

Neutral Citation No. - 2023:AHC-LKO:58193-DB

A.F.R.

RESERVED

Court No. - 1

- (1) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 589 of 2018  
**Appellant :-** Khushnuda Parveen  
**Respondent :-** State Of U.P.Throu.Secy.Secondary Education Lko.And Ors.  
**Counsel for Appellant :-** Virendra Singh  
**Counsel for Respondent :-** C.S.C.,Meenakshi Parihar Singh,Prashant Kumar Singh,Raj Kr Singh Suryvanshi

**Connected with**

- (2) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 590 of 2018  
**Appellant :-** Khushnuda Parveen  
**Respondent :-** State Of U.P.Throu.Secy.Secondary Education Lko.And Ors.  
**Counsel for Appellant :-** Virendra Singh,Mohd.Murtaza Khan  
**Counsel for Respondent :-** C.S.C.,Meenakshi Parihar Singh

**with**

- (3) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 591 of 2018  
**Appellant :-** Khushnuda Parveen  
**Respondent :-** State Of U.P.Throu.Prin.Secy.Madhyamik Education Lko.And Ors.  
**Counsel for Appellant :-** Virendra Singh,Mohd.Murtaza Khan  
**Counsel for Respondent :-** C.S.C.

**with**

- (4) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 592 of 2018  
**Appellant :-** Khushnuda Parveen  
**Respondent :-** State Of U.P.Throu.Secy.Secondary Education Lko.And Ors.  
**Counsel for Appellant :-** Virendra Singh  
**Counsel for Respondent :-** C.S.C.,Meenakshi Parihar Singh

**with**

- (5) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 593 of 2018  
**Appellant :-** Khushnuda Parveen  
**Respondent :-** State Of U.P.Throu.Secy.Secondary Education Lko.And Ors.  
**Counsel for Appellant :-** Virendra Singh  
**Counsel for Respondent :-** C.S.C.

**Hon'ble Attau Rahman Masoodi,J.**

**Hon'ble Om Prakash Shukla,J.**

**(Per Om Prakash Shukla, J.)**

**Application for Condonation of Delay**

- (1) Heard Ms. Pushpila Bisht, *Amicus Curiae*, appearing on behalf of appellant, Shri V.P. Nag, learned Standing Counsel representing the State/respondents no. 1, 2, 3 and 5, Shri R.K. Singh Suryavanshi, learned Counsel representing respondent no.4/U.P. Secondary Education Service Selection Board, Shri Prashant Kumar Singh, learned Counsel representing the respondent no.6/Committee of Management, Smt. Meenakshi Parihar, learned Counsel representing the respondent no.7/writ petitioner,
- (2) Having gone through the averments made in the affidavit filed in support of the application seeking condonation of delay and in absence of any objection by the respondents, this Court is satisfied that delay has sufficiently been explained.
- (3) The application for condonation of delay filed in the above-captioned appeals is, accordingly, allowed and delay in filing the above-captioned special appeals is hereby condoned.

**(Order on Appeals)**

**A. INTRODUCTION**

- (4) The legality and correctness of common judgment and order dated 19.07.2018 passed by the learned Single Judge in (i) Writ Petition

No. 23409 (S/S) of 2016 : *Ram Ujagar Mishra Vs. State of U.P. and others*, (ii) Writ Petition No. 13 (S/S) of 2014 : *Ram Ujagar Mishra Vs. State of U.P. and others*, (iii) Writ Petition No. 7415 (S/S) of 2014 : *Ram Ujagar Mishra Vs. State of U.P. and others*, (iv) Writ Petition No. 4016 (S/S) of 2011 : *Smt. Khushnuda Parveen Vs. State of U.P. and others* and (v) Writ Petition No. 3969 (S/S) of 2013 : *Smt. Khushnuda Parveen Vs. State of U.P. and others*, are called in question by the appellant, **Smt. Khushnuda Praveen**, in the above-captioned *intra Court* appeals under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952.

**B. FACTS**

- (5) Succinctly, the facts of the case are that Saadat Inter College, Nanpara, District Bahraich (hereinafter referred to as ‘**Institution**’), is being run under the aegis of a society registered under the provisions of Societies Registration Act, 1860. The said Institution is recognized under the provisions of U.P. Intermediate Education, 1921 and is also receiving grant-in-aid from the State Government. Therefore, the provisions of U.P. High School and Intermediate Colleges (Payment of Salary to the Teachers and other Employees) Act, 1971 and the provisions of U.P. Secondary Education Service Selection Board Act, 1982 and rules framed thereunder are also applicable to the said institution.

- (6) The appellant, Smt. Kushnuda Parveen, was selected by U.P. Secondary Education Services Selection Board through direct recruitment and was appointed on the post of Lecturer (Urdu) on 07.06.1996 in the Institution. Her selection was made under reserved quota i.e. Scheduled Caste on the basis of Caste Certificate submitted by her.
- (7) Sri Ram Ujagar Mishra (respondent no.7 herein) was initially appointed in the Institution on the post of Assistant Teacher (L.T. Grade) in the year 1981 on *ad hoc* basis, however, his services were regularized w.e.f. 06.04.1991 in the Institution vide order dated 02.08.1992.
- (8) Shri Bismillah Khan, who was the Lecturer in Mathematics in the Institution, retired on 30.06.1991 on attaining the age of superannuation and as such, vide resolution dated 02.08.1992, the Committee of Management resolved to grant promotion to Shri Ram Ujagar Mishra (respondent no.7 herein) on the vacant post of Lecturer in Mathematics in the Institution on *ad hoc* basis under 50% promotion quota. The District Inspector of Schools (hereinafter referred to as 'D.I.O.S.'), vide order dated 15.12.1992, had accorded approval to the aforesaid resolution of the Committee of Management to grant *ad hoc* promotion to Shri Ram Ujagar Mishra (respondent no.7 herein). Subsequently, vide letter dated 20.04.1998, the U.P. Secondary Education Service Selection Board (hereinafter referred to as '**Board**') intimated the

decision of the Board to the D.I.O.S. in regard to the regular promotion of Shri Ram Ujagar Mishra (respondent no.7 herein) on the post of Lecturer in Mathematics in the Institute.

- (9) Apparently, a dispute in regard to the seniority arose in the Institution between the appellant and the respondent No.7 as apparently the said seniority would lead to appointment as Principal to the said Institution. The appellant preferred a representation dated 13.09.2010 claiming seniority and sought for handing over the officiating charge on the post of Principal to her by reverting Shri Ram Ujagar Mishra on the post of Assistant Teacher (L.T. Grade). The Regional Joint Director of Education, Devipatan Mandal, Faizabad, vide order dated 02.06.2011, had considered the aforesaid representation of the appellant and rejected the same vide order dated 02.06.2011 (hereinafter referred to as "**First Order**").
- (10) Subsequently, Shri Shyam Das Maurya, who was the Principal of the Institution, retired on attaining the age of superannuation on 30.06.2011 and before his retirement, the Committee of Management passed a resolution on 29.06.2011, resolving to appoint Shri Ram Ujagar Mishra (respondent no.7 herein) as *ad hoc*/officiating Principal of the Institution. The said resolution dated 29.06.2011 ( hereinafter referred to as "**Second Order**" ) was sent to D.I.O.S. for attestation of the signature of Shri Ram Ujagar Mishra as Principal and payment of salary.

- (11) Meanwhile, the appellant preferred Writ Petition No. 4016 (S/S) of 2011 before this Court, challenging the order dated 02.06.2011 (“First Order”) by which her representation claiming seniority was rejected. The learned Single Judge, while entertaining the said writ petition, kept in abeyance the order dated 02.06.2011 passed by the Regional Joint Director of Education, Devipatan Mandal, Faizabad till further order of the Court vide order dated 14.07.2011. Thereafter, on the strength of this interim order dated 14.07.2011, the appellant had claimed for joining on the post of Principal on *ad hoc*/officiating basis, but the same was not allowed and as such, she preferred Contempt Petition No. 3144 of 2011, which was disposed of vide order dated 14.02.2013 with a liberty to the appellant to raise the issue in her writ petition.
- (12) Pursuant to the aforesaid liberty, the appellant preferred another writ petition, bearing writ petition No. 41 (S/S) of 2013, before this Court. The learned Single Judge, vide order dated 27.05.2013, disposed of the said writ petition finally with a direction to dispose of the representation of the appellant.
- (13) In compliance of the aforesaid order dated 27.05.2013, the D.I.O.S. considered the claim set-up by the appellant and rejected the same vide order dated 28.06.2013 (hereinafter referred to as “**Third Order**”), stating that since the matter regarding seniority is pending before the Hon’ble High Court, thus, there is no

requirement for any action at this stage. Aggrieved by this order dated 28.06.2013, the appellant preferred Writ Petition No. 3969 (S/S) of 2013.

(14) It seems that during pendency of the aforesaid two writ petitions, i.e., Writ Petition No. 4016 (S/S) of 2011 against “First order” and Writ Petition No. 3969 of 2013 preferred by the appellant against “Third Order”, the Joint Director of Education, Devipatan Mandal, Faizabad, in compliance of the order dated 27.05.2013 passed in Writ Petition No. 41 (S/S) of 2013, had also considered the representation dated 01.11.2012 preferred by the appellant and decided the same vide order dated 17.12.2013 ( hereinafter referred to as “**Fourth Order**”), stating that appellant was senior to the respondent no.7 (Ram Ujagar Mishra) w.e.f. 07.06.1996 and as such, it would be appropriate to grant promotion to the appellant on the post of *ad hoc*/officiating Principal of the Institution. Aggrieved by this order dated 17.12.2013 (“Fourth Order”), the respondent no.7 (Ram Ujagar Mishra) preferred Writ Petition No. 13 (S/S) of 2014.

(15) During pendency of the aforesaid writ petitions i.e. writ petition Nos. 4016 (S/S) of 2011, 3969 (S/S) of 2011 and writ petition No. 13 (S/S) of 2014, the respondent no.7 (Ram Ujagar Mishra) also preferred another writ petition, bearing Writ Petition No. 7415 (S/S) of 2014, challenging the validity of the orders dated 05.04.1996

and 30.05.1996 (together referred to as “**Fifth Order**”), by which appellant was selected and appointed as Lecturer in Urdu.

(16) Thereafter, the Director of Education (Secondary), on the basis of the letter sent by D.I.O.S. dated 17.08.2016, had passed the order dated 19.09.2016 ( hereinafter referred to as “**Sixth Order**”), by which the D.I.O.S. was directed to ensure the joining of the appellant on the post of *ad hoc*/officiating Principal of the Institution by exercising power under Section 18 (2) of the U.P. Secondary Education Services Selection Board Act, 1982. Pursuant to the aforesaid order of the Director of Education (Secondary) dated 19.09.2016, the D.I.O.S. had passed an order dated 20.09.2016 (hereinafter referred to as “**Seventh Order**”), whereby he had directed for handing over the charge of *ad hoc*/officiating Principal to the appellant.

(17) Aggrieved by the aforesaid orders dated 19.09.2016 and 20.09.2016, the respondent no.7 herein (Sri Ram Ujagar Mishra) preferred Writ Petition No. 23409 (S/S) of 2016 before this Court. The learned Single Judge, vide order dated 28.12.2016, while entertaining the said writ petition, stayed the operation of aforesaid orders dated 19.09.2016 and 20.09.2016.

(18) Ultimately, the learned Single Judge had clubbed all five writ petitions i.e. Writ Petition Nos. 23409 (S/S) of 2016, 13 (S/S) of 2014, 7415 (S/S) of 2014, 4016 (S/S) of 2011 and 3969 (S/S) of



2013 and heard together and the same were disposed of vide common judgment and order dated 19.07.2018 ( hereinafter referred to as “**Impugned Order**”). The learned Single Judge has decided the aforesaid writ petitions as under :-

Sl. No.	Writ Petition Number	Decision	Challenge in Special Appeal
01	23409 (S/S) of 2016 : <i>Ram Ujagar Mishra Vs. State of U.P. and others</i>	Writ Petition is allowed. The impugned orders dated 19.09.2016 and 20.09.2016 are set-aside.	Special Appeal Defective No. 590 of 2018 : <i>Smt. Khusnuda Parveen Vs. State of U.P. and others</i>
02	13 (S/S) of 2014 : <i>Ram Ujagar Mishra Vs. State of U.P. and others</i>	Writ Petition is allowed. The impugned order dated 17.12.2013 is set-aside	Special Appeal Defective No. 592 of 2018 : <i>Smt. Khusnuda Parveen Vs. State of U.P. and others.</i>
03	Writ Petition No. 7415 (S/S) of 2014.: <i>Ram Ujagar Mishra Vs. State of U.P. and others</i>	The writ petition is allowed and the impugned orders dated 05.04.1996 and 30.05.1996	Special Appeal Defective No. 589 of 2018 : <i>Smt. Khusnuda Parveen Vs. State of U.P. and others</i>
04	Writ Petition No. 4016 (S/S) of 2011 : <i>Smt. Khusnuda Parveen Vs. State of U.P. and others</i>	The writ petition is dismissed.	Special Appeal Defective No. 591 of 2018: <i>Smt. Khusnuda Parveen Vs. State of U.P. and others</i>
05	Writ Petition No. 3969 (S/S) of 2013 : <i>Smt. Khusnuda Parveen Vs. State of U.P. and others</i>	The writ petition is dismissed.	Special Appeal Defective No. 593 of 2018: <i>Smt. Khusnuda Parveen Vs. State of U.P. and others</i>

(19) The learned Single Judge, while deciding the aforesaid writ petitions vide impugned order, has also directed the respondents in the writ petitions to permit Sri Ram Ujagar Mishra (respondent

no.7 herein) to continue on the post of *ad hoc* Principal of the Institution till regularly selected candidates comes and joins and to pay him regular monthly salary month by month accordingly, in as much as, the arrears of salary, if found due, be paid within three months from the date of production of a certified copy of the order.

- (20) The appellant being aggrieved have preferred the above-captioned special appeals before this Court.
- (21) Since the above-captioned special appeals arise out of a common factual matrix and impugned judgment, we are disposing them of vide this common judgment.

**C. SUBMISSIONS**

- (22) Ms. Pushpila Bisht, *Amicus Curiae*, appearing on behalf of appellant has submitted that by means of the impugned common judgment/order dated 19.07.2018, the learned Single Judge had decided different issues agitated by the appellant and respondent no.7 in their respective writ petitions. In Writ Petition No. 4016 (S/S) of 2011 filed by the appellant herein, she challenged the order dated 02.06.2011 (“First Order”), whereby her representation claiming seniority and prayer for handing over the charge on the post of Principal to her by reverting Sri Ram Ujagar Mishra on the post of Assistant Teacher (L.T. Grade) was rejected and seniority determined earlier was held to be valid; in Writ

Petition No. 3969 (S/S) of 2013 filed by the appellant, she challenged the order of the D.I.O.S. dated 28.06.2013 (“Third Order”) by which her representation claiming seniority was rejected *inter alia* on the ground that since the matter regarding seniority is pending before the Hon’ble High Court, hence there is no requirement for any action at this stage; in Writ Petition 13 (S/S) of 2014 filed by the respondent no.7 herein (Ram Ujagar Mishra), he challenged the order of Regional Joint Director of Education dated 17.12.2013 (“Fourth Order”) by which seniority was re-determined; in Writ Petition No. 7415 (S/S) of 2014 filed by the respondent no.7 herein, he challenged the validity of the orders dated 05.04.1996 and 30.05.1996 (“Fifth Order”), whereby the appellant herein was selected and appointed as Lecturer in Urdu; and in Writ Petition No. 23409 of 2016 filed by the respondent no.7, he challenged the order dated 19.09.2016 (“Sixth Order”) by which D.I.O.S. was directed to ensure the joining of the appellant on the post of *ad hoc*/officiating Principal of the Institution by exercising power under Section 18 (2) of the U.P. Secondary Education Service Selection Board Act, 1982, as well as the consequential order dated 20.09.2016 (“Seventh Order”) passed by the D.I.O.S., by which he had directed for handing over the charge of *ad hoc* Principal to the appellant. Thus, her submission is that in all the writ petitions, more or less the issue between the appellant herein and respondent no.7 herein was in respect of their seniority, appointment of respondent no.7 herein

on the post of *ad hoc*/officiating Principal and appointment of the appellant.

- (23) So far as issue of seniority between the appellant and respondent no.7, learned *Amicus Curiae* has argued that appellant was appointed on the post of Lecturer (Urdu) through direct recruitment on 07.06.1996 by the U.P. Secondary Education Services Board, whereas respondent no.7 was appointed as Assistant Teacher (L.T. Grade) in *ad hoc*/temporary basis by the Manager of the Institution on 20.10.1981 on short term vacancy and thereafter his services on the post of Assistant Teacher (L.T. Grade) were regularized w.e.f. 06.04.1991 vide order dated 02.08.1992. Subsequently, respondent no.7 was granted *ad hoc*/temporary promotion on the post of Lecturer (Mathematics) on 16.12.1992 under 50% quota and his services on the post of Lecturer (Mathematics) were regularized on 20.04.1997 on the recommendation of Uttar Pradesh Secondary Education Services Selection Board. Thus, in any view of the matter, the appellant is senior to the respondent no.7 as also evident from the final seniority list dated 05.08.2007 issued by the Committee of Management of the Institution contained in Annexure No.1 to the affidavit filed in support of application for disposal of interim relief application in Special Appeal Defective No. 589 of 2018, wherein the name of the appellant was shown at serial No. 3, whereas the name of the respondent no.7 was shown at serial No.

5, meaning thereby i.e. on 05.08.2007, the Committee of Management of the Institution had declared the appellant senior to the respondent no.7. However, the learned Single Judge, while adjudicating the issue of re-determination of seniority, has lost sight of not considering the aforesaid aspect of the matter and has erred in recording the finding that the respondent no.7 is continuing to be senior in the Institution since 1996, which has not been challenged by the teachers working in the Institution including Smt. Khusnuda Parveen (appellant herein), therefore, the ratio of the judgment of the Full Bench in the case of **Dr. Asha Saxena Vs. Smt. S.K. Chaudhary** : (1991) 17 ALR 267 relied upon by the learned Counsel for the writ petitioner (respondent no.7 herein) is fully applicable to the facts and circumstances of the case and as such respondent no.6 (appellant herein) cannot be allowed to challenge the seniority of the writ petitioner (respondent no.7 herein) after lapse of almost 15 years.

- (24) So far as the issue of appointment of the appellant on the basis of the alleged forged caste certificate is concerned, learned *Amicus Curiae* representing appellant has argued that the appellant, who did not belong to a Scheduled Caste community by birth but belong to General Category by birth, got married with Sri Harish Chandra Sundaram, who belonged to the Scheduled Caste community and as such, the appellant was entitled to caste certificate on the basis of the law prevailing at the relevant point

of time. Learned *Amicus Curiae* has placed reliance upon the judgment of the Apex Court in **N.E. Horo Vs. Smt. Jahan Ara Jaipal Singh** : AIR 1972 SC 1840 and argued that in view of N.E. Horo (supra), the appellant belonged to the Scheduled Caste community. On that basis, she was appointed as a Lecturer (Urdu) in the Institution through direct recruitment by the U.P. Secondary Education Selection Board on 07.06.1996. Her submission, thus, is that this is not a case where appellant, on the basis of false averments or by playing fraud, had sought and was granted a false Caste Certificate. However, the learned Single Judge, while adjudicating the issue, has lost sight of not considering the aforesaid aspect of the matter and erred in declaring that the appellant got appointment on the post in question by playing fraud.

- (25) Learned *Amicus Curiae* representing the appellant has further submitted that the respondent no.7-Ram Ujagar Mishra had no reason to file writ petition No. 7415 (S/S) of 2014 against the appellant that too in the year 2014 i.e. approx ten years prior to the retirement of the appellant. She submits that the respondent no.7 is working as a Lecturer (Mathematics) in the Institution and apparently he is junior to the appellant, therefore, the respondent no.7 had no *locus standi* to file such a petition against the appellant herein. On this count also, the impugned judgment/order passed by the learned Single Judge is liable to be quashed.

- (26) *Per contra*, learned Counsel for the respondents supported the judgment/order of the learned Single Judge and submitted that the appellant belonged to General Category and did not belong to Scheduled Caste community by birth. Therefore, she could not have obtained a Caste Certificate to the effect that she belonged to the Scheduled Caste community. They submits that the appellant was appointed on the post of Lecturer (Urdu) by the U.P. Secondary Education Service Board under Scheduled Caste category, whereas she actually belongs to General Category. In the service book of the appellant also, the caste of the appellant was shown 'Chamar', which comes under the category of Scheduled Caste. They pointed out that at the time of selection of appellant, the U.P. Secondary Education Selection Board had prepared the merit list category-wise like General, O.B.C. and SC/ST, in which the name of the appellant finds place in the category of Scheduled Caste and the appellant scored only 19 marks and got selected on the post of Lecturer (Urdu) in Varg-I, while the last candidate of General Category, namely, Zeenat Zahara Rizwi, obtained 58 marks, but could not be selected, meaning thereby the appellant was selected under the Scheduled Caste Certificate not in the General Category.
- (27) Learned Counsel for the respondents has further argued that as the appellant obtained appointment of Lecturer (Urdu) by showing her belonging to Scheduled Caste community, even knowing the

fact that she belong to General Category by birth, therefore, the learned Single Judge has rightly observed that the appointment was obtained by the appellant by playing fraud. Thus, the finding recorded by the learned Single Judge in this regard is just and proper and there is no illegality of infirmity in the impugned order.

- (28) Learned Counsel for the respondents has further argued that as the appointment of the appellant was itself void, hence issue of seniority or other service benefit agitated by the appellant cannot be looked into at this stage. Moreso, the declaration of law by the Hon'ble Supreme Court of India under Article 141 of the Constitution of India is always retrospective unless made specifically prospective and that as there is nothing indicated to that effect in the subsequent ruling, it would necessarily follow that the appellant cannot claim any benefit to continue in employment on the basis of the overruled decision.

**D. ANALYSIS & FINDINGS**

- (29) Having heard learned Counsel representing the parties and going through the record available before this Court, it is required to be noted that learned Counsel for the appellant has assailed the impugned judgment/order passed by the learned Single Judge on various grounds, however, we deem it apt to first deal with the issue of appointment of the appellant on the post of Lecturer



(Urdu) obtained by her on the basis of Scheduled Caste Community Certificate. This issue gains significance as in case the appellant is not able to cross the bridge of her appointment, the consequential benefits of seniority, would obviously not accrue in her favour.

(30) Apparently, it has been argued by the learned *Amicus Curiae* that there has not been any misrepresentation on the part of the appellant in obtaining the Scheduled Caste Community certificate, as she has obtained the said certificate after disclosing the specific fact that she claimed Scheduled Caste status only on the basis of her marriage with Shri Harish Chandra Sundaram, who belongs to 'Chamar' community, which has been notified as Scheduled Caste Community.

(31) In order to buttress the claim that though the appellant did not belong to Scheduled Caste Community by birth, she was entitled to be treated as Scheduled Caste Community on her marriage with a Scheduled Caste person, the learned Counsel for the appellant cited the decision of the Hon'ble Supreme Court in **N.E. Horo (supra)**, in which it has been held as follows :-

*"23. We may also refer to Article 330 of the Constitution according to which the seats reserved for the Scheduled Tribes are to be reserved in the House of the People, inter alia, for members of these Tribes. Under S.33(2) of the Act a candidate for a reserved seat has to file a declaration specifying a particular caste or tribe of which he is a member. Article 342(1) empowers*

*the President to specify 'the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall, for the purposes of the Constitution, be deemed to be Scheduled Tribes in relation to the State or Union territory as the case may be. In Parts 1 to 12 of the Schedule to the Constitution (Scheduled Tribes) Order 1952 are specified the tribes or tribal communities or parts of or groups within the tribes or tribal communities who are to be deemed to be Scheduled tribes. Munda is one of such specified tribes or tribal communities. It can well be said that the term "tribal community" has a wider connotation than the expression "tribe". A person who, according to the strict custom of a tribe cannot be regarded as a member of that tribe may well be regarded as a member of that tribal community. Where a non-Munda woman is married to a Munda male and the marriage is approved and sanctioned by the Parha Panchayat of that tribe and the marriage is valid she may not, on the assumption that the rule of endogamy prevails, become a member of the Munda tribe in the strict sense as not having been born in the tribe. She cannot, however, be excluded from the larger group, namely, the tribal community. The High Court has taken the view that the use of the term "tribal communities" in addition to the term "tribes" in Article 342 shows that a wide import and meaning should be given to these words and even if the respondent is not a member of the Munda tribe by virtue of birth she having been married to a Munda after due observance of all formalities and after obtaining the approval of the elders of the tribes would belong to the tribal community to which her husband belongs on the analogy of the wife taking the husband's domicile. Even without invoking the doctrine of domicile the respondent's marriage with late Shri Jaipal Singh who was a Munda having been approved and sanctioned by the Parha Panchayat of the Munda tribe it can be said that she became a member of the Munda tribal community. We have not been shown any infirmity in the reasoning of the High Court on this point. When a person, in the course of time,*

*has been assimilated in the community it is somewhat difficult to comprehend how that person can be denied the rights and privileges which may be conferred on that community even though tribal by constitutional provisions.”*

- (32) However, the learned *Amicus Curiae* appearing on behalf of the appellant missed the point that although the appellant was appointed on 07.06.1996, the Judgment, which held the field, was not in fact **N.E. Horo (supra)**, but another Judgment passed by the Hon'ble Supreme Court subsequently on 04.01.1996. The dates are of great significance as the argument that the Judgment of N.E Horo (Supra) would apply falls flat on its own weight as by the time the appointment of the appellant was being made, the judgment in **Valasamma Paul v. Cochin University and others :** [(1996) 3 SCC 545] had been governing the field. It is important to note that the Hon'ble Supreme court, after considering the aforesaid decision in N.E. Hora's case and other subsequent judgments, had held in Valasamma (Supra) as follows:-

*"34. ... .. when a member is transplanted into the Dalits, Tribes and OBCs. he/she must of necessity also undergo have had same the handicaps, and must have been subject 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."*

- (33) Submission of the learned *Amicus Curiae* representing the appellant is that as the Scheduled Caste Community Certificate of the appellant had been issued on the basis of a ruling of the Apex Court in N.E. Hora's Case which was then holding the field and had enabled the appellant to secure an employment on 07.06.1996 is not correct and as such the argument of the learned *Amicus Curiae* that the appointment of the appellant would not be equitable to deprive her of that Scheduled Caste Community status on the basis of the subsequent ruling of the Apex Court of the year 1996 is also not correct.
- (34) It would be apt to mention here that a Bench of Three-Judges of the Hon'ble Supreme Court in **Sobha Hymavathi Devi v. Setti Gangadhara Swamy and others** : (2005) 2 SCC 244, on noticing the contradictions in the decisions of the two Division Benches of the Hon'ble Supreme Court in **N.E.Hora v. Smt.Jahan Ara Jaipal Singh (supra)** and **Valasamma Paul v. Cochin University and others (supra)**, held that the constitutional reservations intend to benefit the really underprivileged and not those who come to the caste by way of a marriage, and to that extent, the decision in N.E. Hora's case, which runs counter to that view, cannot be accepted as correct, and categorically laid out that

the recognition of a lady as a member of a Backward Class Community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution of India for the reason that she as a member of the forward caste, had an advantageous start in life and a marriage with a male belonging to a backward class, would not entitle her to the facility of the reservation given to a Backward Class Community. There is nothing indicated in that binding ruling that it would be only prospective in operation. The relevant part of **Sobha Hymavathi Devi (supra)** is reproduced as under :-

*“What then remains is the fact that the appellant though assigned the caste of her father Murahari Rao, namely, the Sistu Karnam community, had married a tribal belonging to the Bhagatha Community. On the basis of this marriage, it is argued that she must be taken to have acquired membership in the community of her husband and consequently treated as a member of that community. It is in that context that the decision in Horo (supra) was relied on. It is also contended that the decision in Horo (supra) related to an election dispute and consequently, the ratio of that decision should govern the present case. We have already indicated that there is nothing to show that the marriage of the appellant with Appala Raju was sanctioned or approved by the elders of the Bhagatha Community or the concerned Panchayat or was in tribal form or that the formalities attending such a tribal marriage were observed and the marriage was performed after obtaining the approval of the elders of the tribe. Even otherwise, we have difficulty in accepting the position that a non-tribal who marries a tribal could claim to contest a seat reserved for tribals. Article 332 of the Constitution speaks of reservation of seats for Scheduled Tribes in Legislative Assemblies. **The object is clearly to give representation in the legislature to Scheduled Tribe candidates, considered to be deserving of such special protection. To permit a non-tribal under cover of a marriage to contest such a seat would tend to***

**defeat the very object of such a reservation. The decision of this Court in Valsamma Paul (Mrs.) vs. Cochin University and others (supra), supports this view.** Neither the fact that a non-backward female married a backward male nor the fact that she was recognized by the community thereafter as a member of the backward community, was held to enable a non-backward to claim reservation in terms of Articles 15(4) or 16(4) of the Constitution. Their Lordships after noticing *Bhoobun Moyee v. Ram Kishore*, (1865) 10 MIA 279, and *Lulloobhoy Bappoobhoy Cassidass Moolchund v. Cassibai*, (1879-80) 7 IA 212, held that a woman on marriage becomes a member of the family of her husband and thereby she becomes a member of the caste to which she has moved. The caste rigidity breaks down and would stand as no impediment to her becoming a member of the family to which the husband belongs and to which she gets herself transplanted. Thereafter, this Court noticed that recognition by the community was also important. Even then, this Court categorically laid down that the recognition of a lady as a member of a backward community in view of her marriage would not be relevant for the purpose of entitlement to reservation under Article 16(4) of the Constitution for the reason that she as a member of the forward caste, had an advantageous start in life and a marriage with a male belonging to a backward class would not entitle her to the facility of reservation given to a backward community. The High Court has applied this decision to a seat reserved in an election in terms of Article 332 of the Constitution. We see no reason why the principle relating to reservation under Articles 15(4) and 16(4) laid down by this Court should not be extended to the constitutional reservation of a seat for a Scheduled Tribe in the House of the People or under Article 332 in the Legislative Assembly. The said reservations are also constitutional reservations intending to benefit the really underprivileged and not those who come to the class by way of marriage. **To the extent the decision in Horo (supra) can be said to run counter to the above view, it cannot be accepted as correct.** Even otherwise, in the absence of evidence on the relevant aspects regarding marriage in tribal form and acceptance by the community, the decision in *Horo (supra)* cannot come to the rescue of the appellant. On a consideration of the relevant aspects, we are of the view that whether it be a reservation under Articles 15(4) or 16(4) or 330 and

*332, the said reservation would benefit only those who belong to a Scheduled Caste or Scheduled Tribe and not those who claim to acquire the status by marriage, like the appellant in this case. Thus, in our view, the High Court was fully justified in coming to the conclusion that the appellant could not claim the right to contest a seat reserved for a Scheduled Tribe in terms of Article 332 of the Constitution of India merely by virtue of her marriage to a person belonging to a Scheduled Tribe."*

(emphasis supplied)

- (35) To the aforesaid context, it would be necessary to recapitulate the unassailable legal position regarding retrospectively of declaration of law by a binding ruling of the Hon'ble Supreme Court under Article 141 of the Constitution of India as held in **M.A.Murthy v. State of Karnataka** : (2003) 7 SCC 517, which reads as under :-

*"8. ... the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in L.C. Golak Nath v. State of Punjab [AIR 1967 SC 1643]. In Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared*

*applies to future cases. (See Ashok Kumar Gupta v. State of U.P. [(1997) 5 SCC 201 : 1997 SCC (L&S) 1299] and Baburam v. C.C. Jacob [(1999) 3 SCC 362 : 1999 SCC (L&S) 682 : 1999 SCC (Cri) 433] .) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, **there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling.** The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. ..."*

(emphasis supplied)

- (36) Keeping in mind the aforesaid legal proposition of law, it would not be possible to adopt equitable considerations to sustain the Scheduled Caste Community Certificate that had been obtained by the appellant, who admittedly does not belong to Scheduled Caste Community by birth and had claimed such status only on account of her marriage with a person belonging to Scheduled Caste.
- (37) Even otherwise, a Three Judge Bench of the Hon'ble Supreme Court in **R. Viswanatha Pillai Vs. State of Kerala** : (2004) 2 SCC 105 has ruled that the invalidation of the caste or tribe claimed, upon verification, would result in the appointment or admission, as the case may be, being rendered *non est* or void *ab initio*.



- (38) Reiterating the same legal position in **Chairman and Managing Director, Food Corporation of India v Jagdish Balaram Bahira** : (2017) 8 SCC 670, another Bench of Three-Judges of the Hon'ble Supreme Court has held that the exception to the above doctrine was in those cases where that Court exercised its power under Article 142 of the Constitution to render complete justice. The relevant part of **Jagdish Balaram Bahira (supra)** is reproduced as under :-

***“48...Where a candidate had been appointed to a reserved post on the basis of the claim that he or she was a member of the group for which the reservation is intended, the invalidation of the claim to belong to that group would, as a necessary consequence, render the appointment void ab initio. The rationale for this is that a candidate who would otherwise have to compete for a post in the general pool of unreserved seats had secured appointment in a more restricted competition confined to the reserved category and usurped a benefit meant for a designated caste, tribe or class. Once it was found that the candidate had obtained admission upon a false representation to belong to the reserved category, the appointment would be vitiated by fraud and would be void ab initio. The falsity of the claim lies in a representation that the candidate belongs to a category of persons for whom the reservation is intended whereas in fact the candidate does not so belong. The reason for depriving the candidate of the benefit which she or he has obtained on the strength of such a claim, is that a person cannot retain the fruits of a false claim on the basis of which a scarce public resource is obtained... A candidate who does so causes detriment to a genuine candidate who actually belongs to the reserved category who is deprived of the seat. For that matter, a detriment***

*is caused to the entire class of persons for whom reservations are intended, the members of which are excluded as a result of an admission granted to an imposter who does not belong to the class. The withdrawal of benefits, either in terms of the revocation of employment or the termination of an admission was hence a necessary corollary of the invalidation of the claim on the basis of which the appointment or admission was obtained. The withdrawal of the benefit was not based on mens rea or the intent underlying the assertion of a false claim. In the case of a criminal prosecution, intent would be necessary. On the other hand, the withdrawal of civil benefits flowed as a logical result of the invalidation of a claim to belong to a group or category for whom the reservation is intended.”*

*“59. The Full Bench judgment of the Bombay High Court in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] has essentially construed the judgments in Kavita Solunke [Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609] and in Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] as having impliedly overruled the earlier Full Bench judgments in Ganesh Rambhau Khalale [Ganesh Rambhau Khalale v. State of Maharashtra, 2009 SCC OnLine Bom 20 : (2009) 2 Mah LJ 788] and Ramesh Suresh Kamble [Ramesh Suresh Kamble v. State of Maharashtra, 2006 SCC OnLine Bom 1078 : (2007) 1 Mah LJ 423] . In view of the conclusion which we have arrived at in regard to the earlier decisions rendered by the two-Judge Benches in Kavita Solunke [Kavita Solunke v. State of Maharashtra, (2012) 8 SCC 430 : (2012) 2 SCC (L&S) 609] and Shalini [Shalini v. New English High School Assn., (2013) 16 SCC 526 : (2014) 3 SCC (L&S) 265] , we are unable to subscribe to the view expressed by the Full Bench in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] . The judgment of the Full Bench of the Bombay High Court in Arun [Arun v. State of Maharashtra, 2014 SCC*

*OnLine Bom 4595 : (2015) 1 Mah LJ 457] holds that: (SCC OnLine Bom para 75)*

*(i) mere invalidation of the caste claim by the Scrutiny Committee would not entail the consequences of withdrawal of benefits or discharge from employment or cancellation of appointments that have become final prior to the decision in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] on 28-11-2000;*

*(ii) the benefit of protection in service upon invalidation of the caste claim is available not only to persons belonging to Koshti and Halba Koshti but is also available to persons belonging to the special backward category on the same terms.*

*The High Court has even gone to the extent of holding that the decision in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] was in the nature of prospective overruling of the law which was laid down by the Bombay High Court. The above view of the Bombay High Court is clearly unsustainable. Neither the judgment in Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] nor any of the judgments of this Court which have construed it have held that Milind [State of Maharashtra v. Milind, (2001) 1 SCC 4 : 2001 SCC (L&S) 117] was an exercise in prospective overruling. The High Court was in error in holding so. The decision of the Full Bench in Arun [Arun v. State of Maharashtra, 2014 SCC OnLine Bom 4595 : (2015) 1 Mah LJ 457] is unsustainable. The Full Bench had evidently failed to notice that cases where the protection was granted by this Court following the invalidation of a caste claim was in exercise of the power conferred by Article 142 of the Constitution, depending upon the facts and circumstances of each case. The jurisdiction under Article 142 is clearly not available to the High Court in the exercise of its jurisdiction under Article 226. The High Court erred in arrogating that jurisdiction to itself.”*

**(39) In State of Punjab Vs. Rafiq Masih (Whitewasher) : (2014) 8**

SCC 883, another Three Judge Bench of the Hon'ble Supreme

Court has held that the directions of that Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. In such circumstances, the reliance placed by the learned counsel for the appellant, cannot be of any avail.

**E. Conclusion**

- (40) In the light of the aforesaid incontrovertible legal position coupled with the fact of the present case, we are in full agreement with the view expressed by the learned Single Judge on the issue of appointment of the appellant by means of the impugned judgment/order. The learned Single Judge has taken great pain in deciding all the issues which were agitated by the parties. No new ground has been pressed, which would enable this Court to take a contrary view as has been expressed by the learned Single Judge.
- (41) For the aforesaid reasons, since the appellant obtained appointment upon a false representation to belong to the reserved category and her very appointment to the post of Lecturer (Urdu) stands vitiated, we deem it not to deal with other issues raised by the appellant in the above-captioned special appeals and allow the *lis* to set at rest without any further action or counter claim.

(42) The above-captioned *intra Court* appeals being bereft of merits are, accordingly, **dismissed**. However, there shall be no order as to costs for the facts and circumstances of the case.

(43) Before parting with the case, this Court must candidly express unreserved and uninhibited appreciation for the assistance rendered by Ms. Pushpila Bisht, *Amicus Curiae* representing the appellant in the above-captioned appeals, therefore, she shall be paid a sum of Rs.5,000/- towards her remuneration by the High Court Legal Service Committee.

**(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)**

**Order Date :- 30<sup>th</sup> August, 2023**  
Ajit/-