

IN THE HIGH COURT OF JHARKHAND AT RANCHI
LPA No. 282 of 2015

Ranjit Kumar Appellant
Versus
1. The State of Jharkhand.
2. The Director General Police, Ranchi.
3. The Inspector General, Jharkhand Armed Police, Ranchi.
4. The Dy. Inspector of Police (Personnel), Jharkhand, Ranchi.
5. The Dy. Inspector General of Police, Jharkhand Armed Police, Ranchi.
1. Commandant, India Reserve Battalion-1, Jamtara. Respondents
2. Chandan Kumar
3. Pramod Kumar Ram
9. Abhishek Kumar Proforma Respondents
Azad

With
LPA No. 136 of 2015

1. Chhote Lal Yadav
2. Umesh Yadav
3. Anil Kumar Sah
4. Sanjay Kumar
5. Deepak Kumar Appellants
Versus
1. The State of Jharkhand.
2. Director General of Police, Jharkhand.
3. Inspector General, Jharkhand Armed Police, Ranchi.
4. Deputy Inspector of Police (Personnel), Jharkhand, Ranchi.
5. Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi.
6. Commandant, Indian Reserve Battalion-1, Jamtara.
7. State of Bihar through Chief Secretary, Patna. Respondents
8. Md. Akhtar Rasul
9. Hare Ram Kumar Paswan Proforma Respoondents

With
LPA No. 139 of 2015

1. Amresh Kumar
2. Deo Muni Mandal
3. Sanjay Shaw Appellants
Versus

1. The State of Jharkhand.
2. Director General of Police, Jharkhand.
3. Inspector General, Jharkhand Armed Police, Ranchi.
4. Deputy Inspector of Police (Personnel), Jharkhand, Ranchi.
5. Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi.
6. Commandant, Indian Reserve Battalion-1, Jamtara Respondents
7. Ajay Kumar
8. Arun Kumar Proforma Respondents

With
LPA No. 140 of 2015

1. Chandan Kumar
2. Parmod Kumar Ram
3. Abhishek Kumar Azad Appellants

Versus

- 1. The State of Jharkhand.
- 2. Director General of Police, Jharkhand.
- 3. Inspector General, Jharkhand Armed Police, Ranchi.
- 4. Deputy Inspector of Police (Personnel), Jharkhand, Ranchi
- 5. Deputy Inspector General of Police, Jharkhand Armed Police, Ranchi.
- 6. Commandant, Indian Reserve Battalion-1, Jamtara Respondents
- 7. Ranjit Kumar
- 8. Deo Kumar Proforma Respondents

With

LPA No. 204 of 2015

Hare Ram Kumar Paswan Appellant

Versus

- 1. The State of Jharkhand.
- 2. Director General of Police, Jharkhand.
- 3. Inspector General, Jharkhand Armed Police, Ranchi.
- 4. Deputy Inspector General of Police (Personnel),
Jharkhand Armed Police, Ranchi.
- 5. Deputy Inspector General of Police,
Jharkhand Armed Police, Ranchi.
- 1. Commandant, Indian Reserve Battalion-1, Jamtara.
..... Respondents

With

LPA No. 409 of 2015

- 1. Arun Kumar
- 2. Ajay Kumar
..... Appellants Versus

- 3. The State of Jharkhand.
- 4. Director General of Police, Jharkhand.
- 5. Inspector General, Jharkhand Armed Police, Ranchi.
- 6. Deputy Inspector General of Police (Personnel), Jharkhand.
- 7. Deputy Inspector General of Police,
Jharkhand Armed Police, Ranchi.
- 8. Commandant, Indian Reserve Battalion-1, Jamtara.
..... Respondents

With

LPA No. 609 of 2015
(With I.A. No.6062 of 2016)

Dashrath Paswan Appellant

Versus

- 1. The State of Jharkhand.
- 2. The Director General-cum-Inspector General of Police,
Jharkhand, Ranchi.
- 3. The Superintendent of Police,
West Singhbhum, Chaibasa. Respondents

With

LPA No. 80 of 2018
(With I.A. No.1579 of 2018)

- 1. The State of Jharkhand.

1. The Secretary,
Personnel, Administrative Reforms & Rajbhasa Department,
Govt. of Jharkhand, Ranchi.
1. The Deputy Secretary,
Personnel, Administrative Reforms & Rajbhasa Department,
Govt. of Jharkhand, Ranchi.
- Appellants / Respondents
- Versus
1. Pankaj KumarRespondent/ Writ Petitioner
2. The Secretary cum Examination Controller,
Jharkhand Public Service Commission, Ranchi.
3. The Director in Chief,
Sri Krishna Public Administration Institution,
Govt. of Jharkhand, Ranchi.
1. The Joint Director,
Sri Krishna Public Administration Institution,
Govt. of Jharkhand, Ranchi. Proforma Respondents

P R E S E N T

HON'BLE MR. JUSTICE H.C. MISHRA
HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE B.B. MANGALMURTI

For the Appellants	: M/s Indrajit Sinha, Sumeet Gadodia, Shilpi John, Anjani Nandan, Piyush Chitresh, Deepankar, Sharad Kaushal, Diwakar Upadhyay, Manoj Tandon, Shristi Sinha, Neha Bharadwaj, Navin Kumar Singh, Shaumya Ria, Advocates
For the Respondents	: Mr. Manoj Tandon, A.A.G. M/s. Shristi Sinha, Neha Bhardwaj, Navin Kumar Sinha, Saumya Ria, Advocates.
For the State of Bihar	: Mr. S.P.Roy, G.A. Mr. Binit Chandra, J.C to G.A

C.A.V on:- 18/10/2019

Pronounced on: -24/02/2020

H.C. Mishra, J.:- Heard learned counsels for the appellants and learned Addl. Advocate General for the respondent State of Jharkhand, as also learned counsel for the State of Bihar in all these appeals.

Facts of LPA No.282 of 2015 and analogous matters.

2. The appellants in LPA No.282 of 2015 and its analogous matters, (except LPA No. 80 of 2018), are aggrieved by the impugned Judgment dated 30.01.2015, passed by the Hon'ble Singh Judge in W.P. (S) No.3737 of 2008 and its analogous matters.

1.All these appellants were appointed as constables, on the posts reserved for S.C. / S.T. / O.B.C., in Jharkhand Police, after bifurcation of the State of Jharkhand from the erstwhile State of Bihar. After about three years of service, their services were terminated on the ground that they were the permanent residents of the State of Bihar, and had produced the caste certificates issued by the authorities in the State of Bihar. Subsequently, it was found that after bifurcation of the State of Bihar, they could not be given the benefits of reservation on the basis of the caste certificates issued by the authorities of their respective districts in the State of Bihar, and accordingly, by the impugned orders dated 04.04.2008 and 16.06.2008, issued by the competent authorities, the services of the appellants were terminated. The appellants challenged the order of termination by filing W.P.(S) No. 3737 of 2008 and analogous writ applications, all of which were heard together and were dismissed by the impugned Judgment dated 30.01.2015, passed by the Writ Court, relying upon the decisions of the Hon'ble Apex Court in **Marri Chandra Shekhar Rao Vs. Dean, Seth G.S Medical College & Ors.**, reported in (1990) 3 SCC 130, **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra & Anr. Vs. Union of India & Anr.**, reported in (1994) 5 SCC 244, and **M.C.D. Vs. Veena & Ors.**, reported in (2001) 6 SCC 571. The Writ Court also relied upon the decision of the Division Bench of this Court in **Kavita Kumari Kandhaw & Ors. Vs. State of Jharkhand & Ors.**, reported in 2006 (2) JCR 512 (Jhr), wherein also, relying upon the aforesaid Judgements of the Hon'ble Apex Court, this Court had held that the Backward Class of one State cannot be deemed to be so in relation to the other State, and the caste certificate issued by one State, is not valid in other State. The Writ Court, thus, dismissed the writ applications of the appellants writ petitioners.

2.Aggrieved thereby, the appellants filed these L.P.As. While these matters were being heard by the Division Bench on 09.08.2018, the Division Bench of this Court was of the view that though the question that the Backward Class of one State cannot be deemed to be so in

relation to other State and the certificate issued by one State, is not valid for other State, was no more a question *res-integra*, but the question whether the persons born prior to 15.11.2000 in the erstwhile unified State of Bihar, belonging to the reserved category and enjoying the benefits thereof throughout the territory of the unified State, can subsequently be denied the same benefits of reservation in the divided State of Jharkhand, only because of the fact that the State has been bifurcated with effect from 15.11.2000, for which, those persons were not at all responsible, particularly, when the castes, to which the appellants belonged, were recognized to be in the reserved categories even in the State of Jharkhand after bifurcation. This Court took a view that similar question had been considered by the Hon'ble Supreme Court of India in **Sudhakar Vithal Kumbhare Vs. State of Maharashtra & Ors.**, reported in (2004) 9 SCC 481, which had cropped-up due to bifurcation of the particular region in the State of Madhya Pradesh, which after reorganisation of the State came in the State of Maharashtra. The Hon'ble Apex Court had framed the following question :-

"5. -----. In other words, the question that is required to be posed and answered would be as to whether the members of the Schedule Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the State Reorganisation Act. -----."

5. This Court, however, was of the opinion that the question was left undecided by the Hon'ble Supreme Court of India. Accordingly, these matters were referred to the Larger Bench by order dated 09.08.2018. While referring these matters to the Larger Bench, this Court was also conscious of the fact that the question involved in these cases, if decided in favour of the appellants, the benefits thereof must be applicable in both the States, i.e., the State of Jharkhand and the State of Bihar, as it could not be allowed that the benefit shall be given in the State of Jharkhand only, but the same benefit shall not be recognized by the State of Bihar, and *vice versa*. Accordingly, the State of Bihar, through its Chief Secretary, was also added as a party in one of these matters, i.e., LPA

No.136 of 2015, and we have heard the learned counsel for the State of Bihar also.

Facts of LPA No.80 of 2018.

6. The facts in LPA No. 80 of 2018 are slightly different. Writ petitioner Pankaj Kumar, the respondent in LPA No.80 of 2018, though originally belonged to Patna District in the State of Bihar, was born on 27.11.1974, in the District of Hazaribagh, where his father was residing at the relevant time. He was born and brought up entirely in the territory of now the State of Jharkhand, and all his education were also done within the territory, which is now in the State of Jharkhand. He also belonged to the Scheduled Caste category, and his caste certificate was also issued by the competent authority in the State of Jharkhand. Pursuant to an advertisement issued by the erstwhile State of Bihar, he was appointed on the post of Assistant Teacher by the erstwhile State of Bihar on 21.12.1999, against the post reserved for S.C. category, and pursuant to the cadre division, after the bifurcation of the State, he was allocated to the cadre of State of Jharkhand. The respondent writ petitioner, applied for appearing in the third Combined Civil Services Examination, 2008, pursuant to an Advertisement No. 11 of 2007, published by the State of Jharkhand, on the basis of the caste certificate issued in his favour. He cleared the preliminary as well as main examinations, and he also cleared the interview, and in the final result, which was published in the year 2010, the name of the respondent writ petitioner appeared at Sl. No. 5, against total 17 vacancies in the Scheduled Castes category. He was also asked to report to Sri Krishna Public Administration Institution, Ranchi, to undergo training from 12th August, 2010, where the appointment letter was to be handed over to him. However, no appointment letter was issued to him, though the other persons were appointed vide Notification dated 11.08.2010, whereby, only 16 candidates were appointed under the Scheduled Caste category, leaving out the respondent writ petitioner. His representations went in vain and ultimately, he had to knock the door of this Court in W.P.(S) No. 5147 of 2010.

1.As per the counter affidavit filed in the said writ application on behalf of the State, it was admitted that the writ petitioner had been duly selected in Scheduled Caste category, but it was stated that as per his service book, the permanent address of the petitioner was of Patna in the State of Bihar, and since the writ petitioner was a permanent resident in the State of Bihar, and he had migrated from the State of Bihar to the State of Jharkhand, he was not entitled for the benefit of reservation in the State of Jharkhand, and was not entitled for issuance of the appointment letter in the rank of Deputy Collector.

2.By the impugned Judgment dated 13.10.2017 passed in W.P.(S) No.5147 of 2010, the writ application was allowed by the Writ Court, directing the respondent State to issue the appointment letter in favour of the writ petitioner. Aggrieved thereby, the State has preferred this appeal, being L.P.A. No.80 of 2018, which also, in view of the similar question involved, was referred to the Larger Bench, by a co-ordinate Bench of this Court, by order dated 26.03.2019, to be heard along with LPA No.282 of 2015. This is how this matter has also been listed along with the aforesaid L.P.As and has been heard together.

3.Learned counsel Sri Indrajit Sinha has addressed the Court on behalf of the appellants in LPA No. 282 of 2015 and analogous matters, i.e., in the matters relating to the police constables, whose services were terminated after about three years of service, whereas learned counsel Sri Sumeet Gadodia, has addressed this Court on behalf of the respondent writ petitioner in LPA No.80 of 2018, preferred on behalf of the State of Jharkhand. Learned Additional Advocate General, Sri Manoj Tandon has represented the State of Jharkhand, whereas the State of Bihar is represented by the learned counsel Sri S.P. Roy.

4.It is submitted by the learned counsel for the appellants in LPA No. 282 of 2015 and analogous matters, that these appellants had applied, pursuant to the Advertisement No. 1 of 2004 for appointment on the post of Constables, and upon being declared successful, they were duly appointed and they received the basic training of constable and joined their respective posts. After working for about three years, they were

served with the notices, seeking explanation as to why the appellants may not be dismissed and subsequently, vide orders dated 04.04.2008 and 16.06.2008, issued by the competent authorities, their services have been terminated on the ground that the appellants had produced the caste certificates issued from the Districts, which now fall within the jurisdiction of the State of Bihar. It is submitted by the learned counsel that it is not in dispute that the castes, to which these appellants belong, have been recognized as Scheduled Castes, Scheduled Tribes and Other Backward Classes, in both the erstwhile unified State of Bihar, as well as in the State of Jharkhand after its bifurcation, and the castes of the appellants find place even in the 5th and 6th Schedules, with respect to the State of Jharkhand, in the Bihar Reorganisation Act, 2000. It is submitted by the learned counsel for these appellants that the appellants have been appointed on the basis of the caste certificates issued by the district authorities of the successor State of Bihar, and they are entitled to be given the benefit of reservation under Article 16(4) of the Constitution of India. Learned counsel has submitted that under this Article, the word 'citizen' has been used by the Constitution, which is distinct and apart from the word 'resident' of State or Union Territory, and according to Article 16 of the Constitution of India, no citizen can be deprived of the benefit of reservation on the ground of place of birth, or residence with respect to any employment or appointment to any office under the State. Learned counsel has submitted that the other Articles of the Constitution of India have to be read in a manner so as to give a harmonious construction to this Article as well.

11. Learned counsel has accordingly, submitted that any effort on the part of the State to deprive the appellants from the benefits of reservation only on the ground that they are the permanent residents of the State of Bihar, and their caste certificates have also been issued by the District authorities in the State of Bihar, shall amount to create a class within class, with respect to the members of the SC / ST / OBC, which cannot be permitted in the eyes of law. In support of his contention, learned counsel has placed reliance upon the decision of the Hon'ble

Apex Court in **E.V. Chinnaiah Vs. State of A.P. & Ors**, reported in (2005) 1 SCC 394, laying down the law as follows:-

"41. The conglomeration of castes given in the Presidential Order, in our opinion, should be considered as representing a class as a whole. The contrary approach of the High Court, in our opinion, was not correct. The very fact that a legal fiction has been created is itself suggestive of the fact that the legislature of a State cannot take any action which would be contrary to or inconsistent therewith. The very idea of placing different castes or tribes or group or part thereof in a State as a conglomeration by way of a deeming definition clearly suggests that they are not to be subdivided or subclassified further. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the list. Such subclassification would be violative of Article 14 of the Constitution. -----." (Emphasis supplied).

1.The other arguments of Learned counsels, Sri Indrajit Sinha and Sri Sumeet Gadodia, are almost identical. It is submitted by the learned counsels that the decisions of the Hon'ble Apex Court in **Marri Chandra Shekhar Rao** (*supra*) and **Action Committee** (*supra*), relied upon by the Writ Court, while dismissing the writ applications of the constables, are not applicable to the facts of these matters, inasmuch as, in those decisions, the Hon'ble Apex Court have not laid down the law in the context of the States, which have been bifurcated, pursuant to any Reorganisation Act.

2.Learned counsels have placed reliance upon the decision of the Hon'ble Supreme Court in **Sudhakar Vithal Kumbhare's** case (*supra*), wherein the facts of the case were that, the appellant therein was originally a resident of village Sawargaon, in the district of Chhindwara, in the State of Madhya Pradesh. Subsequently, after Reorganisation, the part of the said District had gone into the State of Maharashtra. The appellant belonged to 'Halba' Tribe, which was recognized as a Scheduled Tribe in the District of Chhindwara in the State of Madhya Pradesh, and after the Reorganisation when the part of the District was taken in the State of Maharashtra, the said tribe was also recognized as

Scheduled Tribe in the State of Maharashtra as well. The appellant was selected and appointed against the non-reserved vacancies on the basis of the merit as Junior Engineer (Civil) in the Maharashtra State Electricity Board. Subsequently, in the year 1987, he was promoted as Assistant Engineer (Civil) against the reserved vacancies on the basis of the certificate of belonging 'Halwa' Tribe, issued by the competent authority of the State Madhya Pradesh. The appellant was, subsequently reverted from the post of Assistant Engineer (Civil), holding that he was not entitled to the benefits of reservation for the Scheduled Tribe in the State of Maharashtra, which he had challenged in the writ application before the High Court, where his writ petition was dismissed. In appeal, the Hon'ble Supreme Court framed the question as follows :-

"5. But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and been denied facilities for development and growth in several States. They require protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantaged and developed sections of the community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in Chhindwara region, a part of which, on States' reorganisation, has come to the State of Maharashtra, was entitled to the benefit of reservation. It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be

as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind." (Emphasis supplied).

1.The appeal was allowed with costs and though in the order of reference to the Larger Bench, this Court had opined that the question was left unanswered by the Hon'ble Apex Court, learned counsels submitted that by using the expression "but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States", the Hon'ble Apex Court had actually answered the question, holding that the benefit could not be denied to the appellant.

2.Learned counsels have also placed reliance upon the decision of the Hon'ble Apex Court in **Sau Kusum Vs. State of Maharashtra & Ors.**, reported in (2009) 2 SCC 109, wherein where, the appellant who was belonging to the Vidarbha area, the border area of the States of Madhya Pradesh and Maharashtra, claimed to be belonging to the carpenter caste, which was recognized as Other Backward Class in both the States, was denied to the right to contest an election for the Member of Panchayat in the State of Maharashtra, on the ground that she was not a resident of Maharashtra prior to 1967 and her family had migrated from the State of Madhya Pradesh to the State of Maharashtra. In the said case,

it was urged on behalf of the appellant that the principles laid down in **Sudhakar Vithal Kumbhare's** case should have been applied. In the said case, the Hon'ble Apex Court laid down the law as follows :-

"12. In that view of the matter, if it is a fact that the people belonging to the said caste are recognised as OBC, both in Madhya Pradesh and Maharashtra, being badhai in the former and sutar in the latter and keeping in view of the fact that the Caste Scrutiny Committee has found her to be belonging to the sutar caste, we are of the opinion that the matter requires reconsideration.

1.It may be noticed that the Bombay High Court also in Hitesh Dasiram Murkute v. State of Maharashtra opined:

“(iv) Date too is equally relevant in order to identify the person as belonging to caste included in the Schedule on the date of such inclusion with reference to locality identified in the Schedule. Therefore, a person claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in Schedule from a place identified in the Schedule. In other words, the relevant date is not the date of migration but date of inclusion of caste or tribe in the Schedule.”

1.There is nothing on record to show as to when she had migrated to the State of Maharashtra. If admittedly she had migrated to the State of Maharashtra before 1967, she would be considered to be a permanent resident of Maharashtra.

16. It is one thing to say that she, being not a permanent resident of the State, would not be entitled to contest any election. If she is to be conferred the said status, she will be entitled to all the benefits to which members of the said caste are entitled to but would also be entitled to other benefits i.e. not the benefit to contest in the reserved categories of the election of the Panchayat alone but other benefits as well."

16. Setting aside the impugned order in that case, the matter was referred to the Caste Screening Committee for a proper decision. It may be noted that in the aforesaid case, the Hon'ble Apex Court has also placed reliance with approval upon the decision of the Bombay High Court in **Hitesh Dasiram Murkute Vs. State of Maharashtra & Ors.**, reported in 2007 (5) Mh. L.J. 454, wherein it was held that the person

claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in Schedule from a place identified in the Schedule, and that the relevant date is not the date of migration, but date of inclusion of caste or tribe in the Schedule. However, the said decision was subsequently, overruled by the Full Bench of Maharashtra High Court in a Judgement rendered on 03.03.2010, in W.P No.6060 of 2008 and analogous matters, **(Kum Shweta Santalal Lal Vs. The State of Maharashtra & Ors.)**, holding in essence that the date when a person can be treated as migrant or non-migrant, is the date of migration. Learned counsels, however, submitted that this could not be done by the Full Bench of Bombay High Court, in view of the fact that **Hitesh Dasiram Murkute's** case was referred by the Apex Court with approval in **Sau Kusum's** case (*supra*).

17. It is submitted by the learned counsels that in **M.C.D. Vs. Veena's** case (*supra*), the Hon'ble Apex Court, taking into consideration the decision in **Marri Chandra Shekhar Rao's** case (*supra*), has held as follows:-

"6. Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belonging thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they had been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in another State, a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in

mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs."

(Emphasis supplied).

18. Learned counsels have further submitted that from the aforesaid decision, it is clear that these decisions are applicable to the cases where the degree of disadvantages in two States may be totally different and merely because a caste is specified in one State as belonging to OBC does not necessarily mean that if there be another group of the same nomenclature in another State, a person belonging in that group is entitled to the right of privilege and the benefits admissible to the members of that caste. It is submitted by the learned counsels that this decision cannot be applicable to the case where the degree of disadvantages in both the States are the same and when such is the case, the benefit cannot be denied in either of the States. It is submitted by the learned counsels that admittedly, prior to 15.11.2000, the caste, to which, these appellants were belonging, were given the benefits of reserved category in the unified State of Bihar and only upon its bifurcation, the said benefit is being denied by either State. Learned counsels has submitted that there is nothing to show that the disadvantages which were uniform in the unified State in the entire region, have been subjected to any change after bifurcation of the State and it cannot be said that after the bifurcation of the State, the degree of advantages or disadvantages have changed in the State of Bihar, or in the State of Jharkhand, so as to disentitle the benefits of reservation to the candidates belonging to the State of Bihar, and now in the State of Jharkhand *vice versa*. Learned counsels have placed reliance upon the decision of the Division Bench of this Court in **Madhu Vs. State of Jharkhand & Ors.**, reported in 2010 SCC OnLine Jhar 1286. The facts of this case are similar in nature to the case of LPA No.80 of 2018, wherein, Madhu was born in the State of Jharkhand, even though her parents are from the erstwhile State of Bihar. Prior to bifurcation of the State of Bihar in two States, the father of Madhu was posted at Bokaro Steel City, Bokaro, and thus, for all intent and purposes, she was given the benefit of being a *bona fide* resident of

the State of Jharkhand. She belonged to the caste of 'Paasi', which was declared as Scheduled Caste in both the States, i.e., Bihar and Jharkhand, but she was denied the benefit of the reserved category on the ground that she had migrated from the State of Bihar. In the said case, the Division Bench held as follows:-

"9. In the facts and circumstances of the case, as aforesaid, we are of the considered view that the petitioner being a resident of the original State of Bihar, it cannot be considered that her father migrated to the State of Jharkhand, inasmuch as the father of the petitioner has settled in Bokaro prior to the Reorganisation of the State of Bihar, and in that view of the matter, it was for the administrative reasons that the State of Jharkhand was created and the petitioner became the resident of the State of Jharkhand. This fact also cannot be lost sight of that the petitioner was born in Bokaro in the State of Jharkhand. Her caste 'passi' has been declared to be the Scheduled Caste in the State of Jharkhand. In that view of the matter, we are of the considered view that the petitioner is entitled to be treated as the person belonging to a Scheduled Caste and in that view of the matter, she is entitled to receive the certificate to that effect from the respondents."

19. Learned counsels have also placed reliance upon the decision of the Constitution Bench of the Hon'ble Apex Court in **Bir Singh Vs. Delhi Jal Board and Ors.**, reported in (2018) 10 SCC 312, wherein where the Hon'ble Apex Court has taken into consideration Articles 341 & 342 of the Constitution of India, and the Presidential Orders issued, in the following terms:-

"19. Articles 341 and 342 also makes it clear that the caste, race or tribe or part of or group within any caste, race or tribe as specified in the Presidential Order under Article 341(1) or a tribe or tribal community as may be specified in the Presidential Order under Article 342(1) shall be deemed to be Scheduled Castes/Scheduled Tribes for the purposes of the Constitution in relation to that State or Union Territory, as the case may be. The above position is further made clear by Clause (2) of the two Presidential Orders which are in the following terms.

"Clause 2 of the Constitution (Scheduled Castes) Order, 1950

2. Subject to the provisions of this Order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in Parts I to XXV of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards member thereof resident in the localities specified in relation to them in those Parts of that Schedule.

Clause 2 of the Constitution (Scheduled Tribes) Order, 1950

2. The Tribes or tribal communities, or parts of, or groups within, tribes or tribal communities, specified in Parts I to XXII of the Schedule to this Order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Tribes so far as regards members thereof residents in the localities specified in relation to them respectively in those Parts of that Schedule.”

20. There are various parameters by which a caste/race is recognised as „Scheduled Caste/Scheduled Tribe” in a State/Union Territory or a particular part thereof. There is no doubt that before the Presidential Orders were issued under Article 341(1) or under Article 342(1), elaborate enquiries were made and only after such enquiries that the Presidential Orders were issued. While doing so, the Presidential Orders not only provided that even specified parts or groups of castes, races or tribes/tribal community could be Scheduled Castes/Tribes in a particular State/Union Territory but also made it clear that certain castes or tribes or parts/groups thereof could be Scheduled Castes/Tribes only in specified/particular areas/districts of a State/Union Territory. The reason for such an exercise by reference to specific areas of a State is that judged by standards of educational, social backwardness, etc. races or tribes may not stand on the same footing throughout the State. The consideration for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes and Scheduled Tribes or Backward Classes in any given State depends on the nature and extent of the disadvantages and social hardships suffered by the members concerned of the class in that State. These may be absent in another State to which the persons belonging to some other State may migrate.

24. Whenever States” reorganisation had taken place in the past, Parliament had exercised its powers under Articles 341(2) and 342(2) and provided for specific Castes/Tribes that were

entitled to be recognised as Scheduled Castes and Scheduled Tribes in relation to the reorganised States/Union Territories. The Scheme of the Constitution (Scheduled Castes) and (Scheduled Tribes) Orders makes it clear that Parliament's intention was to extend the benefits of reservation in relation to the States/Union Territories only to the castes, races or tribes as mentioned in the Presidential Orders.

25. The 1950 Order was amended by the Constitution (Scheduled Castes and Scheduled Tribes Order), by the Amendment Act, 1956 (63 of 1956). Another amending Act was enacted by Parliament in 1976. Earlier, orders had been made for the first time in relation to certain territories, such as the Constitution (Andaman and Nicobar Islands) Scheduled Tribes Order, 1959. Further, amendments had taken place as and when Parliament reorganised States, through separate Reorganisation Acts, which led to large-scale modification of the Presidential Orders. Illustratively, when new States/Union Territories were formed such as, Nagaland, Pondicherry, or Sikkim, the Scheduled Castes or Scheduled Tribes Orders were made in relation to the new States/Union Territories, for instance, the Constitution (Nagaland) Scheduled Tribes Order, 1970 — after the reorganisation of Assam; the Constitution (Sikkim) Scheduled Castes Order, 1978; the Constitution (Sikkim) Scheduled Tribes Order, 1978 upon creation of the State of Sikkim; the recent ones being upon creation of the States of Uttarakhand, Chhattisgarh, and Jharkhand. Likewise, when previous Union Territories (such as Goa, Mizoram and Arunachal Pradesh) were constituted into States, consequential amendments were made to the Scheduled Castes and Tribes Orders. All such amendments/enactments were made by Parliament.

1. In Marri Chandra Shekhar Rao, rejecting the contention that a member of Scheduled Castes/Scheduled Tribes should get the benefit of the status „for the purpose of the Constitution throughout the territory of India“, it was observed that if such contention is to be accepted the expression “In relation of that State” would become nugatory.

2. Marri Chandra Shekhar Rao was followed by another Constitution Bench of this Court in Action Committee. After referring to Articles 14, 15(1), 15(4), 16(4) and 19 and Part XVI of the Constitution of India and the decisions governing the

field and also Articles 341 and 342, it was held as under: (Marri Chandra case, SCC pp. 247 & 259, paras 3 & 16)

“3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

* * *

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.”
(emphasis supplied)

32. In *Marri Chandra Shekhar Rao*, the Constitution Bench observed that the expression “in relation to that State” must be read meaningfully and harmoniously. It was observed that if a member of Scheduled Castes/Scheduled Tribes gets the benefit of that status throughout the territory of India, the expression “in relation to that State” would become nugatory. If the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes in a particular State are to be made available in all the States and if such benefits are to be carried from State „A’ to State „B’ on migration, the mandate of Articles 341/342 would get compromised. Such a consequence must be avoided for it is a fundamental rule of interpretation, be it of a statutory enactment or of the Constitution, that wherever and whenever there is a conflict between two provisions, the same should be so interpreted as to give effect to both. “... Nothing is surplus in a Constitution and no part should be made nugatory...”.
[*Marri Chandra Shekhar Rao*]

34. Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions “in relation to that State or Union Territory” and “for the purpose of this Constitution” used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State „A’ cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State „A’.

36. The upshot of the aforesaid discussion would lead us to the conclusion that the Presidential Orders issued under Article 341 in regard to Scheduled Castes and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any

authority including the Court. It is Parliament alone which has been vested with the power to so act, that too, by laws made. Scheduled Castes and Scheduled Tribes thus specified in relation to a State or a Union Territory does not carry the same status in another State or Union Territory. Any expansion/deletion of the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342 of the Constitution of India.

1. Article 16(4) is an enabling provision. It enables the State to provide to Backward Classes including Scheduled Castes and Scheduled Tribes reservation in appointments to public services. Such reservation is to be provided on the basis of quantifiable data indicating the adequacy or inadequacy, as may be, of the representation of such classes in Government service. The data which is the basis of the satisfaction of the State being verifiable, is open to judicial scrutiny on the limited ground of relevance of the circumstances on which the satisfaction is moulded. The policy decision to provide reservation, of course, is beyond the pale of judicial review.

2. It is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential Orders under Articles 341/342 is subject to alteration only by laws made by Parliament, operation of the lists of Scheduled Castes and Scheduled Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard, it must also be noted that the power under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an Executive Order issued under Article 166 of the Constitution. It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential Orders for a particular State/Union Territory within the geographical area of that State and not beyond. If in

the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of Scheduled Castes/Scheduled Tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution could be a possible trigger point of constitutional anarchy and therefore must be held to be impermissible under the Constitution."

(Emphasis supplied).

20. Learned counsels further submitted that a plain reading of these decisions also show that these decisions apply when the background and the disadvantages in two States are different, but where they are the same, the answers have not yet been given by the Hon'ble Supreme Court of India. Learned counsel has also placed the Presidential Orders, issued by the Ministry of Law on 11th August, 1950 and the subsequent amendments made therein by the Act of the Parliament, firstly to show that the caste, to which, the appellants belonged are in the reserved category in both the States and it is further submitted by the learned counsel that the benefits of Article 16 (3) of the Constitution of India can be denied only by the Law made by the Parliament and not otherwise.

1.It is submitted by the learned counsels that admittedly, under the undivided State of Bihar, the entire State was taken as a unit for putting the caste of the appellants under the reserved category. Since these castes were found in the entire States and were treated to be in equal disadvantages position, hence, after bifurcation of the State, they cannot be treated as a different disadvantageous position and they cannot be denied the benefit only on the basis of migration from the State of Bihar to the State of Jharkhand or *vice versa*.

2.It is further submitted by the learned counsel for the appellant in LPA No.80 of 2018 that admittedly, the said appellant, while he was appointed as an Assistant Teacher in the school prior to the bifurcation of the State, he was given the benefit of reservation and by virtue of the

provisions as contained under Section 73 of the Bihar Reorganisation Act, the person who has been appointed under the reserved category posts merely on bifurcation of the cadre, cannot be denied the benefit of reservation in his service career. Learned counsel submits that in case of this respondent-writ petitioner, if he is denied the benefit of reservation for applying to the post of Deputy Collector, it shall give rise to a piquant situation, in which, he shall be given the benefit of reservation for the purpose of service of the Assistant Teacher, but he will be denied the same benefit when he applies for the post of Deputy Collector. It is, however, submitted by the learned counsel for the respondents in LPA No. 80 of 2018 that a person cannot claim reservation in both the States as that would be contrary to the ratio of the Judgment of the Hon'ble Supreme Court of India in **Marri Chandra Shekhar Rao's case (supra)**, but he shall be entitled to the reservation only in one State, i.e., either in the State of Jharkhand or in the State of Bihar after bifurcation.

1. Learned counsels have accordingly, submitted that the impugned action of the State Government, denying the benefits of reservation to the appellants in LPA No. 282 of 2015 and analogous matters, as also in LPA No. 80 of 2018, cannot be sustained in the eyes of law.

2. *Per contra*, learned Additional Advocate General, Sri Manoj Tandon appearing on behalf of the State of Jharkhand and has submitted that it is a well settled principle of law, as decided by the Hon'ble Apex Court, in **Bir Singh's case (supra)**, following its earlier decision in **Marri Chandra Shekhar Rao's case (supra)**, in which, the Hon'ble Apex Court has taken into consideration the provisions of Articles 341 & 342 of the Constitution of India, as also Article 16 of the Constitution of India, holding that the 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,

and further, that the Scheduled Castes and Scheduled Tribes, so specified under the Presidential Orders, would have also the right to migration or the right to move from one part of the Country to another and there is no inhabitation in such migration, but once they decide to migrate, they do not carry with them any special rights of privileges attributed or guaranteed to them in the original State or area or part thereof. The same view has also been taken by the Hon'ble Apex Court in **Action Committee's case** (*supra*), and this matter has also been decided by the Division Bench of this Court in **Kavita Kumari Kandhaw and Ors. Vs. State of Jharkhand and Ors.**, reported in 2006 (2) JCR 512 (Jhr), laying down the law as follows:-

"14. -----, Thus, they cannot derive the advantage of reservation for the purposes of appointment in the State of Jharkhand. We have noticed that some of the petitioners have enclosed caste certificates, most of which have been issued by the district authorities, which now fall within the successor State of Bihar or Uttar Pradesh whereas one or other petitioner have enclosed the caste certificates, issued by the district authorities, territory of which now fall within the State of Jharkhand. But in many of the cases, the certificates, so enclosed, have been issued much after submission of the application for appointment. It has brought to our notice that many persons though have enclosed the caste certificates, issued by the district authorities of the State of Bihar, in the writ petitions certain certificates, issued by the district authorities of the State of Jharkhand, have also been enclosed to suggest that they belong to the State of Jharkhand. Such individual cases cannot be scrutinized by this Court nor such claim can be determined, which can be taken care of by the competent authorities of the State. If any certificate, enclosed by one or other petitioner, issued by the district authorities of the State of Jharkhand prior to submission of the application forms, has been enclosed, then the authorities may consider the case of such person for appointment against the reserved categories, if it is found that such person belongs to the State of Jharkhand. But those, who have enclosed, the certificates, issued by the district authorities, now fall within the State of Bihar, or the certificates, issued by the district authorities of Uttar Pradesh or any other State, cannot claim reservation for appointment in the services of the State of Jharkhand. Similarly, those, who have obtained certificates from the district authorities of

the State of Jharkhand after the last date of filing of the application form, those certificates also cannot be taken into consideration to grant benefit of reservation." (Emphasis supplied).

25. Learned Additional Advocate General has submitted that in **Madhu's** case (*supra*), the law has not been laid down by the Division Bench correctly, inasmuch as though in the said case, the Division Bench of this Court has taken note of the decision of the Coordinate Bench in **Kavita Kumari Kandhaw's** case (*supra*), but it has neither distinguished the said case nor has given any reason for taking a contrary view. It is submitted by the learned Additional Advocate General that the decision of the Division Bench of this Court in **Madhu's** case (*supra*) is *per-incurim*, the law laid down by the Hon'ble Apex Court and also in **Kavita Kumari Kandhaw's** case. Learned Additional Advocate General submits that the Division Bench of this Court could not have taken a contrary view and in any view of the matter, if the Division Bench, deciding **Madhu's** case, was not agreeable to the view of the earlier Division Bench in **Kavita Kumari Kandhaw's** case, it had no option but to refer the matter to the Larger Bench. In this connection, learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in **Mahadeolal Kanodia Vs. The Administrator General of West Bengal**, reported in *AIR 1960 SC 936*, laying down the law as follows:-

"19. Before we part with this appeal, however, it is our duty to refer to one incidental matter. We have noticed with some regret that when the earlier decision of two Judges of the same High Court in Deorajin's case, 58 Cal WN 64 : (AIR 1954 Cal 119), was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of

another Division Bench, and holding the view that earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court.

20. As far as we are aware it is the uniform practice in all the High Courts in India that if one Division Bench differs from an earlier view on a question of law of another Division Bench, a reference is made to a larger Bench. In Calcutta High Court a rule to this effect has been in existence since 1867. It is unfortunate that the attention of the learned Judges was not drawn in the present case to that rule. But quite apart from any rule, considerations of judicial propriety and decorum ought never to be ignored by courts in such matters."

(Emphasis supplied).

1. In this connection, learned counsel has also placed reliance upon the decision of the Hon'ble Apex Court in **Safiya Bee Vs. Mohd. Vajahath Hussain @ Fasi**, reported in (2011) 2 SCC 94, in which also, the similar view has also taken by the Hon'ble Apex Court.

2. Learned Additional Advocate General has also placed reliance upon the decision of the Hon'ble Apex Court in **State of A.P. Vs.**

M. Radha Krishna Murty, reported in (2009) 5 SCC 117, laying down the law as follows :-

17. "15. ... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant

to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. -----."

28. Learned Additional Advocate General has also placed reliance upon paragraphs 34, 36, 37 and 38 quoted from the decision of **Bir Singh's** case (*supra*), and pointed out that even one Hon'ble Judge who had taken the partly descending view in **Bir Singh's** case (*supra*), has also concurred with the aforesaid view in Paragraph 105 of the Judgement, which reads as follows:-

"My conclusion for agreeing with the view taken in paras 34 and 36

105. It is now settled law that a person belonging to Scheduled Caste/Scheduled Tribe in State „A' cannot claim the same status in another State „B' on the ground that he is declared as a Scheduled Caste/Scheduled Tribe in State „A'. The expressions "in relation to that State or Union Territory" and "for the purpose of this Constitution" used in Articles 341 and 342 of the Constitution of India are to be meaningfully interpreted. A given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to that State or Union Territory for which it is specified. Thus, the person notified as a Scheduled Caste in State „A' cannot claim the same status in another State on the basis that he was declared Scheduled Caste in State „A'. Article 16(4) has to yield to the constitutional mandate of Articles 341 and 342."

29. Learned Additional Advocate General has pointed out that the decision of the Hon'ble Apex Court in **Sudhakar Vithal Kumbhare's** case (*supra*) is distinguishable from the facts of this case. Learned Additional Advocate General has pointed out that in the said case, the appellant was denied the benefit of reservation in service promotion, whereas the cases in hand do not relate to in service promotion. It is submitted by the learned counsel that the cases relating to in service promotion in the State of Jharkhand are fully taken care-of by Section 73 of the Bihar Reorganisation Act, 2000, according to which, the condition of service applicable to a person allocated the cadre in the State of Jharkhand shall not be varied to disadvantage, except with the previous

approval of the Central Government. Learned Additional Advocate General has pointed out that even in the case of the respondent writ petitioner in LPA No. 80 of 2018, he shall be entitled to get the benefit of promotion in his service as a Teacher, but if he wants to apply for any other post, subject to open selection, no benefit of reservation can be granted to him. Learned Additional Advocate General accordingly, submitted that the benefit that has been given in **Sudhakar Vithal Kumbhare's** case (*supra*) has already been fully given by the State of Jharkhand to its in-service employees.

30. Learned Additional Advocate General has further submitted that the reservation to a particular caste of a person is decided taking into consideration the population of the people, representing that particular caste. It is submitted by the learned Additional Advocate General that if the contention of the appellants are agreed upon, the people in the reserved category in the State of Jharkhand may be put in a disadvantageous position, inasmuch as their rights to employment on the basis of the reservation applicable in the State, may be taken away by the people, who are the residents of the other State or who have migrated to the State of Jharkhand. It is submitted by the learned Additional Advocate General that this aspect of the matter has been taken care of by the Full Bench of the Bombay High Court in Writ Petition No.6060 of 2008 and analogous matters (**Kum Shweta Santalal Lal's** case), referred to by the learned counsel for the appellants. Learned Additional Advocate General has contended that following the decision of the Hon'ble Apex Court in **Marri Chandra Shekhar Rao's** case (*supra*), and **Action Committee** (*supra*), the Bombay High Court held that the migratee not ordinarily resident on the date of the Presidential Order, shall not be entitled to the benefits of reservation in the State of migration. Learned AAG has drawn our attention, particularly to paragraphs 9 and 26 of the Full Bench decision of Bombay High Court, referred herein below:-

"9. If such construction is not to be accepted in view of the observation in Kumbhare (supra), as understood in Markute (supra) and the date of the Presidential notification i.e. 10th August, 1950 is

considered without reference to the reservation in the geographical area of the new State of Maharashtra, then all S.Ts in the erstwhile geographical area of the Bombay State on the date of the Presidential Order would also be S.Ts for the State of Bombay as also the State of Bombay which came into being in 1956 though they were not ordinarily resident of the State of Maharashtra on 10.8.1950. This would mean that S.Ts in the earlier geographical region of Bombay State as on 10.8.1950 though in some other State if notified, as S.Ts in that State, and also in the State of Maharashtra, though not resident in the State of Maharashtra, would be entitled to the benefits of S.T. Reservation in the State of Maharashtra. This would increase the population of S.Ts for the State of Maharashtra, and would deny to the members of the S.Ts ordinarily resident in the State of Maharashtra, the benefits of reservation as they would have to share the same with S.Ts having similar nomenclature from other States which formed the erstwhile State of Bombay as on 1.8.1950. The S.Ts of the other States at the same time would continue to get the benefit of reservation in the State of origin.

26. Having said so, we may now answer the Reference. In case of a migrant belonging to a Scheduled Caste, not ordinarily resident as on 10.3.1950 in the area that now constitutes the State of Maharashtra and in a case of S.T., considering Rule 5, on 6.9.1950, would not be entitled to the benefits of reservation as S.C./S.T. in the State of Maharashtra. They and their progeny will continue to get the benefits of reservation in the State of origin. Reference answered accordingly."

31. Learned Additional Advocate General has lastly submitted that with respect to **Pankaj Kumar's case** (in LPA No.80 of 2018), the Writ Court has committed a grave error of law by giving a specific direction for issuing the appointment letter in favour of the respondent-writ petitioner, which the Writ Court could not do, as the only direction that could be passed was for consideration of the case of the respondent-writ petitioner. Learned A.A.G., in support of his contention, has placed reliance upon the decision of the Hon'ble Apex Court in **General Manager, State Bank of India and Ors. Vs. Anju Jain**, reported in (2008) 8 SCC 475, laying down the law as follows:-

"37. Even on second ground, the submission of the Bank is well founded. As noted earlier, the learned Single Judge issued

direction to the Bank to appoint the writ petitioner, widow of the deceased employee within one month. As per settled law, a writ of mandamus can be issued directing the authority to consider the case of the petitioner for an appointment or promotion as the case may be but no direction can be given to appoint or promote a person."

1.Learned Additional Advocate General has finally concluded, submitting that the benefit of reservation cannot be granted to the residents outside the State, including the State of Bihar, irrespective of the fact of the date of birth and irrespective of the fact that prior to 15.11.2000, they are enjoying the benefits of reservation in the unified State of Bihar, unless the candidate is the ordinary resident within the territory of now the State of Jharkhand, since the date of Presidential Order, i.e., since 11th August, 1950.

2.The State of Bihar is represented by the learned counsel, Mr. S.P. Roy and a counter affidavit has also been filed on behalf of the State of Bihar in LPA No.136 of 2015, wherein, it is stated that the Government of the State of Bihar has already taken a decision vide his Letter No. 70 dated 11.06.1996, issued in its Department of Personnel and Administrative Reforms, to give the benefits of reservation only to the permanent residents of the State of Bihar and not to others. It is further stated that the same provision of the said letter has been inserted in the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1992, by adding a proviso to Sec.4 thereof, by Amendment Act of 2003, reading as follows:-

"Provided further that the candidates residing out of the State of Bihar shall not claim for benefits of reservation under this Act."

It is submitted that as such, the State of Bihar is not in a position to grant the benefits of the reservation to the permanent residents of the State of Jharkhand in the appointments made in the State of Bihar. In support of his contention, learned counsel for the State of Bihar has fully

adopted the submissions of the learned Additional Advocate General, appearing for the State of Jharkhand.

34. In reply, learned counsel for the appellants submits that the first Judgment of the Division Bench of this Court in **Kavita Kumari Kandhaw's** case (*supra*), is itself *per-incurim* as it has not considered the case of **Sudhakar Vithal Kumbhare**, decided by the Hon'ble Apex Court, in which, the question of reorganisation of the State was also involved. It is submitted by the learned counsel that either in the case of **Marri Chandra Shekhar Rao** (*supra*) or in the case of **Action Committee** (*supra*), the question of reorganisation of the State was not involved and in that view of the matter, if the Division Bench of this Court, deciding **Kavita Kumari Kandhaw's** case has not taken into consideration the decision of the Hon'ble Apex Court in **Sudhakar Vithal Kumbhare's** case, the said Judgment is itself *per-incurium*. Learned counsel has submitted that the decision or the Judgment can be *per-incurium* any provision in statute, rule or regulation, even if the same was not brought to the notice of the Court, and the decision of the Judgment can also be *per-incurium*, if it is not possible to reconcile its *ratio* with any of the previously pronounced Judgment of a co-equal or a Larger Bench, as has been laid down by the Hon'ble Apex Court in **Sandip Kumar Bafna Vs. State of Maharashtra and Anr.**, reported in (2014) 16 SCC 623, laying down the law as follows:-

"19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per

incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

1. Having heard the learned counsels for the parties and upon going through the various decisions, referred to by the learned counsels, the following propositions of law emerge:-

(a) Marri Chandra Shekhar Rao's case (supra), Action Committee's case (supra) and M.C.D. Vs. Veena (supra), relate to the situations, in which, a person migrated from one State to another, which two States were always separate States, and were never united at any point of time. In such a situation it has been held that *considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Caste or Scheduled Tribe or Backward Class in any given State would depend upon the nature and extent of disadvantages and social hardships suffered by the members concerned of the class in that State, which may be totally non est in the other State to which persons belonging thereto may migrate. Therefore, merely because a given caste is specified in one State as belonging to Scheduled Caste or Scheduled Tribe or Backward Class does not necessarily mean that if there be another caste belonging to the same nomenclature in another State, the person belonging to that group would be entitled to the rights, privileges and benefits admissible to the members of that caste of the latter State, and this aspect was very much in the mind of the Constitution Makers, as is evident from the choice of language of Articles 341 and 342 of the Constitution of India.*

(b) In Sudhakar Vithal Kumbhare's case (supra), and Sau Kusum's case (supra), the fact was that after

reorganisation, the part of the District of Chindwara had gone to the State of Maharashtra from the State of Madhya Pradesh. The States of Maharashtra and Madhya Pradesh, were two separate States, but in reorganisation, certain regions or part thereof were removed from one State and merged with other. It is a matter of common knowledge that the State of Madhya Pradesh was created in the year 1956 by combining the States of Madhya Bharat, Vindhya Pradesh and Bhopal, and the Marathi speaking Vidarbha region was removed and merged with the then Bombay State. The State of Maharashtra and Gujrat were created by dividing the erstwhile Bombay State on 01.05.1960. The cases of the appellants in both these matters were similar, as Sudhakar Vithal Kumbhare was denied the benefit of reservation in the State of Maharashtra, on the basis of caste certificate issued by the authorities in the State of Madhya Pradesh, and Sau Kusum had migrated from the State of Madhya Pradesh to Maharashtra after 1967, and she was also denied the benefit of reservation.

(a) It is thus, clear that **Sudhakar Vithal Kumbhare's** case and **Sau Kusum's** case relate to reorganisation of the same region, and the Presidential Order issued for inclusion in the list of Scheduled Caste / Scheduled Tribe or Backward Class was also for the same region, as in the case of unified State of Bihar, as the same unified region in the unified State of Bihar, with the common Presidential Order, has been bifurcated by the Bihar Reorganisation Act.

(b) In **Sudhakar Vithal Kumbhare's** case (*supra*), the question posed to be answered was *whether the members of the Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation in terms of the State Reorganisation Act*. Though this Court was of the view that this question had been left unanswered by the Apex Court, but in

using the expression '*but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States*', the intention of the Hon'ble Apex Court is apparent.

(a) In the same case, the Hon'ble Apex Court, taking into consideration that the areas bifurcated were at one point of time belonging to the same region, held that *under the Constitution (Scheduled Tribes) Order, 1950, as it originally stood, the tribe of that region may be given the same protection, as in the cases of such nature, the degree of disadvantages of various **elements which constitute the input for specification may not be totally different, as even after bifurcation, the State agreed for inclusion of the said tribe as a Scheduled Tribe.***

(b) In **Sau Kusum's** case (*supra*), the Hon'ble Apex Court quoted with approval the view of the Bombay High Court in **Hitesh Dasiram Murkute's** case (*supra*), wherein it was held that *the person claiming benefit would have to show that his **ancestors hailed on the date of inclusion of caste in Schedule from a place identified in the Schedule, and that the relevant date is not the date of migration, but date of inclusion of caste or tribe in the Schedule.*** Since the Hon'ble Apex Court has quoted this view of the Bombay High Court with approval, it is immaterial that the decision in **Hitesh Dasiram Murkute** was later overruled by the Full Bench of Bombay High Court.

(c) Again in **Bir Singh's** case (*supra*), the Constitution Bench of the Hon'ble Apex Court taking into consideration Articles 341 and 342 of the Constitution of India, has held that *there is no doubt that before the Presidential Orders were issued under Article 341(1) or under Article 342(1), elaborate enquiries were made, and only after such enquiries the Presidential Orders were issued, and also made it clear, that*

*certain castes or tribes or parts / groups thereof could be Scheduled Castes / Tribes only in **specified / particular areas** / districts of a State / Union Territory, and they are included in the lists of SC / ST / OBC, in any given State, taking into consideration the nature and extent of the disadvantages and social hardships by the members concerned of the class in that State.* In the present case, the castes / tribes of the appellants have been notified in Presidential Order of 1950 for the entire State of Bihar, and even after bifurcation, they have been recognized as such, by both the succeeding States, i.e., the States of Bihar and Jharkhand.

(a) In **Marri Chandra Shekhar Rao's** case (*supra*), as well as in **Bir Singh's** case (*supra*), it is held that *once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe **but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification.*** As such, the inclusion of the castes / tribes of the appellants in fifth and sixth Scheduled of the Bihar Reorganisation Act, 2000, clearly shows that these castes / tribes have been so included, as the Parliament intended that the members of the SC / ST / OBC should not be denied the benefits, and be given the continuity to the benefits even after the reorganisation of the State.

(b) In **Bir Singh**, the Apex Court has also noted that *whenever States'' reorganisation had taken place in the past, Parliament had exercised its powers under Articles 341(2) and 342(2) and provided for specific Castes / Tribes **that were entitled to be recognised as Scheduled Castes and Scheduled Tribes in relation to the reorganised States / Union Territories.** The Scheme of the Constitution (Scheduled Castes) and (Scheduled Tribes) Orders makes it clear that Parliament''s*

*intention was to **extend the benefits** of reservation in relation to the States / Union Territories only to the castes, races or tribes as mentioned in the Presidential Orders.*

(j) State or its legislature cannot take any action which be would contrary to, or inconsistent with the notification under issued clause (1) of Articles 341 and 342 of the Constitution. It is only the Parliament, which can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe. As such, any action by the State or its authorities denying the benefits of reservation to the Scheduled Castes, Scheduled Tribes or Backward Class, to the persons belonging to the same region which has been bifurcated, shall amount to create a class within a class of members of the Scheduled Castes, Scheduled Tribes or Backward Class, and the same would amount to tinkering with the list. Such sub-classification would be violative of Article 14 of the Constitution, as held by the Apex Court in **E.V. Chinnaiah's** case (*supra*).

(k) The contention of learned counsels, that by virtue of Art. 16 of the Constitution, no citizen can be deprived of the benefit of reservation on the ground of place of birth, or residence with respect to any employment or appointment to any office under the State, and other Articles of the Constitution of India have to be read in a manner so as to give a harmonious construction to Art. 16 as well, has already been answered by the Apex Court in **Marri Chandra Shekhar Rao's** case (*supra*), holding that a member of Scheduled Castes / Scheduled Tribes cannot get the benefit of the status „for the purpose of the Constitution throughout the territory of India“, as if such contention is accepted, the expression “In relation of that State” would become nugatory. The Hon'ble Apex Court has continued to say that this means that a given caste or tribe

can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified.

(1) In **Bir Singh's** case (*supra*), the Hon'ble Apex Court has also held that Article 16(4) is an enabling provision and it is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant, and, therefore, it will be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes / Scheduled Tribes enumerated in the Presidential Orders for a particular State / Union Territory within the geographical area of that State and not beyond.

36. In my considered opinion, the cumulative effect of the law laid down as above by the Hon'ble Apex Court, is that the Presidential Order notified on 11th August, 1950, notifying the Scheduled Castes and Scheduled Tribes under Articles 341 and 342 of the Constitution of India, was issued for the entire geographical region of the unified State of Bihar, taking into consideration the uniform degree of disadvantages, social hardships and sufferings to which the members of those castes and tribes were subjected to, in the entire geographical region. Considering the same, even after bifurcation of the State by virtue of the Bihar Reorganisation Act, 2000, even for the State of Jharkhand, fifth and sixth Schedule have been provided in the aforesaid Act, as the Parliament intended that the members of the SC / ST / OBC should not be denied the benefits, and be given the continuity to the benefits even after the reorganisation of the State. As such, if any caste / tribe included in the Presidential Order notified on 11th August, 1950, notifying the Scheduled Castes and Scheduled Tribes, is also included in the fifth and sixth Schedule to the Bihar Reorganisation Act, 2000, it has to be deemed that the Parliament intended to extend the benefits for the entire united region, with continuity to the benefits even after the reorganisation of the State.

1. Thus, taking a cue from the observations of the Hon'ble Apex Court in **Sudhakar Vithal Kumbhare's** case (*supra*), in the expression “*but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States*”, I am of the considered view that members of the SC / ST / OBC whose forefathers were admittedly the ordinary residents anywhere in the region, i.e., the geographical boundary of the unified State of Bihar, on the date of Presidential Order of 1950, cannot be denied the benefits after the bifurcation of the State, in either of the successor States of Bihar or Jharkhand, if they are born prior the bifurcation of the State, i.e., 15.11.2000, and were getting the benefits of reservation in the entire region, i.e., to say, the entire geographical region of the unified State of Bihar. There is nothing on the record to show that the disadvantages which were uniform in the entire geographical region of the unified State, have undergone any change after the bifurcation of the State. As such, any such person cannot be said to have migrated to either of the successor States, and as such, their date of migration, if any, shall be immaterial for all practical purposes, if on the date of Presidential Order of 1950, they were the ordinary residents of the unified State of Bihar. As such, the benefits of reservation shall be available to all such persons, in both the successor States of Jharkhand, as well as Bihar, and they cannot be denied such benefit by either of these States, as it is not within the domain of the State Government to take away such right, which power only vested with the Parliament.

2. Consequently, Proviso to Section 4 of the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and Other Backward Class) Act, 1992, brought by Amendment Act of 2003, and the letter No.70 dated 11.06.1996, issued by the Department of Personal and Administrative Reforms, Government of Bihar, are held to have no application to the members of the SC / ST / OBC whose forefathers were admittedly the ordinary residents anywhere in the

region, i.e., the geographical boundary of the unified State of Bihar, on the date of Presidential Order of 1950, if they are born prior the bifurcation of the State, i.e., 15.11.2000. Indeed, the aforesaid letter dated 11.06.1996, having been issued much prior to the reorganisation of the unified State of Bihar, cannot even otherwise, be said to have any application to such persons.

1. For the persons taking birth after the bifurcation of the State, i.e., after 15.11.2000, since the Presidential Orders of 1950 have been amended by the Parliament, by virtue of Sections 23 and 24 of the Bihar Reorganisation Act, 2000, read with its fifth and sixth Schedule, such persons shall be governed by the Presidential Orders as amended, 'in relation to that State', i.e., either of the successor States of Bihar and Jharkhand.

2. So far as respondent in L.P.A. No. 80 of 2018 is concerned, he was born and brought up in the State of Jharkhand and his caste certificate has also been issued by the District Authorities in the State of Jharkhand, and as such, his case is also fully covered by the law laid down as above, and is also fully covered by the decision of this Court in **Madhu's** case (*supra*).

3. I find and hold that **Kavita Kumari Kandhaw's** case (*supra*), decided by this Court does not lay down the good law, so far it relates to the members of the SC / ST / OBC whose forefathers were admittedly the ordinary residents of the unified State of Bihar, on the date of Presidential Order of 1950, and born prior to the bifurcation of the State, i.e., 15.11.2000. So far as persons belonging to any other State, and persons born after 15.11.2000, **Kavita Kumari Kandhaw** certainly lays down the good law.

4. Similarly, the law laid down by the Hon'ble Apex Court in **Marri Chandra Shekhar Rao, Action Committee and M.C.D. Vs. Veena**, shall be fully applicable, only so far as persons belonging to any other State, and persons born after 15.11.2000, are concerned, as these cases do not deal with the situation where the same region is reorganised after dividing them. But the persons who were the ordinary residents of

the unified State of Bihar on the date of Presidential Order of 1950, and were born prior to 15.11.2000, shall be guided by the decision of the Hon'ble Apex Court in **Sudhakar Vithal Kumbhare's** case (*supra*) followed in **Sau Kusum's** case (*supra*).

1.It is further made abundantly clear that I have examined this question only from the angle of Article 16 of the Constitution, regarding 'employment or appointment to any office under the State', and as such, this decision shall apply for giving the benefits of reservation only for the purpose of employment or appointment to any office under the State, and not for any other social benefits which are given by the State Governments to the persons belonging to the reserved castes, tribes or classes in the State.

2.The questions of law under reference, are answered accordingly. Consequently, the impugned orders dated 4.4.2008 and 16.6.2008 terminating the services of the appellants in L.P.A. No. 282 of 2015 and analogous matters, are hereby, quashed. The appellants are directed to be taken back into service forthwith. They shall however, not be entitled to any salary for the period they were out of service, but that period shall be treated to be spent in service, for the purpose of counting their seniority, and pensionary benefits. Consequently, the impugned Judgement dated 30.1.2015, passed by the Writ Court in W.P.(S) No. 3737 of 2008, and analogous matters, is set aside, and all these appeals are allowed.

3.For the same reasons, the respondent in L.P.A. No. 80 of 2018, also cannot be denied the appointment to the post of Deputy Collector, for which he had been selected after following the due process of appointment. As such, there is no illegality in the impugned Judgement dated 13.10.2017, passed by the Writ Court, in WP.(S) No. 5147 of 2010. Accordingly, I find no merit in L.P.A. No. 80 of 2018, which is hereby, dismissed.

(H.C. Mishra, J.)

Aparesh Kumar Singh, J: (Speaking for himself and B.B. Mangalmurti, J):

I have gone through the opinion of my esteemed Brother Justice Harish Chandra Mishra. However, having gone through the same, I am respectfully unable to agree with the reasonings and conclusions arrived at by His Lordship at paragraph-36 to 45. While recording my separate opinion, I wish to delineate in brief the necessary factual background of the issue at hand, as it has been dealt in detail by my esteemed brother Justice Mishra in his opinion.

Brief factual matrix leading to the present reference:

2. Appellants in LPA No. 282/2015 approached the writ court being aggrieved by termination of their services on the reserved post (SC/ST/OBC) of constable in Jharkhand Police on the ground that they were permanent residents of the State of Bihar and had produced a caste certificate issued by the authorities in the state of Bihar. They were appointed after bifurcation of the parent State of Bihar in the State of Jharkhand. The writ court relying upon the decision of learned Division Bench of this Court rendered in the case of **Kavita Kumari Kandhaw & others versus State of Jharkhand & others [2006 (2) JCR 512 (Jhr)]**, held that caste certificate issued by the State of Bihar is not valid in the State of Jharkhand.

State of Jharkhand is the appellant in other Letters Patent Appeal No. 80/2018. In this case, writ petitioner who was appointed on the post of Assistant Teacher by the erstwhile State of Bihar against the scheduled caste reserved post and had been allocated to the State of Jharkhand after bifurcation of the parent State, had succeeded in the 3rd Combined Civil Services Examination 2008 under Advertisement No. 11/2007 published by the Jharkhand Public Service Commission as a scheduled caste category candidate and was also asked to report for training from 12.08.2010. But he was denied appointment while other successful candidates were appointed to the post from the scheduled caste category. Writ petitioner had claimed that he originally belonged to Patna district in the State of Bihar but was born on 27.09.1974 in the district of

Hazaribag where his father was residing at the relevant point of time and had been brought up in the territories now falling within the State of Jharkhand and had also undertaken his education in the State of Jharkhand. He has been residing in the district of Ranchi since 1989 permanently and had completed college education in Ranchi. His name appeared in the voter list of Ranchi in 1994. These statements were made at para-14 of the writ petition and in the representation dated 14.08.2010 (Annexure-10 to the writ petition). Writ petition was contested by the State of Jharkhand on the ground that the petitioner being a permanent resident of State of Bihar, was not entitled for the benefit of reservation in the State of Jharkhand since he had migrated from the State of Bihar. The writ court however directed the Respondent State of Jharkhand to issue appointment letter in favour of the writ petitioner, holding that the caste of the writ petitioner was declared as scheduled caste in the State of Jharkhand and he was also born at Hazaribag district in the State of Jharkhand and was declared successful as a person belonging to the scheduled caste. Accordingly, the Respondent State was directed to issue appointment letter to the writ petitioner Pankaj Kumar with all consequential benefits. Learned Division Bench while hearing batch of these Letters Patent Appeals led by LPA No. 282/2015 was of the view that the question whether a person born prior to 15.11.2000 in the parent State of Bihar and belonging to the reserved category and enjoying the benefits thereof throughout the territory of unified State, should be entitled to the benefits of reservation in the State of Jharkhand or not, is *res-integra*. These appellants were not responsible for division of the parent State and the caste of the appellants are recognized in the reserved category even in the State of Jharkhand after bifurcation.

3. Learned Division Bench took a view that though, similar issue had been considered by Hon'ble Supreme Court of India in the case of **Sudhakar Vithal Kumbhare versus State of Maharashtra & others [(2004) 9 SCC 481]**, but the said question was left undecided by the Hon'ble Supreme Court of India. While referring these matters to the larger Bench, the Court felt that if the question involved is decided in

favour of the writ petitioner, benefits thereof must be applicable in both the States i.e. State of Jharkhand and State of Bihar. Accordingly, State of Bihar through its Chief Secretary was also added as party in one of the Letters Patent Appeal No. 136/2015.

1. As the factual matrix of both set of appeals reveal, the basic issue to be answered in this reference is, whether the writ petitioners in LPA No. 282/2015 and LPA No. 80/2018 are entitled to the benefit of reservation in the State of Jharkhand though they were residents of different districts of the State of Bihar such as Bhagalpur, Siwan, Jamui, Munger, Patna, etc.? An incidental question also arises, whether the writ petitioner in LPA No. 80/2018 though born and brought up on 27.09.1974 in the district of Hazaribag and having been appointed on 21.12.1999 as an Assistant Teacher in scheduled caste category on the basis of certificate issued by the competent authority in the State of Jharkhand prior to bifurcation of the State, could be denied the benefits of reservation in direct recruitment to a post under the State of Jharkhand since he originally belongs to the Patna district falling within the successor State of Bihar?

1. The learned Division Bench while making the reference was of the view that if the issue is decided in favour of the writ petitioners, in that event, similar benefits should accrue to persons vice-versa in the Successor State of Bihar as well. After dealing with the legal position at hand and the decision of the Apex Court, Bombay High Court and two conflicting decisions of this Court, Brother H.C. Mishra, J has in his opinion held that all such persons belonging to the reserved category whose forefathers were admittedly ordinary residents of any region within the geographical area of the unified State of Bihar on the date of Presidential Order of 1950 and were born prior to the bifurcation of the parent State of Bihar i.e. 15.11.2000, shall be entitled to reservation in both successor States of Jharkhand as well as Bihar. However, those born after bifurcation of the State i.e. 15.11.2000 would not be entitled to the similar benefits since the Presidential Order of 1950 has been amended by the Parliament by virtue of section 23 and 24 of Bihar Reorganization

Act, 2000 read with its Fifth and Sixth schedule thereof. Such persons shall be governed by amended Presidential Order to that State i.e. either of the Successor State of Bihar or Jharkhand. Accordingly, it has been held that the decision rendered in the case of **Kavita Kumari Kandhaw (supra)** does not lay down a good law as regards the member of SC/ST/OBC whose forefathers were admittedly ordinary residents of the unified State of Bihar on the date of Presidential Order, 1950 and were born prior to 15.11.2000, but it is good law, so far as persons belonging to either of the State born after 15.11.2000 is concerned. His Lordship has held that the decision rendered by the Apex Court in the case of **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another versus Union of India and another [(1994) 5 SCC 244]** and **MCD versus Veena [(2001) 6 SCC 571]** are applicable to any such person born after 15.11.2000, but persons who were ordinary residents of the unified State of Bihar on the date of Presidential Order of 1950 and were born prior to 15.11.2000, shall be guided by the decision of the Apex Court in the case of **Sudhakar Vithal Kumbhare (Supra)** and followed in **Sau Kusum versus State of Maharashtra & others [(2009) 2 SCC 109]**. It was further made abundantly clear that the instant answer is in the context of applicability of Article 16 of Constitution regarding employment or appointment to any office under the State and shall apply only for the purpose of benefits of reservation for public employment to any office under any State and not for social benefits conferred by the State Government to the reserved category candidates. Brother Justice Mishra has referred to the elaborate arguments of the parties before recording his conclusions.

6. I propose to deal with the issue under reference in the following manner:

For better appreciation of the issue at hand, Article 341, 342 and 342-A of the Constitution are quoted hereunder:

“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].

(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.

342. Scheduled Tribes. *(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 tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State [or Union territory, as the case may be].*

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

342-A. Socially and educationally backward classes.- *(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 socially and educationally backward classes which shall for the purposes of this Constitution be deemed to be socially and educationally backward classes in relation to that State or Union territory, as the case may be.*

(2) Parliament may by law include in or exclude from the Central List of socially and educationally backward classes specified in a notification issued under clause (1) any socially and educationally backward class, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.”

Article 16(4) has been read to be an enabling provision to provide reservation to classes and categories of SC/ST enumerated in Presidential Order for appointment to public services in a particular State/UT within its geographical area and to socially and educationally backward classes. The expression “in relation to that State or Union Territory” and “for the purpose of this Constitution” used in Article 341 and 342 have been held to mean that benefits of such reservation stand confined to the geographical territories of a State / UT in respect of which list of SC/ST have been notified by the Presidential Orders. If the benefit of status as a member of scheduled caste / scheduled tribes „for the purpose of Constitution” is extended throughout the territory of India, then the expression “in relation to that State” would become nugatory. It is the

Parliament only who can by law include in or exclude from the list of scheduled castes or scheduled tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. It is also well settled that consideration for specifying a particular caste or tribe or class for inclusion in the list of scheduled castes/scheduled 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-existent in another State to which persons belonging thereto was to migrate. [See: **Marri Chandra Shekhar Rao versus Dean, Seth G.S, Medical College and others, (1990) 3 SCC 130**] followed in another Constitution Bench decision in **Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another versus Union of India and another [(1994) 5 SCC 244, para-3 and 16]** and relied upon in the latest Constitution Bench Judgement of the Apex Court in the case of **Bir Singh versus Delhi Jal Board and others [(2018) 10 SCC 312, para- 28 to 38]**. [See also: **M.C.D versus Veena & others (2001) 6 SCC 571** which related to OBC's where the same view was upheld]. In the case of **Bir Singh (supra)** the Apex Court at para-36 to 38 held as under:

“36. The upshot of the aforesaid discussion would lead us to the conclusion that the Presidential Orders issued under Article 341 in regard to Scheduled Castes and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any authority including the Court. It is Parliament alone which has been vested with the power to so act, that too, by laws made. Scheduled Castes and Scheduled Tribes thus specified in relation to a State or a Union Territory does not carry the same status in another State or Union Territory. Any expansion/deletion of the list of Scheduled Castes/Scheduled Tribes by any authority except Parliament would be against the constitutional mandate under Articles 341 and 342 of the Constitution of India.

37. Article 16(4) is an enabling provision. It enables the State to provide to Backward Classes including Scheduled Castes and Scheduled Tribes reservation in appointments to public services. Such reservation is to be provided on the basis of quantifiable data indicating the adequacy or inadequacy, as may be, of the representation of such classes in Government service. The data which is the basis of the satisfaction of the State being verifiable, is

open to judicial scrutiny on the limited ground of relevance of the circumstances on which the satisfaction is moulded. The policy decision to provide reservation, of course, is beyond the pale of judicial review.

38. It is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential Orders under Articles 341/342 is subject to alteration only by laws made by Parliament, operation of the lists of Scheduled Castes and Scheduled Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard, it must also be noted that the power under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an Executive Order issued under Article 166 of the Constitution. It will, therefore, be in consonance with the constitutional scheme to understand the enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes enumerated in the Presidential Orders for a particular State/Union Territory within the geographical area of that State and not beyond. If in the opinion of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of Scheduled Castes/Scheduled Tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution could be a possible trigger point of constitutional anarchy and therefore must be held to be impermissible under the Constitution.”

7. The line of decisions rendered by the Constitution Bench of the Apex Court in the case of **Marri Chandra Shekhar Rao; Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra** and **Bir Singh** consistently lay down that scheduled castes and scheduled tribes specified in relation to a State or a Union Territory do not carry the same status in another State or Union Territory and any expansion or deletion of the list of scheduled castes / scheduled tribes by any authority except Parliament would be against the constitutional mandate under Article 341 and 342 of the Constitution of India. Since power under Article

16(4) is not only capable of being exercised by legislative provision / enactment, but also by an Executive Order issued under Article 166 of the Constitution, any operation of the lists of scheduled castes and scheduled tribes by exercise of enabling power vested by Article 16(4) beyond the classes or categories enumerated under the Presidential Order for a particular State / Union Territory would have the obvious effect of circumventing the specific constitutional provisions in Article 341 and 342. If in the opinion of the State, it is necessary to extend the benefit of reservation to a class / category of SC/ST beyond those specified in the Lists for that particular State, constitutional discipline would require the State to make its view in the matter prevail with the central authority, so as to enable an appropriate parliamentary exercise to be made by an amendment of the Lists of scheduled castes / scheduled tribes for that particular State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution has been held to be impermissible under the Constitution.

8. It is true, as has been argued by the learned counsels for the writ petitioner, that these decisions did not specifically relate to cases arising out of bifurcation of an erstwhile State. In **Marri Chandra Shekhar Rao (supra)**, the petitioner belonging to „Gowda“ community recognized as Scheduled Tribe in the State of Andhra Pradesh, came to live with his father who was appointed on SC quota in Government of India Undertaking and placed at Bombay in the State of Maharashtra since the age of nine years. After passing secondary and higher secondary examination from Maharashtra, he sought admission in the medical college in Maharashtra on the basis of Scheduled Tribe status, but was denied the same. State of Maharashtra relied upon the circular dated 22nd February 1985 issued by the Government of India, Ministry of Home Affairs which inter-alia stated that Scheduled Castes / Scheduled Tribe person who has migrated from the State of origin to some other State for the purpose of seeking education, employment, etc. will be entitled to derive benefits from the State of origin and not from the State to which he has migrated. The question before the Apex Court was, whether one

who has been recognized as a Scheduled Tribe in the original State of birth continues to have the benefit or privilege or rights in the State of migration or where he later goes. While disposing of the writ petition, Hon'ble Supreme Court held that the petitioner was not entitled to be admitted to the medical college on the basis that he belongs to Scheduled Tribes in his original State. The Apex Court held that declaration of Scheduled Castes and Scheduled Tribes under Article 341 and 342 of the Constitution "in relation to that State" have to be read harmoniously with the expression "for the purpose of this Constitution" so as to give a full meaning and effect, so that one may not negate the other. Therefore, statutory constitutional provisions should be interpreted properly and where there is a conflict between two provisions, the same should be so interpreted as to give effect to both since nothing is surplus in the Constitution and no part should be made nugatory. So construed, it must be held that reservation made in relation to Scheduled Castes or Scheduled Tribes of that State is so determined to be entitled to all privileges and rights under the Constitution in that State. This construction is consistent with the language, purpose and scheme of the Constitution. [See: **Marri Chandra Shekhar Rao versus Dean, Seth G.S, Medical College and others, (1990) 3 SCC 130, para-13 and 14.** In the case of **Action Committee (supra)**, the same view was affirmed and followed. At para-16, it was held as under:

"16. 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."....."(emphasis supplied)

In the case of **Bir Singh (supra)**, the question before the Apex Court was again posed for consideration in the following manner.

“Whether a person belonging to a Scheduled Caste in relation to a particular State would be entitled or not, to the benefits or concessions allowed to Scheduled Caste candidate in the matter of employment, in any other State?”

9. The question referred to above in the case of **State of Uttaranchal versus Sandeep Kumar Singh [(2010) 12 SCC 794]**, was felt to be surviving in the instant appeals arising out of the Full Bench decision of Delhi High Court in the case of **Deepak Kumar versus District and Sessions Judge, Delhi** and other analogous civil appeals arising from the decision of the Calcutta High Court. The decision in the case of **S. Pushpa versus Sivachanmugavelu (2005) 3 SCC 1** was perceived to be contrary to some of the view expressed by the Constitution Bench judgment in the case of **Marri Chandra Shekhar Rao (supra)** and **Action Committee (supra)**. The learned Central Administrative Tribunal followed the decision in the case of **Marri Chandra Shekhar Rao (supra)** and **Action Committee (supra)** in preference to the view expressed in **S. Pushpa (supra)** and held that a migratee Scheduled Castes person would not be entitled to the benefit conferred on members of Scheduled Caste enumerated in the Lists, so far as Union Territory of Delhi is concerned. Delhi High Court sitting in full Bench, found the decision in **S. Pushpa** to be more directly relatable to the issue at hand i.e. being one of the services in the Union Territory. It therefore felt bound by the decision of the three-Judge Bench of the Apex Court in **S. Pushpa (supra)**. However, while doing so, Delhi High Court in para-66 of the judgment emphasized on the necessity of an authoritative pronouncement on the issue arising. On certificate to appeal under Article 134-A of the Constitution, instant appeal lay before the Apex Court for decision on the point of reference made earlier in the case of **State of Uttaranchal (supra)**, though said appeal had been disposed of by a larger Bench of the Apex Court vide order dated 06.08.2014 in the light of the findings of the High Court. The question referred therefore had remained unanswered. In the case of **Bir Singh**

(**Supra**), the Apex Court answered the reference at para-38 of the opinion rendered by the Hon'ble Justice Ranjan Gogoi as His Lordship then was, for himself, Justice Ramana, Justice Shantanagoudar and Justice Nazeer, Justice Banumathi partly concurred with the conclusions arrived at para-34 and 38 while differing with the conclusion in para-69 regarding approval of Pan India Reservation Rule to the National Capital Territory of Delhi in relation to services under the State / Union Territories. The majority judgment in the case of **Bir Singh (supra)** held that Pan India Reservation Rule could apply to the National Capital Territory of Delhi.

10. However, it should not be lost sight of while dealing with the arguments of learned counsel for the petitioners herein, that both the majority judgment and partly concurring judgment of Justice Banumathi in the case of **Bir Singh** have made reference to the amendments made to the Presidential Order by the Parliament at the time of reorganization of the States including the State of Bihar. 11. It is contended by the writ petitioner that the decision of **Sudhakar Vithal Kumbhare (supra)** and **Sau Kusum (supra)** deal with the cases arising out of reorganization of the State. Writ petitioners have placed strong reliance on these decisions.

12. Sudhakar Vithal Kumbhare was a member of Scheduled Tribe known as Halba / Halbi which stood recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra. He was the resident of village Sawargaon, Post. Pandhurna district Chhindwara in the State of Madhya Pradesh. As a result of State reorganization, a part of the said district Chhindwara being Chandrapur which was originally in the State of Madhya Pradesh, had gone into the State of Maharashtra. It was not in dispute that he was brought up and educated in the village Pandhurna / Chhindwara district and had been appointed in Maharashtra Electricity Board against the non-reserved vacancy on the post of Junior Engineer (Civil) on the basis of merit. In 1987 he was promoted to officiate as an Assistant Engineer (Civil) against a reserved vacancy on the basis of a caste certificate of Halba / Halbi caste issued by the competent authority of the State of Madhya Pradesh. However, later on,

he was reverted to the post of Junior Engineer as he was held to be not entitled to the benefit of reservation for Scheduled Tribe in the State of Maharashtra. The Apex Court referred to the earlier decisions in the case of **Action Committee (supra)** and after acknowledging the legal position having regard to the plain expression “in relation to that State” in Article 342 of the Constitution, observed in the following terms.

“5..... It is one thing to say that the expression “in relation to that State” occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganisation Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind.”(emphasis supplied)

13. It is apparent from a reading of the above observation that the Apex Court having noticed the unique feature of the case wherein both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region as it originally stood, under the Constitution (Scheduled Tribes) Order, 1950, was of the opinion that the question was required to be referred before the Caste Scrutiny Committee established in the light of the judgment of the Apex Court in the case of **Kumari Madhuri Patil (I) versus Addl.**

Commr., Tribal Development [(1994) 6 SCC 241]. The Apex Court observed that in a given case of this nature, the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganization might have agreed for inclusion of the said Tribe „Halba / Halbi as a Scheduled Tribe in the State of Maharashtra having regard to the said fact in mind. It therefore appears that the Apex Court, having regard to the distinctive feature of the case where P.O. Pandhurna under which village Sawargaon of appellant Sudhakar Vithal fell and a part of the area Chandrapur which at one point of time belonged to the same region (covered under the Constitution (Scheduled Tribes) Order 1950 as regards the Scheduled Tribe Halba / Halbi) and the possibility that the nature of degree of disadvantages of various element which constitute the input for specification may not be totally different in the successor State of Madhya Pradesh and Maharashtra upon reorganization, was persuaded to refer the question before the Caste Scrutiny Committee whether the appellant Sudhakar Vithal should get the same benefits despite bifurcation of the State in terms of States reorganization Act. The Apex Court however being aware of the legal position that a Scheduled Tribe notified in one State may not be given the benefits thereof in another State within the meaning of Article 342 of the Constitution, refrained from issuing a general direction granting benefit of reserved category to the persons belonging to one of the States after bifurcation of the parent State in the other successor State despite the fact that a Scheduled Tribe „Halba / Halbi“ stood recognized by both the successor States after reorganization. Moreover, Sudhakar Vithal originally appointed as a Junior Engineer in unreserved category under Maharashtra Electricity Board, had sought promotion to the post of Assistant Engineer (Civil) claiming the benefit of reservation as a Scheduled Tribe on the basis of a certificate of „Halba / Halbi“, a Scheduled Tribe, issued by the competent authority of the State of Madhya Pradesh. It follows therefrom that the Apex Court in the case of Sudhakar Vithal Kumbhare (supra) did not lay down a general

proposition of law that upon bifurcation of the State, the residents belonging to either of the successor State would be entitled to the benefit of reservation in both the successor States, as it would have been contrary to the legal position in respect of Article 341 and 342 of the Constitution of India, as per the decision rendered by the Constitution Bench of the Apex Court in the case of **Action Committee (supra)**.

1. In the case of the petitioners in batch of cases lead by LPA No. 282/2015, it is not in dispute that they belong to the districts falling within the successor State of Bihar and no part or area of such district stood bifurcated and fell in the successor State of Jharkhand at the time of reorganization of the parent State of Bihar. As a matter of fact, under the Bihar Reorganization Act, 2000, the division of the territories of the erstwhile State of Bihar, as notified under section 3 of the Act of 2000, were all such districts which had existed from before and were not subjected to any division in their territories between two successor States at the time of bifurcation of the parent State of Bihar. For better appreciation, Section 3 and 4 of under Part-II of Bihar Reorganization Act, 2000 is quoted as under:

PART II

REORGANISATION OF THE STATE OF BIHAR

“3. Formation of Jharkhand State.- One and from the appointed day, there shall be formed a new State to be known as the State of Jharkhand comprising the following territories in the existing State of Bihar, namely:-

Bokaro, Chatra, Deoghar, Dhanbad, Dumka, Garhwa, Giridih, Godda, Gumla, Hazaribagh, Kodarma, Lohardaga, Pakur, Palamau, Ranchi, Sahebganj, Singhbhum (East) and Singhbhum (West) districts;

and thereupon the said territories shall cease to form part of the existing State of Bihar.

4. State of Bihar and territorial divisions thereof.- On and from the appointed day, the State of Bihar shall comprise the territories of the existing State of Bihar other than those specified in Section 3.”

1. A bare reading of the aforesaid provision clearly shows that the territorial area / divisions which fell into the new successor States of Jharkhand and Bihar did not face any division at the time of bifurcation of the parent State. For example, territories under Santhal Pargana Division comprising of Dumka, Sahebganj, Godda, Deoghar and Pakur

ceased to form part of the existing State of Bihar by virtue of Section 3 of Bihar Reorganization Act. None of the areas of any of these districts comprising under Santhal Pargana Division were divided and fell within the territories of Successor State of Bihar. The Santhal Pargana, as defined under Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, Section 4(xvii) thereof means „Santhal Pargana Division comprising of Dumka, Sahebganj, Godda and Deoghar Districts as substituted by an Amendment Act 14 of 1984 while Pakur, Sub Division of Sahebganj District, was carved out on 20.01.1994 to constitute Pakur District falling within Santhal Pargana Division. As such, in districts of Successor State of Bihar i.e. Bhagalpur, Jamui and Munger, no area of the districts falling within Santhal Pargana Division underwent division to form part of these districts / territorial division in Bihar. Perhaps, Parliament being conscious of such anomalies resulting in bifurcation of an existing State, specifically avoided the situation as arose in the case of **Sudhakar Vithal Kumbhare (supra)**. At the same time, by virtue of the amendments to the Constitution (Scheduled Tribes) and (Scheduled Castes) Order, 1950 under section 23 and 24 of the Act of 2000 as enumerated in the Fifth and Sixth schedule respectively of the Bihar Reorganization Act, Lists of Scheduled Caste and Scheduled Tribes were notified for the Successor State of Jharkhand separately. The List of Scheduled Castes and Scheduled Tribes under the Constitution Order, 1950 were amended and notified for the State of Jharkhand by insertion of Part-VIA and Part-XXII therein. By virtue of this amendment to the Constitution (Scheduled Castes) Order, 1950 and Constitution (Scheduled Tribes) Order, 1950, a distinct list of Scheduled Castes and Scheduled Tribes stood notified for the State of Jharkhand, though many of the Scheduled Castes or Tribes may be of same nomenclature in both the States.

16. In the case of the writ petitioners, it is not that they would be denied the benefit of reservation in the State of Bihar, if they belong to the Scheduled Castes or Tribes notified for that State and certificate to that effect has been issued by the competent authority of the State of

Bihar. If the proposition advanced by the writ petitioner is taken to its logical extreme, it would have the effect of conferring the residents of either of the Successor States the benefits of reservation in both the Successor States which would render the meaning of expression “in relation to that State” and “for the purposes of Constitution” nugatory. It would also render the provisions of section 23 and 24 read with Schedule Fifth and Sixth of the Bihar Reorganization Act, 2000 otiose and meaningless. It need not be lost sight of that bifurcation of the parent State of Bihar does not render a member of any Scheduled Castes / Scheduled Tribes, as falling under the Constitution (Scheduled Castes) Order, 1950 and the Constitution (Scheduled Tribes) Order, 1950, ineligible to such status if the Parliament has not deleted the said caste by virtue of any subsequent amendment in exercise of power under Article 341(2) and 342(2) of Constitution under the provisions of the Bihar Reorganization Act, 2000, except that they would be entitled to the benefit of reservation in the respective Successor States to which they belong. In this regard, it is the consistent stand of both the State of Jharkhand and State of Bihar that the benefits of reservation are guaranteed to all such persons who were permanent residents of the territories falling within the Successor States of Jharkhand or Bihar at the time of issuance of the Constitution (Scheduled Castes) Order, 1950 or Constitution (Scheduled Tribes) Order, 1950 and covered thereunder. The writ petitioners have not laid any challenge to the decision of the respective Successor States of Bihar and Jharkhand on the cut-off date i.e., the date of notification of the Constitution (Scheduled Castes) Order, 1950 or Constitution (Scheduled Tribes) Order, 1950 for the purposes of conferring the benefits of reservation to the members of the Scheduled Castes / Scheduled Tribes in the respective Successor States.

17. I now propose to deal with the contention of the writ petitioner in the light of the decision in the case of **Sau Kusum (supra)**. The appellant Sau Kusum claimed to belong to the carpenter caste hailing from Vidarbha area which is the border area of the State of Madhya Pradesh and Maharashtra. Carpenter in the State of Madhya Pradesh

were known as „Badhai“, whereas in the State of Maharashtra, they were known as „Sutar“ and in both the States, people belonging to the said caste were considered as Other Backward Class. As the facts of the case appear, it was not known when the family of the appellant Sau Kusum migrated from the State of Madhya Pradesh to the State of Maharashtra. She was elected on the post of Sarpanch reserved for the OBC category in the Panchayat in village Chincholi. The private Respondent challenged her election claiming that she did not belong to the OBC category and therefore, could not be elected. The Apex Court referred to the case of **Sudhakar Vithal Kumbhare (supra)** which had taken into consideration the peculiar situation obtaining wherein the border areas of a State whose part of the territory were transferred whereas part of the territory had remained and both were inhabited by the people having same traits and culture. In that view of the matter, the Apex Court at para-12 noted that if it is a fact that the people belonging to the said caste are recognized as OBC, both in Madhya Pradesh and Maharashtra being „Badhai“ in the former and „Sutar“ in the latter and keeping in view the fact that the Caste Scrutiny Committee has found her to be belonging to the „Sutar“ caste, the matter required reconsideration. The decision of the Bombay High Court in the case of **Hitesh Dasiram Murkute versus State of Maharashtra and others [(2007) 5 Mh.L.J. 454]** was also taken note of, wherein it was held in the following manner.

“13. It may be noticed that the Bombay High Court also in Hitesh Dasiram Murkute v. State of Maharashtra opined: (Mah LJ p. 472, para 41)

“(iv) Date too is equally relevant in order to identify the person as belonging to caste included in the Schedule on the date of such inclusion with reference to locality identified in the Schedule. Therefore, a person claiming benefit would have to show that his ancestors hailed on the date of inclusion of caste in Schedule from a place identified in the Schedule. In other words, the relevant date is not the date of migration but date of inclusion of caste or tribe in the Schedule.”

18. The Apex Court found that there was nothing on record to show as to when she had migrated to the State of Maharashtra. It was observed that if admittedly, she had migrated to the State of Maharashtra before

1967, she would be considered to be a permanent resident of Maharashtra. In this factual background and the legal position of **Sudhakar Vithal Kumbhare (supra)**, the Apex Court was of the opinion that the matter should be considered afresh by the Caste Scrutiny Committee wherein the appellant **Sau Kusum** may be directed to adduce evidence inter-alia on the question as to when she had migrated.

19. What is the significance of the year 1967 in relation to the case of **Sau Kusum**, needs to be understood in proper perspective since the writ petitioner, specifically in LPA No. 80/2018 has also placed strong reliance on the decision of the Apex Court in the case of **Sau Kusum**. In this regard, it is relevant to mention here that the State of Maharashtra framed Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. Thereafter, Government of Maharashtra framed Maharashtra Scheduled Castes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Rules, 2012 in exercise of power under section 18(1) of the Act of 2000. Rule 2 contains the definition clause. Rule 2(e) reads as under:

*“(e) “**deemed date**” means the **10th August 1950**, that is the date of Presidential Order for Scheduled Castes; and the **21st November 1961** for De-notified Tribes (Vimukta Jatis) and Nomadic Tribe; and the **13th October 1967** for Other Backward Classes and Special Backward Category;”*

Rule 3 provides conditions of residence for issuance of Caste Certificate, which reads as under:

*“3. **Conditions of residence for issuance of Caste Certificate.**-(1) The Competent Authority may issue a Caste Certificate to the applicant, who is a permanent resident of the concerned area on deemed date, for which the Competent Authority is designated or appointed, by the Government, by notification published under clause (b) of section 2 of the Act, in the Official Gazette.
(2) In case of the applicant, who is born after deemed date, the place of ordinary residence for the purpose of issuance of Caste Certificate shall be the place of permanent residence of*

his father or grandfather or great grandfather on deemed date.

(3) In case of migration within the State of Maharashtra, the applicant shall apply for Caste Certificate to the concerned Competent Authority, within whose jurisdiction their forefathers or relative were residing.”

Rule 6 provides for issuance of Caste Certificate to migrated persons; Rule 11 provides for Constitution of Scrutiny Committee. Though, rules have been framed in the year 2012, but the deemed date provided under rule 2(e) i.e. 13.10.1967 is the date of notification of Other Backward Class and Special Backward Category by the Government of Maharashtra. At Serial No. 174 thereof, is the caste „Sutar“. The significance of the year 1967 and the date of notification i.e. 13.10.1967 for OBC status in the State of Maharashtra has also been discussed in a decision of the Bombay High Court in the case of **Swami Kalavati W/O Sidhilingappa vs. State of Maharashtra and Anr. [2008 (1) MhLj 104]**. The State of Bombay underwent reorganization under the State Reorganization Act, 1956 and again under the Bombay Reorganization Act, 1960, whereunder the State of Gujarat and Maharashtra were created. The Presidential Orders of 1950 relating to Scheduled Castes / Scheduled Tribes were also amended under the VIIth and VIIIth Schedule to the Act of 1960 for the newly created States of Gujarat and Maharashtra. **Sau Kusum** claimed to belong to Other Backward Class and having migrated prior to 1967. The Circular of 21.08.1996 referred to in the case of **Sau Kusum** was made the basis to reject her case earlier by the Caste Scrutiny Committee since she was not the resident of Maharashtra prior to 1967. It is in this context that the Apex Court directed that the claim of the appellant **Sau Kusum** as belonging to Other Backward Class in the State of Maharashtra was required to be considered afresh by the Caste Scrutiny Committee to determine, whether she had migrated before 1967? The Apex Court at para-14 of the Report observed that there is nothing on record to show as to when she had migrated to the State of Maharashtra. If admittedly she had migrated to the State of Maharashtra before 1967, she would be

considered to be a permanent resident of Maharashtra. Since the case of **Sau Kusum** related to migration from Vidarbha area, bordering State of Madhya Pradesh and Maharashtra to the State of Maharashtra after its creation, the issue was required to be determined by the Caste Scrutiny Committee, whether she had migrated prior to 1967. The writ petitioner Pankaj Kumar (Respondent in LPA No. 80/2018) has not pleaded a case of migration to the Successor State of Jharkhand after its creation. His case is that he was permanently residing in the area falling within the territories of Jharkhand prior to reorganization of the State. Incidentally, both the decisions in the case of **Sudhakar Vithal Kumbhare** and **Sau Kusum** were rendered in the context of specific facts of their cases, as referred to hereinabove.

20. As is evident from the aforesaid discussion, the Apex Court in the specific facts of the case found it proper to direct the Caste Scrutiny Committee to consider the case of the appellant Sau Kusum afresh after examining the evidence adduced on the question as to when she had migrated. In this context, it is to be seen whether the ratio of **Sau Kusum** would apply to the case of the writ petitioners. In this regard, it is to be kept in mind that reliance on a decision is to be made after discussing as to how the factual situation fits in the fact situation of the decision relied upon. The observation of the Apex Court in the case of **Sau Kusum** have to be read in the context in which they appear to have been stated. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. It would be profitable to quote the opinion of the Apex Court in the case of **State of Andhra Pradesh Versus Radha Krishna Murthy [(2009) 5 SCC 117, para-17]** on what constitutes ratio decidendi of a decision.

“17. “15. ... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid’s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret

words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (AC at p. 761), Lord Mac Dermot observed:

„The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....”

1. In *Home Office v. Dorset Yacht Co. Ltd.*³ Lord Reid said (AC at p. 1027 A-B) *„Lord Atkin’s speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.”* Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) observed: (AC at p. 1069 H)

„...One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament....” And, in *British Railways Board v. Herrington* Lord Morris said: (AC p. 902 D)

„There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.”

1. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

2. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (*Abdul Kayoom v. CIT*, AIR p. 688, para 19)

„19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

* * *

„Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.”

As observed hereinbefore, there are clearly distinguishable features of the case of the writ petitioners from that of **Sudhakar Vithal Kumbhare** or **Sau Kusum** case. As such, the *ratio decidendi* of those

cases, in my humble opinion, would not apply to the case of the writ petitioners.

21. Apparently, the facts of the writ petitioners in LPA No. 282/2015 and analogous cases are not of migration from the State of Bihar to Jharkhand any time prior to bifurcation of the parent State of Bihar on 15.11.2000. In these cases, none of the territories under the districts of the parent State of Bihar underwent division as is evident from a reading of Section 3 and 4 of the Reorganization Act, as discussed hereinabove, as was the case in **Sudhakar Vithal Kumbhare (supra)**. The writ petitioner in LPA No. 80/2018 has also not pleaded the case of migration from the State of Bihar. According to his case, he was permanently residing since 1989 in Ranchi. He has done his graduation at Ranchi. He was appointed as an Assistant Teacher by the erstwhile State of Bihar in the Scheduled Caste category on the basis of certificate issued by the competent authority falling in the area now under State of Jharkhand prior to bifurcation of the State. In the case of **Sau Kusum**, the appellant claimed to belong to the Carpenter Caste from Vidarbha, a border area of Madhya Pradesh and Maharashtra and that the caste of Carpenter was recognized as „Badhai“ in Madhya Pradesh and „Sutar“ in the State of Maharashtra and considered as Other Backward Class. In none of the case of the present writ petitioners, the same fact situation emerges. There has been clear bifurcation of the regions or territorial divisions between the Successor State of Bihar and Jharkhand at the time of reorganization of the parent State of Bihar on 15.11.2000 as is evident from Section 3 and 4 of the Act of 2000. The district falling within the territorial division of Santhal Pargana have fallen within the State of Jharkhand, whereas the remaining districts adjacent thereto in other territorial division have been allocated to the successor State of Bihar. Therefore, the consequence befalling as a result of bifurcation of the parent State, as in the case of **Sudhakar Vithal Kumbhare (supra)** or **Sau Kusum (supra)**, do not apply to the petitioners since they are residents of the territories falling within the successor State of Bihar. Both the successor State of Bihar and Jharkhand have recognized the

persons who were permanent residents of the territories falling within the successor State of Jharkhand or Bihar at the time of issuance of Constitution (Scheduled Caste) Order, 1950 or Constitution (Scheduled Tribes) Order, 1950 as entitled to the benefit of reservation in the respective States.

22. It has been noticed in the foregoing paragraphs that none of these writ petitioners have laid any challenge to the cut-off date fixed by the successor State of Bihar and Jharkhand for the purposes of treating the persons as permanent resident of their respective States for being entitled to the benefit of reservation under the Fifth and Sixth Schedule of Bihar Reorganization Act i.e. Amendment of the Constitution (Scheduled Castes) Order, 1950 and Amendment of the Constitution (Scheduled Tribes) Order, 1950. As has been distinctly held in the line of the decisions rendered by the Apex Court and reiterated in the case of **Bir Singh (Supra)** at para-34 that “Unhesitatingly, therefore, it can be said that a person belonging to a Scheduled Caste in one State cannot be deemed to be a Scheduled Caste person in relation to any other State to which he migrates for the purpose of employment or education. The expressions “in relation to that State or Union Territory” and “for the purpose of this Constitution” used in Articles 341 and 342 of the Constitution of India would mean that the benefits of reservation provided for by the Constitution would stand confined to the geographical territories of a State/Union Territory in respect of which the lists of Scheduled Castes/Scheduled Tribes have been notified by the Presidential Orders issued from time to time. A person notified as a Scheduled Caste in State „A’ cannot claim the same status in another State on the basis that he is declared as a Scheduled Caste in State „A”. At para-36 of the report, Apex Court has concluded that the Presidential Orders issued under Article 341 in regard to Scheduled Castes and under Article 342 in regard to Scheduled Tribes cannot be varied or altered by any authority including the Court. It is Parliament alone which has been vested with the power to so act and that too, by laws made. Further, at para-38, quoted earlier, the Apex Court categorically held that power

under Article 16(4) capable of being exercised by a legislative provision/enactment and also by an Executive Order issued under Article 166 of the Constitution has to be read harmoniously with Article 341/342 of the Constitution. The List of Scheduled Castes/Scheduled Tribes in the Presidential Orders under Articles 341/342 can be subject to alteration only by laws made by Parliament. State / Union Territories by exercise of enabling power vested by Article 16(4) cannot circumvent the specific provisions under Article 341/342 of the Constitution.

1.State of Bihar through its counter affidavit has taken a categorical stand based upon the letter no. 70 dated 11.06.1996 (Annexure-A) and Bihar Reservation of Vacancies for the Post and Services) Act, 2003 that the candidates residing out of the State of Bihar shall not be entitled to the benefit of reservation under this Act. It has conveyed its decision to the State of Jharkhand through letter no. 72 dated 13.02.2004 (Annexure-C) that the benefit of reservation in the services in the State of Bihar could only be available to the candidates who are permanent residents of the State of Bihar and candidates belonging to the State of Jharkhand would not be entitled to such benefits.

The stand of the State of Jharkhand and State of Bihar are in consonance with the letter and spirit of the Fifth and Sixth Schedule of Bihar Reorganization Act, 2000 read with section 23 and 24 thereof. No derogation therefrom can be made by either of the State under enabling provisions of Article 16(4) of the Constitution of India in teeth of the law laid down by the Parliament as has been held in the case of **Bir Singh (Supra)**. No such direction can either be issued to the State of Jharkhand and Bihar in teeth of the provisions under the Bihar Reorganization Act.

1. From the aforesaid discussions, it follows that none of the case of the writ petitioners are covered under the ratio rendered by the Apex Court in the case of **Sudhakar Vithal Kumbhare (supra)** or **Sau Kusum (supra)** rendered in the specific facts of the case entailing therein. Moreover, as already discussed in the foregoing paragraphs, Sudhakar Vithal Kumbhare was denied the benefit of reservation at the

promotional stage and he had been entrant in services in non-reserved category. In the case of the writ petitioner in LPA No. 80/2018, the benefit of reservation available to him as a reserved category candidate on his appointment under the parent State of Bihar from the Scheduled Castes category stands protected by virtue of the executive instruction contained in letter dated 14.08.2008 by the State of Jharkhand in consonance with the specific provisions contained in the Parliamentary legislation i.e. section 73 of Bihar Reorganization Act, which reads as under:

“73. Other provisions relating to services.- (1) *Nothing in Section 72 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State:*

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Bihar or to the State of Jharkhand under Section 72 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(1) All services prior to the appointed day rendered by a person,-

(a) if he deemed to have been allocated to any State under Section 72, shall be deemed to have been rendered in connection with the affairs of that State;

(a) if he deemed to have been allocated to the Union in connection with the administration of the Jharkhand shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of services.

(1) The provisions of Section 72, shall not apply in relation to members of any All India Services.”

25. Parliament in its wisdom has provided for protection under section 73 of the Act of 2000 to any person serving under the parent State of Bihar from suffering any disadvantage due to his allocation to the State of Bihar or State of Jharkhand because of reorganization of the State. Therefore, a person appointed in the parent State of Bihar from the reserved category could not be denied the benefit of reservation in the other Successor State, in case he was not a permanent resident of that Successor State, upon reorganization of the parent State. However, this being an exception would not apply as a general rule in case of direct

recruitment to any post in the successor State, though such a person allocated pursuant to the bifurcation of the State under section 72 of the Act of 2000 would be protected from any disadvantage in his service condition under section 73 of the Act of 2000. Any contrary position would be in teeth of Article 341/342 which provides that a person belonging to the Scheduled Castes or Scheduled Tribes would be entitled to the benefits provided by the Constitution confined to a geographical area of the State or Union Territories in respect of which, List of Scheduled Castes and Scheduled Tribes have been notified by the Presidential Orders from time to time or have gone amended pursuant to the bifurcation of the State for the purposes of the Constitution, as has been held in the case of **Bir Singh (Supra)**.

26. In that sense, these writ petitioners cannot make out a case of discrimination on the grounds of unreasonable classification. Scheduled Castes and Scheduled Tribes persons, as notified under the Presidential Order and amended as per Fifth and Sixth Schedule of Bihar Reorganization Act and being the permanent residents, as on the date of Presidential Order, of the successor State, would be guided by and entitled to the benefit of reservation in the successor States. No exception can be made by any authority or State Legislature or by the Court to such Presidential Order except by the Parliament which has been vested with the power to do so and that too by laws made. The legislative enactment is preceded by a consultative exercise with the Governor of the State to amend the Presidential Order. Neither there are any materials adduced by the writ petitioners, nor this Court finds any grounds made out to engage in judicial review of a fact finding consultative exercise undertaken by the Union of India with the Governor of the State. The same nomenclature of the Scheduled Castes or Schedules Tribes in another State does not necessarily mean that they would be given the same rights and privileges admissible to the member of Schedules Castes / Schedule Tribes of the other State for the purposes of this Constitution. In broader perspective, such an argument also does not appeal to the reason since none of these writ petitioners are being denied the benefit of reservation

as Scheduled Castes or Scheduled Tribes category in the successor State of Bihar if they fulfill the conditions of being the permanent residents of the State of Bihar as on the date of Presidential Orders.

27. It is pertinent to state that none of the writ petitioners have alleged that the benefit of reservation is being denied to them by the Successor State of Bihar in matters of appointment to a public post. No action or part of action as a result of any decision alleged to have been taken by the State of Bihar which has the effect on the writ petitioners falling within the jurisdiction of the State of Jharkhand have arisen. As such, the territorial nexus of cause of action to assume jurisdiction under Article 226 of the Constitution of India being absent, any direction upon the successor State of Bihar to confer similar benefits to all persons covered under the Presidential Orders of 1950 belonging to Scheduled Castes or Scheduled Tribes category candidate, even if they do not fall in the class of permanent resident of the successor State of Bihar, as per the cut-off date of Presidential Notification of 1950 i.e. 11.08.1950, would indeed be beyond jurisdiction of this Court. Writ petitioners have not laid any challenge to any of the provisions of Bihar Reorganization Act, in particular Section 23 and 24, and amendment to the Presidential Orders for Scheduled Castes and Scheduled Tribes respectively under Fifth and Sixth Schedule thereof. Article 226 of the Constitution of India is quoted hereunder for better appreciation of the legal position in this regard. [See: **Kusum Ingots & Alloys Ltd. Versus Union of India & another [(2004) 6 SCC 254]**

“226. Power of High Courts to issue certain writs.- (1) Notwithstanding anything in Article 32, [* *] every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including [writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]*

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action,

wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”

28. On the basis of the discussions made hereinabove, the reasons recorded and the position in law as declared by the Apex Court in the decisions referred to hereinabove, I am of the considered opinion that none of the writ petitioners are entitled to the benefit of reservation as Scheduled castes or Scheduled Tribes or OBC category candidate in the successor State of Jharkhand for the purposes of appointment under the State. However, the service conditions of those persons serving under the erstwhile State of Bihar and allocated to the State of Jharkhand after bifurcation are protected under section 73 of the Act of 2000. I am also unable to conform to the view taken by Brother Justice Mishra to accord the benefit of reservation to all persons covered under the Presidential Orders of 1950 in both successor States if they were born before 15.11.2000. Such a distinction would, in my humble opinion, fall flat of the specific law passed by the Parliament i.e. Bihar Reorganization Act which has amended the Presidential Orders of 1950 under Fifth and Sixth Schedule. For the same reason, it cannot be held that the benefit of reservation under the Presidential Orders under the Fifth and Sixth Schedule of Bihar Reorganization Act would be applicable only to those persons born after bifurcation of the State i.e. 15.11.2000 and are residents of either of the States. Such a classification on the basis of date of birth of a person before or after 15.11.2000 has no rational nexus with the object sought to be achieved. Presidential Orders of 1950 has been amended under Fifth and Sixth Schedule read with section 23 and 24 of Bihar Reorganization Act. Both the Successor States born on 15.11.2000 are sovereign in their fields. The State of Bihar became non-existent from 15.11.2000. The two Successor States created by a law passed by the Parliament being sovereign in nature, cannot be compelled to provide reservation to persons who or whose forefathers were not the residents of the territories falling within the area of the Successor States on the date of the Presidential Orders. Such a cut-off date for recognizing the claim

of persons as being entitled to the benefit of reservation under the Presidential Orders, 1950 have not been challenged by the writ petitioners. As such, it does not lie within the jurisdiction of this Court to direct conferment of benefits of reservation in teeth of the provisions of Article 341 and 342 of the Constitution of India and the law laid down by the Parliament in exercise of the power under Article 341(2) and 342(2) of the Constitution of India, as has been clearly held in the case of **Bir Singh (Supra)**.

29. As such, I am of the humble opinion that the decision of the learned Division Bench of this Court in the case of **Kavita Kumari Kandhaw (supra)** lays down good law. However, the decision rendered by the learned Division Bench of this Court in the case of **Madhu versus State of Jharkhand & others [2010 SCC Online Jhar 1286]** is not the correct law. As a cumulative effect of the discussions made hereinabove and reasons recorded, judgment dated 13.10.2017 rendered by the learned Single Judge in the case of **Pankaj Kumar Versus State of Jharkhand & others** in WPS No. 5147/2010 cannot be upheld in law as well as on facts and it is accordingly set aside. Letters Patent Appeal No. 80/2018 is allowed. However, judgment dated 30.01.2015 rendered by the learned Single Judge in WPS No. 3737/2008 and analogous matters does not warrant any interference. Letters Patent Appeal No. 282/2015 and other analogous appeals arising therefrom are dismissed. Reference is answered accordingly.

(Aparesh Kumar Singh, J)

(B.B. Mangalmurti, J)

(B.B. Mangalmurti, J)

Jharkhand High Court, Ranchi
Dated 24th February 2020
R.Kr/BS/Ranjeet/A.F.R.