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Title: Need to provide reservation benefits to the Scheduled Tribes in jobs of Delhi Government.

DR. KIRODI LAL MEENA (DAUSA): The policy of the Government of India in regard to the reservations for SCs and STs in posts and services under the Government of India was laid down in the MHA Resolution No. 42/21/49-NSGS dated 13th September, 1950. Further, the MHA vide O.M. No. 7/2/55-SCT dated 14th October 1955 had taken decision that reservation of SC/ST in the local and regional recruitment to Class III & IV and posts made otherwise than through Union Public Service Commission except in Delhi where the percentage of reservation prescribed for the recruitment on all India basis should be followed, will be based on the proportion of the population of SCs and STs in the State. Further, Ministry of Home Affairs vide its Resolution No. 27/25/68-Estt. (SCT) dated 23rd March, 1970 took a decision to revise the percentage of reservation in respect of the Scheduled Tribes under Government of India in the light of population of these communities as shown in the 1961 Census i.e., the recruitment by open competition and in recruitment made otherwise than by open competition to posts filled by direct recruitment on all India basis, the reservation in favour of ST will be 7.5% as against the existing reservation of 5 %

The tribal communities notified in the States and UTs were enjoying the reservation benefits 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 Subhash Chandra & others Vs. Delhi Subordinate Services Selection Board and Others declaring that the dicta in Pushpa (Case Appeal Vigil No. 6-7 of 1998 S. Pushpa and Other Vs Siva Chanmugavelu and Others) is an obiter and not lay down any binding ratio. The benefits of the reservation 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 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 UT 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 N. 4494 of 2006 dated 7th October, 2010 State of Uttarakhand Vs. Sandeep Kumar Singh & Others 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 have been hanged in balance by the Hon'ble Court using two words 1) dicta obiter (an 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 ratione decidendi (2) per in curium (a decision which a subsequent court finds to be a mistake and therefore not a binding precedent).

Therefore in the light of judgment in Civil Appeal no. 4494 of 2006 State of Uttarakhand Vs. Sandeep Kumar Singh and Others it is clear that the restriction imposed by two-judges bench in civil appeal No. 24327 of 2005 Subhash Chandar & Others Vs. Delhi Subordinate Selection Board and Others 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 14th October, 1955 MHA may be immediately restored so that tribal youths living in the isolated places may come into the main stream of the nation.
