

PUDUCHERRY S.C. PEOPLE WELFARE ASSOCIATION A

v.

CHIEF SECRETARY TO GOVT., UNION TERRITORY OF
PONDICHERRY & ORS.

(Civil Appeal Nos. 10829-10830 of 2010) B

AUGUST 07, 2014

**[R. M. LODHA, CJI, MADAN B. LOKUR AND
KURIAN JOSEPH, JJ.]**

Service Law – Reservation – For Scheduled Caste candidates – Entitlement – Government Orders related to reservation benefits in promotion and employment to Group C and D posts and in professional courses – Challenge to – Held: Impugned Government Orders not sustainable as they were not in consonance with the Presidential Order, 1964 – By no executive power, amendment, modification, alteration or variance in the Presidential Order was permissible – It was not open to the executive to do anything directly or indirectly leading to any change in the Presidential Order – Once Presidential Order was issued u/Art. 341(1) or Art. 342(1) of Constitution, any amendment in the Presidential Order could only be made by the Parliament by law as provided in Arts. 341(2) or 342(2) of Constitution, as the case may be, and in no other manner – Interpretation of ‘resident’ in the Presidential Order as ‘of origin’ amounted to altering the Presidential Order – Constitution (Pondicherry) Scheduled Castes Order, 1964 – Constitution of India, 1950 – Arts. 341 and 342. C
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The appellant is an association representing the Scheduled Caste residents having permanent residence/place of abode in Puducherry. The association filed Writ Petitions before the High Court challenging the two Government Orders, ‘G.O.M. 11/2005’ and ‘G.O.M. 12/ G

A 2005'] both dated 05.08.2005. G.O.M. 11/2005 relates to reservation benefits in promotion and employment to Group C & D posts and the other G.O.M. 12/2005 relates to reservation benefits in professional courses. The High Court dismissed the Writ Petitions. The matter came up before this Court.

Allowing the appeals, the Court

C HELD : 1.1. The impugned Government Orders cannot be sustained on the short ground, viz., they being not in consonance with the Constitution (Pondicherry) Scheduled Castes Order, 1964. It is seen from para 2 of the above Presidential Order that the castes, races or tribes or parts of or groups within castes, races or tribes (15 in all) specified in the Schedule appended thereto are deemed to be Scheduled Castes for the purposes of the Constitution in relation to the Union Territory of Pondicherry so far as regards members thereof are resident in the Union Territory. The Government Orders, however, have confined reservation benefits to Scheduled Castes origins of the Union Territory of Pondicherry. It would be seen that the Presidential Order does not speak of "origins" of the Union Territory of Pondicherry, it only speaks of "resident". [Paras 11, 12 and 13][1092-E-F; 1093-E-H]

F 1.2. It is by virtue of the notification of President under Article 341(1) of the Constitution that the Scheduled Castes come into being. The members of the Scheduled Castes are drawn from castes, races or tribes, they attain a new status by virtue of Presidential Order. Clause (2) of Article 341 empowers Parliament alone by law to include or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) by the President. By no executive power, the amendment, modification, alteration or

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variance in the Presidential Order is permissible. It is not open to the executive to do anything directly or indirectly which may lead to any change in the Presidential Order. Once Presidential Order has been issued under Article 341(1) or Article 342(1), any amendment in the Presidential Order can only be made by the Parliament by law as provided in Article 341(2) or Article 342(2), as the case may be, and in no other manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order. Thus, the impugned Government Orders - G.O.M. 11/2005 and G.O.M. 12/2005 - not being in conformity and consonance with the Presidential Order, 1964 cannot be sustained in law and have to be set aside. [Paras 15, 16][1094-D-H; 1095-A-B]

S. Pushpa and others v. Sivachanmugavelu and others (2005) 3 SCC 1 ; *State of Uttaranchal v. Sandeep Kumar Singh and Others* (2010) 12 SCC 794 and *Subhash Chandra v. Delhi Subordinate Service Selection Board* (2009) 15 SCC 458 – referred to.

CASE LAW REFERENCE

(2005) 3 SCC 1	referred to	Para 4
(2010) 12 SCC 794	referred to	Para 8
(2009) 15 SCC 458	referred to	Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 10829- 10830 of 2010.

From the judgment and order dated 21.07.2008 passed by the High Court of Madras in WP No. 33305 & 33306 of 2006.

Ms. V. Mohana, Adv., for the Appellant.

- A R. Venkat Ramani, Guru Krishna Kumar, Sr. Advs.,
V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian,
Ms. Neelam Singh, Sameer Singh, Ms. G. Indira,
K. V. Jagdishvaran, Vishnu Sharma, Gopal Singh Amit Pawan,
Sumit Kumar, Deepayan Mandal, Gaurav Agrawal, Ms. Asha
B Gopalan Nair, Abhishek Kumar Pandey, B.V. Balram Das,
P. Parmeswaran, D.S. Mahra, Praneet Ranjan, Pradeep
Kumar, Bankey Bihari Sharma, Aruneshwar Gupta, Naresh
Kaushik, Sanjeev K. Bhardwaj, Ms. Lalita Kaushim Suresh
C A. Venkatesh, Annam D.N. Rao, Ms. Neelam Jain, Ms. Vaishali
R., Ms. Binu Tamta, Bijan Kumar Ghosh and S.K. Poddar,
Advs. for the Respondents.

The Judgment of the Court was delivered by

D **R. M. LODHA, C.J.I.**

1. The appellant is an association representing the
Scheduled Caste residents who have permanent residence/
place of abode in Puducherry. The association filed two Writ
Petitions before the High Court challenging the two
E Government Orders being G.O.Ms.No.11/2005/Wel(SCW II)
[for short, 'G.O.M. 11/2005'] and G.O.Ms.No.12/2005/Wel(SCW
II) [for short, 'G.O.M. 12/2005'] both dated 05.08.2005. G.O.M.
11/2005 relates to reservation benefits in promotion and
employment to Group C & D posts and the other G.O.M. 12/
F 2005 relates to reservation benefits in professional courses.

2. The High Court was not persuaded by the arguments
of the writ petitioner and dismissed the two Writ Petitions by a
common order dated 21.07.2008.

- G 3. The present Civil Appeals, by special leave, arise from
the above common judgment.

4. Both Government Orders take note of the Constitution
(Pondicherry) Scheduled Castes Order, 1964 and also the
judgment of this Court in *S. Pushpa and others Vs.*

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*Sivachanmugavelu and others*¹ and then provide for extension of reservation only to the Scheduled Castes origins of the Union Territory. A

5. Para 5 of G.O.M. 11/2005 reads as follows :-

"Having examined the demand made by various Welfare Associations and Scheduled Castes (origin) people of the Union Territory of Pondicherry and taking into account the observations made by the Hon'ble Supreme Court at para 21 of the said judgment dated 11.02.2005, the Lieutenant Governor, Pondicherry is pleased to order that the reservation benefits in promotion, employment to Group 'C' and 'D' posts shall henceforth be extended only to the Scheduled Caste origins of the Union Territory as notified in the Constitution (Pondicherry) Scheduled Castes Order, 1964 read with the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002 (Central Act 61 of 2002)." B C D

6. Similarly, para 5 of G.O.M. 12/2005 reads as follows:-

"Having examined the demand made by various Welfare Associations and Scheduled Castes (origin) people of the Union Territory of Pondicherry and taking into account the observations made by the Hon'ble Supreme Court at para 21 of the said judgment dated 11.02.2005, the Lieutenant Governor, Pondicherry is pleased to order that the reservation benefits in the field of education and welfare shall henceforth be extended only to the Scheduled Caste origins of this Union Territory as notified in the Constitution (Pondicherry) Scheduled Castes Order, 1964 read with the Constitution (Scheduled Castes) Order (Second Amendment) Act, 2002 (Central Act 61 of 2002)." E F G

A 7. Leave was granted in these matters on 13.12.2010 and it was ordered that these matters be tagged with Civil Appeal No. 4494 of 2006.

B 8. It so happened that subsequently by order dated October 7, 2010, Civil Appeal No. 4494 of 2006², came to be referred to a 3-Judge Bench as the 2-Judge Bench, *inter alia*, observed that in *Subhash Chandra Vs. Delhi Subordinate Service Selection Board*³, the 2-Judge Bench could not have held that the decision rendered in *S. Puspha*¹ case is obiter and not binding.

C 9. Civil Appeal No. 4494 of 2006² has been dismissed by us yesterday (August 6, 2014) without answering the reference as it was not necessary in view of paragraph 4 of the impugned judgment therein.

D 10. In the present case also, it is not necessary to answer the question raised in the reference only in Civil Appeal No. 4494 of 2006² as we find that the impugned Government Orders cannot be sustained on the short ground, viz., they being not in consonance with the Presidential Order, 1964.

E 11. The Presidential Order, 1964 reads as follows :-

"THE CONSTITUTION (PONDICHERRY) SCHEDULED
CASTES ORDER, 1964

(C.O. 68)

F In exercise of the powers conferred by clause (1) of article 341 of the Constitution of India, the President is pleased to make the following Order, namely:-

G 1. The Order may be called the Constitution (Pondicherry) Scheduled Castes Order, 1964.

2. The castes, races or tribes or parts of or groups within

²(2010) 12 SCC 794, *State of Uttaranchal Vs. Sandeep Kumar Singh and Others*

H ³(2009) 15 SCC 458

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 Union Territory of Pondicherry so far as regards members thereof resident in that Union territory. A

Provided that no person, who professes a religion different from the Hindu or the Sikh religion, shall be deemed to be a member of a Scheduled Caste. B

THE SCHEDULE

- | | | |
|---------------------|-----------------------|---|
| 1. Adi Andhra | 9. Pallan | C |
| 2. Adi Dravida | 10. Parayan, Sambavar | |
| 3. Chakkiliyan | 11. Samban | |
| 4. Jambuvulu | 12. Thoti | D |
| 5. Kuravan | 13. Valluvan | |
| 6. Madiga | 14. Vetan | |
| 7. Mala, Mala Masti | 15. Vettiyan | |
| 8. Paky" | | E |

12. It will be seen from para 2 of the above Presidential Order that the castes, races or tribes or parts of or groups within castes, races or tribes (15 in all) specified in the Schedule appended thereto are deemed to be Scheduled Castes for the purposes of the Constitution in relation to the Union Territory of Pondicherry so far as regards members thereof are resident in the Union Territory. F

13. The Government Orders, however, have confined reservation benefits to Scheduled Castes origins of the Union Territory of Pondicherry. It would be seen that the Presidential Order does not speak of "origins" of the Union Territory of Pondicherry, it only speaks of "resident". G

A 14. Article 341 of the Constitution of India provides as under:-

B "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 case may be.

C (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."

D 15. It is important to bear in mind that it is by virtue of the notification of President under Article 341(1) that the Scheduled Castes come into being. The members of the Scheduled
E Castes are drawn from castes, races or tribes, they attain a new status by virtue of Presidential Order. Clause (2) of Article 341 empowers Parliament alone by law to include or exclude from the list of Scheduled Castes specified in a notification issued under Clause (1) by the President. By no executive
F power, the amendment, modification, alteration or variance in the Presidential Order is permissible. It is not open to the executive to do anything directly or indirectly which may lead to any change in the Presidential Order. Once Presidential Order has been issued under Article 341(1) or Article 342(1),
G any amendment in the Presidential Order can only be made by the Parliament by law as provided in Article 341(2) or Article 342(2), as the case may be, and in no other manner. The interpretation of "resident" in the Presidential Order as "of origin" amounts to altering the Presidential Order.

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16. Thus, we find that the impugned Government Orders - G.O.M. 11/2005 and G.O.M. 12/2005 - not being in conformity and consonance with the Presidential Order, 1964 cannot be sustained in law and have to be set aside. We order accordingly. A

17. Civil Appeals are allowed as above with no order as to costs. B

Bibhuti Bhushan Bose

Appeals allowed.