



2024:DHC:7613-DB



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

+ W.P.(C) 341/2024 and CM APPL.1549/2024

DSSSB AND ANRPetitioner

Through: Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat for Mrs. Avnish Ahlawat, Standing Counsel for DSSSB

Versus

DINESH MAHAWARRespondent

Through: Dr. Vijendra Mahndiyan, Ms. Apurva Singh and Ms. Nikita Tiwari, Advs.

+ W.P.(C) 2678/2024 and CM APPL. 10938-10939/2024

DELHI SUBORDINATE SERVICES SELECTION BOARD AND ANRPetitioner

Through: Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat for Mrs. Avnish Ahlawat, Standing Counsel for DSSSB

Versus

PAVAN KUMARRespondent

Through: Dr. Vijendra Mahndiyan, Ms. Apurva Singh and Ms. Nikita Tiwari, Advs.

+ W.P.(C) 518/2024 and CM APPL.2333/2024

DELHI SUBORDINATE SERVICES SELECTION BOARD AND ANR.Petitioner

Through: Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam, Mr. Mohnish Sehrawat for Mrs. Avnish Ahlawat, Standing Counsel for DSSSB



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Versus

MOHAN SINGH

.....Respondent

Through: Dr. Vijendra Mahndiyani, Ms.
Apurva Singh and Ms. Nikita Tiwari, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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26.09.2024

C. HARI SHANKAR, J.

1. On 29 December 2009, the Delhi Subordinate Services Selection Board¹, advertised 1862 posts of Staff Nurse in the Department of Health and Family Welfare, Govt. of NCT of Delhi. The respondents applied for the post as Scheduled Castes² candidates. They are holders of certificates issued by the Tehsildar, certifying them to belong to castes which were recognised as Scheduled Castes in the state of Rajasthan. The respondents were shortlisted for selection to the post of Staff Nurse. However, later, by orders passed on different dates, their selections were cancelled on the ground that castes to which they belonged were not recognised as Scheduled Castes in Delhi.

2. Aggrieved thereby, the respondents moved the learned Central Administrative Tribunal³ by way of various OAs. The learned Tribunal, by separate judgments of the same date, i.e. 24 July 2023,

¹ "the DSSSB", hereinafter

² "SC", hereinafter

³ "the Tribunal", hereinafter



has allowed the OAs, following the judgment of a Division Bench of this Court in *Deepak Kumar v District & Sessions Judge*⁴, conclusions in which are to be found in para 66 of the judgment, which may be reproduced thus:

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

(1) The decisions in *Marri*⁵, *Action Committee*⁶, *Milind*⁷ and *Chinnaiah*⁸ 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,

⁴ 2012 SCC OnLine Del 4794

⁵ (1990) 3 SCC 130

⁶ (1994) 5 SCC 244

⁷ (2001) 1 SCC 4

⁸ (2005) 1 SCC 394



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*⁹ 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-à-vis Union Territories, is binding; it was rendered by a Bench of three judges.

(4) The later ruling in *Subhash Chandra*¹⁰ 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*¹¹.

⁹ (2005) 3 SCC 1

¹⁰ (2009) 15 SCC 458

¹¹ (2010) 12 SCC 794



(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.”

3. Resultantly, the learned Tribunal has held the respondents to be entitled to reservations in the matter of selection as Staff Nurse as SC candidates, and has also directed, forthwith, therefore, issuance of appointment letters to the respondents subject to their meeting all other eligibility criteria. The respondents have been granted consequential benefits on notional basis with actual benefits only after the date on which the respondents assume charge of their respective posts.

4. Aggrieved thereby, the DSSSB has filed the present writ petition before this Court.

5. We have heard Mr. N.K. Singh learned Counsel for the petitioners and Dr. Vijendra Mahndiya, learned Counsel for the respondents, at some length.



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6. By the impugned Judgment, the learned Tribunal has allowed the respondents' OA and held that the respondents were entitled to be treated as Scheduled Caste candidates on the basis of the certificates held by them, though the certificate was issued outside Delhi.

7. On the very first day when this writ petition was listed before this Court, it was acknowledged by the petitioners that as per the legal position effected from 2012, scheduled caste candidates with caste certificates from other States were also eligible to be considered for posts reserved for Scheduled Caste candidates in the GNCTD. However, it was contended that the selection process had been completed before the petitioners had approached the learned Tribunal.

8. The Court, therefore, directed the respondents to place on record an affidavit as to whether all the vacancies pertaining to the selection which took place in 2009 stood filled up before the respondents had approached the Tribunal. The affidavits that have come to be filed by the petitioners indicate that this is not the position and that vacancies from the selection were filled up even after the respondents had approached the learned Tribunal.

9. Dr. Vijendra Mahndiyan, learned counsel for the respondents has pointed out that an identical issue, involving identically situated candidates, had come up before a Coordinate Bench of this Court in *DSSSB v Vishnu Kumar Badetia*¹², in which a Coordinate Division

¹² 2024 SCC OnLine Del 6371



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Bench of this Court held that the candidates were entitled to appointment as Staff Nurse as Scheduled Caste candidates. The respondents in the present case had also applied for recruitment as Staff Nurse pursuant to the very same advertisement. There can be no dispute, therefore, that the present respondents and the respondent in ***Vishnu Kumar Badetia*** are identically situated.

10. Mr. N.K. Singh, learned counsel for the petitioners, does not dispute the fact that the respondents in these writ petitions are identically situated to the candidate in ***Vishnu Kumar Badetia*** and were subjected to same selection process for appointment as Staff Nurse.

11. In that view of the matter, there is no error in the impugned judgment of the learned Tribunal, which is upheld in its entirety with consequential benefits to the respondents.

12. The petitions are accordingly dismissed with no orders as to costs.

C.HARI SHANKAR, J

DR. SUDHIR KUMAR JAIN, J

SEPTEMBER 26, 2024/ yg

Click here to check corrigendum, if any