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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2410/96 alongwith OAs No.2431/96, 2508/96, 2523/96
OA 2636/96, 24/97, 52/97, 1484/96, 1557/96, 1841/96
1871/96, 2216/96, 316/97, 894/97, 257/96 and 452/97

New Delhi, this 24th day of October, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

S/Shri
1. Parmender Kumar
   Vill. & PO Tharrampuri, Dt. Rewari
2. Surender Kumar
   Vill. Mamdiya Assampur, PO Khari
   Dt. Rewari (Haryana)
3. Dilbag Hussain
   Vill. Autha, PO Shahchokha
   Dt. Gurgaon
4. Krishan Kumar
   Vill. & PO Mokehera, Dt.Gurgaon
5. Ahmed Khan
   Vill. Hajipur, PO Punhama
   Dt. Gurgaon
6. Pradeep Kumar
   Vill. PO Sidhma, Dt. Mahendergarh
7. Balwan Singh
   Vill. Balour, PO Bahadurgarh
   Dt. Rohtak
8. Subhash Chand
   Vill. Kharkhoda, Ward No.
   Dt. Sonepat
9. Vikram Singh
   Vill. Dhasera, PO Bikaner Teh. Rewari
10. Rajender Kumar
    Vill. & PO Kalwari
    Dt. Gurgaon
11. Jai Prakash
    Vill. Bhakli PO Kosli, Dt.Rewari

.. Applicants in OA 2410/96

(All through Mrs. Avnish Ahlawat, Advocate)

1. Naresh Kumar
   Vill. & PO Bharawas
   Teh. Rewari
2. Umed Singh
   Vill. & PO Sehlang
   Teh. Dt. Mahendragarh
3. Vijay Singh
   Vill. Tigra, PO Gujarwas
   Teh. Narnaul, Dt.Mahendragarh
4. Mam Chand
   Vill. Mandhewali, PO Tigan, Teh. Ballabhgarh
   Dt. Faridabad
5. Ravinder Singh
   Vill. Bhelpa, PO Rithoj
   Teh. Sohna, Dt. Gurgaon
6. Basant Ram
   Vill. & PO Dhani
   Teh. Jhajjar, Dt. Rohtak

7. Pop Singh
   Vill. PO Badshahpur
   Dt. Gurgaon
8. Subhash Chand
   Vill. Lakhuwas, PO Sohna
   Teh. Sona, Dt. Gurgaon
9. Vikram Kumar
   Vill. & PO Badshahpur, Dt. Gurgaon .. Applicants in OA 2431/96

(All through Advocate Mrs. Avnish Ahlawat)

Woman Constable Shakuntala
451, Bawana, Delhi-39 .. Applicant in OA 2508/96

(Through Advocate Mrs. Avnish Ahlawat)

Pramod Kumar Verma
58, Ahir Mohalla, Mogis Talab
Bhopal .. Applicant in OA 2523/96

(Through Advocate Mrs. Avnish Ahlawat)

versus

1. Commissioner of Police
   Police Hqrs., New Delhi-2

2. Shri N.S. Rana
   Addl. Commissioner of Police
   Delhi Police, Delhi

3. Addl. Deputy Commissioner of Police
   East Dt. Delhi

4. Addl. Dy. Commissioner of Police
   SouthDt., Delhi Police, Hauz Khas

5. Dy. Commissioner of Police
   II Battalion, Delhi Armed Police
   Kingsway Camp, New Delhi .. Respondents

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1. Shri Manphool Singh
   Vill. Bahar Kalan, PO Mazra Sawaraj
   Dt. Rewari
2. Ajay Kumar
   Vill. & PO Bhrtala
   Dt. Rewari
3. Naresh Kumar
   Vill. PO Neela Heri, Dt. Rohtak
4. Raj Kanwar
   Vill. Naya Gaon, PO Bikaner
   Dt. Rewari
5. Anil Kumar
   Vill. & PO Raliawas
   Dt. Rewari
6. Jai Prakash
   137, Ranjit Nagar, New Delhi
7. Ishwar Singh
   Vill. Bachhod, Dt. Mohindergarh

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8. Sat Pal
   Vill. &PO Rajgarh
   Dt. Bhiwani
9. Kanwal Singh
   PO Krishna Nagar, Teh. Narnaul
   Dt. Mohindergarh .. Applicants in 2636/96

(All through Shri Shyam Babu, Advocate)

Vinod Kumar
Vill. Kalaka, PO Majra Gurdass
Dt. Rewari .. Applicant in OA 24/97

Subhash Chander
Vill. PO Mastapur, Dt. Rewari .. Applicant in 52/97

(All through Shri Shyam Babu, Advocate)

versus

Union of India, through

1. Secretary
   M/Home Affairs, North Block, New Delhi

2. Chief Secretary
   Govt. of NCT of Delhi, Delhi

3. Commissioner of Police
   Police Hqrs., New Delhi

4. Dy. Commissioner of Police
   2nd Bn. DAP, Kingsway Camp, New Delhi..Respondents

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1. Rajesh Kumar Yadav
2. Vikram Singh
3. Pradeep Singh
4. Krishna Avtar
5. Vikas Yadav
6. Ved Prakash
7. Satya Prakash
8. Rajesh Kumar
9. Ramniwas
10. Karan Singh
11. Mukesh Raj
12. Sudesh Kumar
13. Manish Yadav
14. Mahaveer Prasad .. Applicants in OA 1484/96

all c/o Shri Naresh Kaushik & Arun Yadav, Advocates,
25, Bazar Lane, Bengali Market, New Delhi)

Mukesh Singh
Vill. Lisan, Teh. Rewari, Dt. Rewari .. Applicant in 1557/96

1. Rajnish Kumar
2. Sunder Lal
3. Rajbir
4. Parmod Kumar
5. Sukhbir
6. Jitender Kumar
7. Prem Chand
8. Rajinder Singh ... Applicants in OA 1841/96

(all c/o Shri Naresh Kaushik & Arun Yadav, Advocates).

Subhash Saini
Vill. Gurgaon, Garni Mohla, Gurgaon .. Applicant in OA 1871/96

(Through Advocate Shri Arun Yadav)

1. Sandeep Yadav
   KankaRola, Dt. Gurgaon
2. Iqbal
   Badhas, Dt.Gurgaon
3. Satya Pal
   Padheni, Gurgaon Dt. .. Applicants in OA 2216/96

(Through Advocate Shri Naresh Kaushik & Arun Yadav)

1. Purushotam Singh
   Vill. & PO Dakhora, Teh. Korli
   Dt. Rewari
2. Mahesh Kumar
   Vill. & PO Dakhora
   Teh. Korli, Dt. Rewari
3. Subash Chand
   Vill. Mandola, Dt. Rewari
4. Sahi Ram
   Vill.Seka, Dt. Mahindergarh ..Applicants in OA 316/97

(Through Advocates Shri Naresh Kaushik & Arun Yadav)

Surender Singh
Vill. Manuwas, Dt. Gurgaon .. Applicant in OA 894/96

(Through Advocates Shri Naresh Kaushik & Arun Yadav)

versus

1. Secretary
   Ministry of Home
   North Block, New Delhi

2. Chief Secretary
   Govt. of NCT of Delhi
   5, Sham Nath Marg, Delhi

3. Commissioner of Police
   Police Hqrs., MSO Building
   New Delhi .. Respondents

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1. Naresh Kumar
2. Ram Phal
3. Krishan Kumar
4. Manoj Kumar, s/o Shri Suraj Bhan
5. Manoj Kumar, s/o Shri Mandhir Singh
6. Sanjay Kumar
7. Jai Kishan .. Applicants OA 257/97

all c/o Shri Dinesh Yadav, Advocate, 789, Western Wing, Tis Hazari Courts, Delhi

versus

1. Secretary
   M/Home Affairs
   North Block, New Delhi

2. Secretary
   Govt. of NCT of Delhi
   5, Sham Nath Marg, Delhi

3. Commissioner of Police
   Police Hqrs., MSO Bldg., New Delhi

4. Dy. Commissioner of Police
   IInd Bn., Delhi Armed Police, Delhi..Respondents

Sushma Yadav
516/5, Mehrauli
New Delhi .. Applicant in OA 452/97

(By Advocazte Shri Shankar Raju

versus

1. Secretary
   M/Home Affairs
   North Block, New Delhi

2. Commissioner of Police
   Police Hqrs.
   MSO Building, New Delhi

3. Addl. Dy. Commisssioner of Police
   IInd South District
   P.S. Kauz Khas, New Delhi .. Respondents

(Shri Arun Bhardwaj and Shri Raj Singh, Advocates for espondents)

ORDER

Hon'ble Shri S.P. Biswas

The applicants, 73 in number, in these 16 Original Applications belong to Other Backward Communities (OBC for short) hailing mostly from Haryana and other neighbouring states. They are aggrieved by (i) termination of their services abruptly(as in OAs No.2410/96, 2431/96, 2508/96,2523/96 and 452/97), (ii) cancellation of candidatures after selection (in OAs No.2636/96, 24/97, 52/97, 257/97, 316/97 and 894/97) and (iii) non-issue of offers of appointment though empanelled (in OAs No.1841/96, 1557/96, 1484/96, 2216/96, 1871/96). The main plank of applicants' attack is that at no stage, i.e. before "Notification"(8.6.95), at the stage of issuing subsequent corrigendum (29.7.95) and while holding interview (1st week of December/95), none of the candidates were told that their names have to be found not only in the State Lists of OBCs but also in the Central List and that the certificate produced has to be as per proforma prescribed in appendix 3 of DoPT's OM dated 23.11.95. Hence, the "principle of Estoppel" is evidently in their favour.

2. It has been further submitted that in view of the resolution by the Ministry of Welfare dated 6.12.96, respondents are duty bound to issue appointment letters to the applicants in pursuance of the selection that took place in 1995.

3. While opposing the claims of the applicants, respondents have mainly relied upon the following:

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(i) That the categories of OBCs the applicants claim to belong to are not to be found in the common list (State as well as Mandal list) as annexed in the office memorandum of DoPT/Government of India 8.9.93; The certificates are also not as per the proforma laid down by the Government of India annexed with the above memorandum.

(ii) That as per DoPT's instructions in OM No.36033/9/95 dated 10.5.95, caste certificates produced by OBC candidates can be verified by the appointing authority at any time after the appointment also and that is what they have tried to ensure through DCP/II Bn.'s letter dated 19.4.96; and

(iii) That as per the decision of the Hon'ble Supreme Court in Indra Sawhney Vs. UOI & Ors.JT 1992(6) SC 273 (popularly known as MANDAL CASE), any proceedings questioning the validity or operation/ implementation of the orders in OMs dated 13.10.90 and 25.9.91 on any ground whatsoever, shall be filed or instituted only before the Supreme Court and not before any High Court or any court or Tribunal.

4. Heard rival contentions of learned counsel of all the parties.

5. The short question for our consideration is whether Resolution/Notification of the Government of India (Ministry of Welfare) No. 12011/44/96-BCC dated 6.12.96 declaring Ahirs and Yadavs and others as belonging to OBCs should be with retrospective effect in the sense that persons belonging to these communities should have the benefit from the date of their appointment or from the date the communities were notified as such by the State Governments or from the date of original Notification by the Government of India i.e. O.M. No.36012/22/03-Estt.(SCT) dated 8.9.93.

6. Before we determine the aforesaid issue, we need to bring out the principles applicable for determining retrospectivity or prospectivity of a Notification/Resolution. In this connection, the decision rendered by the Apex Court in the case of Income Tax Officer, Tutitocorin Vs. T.S.Devinatha Nadar etc. (AIR 1968 SCC 623) is very relevant for our purpose.

7. What is stated by the Hon'ble Supreme Court, as summarised in the head note C, is as under:

> "The general rule is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective; and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. In fact, the Court must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of law, and what it was that the Legislature contemplated (1869)4 Ch.A 735 Rel.on".

8. On the basis of abovementioned principles, all statutes other than those which are merely declaratory (i.e. statutes relating to procedure/evidence etc) are prima facie prospective. But statutes which are declaratory in nature will have retrospective effect.

9. Applying the above principles, position of law on this sensitive issue is indisputably clear in a long line of decisions of the Hon'ble Supreme Court/High Court as well as Central Administrative Tribunal.

10. In the case of **Bhaiya Ram Munda** Vs. **Anirudh Patar and others** (AIR 1971 SC 2533) decided on 8.8.1970, the basis issue was non-mentioning of "Patars" as sub-tribe

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of "Mundas" declared as Scheduled Tribe (ST for short) in the State of Bihar under Article 342 of the Constitution. The relevant para in that order is reproduced below:-

> "The alternative argument advanced by counsel for the appellant has also no substance. It is true that in Part III of the Schedule to the Constitution (Scheduled Tribes) Order 1950 issued under Art. 342 of the Constitution the name "Munda" was mentioned and similarly the names of other sub-tribes amongst Mundas were mentioned. Counsel for the appellant contended that if according to Dr. Sachchidanand, Mahalis, Ho, Bhumils, Asur, Baiga and Khangars are Mundas, specific mention of some of those tribes in the Scheduled Tribes Order clearly indicated that "Patars" who are not mentioned therein are not a Scheduled Tribe within the meaning of the Order. There is however no warrant for that view. If Patars are Mundas, because some sub-tribes of Mundas are enumerated in the Order and others are not, no interence will arise that those not enumerated are not Mundas. We are unable to hold that because Patars are not specifically mentioned in the List they cannot be included in the general heading Munda." (emphasis added)

11. It is evident that just because "Patars" are not specifically mentioned in the list, it cannot be said that they cannot be included in the general heading - "Mundas". The name by which a tribe or sub-tribe is known is not decisive. Even if the tribe of a person is different from the name included in the Presidential order, it may be shown that the name included in the Order is a general name applicable to sub-tribes. (Please see Civil Appeal No. 1622 of 1967 decided on 21.5.68 (SC)). It was thus concluded that "Patars" of Tamar District in Bihar are a sub-tribe of Mundas and they are not different from "Mundas"(Emphasis added). The same situation prevails here when we speak of Gowala/Gawala and Ahirs/Yadavs.

12. We now come to the case law touching upon on the same subject as decided by the High Court of Karnataka in the case of **Shanta Vs. State of Karnataka and Another (1994(3) Kar. L.J. 128).** The petitioner therein was chargesheeted for obtaining a false caste certificate. Admittedly, she belonged to "Beda" community but declared herself to be belonging to "Nayaka" which is notified as ST. The petitioner had produced several Government publications which show that "Beda" community is synonymous with "Nayaka" community and that in various districts the same community is called by different names. It was held that "Beda" and "Nayaka" are not different communities and that the same communities go by two names and that those names are synonymous. In the present case, Ahirs and Yadavs are synonyms of Gowala/Gawala and admitted by respondents,

13. In view of the above, it was held by the Hon'ble High Court that declaring herself to be 'Nayaka' by tribe, she could not be held responsible for false declaration. Since "Beda" was synonymous of "Nayaka". she was given the benefit and charges quashed. Based on two of its earlier decisions, in KSRTC Vs. E.M. Munivenkatappa (WA No. 470 of 1991) and E.M. Munivenkatappa Vs. K.S.R.T.C. (W.P.No.22662 of 1991), the Hon'ble High Court held that ordinance which was followed by an Act must be given retrospective effect since the amendment was of a declaratory nature. (emphasis added).

14. We now come to the decision of the Central Administrative Tribunal, Bangalore Bench in the case of Sampath Kumar Vs. CPFC/NDLS in OA No.544/94 decided on

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16.3.95. In that case, the applicant was aggrieved by the denial of benefit claimed by him with effect from 27.7.1977 on the ground that he belongs to ST Community and intimating that he was not entitled to the benefit prior to 19.4.1991 as in OM dated 26.9.1993 issued by the Respondent therein. The applicant had retired on superannuation with effect from 31.1.1994 as an Enforcement Officer, though appointed originally as a Lower Division Clerk against general category on 9.12.1957. Later on Government of Karnataka classified the communities viz., Naika, Nayaka, Challava Nayaka, Kapadia Nayaka, Mota Nayaka and Nana Nayaka as belonging to ST with effect from 1.5.1976 and the Government of India by notification dated 27.7.1977 also included the above categories under ST. Pursuant to the above notification, the applicant filed a representation to treat him as ST with effect from 10.1.1977 claiming that he belonged to "Beda" community which according to him was a synonymous of "Nayaka" which is classified as ST. Therefore, he filed W.P. before High Court of Karnataka which came to be transferred to this Tribunal and disposed of in OAs No. 164/86 to 166/86 with a direction to look into the matter afresh after giving an opportunity to the applicant. The applicant produced a fresh certificate dated 9.10.1991 obtained from the Tahsildar, Bangalore. The representation of the applicant was considered from that date and he was to be treated as ST from 19.4.1991 and not from 10.1.1977. The applicant then filed OA No. 473/92 before this Tribunal which was disposed of directing the respondents to decide the status of the applicant with regard to his

claim as ST. The Deputy Commissioner replied stating that he is entitled to consequential benefits provided for STs but only with effect from 19.4.1991.

15. Thus, the applicant approached the Tribunal in a second round of litigation in the above OA i.e. 544/94 seeking relief, inter alia, in terms of treating him as ST with retrospective effect from 27.7.1977 alognwith all consequential benefits.

16. The above OA was examined by Division Bench in details keeping in view of the decision of the Apex Court in (i) Civil Appeal No.481/89 in Chandra Kumar Vs. UOI decided on 2.12.94 (ii) Law laid down in Income Tax Officer, Tuticorin's case (supra); (iii) decisions in cases of KSRTC Vs. E.M. Munivenkatappa and E.M. Munivenkatappa Vs. KSRTC; and (iv) the ratio arrived at Smt. Shanta's case (supra).

17. The Division Bench concluded that Ordinance 3 of 91 which was subsequently enacted was only in the nature of declaration and was not procedural and, therefore, it has to come into operation retrospectively from 27.7.77 and no necessarily from the date of the Ordinance i.e. of 1991. It was so held because the applicant belonging to "Beda" community which was admittedly synonymous of 'Nayaka' and came to be declared as ST not from the date of Ordinance 3 of 1991 but on the date when several other communities were treated as ST with effect from 27.7.77. The O.M. dated 21.7.93 denying the benefit to the applicant therein was quashed and the department was directed to treat him as ST w.e.f. 27.7.77 when Government of India Notification came into operation.

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18. The 4th case was decided again by the same Bangalore Bench in the case of Jayaramiah Vs. SGM/Bangalore in OA-758/96 decided on 20.10.96. Pleadings in this case proceeded on the same lines as in aforesaid cases and reliefs granted with retrospective effect.

19. The legal position that emerges out in the cases aforementioned could be summarised as under:-

(A) Wherever a community came to be notified as SC/ST/OBC and that there are indisputable evidence of STs with synonymous names existing around, the latter have to be recognised as belonging to the main community and cannot be discriminated. The decisions of the Apex Court in Munda's case as well as of the High Court in Santa's case support this view.

(B) Notification/Ordinances issued by Government if it is a declaration, and not procedural, will have retrospective effect. The decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Income Tax Officer (supra) support this view. This principle has been applied bythe High Court of Karnataka while decidingWrit Petitions No.22662/91 dated 18.11.91 (supra).

(C) When a subsequent Notification is issued, leaving- behind certain sub-Tribes/groups retrospectivity will relate back only upto the date of declaration of the original Notification and not beyond that, provided claims of sub-Tribes/sub-castes are impeccable. This view gets support by all the case-laws cited herein above.

20. The question in these present applications would be whether Ministry of Welfare's Resolutin/Notification dated 6.12.96 is one of the declaratory in nature. We find that the above resolution is based on advice of National Commission for Backward Classes (NCBC for short) set up under NCBC Act, 1993. This is evident

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from Secretary, NCBC's letter dated 20.6.96 as in annexure II in OA 894/97. The Commission came up following the direction under Article 141 of the Constitution by the Apex Court in MANDAL's case to "etertain, examine and recommend upon the request for inclusion and complaints of over inclusion and under inclusion in the central list of backward classes". Commission's advice to the Government of India, under Section 9(1) of the NCBC Act, 1993 is ordinarily binding. The above notification would not have surfaced but for the advice of the Commission being of statutory nature. Since the resolution dated 6.12.96 is essentially an order arising out of directions of the 9 Member-Bench of the Apex Court, it would have the force of being declaratory, and not procedural, in nature. In fact, the above resolution amounts to declaration of law by means of resolution and, therefore, should have retrospective effect as per law laid down as mentioned in details in paras 17 to 19 hereinbefore.

21. What is important is not the name by which a sub-tribe is known but whether the name included in the order is a general name and is applicable to sub-tribe (Emphasis added). The general name here is "GOWALA"/"GAWALA" and is applicable to sub-tribes of Ahir/Yadav. To establish that Ahirs and Yadavs are synonym (belonging to same group of Gowala/Gawala) we do not have to depend only on the Government of India's resolution dated 6.12.96. The report of Backward Classes Commission (Mandal Commission) of 1980 at page 182 (2nd part Volume III to Volume VIII - Haryana Chapter) clearly mentions "Ahir, Gowala, Gawala, Rao and Yadav" as OBCs under the same entry No.2. This

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document, dating back to 1980 commands acceptance. Thus, the law laid down by the Supreme Court in Munda's case, the ratio arrived at by the High Court in Shanta's case and also in Sampath Kumar's case of the Tribunal are squarely applicable to the facts and circumstances of the present applications both in terms of treating Ahirs/Yadavs as synonyms of Gawala/Gowala and retorspective applicability of Government of India's resolution dated 6.12.96 being of declaratory nature for the reasons aforequoted in sub-paras A, B & C in para 19 aforementioned.

22. We find that respondents' action in respect of denial to issue offers of appointment or in terminating services of those already employed or even cancelling the candidatures of selected candidates are devoid of principles of natural justice as well as application of mind. It is not their case that the applicants have submitted false caste certificates. Applicants have been found to have produced certificates not as per proforma. Respondents have now come out to say that the certificates submitted should have been as per format enclosed in DoPT's OM No.36033/28/94-Estt. dated 23.11.95 and this admittedly came to their notice later on only in April, 1996. That followed series of actions under challenge herein. There is some force in the contention of the applicants that steps taken by DCP through letter dated 19.4.96 was an act of "after-thought" since none of them were ever informed of the above vital requirement at any stage whatsoever right from the date of notification ti
the panel. Since appointments are l
condition and that the said conditic

public, it would have been only fair for the respondents to offer an opportunity in this respect. That was not done. Principle of natural justice thus stood violated notwithstanding the fact that the respondents had yet another conditionality to press for.

23. Respondents have also taken the plea that the categories of OBCs the applicants belong to are not in the common list of OBCs of State Governments as well as Mandal list as per annexure attached to the OM dated 10.9.93. That OM mentions: "The OBCs for the purpose of aforesaid reservation would comprise, in the first phase, the castes and communities which are common to both the lists inthe report of the Mandal Commission and the State Governments' Lists". There are reasons why such a "phase-wise" order was issued. This calls for a short elaboration of the background behind the reservation for OBCs.

24. Government of India was seized with the problem of reservation for OBCs right from 1990 or even earlier. It was initially felt that "Only such classes of citizens who are socially and educationally backward are qualified to be identified as backward classes. To be accepted as backward classes for the purpose of reservation under Article 15 or Article 16, their backwardness must have been either recognised by means of a notification" under Article 341 or 342 of the Constitution. In the case of other backward classes of citizens qualified for reservation, the burden is on the State to show that these classes have been subjected to such discrimination in the past that they were reduced to a state of helplessness, poverty and the

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consequential social and educational backwardness as in the case of the SC and STs. These classes of citizens, segregatedin slums and ghettos and afflicted by grinding poverty, disease, ignorance, illhealth and backwardness, and haunted by fear and anxiety, are the constitutionally intended beneficiaries of reservation, not because of their castes or occupations, which are merely incidental facts of history, but because of their backwardness and disabilities stemming from identified past or continuing inequalities and discrimination. It is at this stage in 1990-91, the Apex Court received fairly a large number of writ petitions requiring determination of guiding principles. It was thus held in MANDAL's case that "means-test" is imperative to skim-off the affluent sections of the backward classes". Thus, following the directions of the Hon'ble Supreme Court the first phase of reservation for OBCs started in Government of India, with the communities/castes which were common to both the lists in the report of Mandal Commission and the State Governments' lists. Instructions under Government of India OM dated 8.9.93 have to be read with those under notification dated 10.9.93 wherein it has been mentioned that the Expert Committee on "creamy Layer" has been commissioned to prepare the Common Lists in respect of 14 states which had notified the list of OBCs for the purpose of reservation in State Services as on the date of judgement of the Supreme Court. The Common Lists prepared by the Committee were accepted by the Government which decided to notify the list (annexed with OM dated 10.9.93) of the OBCs in the context of implementation of the aforesaid OM dated 8.9.93. The NCBC, set up under the provisions of the National

Commission for Backward Classes Act, 1993 in pursuance of the direction of the Supreme Court in MANDAL case, had to entertain, examine and recommend upon requests for inclusion and complaints of overinclusion and under-inclusion in the lists of Other Backward Classes of citizens.

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25. The resolution dated 6.12.96 based on NCBC's advice is, in effect, the outcome of directions of constitutional authority and also in follow up of the directions of the Apex Court contained in OM dated 10.9.93. Responsible public functionaries like the respondents herein should have called their own attention in understanding the expressions like - "in the first phase" - in the OM relied upon by them.

26. We find the respondents have neither challenged the notifications dated 24.1.95 and 7.6.95 of the State Governments of NCT of Delhi and Haryana respectively. Nor resolution of the Government of India dated 9.12.96 has been questioned. Since Ahirs/Yadavs have been categorised as belonging to OBCs by the aforesaid resolution and since their inclusions are apparently based on the recommendations of the statutory body, there is no reason why the effect of the resolution should not be given from the date of the notification by the State Governments. Ordinarily, retrospective application would have been related back to Government of India notification's dated 8.9.93, since the reservation for OBCs in the Central Government for the first time started from that date. But such benefits could not be given to any State Government unless they had justified their actions by means of proper

notification and that was done by the Government of Haryana on 7.6.95 and the Govt. of NCT of Delhi on 24.1.95. Since such notifications could be made only after applying the principle of "creamy layer", as laid down by the Hon'ble Supreme Court, we are inclined to agree that the caste/class tag should be allowed to take effect from the date of notifications by the State Governments. This is the principle which has been adopted by the High Court of Karnataka in Shanta's case (supra) and we are in respectful agreement with the ratio arrived at therein.

27. Respondents would then argue that the caste tag should go with the aplicants only from the date of notification, i.e. 6.12.96. This date is important. It only signifies, in terms of time, when an official notice was taken of past events referable to recognition of backwardness. The date does not wash away the past. If one is an OBC on 24.1.95/7.6.95 and again on 6.12.96, how can his OBC character be taken away in between 31.12.95 and 7.6.96 when appointments were due?

28. What would govern the present set of recruitments is the position of law/regulations prevailing at the time of Recruitment notifications dated 2.6.95/8.6.95/29.7.95. In fact, all the conditions for recruitment were stipulated in the communication dated 8.6.95 addressed to Employment Exchange. It is impermissible to bring in subsequent conditions dated 23.11.95 to invalidate the selection already held (emphasis added). We find our views get fortified by the decisions of the Apex Court in the case of P.Mahendran & Ors. Vs. State of Karnataka and Ors.,

AIR 1996 SC 405 wherein the respondents' attempts to apply new provisions to govern the selections already started have been deprecated. On the date of above Notification Ahirs and Yadavs find their names appearing separately against the appropriate entry numbers in the State list (notified on 7.6.95) and in the Mandal list. There were thus enough of materials to publish the "second phase" of common list or update the earlier Central list dated 10.9.93. If Ahirs and Yadavs were not shown in a subsequent common list, applicants could not be forced to face avoidable difficulties.

29. That apart, the undisputed facts are that on the date of notification, i.e. on 8.6.95, the state lists notified did include all the categories applicants herein belonged to. Those names also appear against the appropriate entry number in Mandal List. OM dated 8.9.93 does not stipulate that any community appearing subsequently in the state lists and having corresponding entry in Mandal list, need not be considered. On the contrary, mention of the reservation being - "in the first phase" points to the need for consideration of subsequent issues based on valid considerations. Respondents have failed to take note of this.

30. The respondents' counsel vehemently argued that the OBCs like Ahirs and Yadavs could not be treated as OBCs for the purpose of obtaining 27% reservation unless they were OBCs declared by the Central list, before they were appointed to the post and since the notification including these communities as OBCs was published by the

Central Government only on 6.12.96, the benefit of reservation as OBC could not have been extended to the applicants.

31. On the other hand, the submission of the applicants were that the respondents, even though, were recruiting for NCT of Delhi, had gone to the State of Haryana and 8 other States for local recruitment and they themselves were not sure whether the OBCs being recruited to a service in NCT of Delhi should be identifiable with the help of a notification of NCT of Delhi or with respective States. It is also a fact that the NCT of Delhi by its notification dated 20.1.95 had brought out these communities as OBCs for the purpose of getting the benefit of reservation as OBCs within the NCT of Delhi. It is subsequently that the respondents came to realise that even though the recruitment was for Delhi, since the recruitment was from the State of Haryana, the OBC character of a community should be determined as per the rules applicable to the State of Haryana. Accordingly, the respondents found out, subsequent to the selection and appointment, that the applicants were not belonging to the OBC of the State of Haryana recognised by the Central Government by its notification dated 10.9.93. The submission of the counsel for the applicants was that even though the communities to which the applicants belong were already recognised as OBCs within the State of Haryana, the Central Government notification only declares them for the purpose of reservation but otherwise as far as the character and status of the OBCs are concerned, the applicants would remain members of the OBC community with effect from the notification of the State of Haryana dated 7.6.95. It was also

(35)

submitted that even though Ahirs and Yadavs were not as such mentioned by the notification of the Central Government dated 10.9.93, by a subsequent notification dated 6.12.96, it has incorporated these two communities as OBCs as names synonymous to the alreedy existing entry No.26 for Gawala and Gowala. By this notification, the Central Government has only further described that the communities of Ahirs and Yadavs are synonymous to Gawala & Gowala and that does not mean Ahirs and Yadavs became OBCs from the date of notification. It must be remembered that in all these notifications, entryNo.26 is referring to these communities as common entry which has been taken from the notification of the Haryana Government declaring all these communities under one entry as OBC.

32. It has also been submitted by the applicants that the Hon'ble Supreme Court in Indra Sawhney's case (supra) permitted the Central Government to implement 27% reservation for OBCs only if the expert Committee's report is implemented and the "creamy layer" of these communities are excluded from the benefit of the said 27% reservation, that is to say, the "creamy layer" of the respective OBC communities even though continued to remain as members of the OBC community, from the date they were so recognised and constituted by their respective State Governments, those creamy layers did not cease to become OBC but they will not get the benefit of 27% reservation. The intention of 10.9.93 notification was to isolate only those OBCs, common in State Lists as well in Mandal list, for the purpose of benefit of 27% reservation only after satisfying creamy layer criteria. Those who did not fulfill the said

criteria did not lose the character of OBC. Thus, the irressistible conclusion is that the declaration of a community as OBC will relate back to the State list where the State has included these castes as OBCs after a thorough inquiry as to their backwardness in accordance withe criteria laid down. Subsequently, in accordance with the decision of the Apex Court, what is left to be done was to issue the notification recognising them as eligible for reservation of 27%. Therefore, the submission of the respondents that the OBC character of the applicants didnot relate back to the date on which the respective States have found and constituted a particular community as OBC and they will not be considered as OBC for the benefit being declared as OBC and but only for the purpose of obtaining the benefit of 27% reservation is, therefore, to be rejected.

33. The learned counsel for the respondents also argued that in view of the directions given by the Hon'ble Supreme Court in para 861, this Court has no jurisdiction to decide this issue. He also relied on clause (c) of para 861. For the sake of convenience the said para is reproduced below:

> "861. (A) The Government of India, each of the State Governments and the Administrations of Union Territories shall, within four months from today, constitute a permanent body for entertaining, examining and recommending upon requests for inclusion and complaints of overinclusion and under-inclusion in the lists of other backward classes of citizens. The advice tendered by such body shall ordinarily be binding upon the Government.
>
> (B) Within four months from today the Government of India shall specify the bases, applying the relevant and requisite socio-economic criteria to exclude socially advanced persons/sections ("creamy layer") from

"Other Backward Classes". Theimplemention of the impugned OM dated 13.8.90 shall be subject to exclusion of such socially advanced persons ("creamy layer"). This direction shall not however apply to states where the reservations in favour of backward classes are already in operation. They can continue to operate them. Such states shall however evolve the said criteria within six months from today and apply the same to exclude the socially advanced persons/sections from the designated "Other Backward Classes".

(C) It is clarified and directed that any and all objections to the criteria that may be evolved by the Government of India and the State Governments in pursuance of the direction contained in clause (B) of para 861 as well as to the classification among backward classes and equitable distribution of the benefits of reservations among them that may be made in terms of and as contemplated by clause (i) of the OM dated 25.9.91 as explained herein, shallbe preferred only before this Court and not before or in any other High Court or other Court or Tribunal. Similarly, any petition or proceeding questioning the validity, operation or implementation of the two impugned OMs, on any grounds whatsoever, shall be filed or instituted only before this Court and not before any High Court or other Court or Tribunal".

34. It is obvious that the submission of the counsel for the respondents is misplaced. By clause (c), the Hon'ble Supreme Court was clarifying that any and all objections to the criteria that may be specified by the GOI or State Government pursuant to the directions contained in clause (b) and the classification among the backwardness and equitable distribution of benefits among them in accordance with OM dated 25.9.91 can be preferred only to the Hon'ble Supreme Court. That is to say, clause (c) refers to the subject matter mentioned in clause (b), namely the discrimination of criteria to exclude socially advanced creamy layer and the classification of equitable distribution referred to in clause (c) are also referred to the creamy layer in clause (b). The latter part of clause (c) also mentions that any petition or proceeding questioning the validity, operation or implementation of these two OMs

on any ground whatsoever shall be filed or instituted only before the Supreme Court. It is not the case of the respondents that the applicants are challenging the validity, operation or implementation of the two OMs which were the subject matter of the decision of the Supreme Court in the said case. Thus, the objection as to the jurisdiction of this court to decide the issues raised herein and described above, is totally misplaced.

35. On the other hand the Supreme Court indicates that the State Government could constitute a permanent body within four months for maintaining, examining and recommending upon the request of exclusion or complaints of over-inclusion etc. of the OBC citizens and their advice to the State Government would be ordinarily binding.

36. It is pertinent to mention that the notification dated 7.6.95 of the Haryana Government was, in fact, issued in pursuance of the directions given by the Supreme Court. As such, the applicants who have obtained certificates from the State of Haryana in accordance with the list published by that Government is a conclusive evidence as to the status of OBC as far as the applicants are concerned. Whether the Central Government has subsequently recognised this status for different purpose or not, is not going to change the character of the applicants as OBCs after the notification dated 7.6.95. This is because the said notification has been issued by a permanent body constituted by the State Government in accordance with the decision of the Supreme Court.

37. In the facts and circumstances of the case, the OAs are allowed with the following directions:

(i) Orders dated 15.10.96, 30.10.96, 31.10.96 and 4.11.96 cancelling the candidatures and thereby refusing to issue offer of appointment and orders dated 3o.10.96, 31.10.96, 12,11,96 and 18-19.2.97 terminating the services of the applicants shall stand quashed;

(ii) In the case of those applicants awaiting offer of appointment after due process of selection, respondents are directed to issue offers of appointment to them provided other conditions stand fulfilled. Applicants served with letters of termination shall be reinstated and orders of termination already served be withdawan or to those threatened to be served shall not be effected. These orders shall be carried out within a period of eight weeks from the date of receipt of a certified copy of this order.

(iii) Our orders, however, will not be applicable to the applicants in OA 52/97 or other applicants who have approached the High Court in writ petitions separately.

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(iv) In case services of some of the applicants have been terminated, all their past service shall be counted for the purpose of seniority. However, there shall be no backwages for them for the intervening period since they have not actually worked.

There shall be no order as to costs.

(S.P. Biswas)
Member(A)

(Dr. Jose P. Verghese)
Vice-Chairman(J)

/gtv/

Attested
27/10/93