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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 04th September, 2024*

+ W.P.(C) 12303/2024 and CM APPL. 51162/2024 CM APPL.
51163/2024

DELHI SUBORDINATE SERVICES SELECTION BOARD AND
ANR.Petitioners

Through: Ms. Avnish Ahlawat, St. Counsel
GNCTD with Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik, Ms.
Aliza Alam and Mr. Mohnish
Sehrawat, Advocates

Versus

VISHNU KUMAR BADETIYARespondent

Through: Mr. Vijendra Singh Mahndiyani,
Ms. Apurva Mahndiyani & Ms. Nikita
Tiwari, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present writ petition has been filed under Article 226 read with



Article 227 of the Constitution of India seeking quashing and setting aside of order dated 27.04.2024 passed by the learned Central Administrative Tribunal (the Tribunal), Principal Bench, New Delhi in OA No.3186/2016.

2. Notice issued.

3. Mr. Vijrendra Singh Mahndiyan, Advocate, appearing on behalf of respondent accepts notice.

4. With the consent of learned Counsel for the parties, the present petition has been taken up for final hearing.

5. The brief background of the case is that the respondent had preferred OA No.3186/2016 before the learned Tribunal pleading that in terms of Advertisement No.004/09, inviting applications for filling-up of vacancies for various posts, including Staff Nurse and Nurse Grade-A by the petitioners, he applied for the post code 77/09 under category 'Staff Nurse' under Ministry Health and Family Welfare, GNCTD and along with application form annexed photocopies of the requisite testimonials.

6. The respondent was issued admit card on 30.05.2010 wherein it was clearly mentioned that he belonged to Scheduled Castes (SC) category. The respondent appeared in the examination, which was held in two tiers and vide result dated 27.01.2011, he was declared successful. The respondent obtained 87 marks out of 200 marks, whereas the last selected candidate from SC category had secured 71 marks.

7. In the final merit list, since he did not find his name and so, he approached the competent authority of the petitioners to find out reason for stall of his appointment. He was informed by the petitioners that his candidature was not considered under 'reserved category' as the Caste



Certificate provided by him stands issued by other State other than the State of Delhi.

8. The respondent in his OA filed before the learned Tribunal pleaded that in terms of Letter No.F.61(73)/97-S.III/710 dated 30.06.2005 issued by the Government of NCT of Delhi, the Scheduled Castes/Scheduled Tribes candidates irrespective of their nativity shall be eligible for reservation to the civil posts under Government of NCT of Delhi.

9. The respondent further pleaded that in the year 2011 similarly situated candidates preferred OA No.1687/2011 and OA No.1124/2013 before the learned Tribunal in respect of the post of Staff Nurse, post code 77/09, which stood allowed vide orders dated 15.05.2014 and 14.07.2014 respectively, whereby the petitioners were directed to consider the candidature of the applicants therein as SC candidate and give them appointment with consequential benefits.

10. Respondent also pleaded that another OA No.3304/2013 filed by similarly situated candidates before the learned Tribunal, was also allowed with direction to the petitioners to examine the claim of the applicants therein and initiate the process appointment, as the posts were still vacant.

11. The respondent also averred before the learned Tribunal that in the year 2015, another OA being OA No.1530/2015 was preferred by some other persons for similar relief, which was also allowed by the learned Tribunal and those applicants were considered for appointment under SC category for the same post.

12. The respondent also informed the learned Tribunal that in terms of letter No.F.3(9 to 13)/DSSSB/Result/2010-11/2015, dated 21.08.2015,



petitioners considered the similarly situated persons belonging to SC category for the same post and were given appointment.

13. The respondent claimed to have made a representation dated 12.04.2016 to the petitioners requesting to consider his candidature for the post code 77/09, however, he was informed by the competent authority that no action on his application was taken. The respondent, thus, approached the learned Tribunal praying for a direction to the petitioners to grant him appointment under SC category for the post of Staff Nurse, post code 77/09.

14. To the contrary, stand of petitioners before the learned Tribunal was that in respect of reservation of SC/ST category, DSSSB has been following instructions issued by the Government of NCT of Delhi from the year 1997 till 2005 and the instructions issued by the Government of NCT of Delhi vide letter No.F.19(10)/2001/S-III/2146 dated 10.08.2001, were being followed.

15. Whereas, the petitioners pleaded that during the period from 04.08.2009 till 12.09.2012, the benefit of reservation to SC/ST category candidates who were from outside the State of Delhi in respect of civil posts under Government of NCT of Delhi, including local and autonomous bodies under the Government, was not extended in view of decision rendered by the Hon'ble Supreme Court in the case of *Subhash Chandra & Anr. Vs. DSSSB and Ors.* (2009) 15 SCC 458 with W.P.(C) 507/2006, titled as *Sarv Rural and Urban Welfare Society through its President vs. UOI and Ors.* has held that those candidates who have obtained SC/ST certificates in Delhi on the basis of certificates of their parents issued by other States and have migrated to Delhi, are not entitled for the benefit of reservation and shall be



considered under UR category.

16. The petitioners averred before the learned Tribunal that granting benefits of reservation on pick & choose basis to outside SC/ST candidates in respect of exams conducted and results declared during the period 04.08.2009 to 12.09.2012, will unsettle the entire recruitment/selection process in a number of cases. It will literally open a Pandora box. It was also pleaded that the judgment dated 12.09.2012 in the case of *Deepak Kumar & Ors vs. District & Sessions Judge* was prospective and it could not have been applied retrospectively.

17. During the course of hearing in the present petition, learned counsel appearing on behalf of petitioner submitted that Grounds-B, F and G in the present petition are not pressed. Learned Counsel submitted that the learned Tribunal failed to consider that the decision rendered in *Deepak Kumar (supra)* is not applicable prospectively and respondent should not have been considered for appointment under SC category and some other outside SC/ST candidates may have high merits, as compared to the local SC/ST. Learned Tribunal did not consider that for the period 04.08.2009 to 12.09.2012, the benefit of reservation was not extended to SC/ST candidates under various posts by Government of NCT of Delhi, who were outside from the State of Delhi. Also that the result of the examination was declared on 17.01.2011 and the process of recruitment in respect of the advertisement was completed on 12.09.2012 and the unfilled vacancies reserved for SC/ST category for the post code 77/09 were already carried forwarded to the subsequent recruitments made by petitioners.

18. To the contrary, learned counsel for respondent has submitted that the



present petition has been preferred by the petitioner after more than a year of passing of the impugned judgment by the learned Tribunal. Learned counsel submits that there is no merit in the averments made on behalf of the petitioners and thus, the present petition deserves to be dismissed.

19. Upon hearing learned counsel for both the sides and on perusal of impugned order as well as other material placed on record, this Court at the first instance takes note of the fact that the learned Tribunal in the impugned judgment dated 27.04.2024 has observed that the OA filed by the respondent herein, was listed for hearing along with the OA No.3094/2016 which was decided on 24.07.2023, however, the OA filed by the respondent could not be disposed of on the said date due to non-availability of learned counsel and remained pending.

20. In the impugned judgment, learned Tribunal has placed heavy reliance upon decision in OA No.3094/2016, wherein candidates belonging to the SC category, who had applied for the post of Staff Nurse under very same advertisement No.004/2009, were denied appointment by the petitioners on the ground that the status of SC held by them, was with respect to State of Rajasthan.

21. The learned Tribunal considered the question as to whether SC certificate issued by the State of Rajasthan would be valid for availing the benefit of reservation in a post under Union Territory of Delhi.

22. The learned Tribunal in OA No.3094/2016, placed heavy reliance upon decision rendered by Full Bench of this Court in *Deepak Kumar & Ors. Vs. District and Sessions Judge, Delhi* 2012 SCC OnLine Del 4794, wherein it is held as under:-



“66. This court summarizes its conclusions, as follows:

(1) *The decisions in Marri, Action Committee, Milind and Channaiah have all ruled that scheduled caste and tribe citizens moving from one State to another cannot claim reservation benefits, whether or not their caste is notified in the state where they migrate to, since the exercise of notifying scheduled castes or tribes is region (state) specific, i.e. “in relation” to the state of their origin. These judgments also took note of the Presidential Notifications, which had enjoined such citizens to be “residents” in relation to the state which provided for such reservations.*

(2) *The considerations which apply to Scheduled Caste and Tribe citizens who migrate from state to state, apply equally in respect of those who migrate from a state to a union territory, in view of the text of Articles 341(1) and 342(1), i.e. only those castes and tribes who are notified in relation to the concerned Union Territory, are entitled to such benefits. This is reinforced by the Presidential Notification in relation to Union Territories, of 1951. Only Parliament can add to such notification, and include other castes, or tribes, in view of Articles 341(2), Article 342(2) which is also reinforced by Article 16(3). States cannot legislate on this aspect; nor can the executive — Union or state, add to or alter the castes, or tribes in any notification in relation to a state or Union Territory, either through state legislation or through policies or circulars. Differentiation between residents of states, who migrate to states, and residents of states who migrate to Union Territories would result in invidious discrimination and over-classification thus denying equal access to reservation benefits, to those who are residents of Union Territories, and whose castes or tribes are included in the*



Presidential Order in respect of such Union Territories. The Pushpa interpretation has led to peculiar consequences, whereby:

- (i) The resident of a state, belonging to a scheduled caste, notified in that state, cannot claim reservation benefit, if he takes up residence in another state, whether or not his caste is included in the latter State's list of scheduled castes;*
 - (ii) However, the resident of a state who moves to a Union Territory would be entitled to carry his reservation benefit, and status as member of scheduled caste, even if his caste is not included as a scheduled caste, for that Union Territory;*
 - (iii) The resident of a Union Territory would however, be denied the benefit of reservation, if he moves to a State, because he is not a resident scheduled caste of that State.*
 - (iv) The resident of a Union Territory which later becomes a State, however, can insist that after such event, residents of other states, whose castes may or may not be notified, as scheduled castes, cannot be treated as such members in such newly formed states;*
 - (v) Conversely, the scheduled caste resident of a state which is converted into a Union Territory, cannot protest against the treatment of scheduled caste residents of other states as members of scheduled caste of the Union Territory, even though their castes are not included in the list of such castes, for the Union Territory.*
- (3) The ruling in Pushpa is clear that if the resident of a state, whose caste is notified as Scheduled caste or scheduled tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in*



relation to the Union Territory, even though if he moves to another state, he is denied such benefit (as a result of the rulings in Marri and Action Committee). The ruling in Pushpa, being specific about this aspect vis-vis Union Territories, is binding; it was rendered by a Bench of three judges.

(4) The later ruling in Subhash Chandra doubted the judgment in Pushpa, holding that it did not appreciate the earlier larger Bench judgments in the correct perspective. Yet, Subhash Chandra cannot be said to have overruled Pushpa, since it was rendered by a smaller Bench of two judges. This approach of Subhash Chandra has been doubted, and the question as to the correct view has been referred to a Constitution Bench in the State of Uttaranchal case.

(5) By virtue of the specific ruling applicable in the case of Union Territories, in Pushpa, whatever may be the doubts entertained as to the soundness of its reasoning, the High Courts have to apply its ratio, as it is by a formation of three judges; the said decision did notice the earlier judgments in Marri and Action Committee. Article 141 and the discipline enjoined by the doctrine of precedent compels this Court to follow the Pushpa ruling.

(6) In matters pertaining to incidence of employment, such as seniority, promotion and accelerated seniority or promotional benefits, flowing out of Articles 16(4A) and (4B) of the Constitution, there may be need for clarity, whichever rule is ultimately preferred — i.e. the Pushpa view or the Marri and Action Committee view. In such event, it may be necessary for the guidance of decision makers and High Courts, to spell out whether the correct view should be applied prospectively. Furthermore, it may be also necessary to clarify what would be meant by



prospective application of the correct rule, and whether such employment benefits flowing after recruitment, would be altered if the Marri view is to be preferred.”

23. The learned Tribunal taking the note of the petitioners’ objection that the decision in **Deepak Kumar (Supra)** shall not be applicable retrospectively, observed that the judgment passed by this Court extensively quotes the other judgments on the subject and interprets various provisions under law and allowed OA No.3094/2016. The learned Tribunal held that the OA preferred by the respondent herein, is a mirror image of applicants in OA No.3094/2016 and there was no cause to take a divergent view and thereby, allowed respondent’s application.

24. A Coordinate Bench of this Court in **Ashu & Ors. Vs. The Registrar General, High Court of Delhi and Ors.** 2022/DHC/004613 in a somewhat similar case, wherein the petitioners who belonged to SC/ST category, were declared ineligible for appointment in the Establishment of this Court, on the ground that they were not ordinarily residents of Delhi; observed as under:-

“37. It is apparent from the above that the Court had read in the requirement of being ordinarily resident of Delhi for seeking benefit of reservation on the ground that such benefit also available to migrant Scheduled Castes and Scheduled Tribes. Clearly, there can be no such requirement where recruitment is to a post to which all citizens of India, irrespective of their residence, are eligible to apply. And, more importantly, the rule of pan-India reservation is applicable. Thus, if a candidate is able to furnish a certificate of belonging to a Scheduled Caste or Scheduled Tribe - which may



otherwise be issued only by the competent authority where such a candidate is ordinarily resident - he cannot be denied the benefit of reservation as specified under the Notification.”

25. During the course of hearing, this Court put a specific query to the counsel appearing on behalf of the petitioners as to whether in NCT of Delhi, reservation is given to the candidates belonging to the PWD category irrespective of the Certificate issued by any State. The answer of the learned counsel for petitioners was in affirmative. It is also not in dispute that the candidates belonging to the Economically Weaker Sections irrespective of their State from which they belong to, are given appointment in the NCT of Delhi.

26. In such a situation, the State of NCT of Delhi is giving reservation to one category and denying to the other category, which is sheer discrimination to the category in question in the present case, and cannot be permitted.

27. It is also not in dispute, NCT of Delhi being Union Territory for all purposes, except for running administration, is of migrants, therefore, benefit of reservation to any category cannot be denied.

28. In the present case, the respondent was issued Caste Certificate on 23.10.1993, which indisputably he had annexed with his application. The petitioner had also successfully qualified the selection process and secured 87 marks against 71 marks obtained by the last selected candidate from SC category. The respondent had also made a representation to the competent authority seeking his appointment, which remained unanswered. Also, it is not in dispute that the OA No.3186/2016 was listed for hearing along with



OA No. 3094/2016, being similar on facts. However, OA No.3094/2016 was allowed by the learned Tribunal on 24.07.2023, but respondent had to wait for the relief till 27.04.2024.

29. In our opinion, the learned Tribunal is not in error to hold that the respondent is entitled to appointment on the post of Staff Nurse as an SC candidate pursuant to Advertisement No.004/09.

30. The present petition is accordingly dismissed, with direction to the petitioners to comply with the directions, within four weeks, enumerated in Para-14 of the impugned judgment dated 27.04.2024 passed by the learned Tribunal in OA 3186/2019.

31. With directions, as aforesaid, the present petition and pending application, if any, are accordingly dismissed.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 04, 2024

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