

# **SUPREME COURT OF INDIA**

Chandigarh Administration

Vs.

Surinder Kumar

(Brijesh Kumar and Arun Kumar JJ.)

27.11.2003

## **JUDGMENT**

### **ARUN KUMAR, J.**

With the promulgation of the Punjab Re-organisation Act 1966 in place of erstwhile State of Punjab, three States viz. Punjab, Haryana and Himachal Pradesh were carved out while Chandigarh became a Union Territory. Under Article 239 of the Constitution of India the Union Territories are administered by the President of India acting through an Administrator to be appointed by him. But this does not mean that the Union Territories become merged with the Central Government. They are centrally administered but they retain their independent entity. On formation of the Union Territory of Chandigarh, its employees were governed by the rules/instructions as applicable to the Central Government employees in view of Service of Union territory Employees Rules 1966. In the present case these facts have become relevant for the reason that the Chandigarh Administration issued an advertisement inviting applications for fourteen posts of Assistant Sub-Inspectors in the Chandigarh Police. Two posts were meant for Scheduled Castes (for short "SC") and four posts for Other Backward Classes (for short "OBC") candidates. Respondents 1 to 5 were applicants for the said posts in pursuance of the advertisement. Respondents 1 and 2 were SC candidates while respondents 3 to 5 were OBC candidates. These respondents had caste certificates issued by their respective States i.e. Punjab, Haryana and Himachal Pradesh.

On the basis of the caste certificates held by them the respondents sought the benefit of reservation but the same was denied to them.

This led them to approach the Central Administrative Tribunal at Chandigarh. The Tribunal vide its order dated 23.2.2000 allowed the OA filed by the respondents and directed the Chandigarh Administration to give appointments to the applicants if they were found to be otherwise eligible. Chandigarh Administration i.e. appellants herein challenged the said order of the Tribunal by way of a Writ Petition filed in the Punjab and Haryana High Court. The High Court dismissed the Writ Petition upholding the view taken by the Tribunal. The present appeal is directed against the said judgment and order of the High Court.

It is not in dispute that the Government of India instructions are applicable and are being followed by the Chandigarh Administration being a Union Territory as aforesaid. In fact, the appellants have in a rejoinder affidavit filed in this court specifically admitted that "for the purposes of recruitment instructions issued by the Government of India are being followed being not the 'Condition of Service'". Further it has been stated in this rejoinder affidavit "in case of Recruitment Rules, the Chandigarh Administration is following the Rules/Instructions issued by the Central Government". The Government of India vide its Circular No.DC/16014/1/82-SC-BCD.1 dated 22.2.1985 issued instructions to the Chief Secretaries of all the States and Union Territories to the effect that SC/ST persons who have migrated from the States of origin to other States for the purpose of seeking education/employment etc. will be deemed to be Scheduled Castes/Scheduled Tribes of the State of their origin and will not be entitled to derive benefits from the State of their migration on that basis. The prescribed authority of a State Government/Union Territory administration may issue the SC/STs certificate to a person who has migrated from another State on the production of genuine certificate issued to his father by the prescribed authority of the State of the father's origin. The certificates were to be issued irrespective of whether Caste/Tribe in question is Scheduled or not in relation to the State/Union Territory to which the person has migrated. Para 2 of the said circular is reproduced:

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

In pursuance of the aforesaid circular of the Government of India, the Home Secretary, Chandigarh Administration vide his letter dated 28th July, 1986 sought clarification from the Government of India, Ministry of Home Affairs as to whether these instructions are applicable in the Union Territory of Chandigarh. The Chandigarh Administration received the following reply to the said letter from the Government of India, Ministry of Welfare.

No.BC.12017/9/86-SC&BCD.I(Ch.Admn.) Government of india/Bharat Sarkar Ministry of Welfare/Kalyan Mantralaya New Delhi, dated 26.8.86 To The Home Secretary, Chandigarh Administration (Home-I), Chandigarh.

Sub: Issue of Scheduled Caste/Scheduled Tribe certificate to migrants from other states/U.T.s Grant of benefits/concessions to the migrated persons Clarification of.

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Sir, I am directed to refer to your letter No.4731-IB(7)-86/14080 dated 28.7.86 on the above subject and to say that in respect of employment under the Central government there is no discrimination between Scheduled Castes and the Scheduled Tribes of one State or another. In respect of employment under the Union Territories also legally, the position would be the same. Thus, in the case under reference, a recognised Scheduled Caste/Scheduled Tribe of any other State/Union Territory would be entitled to the benefits and facilities provided for Scheduled Castes and Scheduled Tribes in the services under the Union Territory of Chandigarh. All cases may be finalized in light of the position clarified above. Past case may not be re-opened as there may be complications in deciding those cases. Any how, for further clarification on service issues, the matter may be taken up with Department of Personnel and Training as they are dealing with the subject.

Yours faithfully, Sd/- ( B.N. Srivastava ) Director It will be seen from the above quoted letter of the Government of India that a recognised Scheduled Caste/Scheduled Tribe candidate of any other State or Union Territory was held entitled to benefit of reservation for Scheduled Castes and Scheduled Tribes in the Union Territory of Chandigarh. Further the said circular leaves it to the Chandigarh administration to seek further clarification, if any, on this issue from the Department of Personnel & Training, Government of India. It is the stand of the appellant that it made several efforts to seek further clarification from the Department of Personnel & Training, Government of India as suggested in letter dated 26th July, 1986. However, they had not received any response in this regard.

The Central Administrative Tribunal as well as the High Court relying on the clarification issued by the Government of India vide its letter dated 26th July, 1986 rejected the stand of the appellant while granting relief to the respondents.

According to the learned counsel for the appellants the letter dated 22nd February, 1985 of the Government of India holds the field and is binding on the Chandigarh Administration and, therefore, the respondents not being SC/OBC candidates of the Union Territory of Chandigarh are

not entitled to the benefit of reservation. The learned counsel has also placed reliance on certain decisions of this Court in support of her stand that the benefit of belonging to SC/ST/OBC is available only in the State of origin and not in the State to which the person concerned migrates. In other words the benefit of being a SC/ST/OBC can be enjoyed by a person only in the State to which he belongs. He cannot derive this benefit in the State to which he or she migrates.

Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College and Others [(1990) 3 SCC 130] is a Constitution Bench judgment of this Court on which reliance has been placed by the learned counsel for the appellant. The petitioner was born in the State of Andhra Pradesh. The petitioner was residing with his father in Bombay. His father held a ST certificate from the State of Andhra Pradesh. After passing the 12th standard examination of the Maharashtra State Board the petitioner submitted application for admission to the respondent Medical College seeking the benefit of reservation in favour of STs. He was denied admission to the MBBS course though ST candidates who had secured lesser marks than him had been admitted. This denial of admission was based on the Government of India circular dated 22nd February, 1985, referred to hereinbefore according to which a person who migrates from one State to another is entitled to benefit of being SC/ST caste certificate in the State of origin and not in the State to which he or she migrates. The petitioner was held not entitled to be admitted to the Medical College on the basis that he belongs to Scheduled Tribe in his original State. The following observation was made:

"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 in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities. This must be the basic approach to the problem." It will be seen that the judgment proceeds on the basis of the Government of India instructions contained in letter dated 22.2.1985.

According to the learned counsel for the appellant the respondents hold reserved category certificate from other States and not from the Union Territory of Chandigarh where they are seeking employment. Therefore, in view of the aforesaid judgment they are entitled to benefit in the State of their origin and not in the Union Territory of Chandigarh where they are seeking employment.

In Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Others vs. Union of India and Another [(1994) 5 SCC 244] it was brought to the notice of this Court that the Government of India had been taking a stand that if SC/ST persons who migrate from the State of origin to another State in search of employment or for educational purposes or the like, cannot be treated as persons belonging to Scheduled Caste or

Scheduled Tribe of the State to which they migrate and hence they cannot claim benefit as such in the latter State. This stand of the Government was challenged as being unconstitutional. This Court noticed 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 Scheduled Tribe in relation to the State or Union Territory for which it is specified. Consideration for specifying a particular caste or tribe or class for inclusion in the list of Schedule Castes/Scheduled Tribes or backward in a given State would depend upon 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 purpose of this Constitution'. The case of Marri chandra Shekhar Rao (supra) was followed.

In the above cases the issue has been examined from the point of view of constitutionality of the policy of the Government on the question of extending benefit on the basis of SC/ST/OBC reservation. The circumstances and the conditions which attract the benefit of being member of SC/ST/OBC vary from State to State.

That is why it was observed in State of Maharashtra and Others vs. Kumari Tanuja [(1999) 2 SCC 462] that the State has every right to recognise a particular community in a particular manner but the same should be done for good reasons and after application of mind to all relevant facts. Thus the ultimate decision with respect to extending the benefit of reservation has been left to the State.

In the present case we have noticed that the Government of India instructions contained in circular dated 26.8.1986 specifically permit that a recognised Scheduled Caste/Schedule Tribe of any other State or Union Territory would be entitled to the benefits and facilities provided for SC/ST in the services in the Union Territory of Chandigarh. This letter is specifically addressed by the Government of India to the Home Secretary, Chandigarh Administration and deals with employment in the Union Territory of Chandigarh. Therefore, there is no reason to ignore the instructions contained in the said letter. It is to be noticed in this behalf that in the rejoinder affidavit filed by the appellant before this Court it is specifically pleaded in para 12 that "at the relevant time, the reservation benefit was being extended to all the candidates belonging to respective communities on the production of valid certificates of castes issued by the State of origin, but on receipt of clarification on 7.9.1999 the reservation benefits are only to be allowed to. who are bonafide residents of Chandigarh and in whose favour valid certificates have been issued by the competent authority of Chandigarh Administration. After 7.9.1999 no appointment against reserved posts have been made to the candidates who are not residents of Chandigarh and are not having valid certificates of caste issue by the DM/SDM Chandigarh".

Thus as per their own admission the appellant was following the instructions contained in the Government of India letter dated 26.8.1986 till 7.9.1999. Now we have to see the significance of the date 7.9.1999. It appears that the appellant is taking the date 7.9.1999 on the basis of a letter written by Home Secretary, Chandigarh Administration to the Inspector General of Police, Union Territory, Chandigarh which bears the said date. The subject of the letter is "clarification". According to this letter the Personnel Department of Chandigarh Administration had given a clarification based on the Government of India letter dated 22.2.1985 (to which reference has already been made). The said letter of the Government of India had confined the benefit of reservation to persons in their State of origin and not in the State to which they migrate. This letter does not make any reference to the subsequent circular dated 26.8.1986 of the Government of India. The Chandigarh Administration was admittedly following the instructions contained in the Government of India circular dated 26.8.1986. A volte face appears to have been taken and the administration has fallen back on the earlier instructions of Government of India contained in letter dated 22.2.1985.

Significance of the date 7.9.1999 appears to be based on this clarification issued by the Home Secretary, Chandigarh Administration to the Inspector General of Police, Union Territory of Chandigarh.

Looking at the issue from another angle it is to be noted that the Home Secretary, Chandigarh Administration cannot overlook the instructions contained in the Government of India circular dated 26.8.1986 specially when those instructions were being admittedly all along followed by the Chandigarh Administration. The stand of the appellant regarding discontinuing the benefit of reservation to persons belonging to reserved categories in other States in the Chandigarh Administration w.e.f. 7.9.1999 thus appears to be wholly untenable.

It is not in dispute that the Government of India is entitled to issue instructions qua service in the Union Territories. Under Article 239 of the Constitution of India the administration of the Union Territories is left with the President of India. Appellant does not even suggest that the Government of India instructions are not binding on it. As a matter of fact the appellant has been following the Government of India instructions issued from time to time. The latest instructions on the subject in issue in this appeal are contained in the Government of India circular dated 26.8.1986.

Admittedly, thereafter inspite of requests from the Chandigarh Administration the Government of India has not issued any instructions to the contrary so far. A letter dated 8.12.2000 from the Government of India to the Home Secretary, Chandigarh Administration, Chandigarh on the subject is only on the issue of challenging the decision of the Central Administrative Tribunal and the Punjab & Haryana High Court in the present case by way of special leave petition to this Court. It is on the subject whether the Chandigarh Administration should file a special leave petition in the case in hand. It does not contain a policy decision or circular or instructions on the subject. Therefore, for decision of the issue raised in the present appeal the said letter is of no relevance. The judgments

relied upon by the learned counsel for the appellant to only decide the constitutional aspect of the Government policy on the subject at a given time while leaving the policy decision as to what benefits are to be conferred on persons belonging to reserved categories with the Government of India. In the present case the Government of India has conveyed its decision on the point vide its circular letter dated 26.8.1986 which has not been modified.

Therefore, the instructions contained in the said letter which were admittedly being followed till 7.9.1999, in our view, continue to be in force. There is no reasonable basis to discontinue the said decision with effect from 7.9.1999. No reason or basis has been disclosed for discontinuing the same with effect from the said date.

The result of the above discussion is that this appeal fails and the same is dismissed with costs. Counsel fee Rs. 5,000/-.