

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU**

**&**

**HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA**

**ON THE 12<sup>th</sup> OF DECEMBER, 2023**

**WRIT PETITION No. 6700 of 2023**

**BETWEEN:-**

**SEEMA DEVI W/O SHRI SUNIL KUMAR  
SONI, AGED ABOUT 33 YEARS,  
OCCUPATION: TEACHER R/O H.NO. 292,  
WARD NO. 1, SARWANIYA SINGOLI, TEHSIL  
SINGOLI DISTRICT NEEMUCH (MADHYA  
PRADESH) AT PRESENT R/O HIGH COURT  
SOCIETY, RAMPUR, JABALPUR (MADHYA  
PRADESH)**

**....PETITIONER**

***(BY SHRI RAMESHWAR SINGH THAKUR AND SHRI VINAYAK  
PRASAD SHAH - ADVOCATES)***

**AND**

- 1. UNION OF INDIA THROUGH SECRETARY,  
DEPARTMENT OF SOCIAL JUSTICE AND  
EMPOWERMENT SECRETARY SHASTRI  
BHAWAN, C-WING, DR. RAJENDRA PRASAD  
ROAD, NEW DELHI (DELHI)**
- 2. THE STATE OF MADHYA PRADESH  
THROUGH THE PRINCIPAL SECRETARY,  
GENERAL ADMINISTRATION  
DEPARTMENT VALLABH BHAWAN  
BHOPAL (MADHYA PRADESH)**
- 3. THE PRINCIPAL SECRETARY, SCHOOL  
EDUCATION DEPARTMENT VALLABH  
BHAWAN BHOPAL (MADHYA PRADESH)**

4. THE COMMISSIONER, DIRECTORATE OF  
PUBLIC INSTRUCTION (DPI) DEPARTMENT  
GAUTAM NAGAR BHOPAL (MADHYA  
PRADESH)

.....RESPONDENTS

(RESPONDENTS/STATE BY SHRI G.P. SINGH – GOVERNMENT  
ADVOCATE)

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*This petition coming on for orders this day, Hon'ble Shri Justice  
SHEEL NAGU passed the following:*

**ORDER**

This petition has been filed by petitioner under Article 226 of the  
Constitution praying for following reliefs:-

*“(i) To set aside letter (Ann.P/1) to the extent of these letters  
comes in the way of petitioners as obstacle to get benefits of  
concession and reservation as OBC, as it ultra vires to the  
fundamental right guaranteed by Art.16(2) and 19(1)(e) of the  
Constitution of India.*

*(ii) To set aside the circular issued by the GAD dated  
11/07/2005 (Ann.P/2) to the extent of the contravention to be a  
candidate as OBC category for petitioners in recruitment on  
public post in the State of M.P., as it ultra vires to the  
fundamental right guaranteed by Art.16(2) and 19(1)(e) of the  
Constitution of India.*

*(iii) To direct the respondents No.3 & 4 to add names of the  
petitioners in list of selected candidates for choice filing of  
schools (Ann.P/8) as less meritorious candidates have been  
selected.*

*(iv) To direct the respondents No.3 & 4 to provide appointment  
as Middle Teacher Sanskrit as OBC category candidate in  
recruitment through Teacher Eligibility Test 2018 as less  
meritorious candidates have been selected (Ann.P/11).*

*(v) Any other relief the Hon'ble Court kindly be please to deem fit and proper in the facts and circumstances of the case in the interest of justice."*

1.1 In this petition, writ of *certiorari* is sought to be issued for quashment of Annexure P/1 and P/2, which are executive instructions issued by Government of India and Government of M.P. respectively. The challenge is made to said instructions to the extent these instructions deny issuance of caste certificate in the State of M.P. to a person, who has migrated from his home State to M.P., even if the caste to which he belongs in his home State is also declared as OBC in the migrating State. Thus, petitioner has been denied to be treated as an OBC candidate in the absence of any OBC certificate issued by Competent Authority in M.P. As such petitioner was not included in the select list of OBC selected candidates for appointment as Middle School Teacher.

2. Learned counsel for rival parties are heard on the question of admission so also on final disposal.

3. This case is being decided finally with consent of the parties.

4. The petitioner claims herself to belong to Soni (Swarnkar) caste/community and resident of State of Rajasthan where Soni (Swarnkar) is notified as OBC.

4.1 The facts further reveal that petitioner got married and shifted to her matrimonial home in District Neemuch (M.P.). The husband of petitioner, who is resident of M.P. also belongs to Soni (Swarnkar), which is notified as OBC in State of M.P. The petitioner appeared and secured 86.3 marks as an OBC candidate in the Middle School Teacher Eligibility Test 2018, which is more than qualifying marks of 50% out of maximum marks of

150 prescribed for reserved category candidates. A select list was issued on 11.01.2023 in which OBC female candidates securing less marks than the petitioner found place. On making representation on 21.02.2023 no response came forth and thereafter this petition has been filed.

5. Learned counsel for petitioner has primarily raised following grounds:-

(i) The instructions of Government of India as well as Government of M.P. are in violation of fundamental right enshrined in Article 19(1)(e) of the Constitution. It is contended that since petitioner has a fundamental right to move and settle at any place in the country, said right cannot be curtailed by depriving petitioner of her caste status merely due to her movement from one State to another for marriage or employment.

(ii) Since caste is relatable to birth and not place of residence, denial of appointment to petitioner under OBC category is unlawful.

(iii) The impugned executive instructions Annexure P/1 and P/2 are abhorrent to the concept of reservation which is constitutionally recognized.

(iv) When faced with decisions of Apex court including judgment rendered by Five Judge Bench in *Action Committee On Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes In the State of Maharashtra & Anr. vs. Union of India* reported in (1994) 5 SCC 244, learned counsel for petitioner contends that said judgments are incorrect since Apex Court is not empowered to

legislate and lay down something, which is not permissible under the Constitution or any other statute.

6. This Court need not enter into the prolixity of detailed discussion in view of the issue qua ground 3(i) involved herein having been settled by various decisions of Apex Court in ***Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Ors. (1990) 3 SCC 130*** and ***Action Committee*** (supra), which have stood the test of time till date. Relevant extracts of these decisions are reproduced below for ready reference and convenience:-

**In Marri Chandra (supra)**

*“13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Venkataramana Devaru v. State of Mysore AIR 1958 SC 255 , where Venkatarama Aiyer, J. reiterated that the rule of construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression ‘for the purposes of this Constitution’ in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all — to Scheduled Castes or Tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original*

*State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection.*

*After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution.*”

**In Action Committee (supra)**

*“16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State “for the purposes of this Constitution”. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:*

*“He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the*

territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them....”

*Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin.”*

Aforesaid view has been followed by Apex Court in ***Ranjana Kumari vs. State of Uttarakhand & Ors. (2019) 15 SCC 664 and Bhadar am vs. Jassa Ram & Ors. (2022) 4 SCC 259.***

6. From the aforesaid, it is lucid that a person, who migrates from one State to the other does not carry his caste status to the migrating State, even if the same caste is recognized as OBC in both States. The reason is not far to see. There may be caste or sub caste of same name, which are recognized in more than one States in India. However, merely because the caste known by a particular name is recognized in more than one States cannot extend the benefit of reservation in both the States. The recognition



of a caste in a particular State as OBC is directly relatable to social, economic and educational backwardness faced by that caste in the home State. This geographical, social and educational backwardness existing in the home State cannot necessarily be the same in the other State.

6.1 Thus, it is not the similarity of name of a particular caste in two or more States, which is the deciding factor but it is the social, economic and educational backwardness of that particular caste in a particular State, which recognizes that caste to be a scheduled caste/OBC. The social, economic and educational backwardness are factors, which are never identical or even similar in two different States.

7. Accordingly, the prayer for quashment of Annexure P/1 & P/2, which are executive instructions issued by Government of India and Government of M.P. respectively do not have any force since the principle behind these impugned instructions are in line with law laid down by Apex Court in aforesaid decisions.

7.1 The other ground of petitioner that caste is relatable to birth is not disputed. However, in the given facts and circumstances where a person migrates from one State to the other, he does not carry with him his caste status to the migrating State. This has been explained repeatedly by Apex Court in aforesaid decisions as extracted above.

7.2 The other ground of petitioner that concept of reservation would be defeated, if Annexure P/1 & P/2 are upheld also has no water to hold. The concept of reservation is undoubtedly recognized Constitutionally. However, reservation in public services is always Statewise and does not have a Pan India sweep. The presidential orders which notified the list of

Scheduled Caste, Scheduled Tribe and O.B.C. are published separately for each State. There is no singular list of S.C., S.T. and O.B.C. by a presidential order for the entire country. Thus, there is no question of concept of reservation being defeated on migration.

7.3 The last ground of learned counsel for petitioner that law laid down by Apex Court is not in consonance with provisions of Constitution is heard to be dismissed at the very outset. Under Article 141 of the Constitution, the law declared by Apex Court is binding on all Courts situated within the territory of India. Aforesaid extracted judgments which lay down the law in respect of caste status of a person migrating from one State to the other is binding on this Court.

8. In view of above discussion, no case for interference is made out. Accordingly, present petition stands dismissed.

9. No cost.

**(SHEEL NAGU)**  
**JUDGE**

**(DEVNARAYAN MISHRA)**  
**JUDGE**