
(2013) 09 SC CK 0042

In the Supreme Court Of India

Case No : Civil Appeal No. 8225 of 2013 (Arising out of SLP (C) No. 33724 of 2011)

Ranjana Kumari

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Constitution of India, 1950 — Article 16, 16(4), 239, 330, 331

Citation : (2013) 6 AWC 5474 : (2013) 13 JT 18 : (2013) 12 SCALE 5 : (2013) 14 SCC 710 : (2013) 4 SCT 736

Hon'ble Judges : V. Gopala gowda, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Priyanka Hingorani, for the Appellant; Rachana Srivastava and Utkarsh Sharma, for the Respondent

Judgement

G.S. Singhvi, J.—Leave granted.

2. The Appellant has questioned correctness of order dated 29.8.2011 by which the Uttarakhand High Court dismissed the writ petition filed by her in the matter of appointment as District Information Officer against the post reserved for Scheduled Caste.

3. In response to an advertisement issued by Public Service Commission, Uttaranchal (now Uttarakhand) (for short, 'the Commission'), which was published in newspaper Amar Ujala dated 25.8.2002 for recruitment against 833 posts in different cadres, the Appellant submitted an application for appointment as District Information Officer mentioning therein that she is a member of Scheduled Caste. She cleared the Combined Civil Services Examination, 2002, preliminary as well as main. She was interviewed by the Commission in May, 2005. During the interview, the Appellant was asked to indicate her preferences for various advertised posts. She gave her 15th preference for the post of District Information Officer. She was provisionally selected but her candidature was cancelled by the Commission vide Office Memorandum dated 4.10.2005 on the

ground that she cannot take benefit of reservation in the State of Uttarakhand because she is a Scheduled Caste (Valmiki of Punjab). The other ground indicated by the Commission was that the Appellant was not eligible to be appointed against the advertised post because the mark sheet of her examination of Diploma in Journalism was issued on 26.10.2002, i.e., after the last date fixed for receipt of application.

4. The Appellant challenged the decision of the Commission in Writ Petition No. 1281(M/B)/2005 (re-numbered as Writ Petition No. 297/2007). The Division Bench of the High Court dismissed the same by observing that right to be treated as a member of reserved category is directly attributable to birth and a person can claim the benefit of reservation only in the State in which he/she is born and not the State to which such person may migrate after marriage or otherwise. The Division Bench held that after migration from Punjab, the Appellant cannot be treated as a member of Scheduled Caste in the State of Uttarakhand and she is not entitled to be appointed against the post reserved for Scheduled Caste.

5. Ms. Priya Hingorani, learned Counsel for the Appellant argued that the impugned order is liable to be set aside because the view taken by the High Court on the Appellant's entitlement to be treated as Scheduled Caste of Uttarakhand is not only erroneous, but is also contrary to the law laid down by this Court. She pointed out that the Appellant had married Shri Rajesh Gill, who is Valmiki by caste and is a resident of Dehradun since 1988 and argued that the Commission committed an error by rejecting her plea for appointment against the post reserved for Scheduled Caste despite the fact that Valmiki is recognised as a Scheduled Caste in the States of Uttar Pradesh and Uttarakhand. Ms. Hingorani also invited our attention to certificates dated 10.9.2002 and 13.6.2005 issued by Tahsildar, Dehradun showing the Appellant as Valmiki of Uttar Pradesh and Uttaranchal and a resident of Dehradun and argued that as on the last date of application, the Appellant could not be treated as a person belonging to Punjab because she is a permanent resident of Dehradun (Uttarakhand). Learned Counsel also assailed the other ground on which the Commission rejected the Appellant's candidature by pointing out that result of the examination held by Rajrshi Tandon Open University, Allahabad was declared on 15.9.2002, i.e., one day before the last date fixed for receipt of application and she had produced all the documents at the time of interview.

6. Ms. Rachana Srivastava, learned Counsel for the Respondents supported the impugned order and argued that the High Court did not commit any error by negating the Appellant's challenge to the decision of the Commission to cancel her candidature because she cannot be treated as a Scheduled Caste of Uttarakhand. In support of her argument, Ms. Srivastava relied upon the judgments of the Constitution Bench in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, , Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the Action Committee on Issue of Caste Certificate to scheduled Castes and Scheduled Tribes in the State

of Maharashtra and Another Vs. Union of India (UOI) and Another, and Subhash Chandra and Another Vs. Delhi Subordinate Services Selection Board and Others,

7. We have considered the respective arguments and scrutinized the record.

8. Articles 341 and 342, which have bearing on the decision of the question arising in this appeal, read as under:

341. Scheduled Castes.-(1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

342. Scheduled Tribes.- (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

9. The above reproduced articles enjoin that the President after consultation with the Governor where the States are concerned, by public notification, may specify the tribes or tribal communities or parts of or groups of tribes or tribal communities, which shall be deemed to be Scheduled Castes in relation to that State under Article 341 or Scheduled Tribes in relation to that State under Article 342.

10. In *Marri Chandra Shekhar Rao v. Dean, Seth G.S. Medical College and Ors.* (supra), the Constitution Bench of this Court was called upon to consider whether the Petitioner, who was a member of Scheduled Tribe in the State of Andhra Pradesh was entitled to admission in MBBS course in Maharashtra against the quota reserved for Scheduled Tribes. The Petitioner was born in Tenali in the State of Andhra Pradesh and belonged to the Gouda community also known as "Goudu" which is recognised as "Scheduled Tribe" in the State of Andhra Pradesh. The father of the Petitioner was issued a Scheduled Tribe Certificate by the Tahsildar, Tenali, Andhra Pradesh. He was appointed in the Fertilizer

Corporation of India, a public sector undertaking. On the 19th June, 1978, the Petitioner's father joined Rashtriya Chemicals and Fertilizers Ltd., a Government of India undertaking, under the quota reserved for Scheduled Tribes. He was posted in Bombay. As a consequence, the Petitioner started living in Bombay. He completed his education in Bombay. For the academic year 1989-90, he submitted applications for admission in three medical colleges run by the Bombay Municipal Corporation and one medical college run by the State of Maharashtra and sought the benefit of reservation in favour of Scheduled Tribes. His claim was not accepted on the ground that he does not belong to Scheduled Tribe of Maharashtra. After examining the scheme of the relevant Constitutional provisions, this Court observed:

It appears that Scheduled Castes and Scheduled Tribes in some States had to suffer the social disadvantages and did not have the facilities for development and growth. It is, therefore, necessary in order to make them equal in those areas where they have so suffered and are in the state of underdevelopment to have reservations or protection in their favour so that they can compete on equal terms with the more advantageous or developed sections of the community. Extreme social and economic backwardness arising out of traditional practices of untouchability is normally considered as criterion for including a community in the list of Scheduled Castes and Scheduled Tribes. The social conditions of a caste, however, varies from State to State and it will not be proper to generalise any caste or any tribe as a Scheduled Tribe or Scheduled Caste for the whole country. This, however, is a different problem whether a member or the Scheduled Caste in one part of the country who migrates to another State or any other Union territory should continue to be treated as a Scheduled Caste or Scheduled Tribe in which he has migrated. That question has to be judged taking into consideration the interest and well-being of the Scheduled Castes and Scheduled Tribes in the country as a whole.

It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere. But if sufficiently long time is spent in socially advanced area then the inhibitions and handicaps suffered by belonging to a socially disadvantaged community do not continue and the natural talent of a man or a woman or a boy or girl gets full scope to flourish. These, however, are problems of social adjustment i.e. how far protection has to be given to a certain segment of socially disadvantaged community and for how long to become equal with others is a matter of delicate social adjustment. These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or part of community or section. 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. In other words, 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.

11. In 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. (supra), another Constitution Bench considered a similar issue. The question framed in that case was:

Where a person belonging to a caste or tribe specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to State A migrates to State B where a caste or tribe with the same nomenclature is specified for the purposes of the Constitution to be a Scheduled Caste or a Scheduled Tribe in relation to that State B, will that person be entitled to claim the privileges and benefits admissible to the persons belonging to the Scheduled Castes and/or Scheduled Tribes in State B.

The aforesaid question was considered in the backdrop of certificate, circulars and letters issued by the Government of India and consequential instructions issued by the State of Maharashtra indicating that members belonging to the Scheduled Castes and Scheduled Tribes of other States shall not be entitled to the benefits and privileges accorded by the State of Maharashtra unless he or she is shown to be permanent resident of the State of Maharashtra on 10.8.1950 in the case of Scheduled Castes and 6.9.1950 in the case of Scheduled Tribes. The Constitution Bench referred to the relevant Constitutional provisions including Articles 341 and 342, the judgment of the earlier Constitution Bench in Marri Chandra Shekhar Rao's case and observed:

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.

12. The issue was again considered in S. Pushpa and Others Vs.

Sivachanmugavelu and Others, The facts of that case were that the Directorate of Education, Government of Pondicherry had issued an advertisement for making recruitment of 350 General Central Service Group "C" posts of Secondary Grade of which 56 posts were reserved for Scheduled Castes. In response to the advertisement, the employment exchange sponsored the names of candidates of various categories including Scheduled Caste. The employment exchange also sponsored some names of Scheduled Caste candidates from neighbouring employment exchanges as sufficient number of Scheduled Caste candidates were not available in Yanam and Mahe region of the Union territory of Pondicherry. Out of 55 selected candidates of Scheduled Caste, 29 produced community certificates from the Governments of Tamil Nadu, Andhra Pradesh and Kerala, based on which the revenue authority of Pondicherry had issued community certificates to them. The remaining 26 candidates produced community certificates from the revenue authority of Pondicherry. The Respondents challenged the selection of aforesaid Scheduled Caste candidates mainly on the ground that a migrant Scheduled Caste candidate belonging to another State is not eligible for appointment on a post which is reserved for Scheduled Caste candidate of the Union Territory of Pondicherry. The Central Administrative Tribunal relied upon the judgments in Marri Chandra Shekhar Rao's case 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. (supra) and held that the Scheduled Castes who migrated to the Union Territory of Pondicherry after the issuance of Presidential notification, which has specified Scheduled Castes in terms of Article 341 of the Constitution cannot claim the benefit of reservation in the services of the Government of Pondicherry. Accordingly, the selection and appointment of migrant Scheduled Caste candidates was set aside and a direction was issued to review the selection process. The three Judge Bench of this Court referred to the judgments of the Constitution Bench in Marri Chandra Shekhar Rao's case and the Action Committee's case and observed:

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.

13. In the case of Subhash Chandra and Anr. v. Delhi Subordinate Services Selection Board and Ors. (supra), private Respondents and/or their parents are migrants to Delhi. In their native places, they were declared to be the members of the Scheduled Castes. The Ministry of Home Affairs issued a circular on or about 2.5.1975, in terms whereof the manner in which the claim of a person belonging to Scheduled Castes or Scheduled Tribes is required to be verified was laid down. Such verification was to be made having regard to the Presidential order specifying the Scheduled Castes and Scheduled Tribes in relation to the concerned State. National Capital Territory of Delhi issued clarification by way of two circulars. Pursuant to directions issued by the Union Territory, an advertisement was issued by the State Subordinate Selection Board containing general instructions that Scheduled Caste and OBC candidates must furnish certificates issued by the competent authority of Government of NCT of Delhi issued on or before the closing date of receipt of application forms. The Appellants questioned the legality and/or validity of the circulars issued by the National Capital Territory of Delhi by claiming that they are entitled to the benefits of the Presidential Notification declaring their caste to be Scheduled Castes but keeping in view the nature of verification specified by reason of the aforementioned circulars. The Government of National Capital Territory contended that the notification involved two sets of castes/categories certificate one in relation to the original inhabitants and the other relating to the migrants. The Petitioners filed Writ Petition challenging circulars before the High Court. By relying upon the ratio of Marri Chandra Shekhar Rao's case and Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra v. Union of India (supra), the High Court dismissed the writ petition. A two Judge Bench of this Court reversed the order of the High Court and declared that the migrants are not entitled to the benefit of reservation in the Union Territories. The two Judge Bench also declared that the view expressed by the three Judge Bench in S. Pushpa v. Sivachanmugavelu (supra) was per incuriam.

14. The matter again came up for consideration before a two Judge Bench in State of Uttaranchal Vs. Sandeep Kumar Singh and Others, The two Judge Bench did not approve the approach adopted by another two Judge bench in Subhash Chandra's case and referred the matter to larger Bench by making the following observations:

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.

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.

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.

15. The question arising in this appeal is whether a person like the Appellant, who is a Scheduled Caste in the State where she was born will not be entitled to the benefit of reservation after marriage in the State where her husband is living despite the fact that the husband also belongs to Scheduled Caste and the particular Caste falls in the same reserved category in the State of migration and that she is a permanent resident of that State.

16. Since the other related matter has been referred to a larger Bench, we think that it would be just and proper to refer this matter also to the larger Bench. Ordered accordingly.

17. The Registry is directed to place the papers before the Hon'ble the Chief Justice of India for consideration and appropriate order.