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Title: Need to provide reservation benefits to the Scheduled Tribes under Delhi Government.

DR. KIRODI LAL MEENA (DAUSA): The member of the tribal communities notified in the States and Union Territories were enjoying the reservation benefits of the vacancies in posts and services under the Government of NCT of Delhi till the Hon'ble Supreme Court pronounced its judgment in Civil Appeal No. 5092 of 2009 declaring that the dicta in Pushpa case Appeal Civil No. 6-7 of 1998 is an obiter and not lay down any binding ratio. The benefits of the reservation given to the Scheduled Tribes under Government of NCT of Delhi were stopped in the light of said judgment pronounced by the two-judges of Hon'ble Supreme Court setting aside the judgment pronounced by the three judges of Hon'ble Supreme Court in S. Pushpa case stating that on the basis of administrative circular issued or otherwise reservation of ST's can be given in GNCTD more so when the constitutional scheme as contained in Clause (1) of Article 342 of the Constitution of India putting a State and Union Territory in the same bracket. The marginalized section has been deprived of the benefits by the decision taken by the Government reducing the reservation to the Scheduled Tribes to 1%. The decision taken by the GNCTD is affecting the tribals across the country and the youth of the marginalized section were attracted towards the naxal activities having no employment opportunities.

Recently, the two-judges bench of Hon'ble Supreme court Civil Appeal No. 4494 of 2006 has held that in our view a two-judges Bench of this court could not have held the three-judges Bench in S. Pushpa case to be obiter and per in curium". A very important question of law as to interpretation of Articles 16 (4), 341 and 342 arises for consideration in the appeal. Whether Presidential Order issued under Article 342(1) of the Constitution has any bearing on the State's action in making provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. The extent and nature of interplay and interaction among Articles 16 (4), 341 (1) of the Constitution is required to be resolved. The fate of entire community has been hanged in balance by the Hon'ble Court using two words 1) dicta Obiter (and incidental observation made by a judge which is not material to the judgment and therefore not binding) i.e. statement which are not part of the ratio decidendi (2) Per in curium (a decision which a subsequent court finds to be a mistake and therefore not a binding precedent).

It is clear that the restriction imposed by two-judges bench in civil appeal no. 24327 of 2005 has been removed. Therefore, it is prayed that existing policy of Government of India to provide reservation benefits to the Scheduled Tribes under Government of NCT of Delhi vide O.M. NO. 7/2/55-SCT dated 14 October, 1955 MHA may be immediately resorted to so that tribal youths living in the isolated places may come into the main stream of the nation.

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