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S. PUSHPA AND ORS.

v.

SIVACHANMUGAVELU AND ORS.

FEBRUARY 11, 2005

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[R.C. LAHOTI, CJ., K.G. BALAKRISHNAN AND G.P. MATHUR, JJ.]

Service Law:

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Constitution of India, 1950; Articles 16(4), 227, 230, 231, 239, 239A, 239B, 240, 309, 330, 331, 332, 333 and 341(1) & (2):

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Appointment of Selection Grade Teachers in Pondicherry—Selection of migrant Scheduled Caste (SC) persons against the quota reserved for SC in Union territory of Pondicherry—Challenge to—Declared illegal and invalid by CAT—On appeal, Held: Reservation benefit in employment in UT extended to migrant SC/ST candidates after consultation and confirmation from the Central Government—Reservation policy of the Central Government consistently followed by the Union Territory—No infraction of constitutional provision found in the policy—Hence, Selection made in pursuance of the reservation policy does not suffer from any legal infirmity—The view taken by the Tribunal to the contrary cannot be sustained, hence set aside—Government of Union Territories Act, 1963—General Clauses Act, 1897; Section 3(8)—Pondicherry (Administration) Act, 1962—Section 3.

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Equality of opportunity in employment—Presidential order for reservation of SC/ST—Effect of—Discussed.

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Respondents approached the Central Administrative Tribunal challenging the selection of migrant Scheduled Caste (SC) candidates for the post of teachers as against quota reserved for SC persons in the Union Territory of Pondicherry. CAT held the selection as illegal and invalid and directed the authorities concerned to review the selection process with regard to the reservation quota. Hence the present appeals.

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It was contended by the appellants that the Government of India has, from time to time, issued Circulars and Government Orders clearly mentioning that migrant SC persons are eligible for appointment against posts reserved for SC persons in the Union Territory and in the absence

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of any statutory enactment or rules made in exercise of powers conferred under the proviso to Article 309 of the Constitution, these Circulars or Government Orders are binding upon the Government of Pondicherry; that in the matter of providing reservation in favour of any backward class of citizens within the meaning of Article 16(4) of the Constitution, it is open to the Govt. of Union Territory to apply any policy, including the one whereunder migrant SC persons are also given the benefit of reservation and it is not open to the respondents to challenge the said reservation policy; and that since right from inception the Government of Pondicherry has been following a uniform reservation policy allowing reservation to migrant SC persons, the same cannot be held to be illegal or contrary to any constitutional provisions.

Respondents submitted that in view of clear language in Article 341(1) of the Constitution, only such castes which have been mentioned in the schedule appended to the Presidential Order of 1964, directing reservation of SC persons shall be deemed to be Scheduled Castes for the purpose of appointment against reserved quota and migrant SC persons are not eligible therefor; that the fact that a Union territory is administered by the President can make no difference so far as the appointment against reserved quota is concerned as the posts in question are posts under the Government of Pondicherry, a Union Territory and cannot be deemed to be posts under the Central Government.

Allowing the appeals, the Court

HELD:1.1. The power to make regulations by the President is fairly large as he can repeal or amend any Act made by Parliament or any other law which is applicable to the territory and shall have the same force and effect as an Act of Parliament. [1169-G]

1.2. The provisions under Articles 227, 230 and 231 of the Constitution show that the position of a Union territory is different from that of a State. The Administrator of the Union Territory and his Council of Ministers act under the general control of and are under an obligation to comply with any particular direction issued by the President. Further, the administrator while acting under the scope of the authority given to him under Article 239 of the Constitution would be the Central Government. [1170-B; 1171-C]

1.3. Earlier, Government of India, the General Administration

A Department of the Government of Pondicherry issued a Government Order instructing that SCs/Tribes candidates from outside the Union Territory of Pondicherry should also be considered for appointment to posts reserved for SCs/Tribes in the Admn. The Government of Pondicherry sought some clarifications from the Central Government regarding admissibility of reservation benefit to migrant SC/ST candidates.

B Ministry of Welfare, Government of India responded to it vide their letter dated 6.10.1995, and the Government of Pondicherry circulated the said letter to Secretaries and Heads of Departments/Offices. These documents show that Government of Pondicherry has throughout been proceeding on the basis that being a Union Territory, all orders regarding reservation

C for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry administration as well. Since all SC/ST candidates which have been recognized as such under the orders issued by the President from time to time irrespective of the State/ Union territory, in relation to which particular castes or tribes have been recognized as SCs/STs are eligible for reserved posts/services under the

D Central Government, they are also eligible for reserved posts/services under the Pondicherry administration. Consequently, all SC/ST candidates from outside the Union Territory of Pondicherry would also be eligible for posts reserved for SC/ST candidates in Pondicherry administration. Therefore, right from the inception, this policy is being

E consistently followed by the Pondicherry administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in Pondicherry administration. Nothing inherently wrong nor any infraction of any constitutional provision is found in such a policy.

[1171-D, H; 1172-B, F; 1173-B, C-D-E-F]

F 2. The principle enunciated in the case of *Marri Chandra Shekhar Rao* has no application to the facts and circumstances of the present case, as Union Territory of Pondicherry is not a State. In the context of Article 246 of the Constitution, Union territories are excluded from the ambit of expression "State" occurring therein. This was clearly explained by a

G Constitution Bench in *T.M. Kanniyar v. Income Tax Officer*. In the case of *New Delhi Municipal Council v. State of Punjab*, the majority has approved the ratio of *T.M. Kanniyar* holding that the Union territories are not States for the purpose of Part XI of the Constitution. The Tribunal has, therefore, clearly erred in applying the ratio of *Marri Chandra Shekhar Rao* in setting aside the selection and appointment of migrant SC

H candidates. [1173-G-H; 1174-A]

T.M. Kanniyar v. Income Tax Officer, [1968] 2 SCR 103 AIR (1968) SC 367 and *New Delhi Municipal Council v. State of Punjab*, [1997] 7 SCC 339, followed. A

Marri Chandra Shekhar Rao v. Dean, SGS Medical College and Ors., [1990] 3 SCC 130, distinguished. B

3. In order to ascertain the number of seats which have to be reserved for Scheduled Castes or Scheduled Tribes in the House of the People or in the Legislative Assembly, it is absolutely essential to ascertain precisely the population of the Scheduled Castes or Scheduled Tribes in the State or Union territory. A fortiori, for the purpose of identification, it becomes equally important to know who would be deemed to be Scheduled Caste in relation to that State or Union territory. This exercise has to be done strictly in accordance with the Presidential Order and a migrant Scheduled Caste of another State cannot be taken into consideration otherwise it may affect the number of seats which have to be reserved in the House of Legislative Assembly. Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Articles 341 and 342 of the Constitution after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of forward caste. [1175-C-D-E] C D

4.1. Clauses (1) and (2) of Article 16 of the Constitution guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of "backward classes of citizens" which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union territory only for such scheduled Castes and Scheduled Tribes which are mentioned in the schedule appended to the Presidential Order for that particular State or Union territory. However, this Article does not say that only such Scheduled Castes and Scheduled Tribes which are mentioned in the Presidential E F G H

A Order issued for a particular State alone would be recognized as backward classes of citizens and non else. [1175-F-G-H; 1176-A]

4.2. If a State or Union territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such, in relation to that State or Union territory then such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the schedule to the Presidential Order issued for such Union territory.

C [1176-B]

5. The Government of Pondicherry having adopted a policy of Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State, are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law. Since there has been no violation of any constitutional or any other legal provision in making selection and appointment of migrant Scheduled Caste candidates against the quota reserved for Scheduled Castes to the post of Selection Grade Teachers, the contrary view taken by the Tribunal cannot be sustained. [1176-C-D]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6-7 of 1998.

F From the Judgment and Order dated 5.11.96 of the Central Administrative Tribunal, Madras in O.A.Nos. 199 and 214 of 1996.

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C.A. Nos. 4-5 of 1998.

V. Balachandran for the Appellant in C.A. Nos. 6-7/98

G V.R. Reddy and V.G. Pragasam with him for the Appellant in C.A. Nos. 4-5/98.

M.N. Rao and M.A. Chinnaswamy for the Respondents.

K.V. Vishwanathan, K.V. Venkataraman, B. Rangunath and K.V. Vijayakumar for Applicant in I.A.Nos. 9-10 in C.A.Nos. 4-5/98.

H The Judgment of the Court was delivered by

G.P. MATHUR, J. 1. These appeals, by special leave, have been preferred against the judgment and order dated 5.11.1996 of the Central Administrative Tribunal (Madras Bench) by which O.A. No. 199/1996 and O.A No. 214/1996 were allowed and selection made of migrant Scheduled Caste candidates against the quota reserved for Scheduled Castes on the post of Selection Grade Teachers in the selection held in the year 1995 in the Union territory of Pondicherry was declared as illegal and invalid, and a further direction was issued to review the selection process with regard to the reserved quota by excluding the migrant Scheduled Caste candidates who had migrated after the relevant notification had been issued in the year 1964.

2. The Directorate of Education, Government of Pondicherry, issued an advertisement for making recruitment of 350 General Central Service Group "C" posts of Secondary Grade Teachers (for short 'SGT') wherein 56 posts were reserved for Scheduled Caste candidates (for short SC candidates). In response to the notification, the employment exchange sponsored the names of candidates in respect of various categories including SC candidates as requested by the Department. Besides, as envisaged and in conformity with the National Employment Service Manual, the employment exchange also sponsored some names of SC candidates from neighbouring employment exchanges as sufficient number of SC candidates were not available in Yanam and Mahe region of Union territory of Pondicherry. The employment exchange, Pondicherry sponsored 118 candidates. The employment exchange of Badagara (Kerala) sponsored 4 candidates for Mahe, the employment exchange Yanam sponsored 15 candidates and employment exchange Vishakhapatnam (AP) sponsored 139 candidates for Yanam. After holding interview a final Selection List was prepared and out of 55 finally selected SC candidates, 29 candidates had produced community certificates from the Governments of Tamil Nadu, Andhra Pradesh and Kerala, based on which the revenue authority of Pondicherry had issued community certificates to them. The remaining 26 candidates produced community certificates from the revenue authority of Pondicherry. The contesting respondents in these appeals filed O.A. No. 199 of 1996 and O.A. No. 214 of 1996 before the Central Administrative Tribunal (Madras Bench) challenging the selection of aforesaid SC candidates basically on the ground that a migrant SC candidate belonging to another State is not eligible for appointment on a post which is reserved for a SC candidate for Union Territory (hereinafter for short 'UT') of Pondicherry and also for a direction to appoint original inhabitants of Scheduled Caste origin belonging to UT of Pondicherry. The Central Administrative Tribunal (hereinafter for short 'Tribunal'), relying upon the decisions in *Marri Chandra Shekhar Rao*

A v. *Dean, SGS Medical College and Ors.*, [1990] 3 SCC 130 and Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the *State of Maharashtra v. Union of India and Anr.*, [1994] 5 SCC 244 held, that the SC persons who migrated to UT of Pondicherry after the issuance of Presidential notification, which has specified Scheduled Castes in terms of Article 341 of the Constitution cannot claim the benefit of reservation in the matter of employment in Pondicherry Government service. Accordingly, the selection and appointment of migrant SC candidates was set aside and a direction was issued to review the selection process with regard to the reserved quota after excluding the migrant SC candidates who had migrated after the issuance of the notification in the year 1964.

C 3. Feeling aggrieved by the decision of the Central Administrative Tribunal (for short the 'Tribunal'), the Union of India and Director of Education, Government of Pondicherry, preferred Special Leave Petitions, which after grant of leave have been registered as Civil Appeal Nos. 4 and 5 of 1998. Some of the candidates whose selection has been set aside also preferred Special Leave Petitions which, after grant of leave have been registered as Civil Appeal Nos. 6 and 7 of 1998.

E 4. Before advertng to the contentions raised by learned counsel for the parties, it is necessary to mention that the U.T. of Pondicherry comprises of former four French settlements in India, viz. Pondicherry, Karaikal, Mahe and Yanam. Karaikal is situate within the territorial boundary of State of Tamil Nadu, Mahe is situate within the territorial boundary of State of Kerala and Yanam is situate within the territorial boundary of State of Andhra Pradesh. Though *de-facto* transfer of these four French settlements to Government of India took place in the year 1954, they legally merged with the Union of India with effect from 16.8.1962 by the Eighteenth Amendment to the Constitution. These four settlements were constituted as U.T. of Pondicherry under Government of Union territories Act, 1963 (Act No. 20 of 1963).

F 5. Article 341 of the Constitution which is important for the purpose of decision of the present case reads as under :

G "341. *Scheduled Castes.* - (1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the

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case may be:

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

The President of India exercising power under Article 341(1) issued an order known as Constitution (Pondicherry) Scheduled Castes Order, 1964. Paragraph 2 of this Order read as under :

“2. The castes, races or tribes or parts of or groups within castes, races or tribes specified in the schedule to this Order shall for the purposes of the Constitution, be deemed to be Scheduled Castes in relation to the U.T. of Pondicherry so far as regards members thereof resident in that Union territory.”

The schedule mentions 15 castes which are to be deemed to be Scheduled Castes in relation to the U.T. of Pondicherry.

6. Learned counsel for the appellants has submitted that the decisions rendered in *Marri Chandra Rao* (supra) which has been the sheet anchor of the case of the contesting respondents (applicants before the Tribunal) and which has been relied upon by the Tribunal related to a case where the migrant was from one State to another State (from Andhra Pradesh to Maharashtra) and it can have no application to a case where the migration of a SC person is from a State to an adjoining or contiguous Union territory, as is the case here. The areas included in the U.T. of Pondicherry being very small enclaves and being contiguous and surrounded by large States, the principle which may be applicable in the case of migration from one State to another State cannot be applied having regard to the ground realities. Learned counsel has further submitted that the Government of India has, from time to time, issued circulars and Government Orders clearly providing that migrant SC persons are eligible for appointment on posts reserved for SC persons in the U.T. of Pondicherry and in absence of any statutory enactment or rules made in exercise of powers conferred under the proviso to Article 309 of the Constitution, these circulars or Government Orders are binding upon the Government of Pondicherry. It has also been contended that in the matter of providing reservation in favour of any backward class of citizens within the meaning of Article 16(4) of the Constitution, it is open to the U.T. of

A Pondicherry to apply any policy, especially one whereunder migrant SC persons are also given the benefit of reservation and it is not open to the contesting respondents to object to such kind of a reservation policy and claim that the benefit of reservation should be extended only to such SC persons who are mentioned in the schedule appended to the Presidential Order issued in the year 1964. Learned counsel has also submitted that right from inception, the U.T. of Pondicherry has been following a practice whereunder migrant SC persons are held eligible for appointment on reserved posts and this being the consistent and uniform policy of the State, the same cannot be held to be illegal or contrary to any constitutional provisions.

C 7. Learned counsel for the contesting respondents (applicants in the original application before the Tribunal) have submitted that in view of clear language in Article 341(1) of the Constitution, only such castes which have been mentioned in the schedule appended to the Presidential Order of 1964, shall be deemed to be Scheduled Castes for the U.T. of Pondicherry and a migrant SC person is not eligible for any reserved posts. Learned counsel has also submitted that the fact that a Union territory is administered by the President through an administrator appointed by him, can make no difference as the posts in question are posts under the Pondicherry government and cannot be deemed to be posts under the Central Government. Learned counsel has also placed strong reliance on the following observation made by the Constitution Bench in the case of *Marri Chandra* (supra) in para 10 of the reports :

F “...These must be so balanced in the mosaic of the country’s integrity that no section or community should cause detriment or discontentment to other community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities.....”

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Reliance has also been placed on the following observation in *Action A*
Committee case (supra) :

“The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere B
and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a socially disadvantaged community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. C
Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country’s integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to becoming equals with others but those D
who go to other areas should ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas”.

8. Before the Tribunal it was pleaded on behalf of the appellants that the Legislative Assembly of U.T. of Pondicherry has not been vested with powers to make laws in relation to public services of the Union territory and consequently the President of India is the repository of all powers with regard to public services of the Union territory and with regard to the persons appointed in connection with the affairs of the Union territory. The President has delegated to the Lt. Governor of Pondicherry power to frame rules for regulating the method of recruitment to the civil services and posts in Grade ‘A’, ‘B’, ‘C’ and ‘D’ under his administrative control in connection with the affairs of the Union territory and also the conditions of service of persons appointed to such services. While making rules for appointment in Grade ‘A’ and ‘B’ posts, the Lt. Governor has to act subject to prior consultation with the Union Public Service Commission. The services and posts for U.T. of Pondicherry are treated like Central services and posts, and in the matter of reservation in posts and services for Scheduled Castes, the Government of U.T. of Pondicherry is bound by the policy prescription and the rules and orders of Government of India. F
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9. The Policy of the Government of India, whereunder all SC/ST H

A candidates get benefit in the matter of appointment and admission in educational institutions controlled/administered by the Central Government has been reproduced in para 18 of the judgment in *Marri Chandra Shekhar Rao* (supra) and the relevant part thereof reads as under :

B “Scheduled Castes and Scheduled Tribes are entitled to derive benefits of the all-India Services or admissions in the educational institutions controlled/administered by the Central Government, irrespective of the State to which they belong. The reservation in force in favour of the Scheduled Castes and Scheduled Tribes in filling vacancies in posts and services under the Government of India are as in the enclosure (Chapter II of the Brochure on the Reservation for Scheduled Castes and Scheduled Tribes in Services issued by the Government of India). The reservations for Scheduled Castes and Scheduled Tribes in the all India services are covered by these provisions and at present are 15 per cent and 7.5 per cent respectively. The Central Government/government services include the all-India services i.e. the Indian Administrative Service, the Indian Police Service, the Forest Service, etc.”

E 10. It will be useful here to take note of certain provisions of the Constitution and other enactments which have a bearing on the controversy in hand and also some of the orders issued in this regard by the Government of India and also by Government of Pondicherry. Part VIII of the Constitution (Articles 239 to 241) deals with the Union territories. Article 239 and Article 239A which was inserted by the Constitution (Fourteenth Amendment) Act, 1962 read as under :

F 239. *Administration of Union territories.* (1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

G (2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

H .239A. *Creation of local Legislatures or Council of Ministers or both*

for certain Union territories. (1) Parliament may by law create for the Union territory of Pondicherry - A

(a) a body, whether elected or partly nominated and partly elected, to function as a Legislature for the Union territory, or

(b) a Council of Ministers, B

or both with such Constitution, powers and functions, in each case, as may be specified in the law.

(2) Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution." C

11. Article 239B confers power upon the administrator of U.T. of Pondicherry to promulgate Ordinances during recess of Legislature in certain circumstances. But in view of the first proviso appended to clause (1) of Article 239B, no such Ordinance shall be promulgated by the administrator except after obtaining instructions from the President in that behalf. Article 240 confers power on the President to make regulations for certain Union territories, including Pondicherry, subject to satisfaction of certain conditions laid down in the two provisos appended to clause (1) of this Article. Clause (2) of Article 240 lays down that any regulation so made by the President may repeal or amend any Act made by Parliament or any other law which is for the time being applicable to the Union territory and when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to that territory. Articles 239 and 240 of the Constitution clearly show that U.T. of Pondicherry is administered by the President through an administrator (Lt. Governor) appointed by him and when the Legislature thereof is dissolved or is not functioning, the President is empowered to make regulations for peace, progress and governance of the said Union territory. The power to make regulations by the President is fairly large as he can repeal or amend any Act made by Parliament or any other law which is applicable to the said territory and shall have the same force and effect as an Act of Parliament. D E F G

12. Certain other provisions of the Constitution also deserve to be noticed here. Under clause (1) of Article 230, Parliament may by law extend or exclude the jurisdiction of a High Court from any Union territory. Clause (2)(b) of the said Article provides that where the High Court of a State H

A exercises jurisdiction in relation to a Union territory, the reference in Article 227 to the Governor shall, in relation to any rules, forms or tables for subordinate courts in that territory, be construed as a reference to the President. Similar provision is contained in Article 231(2)(b). These provisions again show that the position of a Union territory is different from that of a State and the head of administration of a Union territory is the President of India.

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13. Some other statutory provisions which have a bearing on the controversy are being reproduced below :

Section 3(8) of the General Clauses Act, 1897 :

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(8) "Central Government" shall -

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(b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,

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(i) ...

(ii) ...

(iii) In relation to the administration of a Union territory, the Administrator thereof acting within the scope of the authority given to him under Article 239 of the Constitution.

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Section 3 of the Pondicherry (Administration) Act, 1962 :

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3. *Officers and functionaries in relation to Pondicherry.* Without prejudice to the powers of the Central Government to appoint from time to time such officers and authorities as may be necessary for the administration of Pondicherry, all courts, tribunals, authorities and officers, whether in India or in the former French Establishments, who immediately before the appointed day, were exercising lawful function in connection with the administration of those Establishments or any part thereof, including the Council of Government and Representatives Assembly, shall, unless otherwise directed at any time by the Central Government or the Administrator in relation to any such court, tribunal, authority or officer, or until other provision is made by law, continue to exercise in connection with the administration of Pondicherry their respective duties and functions in the same manner and to the same extent as before the appointed day with such altered

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designation, if any, as that Government may determine.

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Section 50 of the Government of Union Territories Act, 1963 :

50. *Relation of Administrator and his Ministers to President.* - Notwithstanding anything in this Act, the Administrator and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the President."

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14. The effect of these provisions is also that the Administrator (Lt. Governor of Pondicherry) and his Council of Ministers act under the general control of and are under an obligation to comply with any particular direction issued by the President. Further, the administrator (Lt. Governor of Pondicherry) while acting under the scope of the authority given to him under Article 239 of the Constitution would be the Central Government.

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15. The Central Government has issued several orders and circulars extending the benefit to SC candidates of other States in the matter of employment in the U.T. of Pondicherry which need to be noticed. A D.O letter was sent by the Joint Secretary, Government of India, Ministry of Home Affairs, to the Lt. Governor of Pondicherry on 4.2.1974 and the same is being reproduced below :

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" So far as reservations for SCs/STs candidates in posts/services under the Central Govt. are concerned, the concession is admissible to all SCs and STs which have been recognized as such under the orders issued from time to time irrespective of the State/Union Territory in relation to which particular castes or tribes have been recognized as SCs/Tribes. Thus for a reserved vacancy in a Central Govt. office located in a State, any SC candidate throughout the country would be eligible. Since Pondicherry is a Union Territory all orders regarding reservations for scheduled castes/tribes issued by the Dept. of Personnel in respect of posts/services under the Central Govt. are applicable to posts/services under the Pondicherry Admn. Also as such a SC/Tribe candidate from outside Pondicherry should also be eligible for a vacancy reserved for SCs/STs in the Union Territory Admn".

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After receipt of the aforesaid letter from Government of India, the General Administration Department of the Government of Pondicherry issued a Government Order dated 16.2.1974 which reads as under :

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A “ In view of the clarifications of the Govt. of India all Secretariat Departments, Heads of Departments/Offices are informed that SCs/ Tribes candidates from outside the Union Territory of Pondicherry should also be considered for appointment to posts reserved for SCs/ Tribes in this Admn. These instructions should be followed strictly”.

B The Government of Pondicherry also issued a circular on 6.1.1993 issuing clarifications regarding two points and the second one was regarding the Government Order dated 16.2.1974 (reproduced above). Paras 2 and 3 of this circular read as under :

C “2. The reference second cited is again brought to notice for information and guidance. It has been stated therein that for a reserved vacancy in a Central government Office located in a State any Scheduled Caste candidate throughout the country would be eligible. It has therefore been clarified that since Pondicherry is a Union Territory, all orders regarding reservation for Scheduled Caste/ Scheduled Tribe issued by the Department of Personnel in respect of posts/services under the Central Government are applicable to posts/ services under the Pondicherry Administration also. Hence, as such, a Scheduled Caste/Scheduled Tribe candidate from outside Pondicherry would also be eligible for a vacancy reserved for Scheduled Caste/ Scheduled Tribe in the Union Territory Administration.

E 3. However, in the case of other benefits like scholarships, admission to educational institutions etc., the benefits should be confined to the Scheduled Caste of this Union Territory.”

F It appears that Government of Pondicherry sought some clarifications from the Central Government regarding admissibility of reservation benefit to migrant SC/ST candidates vide their letter dated 21.9.1995. This was replied to by the Ministry of Welfare, Government of India vide their letter dated 6.10.1995 and the relevant part thereof is reproduced below :

G “I am directed to refer to your letter No. A.27265/12/23/CS(EC)/95 dated 21.9.1995 on the above subject and to say that according to para 9 of MHA (Now DoPT) OM No. 42/21/49-NGS dt. 23.1.1952, the Central Government instructions apply mutatis mutandis to all Part C States (now UTs) as well. Such UTs have therefore to follow all Central Government instructions.

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In view of the above position explained above, Pondicherry being UT, services under the Administration will be open to all the SC/ST irrespective of their State of origin. Further in regard to posts filled on all-India basis through UPSC or SSC on open competition basis, SC/ST candidates irrespective of their state of origin can apply. In regard to the posts filled through SSC, Madras all the SC/ST candidates from the southern region will be eligible to apply.

The Government of Pondicherry circulated the aforesaid letter of Government of India to Secretaries of all Departments and Heads of Departments/Offices vide its G.O. Ms. No. 9 dated 20.10.1995.

16. These documents show that Government of Pondicherry has throughout been proceeding on the basis that being a Union territory, all orders regarding reservation for SC/ST in respect of posts/services under the Central Government are applicable to posts/services under the Pondicherry administration as well. Since all SC/ST candidates which have been recognized as such under the orders issued by the President from time to time irrespective of the State/Union territory, in relation to which particular castes or tribes have been recognized as SCs/STs are eligible for reserved posts/services under the Central Government, they are also eligible for reserved posts/services under the Pondicherry administration. Consequently, all SC/ST candidates from outside the U.T. of Pondicherry would also be eligible for posts reserved for SC/ST candidates in Pondicherry administration. Therefore, right from the inception, this policy is being consistently followed by the Pondicherry administration whereunder migrant SC/ST candidates are held to be eligible for reserved posts in Pondicherry administration.

17. We do not find anything inherently wrong or any infraction of any constitutional provision in such a policy. The principle enunciated in *Marri Chandra Shekhar Rao* (supra) cannot have application here as U.T. of Pondicherry is not a State. As shown above, a Union territory is administered by the President through an administrator appointed by him. In the context of Article 246, Union territories are excluded from the ambit of expression "State" occurring therein. This was clearly explained by a Constitution Bench in *T.M. Kannian v. Income Tax Officer*, [1968] 2 SCR 103, AIR (1968) SC 367. In *New Delhi Municipal Council v. State of Punjab*, [1997] 7 SCC 339, the majority has approved the ratio of T.M. Kannian and has held that the Union territories are not States for the purpose of Part XI of the Constitution (para 145). The Tribunal has, therefore, clearly erred in applying the ratio of

A Marri Chandra Shekhar Rao in setting aside the selection and appointment of migrant SC candidates.

18. The contesting respondents (applicants before the Tribunal, who challenged the selection) can derive no benefit from the decision in *Marri Chandra Shekhar Rao* (supra). In this case the writ petitioner Marri Chandra B was born in Gouda community in the State of Andhra Pradesh, which is recognized as a Scheduled Tribe in the Presidential Order issued for the said State. For getting admission in a medical college in the State of Maharashtra, he claimed benefit of reservation being an ST. Gouda community was not recognized as Scheduled Tribe in the Presidential Order issued for the State of Maharashtra and on this ground he was denied the benefit of reservation. C He then filed the writ petition claiming that he is entitled for benefit of reservation being a member of ST. It was in these circumstances that it was held that his community having not been included as an ST in the Presidential Order issued for the State of Maharashtra, he had no legal right to claim benefit of reservation in the State of Maharashtra. The U.T. of Pondicherry D having consistently followed the policy of the Central Government where all scheduled caste candidates were given benefit of reservation, the selection made following the said policy could not be held to be suffering from any legal infirmity on the principle laid down in *Marri Chandra Shekhar Rao* (supra).

E 19. Much emphasis has been laid by learned counsel for contesting respondents upon the expression "in relation to that State or Union territory, as the case may be" occurring in clause (1) of Article 341 of the Constitution, and it has been urged that only such of the castes as are mentioned in the schedule appended to the Constitution (Pondicherry) Scheduled Castes Order F 1964 issued by the President can be deemed to be Scheduled Castes in relation to the U.T. of Pondicherry and none else and, consequently, migrant SC candidates would not be eligible at all.

20. Part XVI of the Constitution deals with special provisions relating to certain classes and contains Articles 330 to 341. Articles 330 and 332 G make provision for reservation of seats in the House of People and Legislative Assemblies of the States respectively, for Scheduled Castes and Scheduled Tribes. Similar provisions have been made for Anglo-Indian community in Articles 331 and 333. Article 338 provides that there will be a Commission for the Scheduled Castes to be known as National Commission for the Scheduled Castes and it also provides for its composition, powers and duties. H

Clause (2) of Article 330 provides that the number of seats reserved in the States or Union territories for Scheduled Castes or Scheduled Tribes shall bear, as nearly as may be, the same proportion to the number of seats allotted to that State or Union territory in the House of the People as the population of the Scheduled Castes in the State or Union territory or of the Scheduled Tribes in the State or Union territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union territory. Similar provision for reservation of seats in favour of SC/ST in the Legislative Assembly of any State is contained in clause (3) of Article 332 of the Constitution. Therefore, in order to ascertain the number of seats which have to be reserved for Scheduled Castes or Scheduled Tribes in the House of the People or in the Legislative Assembly, it is absolutely essential to ascertain precisely the population of the Scheduled Castes or Scheduled Tribes in the State or Union territory. A fortiori, for the purpose of identification, it becomes equally important to know who would be deemed to be Scheduled Caste in relation to that State or Union territory. This exercise has to be done strictly in accordance with the Presidential Order and a migrant Scheduled Caste of another State cannot be taken into consideration otherwise it may affect the number of seats which have to be reserved in the House of People or Legislative Assembly. Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Art. 341 and 342 after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of forward caste.

21. Clauses (1) and (2) of Article 16 guarantee equality of opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. Clauses (3) to (5), however, lay down several exceptions to the above rule of equal opportunity. Article 16(4) is an enabling provision and confers a discretionary power on the State to make reservation in the matter of appointments in favour of "backward classes of citizens" which in its opinion are not adequately represented either numerically or qualitatively in services of the State. But it confers no constitutional right upon the members of the backward classes to claim reservation. Article 16(4) is not controlled by a Presidential Order issued under Article 341(1) or Article 342(1) of the Constitution in the sense that reservation in the matter of appointment on posts may be made in a State or Union territory only for such Scheduled Castes and Scheduled Tribes which are mentioned in the schedule appended to the Presidential Order for that particular State or Union territory. This Article does not say that only such Scheduled Castes and Scheduled

- A** Tribes which are mentioned in the Presidential Order issued for a particular State alone would be recognized as backward classes of citizens and none else. If a State or Union territory makes a provision whereunder the benefit of reservation is extended only to such Scheduled Castes or Scheduled Tribes which are recognized as such, in relation to that State or Union territory then
- B** such a provision would be perfectly valid. However, there would be no infraction of clause (4) of Article 16 if a Union territory by virtue of its peculiar position being governed by the President as laid down in Article 239 extends the benefit of reservation even to such migrant Scheduled Castes or Scheduled Tribes who are not mentioned in the schedule to the Presidential Order issued for such Union territory. The U.T. of Pondicherry having adopted
- C** a policy of Central Government whereunder all Scheduled Castes or Scheduled Tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

D 22. For the reasons discussed above, we are of the opinion that there has been no violation of any constitutional or any other legal provision in making selection and appointment of migrant Scheduled Caste candidates against the quota reserved for Scheduled Castes on the post of Selection Grade Teachers. The view to the contrary taken by the Tribunal cannot, therefore, be sustained and has to be set aside.

E 23. The appeals are accordingly allowed and the judgment and order dated 5.11.1996 of the Central Administrative Tribunal (Madras Bench) is set aside.

S.K.S.

Appeals allowed.