

SUPREME COURT OF INDIA

State of Uttaranchal

Vs.

Sandeep Kumar Singh

C.A.No.4494 of 2006

(B.Sudershan Reddy and Surinder singh Nijjar JJ.)

07.10.2010

ORDER

1. The question which arises for consideration in the present appeal is as to whether a person belonging to a scheduled caste in relation to a particular State would be entitled or not, to the benefits or concessions allowed to scheduled caste candidate in the matter of employment, in any other State?

2. G.B. Pant University of Agriculture & Technology, Pant Nagar, Uttaranchal issued employment notice inviting applications from candidates all over the country for various posts mentioned therein. The notification, inter alia, provided:

“The vacancies are advertised under the reservation roster supplied by the Uttaranchal Government.”

3. Respondents applied for post of Assistant Professor in different departments as scheduled caste reserved category candidates. In support of their caste, certificates issued by the States of U.P, Bihar and Tripura were produced. Respondents were successful in the selection conducted by the University. Appellant, State of Uttaranchal, wrote a letter to the Vice-Chancellor of the University inter alia stating that reservations in the appointment have been made in violation of reservation policy of the State and all the appointments made by the University in violation of the reservation policy of the State were accordingly cancelled. University, accordingly, withdrew the appointment letters of the respondents under the instructions of the State Government on the ground that they do not belong to scheduled caste category of State of Uttaranchal. The respondents filed writ petitions in the High Court challenging the termination letter. The High Court allowed the writ petitions. The High Court without even adverting to the Constitution Bench decisions in *Marri Chandra Shekhar Rao vs. Dean, Seth G. S. Medical College & Ors.*¹ and *Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the India & Anr.*² allowed the writ petitions filed by the respondents and accordingly quashed the termination orders.

4. In *Marri Chandra Shekhar Rao*, a Constitution Bench of this Court while interpreting Article 341 as well as Article 342 observed: "...that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all -- to Scheduled Castes or Tribes and to non- scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction; harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution."

“...But having regard to the purpose, it appears to us that harmonious construction enjoins that we should give to each expression --"in relation to that State" or "for the purposes of this Constitution" -- its full meaning and give their full effect. This must be so construed that one must not negate the other. The construction that reservation made in respect of the Scheduled Caste or Tribe of that State is so determined to be entitled to all the privileges and rights under the Constitution in that State would be the most correct way of reading, consistent with the language, purpose and scheme of the Constitution. Otherwise, one has to bear in mind that if reservations to those who are treated as Scheduled Caste or Tribe in Andhra Pradesh are also given to a boy or a girl who migrates and gets deducted (sic inducted) in the State of Maharashtra or other States where that caste or tribe is not treated as Scheduled Caste or Scheduled Tribe then either reservation will have the effect of depriving the percentage to the member of that caste or tribe in Maharashtra who would be entitled to protection or it would denude the other non-Scheduled Castes or non- Scheduled Tribes in Maharashtra to the proportion that they are entitled to. This cannot be logical or correct result designed by the Constitution.”

5. In Action Committee on Issue of Caste Certificate to Scheduled Castes & Scheduled Tribes in the State of Maharashtra & Anr., it is held:

“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." It is further held: "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". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution.”

6. The latter Constitution Bench reiterated the view taken by former Constitution Bench in Marri Chandra Shekhar Rao case.

7. In *S. Pushpa & Ors. vs. Sivachanmugavelu & ors.*³, a three Judge Bench after referring to Marri Chandra Shekhar Rao & Action Committee cases held: "Part XVI of the Constitution deals with special provisions relating to certain classes and contains Articles 330 to 341. Articles 330 and 332 make provision for reservation of seats in the House of the People and Legislative Assemblies of the States respectively, for Scheduled Castes and Scheduled Tribes. Similar provisions have been made for Anglo- Indian community in Articles 331 and 333. Article 338 provides that there will be a Commission for the Scheduled Castes to be known as National Commission for the Scheduled Castes and it also provides for its composition, powers and duties. Clause (2) of Article 330 provides that the number of seats reserved in the States or Union Territories for Scheduled Castes or Scheduled Tribes shall bear, as nearly as may be, the same proportion to the number of seats allotted to that State or Union Territory in the House of the People as the population of the Scheduled Castes in the State or Union Territory or of the Scheduled Tribes in the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory. Similar provision for reservation of seats in favour of SC/ST in the Legislative Assembly of any State is contained in clause (3) of Article 332 of the Constitution. Therefore, in order to ascertain the number of seats which have to be reserved for Scheduled Castes or Scheduled Tribes in the House of the People or in the Legislative Assembly, it is absolutely essential to ascertain precisely the population of the Scheduled Castes or Scheduled Tribes in the State or Union Territory. A fortiori, for the purpose of identification, it becomes equally important to know who would be deemed to be Scheduled Caste in relation to that State or Union Territory. This exercise has to be done strictly in accordance with the Presidential Order and a migrant Scheduled Caste of another State cannot be taken into consideration otherwise it may affect the number of seats which have to be reserved in the House of the People or Legislative Assembly. Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Articles 341 and 342 after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of a forward caste.

“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."

A two Judge Bench in *Subhash Chandra & Anr. vs. Delhi Subordinate Services Selection Board & Ors.*⁴ 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 & Anr. vs. State of Maharashtra & Anr.*⁵, 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.

¹(1990) 3 SCC 130

²(1994) 5 SCC 244

³(2005) 3 SCC 1

⁴(2009) 15 SCC 458

⁵(2005) 2 SCC 673