressed classes from the degrading condition of their social and economic servitude. Dr. J. H. Hutton, a Census Commissioner of India, framed a list of the depressed classes systematically, and that list was made the basis of an order promulgated by the British Government in India called the Government of India (Scheduled Castes) Order, 1936. The Constitution (Scheduled Castes) Order, 1950 is substantially modelled on the Order of 1936. The Order of 1936 enumerated several castes, races or tribes in an attached Schedule and they were, by paragraph 2 of the Order, deemed to be Scheduled Castes….. During the framing of the Constitution, the Constituent Assembly recognised ``that the Scheduled Castes were a backward section of the Hindu community who were handicapped by the practice of untouchability'`, and that ``this evil practice of untouchability was not recognised by any other religion and the question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise'`. The Sikhs however, demanded that some of their backward sections, the Mazhabis, Ramdasis, Kabirpanthis and Sikligars, should be included in the list of Scheduled Castes. The demand was accepted on the basis that these sects were originally Scheduled Castes Hindus who had only recently been converted to the Sikh faith and ``had the same disabilities as the Hindu Scheduled Castes'`. The depressed classes within the fold of Hindu society and the four classes of the Sikh community were therefore made the subject of the original Constitution (Scheduled Castes) Order, 1950. Subsequently in 1956 the Constitution (Scheduled Castes) Order, 1950 was amended and it was broadened to include all Sikh untouchables.”

The Court went on to describe the process whereby castes were notified as scheduled castes or tribes, and negated the plea of discrimination of members of castes (who are scheduled castes) who had converted to another religion. It was

underlined that to continue within the description of scheduled castes, the concerned individual who converts should be able to show an identical level of social disadvantage:

“8. It is quite evident that the president had before him all this material indicating that the depressed classes of the Hindu and the Sikh communities suffered from economic and social disabilities and cultural and educational backwardness so gross in character and degree that the members of those castes in the two communities called for the protection of the constitutional provisions relating to the Scheduled Castes. It was evident that in order to provide for their amelioration and advancement it was necessary to conceive of intervention by the State through its legislative and executive powers. It must be remembered that the declaration incorporated in paragraph 3 deeming them to be members of the Scheduled Castes was a declaration made for the purposes of the Constitution. It was a declaration enjoined by clause (1) of Article 341 of the Constitution… It is necessary to establish further that the disabilities and handicaps suffered from such caste membership in the social order of its origin - Hinduism - continue in their oppressive severity in the new environment of a different religious community.”

14. Dr. B.R. Ambedkar, while moving Article 300-A of the Draft Constitution (which ultimately became Article 341) said, in the Constituent Assembly, on 17.11.1949, that:

“The object of these two articles, as I stated, was to eliminate the, necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have, the power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this : that once a notification has been issued by the President, which, undoubtedly, lie will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the

List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President." (emphasis supplied)

15. Later, during the debates on 2-12-1948 (Constituent Assembley Debates, 2nd December, Debates on Article 13, Volume II also quoted in Founding Father's view by H. S Saksena), Dr. Ambedkar dealt with precisely the question which this court has to consider, i.e the status of scheduled caste or tribe members who migrate to another part of the country, and whether they can be treated as scheduled castes (or tribes) there. In reply to a query by another member, he stated the following:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in his Constitution. But, so far as the present Constitution stands, a member of a Scheduled Tribe going outside the Scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area of a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.."

16. The issue of how those migrating from one state to another are to be treated for reservation benefit purposes was first dealt with in 1975, by a Union Ministry of Home Affairs (MHA) notification (dated 2-5-1975) declaring the terms and conditions which were applicable for reservation of seats in case of migration of Scheduled Castes and Scheduled Tribes from one state to another. Para 2(ii) of the said order stated that:

“Where a person migrates from one state to another, he can claim to belong to SC or ST only in relation to the state to which he originally belongs and not in respect of the state to which he has migrated.”

On 22.02.1977, the MHA issued another notification clarifying the earlier order of 1975, with regard to residence, which stated that:

“As required under Article 341 and 342 of the Constitution the President has with respect to every State and Union Territory and where it is State after consultation with governor of the concerned state issued orders notifying various castes and tribes as SC and ST in relation to that State or UT from time to time. The inter State area restriction have been deliberately imposed so that the people belonging to the specific community residing in specific area, which has been assessed to quality for SC or ST status, only benefit from the facilities provided for them. Since the people belonging to the same caste but living in different States/UTs may not necessarily suffer from the same disabilities, it is possible that two persons belonging to same caste but residing in different states/UTs may not be treated to belong to SC/ST or vice versa. Thus the residence of a particular person in a particular locality assumes a special significance. This residence has not to be understood in the literal or ordinary sense of the word. On the other had it connotes the permanent residence of a person on the date of notification of the Presidential Order scheduled his caste/tribe in relation to that locality. Thus a person who is temporarily away from his permanent place of abode at the time of the notification of the presidential Order applicable in his case, say for example, to earn a living or seek education etc., can also be regarded as scheduled caste or scheduled tribe, as the case may be, if his caste/tribe has been specified in that order in relation to his state/UT. But he cannot be treated as such in relation to place of his temporary residence notwithstanding the fact that the name of his caste/tribe has been scheduled in respect of that area in any Presidential Order.

It is to ensure the veracity of this permanent residence of a person and that of the caste/tribe to which he claims to belong that the Government of India has made a special provision in the proforma prescribed for the issue of such certificate. In order that the certificates are issued to be deserving person it is necessary that

proper verification based primarily on revenue record and if need be, through reliable inquires, is made before such certificates are issued. As it is only Revenue Authorities who, decide having access to relevant revenue records are in a position to make reliable inquiries. Government of India insists upon the production of certificates, from such authorities only. In order to be competent to issue such certificate therefore authority mentioned in Appendix 15 of this Brochure should be the one concerned with the locality in which person applying for the certificate had his place of permanent abode at the time of the notification of the relevant order. Thus the Revenue Authority of one District would not be competent to issue such a certificate in respect to persons belonging to another District. No can such an authority of one state/UT issue such certificate in respect of persons whose place of permanent resident at the time of the notification of a particular Presidential Order, has been in a different state/Union Territory. In the case of persons born after the date of notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Casts or Scheduled Tribes status, is the place of permanent abode of their parents at the time of the notification of Presidential Order under which they claim to belong to such caste/tribe."

The issue was revisited in another circular of 1982, issued by the Union Government, which decided that caste certificates could be issued to those who migrated from one state to another, but clarified that this would not alter their status as scheduled caste or scheduled tribe members, in one State or another.

17. A textual reading of Articles 341 and 342 of the Constitution of India shows that Presidential Notifications, whether in respect of Scheduled Castes or in respect of Scheduled Tribes, are "for the purposes of this Constitution" and "in relation to that State (or Union Territory, as the case may be)". Also, if there is a Presidential Notification under Article 341(1) or Article 342(2), Parliament may by law include or exclude caste, race, tribe or group in the list of Scheduled Caste and Schedules Tribes notified under the Presidential Notification. The Constitution (Scheduled Castes) Order, 1950, the Constitution (Scheduled Tribes) Order, 1950 and the Constitution (Scheduled Castes) (Union Territories) Order, 1951, Constitution (Scheduled Castes) (Union Territories) Order, 1951, Constitution

(Scheduled Tribes) (Union Territories) Order, 1951 were the first Presidential Notifications issued under Article 341 and Article 342 of the Constitution of India specifying Scheduled Castes and tribes in relation to various States and Union Territories. The Order of 1950 was amended by the Constitution (Scheduled Castes and Scheduled Tribes Order), Amendment Act, 1956, (Act 63/1956). Another amending Act was enacted by Parliament in 1976. Earlier, orders had been made for the first time in relation to certain territories, such as the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959. Further, amendments had taken place as and when Parliament reorganized states, through separate Acts, such as the Bombay Reorganization Act, the Punjab Reorganization Act, Andhra Reorganisation Act, States Reorganization Act (which led to large scale modification of the 1950 and 1951 Presidential Orders). Similarly, when new territories were incorporated into India, such as Pondicherry, or Sikkim, the Scheduled Castes or Scheduled Tribes Orders were made in relation to the new territories (for instance, the Constitution (Dadra and Nagar Haveli) Scheduled Castes Order, 1962, the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962; the Constitution (Pondicherry) Scheduled Castes Order, 1964, the Constitution (Goa, Daman and Diu) Scheduled Caste Order, 1968, the Constitution (Goa, Daman and Diu) Scheduled Tribes Order, 1968; the Constitution (Nagaland) Scheduled Tribes Order, 1970 - after the reorganization of Assam; the Constitution (Sikkim) Scheduled Castes Order, 1978; the Constitution (Sikkim) Scheduled Tribes Order, 1978) the recent ones being upon creation of the States of Uttarakhand, Chhatisgarh, and Jharkhand. Likewise, when previous Union Territories (such as Goa and Arunachal Pradesh) were constituted into States, consequential amendments were made to the Scheduled Castes and Tribes Orders. In the case of Goa, the Goa, Daman and Diu Reorganisation Act, 1987 (Act No. 18 of 1987), by Section 19 amended the Scheduled Castes and Scheduled Tribes Orders. Arunachal Pradesh and Mizoram were constituted as States (from previous status as Union Territories) by Re-organization enactments in 1986. All these were Parliamentary enactments. The Presidential Notifications of 1950 and 1951 (as amended) in relation to Scheduled castes and scheduled tribes of various states, very importantly provided that:

“the castes, races or tribes or parts of, or groups within, castes or tribes specified in [Parts to [XXIV]] of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of that Schedule.”

An identical condition was engrafted in the Scheduled Castes (Union Territories) Order, 1951:

“Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes, specified in 3[Parts I to III] of the Schedule to this Order shall, in relation to the 2[Union territories] to which those parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule.”

18. Part VIII of the Constitution of India deals with Union Territories. It, inter alia, consists of Articles 239 to 241. Article 239 provides for the administration of every Union Territory by the President acting through an Administrator. It reads as follows:

“239. Administration of Union Territories

(1) Save as otherwise provided by Parliament by law, every Union Territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.”

19. So far as the Union Territory of Delhi is concerned, Article 239AA was introduced in the Constitution of India by the Constitutional (69th Amendment) Act, 1991 with effect from 1.1.1992. It provides for a Legislative Assembly, seats whereof are required to be filled by members chosen by direct election from

territorial constituencies in the National Capital Territory. Under Article 239AA(3)(a), the Legislative Assembly has powers to make laws for the Union Territory of Delhi in respect to the matters specified under said clause (3)(a) of Article 239AA of the Constitution of India.

20. The expressions “in relation to that State or Union Territory” and “for the purposes of this Constitution” used in Articles 341 and 342 of the Constitution of India are relevant and determinative of the issues in this case at hand. According to one set of petitioners, since under the constitutional scheme, the Union Territory NCT of Delhi has to be administered by the President acting through an Administrator, the Union of India is within its rights in issuing instructions, either under specific statutes, or generally of executive nature, requiring reservations to be made for admissions to institutions in the Union Territory of Delhi. The other set of petitioners, on the other hand, urged that Article 239 should be read harmoniously with Articles 341 and 342 of the Constitution of India. It is argued that Article 15(4) and Article 16 (4) are merely enabling provisions, and do not confer any substantive power to classify or choose castes or tribes. The specific provision under Article 16 (4) only deals with the State’s duty to ensure “adequate representation” in the services, but under no circumstances does it enable the exercise of deciding which communities or castes are to be included or excluded for the purpose of reservation. In other words, the entitlement of communities and the conditions attached to such entitlement, to reservations, are exclusively found in the Presidential notifications, or amendments to it, by Parliament. If therefore, there is no Presidential Notification under Article 342 of the Constitution of India for the purposes of reservation for Scheduled Tribes, or only a few castes are notified as Scheduled Castes for the Union Territory of Delhi, the sine qua non being missing, no reservation can be effected for members belonging to Scheduled Tribes or for those castes which are not notified for the Union Territory. Furthermore, the nature of Scheduled Castes Orders, made under the Constitution and as amended from time to time by the Parliament, indicate a clear intent to limit benefits to only those enlisted in the Constitution Schedule Caste (Union Territories) Order, 1951, in relation to Delhi, and subject to residential qualifications spelt out in it.

21. The Union Territories Scheduled Castes Order of 1951, amended by an Act, in 1956 and later in 1976, and still later, in 1987, reads as follows:

“THE CONSTITUTION (SCHEDULED CASTES) UNION TERRITORIES) ORDER,1951 C.O. 32, dated the 20th September, 1951.

In exercise of the powers conferred by Clause (1) of Article 341 of the Constitution of India, as amended by the Constitution (First Amendment) Act, 1951, the President is pleased to make the following order namely:

1. This order may be called the constitution (Scheduled Castes) (Union Territories) Order, 1951.

2. Subject to the provisions of this order, the castes races or tribes or parts of, or groups within, castes or tribes, specified in (parts 1 to III of the Scheduled to this Order shall, in relation to the (Union Territories) to which those parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them respectively in those parts of that schedule.

3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu (or the Sikh or the Buddhist) Religion shall be deemed to be a member of a Scheduled caste. [4. Any reference in this order to a Union Territory in part 1 of the Scheduled shall be construed as a reference to the territory constituted as a Union territory as from the first day of November, 1956, any reference to a Union territory in part II of the Schedule shall be construed as a reference to the territory constituted as a Union territory as from the first day of November, 1966 and any reference to a Union territory in part III of the Schedule shall be construed as a reference to the territory constituted as a Union territory as from the day appointed under clause (b) of Section 2 of the Goa, Daman and Diu Reorganisation Act, 1987].

[THE SCHEDULE

PART 1

DELHI

1. Throughout the Union Territory:

1. Ad Dharmi 2. Aheria 3. Aheria 4. Balal 5. Banjara 6. Bawaria 7. Bazigar 8. Bhangi 9. Bhil 10. Chamar,l Chanwar Chamanr, Jatya or Jatav Chamar, Mochi Ramadasia, Ravidasi, Reghgrh or Raigharh 11. Chohra (Sweeper) 12. Chuhar (Balmiki) 13. Dhanak or Dhanuk 14. Dhobi 15. Dom 16. Gharrami 17. Julaha (Weaver) 18. Karbirpanthi 19. Kachhandha 20. Kanjar or Giarah 21. Khatik 22. Koli 23. Lalbegi 24. Madri 25. Mallah 26. Mazhabi 27. Meghwal 28. Naribut 29. Nat (Rana), Badi 30. Pasi 31. Perna 32. Sansi or Bhedkut 33. Sapera 34. Sikligar 35. Singiwala or Kalbelia 36. Sirkiband

Part III

CHANDIGARH

[throughout the Union Territory]

1. Ad Dharmi 2. Bangali 3. Barar, Burar or Berar 4. Batwal, Barwala] 5. Baruia or Bawaria 6. Bazigar 7. Balmiki, Chura or Bhangi 8. Bhanjra 9. Chamar, Jatia, Chamar, 10. Chanal Rehgar, Raigar, Ramadasi Or Ravidas 11. Dagi 12. Darin. 13. Dhanak 14. Dhogri, Dhangri or Siggi 15. Dumna, Mahasha or Doom 16. Ganga 17. Gandhila or Gandil Gondola 18, Kabirpanthi or Julaha 19. Khatik 20. Kori or Koli 21. Marija or Marecha 22. Mazhabi 23. Megh 24. Nat 25. Od 26. Pasi 27. Perna 28. Pherera 29. Sanhai 30. Sanhal 31. Sansoi 32. Sandi, Bhedkut or Manesh 33. Sapela 34. Sarera 35. Sikligar 36. Sirkibandi

PART III

DAMAN AND DIU III.

Throughout the Union Territory:

1. Bhangi (Hadi) 2. Chambhar, Mochi 3. Mahar 4. Mahyavanshi (Vankar) 5. Mangi”

Thus, in relation to Delhi, there are only 36 castes listed as scheduled castes in the Order; they have to be “residents of” the concerned territory, i.e of Delhi, to avail the benefit. Therefore, as regards entitlement of benefit of reservation “for the purpose of the Constitution”, textually, only such members of the Scheduled Castes who fulfil the requisites spelt out in the Presidential Notification for Delhi can legitimately claim it.

22. In Marri, the Supreme Court dealt with the question whether an individual belonging to a Scheduled Tribe or scheduled caste, in one state would be entitled to the benefit of reservation in a different state, (whether he “carried” the tag of disability to be entitled to reservation, upon migration). It was held that:

“7. In this connection, the provisions of Articles 341 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 Castes 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.

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12. It is, however, necessary to give proper meaning to the expressions “for the purpose of this Constitution” and “in relation to that State” appearing in Articles 341 and 342 of the Constitution. The High Court of Gujarat has taken the view in two decisions, namely, Kum. Manju Singh v. The Dean, B.J. Medical College, AIR 1986 Gujarat 175 and Ghanshyam Kisan Borikar v. L.D. Engineering College, AIR 1987 Gujarat 83 to which our attention was drawn, that the phrase “for the purposes of this Constitution” cannot be and should not be made subservient to the phrase “in relation to that State” and, therefore, it was held in those two

decisions that in consequence, the classification made by one State placing a particular caste or tribe in the category of Scheduled Castes or Scheduled Tribes would entitle a member of that caste or tribe to all the benefits, privileges and protections under the Constitution of India. A similar view has been taken by the Karnataka High Court in the case of M. Muni Reddy v. Karnataka Public Service Commission and Ors., 1981 Lab I.C.1345. On the other hand, the Orissa High Court in the case of K. Appa Rao v. Director of Posts and Telegraphs, Orissa and Ors., AIR 1969 Orissa 220 and the full Bench of the Bombay High Court in M.S. Malathi v. The Commissioner, Nagpur Division and Ors., AIR 1989 Bombay 138 have taken the view that in view of the expression “in relation to that State” occurring in Articles 341 and 342, the benefit of the status of Scheduled Castes or Scheduled Tribes would be available only in the State in respect of which the Caste or Tribe is so specified. A similar view has been taken by the Punjab and Haryana High Court in the case of V.B. Singh v. State of Punjab, ILR 1976 (1) Punj and Har. 769.

13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Sri Venkatamana Devaru and Ors. v. State of Mysore and Ors., 1958 SCR 895 at 918, where Venkatarama Aiyar, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression “for the purposes of this Constitution” in Articles 341 as well as in Article 342 do imply that the Scheduled Castes and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right e.g. it has been argued that right to migration or right to move from one pat to another is a right given to all to scheduled castes or tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for

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

Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation, to the very purpose and scheme and language of Article 341 read with Article 14(4) of the Constitution."

23. The rule in Marri was again reiterated by another Constitution Bench of the Supreme Court in the Action Committee decision, stating:

"3. On a plain reading of Clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under Clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition."

Having posed the question, the Court, in Action Committee, read the ratio in Marri, and commented as follows:

"It must also be realised that before specifying the castes or tribes under either of the two articles the President is, in the case of a State, obliged to consult Governor of that State. Therefore, when a class is specified by the President, after consulting the Governor of State A, it is difficult to understand how that specification made "in relation to that State" can be treated as specification in relation to any other State whose Governor the President has not consulted. True it is that this specification is not only in relation to a given State whose Governor has been consulted but is "for the purposes of this Constitution" meaning thereby the various provisions of the Constitution which deal with Scheduled Castes/Scheduled Tribes. The Constitution Bench has, after referring to the

debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced. areas, the inhibitions and handicaps suffered by belonging to a socially disadvantageous community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to become equals with others but those who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas….

16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution".

24. A later Constitution Bench of the Supreme Court, in its decision in Milind, held that:

Plain language and clear terms of these Articles show

(1) the President under Clause

(1) of the said Articles may with respect to any State or Union Territory and where it is a State, after consultation with the Governor, by public notification specify the castes, races or tribes or parts of or groups within the castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes/Scheduled Tribes in relation to that State or Union Territory as the case may;

(2) under Clause

(2) of the said Articles, a notification issued under Clause

(1) cannot be varied by any subsequent notification except by law made by Parliament. In other words, 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 notifications issued under Clause

(1) of the said Articles. In including castes and tribes in Presidential Orders, the President is authorised to limit the notification to parts or groups within the caste or tribe depending on the educational and social backwardness. It is permissible that only parts or groups within them be specified and further to specify castes or tribes thereof in relation to parts of the State and not to the entire State on being satisfied that it was necessary to do so having regard to social and educational backwardness. The States had opportunity to present their views through Governors when consulted by the President in relation to castes or tribes, parts or groups within them either in relation to the entire State or parts of State. It appears that the object of clause

(1) of Articles 341 and 342 was to keep away disputes touching whether a caste/tribe is a Scheduled Caste/Scheduled Tribe or not for the purpose of of the Constitution. Whether a particular caste or a tribe is Scheduled Caste or Scheduled Tribe as the case may be within the meaning of the entries contained in the Presidential Orders issued under Clause

(1) of Articles 341 and 342, is to be determined looking to them as they are. Clause

(2) of the said articles does not permit any one to seek modification of the said orders by leading evidence that the caste/Tribe (A) alone is mentioned in the Order but caste/Tribe (B) is also a part of caste/Tribe (A) and as such caste/Tribe (B) should be deemed to be a Scheduled Caste/Scheduled Tribe as the case may be. It is only Parliament that is competent to amend the Orders issued under Articles 341 and 342.

25. It would be material here to notice another decision, which is somewhat relevant. The Supreme Court had to deal with a situation where a State sought to sub-divide Scheduled Castes (which had been included in the Presidential notification) into most backward castes. The Supreme Court, again underlined the conclusiveness of the determination by the President, and the exclusive jurisdiction of Parliament to amend it, in the Constitution Bench judgment, reported as E. V. Chinnaiah v. State of A.P. (2005) 1 SCC 394. In that decision, it was held that:

“13. We will first consider the effect of Article 341 of the Constitution and examine whether the State could, in the guise of providing reservation for the weaker of the weakest, tinker with the Presidential List by subdividing the castes mentioned in the Presidential List into different groups. Article 341 which is found in Part XVI of the Constitution refers to special provisions relating to certain classes which includes the Scheduled Castes. This article provides that the President may with respect to any State or Union Territory 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. This indicates that there can be only one list of Scheduled Castes in regard to a State and that list should include all specified castes, races or tribes or part or groups notified in that Presidential List. Any inclusion or exclusion from the said list can only be done by Parliament under Article 341(2) of the Constitution. In the entire Constitution wherever reference has been made to 'Scheduled Castes' it refers only to the list

prepared by the President under Article 341."

26. In a Constitution Bench ruling in Bhaiyalal V. Harikishan Singh AIR 1965 SC 1557 the Supreme Court noticed that while framing notifications under Articles 341 and 342, the President has the necessary materials and that the executive Government cannot amend it; only Parliament is empowered to amend the Notification under Articles 341(2) and 342(2) of the Constitution, as is underlined by the expression "but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification" occurring in each of the said provisions. It was held by the Court that:

"The object of Art. 341(1) plainly is to provide additional protection to the members of the Scheduled Castes having regard to the economic and educational backwardness from which they suffer. It is obvious that in specifying castes, races or tribes, the President has been expressly authorised to limit the notification to parts of or groups within the castes, races or tribes, and that must mean that after examining the educational and social backwardness of a caste, race or tribe, the President may well come to the conclusion that not the whole caste, race or tribe but parts of or groups within then should be specified. Similarly, the President can specify castes, races or tribes or parts thereof in relation not only to the entire State, but in relation to parts of the State where he is satisfied that the examination of the social and education are backwardness of the race, caste or tribe justifies such specification. In fact, it is well-known that before a notification is issued under Art. 341(1), an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as may appear to be necessary, and in doing justice, it would obviously be expedient not only to specify parts or groups of castes, races or tribes, but to make the said specification by reference to different areas in the State. Educational and social backwardness is regard to these castes, races or tribes may not be uniform or of the same intensity in the whole of the State; it may very in degree or in kind in different areas and that my justify the division of the State into convenient and suitable areas for the purpose of issuing the public notification in question."

It is, therefore, evident that the co-relationship between the area or region, and the community concerned, which suffers from social and economic disabilities caused by untouchability (in that area or region) so as to require inclusion, for special treatment as a Scheduled Caste, is the paramount consideration.

27. By virtue of Article 341, the Presidential orders made under Sub- Article (1) acquire an exclusive status. But for Articles 341(1) and (2) [or Article 342(1) and (2)], it would have been possible for both the Union and States, to legislate upon, or frame policies, concerning the subject of reservation, vis-a-vis inclusion of Castes/Tribes and the conditions applicable. The presence of Articles 338, 341 and 342 indicates that :

a) Only the President could, as a one- time measure, notify castes/tribes as Scheduled Castes/Tribes and also indicate conditions attaching to such declaration.

b) There is only one constitutionally sanctioned authority, viz. National Commission enjoined to submit reports in that regard to the President, after due deliberation;

c) Even the authority that originally notified the SC/ST order (The President) loses the right to vary such notification [Article 341(2)];

d) Future inclusions, modifications, variations deletions and amendments to the SC/ST orders can be made only by Parliament.

It is immediately discernible, therefore, that the rationale for migrant citizens (notified as members of a scheduled caste in one region or state) moving from one place to another and not being entitled to claim benefit of reservation (in spite of their belonging to Scheduled Caste in their own State and a caste of that nomenclature being notified in the State when they migrate) - is not premised on existence of legislative, administrative/executive control over Union Territories by the Union, as opposed to States. Apparently, that is not a relevant factor for deciding who can enjoy the benefit of reservation. This is because the authority in the case of both Union Territories and States to make an order, including

communities in the lists for concerned states/Union Territories is the same, i.e. the President, initially, and later, the Parliament. Also, the President has no greater power in respect of modification/alteration of the order, in the case of Union Territories. He ceases to have any power to vary, amend or modify the Order. Only Parliament has exclusive power by way of legislation to amend an SC/ST Order, in the case of States as well as Union Territories.

28. The Scheme and position of the Constitution (Scheduled Castes) Orders is that-

1) Originally a common Presidential Order was made in respect of States in 1950.

2) Another common Presidential Order was made in respect of Union Territories in 1951. The Union Territories Order continues to be in force. It comprehends 3 Union Territories including Delhi and Chandigarh.

3) Separate orders have been made in respect of the Union Territories of Pondicherry and Dadra and Nager Haveli. There is no order in respect of Andaman Nicobar Islands.

4) Amendments were made to the Scheduled Caste/Tribe Orders of the States and Union Territories Order of 1951, by an Acts of Parliament in 1956 and later, in 1976.

29. Whenever States' reorganization took place in the past, Parliament exercised its powers under Article 341(2) and Article 342 (2) and provided for specific Castes/Tribes that had to be Scheduled Castes and Scheduled Tribes in relation to the reorganized States/Union Territories. The Scheme of the Constitution Scheduled Caste Orders, more particularly, the Constitution Scheduled Castes (Union Territories) Order, also clarify that Parliamentary intention was to extend benefits of reservation in relation to the Union Territories in terms of the conditions mentioned in the Orders themselves. Therefore, the expansive construction by which Scheduled Castes for one State are sought to be given benefits in Union Territories, would be contrary to the express intendment of the Orders in relation to the Union Territories, and indeed the Constitution. If Parliamentary intention was

that all Scheduled Castes in all States could be considered as Scheduled Castes in all Union Territories, such intention would have been explicit. By the same analogy, if Presidential or Parliamentary intention was to extend the benefit of reservation in Union Territories even to migrants from States having the same Caste nomenclature (as notified in a Union Territory such as Delhi), that intention too would have been explicit. Existence of few caste groupings only “in relation” to Delhi, therefore, rules out the claim of migrants from other States/Union Territories.

30. The Constitution makers principally had in mind the practice of untouchability while providing for castes to be known as Scheduled Caste or Scheduled Tribes (in the latter case, the indicia being backwardness bordering primitiveness). This is clear from a reading of Articles 17, 46,330, 332, 338, 341 and 342 of the Constitution, as noted by the Supreme Court in the decision reported as Soosai Vs. Union of India 1985 (Supp) SCC 590. The underlying principle for including or excluding a Caste from the list of Scheduled Castes in relation to State or a Union Territory has been and will remain the same, namely; whether that caste/group suffers from such disability in that area as to warrant its inclusion in the relevant Scheduled Caste Order for the concerned State/Union Territory. This awareness is evident from the decision of the Constitution Bench in the Marri, Action Committee, Milind and Chinnaiah cases. Logically the rule of denial of reservation benefits to persons migrating from one State to another, appear to equally apply in the case of migrants to Union Territories.

31. A compelling aspect which the court cannot ignore lightly is that a limited construction of the Rule in Marri's case so as to make a departure in the case of Union Territories would destroy the integrity of a principle which has to apply through-out the country. Conferment or denial of a benefit to a migrant, based on his being a member of Scheduled Caste in the place of his origin, cannot be made to depend upon the existence or otherwise of an administrative unit as a Union Territory or a State. Parliament has the exclusive power to make new States and Union Territories, alter the boundaries of the States/Union Territories, re-organise States/Union Territories, create/destroy States/Union Territories. In the exercise of such power, Parliament does not even have to seek recourse to Article 368 of the

Constitution by virtue of Articles 3 and 4. The law which creates a State or Union Territory or re-organizes boundaries can be passed with a simple majority. Such a law can amend the First Schedule of the Constitution of India. Exercising such power, the Union of India has been re-organized as many as 16 times. Through its exercise many former Union Territories namely, Goa, Andhra Pradesh, Mizoram and Himachal Pradesh, which had been Union Territories at some point or the other, were conferred State-hood. The existence of State or Union Territory boundaries, therefore does not alter the reality about their impermanence. Though a Union, India comprises of destructible states. The latest re-organization in 2000 saw realignment of boundaries and creation of three new states. Thus, the principle that persons of origin in relation to the State/Union Territory concerned, only, being entitled to the benefit of reservation with respect to that Union Territory/State (emphasized in Marri and Action Committee) has to be applied to States as well as Union Territories. 31. The decisions, right from Bhaiyalal, to Chinnaiah, all rendered by Constitution Benches have affirmed that:

(i) The Presidential Notifications and Acts are conclusive and binding. They cannot be investigated by the Courts, [Ref. B. Basavingappa vs. D. Munichinnappa, 1965(1) SCR 315, State of Maharashtra vs. Milind, 2001(1) SCC 4]

(ii) The SC and ST Orders are to be read as they are, and cannot be varied or modified by interpretation;

(iii) Every such Presidential Order (or modification thereof through Parliamentary Act) has consistently insisted that the notified castes or states “in relation” to that state or Union territory are in respect of residents of that territory.

(iv) The Presidential notifications are to be construed strictly as regards matters mentioned therein (Milind);

(v) It is permissible to notify scheduled castes/tribes in parts of a State or parts of any area. Such restrictions are not discriminatory, having regard to be purpose of extending benefits to castes that are backward in relation to a specified area (Bhaiyalal, 1965(2) SCR 877).

(vi) No authority, save Parliament is empowered to modify or amend the Orders under Articles 341 and 342 (Bhaiyalal, Marri, Milind);

32. Apart from the above, the construction which would result in notified scheduled castes or tribes, in union territories (such as, for instance Andaman and Nicobar, or Daman) having to compete for the limited number of reserved public employment opportunities along with all scheduled castes and tribes, notified in all states and Union Territories (and not in their territories only) would result in over classification. It would also discriminate between the quality of opportunity or access to reservation benefits between citizen and citizen. Whereas in States, the competition would be restricted to those who are members of the notified lists, in Union Territories, the rule would be different; those members who are considered to be scheduled castes or tribes “in relation to” that Union territory would have to compete, per force with a large number of people who are not scheduled castes or tribes in relation to such territory. Such a consequence would completely undermine the benefit of reservation, as the result would be that the castes or tribes so notified in relation to the union territory would have vastly reduced chances of getting recruited.

33. This Court also notices that in matters of public employment, the State (within the meaning of Article 12) cannot, by virtue of Article 16 (2) be discriminated against on ground of inter alia “place of birth” - a prohibition similar to what is provided under Article 15 (1). However, it is only Parliament, which can make laws prescribing, in regard to a “class of employment or appointment to an office under the Government or or any local or other authority, within a State or Union territory any requirement as to residence within the State or Union territory” by virtue of Article 16 (3). This aspect was considered by the Supreme Court in State of Sikkim v. Surendra Prasad Sharma 1994 (5) SCC 282 as follows:

“However, notwithstanding anything in the Constitution, Parliament was empowered to make laws inter alia with respect to any matter referred to in Article 16(3). Thus, Parliament could prescribe by law the requirement as to residence within a State or Union Territory and if such a law is made nothing in Article 16 will stand in the way of such prescription. Since Article 16(3) is in Part III ofthe

Constitution, the law, if made, would clearly be intra vires the Constitution."

Pradip Tandon v State of U.P. 1975 (1) SCC 267 and State of Maharashtra v. Raj Kumar AIR 1982 SC 1301 are two cases where the reservations based on residence, made by State's notifications or orders, in the absence of Parliamentary enactment, were held unconstitutional. In Pradeep Jain v Union of India AIR 1984 SC 1420, it was held that:

"Parliament alone is given the right to enact an exception to the ban on discrimination based on residence and that too only with respect to positions within the employment of a State Government."

The provision of Article 16 (3) read with Articles 341 (2) and 342 (2) invests Parliament, and Parliament only with exclusive jurisdiction to provide for residential qualifications in relation to public employment, even in States. This is consistent with the intention of the Constitution to exclude all other authorities from enacting or providing for residential qualifications. Thus, State Legislatures and other wings such as the Union Executive, whether in relation to state employment or local authority employment, or Union or Union Territory employment, are not competent to make such residential provisions. Consequently, States or even Union Government cannot add to, or subtract from the conditions spelt out by the SC/ST orders, either in relation to states or union territories.

34. Constitutions are interpreted differently from other statutes. Their provisions are meant to endure the test of time; at the same time Courts have to ensure that meaning is given to every term and expression in the concerned provision. In IndiaCements Ltd. vs. Union of India , 1990(1) SCC 12, a seven Judge Constitution Bench of the Supreme Court held that:

"16. Courts of law are enjoined to gather the meaning of the Constitution from the language used and although one should interpret the words of the Constitution on the same principles of interpretation as one applies to an ordinary law but these very principles of interpretation compel one to take into account the nature and scope of the Act which requires interpretation. It has to be remembered that it is a Constitution that requires interpretation. Constitution is the mechanism under

which the laws are to be made and not merely an Act which declares what the law is to be…

17. In Re C.P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, C.J. of the Federal Court of India relied on the observations of Lord Wright in James v. Commonwealth of Australia and observed that a Constitution must not be construed in any narrow or pedantic sense, and that construction most beneficial to the widest possible amplitude of its powers, must be adopted. The learned Chief Justice emphasised that a broad and liberal spirit should inspire those whose duty it is to interpret the Constitution, but they are not fee to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or correcting supposed errors. A Federal Court will not strengthen, but only derogate from its position, if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution of a country is a living and organic thing, which of all instruments has the greatest claim to be construed ut res magis valeat quam pereat-„it is better that it should live than that it should perish?."

This approach was also underlined in Action Committee?s case in the following terms:

"The interpretation that the Court must put on the relevant constitutional provisions in regard to Scheduled Castes/Scheduled Tribes and other backward classes must be aimed at achieving the objective of equality promised to all citizens by the Preamble of our Constitution. At the same time it must also be realised that the language of clause (1) of both the Articles 341 and 342 is quite plain and unambiguous. It clearly states that the President may specify the castes or tribes, as the case may be, in relation each State or Union Territory for the purposes of the Constitution."

35. The decision of the Supreme Court in S. Pushpa (supra) was concerned with the issue of whether the consistent practice of the Govt of Pondicherry, extending SC/ ST status benefits to all classes of SC/ST candidates, whether from that Union Territory or not, for the purpose of public employment in the administration of the Union Territory, was legal. The court affirmed that practice, holding:

“These documents show that Government of Pondicherry has throughout been proceeding on the basis that being a Union territory, all orders regarding reservation for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry administration as well. Since all SC/ST candidates which have been recognized as such under the orders issued by the President from time to time irrespective of the State/Union territory, in relation to which particular castes or tribes have been recognized as SCs/STs are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry administration. Consequently, all SC/ST candidates from outside the U.T. of Pondicherry would also be eligible for posts reserved for SC/ST candidates in Pondicherry administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in Pondicherry administration.

We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in Marri Chandra Shekhar Rao (supra) cannot have application here as U.T. of Pondicherry is not a State. As shown above, a Union territory is administered by the President through an administrator appointed by him. In the context of Article 246, Union territories are excluded from the ambit of expression State occurring therein. This was clearly explained by a Constitution Bench in T. M. Kanniyan vs. Income Tax Officer 1968

(2) SCR 103 (AIR 1968 SC 367). In New Delhi Municipal Council vs. State of Punjab 1997

(7) SCC 339 the majority has approved the ratio of T. M. Kanniyan and has held that the Union territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of Marri Chandra Shekhar Rao in setting aside the selection and appointment of migrant SC candidates.? The above observations were based on the following opinion of the Court: ?Clauses

(1) and

(2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses

(3) to (5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of ``backward classes of citizens'` which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the schedule appended to the Presidential Order for that particular State or Union territory. This Article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognized as backward classes of citizens and none else. If a State or Union territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such, in relation to that State or Union territory then such a provision would be perfectly valid. However, there would be no infraction of clause

(4) of Article 16 if a Union territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the schedule to the Presidential Order issued for such Union territory. The U.T. of Pondicherry having adopted a policy of Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

36. The above observations make it clear that in Pushpa, the Supreme Court took a specific view about how scheduled castes notified in a State are to be treated in

relation to employment in Union territories. The judgment also shows that the structure of the Scheduled Caste and Scheduled Tribes, requiring residential qualifications in relation to the States or Union Territories concerned, was not considered. The larger Bench rulings in Milind and Bhaiyalal clarify conclusiveness of the Presidential Order, and the ruling in Bhaiyalal evidences the nuanced nature of the exercise undertaken to determine the extent of backwardness deserving protection. In Bhaiyalal, it was noted that educational and social backwardness in regard to the castes, races or tribes may not be uniform or of the same intensity everywhere and that “it may vary in degree or in kind in different areas and that may justify the division of the State into convenient and suitable areas”. These was not brought to the notice of the Court in Pushpa, nor were the nuances of the text of the Union Territories Scheduled Caste Order of 1951 brought to its notice. Nevertheless, the fact remains that Pushpa is definitive and categorical on the issue, and constitutes binding precedent for this Court.

Binding nature of the holding in Pushpa

37. High Courts, and indeed all Courts, are tethered to precedent and the law declared by the Supreme Court by virtue of Article 141 of the Constitution. The doctrine of precedent is essential to ensure consistency and stability in the administration of law or else, if each court is left free to pursue its views regardless of previous judgments of higher courts, or Benches of greater composition, in a hierarchal system, the consequence would be chaos and uncertainty about the law. Here, one recollects the caution administered in Broom v. Cassell and Co., [1972] 1 AER 801 that:

“it will never be necessary to say so again, that in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers".

The rule was again explained in Davisv. Johnson, (1978) 2 WLR 152 in the following words:

“Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides

at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules."

The Supreme Court, speaking through Krishna Iyer, J, in Ambika Prasad Misra v. State of U.P. AIR1980 SC 1762 explained that even though a decision might be based on faulty reasoning or might be unsatisfactorily argued, if it is of a higher court and consequently binding, has to be necessarily followed. The following observations in Salmond's 'Jurisprudence', page 215 (11th edition) was referred to:

"A decision does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned."

38. In this context, the Supreme Court held in Shyamaraju Hegde vs U. Venkatesha Bhat and Ors 1988 SCR (1) 340 that:

"The Full Bench in the impugned judgment clearly went wrong in holding that the two-Judge Bench of this Court referred to by it had brought about a total change in the position and on the basis of those two judgments. Krishnaji's case would be no more good law. The decision of a Full Bench consisting of three Judges rendered in Krishnaji's case was binding on a bench of equal strength unless that decision had directly been overruled by this Court or by necessary implication became unsustainable. Admittedly there is no overruling of Krishnaji's decision by this Court and on the analysis indicated above it cannot also be said that by necessary implication the ratio therein supported by the direct authority of this Court stood superseded. Judicial propriety warrants that decisions of this Court must be taken as wholly binding on the High Courts. That is the necessary outcome of the tier system."

39. In view of the above discussion, this Court holds that whatever reservations may exist and might have even been voiced in Subhash Chandra about the holding in S. Pushpa being contrary to earlier Constitution Bench rulings in Marri, Action Committee, Milind etc, it was not open to a Division Bench of this court, in Delhi and State Subordinate Selection Board v Mukesh Kumar (supra) to say that Subhash Chandra prevailed, particularly since S. Pushpa was by a larger three

member Bench. It is true that the concerns and interpretation placed by Subhash Chandra flow logically from a reading of the larger Supreme Court Constitution Bench rulings. Nevertheless, since this Court is bound by the doctrine of precedent, and by virtue of Article 141 has to follow the decision in Pushpa, as it deals squarely with the issue concerning status of citizens notified as scheduled castes from a state to a Union Territory, it was not open, as it is not open to this court even today, to disregard Pushpa. The Court further notices that the correctness of Subhash Chandra has been referred for decision in the State of Uttaranchal case; the matter is therefore at large, before the Constitution Bench, which will by its judgment show the correct approach. Till then, however, Pushpa prevails.

40. In view of the above discussion about the applicable law, this Court proposes to take up each Writ Petition referred to this Bench. WP.No. 7878/2010: Sarv Rural and Urban Welfare Society

41. The writ petitioner, a society incorporated for the upliftment of Backward, scheduled castes and others in Delhi, in education, social and cultural fields, seeks the implementation of the Supreme Court ruling in Subhash Chandra and urges that only those castes which are notified as scheduled castes, under the Constitution (Scheduled Castes) Union Territories Order, 1951 for the Union Territory of Delhi should be allowed the benefit of scheduled caste reservations in respect of facilities in Delhi. It is submitted that allowing the benefit to scheduled castes which are not notified in relation to Delhi, or granting it to Scheduled Tribes, for whom no notification exists in Delhi, is contrary to Articles 14 and 16 of the Constitution of India.

42. This court has previously held that whatever doubts may exist in respect of the applicability of Pushpa, since that is a larger Bench ruling, judicial discipline demands that till the five-judge Bench clarifies the law, or takes a view contrary to Pushpa, this Court is bound by that decision. However, it would be relevant to notice one aspect, on which clarification and guidance would be essential. As noticed earlier, there are only 36 notified castes in the list in respect of (in relation to) the Union Territory of Delhi. If Subhash Chandra were to be applied, members

of those scheduled castes who are “residents of” Delhi can avail the benefit. Therefore, as regards entitlement of benefit of reservation to posts under the Govt of NCT of Delhi for the purpose of the Constitution, only such members of the SCs who fulfil the requisites spelt out in the Presidential Notification for Delhi can legitimately claim it. As regards Central Government posts and services, however, the situation necessarily has to be different. The analogy here can be with All India service, which, conceptually and definitionally is through-out the territories of India. Thus, a person claiming to be Scheduled Caste has to specify that he belongs to a caste notified as Scheduled Caste in one State or one Union Territory and that he is a resident of that State/Union Territory. Fulfilment of that criterion is sufficient for the purpose of Union Government service, since all Scheduled Castes in all States/Union Territories are part of Union of India (however, the converse is not true of State Service or service under Union Territory, where territoriality has to be given effect to). This parity with All India Service, under the Union, is necessary because the Supreme Court, in Marri, did not invalidate the policy, though made aware of it. Further, facilities owned or funded by the Central Government for which admission is on All India basis, can be located anywhere, either in Union Territories or States. Their mere location cannot confer greater benefits to residents of those States or Union Territories.

43. The reliefs which the petitioners seek, is in the nature of a general direction, which the court cannot give, having regard to the present state of the law, particularly the binding judgment in Pushpa.

44. The writ petitioners cannot, for the above reasons, be granted any reliefs.

WP No. 5390/2010; WP No. 3223/2011, 3278/2011 and 7717/2010

45. In this case, the writ petitioners had applied for appointment to the post of Lower Division Clerk, pursuant to a public advertisement issued by the Officer of the District and Sessions Judge Delhi, calling for applications in respect of 412 vacancies to that post. Of these, 94 were reserved for OBC candidates, 52 for Scheduled caste candidates, and 47 for Scheduled Tribe candidates. The selection was to be on the basis of performance in the written test, a typing test and also an interview. The written test was held on 7-3-2010; the petitioners’

applications were processed, and they were allowed to sit as scheduled caste or scheduled tribe candidates, on the basis of the certificate furnished by them. Their claims were based on their fathers being members of scheduled castes, notified in places i.e. States or Union territories other than Delhi. The writ petitioners qualified in the written test, and were called for a typing test, which was held on 17-4-2010. All of them qualified in the typing test, and were all asked to appear in the interview, which they did, on 13-5-2010. They were offered appointments by separate letters in June, 2010. The petitioners claim that at this time, they were medically examined, and even their antecedents verified. It was urged that they were working at the time they were offered appointment, and were consequently asked to submit resignation letters, to take up their new appointment as LDCs, which they did. It was submitted that they were informed that their applications for joining were withheld, on account of the judgment of the Supreme Court, in Subhash Chandra. Their counsel submitted that those scheduled caste candidates, who had applied and whose castes were notified in the Scheduled Castes and Tribes Union Territories Order, were, however, allowed to join. It was emphasized that the petitioners have been treated unequally, and discriminated against, without any reason. Having accepted the scheduled caste or scheduled tribe applications, and selected them it was not open to the respondents to deny them the benefit. In WP 816/2011 it is further averred that though the petitioner had qualified and was called for interview, yet again, by a circular dated 13-9-2010 issued by the District Judge, a typing test was called for, in respect of those who had secured between 20 and 29 marks (out of 30 marks) in the previous typing test. For the first time, in respect of the same selection process, after the written test, a typing test and interview was conducted, and the petitioners were declared successful (in the first round) and had not joined, were directed to be treated as general category candidates. This circular (of 13-9-2010) stated, inter alia, that:

“Candidates of SC and OBC candidates who have migrated from outside Delhi and fulfil all conditions of general category candidate, will be called for typing test, if they have secured 74 marks in the written test. Those who clear the type test with speed of 30 words per minute will e considered for appointment to the post of LDC. Only those candidates will be called for interview who were not interviewed earlier.

Those who already joined the service in pursuance of the LDC examination in 2009, shall also have to pass the type test with speed of 30 words per minutes…"

It was submitted that having treated the petitioners like scheduled caste candidates eligible to compete as such, after conclusion of the entire recruitment process, and declaration of results, of the written test, it was not open to the District Judge to impose further conditions, disqualifying them and treating them as belonging to another, or general category.

46. The respondents in the writ petition and the Govt of NCT of Delhi argued that after the decision in Subhash Chandra, it became necessary to restrict the benefit of reservation for scheduled castes in relation to the Union Territory of Delhi to only members of those castes who found mention in the Presidential Notification in relation to Delhi. The withholding of appointment cannot be characterized as arbitrary, since no selected candidate has a vested right in appointment. For this proposition, reliance was placed on the decision reported as Sankersan Dash v. Union of India, AIR 1991 SC 1612. It was also argued that the candidates had to be called for re-typing test in view of the decision of a Division Bench of this Court in Anupam Garg v District and Sessions Judge, LPA No. 417/2010. The candidates who had secured between 22 and 29.5 marks in the typing test were called for such re-typing test. The petitioners were not treated as SC/ST but as General category candidates; they did not get the necessary cut off marks in that category.

47. The view which this Court expressed, about the binding nature of the Supreme Court's ruling in Pushpa prevailing, would apply in this case. There is no doubt that the advertisement in the present case was issued in December, 2009. At that time, the judgment in Subhash Chandra had already been delivered (it was pronounced on 4th August, 2009). Yet, the fact remains that being a larger Bench ruling of three judges, Pushpa had to prevail. This is highlighted by the view of the Supreme Court in State Of U.P vs Ram Chandra Trivedi AIR 1976 SC 2547:

"It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches."

48. There is, however, one more aspect which requires to be borne in mind. In view of instructions having been made pursuant to Subhash Chandra?s judgment, a clarification was sought from the Supreme Court, by way of an application filed by the Government of National Capital Territory of Delhi and Delhi Technological University. The Court referred to the background facts and the decision rendered in Subhash Chandra and Anr and stated as follows:

"The present application filed by the Government of N.C.T. of Delhi is for clarification as to whether the judgment delivered in the Civil Appeal would also cover those Scheduled Tribes students who were successful in the written examination and had been selected for counselling before the judgment was delivered. Therefore, in the said application, the following reliefs have been prayed for:

"a) Pass an order clarifying that the observations made and decision taken by this Hon'ble court in its judgment dated 04.08.2009 in Civil Appeal No. 5092 of 2009 {Subhash Chandra v Delhi Subordinate Services Selection Board and Ors.} would not come in way of hinder the admission process of the Appellant-University and other Delhi Government run colleges and polytechnics in filling up seats reserved in favour of Scheduled Tribe candidates for the academic session 2009-2010 only, and can be filled up by Scheduled Tribe candidates immigrating from places outside Delhi; or, in the alternative;

b) Pass an order directing the manner in which the seats reserved for Scheduled Tribe candidates in the Applicant-University be filled up for the academic session 2009-2010 only."

Learned Additional Solicitor General appearing in support of the application filed by the Government of NCT of Delhi, submitted that although a notification had not been issued in terms of Article 341 of the Constitution, by way of past practice, students from the Scheduled Tribes category from other States had also been considered for admission in Delhi University. The learned ASG sought further clarification as to whether the judgment was intended to be prospective or whether it intended to cover those candidates who have already been selected for. Two other applications filed by the students who were successful and have been

selected for counselling also pray for the same clarification and for a direction that they be admitted into the institutions for which they had applied and were successful.

In this situation, we had requested the learned ASG, Mr.Mohan Parasaran, to take instructions from the Government of NCT of Delhi in its Department of and Technical Education as to whether the Scheduled Tribes students, referred to hereinabove, could be accommodated although the first semester was to be completed soon. The learned ASG has produced a copy of instructions received by him from the OSD, DTU and Deputy Director(TTE) Mr. O.P. Shukla, wherein it has been mentioned that if the Delhi Category of Scheduled Tribes students who were successful and had been selected for counselling were to be admitted, special classes would be arranged for them to complete the mandatory teaching requirements of 13 weeks for one semester and thereafter they could catch up with the other students for the second semester in March, 2010. It has also been indicated that loss of study of these students in January and February, 2010 of second semester will be compensated by holding special/extra classes on Saturdays and Sundays and other vacations. It was also indicated that while issuing directions, the Court should not extend the benefit to Scheduled Tribes candidates who have already taken admission in any Institute/University in Delhi as that would disturb to the entire admission process.

Apart from the learned ASG, we have also heard Mr. Naresh Kaushik, learned counsel, in support of I.A.Nos.9 and 10 and Ms. Lata Krishnamurthy, learned counsel, in respect of I.A.Nso.11 and 12. In addition, we have also heard Mr.D.N. Goburdhan, learned counsel, who had appeared for the appellant in the Civil Appeal. While learned counsel for the applicants were all ad idem in their approach to the matter, Mr.Goburdhan had reservations and submitted that any order that may be passed in these applications would amount to violation of provisions of the Constitution itself.

Having considered the submissions made on behalf of the parties, it should first be clarified that we are only considering whether the judgment and order passed in the Civil Appeal intended to cover even those Scheduled Tribes candidates who

had not only participated in the selection process but had also been selected for counselling prior to the delivery of the said judgment. We are of the view that this does not entail invocation of our power under Article 142 of the Constitution and, accordingly, Mr. Goburdhan's submission, has no merit.

We clarify that the judgment delivered in C.A. No. 5092/2009 was intended to take effect prospectively and it was not the intention of the Court that the students who had already applied and had been selected for counselling should also be covered by the same. The High Court had in its judgment indicated that there were no materials on record to prove that the S.T. applicants were migrants. In our view such a consideration is immaterial for our purpose since despite the fact that the notification had been issued under Article 341 of the Constitution, as per past practice, S.T. candidates were being given admission in Delhi educational institutions. Unfortunately, although the applications were made soon after the judgment was delivered, the same could not be taken up for final disposal before the first semester has almost come to an end. In such circumstances, we accept the recommendations of the Department of Training and Technical Education,

Government of NCT of Delhi, and direct that the successful students who had been called for counselling and have not already taken admission in any institution or University in Delhi, would be entitled to admission in the respective institutions for which they had applied for and also direct that special classes be arranged for the students to enable them to catch up with those who are in the process of completing the final semester. Such admission process should be completed, if possible, within a week from date." (emphasis supplied)

49. This Court is of the opinion that the above clarification (about Subhash Chandra being prospective) was meant to cover the candidates who had participated in the admission process in Subhash Chandra?s case. However, that order of the Supreme Court was meant to tide over the hardship that was likely to flow from the implementation of the Subhash Chandra judgment. That clarificatory order of the Supreme Court itself was by a two judge Bench of the Supreme Court, and did not consider which of the two decisions, i.e Pushpa, or Subhash Chandra was correct. In these circumstances, having regard to the decision of the Supreme

Court in Ram Chandra Trivedi?s case (supra) the law and opinion in Pushpa has to prevail, since it is by a larger Bench (than Subhash Chandra). This course is to be followed additionally, on the authority of the decisions of the Supreme Court in Ganapati Sitaram Balvalkar and Anr. v. Waman Shripad Mage (Since Dead) Through Lrs., [1981] 4 SCC 143; Mattulal v. Radhe Lal, [1975] 1 SCR 127; Acharaya Maharajshri Narandrapra- sadji AnandprasadjiMaharaj etc. v. The State of Gujaratand Ors., [1975] 2 SCR 317 and Union of India v Raghubir Singh AIR 1989 SC 1933. In the last mentioned decision, by a Constitution Bench, the Supreme Court pertinently held that (the):

“pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court.”

50. Some of the petitioners were asked to appear in the re-typing test on account of directions in Anupam Garg?s judgment, by a Division Bench. In the case of Monika Meena, (the petitioner in W.P. 7717/2010), the respondent’s position is that she secured an overall marks of 123 and had got 30 marks in the first typing test, and that since she had produced an ST certificate which showed that her father was a migrant, she could not be given the benefit of reservation. Though she had secured more marks than the last general category candidate (which was 117), she was denied appointment as she was overaged, according to the general category criteria. In the case of Sandeep Soni (W.P. 3278/2011), the facts are that he was allowed to compete as a SC candidate but was asked to later appear in the re-typing test, as the certificate was in relation to a state outside Delhi. He was consequently treated as a general category candidate; his overall marks are 114, and the last cut off marks in respect of general category candidates is 117.5.

51. In all the cases, the writ petitioners’ initial claim as Scheduled caste or scheduled tribe candidates had been accepted and they were allowed to compete. They were successful in the recruitment test. Later, they were told about Subhash Chandra?s judgement. Subsequently, some of them appeared in the re-typing test, necessitated by the judgment of the Division Bench in Anupam Garg. This

was used as an occasion to treat them as general category candidates. This court is of the opinion that having regard to the clear judgments of the Supreme Court about the binding nature of the judgment of larger Bench decisions, the law declared by Pushpa could not have been disregarded, even if there were a judgment by a two judgment decision to the contrary. Furthermore, there was no change in the ground reality between the time when the petitioners initially appeared, and were asked to appear in the re-typing test again. The only object of the re-typing test was to see the proficiency of those who had secured between 20 and 29.5 marks. However, that could not have meant that the respondents unilaterally changed the status of the petitioners - in the middle of the recruitment process- to general category candidates. In the case of Monika Meena, the injustice which has ensued is writ large; she has more than the cut off scored by the last candidate in the general category, and also had scored 30 marks in the typing test. Yet, she is now denied appointment on the ground that as general category candidate she was “overage”. On the other hand, she is not overaged, if the original status recognized by the respondents as a reserved category candidate, is continued.

52. As a result of the above discussion, it is held that the writ petitioners’ claims to be members of scheduled castes and scheduled tribes, having been accepted on the basis of the prevailing understanding that migrant citizens who fall within the description of one or more scheduled castes, or tribes, somewhere in the country (and might not necessarily fit that description in the list in relation to Delhi), based on Pushpa, have to be considered and their cases processed for the purpose of appointment. In view of the authoritative pronouncements of the Supreme Court mentioned above, it cannot be said that Subhash Chandra overruled Pushpa. Their cases for appointment have to be processed, regardless of the circular dated 13-10-2010 issued by the District Judge, Delhi; they shall be treated as scheduled caste or tribe candidates, for this purpose. These writ petitioners therefore, are entitled to relief.

Writ Petitions 816/2011, 1713/2011 and 8368/2010

53. The writ petitioners in these proceedings appeared as Other Backward Class (OBC) candidates, for the post of Lower Division Clerk (LDC) advertised by the District Judge. The subject matter of these is similar to those in the batch writ petitions dealt with above [W.P.(C) 5930/2010, 3223/2011, 3278/2011 and 7717/2010]. However, unlike in the other cases, the petitioners are OBC candidates. Their grievance is that though they appeared and were treated as OBC candidates, later, after the decision in Anupam Garg?s case, which occasioned a retyping test, their certificates were not accepted.

54. The respondents' submission in these cases is that after the initial selection/recruitment process, their results were withheld on account of the decision in Subhash Chandra?s case. Even though the writ petitioner in W.P.(C) 8368/2010 appeared in the second retyping test, the fact remained that as on the date of her application, the certificate furnished was issued by some authority in Chandigarh. The petitioner, Veena Yadav was born and educated outside Delhi and, therefore, could not claim benefit of reservation as an OBC candidate. Besides these, it is argued that unlike SCs/STs, OBC's stand on an entirely different footing and there is no change in law. The respondents' counsel relied upon the Supreme Court decision in MCD v. Veena and Ors. 2001 (6) SCC 571. Learned counsel also relies upon Article 340 of the Constitution of India, which requires the President to appoint a Commission to investigate conditions of backward classes and make recommendations. It is submitted that unlike in the case of Articles 341and 342 in respect of SCs/STs, there are no similar presidential notifications which have sanctity and primacy for OBCs.

55. It can be seen from the above discussion that the writ petitioners in these cases are not members of the SCs/STs. The certificate issued in their cases clearly brought out the fact that they were OBCs from outside Delhi; those certificates were furnished at the time the application was made. In this context Article 340 reads as follows:

"**340. Appointment of a Commission to investigate the conditions of backward classes -**

(1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament."

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

"6 . Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto

goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs."

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

Writ Petition No. 1205/2011

58. In this case too, the petitioners had applied for appointment to the post of LDC pursuant to the advertisement issued by the District Judge. The first two petitioners are members of Other Backward Classes (OBC) but whose castes are notified in relation to other states and whose fathers had shifted residence to Delhi. The third and fourth petitioners (Sandeep Kumar and Alaxender Toppo) belong to Scheduled Tribes, notified as such in other states such as Haryana and Bihar. The fifth petitioner is a member of a Schedule Castes notified in Bihar. Their common case is that all of them claimed that their applications were processed and they were permitted to appear in the written examination, subsequently in the typing test and also in the interview (the latter being held on 13.05.2010). It is also stated that they were issued with letters of appointment in June, 2010, and they underwent medical examination. One petitioner i.e. Radhey Shyam even resigned

from his existing service.

59. The petitioners aver that in this background, the respondents subsequently took the position that they were not entitled to be treated as reserved category candidates and were, therefore, treated as belonging to the general category. It is stated that their appointments were consequently withheld.

60. The position of the respondents during the arguments was similar as in other cases, namely, that since the petitioners claim the benefit as reserved candidates, which was inadmissible in view of the Subhash Chandra?s judgment, they cannot be appointed to the reserved vacancies.

61. As in the case of WP Nos. 816/2011, 1713/2011 and 8368/2010, the first two petitioners' claim for appointment cannot be considered. They belong to OBC not notified as such in Delhi. The petition, as far as they are concerned, has to consequently fail. So far as the other three petitioners (Nos. 3 to 5) are concerned, for the reasons mentioned in Paragraph 49 of this judgment, the respondents have to, on the basis of the ruling in Pushpa?s case, continue to treat them as Scheduled Castes or Scheduled Tribes candidates, as the case may be. Their cases are to be processed having regard to the last cut off marks obtained by those who were appointed in such reserved category. This writ petition has to, therefore, succeed as far as the third, fourth and fifth petitioners are concerned. It has to fail as regards the first two petitioners.

W.P. No.1513/2011

62. In this case, the Delhi Jal Board claims to be aggrieved by an order of the Central Administrative Tribunal (C.A.T.) dated 7.9.2010 in O.A. No.2181/2010. The facts are that the applicants before the CAT (Respondent nos.1-8 in the present appeal and hereafter called the general category officers), had challenged the final seniority list drawn by the Delhi Jal Board (hereafter referred to as "the Board"). In that, the Respondent nos.9-11 (who were originally arrayed before the Tribunal as Respondent nos.5-7 and are referred to hereafter as the "SC/ST officers") had been treated as senior to the said general category officers on the basis of their being members of Scheduled Castes or Scheduled Tribes. These general

category employees had contended that the said SC/ST officers were ineligible for the benefit of reservations since their castes were not notified as Scheduled Castes “in relation to” Delhi.

63. Before the Tribunal, the respondents, i.e., the reserved category employees had relied upon the clarification issued by the Supreme Court in respect of the prospective application of Subhash Chandra?s judgment. However, the Tribunal held that the clarification was not to any avail and that reasoning in Subhash Chandra?s case applied retrospectively. The Tribunal also sought to place reliance upon the ruling in Marri Chandrashekhar Rao and the Action Committee cases.

64. We have considered the submissions of the parties. In this case, the reserved category candidates had been appointed to the reserved posts as far back as in 1989 and 1990. Even though the question of their seniority on account of their being members of the Scheduled Castes and Scheduled Tribes did not arise then, nevertheless, the fact remains the Board did not have any grievance; indeed it treated their claim to belong to the members of the Scheduled Castes as valid. If the Tribunal’s logic i.e. that such employees or officials cannot be treated as Scheduled Castes or Scheduled Tribes members, were to be upheld, logically, they were also not entitled to hold the post since their appointments were made in the very first instance on the basis of their being members of such Scheduled Castes. Such an unreasonable and wholly inequitable result cannot follow. The other result of the CAT’s decision would be that for the purpose of initial appointment, these SC/ST candidates would be treated as such, but for the purpose of seniority, and accelerated promotion, they would be denied reservation benefits. Furthermore, the status of such SC/ST officers could not have been allowed to be challenged after such a long time, i.e after more than two decades. The Tribunal erred in entertaining the applications of the first eight respondents, and ought to have dismissed it, on this short ground, since the issue of status of such SC/ST officers stood settled more than 20 years ago, and could not have been questioned. The finalization of seniority might have arguably led the applicants to approach the Tribunal; however, as to the status of the SC/ST officers, the issue could not have been gone into, since their initial appointments

had been finalized long ago.

65. These petitions pose a difficult challenge to the High Courts when they are confronted with differing, and at times conflicting judgments of the Supreme Court. On the one hand, the decision in Pushpa (by three judges) is seemingly in conflict with rulings of at least three Constitution Benches of the Supreme Court. However, there cannot be any doubt as to its binding nature, since it pointedly and specifically deals with the question of migrant scheduled tribes and scheduled caste candidates entitlements to reservation benefits under the Constitution, when they move to Union Territories. At the same time, the reasons outlined in Subhash Chandra about the correctness of Pushpa?s views are weighty and powerful; yet the fact remains that the said decision was by a Bench of two judges, and could not be construed as having “overruled” Pushpa. In fact, the approach adopted by Subhash Chandra has been frowned upon, and the conflict between Subhash Chandra and Pushpa has been referred to a Constitution Bench in the State of Uttaranchal case. At the same time, the fact that Pushpa remains as a binding precedent, cannot be ignored by virtue of the overbearing nature of Article 141 of the Constitution. In this background, the clarification by a two Bench decision that Subhash Chandra should operate prospectively, has to be viewed in the context. The two judge Bench was concerned with the effect of Subhash Chandra, in respect of those who had applied for admission the process of which had not been completed. The clarification was meant really to cover their cases, and minimize the adverse impact which would have flowed on a strict application of Subhash Chandra. However, if that order itself were to be a normative declaration, further inequities would arise, because the binding nature of Pushpa has not been undermined in it. Also, in the context of seniority, as in the case of the officials of the Board, if it is held that for purposes of initial employment, scheduled caste and tribe officers who had migrated from states and places other than Delhi, would continue to be treated as possessing that status, but would be denied further benefits, such as seniority positions, and promotions, which they would have otherwise been legitimately entitled to as members of such scheduled castes or tribes (on account of prospective application of Subhash Chandra?s case), the result would be utterly unjust and inequitable. It would lead to a highly anomalous situation where reservation benefit would be admitted at the stage of appointment

but denied for subsequent benefits. This would itself result in violation of Articles 16 (4A) and 16 (4B) of the Constitution. As a result of the above discussion, the present petition deserves to succeed.

CONCLUSION

66. This court summarizes its conclusions, as follows: (1) The decisions in Marri, Action Committee, Milind and Channaiah have all ruled that scheduled caste and tribe citizens moving from one State to another cannot claim reservation benefits, whether or not their caste is notified in the state where they migrate to, since the exercise of notifying scheduled castes or tribes is region (state) specific, i.e " in relation" to the state of their origin. These judgments also took note of the Presidential Notifications, which had enjoined such citizens to be "residents" in relation to the state which provided for such reservations.

(2) The considerations which apply to Scheduled Caste and Tribe citizens who migrate from state to state, apply equally in respect of those who migrate from a state to a union territory, in view of the text of Articles 341 (1) and 342 (1), i.e. only those castes and tribes who are notified in relation to the concerned Union Territory, are entitled to such benefits. This is reinforced by the Presidential Notification in relation to Union Territories, of 1951. Only Parliament can add to such notification, and include other castes, or tribes, in view of Articles 341 (2), Article 342 (2) which is also reinforced by Article 16 (3). States cannot legislate on this aspect; nor can the executive - Union or state, add to or alter the castes, or tribes in any notification in relation to a state or Union Territory, either through state legislation or through policies or circulars. Differentiation between residents of states, who migrate to states, and residents of states who migrate to Union Territories would result in invidious discrimination and over-classification thus denying equal access to reservation benefits, to those who are residents of Union Territories, and whose castes or tribes are included in the Presidential Order in respect of such Union Territories. The Pushpa interpretation has led to peculiar consequences, whereby:

(i) The resident of a state, belonging to a scheduled caste, notified in that state, cannot claim reservation benefit, if he takes up residence in another state, whether

or not his caste is included in the latter State's list of scheduled castes;

(ii) However, the resident of a state who moves to a Union Territory would be entitled to carry his reservation benefit, and status as member of scheduled caste, even if his caste is not included as a scheduled caste, for that Union Territory;

(iii) The resident of a Union Territory would however, be denied the benefit of reservation, if he moves to a State, because he is not a resident scheduled caste of that State.

(iv) The resident of a Union Territory which later becomes a State, however, can insist that after such event, residents of other states, whose castes may or may not be notified, as scheduled castes, cannot be treated as such members in such newly formed states;

(v) Conversely, the scheduled caste resident of a state which is converted into a Union Territory, cannot protest against the treatment of scheduled caste residents of other states as members of scheduled caste of the Union Territory, even though their castes are not included in the list of such castes, for the Union Territory.

(3) The ruling in Pushpa is clear that if the resident of a state, whose caste is notified as Scheduled caste or scheduled tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in relation to the Union Territory, even though if he moves to another state, he is denied such benefit (as a result of the rulings in Marri and Action Committee). The ruling in Pushpa, being specific about this aspect vis--vis Union Territories, is binding; it was rendered by a Bench of three judges.

(4) The later ruling in Subhash Chandra doubted the judgment in Pushpa, holding that it did not appreciate the earlier larger Bench judgments in the correct perspective. Yet, Subhash Chandra cannot be said to have overruled Pushpa, since it was rendered by a smaller Bench of two judges. This approach of Subhash Chandra has been doubted, and the question as to the correct view has been referred to a Constitution Bench in the State of Uttaranchal case.

(5) By virtue of the specific ruling applicable in the case of Union Territories, in Pushpa, whatever may be the doubts entertained as to the soundness of its reasoning, the High Courts have to apply its ratio, as it is by a formation of three judges; the said decision did notice the earlier judgments in Marri and Action Committee. Article 141 and the discipline enjoined by the doctrine of precedent compels this Court to follow the Pushpa ruling.

(6) In matters pertaining to incidence of employment, such as seniority, promotion and accelerated seniority or promotional benefits, flowing out of Articles 16 (4A) and (4B) of the Constitution, there may be need for clarity, whichever rule is ultimately preferred - i.e the Pushpa view or the Marri and Action Committee view. In such event, it may be necessary for the guidance of decision makers and High Courts, to spell out whether the correct view should be applied prospectively. Furthermore, it may be also necessary to clarify what would be meant by prospective application of the correct rule, and whether such employment benefits flowing after recruitment, would be altered if the Marri view is to be preferred.

67. In view of the above discussion WP No. 5390/2010; WP No. 3223/2011 3278/2011, 7717/2010 are allowed. The third, fourth and fifth Petitioners in W.P. 1205/2010 are entitled to succeed; the said petition is allowed to that extent. The said petition is dismissed, as far as the first and second writ petitioners are concerned. For the reasons mentioned earlier, W.P.(C) 816/2011, 1713/2011 7878/2010 and 8368/2010 are dismissed. W.P.(C) No. 1513/2011 is allowed, and the impugned order of the Central Administrative Tribunal is set aside. Consequently, in WP No. 5390/2010; WP No. 3223/2011 3278/2011, 7717/2010 as well as WP 1205/2010 (as far as it concerns the third, fourth and fifth Petitioners) the District Judge, and the Govt. of NCT are hereby directed to ensure that the petitioners' cases for appointment to LDC are processed, and they are treated as scheduled caste or schedule tribe candidates, entitled to be considered as such, and appropriate orders made in that regard. This exercise shall be concluded within six weeks from today.

68. Having regard to the public importance of the questions which have arisen and have been dealt with, in relation to the interpretation of Articles 16, 341and 342 of

the Constitution of India, the Court hereby grants certificate to appeal to the unsuccessful parties, under Article 134A of the Constitution of India, to appeal to the Supreme Court.

69. There shall be no order on costs.

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