
(2017) 11 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : 3310 of 2016

Vijaylakshmi

APPELLANT

Vs

State of H.P. & others

RESPONDENT

Date of Decision : 13-11-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 340](#), [Article 342](#), [Article 15\(4\)](#), [Article 341](#), [Article 16\(4\)](#), [Article 16\(4A\)](#), [Article 332](#), [Article 366 \(24\)](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Appointment of a Commission to investigate the conditions of backward classes - Scheduled Tribes - Annulment or suspension of acts and resolutions of District and Regional Councils - Scheduled Castes - Dissolution of a District or a Regional Council - Dissolution of a District or a Regional Council - Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States - Definitions

Citation : (2017) 11 SHI CK 0006

Hon'ble Judges : Sanjay Karol, Ajay Mohan Goel

Bench : Division Bench

Advocate : Neeraj Maniktala, M.A. Khan, Anup Rattan, J.K. Verma, Ashok Sharma, Sukarma Sharma

Final Decision : Dismissed

Judgement

1. It is not in dispute that either by birth or upbringing, petitioner does not belong to a Schedule Tribe category. She is a Brahmin, born in the State of Uttar Pradesh. Also, her upbringing is not in a socially or culturally backward set up. It is also not in dispute that Scheduled Tribe certificate was obtained by her solely on the strength of her having married a person who belonged to a Scheduled Tribe category. 2. In the present petition, the sole question, which arises for consideration, is as to whether a lady, who otherwise does not belong to a Scheduled Tribe, on account of her marriage to a person belonging to a Scheduled Tribe, so notified within the State of Himachal Pradesh, acquires the

status of that of her husband, i.e. Scheduled Tribe, for the purpose of claiming benefits as envisaged under Article 16(4) of the Constitution of India or not. 3. While the issue is no longer res-integra, for it stands settled by Hon''ble Supreme Court of India in its several decisions, but however, since repeatedly it keeps on cropping, not only with regard to ladies who otherwise do not belong to a Scheduled Tribe but marry a person belonging to a Scheduled Tribe, but also with regard to ladies, who do not belong to a Scheduled Caste but marry a person belong to a Scheduled Caste, we endeavour to reiterate the law, as stands laid down by the Hon''ble Supreme Court of India. 4. By way of this writ petition, the petitioner has prayed for the following reliefs: "(a) That the order Annexure P-8 passed by the Naib Tehsildar Holi may kindly be declared illegal and quashed and set aside as the Caste/Tribe Certificate was issued to the petitioner after all the due verification by the authorities and on the basis of the law holding the field as laid down by the Hon''ble Apex Court. (b) That the enquiry by Respondent No. 3 that the caste/tribe certificate submitted by the petitioner was false, may kindly be declared as arbitrary and against the law as laid down. (c) Record of the case may be called for the kind perusal of this Hon''ble Court." 5. Case of the petitioner is that she was married to one Shri Prem Chand, resident of Village Gusal, Panchayat Holi, District Chamba in the year 1972, belonging to Gaddi Rajput Tribe. By virtue of her being married to a person belonging to a Scheduled Tribe category, she applied to the authorities for the issuance of a Scheduled Tribe certificate, which was issued to her on 20.03.1985 by the Executive Magistrate, Sub Tehsil Holi, District Chamba. On the strength of the said certificate, petitioner joined as a Primary Teacher under the Kendriya Vidyalaya Sangathan in the year 1986. In the year 2011, i.e. after putting in more than 25 years of service, she was chargesheeted vide memorandum dated 28.02.2011 to the effect that she had gained appointment by submitting a false caste certificate against the post reserved for a Scheduled Tribe category. Petitioner denied the allegations by maintaining that the Scheduled Tribe certificate was rightly issued in her favour by the authorities concerned. In the meanwhile, on 23.12.2014, petitioner received a communication from the office of Naib Tehsildar, Sub Tehsil Holi, calling her for verification/cancellation of the said Scheduled Tribe certificate issued to her. She responded to the same explaining that the certificate stands rightly issued in her favour by the authorities after carrying out all necessary verifications. Despite this, vide order dated 01.01.2015, her Scheduled Tribe certificate was cancelled by the authorities on the ground that by birth she did not belong to a Scheduled Tribe category, for she hailed from an upper caste family in Roorkee (U.P.), therefore, issuance of Scheduled Tribe certificate in her favour was illegal. In view of the tribal certificate issued to the petitioner being declared as illegal in the eyes of law, she was dismissed from service on 18.2.2015. Statutory appeal filed by her also stands rejected. 6. Feeling aggrieved, petitioner has filed the present petition praying for the reliefs reproduced supra. 7. In the reply so filed to the petition, stand taken by the respondents is that the tribal certificate issued in favour of the petitioner rightly stands cancelled, for by birth she did not belong to a Scheduled Tribe category

and as such could not have gained the status of a Scheduled Tribe by simply marrying a person, belonging to a Scheduled Tribe category. In support of this stand, respondent-State has relied upon various notifications issued by the Government of India as well as the respondent-State from time to time. 8. We have heard the learned counsel for the parties and have also carefully perused the records of the case. 9. The Preamble of the Constitution of India is the epitome of the basic structure built in the Constitution guaranteeing justice - social, economic and political - equality of status and of opportunity with dignity of person and fraternity. To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and the Directive Principles of State Policy in Chapter IV of the Constitution delineate the socio-economic justice. 10. Social justice is the comprehensive form to remove social imbalances by law, harmonising the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The ideal of economic justice is to make equality of status meaningful and life worth living at its best removing inequality of opportunity and of status - social, economic and political. 11. Social democracy means a way of life which recognises liberty, equality and fraternity as principles of life. They are the trinity. One cannot divorce one from the other. Without equality, liberty would produce supremacy of the few over the many. Equality without liberty would denude the individual of his initiative to improve excellence. Without fraternity, liberty and equality would not nurture as their natural habitat. Social and economic justice is a constitutional right enshrined for the protection of the society. The right to socioeconomic justice in the trinity, the Preamble, Fundamental Rights and Directives is to make the quality of life of the disadvantaged people meaningful. Equal protection in Article 14, therefore, requires affirmative action by the State to those unequals by providing facilities and opportunities. 12. Part-XVI of the Constitution carves out special provisions, relating to certain classes. Articles 341 and 342 therein deal with the power of the State to specify the castes, races or tribes, which for the purposes of the Constitution are deemed to be Scheduled Castes or Scheduled Tribes, in relation to the respective State/Union Territory. 13. Article 366 (24) & 366 (25) defines the terms "Scheduled Castes" and "Scheduled Tribes". It reads as under: "(24) "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." "(25) "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." 14. Article 15 reads as under: "15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth :- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to- (a) access to shops, public restaurants, hotels and places of public

entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. (3) Nothing in this article shall prevent the State from making any special provision for women and children. (4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. (5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30." 15. Article 16 reads as under: "16. Equality of opportunity in matters of public employment :- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any 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. (4-A) Nothing in this article shall prevent the State from making any provision for reservation 3[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (4-B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year. (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination." 16. It is the mandate of Article 16 that there shall be equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State.

However, the Article itself carves out certain exceptions and one such being to make provisions for reservation for appointment 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. 17. Significantly, Article 16 or for that matter Article 366 does not define the expression "any backward class of citizens". We notice that such endeavour was made by a Constitution Bench (Five Judges) of the Apex Court in *M. Nagaraj and others v. Union of India and others*, (2006) 8 SCC 212, wherein the Court explained the necessity for reservation, being necessary for transcending castes and not for perpetuating the same. The Court cautioned that reservation had to be used in a limited sense, otherwise it would perpetuate casteism in the country. Equality in Article 16 was held individual specific, whereas reservation in Articles 16(4) and 16(4-A) was enabling. The discretion of the State, however, was subject to the existence of backwardness and inadequacy of representation for public employment. "Backwardness" had to be based on objective factors, whereas "inadequacy" had to be measured on the basis of factual existence. 18. Inadequacy in representation and backwardness of the Scheduled Castes and Scheduled Tribes are circumstances, which enable the State Government to act under Articles 15(4) and 16(4) of the Constitution. Thus, it can safely be held that the expression "any backward class of citizens" would include Scheduled Castes and Scheduled Tribes. 19. We may notice that much prior thereto, a Constitution Bench (Nine Judges) of the Apex Court in *Indra Sawhney & others v. Union of India & others*, 1992 Supp (3) SCC 217, had also observed as under: "769. In the former princely State of Travancore, the expression used was "Communities", as would be evident from the Proceedings of the Government of His Highness the Maharaja of Travancore, contained in Order R. Dis. N. 893/general dated Trivandrum, 25th June, 1935. It refers to earlier orders on the subject as well. What is significant is that the expression "communities" was used as taking in Muslims and certain sections of Christians as well; it was not understood as confined to castes in Hindu social system alone. The operative portion of the order reads as follows: "....Accordingly, Government have decided that all communities whose population is approximately 2 per cent of the total population of the State or about one lakh, be recognised as separate communities for the purpose of recruitment to the public service. The only exception from the above rule will be the Brahmin community who, though forming only 1.8 per cent of the total population, will be dealt with as a separate community. On the above basis the classification of communities will be as follows:- A. HINDU 1. Brahmin. 2. Nayar. 3. Other Caste Hindu. 4. Kummula. 5. Nudar. 6. Ezlmva. 7. Cheramar (Pulaya) 8. Other Hindu. B. MUSLIM. C. CHRISTIAN. 1. Jacobite. 2. Marthomite. 3. Syriac Catholic. 4. Latin Catholic. 5. South India United Church. 6. Other Christian." In the then United Provinces, the term "Backward Classes" was understood as covering both the untouchable classes as well other "Hindu Backward" classes. Marc Galanter says: "The United Provinces Hindu Backward Classes League (founded in 1929) submitted a memorandum which suggested that the term "Depressed" carried a connotation "of untouchability, in

the sense of causing pollution by touch as in the case of Madras and Bombay" and that many communities were reluctant to identify themselves as depressed. The League suggested the term "'Hindu' Backward'" as a more suitable nomenclature. The list of 115 castes submitted included all candidates from the untouchable category as well as a stratum above. "All of the listed communities belong to non-Dwijas or degenerate or Sudra classes of the Hindus." They were described as low socially, educationally and economically and were said to number over 60% of the population." The expression "depressed and other backward classes" occurs in the Objectives Resolution of the Constituent Assembly moved by Jawaharlal Nehru on December 13, 1946." "860. For the sake of ready reference, we also record our answers to questions as framed by the counsel for the parties and set out in para 681. Our answers question-wise are: (1) Article 16(4) is not an exception to Article 16(1). It is an instance of classification inherent in Article 16(1). Article 16(4) is exhaustive of the subject of reservation in favour of backward classes, though it may not be exhaustive of the very concept of reservation. Reservations for other classes can be provided under Clause (1) of Article 16. (2) The expression "backward class" in Article 16(4) takes in "Other Backward Classes", S.Cs., S.Ts. and may be some other backward classes as well. The accent in Article 16(4) is upon social backwardness. Social backwardness leads to educational backwardness and economic backwardness. They are mutually contributory to each other and are inter-twined with low occupations in the Indian society. A caste can be and quite often is a social class in India. Economic criterion cannot be the sole basis for determining the backward class of citizens contemplated by Article 16(4). The weaker sections referred to Article 46 do include S.E.B.Cs. referred to in Article 340 and covered by Article 16(4). (3) Even under Article 16(1), reservations cannot be made on the basis of economic criteria alone." "(5) There is no constitutional bar to classification of backward classes into more backward and backward classes for the purposes of Article 16(4). The distinction should be on the basis of degrees of social backwardness. In case of such classification, however, it would be advisable - nay, necessary - to ensure equitable distribution amongst the various backward classes to avoid lumping so that one or two such classes do not eat away the entire quota leaving the other backward classes high and dry. For excluding "creamy layer", an economic criterion can be adopted as an indicium or measure of social advancement." 20. The Apex Court in Nityanand Sharma & another v. State of Bihar & others, (1996) 3 SCC 576 (Two Judges), after considering its earlier decision in Indra Sawhney & others v. Union of India & others, 1992 Supp (3) SCC 217, reiterated that reservation under Article 16(4) is not made in favour of a "caste" but a "Backward Class". Once a caste satisfies the criteria of backwardness, it becomes a Backward Class for the purpose of Article 16(4). Even that is not enough. It must further be found that the Backward Class is not adequately represented in the services of the State. It would, therefore, be for the authority constituted under Article 340 or the appropriate authority to identify the Backward Class eligible for entitlement under Article 16(4). It would thus be seen that the Dalits, Tribes and identified

Backward Classes of citizens who are not adequately represented in a service or office under the State are eligible to be considered under Article 16(1) read with Article 16(4); Equally under Article 15(4) for admission in educational institutions and in other programmes. 21. In the very same decision, the Court framed the following question for itself: "Whether a candidate, by marriage, adoption or obtaining a false certificate of social status would be entitled to an identification as such member of the class for appointment to a post reserved under Article 16(4) or for an admission in an educational institution under Article 15(4)?" And answered the same in the following terms: "33. However, the question is : Whether a lady marrying a Scheduled Caste, Scheduled Tribe or OBC citizen, or one transplanted by adoption or any other voluntary act, ipso facto, becomes entitled to claim reservation under Articles 15(4) or 16(4), as the case may be ? It is seen that Dalits and Tribes suffered social and economic disabilities recognised by Articles 17 and 15(2). Consequently, they became socially, culturally and educationally backward; the OBCs also suffered social and educational backwardness. The object of reservation is to remove these handicaps, disadvantages, sufferings and restrictions to which the members of the Dalits or Tribes or OBCs were subjected and was sought to bring them in the mainstream of the nation's life by providing them opportunities and facilities. 34. In *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*, 1995 Supp (2) SCC 549, and *R. Chandevappa v. State of Karnataka*, (1995) 6 SCC 309, this Court had held that economic empowerment is a fundamental right to the poor and the State is enjoined under Articles 15(3), 46 and 39 to provide them opportunities. Thus, education, employment and economic empowerment are some of the programmes the State has evolved and also provided reservation in admission into educational institutions, or in case of other economic benefits under Articles 15(4) and 46, or in appointment to an office or a post under the State under Article 16(4). Therefore, when a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also have had undergone the same handicaps, and must have been subjected to the same disabilities, disadvantages, indignities or sufferings so as to entitle the candidate to avail the facility of reservation. A candidate who had the advantageous start in life being born in Forward Caste and had march of advantageous life but is transplanted in Backward Caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Article 15(4) or 16(4), as the case may be. Acquisition of the status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution. 36. The recognition of the appellant as a member of the Latin Catholics would not, therefore, be relevant for the purpose of her entitlement to the reservation under Article 16(4), for the reason that she, as a member of the Forward Caste, had an advantageous start in life and after her completing education and becoming major, married Yesudas; and so, she is not entitled to the facility of reservation given to the Latin Catholics, a Backward Class." (Emphasis supplied) 22. The aforesaid principles stand reiterated by the

Apex Court in *Heikham Surchandra Singh & others v. Representative or "Lois" Kakching, Manipur (A Scheduled Caste Uplift Body) & others*, (1997) 2 SCC 523 (Two Judges), wherein the Court was dealing with a case where a person hailing from a forward class had married a person hailing from a backward class (Fisherman). (Also: *State of Tripura & others v. Namita Majumdar (Barman) (Smt)*, (1998) 9 SCC 217). 23. Significantly, not only in the case of appointment but also that of election under the provisions of the Representation of Peoples Act, 1951, the Apex Court consistently followed the aforesaid principles. Noticing its earlier decision rendered in *N.E. Horo v. Smt. Jahanara Jaipal Singh*, (1972) 1 SCC 771 (Two Judges), which it partly overruled, the Court in *Sobha Symavathi Devi v. Setti Gangadhara Swamy & others*, (2005) 2 SCC 244 (Three Judges), specifically held that the principle relating to reservation under Articles 15(4) and 16(4) has to be extended to the constitutional reservation of a seat for a Scheduled Tribe in the House of People or under Article 332 to the Legislative Assembly, for the said reservations are also constitutional reservations, intending to benefit the real underprivileged and not extending to those who come to the class by way of marriage. 24. The principle, even in a case of election to the Municipal Council (Delh), stands reiterated by the Apex Court in *Meera Kanwaria v. Sunita & others*, (2006) 1 SCC 344 (Two Judges). 25. What is the meaning of word "tribe" stands explained by the Apex Court in *Anjan Kumar v. Union of India & others*, (2006) 3 SCC 257 (Two Judges), wherein also the Court was dealing with an identical issue in the following terms: "8. The "tribe" has been characterized by Dr. Gupta, Jai Prakash in *The customary Laws of the Munda and the Oraon* quoted by this Court in *State of Kerala v. Chandramohan*, (2004) 3 SCC 429 at 432 as under: "Tribe has been defined as a social group of a simple kind, the members of which speak common dialect, have a single government and act together for such common purposes as warfare. Other typical characteristics include a common name, a contiguous territory, a relatively uniform culture or way of life and a tradition of common descent. Tribes are usually composed of a number of local communities e. g. bands, villages or neighbourhoods and are often aggregated in clusters of a higher order called nations. The term is seldom applied to societies that have achieved a strictly territorial organization in large States but is usually confined to groups whose unity is based primarily upon a sense of extended kinship ties though it is no longer used for kin groups in the strict sense, such as clans." Bhowmik, K.L. in *Tribal India: a profile in Indian Ethnology* observed: "Tribe in the Dictionary of Anthropology is defined as "a social group, usually with a definite area, dialect, cultural homogeneity and unifying social organization. It may include several subgroups, such as sibs or villages. A tribe ordinarily has a leader and may have a common ancestor, as well as patron deity. The families or small communities making up the tribe are linked through economic, social, religious, family or blood ties"." 26. Significantly, in the very same decision, the Court reiterated that the object of Articles 341, 342, 15 (4), 16 (4) and 16 (4A) is to provide preferential treatment for the Scheduled Castes and Scheduled Tribes having regard to the economic and educational backwardness and other disabilities

wherefrom they suffer. So also considering the typical characteristic of the tribal including a common name, a contiguous Territory, a relatively uniform culture, simplistic way of life and a tradition of common descent, the transplantation of the outsiders as members of the tribe or community may dilute their way of life apart from such persons do not suffer any disabilities. Therefore, the condition precedent for a person to be brought within the purview of the Constitution (Scheduled Tribes) Order, 1950, one must belong to a tribe and suffer disabilities wherefrom they belong. 27. In *Ashok Kumar Thakur v. Union of India & others*, (2008) 6 SCC 1 (Five Judges), while dealing with the constitutional validity of the Constitution (93rd amendment) Act, 2005, whereby, by law, for the advancement of any socially and educationally backward class of citizens/ Scheduled Castes/Scheduled Tribes/special provisions relating to admissions to educational institutions, private or otherwise, aided or unaided, other than the minority educational institutions, the Apex Court again highlighted the absence of equality, both on social and economic plane, necessitating insertion of the Articles providing for reservation under the Constitution. What is the real meaning of "Caste"? Is "caste" a "class"? We quote the following from the said judgment: "149. "Caste" is often used interchangeably with "class" and can be called as the basic unit in social stratification. The most characteristic thing about a caste group is its autonomy in caste related matters. One of the universal codes enforced by all castes is the requirement of endogamy. Other rules have to do with the regulations pertaining to religious purity or cleanliness. Sometimes it restricts occupational choices as well. It is not necessary that these rules be enforced in particular classes as well, and as such a "class" may be distinguished from the broader realm of "caste" on these grounds. Castes were often rated, on a purity scale, and not on a social scale. 150. The observations made by Venkataramaiah J. in *K.C. Vasanth Kumar v. State of Karnataka*, 1985 Supp SCC 714, are relevant in this regard: "110. We are aware of the meanings of the words caste, race, or tribe or religious minorities in India. A caste is an association of families which practise the custom of endogamy i.e. which permits marriages amongst the members belonging to such families only. Caste rules prohibit its members from marrying outside their caste. There are sub-groups amongst the castes which sometimes inter-marry and sometimes do not. A caste is based on various factors, sometimes it may be a class, a race or a racial unit. A caste has nothing to do with wealth. The caste of a person is governed by his birth in a family. Certain ideas of ceremonial purity are peculiar to each caste. Sometimes caste practices even led to segregation of same castes in the villages. Even the choice of occupation of members of castes was predetermined in many cases, and the members of a particular caste were prohibited from engaging themselves in other types of callings, professions or occupations. Certain occupations were considered to be degrading or impure. A certain amount of rigidity developed in several matters and many who belonged to castes which were lower in social order were made to suffer many restrictions, privations and humiliations. Untouchability was practised against members belonging to certain castes. Inter-dining was prohibited in some cases. None of these rules governing

a caste had anything to do with either the individual merit of a person or his capacity. The wealth owned by him would not save him from many social discriminations practised by members belonging to higher castes. Children who grew in this caste ridden atmosphere naturally suffered from many social disadvantages apart from the denial of opportunity to live in the same kind of environment in which persons of higher castes lived. Many social reformers have tried in the last two centuries to remove the stigma of caste from which people born in lower castes were suffering. Many laws were also passed prohibiting some of the inhuman caste practices." 151. Rivers, the leading anthropologist, criticizes the use of the terms "caste" and "class" as synonyms. However, many others, such as Lowie and Kimball Young W.H.R. Rivers, *Social Organization* (New York, 1924), use these terms as though they were identical. 156. On the other hand, it is possible that within a caste group there is a marked inequality of status, opportunity, or social standing which then defines the "class" within that particular "caste" system. For example, all the Brahmins are not engaged in highly respectable employment, nor are all very wealthy. It may even be that some Brahmins may be servants of members of a lower caste, or it may also be so that the personal servant of a rich Brahmin may be a poor Brahmin. Hence, there is every reason to believe that within a single caste group there are some classes or groups of people to whom good fortune or perseverance has brought more dignity, social influence and social esteem than it has to others. 157. In India, caste, in a socio-organizational manner would mean that it is not characterized merely by the physical or occupational characteristics of the individuals who make it up; rather, it is characterized by its codes and its close-knit social controls. In the case of classes, however, there may not exist such close-knit unit social controls, and there may exist great disparity in occupational characteristics. 158. A social class is therefore a homogeneous unit, from the point of view of status and mutual recognition; whereas a caste is a homogeneous unit from the point of view of common ancestry, religious rites and strict organizational control. Thus the manner in which the caste is closed both in the organizational and biological sense causes it to differ from social class. Moreover, its emphasis upon ritual and regulations pertaining to cleanliness and purity differs radically from the secular nature and informality of social class rules. In a social class, the exclusiveness would be based primarily on status. Social classes divide homogeneous populations into layers of prestige and esteem, and the members of each layer are able to circulate freely with it. 159. In a caste, however, the social distance between members is due to the fact that they belong to entirely different organizations. It may be said, therefore, that a caste is a horizontal division and a class, a vertical division." (Emphasis supplied) 28. A Constitution Bench (Five Judges) of the Hon'ble Supreme Court 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 and another*, (1994) 5 SCC 244 has also observed that: "3. 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. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition. 16. 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 fights, 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. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under: "He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them...." Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis

that he belonged to a Scheduled Tribe in the State of his origin." 29. The aforesaid principles stand reiterated by the Apex Court in *Kumari Madhuri Patil & another v. Addl. Commissioner, Tribal Development & others*, (1994) 6 SCC 241; *U.P. Public Service Commission, Allahabad v. Sanjay Kumar Singh*, (2003) 7 SCC 657; *S. Pushpa & others v. Sivachanmugavelu & others*, (2005) 3 SCC 1; *Subhash Chandra & another v. Delhi Subordinate Services Selection Board & others*, (2009) 15 SCC 458; and *Sanjeev Kumar & another v. State of Bihar & others*, (2016) 13 SCC 105. 30. Thus, it is evident from the above judgment that let alone a General category candidate who marries a person belonging to a Scheduled Caste or a Scheduled Tribe, even a person belonging to Scheduled Caste or Scheduled Tribe of one State cannot get the benefit of Scheduled Caste or Scheduled Tribe in another State. 31. Recently a three Judge Bench of the Hon'ble Supreme Court in *Chairman and Managing Director FCI and others v. Jagdish Balram Bahira and ors.*, (2017) 8 SCC 670 has held as under: "51. Since the decision of the Bench of three judges in *R. Vishwanatha Pillai v. State of Kerala* (supra) the position of law which has been laid down by this Court is that where an appointment to a post or admission to an educational institution is made against a vacancy which is reserved for a Scheduled Caste or Tribe or a socially and educationally backward class, the invalidation of the claim of the candidate would result in the appointment or, as the case may be, the admission being void and non est. This principle has been followed by another judgment of three Judges in *Dattatray* (supra). The same position has been propounded by a two judge bench in *Bank of India v. Avinash Mandivikar* (supra). The formal termination of an employment or the withdrawal of admission is a necessary consequence which flows out of the invalidation of the caste or tribe claim. The only exception to this principle consists of those cases where, in exercise of the power conferred by Article 142, the Court considered it appropriate and proper to protect the admission which was granted or, as the case may be, the appointment to the post. 32. We notice similar view to have been taken by a Coordinate Bench of this Court in *Smt. Manju v. State of H.P. & others*, AIR 2007 HP 74. 33. Therefore, as per the law as it stands today, it is very clear and categorical that a person who does not belongs to a Scheduled Tribe or a Scheduled Caste category by birth, simply by virtue of marrying a person belonging thereto cannot gain the status of that particular caste or tribe. 34. Coming to the facts of this case, the contention of the learned counsel for the petitioner that petitioner mislead none at the time when the Scheduled Tribe certificate was obtained by her, on the strength of which, she gained employment, in our considered view, is of no help to the petitioner. This we say so for the reason that undisputedly, petitioner was not entitled to be issued a certificate that she belonged to a Scheduled Tribe category only on the strength of her husband belonging to the said tribe. Not only this, findings returned by the authorities while dismissing the petitioner from service also do not call for any interference, because perusal of the orders passed by the said authorities demonstrate that in fact the petitioner had submitted a false tribal certificate. In the certificate submitted, she did not mention the name of her father. It was got

issued by referring therein, name of her husband. 35. Order, dated 12.09.2016 (Annexure P-12) demonstrates that petitioner was called upon by the Principal of the Kendriya Vidyalya to submit Scheduled Tribe certificate in which she was referred to as "daughter of" in place of "wife of", but she failed to submit the same within the stipulated time. 36. We find principles of natural justice to have been fully complied with. 37. Therefore, in view of the above discussion, as admittedly by birth petitioner did not belong to a Scheduled Tribe category, she could not have gained status thereof, by simply marrying a person belonging to such category, we do not find any illegality with the action of the authorities whereby Scheduled Tribe certificate issued in her favour was cancelled and employment obtained by her on the strength of said certificate was terminated. In view of above, as there is no merit in the present petition, the same is accordingly dismissed, so also miscellaneous applications, if any. No order as to costs.