

(1988) 11 BOM CK 0022

In the Bombay High Court

Case No : W. P. No. 5164 of 1988 and W.P. No. 3827 of 1987

M.S. Malathi

APPELLANT

Vs

The Commissioner, Nagpur Division and others

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(1), 16, 17

Citation : (1988) MhLj 1041

Hon'ble Judges : C. Mookerjee, C.J.;S.P. Kurdukar, J;C.S. Dharmadhikari, J

Bench : Full Bench

Advocate : A.P. Deshpande and P.S. Bakre in W.P. No. 5164 of 1988, A.P. Shinde in W.P. No. 5164 of 1988, S.G. Aney with S.S. Sanyal in W.P. No. 5164 of 1988, Bhushan R. Gavai in W. P. No. 3827 of 1987, for the Appellant; A.S. Bobde, Advocate General with V.A. Gangal, Asst Govt. Pleader, B.P. Pandya, Hon. Asst. to Advocate General and S.R. Borulkar for respondents Nos. 1 to 4 in W.P. No. 5164 of 1988, R.P. Darda in W.P. No. 5164 of 1988, A.S. Bobde, Advocate-General with V.A Gangal Asst. Govt. Pleader with B.P. Pandya, Hon. Asstt. to Advocate-General and S.R. Borulkar in W.P. No. 3827 of 1987, for the Respondent

Judgement

C. Mookerjee, C.J.—Their Lordships the Hon"ble Mr. Justice Mohta and the Hon"ble Mr. Justice Ratnaparkhi, JJ., have referred the Writ Petition No. 5164 of 1988 (transferred from Nagpur Bench Writ Petition No. 16 of 1984) to the Full Bench for determination of the following point:

Whether the term "in relation to the State" in Article 341(1) of the Constitution, ensures to the benefit of the Scheduled Caste only within territorial area of that State, or whether a declaration of Scheduled Caste under" the Constitutional order enures to the benefit of Scheduled Castes for whole of the country and not restricted to the particular State".

Mohta and Ratnaparkhi, JJ., were unable to agree with the view taken, by an earlier Division Bench of this Court in the case of Wasudeo vs. Union of India, 1973 Mh.L.J. 994 regarding the interpretation of the said expression "in relation to the State" in Article 341(1) of the Constitution. C. A. No. 5069 of 1988 has

been heard along with the Full Bench Reference.

2. Kumari S, Malathi the Petitioner in Writ Petition No. 16 of 1984 (renumbered as Writ Petition No. 5168 of 1988) belongs to Adi Dravida caste. The said caste Adi Dravida has been specified as a Scheduled Caste in Part XVI of the Schedule (which relates to Tamil Nadu) to the Constitution (Scheduled Castes) Order, 1950 made by the President in exercise of his powers under Article 341(1) of the Constitution and as amended under Article 341(2) from time to time by the Parliament of India. The said caste Adi Dravida has not been however included in Part X of the Schedule to the said Constitution (Scheduled Castes) Order of 1950 which has specified the Scheduled Castes in relation to Maharashtra.

3. At the material time the father of the Petitioner Kumari S. Malathi was employed In the Indian Bureau of Mines, Government of India at Nagpur. Claiming to belong to Scheduled Caste she had applied for admission to Bachelor of Dental Medicine and Surgery course, 1983-84 in the Government Dental College and Hospital at Nagpur against a seat reserved for Scheduled Caste students. She was given provisional admission to the said course subject to the verification of her caste. The authorities for caste verification, had however refused to grant the Writ Petitioner a certificate to the effect that she was a Scheduled Caste in the State of Maharashtra because in the Constitution (Scheduled Castes) Order, 1950 her caste Adi Dravida was not specified as a Scheduled Caste in relation to Maharashtra State. Only because her caste Adi Dravida was specified as a Scheduled Caste in relation to Tamil Nadu did not entitle to her to claim she was a Scheduled Caste also in Maharashtra.

4. Kumari S. Malathi had thereupon filed the present Writ Petition before Nagpur Bench of this Court. Under interim orders granted by Court, she was admitted in a seat reserved for Scheduled Caste students and was allowed to prosecute her studies in the B.D.S. course at Nagpur government Dental College and Hospital. She has in fact already completed the course and has been admitted to the Degree of B.D.S. Under further interim orders made by Court, the Petitioner has been made a Clinical Assistant in order to enable her to read in the Post-Graduate Course. Kum. Manjusha G. Waghmare would have been entitled to be appointed to the said post of Clinical Assistant in the event no Scheduled Caste candidate was available, but as the Petitioner was appointed to the said post, Kum. Manjusha Waghmare was not given the said post. She has been allowed to intervene in this matter.

5. The Writ Petition No. 3827 of 1987 has been directed to be placed for hearing along with Writ Petition No. 16 of 1984 (renumbered as Writ Petition No. 5164 of 1988). Kempanna belongs to Adi Kamataka caste which has been specified in the Constitution (Scheduled Castes) Order, 1950 as a Scheduled Caste in relation to Karnataka State. But in the said Order of 1950 his caste Adi Kamataka has not been specified as a Scheduled Caste also in relation to Maharashtra State. The Respondents have rejected his claim that he must be deemed to be a Scheduled Caste in Maharashtra and that he ought to be given higher position as Scheduled

Caste in the seniority list for Maharashtra Service of Engineers Class II. The Respondents had held that since his caste was not specified in Part X of the Schedule to the Constitution (Scheduled Castes) Order, 1950, he could not be deemed to be a Scheduled Caste in relation to Maharashtra State.

6. Provisions for reservation of seats for Scheduled Caste students in Government Dental College and Hospital, Nagpur had been made by Maharashtra Since presumably in accordance with clause (4) of Article 15 (which was inserted by Constitution (First) Amendment Act, 1951) read with Article 46 of the Constitution. The State under clause (4) of Article 16 of the Constitution may make reservation posts in favour of backward classes of citizens who in the opinion of the State are adequately represented in the service.

7. Therefore in both the Writ Petitions the moot point would be whether the Petitioners whose caste has not been specified as Scheduled Caste in relation to Maharashtra in the Constitution (Scheduled Castes) Order, 1950 ought to be deemed as Scheduled Castes in relation to Maharashtra because of the fact that in relation to a different State (Tamil Nadu and Karnataka respectively) their castes had been specified as Scheduled Castes. In other words when once a caste under an order made under Article 341 is specified as Scheduled Caste in relation to one State or Union Territory, whether such caste is to be deemed as Scheduled Caste for the purposes of the Constitution in all States and Union Territories. We may therefore first ascertain the meaning assigned by the Constitution to the expressions "Scheduled Caste" and "Scheduled Tribes". Clauses (24) and (25) of Article 366 of the Constitution assign the following meanings to the expressions "Scheduled Castes" and "Scheduled Tribes":

"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";

"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".

Thus, the aforesaid two clauses, in turn refer to the provisions of Articles 341 and 342 for the purpose of identifying Scheduled Castes and Scheduled Tribes. The President in exercise of powers conferred by clause (1) of Article 341 had made Constitution (Scheduled Castes) Order, 1950 specifying the castes, races or tribes or parts or groups thereof which shall be deemed as Scheduled Castes for the purposes of the Constitution in relation to the State or Union Territory as the case may be. The Parliament under clause (2) of Article 341 have from time to time inter alia varied the said lists by including and/or excluding there from. Similarly the President in exercise of his powers conferred by clause (1) of Article 342 of the Constitution had made Constitution (Scheduled Tribes) Order, 1950 which has been from time to time amended by the Parliament under clause (2) of Article 342. The tribes or tribal communities or parts or groups thereof

mentioned in the parts in relation to States to which these parts relate are to be deemed as Scheduled Tribes, so far as regards members thereof resident in the localities specified in relation to them.

8. It is settled now that the orders made under Articles 341 and 342 specifying the Scheduled Castes and Scheduled Tribes are exhaustive. No person can claim to be a Scheduled Caste or Scheduled Tribe unless his caste or tribe, as the case may be, has been specified in any of the parts of the Schedules to the two Orders made respectively under Articles 341 and 342. One whose caste or tribe is not so specified cannot for the purposes of the Constitution be deemed to be a Scheduled Caste or Scheduled Tribe as the case might be. The President under Article 341(1) was authorised to limit the notification even to the part of a *Bhaiyalal Vs. Harikishan Singh and Others*,

9. We may proceed to examine in detail the provisions of Article 341. Article 341 was amended by the Constitution (First Amendment) Act, 1951 and also by the Constitution (Seventh Amendment) Act, 1956. Under Article 341(1) as it stands now the President is required to specify in the prescribed manner in respect of any State or Union Territory, the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory as the case may be.

10. The clear mandate of clause (1) of Article 341 is that for each State or Union Territory the castes or tribes or parts of groups thereof are to be separately specified i.e. to be identified by the President. The Supreme Court in the case of *Kishorilal Hans Vs. Raja Ram Singh and Others*, had referred to the First, Fifth and Sixth Schedules of the Government of India Act, 1935 and to the Government of India (Scheduled Castes) Order, 1936. In *Kishorilal's* case (*supra*) the Supreme Court had observed that the Presidential Order under Article 341 of the Constitution has followed the same pattern and the Scheduled Castes and Scheduled Tribes have been specified for the State or territory or parts thereof in relation to the territory in which they resided. The procedure for preparation of such list specifying the Scheduled Castes has been also prescribed. Where the list is to be prepared in respect of a State, the President shall consult with the Governor thereof. Such specifying of Scheduled Caste is to be made in relation to each State - i.e. separate lists of Scheduled Castes for each State and Union Territory shall be prepared. The two key expressions in Article 341(1) are "for the purposes of this Constitution" and "in relation to that State or Union Territory". Mr. Aney the learned counsel in another context himself pointed out that the Court ought to endeavour to make a harmonious construction of the different provisions of the Constitution. Therefore both the aforesaid expressions are to be given effect to while specifying, under Article 341, Scheduled Castes. The expression "purposes of the Constitution" are referable to the provisions of the Constitution relating to the Scheduled Castes and Scheduled Tribes. The Constitution has recognised that Scheduled Castes and Scheduled Tribes require

protection and has made various provisions for safeguarding the interests of Scheduled Castes and Scheduled Tribes etc. (See in this connection the speech of Dr. B.R. Ambedkar in the Constituent Assembly while moving for framing draft Articles 300A and 300B (now Articles 341 and 342)) "...The President... issue a general notification... specifying Scheduled Castes and Scheduled Tribes for the purposes of privileges which have been defined for them in the Constitution". The Scheduled Castes have been made subject of special treatment inter alia in matters of (a) admission to educational institutions maintained by the State or receiving aid from State funds, (b) Public employment, (c) representation in the Lok Sabha and the State Legislatures by reservation of seats for them. The clause (1) of Articles 15 and 16 which are but facets of Right to Equality guaranteed by Article 14 of the Constitution. While Article 15(1) prohibits discrimination against any citizen on the ground only of religion, race, caste, sex or place of birth or any of them; Clause (2) of Article 29 forbids denial of admission to any educational institution maintained by the State or receiving aid from State funds on grounds only of religion, race, caste, language or any of them. The clause (4) of Article 15 provides exception to those embargo imposed, by Articles 15(1) and 29(2) by providing that the State may make any special provision for advancement of any socially and educationally backward classes or for the Scheduled Castes and Scheduled Tribes. The State under clause (4) of Article 16 is entitled to make provisions for 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 of the State. The expression "backward classes" is undoubtedly wide enough to include not only Scheduled Castes or Scheduled Tribes but also other backward classes who are not adequately represented in service. According to Mr. Aney the Scheduled Castes and Scheduled Tribes are entitled to claim benefits also under Articles 17, 19, 21, 29, 38, 46, 81, 330, 332, 333, 334, 335, 338, 340, 341, 342, etc., of the Constitution of India. We have no doubt the words for "the purposes of this Constitution" in clause 24 of Article 366 and in clause (1) of Articles 341 or 342 in their sweep were intended to cover all the provisions in the Constitution relating to Scheduled Castes and Scheduled Tribes But by using at the same time the words "in relation to that State or Union Territory, the Constitution makers clearly exhibited an intention that it would be within the State or Union Territory or in respect of which a caste or tribe or groups or parts thereof are specified as Scheduled Castes or Scheduled Tribes they would enjoy the special provisions relating to Scheduled Castes and Scheduled Tribes in different Articles of the Constitution. In other words only in relation to the State in which they are specified by an Order under Articles 341 and 342 as Scheduled Castes or Scheduled Tribes, a caste or a tribe or groups or parts therefrom, the said caste or tribe would be deemed to be Scheduled Caste or Scheduled Tribe for the purposes of the Constitution. Only within the territorial limits of the State in relation to which they have been specified, under Article 341 members of such caste are to be treated as Scheduled Castes for the purposes of the Constitution. By logical corollary, a caste or a tribe which in relation to a State has not been

specified in the Orders made either under Article 341 or 342 cannot be deemed to be Scheduled Caste or Scheduled Tribe for the purpose of the Constitution. Our Constitution has made special provisions relating to admission of Scheduled Castes and Scheduled Tribes, to educational institutions maintained by the State or receiving aid from State funds or in the matter of reservation for them in the public employment etc., because Scheduled Castes and Scheduled Tribes belong to weaker or backward sections of the community. In *Kishorilal vs. Rajaram* (supra) the Supreme Court had referred to the Tenth Report of the Commissioners for Scheduled Castes and Scheduled Tribes which mentioned that the following two factors had been mainly taken into account for including a caste or a tribe in the lists of Scheduled Castes and Scheduled Tribes (a) socio-economic conditions and (b) population figures. They have been given special protection and they cannot be equally treated with others the matters of admission to educational institutions or in making public employment. Similarly, for limited period of time provisions have been made for reservation of seats for the Scheduled Castes and Scheduled Tribes communities in the legislature. Such backwardness of Scheduled Castes and Scheduled Tribes would be obviously always comparative i.e. relative to the rest of the communities in a particular State or Union Territory. The stage of backwardness or degree of social or economic weakness of Scheduled Castes or Scheduled Tribes and their numerical strength or concentration are not uniform or similar throughout the different States and Union Territories of India. These vary from State to State. Need to protect backward castes and tribes also differs from State to State. While considering religious or linguistic minority under Article 30 of the Constitution to be as backward the Supreme Court in *D.A.V. College, Vs. State of Punjab and Others*, had observed that the same is to be determined with reference to the entire population of a State. Therefore, Articles 341 and 342 have provided for separately identifying or specifying for each State and Union Territory the various castes or tribes who are to be deemed to be Scheduled Castes and Scheduled Tribes. The President is empowered to notify in respect of each State or Union Territory in which caste or tribe would be deemed to be Scheduled Castes or Scheduled Tribes for the purposes of the Constitution in relation to that State or Territory- Accordingly in exercise of the powers conferred by clause (1) of Article 341 of the Constitution, the President made the Constitution (Scheduled Castes) Order, 1950 and Constitution (Scheduled Tribes) Order, 1950. In paragraph 2 of the said two Orders, it was clearly stated that "subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes, specified in Parts I to XIX of the Schedule to this Order shall, 1, 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 on those Parts of that Schedule". In the Schedule for each State and Union Territory a separate part has specified the castes who in relation to that State shall be deemed as Scheduled Castes as the case may be.

11. In the case of *Bhaiyyalal vs. Harikishan* (supra) the Supreme Court had

observed that it was open to the President to declare a caste or a sub-caste shall be deemed to be a Scheduled Caste in a particular part of the State and not in another part. Therefore under the law as it stood then, a person who wanted to be elected from a Scheduled Caste constituency was bound to establish that he had been registered as a Scheduled Caste in his electoral roll and the fact that his caste was recognised as a Scheduled Caste in the constituency from which he was seeking election was of no avail. (See also *Kishorilal Hans Vs. Raja Ram Singh and Others*, .

12. We are unable to accept as sound the contention of the learned counsel for the Writ Petitioner that once a caste is specified under Article 341 of the Constitution as a Scheduled Caste, the members of the caste are for the purposes of the Constitution as a Scheduled Caste, the members of the caste are for the purposes of the Constitution to be deemed as a Scheduled Caste in every State and Union Territory. We cannot decline to give full effect to the following words appearing in Article 341, "in respect of a State or Union Territory*" and "in relation to that State". Use of both these expressions in Article 341 indicates that the order specifying a caste as a Scheduled Caste is confined or limited to the State or the Union Territory in relation to which such identification had been made. It would be not correct to contend that once a caste is specified in relation to a State or Union Territory, these two expressions are to be totally ignored when constitutional benefits for Scheduled Castes are extended to such specified caste. It would also not be correct to urge that when a member of caste which is specified as Scheduled Caste in relation to a particular State migrates to another State, he still carries his mark as a Scheduled Caste. Undoubtedly a person retains the caste to which he is born even when he moves from one State or Union Territory to another. But this does not mean that even after migrating to another State or Union Territory, one must still be deemed to be a Scheduled Caste in a State or Union Territory other than the particular State or Union Territory in relation to which his caste has not been specified as a Scheduled Caste. In the later part of our judgment we have referred to the letters of the Government of India regarding grant of caste certificates to those who migrate from one State to another and a Division Bench decision of this Court has considered the said letters. A man is deemed to belong to a Scheduled Caste for the purposes of the Constitution only if his caste under Article 341 had been specified in relation to a particular State or Union Territory.

13. This interpretation of Article 341 does not in any way affect the fundamental rights under Article 19(1)(d) and (e) to move throughout the territory of India or to reside or settle in any part of India. The particular freedoms guaranteed by Article 19 are enjoyed by every citizen of India irrespective of the fact whether he belongs to a Scheduled Caste or Scheduled Tribe. Therefore for true interpretation of Article 341 any reference to Article 19 would be irrelevant. In a particular State status of a Scheduled Caste could be claimed only if the President under Article 341 has specified the said caste. The Article 341 enjoins that in respect of each State or Union Territory and in case of a State with prior

consultation with the Governor of that State that President may by notification specify a caste or a part thereof as a Scheduled Caste for the purposes of the Constitution in relation to that State or Union Territory. We cannot give any countenance also to the submission that in case we interpret Article 341 read with Article 366(24), the same would result in discrimination against those who may migrate from one State or Union Territory to another State or Union territory. The President's Order under Article 341(1) cannot be impugned on the ground it violates Right to Equality. In fact clause (4) of Article 15 has been held to be an exception to prohibition against discrimination made by Article 15(1) of the Constitution.

14. In the first Place-Article 341 itself having laid down that Scheduled Castes for the purposes of the Constitution shall be specified in relation to a particular State or Union Territory - there could be no denial of right to equality in case of a person is not deemed as a Scheduled Caste in a State in which his caste u/s 341 has not been specified as a Scheduled Caste. Secondly, a reasonable classification could be made between a person whose caste under Article 341 has been specified in a State or the Union Territory as a Scheduled Caste and a person who in the same State or Union Territory has not been specified as a Scheduled Caste under Article 341. The object of such differentiation is to confer benefits for Scheduled Castes who have been so identified in relation to a particular State or Union Territory. In case a person who belongs to a caste which has been specified as a Scheduled Caste only in "A" State claims the benefits of Scheduled Castes also in "B" State, by claiming benefits as a Scheduled one, he might deprive those whose caste has been notified as Scheduled Castes in "B" State and thereby practically defeat the object of specifying Scheduled Castes and Scheduled Tribes in relation to a particular State.

15. The learned counsel Mr. Aney had relied upon the decision in the case of K.C. Vasanth Kumar and Another Vs. State of Karnataka, The Supreme Court in Vasanth Kumar's case indicated inter alia the guidelines for affording better employment and educational opportunities for Scheduled Castes, Scheduled Tribes and backward classes. The said decision is not relevant for deciding the point which arises for decision before us.

16. In Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, the Supreme Court dealt with the question of residence as a requirement for admission to medical colleges and how far preference based on the same would be valid. This decision is also not germane.

17. We have observed that the rationale behind such identifying castes or tribes as Scheduled Castes or Scheduled Tribes is their socio-economic and educational backwardness in a particular State or Union Territory. Therefore, the benefits of constitutional protection for castes and tribes which are to be deemed as Scheduled Castes and Scheduled Tribes are to be given in relation to that State or Union Territory in which the particular caste or tribe suffer from these disabilities and need protection. We accordingly hold that the case of Vasudeo vs.

Union of India, 1973 Mh.L.J. 994, was correctly decided.

18. The Orissa High Court in *K. Appa Rao Vs. Director of Posts and Telegraphs and Others*, and the Punjab & Haryana High Court in the *V. B. Singh vs. State of Punjab and ors.*, ILR (1976) P&H 769, have taken similar views about Article 341 of the Constitution. We respectfully agree with these reported decisions.

19. The Gujarat High Court in *Manju Singh Vs. The Dean, B.J. Medical College and Others*, and *Ghanshyam Kisan Borikar Vs. L.D. Engineering College and Others*, have expressed contrary views. With respect, in the said reported decisions of Gujarat High Court while the expression for our purposes of the Constitution in Article 341(1) was overemphasized and due consideration was not given to the expressions "in respect of..." and "in relation to that State or Union Territory". With respect, the expressions for the purposes of the Constitution" and "in relation to that State" are both to be given effect to and neither the former expression is subservient to the latter nor vice versa. It would be not correct to observe that while the Scheduled Castes are to be specified in relation to a particular State, once specified as Scheduled Castes, members of such castes throughout India would be entitled to claim benefits conferred by Constitution upon Scheduled Castes. We have pointed out that Scheduled Castes are specified in relation to each State and Union Territory in order that in that State or Union Territory castes are given protection and special benefits conferred by Constitution Upon Scheduled Castes.

20. The decision of Kanade and Deshpande, JJ. in the case of *Bhiwaji Eknathrao Kavle vs. The State of Maharashtra*, Writ Petition No. 1572 of 1980 decided on 3rd February 1982, was in accord with the view taken about Article 341 of the Constitution in *Wasudeo vs. "The Union of India (supra)*. In the *Bhiwaji Eknathrao vs. The State of Maharashtra*, (supra) the Petitioner belonged to Dhor community which under the Constitution (Scheduled Castes) Order, 1950 was specified as Scheduled Caste both in Karnataka and Maharashtra. Therefore, the Court had struck down reversion order of the Petitioner on the ground that his was not a Scheduled Caste in Maharashtra. The Court had observed:

Had the petitioner been shown as belonging to a Scheduled Caste in Karnataka the place of his permanent residence and the said caste is not shown as belonging to the Scheduled Caste in the State of Maharashtra under the public notification, then the said order of reversion would have been justified because the castes, races or tribes, etc. specified in the public notification issued in exercise of the power under Article 341 shall for the -purpose of the Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory and such notification can be applicable to another State where such caste is not shown as Scheduled Caste.

21. S.K. Desai J. sitting with one of us (Kurdukar, J.) in the cases of *Miss Anupama Chawla vs. The State of Maharashtra*, Writ Petition No. 2195 of 1984 and *Dhiraj vs. State of Maharashtra*, Writ Petition No. 2667 of 1984 decided on

9th July 1984 had similarly interpreted Article 341 of the Constitution. S. K. Desai and Kurdukar, JJ., had referred to letter dated 18-11-1982 of the Government of India on the subject of grant of caste certificates to members of Scheduled Castes who may migrate from a State in relation to which they have been specified as Scheduled Castes to a State or Union Territory where they are not so specified. While the person so migrating may obtain certificate from the competent officer of the State or Union Territory to which he has migrated that in the State or Territory of origin he is a Scheduled Caste, the same would not alter his Scheduled Caste status in relation to the other State. For the foregoing reasons, we answer the reference in the following manner:

22. A member belonging to Scheduled Caste would be Scheduled Caste only to the State in relation to which his caste is specified as a Scheduled Caste. In a State in relation to which such a caste has not been specified as Scheduled Caste under Article 341, for purposes of the Constitution the caste would not be deemed to be Scheduled Caste. The case of Wasudeo vs. Union of India, was correctly decided.

23. The Writ Petition No. 5164 of 1988 cannot succeed. But it would be unjust and inequitable to forfeit the Petitioner of the degree of B.D.S. obtained by her. Under interim orders of Court she has been already appointed as a Clinical Assistant to enable her to read in the Post-Graduate Course. In the interest of justice the Petitioner may be allowed to retain the post which be treated as a supernumerary one. To avoid any injustice, to the intervenor Kum. Manjusha G. Waghmare we direct the Respondents to appoint her to the post of Clinical Assistant for which she had been at one stage selected and to allow her to read in the Post-Graduate post for which she may be eligible.

24. Writ Petition No. 5164 of 1988 (Writ Petition No. 16 of 1984) is accordingly disposed of in above terms. No order as to costs.

25. The Writ Petition No. 3827 of 1987 must fail, because the Petitioner's caste Adi Karnataka has not been specified by Presidential Order, 1950 as a Scheduled Caste in Maharashtra. He cannot claim any post or seniority reserved for Scheduled Caste of Maharashtra. The Writ Petition No. 3827 of 1987 is discharged without costs.

26. Certificate to file Appeal to the Supreme Court orally prayed for is rejected.