

SUPREME COURT OF INDIA

S. Pushpa

Vs.

Sivachanmugavelu

(Brijesh Kumar and Arun Kumar JJ.)

25.02.2004

JUDGMENT

Brijesh Kumar, J.

1. Leave granted in Special Leave Petitions 7834 and 12370-371 of 2002.

2. The common point which arises for consideration in all the above noted bunch of cases is as to whether a person belonging to a Scheduled Caste in relation to a particular State would be entitled to or not, for the benefits or concessions allowed to Scheduled Caste candidates, in the matter of employment, in any Union Territory where such person has migrated from the other State. Some persons belonging to the Scheduled Castes in relation to the State of Tamil Nadu migrated to the Union Territory of Pondicherry and on the basis of certain notifications issued by the Government of India, as also the Union Territory of Pondicherry the benefit of reservation was made available to them and such persons thus got employment in the Union Territory of Pondicherry. The Central Administrative Tribunal, bench at Madras, set aside such appointments/promotions with a direction to review the selection in regard to the reserved quota excluding the migrated Scheduled Caste candidates from consideration. In some matters where the petitions were filed in the High Court challenging the order of the Central Administrative Tribunal, the same view was taken upholding the judgment of the Central Administrative Tribunal. The Central Administrative Tribunal and the High Court have taken into consideration *inter alia* the decisions, rendered by this Court in the cases of *Marri Chandrashekhar Rao v. Dean, Seth G.S. Medical College and Ors.*¹, and *Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India and Anr.*² in support of the view that a person who is in the list of the scheduled caste in a particular state, no doubt may migrate to any other state but he shall not carry with him the benefits or concessions as available in his state, to the state where he has migrated. That is to say he would not carry with him the status of a Scheduled Caste candidate to the State to which he has migrated, nor he can claim such benefit in that State as available to him as a Scheduled caste candidate in his State.

3. Learned counsel for the appellants refers to the G.O. issued by the Government of India dated 4.2.1974 by which a clarification was conveyed to the Lt. Governor of Pondicherry that Scheduled Caste/tribe candidates from outside the Union Territory of Pondicherry

should also be considered for appointment to posts reserved for Scheduled Castes/tribes in Pondicherry. Our attention has also been drawn to another Notification dated January 6, 1993 issued by the Government of Pondicherry referring to, amongst other, the Government Order dated 4.2.1974 issued by the Government of India clarifying that since Pondicherry is a Union Territory, all orders regarding reservation for Scheduled Castes, Scheduled Tribes in respect of posts/services under the central government are applicable to posts/services under the Pondicherry administration also. therefore, Scheduled Caste/Scheduled Tribe candidates from outside Pondicherry would also be eligible for vacancies reserved for Scheduled Castes, Scheduled Tribes in the Union Territory administration. We don't think it would be necessary to refer to other letters or notifications on the subject. The submission of the appellants is that under Article 239 of the Constitution of India, the Union Territories are administered by the President, therefore, the notifications and orders issued by the Government of India would govern the affairs in the Union Territory of Pondicherry. The case of Marri Chandrashekar Rao (supra), it is submitted has, apart from other things, dealt with a situation where persons had gone from one State to the other State and not from other State to an Union Territory. Same is the position in regard to the case of the Action Committee (supra), A reference has also been made to certain provisions of the Government of Union Territories Act, 1963 (Act 20 of 1963) and it is submitted that the Administrator or the Council of Ministers of an Union territory is to comply with the directions of the President. Article 240 of the Constitution, has been referred, to submit that it is to be read with Articles 239 and 239A of the Constitution, where the powers have been given to the President to make regulations for the Union Territories including Pondicherry. The case of the appellants, therefore, is that directions issued by the Central Government are binding upon the Union Territories.

4. Learned counsel appearing for the appellants in different cases have relied upon a decision of this Court reported in, *Chandigarh Administration and Anr. v. Surinder Kumar and Ors.*³ a judgment rendered by a Bench consisting of ourselves, where it has been held that the Union Territories are though administered by the President of India acting through an Administrator, yet they retain their independent entity and the Union Territories do not get merged with the Central Government. The Union Territory of Chandigarh had been following the instructions issued by the Government of India extending benefits of reservation to Scheduled Caste, Scheduled Tribe candidates from outside the Union Territory of Chandigarh since 1986 after issue of a clarification by the Ministry of Home Affairs, Government of India. Such benefit could not be withdrawn after lapse of long time in the year 1999 on the basis of a previous circular issued in 1985. Some of the candidates from outside the Union Territory of Chandigarh were denied the benefit. They approached the Central Administrative Tribunal and their petition was allowed. The Chandigarh administration approached the High Court but the writ petition was dismissed. It was found by this Court that a different stand was taken in the year 1999 on the basis of some clarification issued by the Home Ministry, Chandigarh Administration to the Inspector General of Police, Union Territory of Chandigarh referring to the instructions of Government of India contained in earlier Circular of 1985. It was thus held that the reason given by the Chandigarh Administration to discontinue the benefit to the Scheduled Caste, Scheduled Tribe candidates from outside the Union Territory of Chandigarh was not tenable and could not be upheld. In paragraph 11 it has been observed as follows:

"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 a member of SC/ST/OBC vary from State to State. That is why it was observed in *State of Maharashtra v. Kumari Tanuja*⁴ that the State has every right to recognize 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."

The appellants therefore, submit that in view of the aforesaid decision in the case of Chandigarh Administration (supra) the circulars Issued on the subject by the Union Government should be held to be binding more particularly in view of the provisions contained under Article 239 of the Constitution of India. The Union Territory of Pondicherry itself, has also issued a circular on the same lines.

5. We, however, find that the case as placed by the respondents opens a wider issue. Such questions or points were not raised in the case of Chandigarh Administration (supra). It is submitted that no distinction can be made in the matter of reservation relating to the persons coming from outside on the basis that it is a Union Territory or a State. It further submitted that the Scheduled Castes have been identified in relation to a State on the basis of the sufferings they had undergone in a particular area or State or an area in a State which may have no relevance in other part of the country, or in another State. It is also indicated that the Union Territory of Pondicherry has its own legislature and council of ministers. Reference to certain provisions of the *Government of Union Territories Act, 1963* has also been made to indicate the extent of law making power in the event of inconsistency of laws.

6. The learned counsel for the respondents have also drawn our attention to Article 330 of the Constitution to indicate that reservation is made having regard to the total population of the Scheduled Castes in the State/Union Territory or part of the State. Article 338 of the Constitution provides for an independent body viz. National Commission of Scheduled Castes and Scheduled Tribes. The Commission makes recommendations after due investigation in all matters relating to safeguards to be provided to Scheduled Castes and Scheduled Tribes under the constitution. It is then submitted that under Article 341 of the Constitution the President, after consultation with the Governor, may specify the castes and tribes etc. which shall for the purposes of this Constitution be deemed to be "Scheduled Castes in relation to that State or the Union Territory, as the case may be". Clause (2) of Article 341 provides that Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. That is to say that there cannot be any change in such a notification identifying SC/ST except by law made by the Parliament. The President has issued the notification under Article 341(1) in respect of the Union Territory of Pondicherry, known as the *Constitution (Pondicherry) Scheduled Castes Order, 1964* enumerating 15 castes therein

which are to be deemed as Scheduled Castes. It cannot be changed directly or indirectly except by law made by Parliament.

7. The submission further is that the above notification of "1962 regarding Scheduled Castes is only in relation to Union Territory of Pondicherry. That is to say a Scheduled Caste in a particular State shall not be so regarded in relation to another State or Union Territory. A notification issued by the central government would not be valid in view of clause (2) of Article 341 and also on the ground that it may amount to adding more castes as Scheduled Castes, so declared in relation to other States.

8. So far Article 16(4) is concerned, the submission made on behalf of the appellants is that it cannot be restricted or regulated by the provisions of Article 341. It is submitted on behalf of the respondents that no provision can be made for reservation ignoring the provisions of Article 341 of the Constitution. Both provisions must operate harmoniously without the exclusion of either. The question of adequacy of representation of scheduled castes, as provided under Clause (4) of Article 16, is also related to the services under the State. Ultimately the submission is that if those who migrate, from whichever State it may be, are allowed the benefit of reservation as Scheduled Caste, it will severely affect the interest of the members of the original Scheduled Castes of the Union Territory of Pondicherry. The Union Territory has its own independent entity and no distinction on the ground of Union Territory and the States can be made. The relevance of the provision as contained under Article 341 that "in relation to a Union Territory/State", cannot be lost sight of. The local conditions have been held to be of vital importance in declaring any caste as Scheduled Caste, *inter alia* depending upon the sufferings they have undergone in a particular area.

9. It is true that some distinction has been sought to be drawn by the respondents between the decision rendered by us in the case of Chandigarh Administration (*supra*) and the cases in hand, also on the basis that the points raised here were not under consideration in the case of Chandigarh Administration (*supra*), we, however feel that in case the impugned decisions of the High Court and the Central Administrative Tribunal are upheld, in support of which some arguable points having *prime facie* merit have been raised, it may sound some conflict with the decision rendered by us in the case of Chandigarh Administration (*supra*).

10. therefore, in our view, it would be appropriate that these cases are placed before a Bench of three Hon'ble Judges, so as to consider the broader issues raised and lay down the law considering all aspects and provisions of the Constitution and other laws on the subject.

11. Let the papers be laid before Hon'ble the Chief Justice of India for constituting a bench of three Hon'ble Judges for hearing of these matters.

¹[1990]2SCR843

²(1994)5SCC244

³(2004)1SCC530

⁴[1999]1SCR315