

**SUPREME COURT OF INDIA**

Director Transport Department Union Territory Administration of Dadra and Nagar Haveli  
Silvassa

Vs.

Mr.Abhinav Dipakbhai Patel

C.A.No.4665 of 2019

(L.Nageswara Rao and M.R.Shah,JJ..)

07.05.2019

**JUDGMENT**

**L.Nageswara Rao,J.,**

SLP.(Civil)No.16421 of 2017

1. Leave granted.

2. The judgment of the High Court directing appointment of the Respondent as Assistant Motor Vehicle Inspector by allowing his Writ Petition is the subject matter of the above Appeal. The Respondent belongs to "Dhodia" caste which is recognized as a Scheduled Tribe category in the State of Gujarat as well as in the Union Territory of Dadra and Nagar Haveli. He holds a caste certificate which was issued by the concerned competent authority in the State of Gujarat. He shifted his residence from Gujarat to the Union Territory of Dadra and Nagar Haveli. He owns a residential accommodation in the Union Territory and has a Voter's I.D. card to show that he was a resident of Dadra and Nagar Haveli.

2. An advertisement was issued on 25.10.2014 calling for applications for filling up two posts of Assistant Motor Vehicle Inspectors, one of them reserved for the Scheduled Tribe category. It was made clear in the advertisement that all Indian citizens could apply for appointment to the post. However, persons having 'Domicile' in Dadra and Nagar Haveli would be given weightage. Candidates claiming to be members of a Scheduled Tribe were required to furnish an attested copy of the certificate issued by the competent authority stating that he/ she belongs to the Scheduled Tribe community. The Respondent applied for selection to the post of Assistant Motor Vehicle Inspector and after scrutiny of 114 applications that were received, it was found that three candidates belonging to the 'General' category and two from the 'Scheduled Tribe' category were eligible. The respondent appeared in the written examination on 01.07.2015. To his surprise, the Respondent found that the result of the written examination for the Scheduled Tribe vacancy was not announced while announcing the result for the unreserved post on 11.07.2015. As there was no response to the representations made by him regarding his

non-selection to the post of Assistant Motor Vehicle Inspector, he approached the National Commission for Scheduled Tribes, Govt. of India. The National Commission, being convinced that the Respondent was a resident of the Union Territory of Dadra and Nagar Haveli and that he belongs to a Scheduled Tribe category, directed the representative of Dadra and Nagar Haveli to seek a clarification from the Ministry of Home Affairs, Govt. of India and appoint the Respondent thereafter. The Ministry of Home Affairs, Govt. of India clarified that the Respondent was eligible for appointment and advised the concerned authority to take appropriate action as per the directions issued by the National Commission for Schedule Tribes. After a series of correspondence between the Government of India, Union Territory of Dadra and Nagar Haveli and the National Commission, an order was passed on 25.07.2016 by the National Commission directing the Appellants to issue a letter of appointment in favour of the Respondent. Since no action was taken to appoint the Respondent, he was constrained to file a Writ Petition in the High Court of Judicature at Bombay.

3. On behalf of the Appellants, it was submitted before the High Court that a policy was framed by the Union Territory of Dadra and Nagar Haveli on 01.09.2006 by which it was decided that the local candidates from open category had to provide 'Domicile' certificate. Insofar as the reserved categories are concerned, only local candidates would be considered. The said policy was modified on 26.12.2013 only in respect of 'Domicile' relating to open category candidates. It was also contended on behalf of the Appellants that there can be no difference between migrants of the Scheduled Tribe from one State to another and from one State to a Union Territory. As there was a separate Presidential Order issued for notifying the Scheduled Tribes in Dadra and Nagar Haveli, migrants cannot claim the benefit of reservation in the Union Territory. While referring to the weightage given to local candidates, the Appellants submitted that 20 marks were given for local candidates in the selection process which apply equally to the open category and the reserved category candidates. However, the Appellants maintained that the benefit of reservation under the Scheduled Tribes category was restricted only to local candidates and not migrants.

4. The High Court was not impressed with the submission of the Appellants that the members of the Scheduled Tribe category from outside the Union Territory were excluded from consideration for appointment to the public post in the Union Territory in the reserved category. Weightage of marks given to local candidates in the selection indicates that outsiders were not excluded from consideration, according to the High Court. The Respondent was found to be a resident of the Union Territory of Dadra and Nagar Haveli and though he migrated from the State of Gujarat, he was entitled to be considered for appointment as a reserved category candidate. On the basis of the said findings, the High Court directed the Appellants to appoint Respondent as Assistant Motor Vehicle Inspector with effect from the date of appointment of other candidates from the same selection process.

5. The learned counsel appearing for the Appellants referred to various circulars which indicate the policy of the Union Territory that the reservation was applicable only to the locals and not to the migrants. He argued that the benefit of reservation can only be

claimed by a person who is domiciled in the Union Territory. According to him, residence of at least 10 years is required for a person to be considered for appointment on a public post as a Scheduled Tribe. To justify the action of the Union Territory in refusing to appoint the Respondent, he relied upon the judgment of this Court reported in *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Another v. Union of India & Another*<sup>1</sup>, *S. Pushpa and Others v. Sivachanmugavelu and Others*<sup>2</sup>, *Puducherry Scheduled Caste People Welfare Association v. Chief Secretary to Government*<sup>3</sup>, *Union Territory of Pondicherry and Others*, and *Bir Singh v. Delhi Jal Board and Others*<sup>4</sup>.

6. The learned Senior Counsel appearing for the Respondent referred to the Office Memorandum issued by the Union Territory to argue that there is a clear indication from the Memorandum that there is no exclusion of Scheduled Tribes of other States from being considered for appointment to a public post in the reserved category. The local candidates were given the benefit of weight age which applies to Scheduled Tribes as well. Amongst the four candidates who were found eligible and who participated in the written examination, the Respondent secured the highest marks and was eligible for being appointed in the unreserved post according to the law laid down by this Court. Even as per the Office Memorandum dated 26.12.2013, which pertains to the direct recruitment in group 'C' posts, the Scheduled Tribe candidates who were selected on their own merit without relaxed standards shall be appointed in the posts earmarked for the open category. The learned Senior Counsel argued that it is settled law that a resident of the Union Territory is entitled to be considered for appointment to the public post as a reserved category candidate. He cannot be deprived of the status as a member of a reserved category candidate only on the ground that he is a migrant. It was submitted that there is no doubt that the Respondent had been residing in the Union Territory for six years before the date of the advertisement. He referred to the judgment of this Court in *Bir Singh* (supra) to argue that the law laid down in *Pushpa's* (supra) case has not been disturbed.

7. By the Constitution (Dadra and Nagar Haveli) Scheduled Tribes Order, 1962, the President declared "Dho dia" caste as a Scheduled Tribe in relation to the Union Territory of Dadra and Nagar Haveli regarding members thereof who are residents in that Union Territory. A circular was issued by the Appellants on 10.07.1995 by which the benefit of reservation in Government offices for Scheduled Castes/ Scheduled Tribes candidates would continue in respect of persons who were appointed prior to 01.01.1990 and a separate decision shall be taken for future appointments. Persons belonging to Scheduled Castes/ Scheduled Tribes domiciled in the Union Territory Administration of Dadra and Nagar Haveli are to be considered for appointment to public posts in reserved categories as per the Office Memorandum dated 01.09.2006. The said notification was in respect of direct recruitments to group 'C' and 'D' posts. While reiterating that the benefit of reservation for appointment to public posts shall be restricted to those castes/ tribes included in the notification applicable to the Union Territory, in the Letter to the Ministry of Home Affairs dated 13.09.2013, it was conveyed that priority/preference shall be given to the locals. It is not disputed that the said priority shall be applicable to candidates belonging to open category as well as reserved categories. The Government of India approved the said proposal regarding weightage/preference to local people in direct

recruitment in respect of Group 'B', 'C' and 'D' posts. The Government of India was of the opinion that exclusive reservation for local people would be unconstitutional. Thereafter, a decision was taken by the Union Territory of Dadra and Nagar Haveli that weightage of 20 additional marks shall be given to the locals in both open and reserved categories for direct recruitment to category 'C' posts in the Union Territory. According to the advertisement, a candidate applying in the reserved category should produce a certificate issued by the competent authority. All Indian citizens were eligible to apply for selection to the post of Assistant Motor Vehicle Inspector and the candidates were informed about the weightage to be given to the locals.

8. In *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and Others*<sup>5</sup> the Petitioner belonged to 'Gouda' community in the State of Andhra Pradesh which was recognized as a Scheduled Tribe in the Presidential Order issued for the said State. He applied for admission in a medical college in the State of Maharashtra and claimed the benefit of reservation. 'Gouda' community was not recognized as a Scheduled Tribe in the Presidential Order issued for the State of Maharashtra, and on that ground he was denied the benefit of reservation. It was held by this Court that he had no legal right to claim benefit of reservation in the State of Maharashtra as his community was not included as a Scheduled Tribe in the Presidential Order issued for the State of Maharashtra.

9. Appointments of Selection Grade Teachers made by the Directorate of Education, Government of Pondicherry was the subject matter of a judgment of this Court in *S. Pushpa* (supra). An advertisement was issued for recruitment of 350 General Central Service Group 'C' posts of Selection Grade Teachers out of which 56 posts were reserved for Scheduled Caste candidates. As sufficient number of Scheduled Castes candidates were not available in the Yanam and Mahe regions of the Union Territory of Pondicherry, candidates registered in the neighbouring employment exchanges in the States of Tamil Nadu, Andhra Pradesh and Kerala were also sponsored. The question that arose for consideration therein was whether a migrant Scheduled Caste candidate belonging to another State was eligible for appointment to the post which is reserved for a Scheduled Caste candidate in the Union Territory of Pondicherry. The Central Administrative Tribunal was of the opinion that migrant Scheduled Caste candidates were not entitled to claim the benefit of reservation in the matter of employment in the Pondicherry Government Service. This Court reversed the judgment of the Central Administrative Tribunal by observing that there is no violation of any provision of the Constitution of India in making the selection and appointment of migrant Scheduled Caste candidates against the quota reserved for Scheduled Castes in the Union Territory of Pondicherry.

10. Government Orders issued by the Pondicherry Government extending the benefit of reservation for admissions in colleges was extended only to the members of the Scheduled Castes who were originally from the Union Territory. While referring to the notification issued under Articles 341(1) and 342(1) of the Constitution of India, this Court in *Puducherry Scheduled Caste People Welfare Association* (supra) decided that no amendment, modification, alteration or variation of the Presidential Order is permissible by an executive power. Altering the word "Resident" in the Presidential Order to "Origin" by an executive order amounted to altering the Presidential Order, was held to be

impermissible by this Court in the said judgment.

11. In view of the difference of opinion relating to the extension of benefits or concessions allowed to Scheduled Caste candidates belonging to a particular State in another State, the matter was referred to a Constitution Bench. In *Bir Singh's* case (supra), this Court was of the opinion that the correctness of the view expressed in the case of *S. Pushpa* (supra) did not require reconsideration. The Constitution Bench also reiterated that the Presidential Notification issued under Articles 341 and 342 cannot be altered or modified by the Executive. The upshot of the above discussion is that a person belonging to a Scheduled Caste or a Scheduled Tribe which is notified by the President for a Union Territory is entitled to be considered as a reserved candidate provided he is a resident of the said Union Territory.

12. There is no dispute that the Respondent was a resident in the Union Territory of Dadra and Nagar Haveli for six years prior to the date of advertisement. He stated in the Writ Petition that he owns an apartment in which he was residing and he married a woman from "Dhodia" tribe in the Union Territory. He further stated that his name is in the Voter's List in the Union Territory. These facts have not been disputed by the Appellants. The central issue raised by the Appellants before the High Court was that a person should be a local in the Union Territory which meant that migrant Scheduled Tribes cannot be given the benefit of reservation. The Presidential Notification issued for the Union Territory of Dadra and Nagar Haveli extends the benefit of reservation to the Scheduled Tribes mentioned therein on the basis of residence and not on the basis of origin. We find no force in the point canvassed by the learned counsel for the Appellants that the reservation for Scheduled Tribes in the Union Territory of Dadra and Nagar Haveli is not available to migrant Scheduled Tribes. A feeble attempt was made by the learned counsel for the Appellant that the requirement of residence is for a period of 10 years for a person to claim the benefit of reservation. There is no material which was placed on record in the High Court in support of the said submission and there was no such averment in the counter affidavit filed in the Writ Petition. This point was not raised before the High Court and no such ground is taken in the Special Leave Petition for which reason the said contention does not merit any consideration. Other points canvassed by the learned Senior Counsel for the Respondent need not be adverted to in view of the order we propose to pass. Gross injustice is caused to the Respondent by the action of the Appellants in not appointing him in spite of the advice of the Union of India and the direction issued by the National Commission for Scheduled Tribes. The appointment of Respondent as Assistant Motor Vehicle Inspector does not brook any further delay.

13. We have no reason to interfere with the judgment of the High Court. Accordingly, the Appeal is dismissed.

Judgment Referred.

<sup>1</sup>(1994) 5 SCC 0244

<sup>2</sup>(2005) 3 SCC 0001

<sup>3</sup>(2014) 9 SCC 0236

<sup>4</sup>(2018) 10 SCC 0313

<sup>5</sup>(1990) 3 SCC 0130