

A REPORT ON THE PROBLEMS OF MIGRANT SCs IN OBTAINING CASTE CERTIFICATES

It is important for candidates belonging to SC community to hold a Caste Certificate in their name, to avail of the constitutional benefits in services and educational institutions. In accordance with articles 341 and 342 of the constitution, a list of Scheduled Caste/Scheduled Tribes is prepared by each state and all such castes which are listed in these schedules can avail of such benefits in that state only. Each state govt. provides benefits only to those SC/STs who are listed in the schedule of that state govt. There is problem in availing benefits when a SC or ST migrates to a state other than the state of his origin. As per the latest news on population growth, the growth rate of SCs population from 2001 to 2011 is lesser than Muslims and STs. The reasons would be in addition to the forced family planning it should be enmass migration of SCs to others State because of extreme poverty and social subjugation. The sons of the soil have become non entity in their migrated state without any legal identity. It is evident from the state like Bihar, Odisha and Chhattisgarh where the population of SCs have come down from 2001 to 2011. Example: Chhattisgarh SCs were 16% in 2001 and became 12% in 2011. An SC in his origin state should be treated as SC all over India taking into his social background since social stigma indelible in the minds of general castes all over India.

Lot of representations from States and UTs are received highlighting this problem because the states to which a person migrates do not accept the caste certificate issued by the state of

origin of the migrants. There are numerous cases of fake caste certificates with resultant benefit going to wrong people and the genuine SC people are denied benefit on one pretext or the other. NCSC decided to carry out a reasoned study to solve this problem. Study so conducted, covers need for migration, peculiarities of the problem in different state of India, constitutional provisions and the decisions given by different courts of law.

Migration is an important feature of human civilization. It is not a new phenomenon. Migration began from the villages to urban areas when the British started setting up factories, ports, army cantonments etc. Uneven development is the main cause of migration besides disparities, inter-regional and amongst different socio-economic-classes. It reflects, human Endeavour to survive in the most testing conditions both natural and manmade. Despite all efforts of the Government of India for inclusive growth, there are serious income disparities, agrarian distress, and inadequate employment opportunities. Also vast growth of informal economy results in migration from rural areas to urban, urban to urban and backward to comparatively advanced regions.

- I. Article 19 of the Constitution of India provides all citizens the right:
 - 1(d) to move freely throughout the territory of India;
 - 1(e) to reside and settle in any part of the territory of India:
 - 1(g) to practice any profession, or to carry on any occupation, trade or business.
- II. Generally people migrate from one State/UT to another State/UT in search of better opportunities and

employment both in Govt. & Pvt. Sectors and settle down permanently in the new State/UT given the prospects of long term employment there. Educated people need to migrate after joining All India Services, which include jobs in the Banks and Insurance Companies whereas unskilled workers migrate in search of jobs in the unorganized sector of agricultural and infrastructural construction work, similarly, people employed in Corporate Sector need to migrate. Of late a big section of domestic workers as maid servants/help have also started migrating due to severe discrimination in the State/UT of the origin. The details of decadal inter-state Migration from 1951-61 to 1991-2001 given below:-

No of Migrants (in Millions)

a.	1951-61	66.00
b.	1961-71	68.20
c.	1971-81	81.00
d.	1981-91	80.90
e.	1991-2001	98.30

III. Article 341 and 342 of the Constitution identify scheduled castes and scheduled tribes State/UT wise only. An order dated 18.11.1982, was issued by the Home Ministry stating that SC certificate may be issued to a person and his successive generations who has migrated from one state to other state or UT on the production of the genuine certificates issued to his parents by the State/UT of his origin. It was later clarified vide order dated 06.08.1984 of Home Ministry, that a person can claim

benefit of being a SC only from the State of origin. This order was issued to clarify. Further SC certificates are not being issued to the migrant persons as also their children if their caste is not listed as SC in the new State/UT. Not only this, even if their caste is listed as SC both in the State/UT of the origin as well as the new State/UT the certificate is not issued.

- IV. A person belonging to a caste that suffered 2000 years of ignominy and a SC always remains a SC anywhere in India particularly because of the stigma of untouchability and strong caste biases in our society. Nobody can assure status of a forward caste to him just because he is not an Original Resident of the state to which he has migrated. After some time the migrant SCs gets identified as untouchable and are treated as such in the new state. In India a Person is recognized only by his varna, gotra and caste even in the metro cities. Nobody can guarantee that a migrated SC person will be treated like an upper caste person in the new states.
- V. In the absence of SC certificate, the migrant SCs cannot apply for the posts reserved for SCs. Also they cannot apply for admission in various educational institutions against the reserved vacancies. Therefore, demand is being raised for a long time now, that SC certificate should be issued to such people in the State/UT of migration and the new born State/UTs. We need to recognize that nobody can guarantee that the SC of one State will not suffer from the handicaps of being an SC in the new/migrated to State/UT.

- VI. New born States/UTs like Uttrakhand, Chattisgarh, Jharkhand and Chandigarh also do not recognize the SCs of the mother states as SCs in the new born states. This is not understood at all because it cannot be seen as a case of migration. When they were recognized as SCs in mother state, there can be no principled reason as to why they should not be recognized as SCs in the new born states/UTs.
- VII. Uttrakhand was carved out of UP IN 2000. As per Uttrakhand Government order dated 27.5.2004, SCs, who were permanent residents of Uttaranchal area before the state of Uttaranchal came into existence and who are still residents of Uttaranchal will be treated as SCs of Uttaranchal State. New migrant SCs are, however, not being issued caste certificates. Recently, on 17.08.2012 the Hon'ble High Court of Uttrakhand at Nanital has given a judgment in the case of Ajay Kumar and Ors v/s State of Uttrakhand according to which the state Govt. was directed to issue a Govt. order for issuance of caste certificate to the SC/ST/OBC residents of Uttrakhand, who are originally residents of mother state of Uttar Pradesh.
- VIII. Puducherry, as a UT came into being in 1954 prior to which it was under French rule for 138 years. The benefits of reservation in employment in Government service including promotion, admission in Educational Institutions and Welfare measures were being enjoyed by both the original and migrant Scheduled Castes of the UT of Pondicherry in the past. During 1995 some original SCs filed cases before CAT (Madras Bench) against the selection of migrant SC candidates for the post reserved

for SCs in the cadre of Secondary Grade Teachers of the Education Department. The CAT, vide its decision dated 5.11.96, set aside the selection of SCs, who had migrated after the issuance of Presidential Notification in 1964. The decision of CAT was ultimately upheld by the Supreme Court as per their order dated 05.1.1998.

- IX. On 05.6.2005 Government of Pondicherry passed a resolution stating that reservation benefits will be available to original SCs of Pondicherry.
- X. Chandigarh, a Union Territory came into being on 01.11.1966. Caste Certificates were being issued up to 1995. Surprisingly not only the issue of new certificates was stopped but also the already issued certificates were invalidated after 1995. There is no plausible reason as to why SCs of mother state of Punjab should not be recognized as SCs of the new born Chandigarh. Because of non-issuance of SC certificate to the SC residents they cannot apply for posts reserved in Govt. Departments as also in admission to the educational institutions. Ministry of Home's order dated 18.11.1982 read with their order dated 06.8.1984 provides for issue of SC certificates to migrants but with no benefits in the new state which otherwise are available to SCs in their state of origin.
- XI. On 30.04.2007, Ministry of Social Justice and Empowerment referred the matter to National Commission for Scheduled Castes for comments besides instructing Chandigarh Administration vide their order 22.2.2008 to issue SC certificates to a migrant SC persons and their progeny on the production of

certificates issued to the father/mother by the State of father/mother's origin. There have been cases where some persons belonging to SC community have been residing in Chandigarh for the last 30 years or so who are involved in manual works such as Malis /Sweeper etc. but they do not have SC certificate in their name since they never felt the need for the same given the nature of their occupation. However their children require SC certificates now which they need to produce in educational institutions as also in government departments in connection with their admission and employment. These children need to be issued SC certificates even though their parents do not have SC certificates in their name.

- XII. The Standing Committee on Social Justice & Empowerment 2006-07 in its 20th report on the constitution SC order (Amendment) Bill, 2006 have, inter-alia, expressed its considered opinion that keeping in view the prevalent ground situation, wherein migration of population takes place from one state to another due to economic factors, a change in this policy is paramount. The Committee, therefore, desired that Govt. should consider the feasibility of according benefits to SC migrants in the State to which they have migrated.
- XIII. Correction in the situation is imperative in view of the fact that a large number of people migrate to other states in search of education and employment. Depriving them of their legitimate claim to avail of Constitutional benefits would surely scuttle the process of holistic development of the community in particular and the country in general.

- XIV. Every citizen of India is free to move to any place within the country for the purpose of employment/business and his ultimate settlement at the new place. Given this situation, it is logical that he should be able to move anywhere with all his rights constitutions or otherwise intact. Merely because he has moved to a new place should not put him to any disadvantage.
2. The Hon'ble High Court of Uttarakhand at Nainital has given Judgment dated 17.8.2012 (ref. para 70, 72, 73, 74 & 76) on 13 writ petitions filed by Sh. Ajay Kumar (all of whom are SC/ST or OBCs) and Others v/s State of Uttarakhand and others for issuance of Caste Certificate for SC/ST/OBCs in Uttarakhand after Uttar Pradesh is bifurcated and State of Uttarakhand is created from composite State of Uttar Pradesh as follow: -

Para 70

"This leads to another area, which needs to be tackled. Caste certificates are being denied on the ground that the person is not an original resident of Uttarakhand and that he was the original resident of Uttar Pradesh. In most of the cases, the court finds that the said person or his father belonged to the OBC category and were rightly issued a caste certificate by the State of Uttar Pradesh since that caste was duly notified in the State of Uttar Pradesh. The same caste is also notified in the State of Uttarakhand. The Presidential Order of 1950 for Scheduled Caste and Scheduled Tribes specified the castes applicable in the entire composite State of Uttar Pradesh, as existing in the year 1950, did not specify the castes in relation to a particular area or locality in the

State of Uttar Pradesh. The decision of the Supreme Court in **Action Committee's case (supra)** and **Marri Chandra Shekhar Rao (supra)** relates to migration of a person from one State to another State and not within a State. Consequently, for example, a person staying in Gorakhpur in the State of Uttar Pradesh and belonging to a reserved category is entitled to the benefits of that reserved category by the State of Uttar Pradesh since his caste is notified in Uttar Pradesh. The said person moves from one corner of the State of Uttar Pradesh to another corner of Uttar Pradesh, let's say, from Gorakhpur to Meerut. He would still be entitled to the benefits provided for that category in as much as the Presidential Order of 1950 provides the privileges for a person in the composite State of Uttar Pradesh."

Para 72

"In the light of the aforesaid, a person of Uttar Pradesh who belongs to the reserved category and who migrated from one part of Uttar Pradesh to another part of Uttar Pradesh and enjoyed the privileges of that caste in the State of Uttar Pradesh and who is staying for all practical purposes in a permanent capacity for a considerable period of time will continue to enjoy the same privileges upon the creation of the State of Uttarakhand provided his caste is notified by the State of Uttarakhand. The said person could not be treated to be the original resident of Uttar Pradesh and the State Government of Uttarakhand could not treat this person as "not an original resident of Uttarakhand" or reject his application on the ground that he originally belongs to the State of Uttar Pradesh."

Para 73

"This view of the Court is further fortified by the issuance of the Government Order dated 27.05.2004 by the State Government in relation to issuance of a caste certificate for Scheduled Castes and Scheduled Tribes. In this Government Order, it was provided that upon the creation of the State of Uttarakhand, the members of Scheduled Castes and Scheduled Tribes who were residing permanently in the State of Uttarakhand since before the creation of the State of Uttarakhand would be treated as an original resident of State of Uttarakhand and that it would not be justified to consider them as migrants from Uttar Pradesh since the State of Uttarakhand was created as a result of the bifurcation of the State of Uttar Pradesh. The same principle can apply for Other Backward Classes of citizens as specified in the Act of 1994. Why such discrimination is being made by the State of Uttarakhand is a mystery? If a privilege is being granted to certain reserved categories, why cannot the State Government grant similar benefits to the remaining reserved categories? The court is unable to fathom this discrepancy being made by the State Government."

Para 74

"Once a caste is specified by the State, the person belonging to that caste is given the privilege in that State and it is immaterial if a particular person migrates from one corner to another corner of the same State. Consequently, when the State of Uttar Pradesh is bifurcated and State of Uttarakhand is created from the

composite State of Uttar Pradesh, the geographical limits of the entire State of Uttar Pradesh will be taken into consideration in relation to the State of Uttarakhand, which has been bifurcated from the State of Uttar Pradesh. The geographical limits cannot be confined to those geographical limits, which have come in the State of Uttarakhand. The contention of the learned Advocate General that if a person was residing permanently in the composite State of Uttar Pradesh at Haridwar, he alone would be entitled to be called an original resident after the creation of Uttarakhand since Haridwar now comes in Uttarakhand is erroneous. The court is of the opinion that any person who has migrated from one part of Uttar Pradesh to another part of Uttar Pradesh and was living permanently for a considerable period of time and was enjoying the privileges of that particular caste in the State of Uttar Pradesh and that part has now become a part of Uttarakhand would be treated as a permanent resident of Uttarakhand upon the creation of the State of Uttarakhand and would also be entitled to all the benefits and privileges of that caste provided that caste was also notified in the State of Uttarakhand."

Para 76

"In the light of the aforesaid, the impugned orders cannot be sustained and are quashed. The writ petitions are allowed and disposed of with a direction to the State authority to pass a fresh order within four weeks from the date of production of the certified copy of the judgment in the light of the observations made above, which is required to be read in the Government Orders dated 29.03.2003, 16.02.2004 and 22.06.2006. In order to

streamline the procedure for the issuance of the caste certificate, the State Government is also directed to issue a Government Order / Clarification for issuance of a caste certificate in the light of the observations made above within two months from today."

However, the above judgment has not been implemented by the Govt. of Uttarakhand so far.

3. In the latest judgment delivered by High Court of Delhi on 12.09.2012, in the case of **Sh. Deepak Kumar**, Govt. of Delhi was directed by the Court that even when the claims of candidates/petitioner were based on their fathers being SCs notified in States or UTs other than Delhi, the petitioner's cases for appointment be processed treating them as SC/ST candidate. Excerpts from this judgment are given below.

Para 5, (sub para 20) Pg-13

Though, a migrant SC/ST person of another State may not be deemed to be so within the meaning of Articles 341 and 342 after migration to another State but it does not mean that he ceases to be an SC/ST altogether and becomes a member of a forward caste.

Para 13, Pg-19

"This social attitude committed those castes to severe social and economic disabilities and cultural and educational backwardness. And though most of Indian history the oppressive nature of the caste structure has denied to those disadvantaged castes the fundamentals of human dignity, human self-respect and even some of the attributes of the human personality.

Para 16, Pg-24

Circular of 1982 , issued by the Union Government, which decided that caste certificates could be issued to those who migrated from one state to another, but clarified that this would not alter their status as scheduled caste or scheduled tribe members, in one State or another.

Para 27, Pg-41

The presence of Articles 338, 341 and 342 indicates that :

- a) Only the President could, as a one-time measure, notify castes/tribes as Scheduled Castes/Tribes and also indicate conditions attaching to such declaration.
- b) There is only one constitutionally sanctioned authority, viz. National Commission for Scheduled Castes enjoined to submit reports in that regard to the President, after due deliberation;
- c) Even the authority that originally notified the SC/ST order (The President) loses the right to vary such notification (Article 341(2));
- d) Future inclusions, modifications, variations, deletions and amendments to the SC/ST orders can be made only by Parliament.

It is immediately discernible, therefore, that the rationale for migrant citizens (notified

as members of a scheduled caste in one region of state moving from one place to another and not being entitled to claim benefit of reservation (in spite of their belonging to Scheduled Caste in their original State and a caste of that nomenclature being notified in the State when they migrate)-is not premised on existence of legislative, administrative/executive control over Union Territories by the Union, as opposed to States. Apparently, that is not a relevant factor for deciding who can enjoy the benefit of reservation. This is because the authority, in the case of both Union Territories and States to make an order, including communities in the lists for concerned states/Union Territories is the same, i.e. the President, initially, and later, the Parliament. Also, the President has no greater power in respect of modification/alteration of the order, in the case of Union Territories. He ceases to have any power to vary, amend or modify the order. Only Parliament has exclusive power by way of legislation to amend an SC/ST order, in the case of States as well as Union Territories.

Para 29, Pg-43

The Constitution makers principally had in mind the practice of untouchability while providing for castes to be known as Scheduled Caste or Scheduled Tribes (in the latter case, the indicia being backwardness bordering primitiveness). This is clear from a reading of Articles 17, 46, 330, 332, 338, 341 and 342 of the constitution, as noted by the Supreme court in the decision reported as Soosai Vs. Union of India 1985 (Supp) SCC 590. The underlying principle for including or excluding a Caste from the list of Scheduled Castes in relation to State or a Union Territory has been and will remain the same, namely: whether that caste/group suffers from such disability in that area as to warrant its inclusion in the relevant Scheduled Caste Order for the concerned State/Union Territory.

Para 35, Pg-49

The decision of the Supreme Court in S. Pushpa (supra) was concerned with the issue of whether the consistent practice of the Govt. of Pondicherry, extending SC/ST status benefits to all classes of SC/ST candidates, whether from that Union Territory or not, for the purpose of public employment in administration of the Union Territory, was legal. The court affirmed that practice.

Para 35, Pg-51

The U.T. of Pondicherry having adopted a policy of Central Government where under all Scheduled Castes or scheduled tribes, irrespective of their State are eligible for posts which are reserved for SC/ST candidates, no

legal infirmity can be ascribed to such a policy and the same cannot be held to be contrary to any provision of law.

Para 37, Pg-52

High Courts, and indeed all Courts, are tethered to precedent and the law declared by the Supreme Court by virtue of Article 141 of the Constitution. The doctrine of precedent is essential to ensure consistency and stability in the administration of law or else, if each court is left free to pursue its views regardless of previous judgments of higher courts, or Benches of greater composition, in a hierarchal system, the consequence would be chaos and uncertainty about the law. Here, one recollects the caution administered in *Broom v. Cassell & Co.*, (1972) 1 AER 801 that:

“it will never be necessary to say so again, that in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the court of appeal, to accept loyally the decisions of the higher tiers”

Para 37, Pg-52

The rule was again explained in *Davis v. Johnson*, (1978) 2 WLR 152 in the following words:

“Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well a basis for orderly development of legal rules.

Para 39, Pg-54

In view to the above discussion, this Court holds that whatever reservation may exist and might have even been voiced in Subhash Chandra about the holding in S. Pushpa being contrary to earlier Constitution Bench rulings in Marri, Action Committee, Milind etc, it was not open to a Division Bench of this court, in Delhi and State Subordinate Selection Board v Mukesh Kumar (supra) to say that subhash Chandra prevailed, particularly since S. Pushpa was by a larger three member Bench. It is true that the concerns and interpretation placed by Subhash Chandra flow logically from a reading of the larger Supreme Court constitution Bench rulings. Nevertheless, since this court is bound by the doctrine of precedent and by virtue of Article 141 has to follow the decision in Pushpa.

Para 42, Pg-55

This court has previously held that whatever doubts may exist in respect of the applicability of Pushpa, since that is a larger Bench ruling, judicial discipline demands that till the five-judge Bench clarifies the law, or takes a view contrary to Pushpa, this court is bound by that decision.

Para 42, Pg-55-56

As regards Central Government posts and services, however, the situation necessarily has to be different. The analogy here can be with All India service, which, conceptually and definitionally is throughout the territories of India. Thus, a person claiming to be Scheduled Caste has to specify that he belongs to a

caste notified as Scheduled Caste in one State or one Union territory and that he is a resident of that state/union territory. Fulfillment of that criterion is sufficient for the purpose of Union Govt. service, since all Scheduled Castes in all states/union territories are part of Union of India (however, the converse is not true of state service or service under Union Territory, where territoriality has to be given effect to).

Para 47, Pg-59

The view which this Court expressed, about the binding nature of the Supreme Court's ruling in Pushpa prevailing, would apply in this case. There is no doubt that the advertisement in the present case was issued in December, 2009. At that time, the judgment in Subhash Chandra had already been delivered (it was pronounced on 4th August, 2009). Yet, the fact remains that being a larger Bench ruling of three judges, Pushpa had to prevail. This is highlighted by the view of the Supreme Court in State of U.P vs Ram Chandra Trivedi AIR 1976 SC 2547:

“ It is also to be borne in mind that even in cases where a High Court finds any conflict between the views expressed by larger and smaller benches of this Court, it cannot disregard or skirt the views expressed by the larger benches.”

Para 49, Pg-63

This court is of the opinion that the above clarification (about Subhash Chandra being prospective) was meant to cover the candidates who had participated in the

admission process in Subhash Chandra's case. However, that order of the Supreme Court was meant to tide over the hardship that was likely to flow from the implementation of the Subhash Chandra judgment. That clarificatory order of the Supreme Court itself was by a two judge Bench of the Supreme Court, and did not consider which of the two decisions, i.e Pushpa, or Subhash Chandra was correct. In these circumstances, having regard to the decision of the Supreme Court in Ram Chandra Trivedi's case (supra) the law and opinion in Pushpa has to prevail, since it is by a larger Bench (than Subhash Chandra).

Para 64, Pg-72

The Tribunal erred in entertaining the applications of the first eight respondents, and ought to have dismissed it, on this short ground, since the issue of status of such SC/ST officers stood settled more than 20 years ago, and could not have been questioned.

Para 65, Pg-72

On the one hand, the decision in Pushpa (by three judges) is seemingly in conflict with rulings of at least three constitution Benches of the Supreme Court. However, there cannot be any doubt as to its binding nature, since it pointedly and specifically deals with the question of migrant scheduled tribes and scheduled caste candidates entitlements to reservation benefits under the constitution, when they move to Union Territories. At the same time, the reasons outlined in Subhash Chandra about the correctness of Pushpa's views are weighty and powerful; yet the fact remains that

the said decision was by a Bench of two judges, and could not be construed as having “overruled” Pushpa. In fact, the approach adopted by Subhash Chandra and Pushpa has been referred to a constitution Bench in the State of Uttaranchal case. At the same time, the fact that Pushpa remains as a binding precedent, cannot be ignored by virtue of the overbearing nature of Article 141 of the Constitution. In this background, the clarification by a two Bench decision that Subhash Chandra should operate prospectively, has to be viewed in the context.

Para 66(1), Pg-74

The decisions in Marri, Action Committee, Milind and Channaiah have all ruled that scheduled caste and tribe citizens moving from one state to another cannot claim reservation benefits, whether or not their caste is notified in the state where they migrate to, since the exercise of notifying scheduled castes or tribes is region state specific, i.e. “in relation” to the state of their origin. These judgments also took note of the Presidential Notifications, which had enjoined such citizens to be “residents” in relation to the state which provided for such reservation.

Para 66(3), Pg-76

The ruling in Pushpa is clear that if the resident of a state, whose caste is notified as Scheduled Caste or scheduled tribe, moves to a Union Territory, he carries with him the right to claim that benefit, in relation to the UT, even though if he moves to another state, he is denied such benefit (as a result of the rulings in Marri and Action Committee). The ruling in Pushpa, being specific about

this aspect vis-à-vis Union Territory, is binding; it was rendered by a Bench of three judges.

From the References given in Subash Chandra case, decided by a 2 judges bench of the supreme court, it would be observed that:-

In **Marri Chandra Shekhar** case of Maharashtra, the Supreme Court (5 Judges Bench) had held the validity of a circular dtd. 22.02.85 issued by GOI which meant that a migrant SC/ST can derive benefit from the state of origin and not the state to which he has migrated. (Ref: Para 27)

In **Action Committee case** (5 Judges Bench) it was held that the caste/tribe has to be specified in relation to a given State/UT. Further it was held that considerations for specifying a particular caste for inclusion in the list of SC/ST in a given state would depend on the social hardships suffered by that caste in that state, which may be totally non-existent in another State to which person belonging thereto may migrate. It was also held that merely because a given caste is specified in the State of origin as a SC 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 benefits admissible to a SC of the migrated State for the purposes of constitution. (Ref: Para 28, 29)

In **Chandigarh Administration** case, the issue related to effect of State Reorganization Act. Marri Chandra Shekhar and Action Committee cases were noticed by the court but then court proceeded on the premise that GOI could issue binding instructions qua service in UTs. Accordingly instructions dtd. 26.8.86 of the GOI, permitting SCs/STs of any state to avail the benefits provided for SC/STs in the services in the UT of the Chandigarh, were upheld. (Ref: Para 35)

In ***Pushpa*** case settled by a 3 judges bench of the supreme court, it was decided that Marri Chandra Shekhar is not applicable in the case of UT of Pondicherry as it was not a state. It was further held that, as per extant practice in Pondicherry, the vacancies occurring in the UT of Pondicherry were to be treated as that of central civil services (for which SC/ST of any state are already eligible) because Administrator of Pondicherry was acting under the authority given to him by President of India and was bound by the directions of the Central Govt. (Ref: Para 36)

Chandigarh Administration and Pushpa read together therefore, proceed on the basis that ***Marri Chandra Shekhar*** would have no application in relation to Union Territory. Decision in the ***Subhash Chandra*** case was that "Although Union Territories are administered by the Central Govt., yet it is difficult to conceive that socio political aspect can be mixed up with the administrative aspect. It was further held that both articles 341 and 342 not only refer to the State but also to the Union Territory. Arguing that constitution bench decision reached in ***Marri Chandra Shekhar*** case, which was followed in a number of decisions including 3 judges bench decisions, could not have being ignored in the ***Pushpa*** case, which was decided only on the basis of an administrative circular, the Supreme Court decided that dicta in ***Pushpa*** is an obiter and does not lay down any binding ratio. (Ref: Para 37, 46)

Ref: from ***Ajay Kumar*** case decided on 17.8.2012 by High Court of Uttrakhand, Nanital.

In this case of Uttrakhand, it was inter-alia decided by the Supreme Court that "Original Resident" does not mean that the person or his for fathers must be the "Original Resident" of the state of uttrakhand or reside in the geographical limits of

uttrakhand prior to its creation on or before the date of issuance of the first Presidential Order of 1950. The geographical limits means an includes the geographical limits of the entire state of Uttar Pradesh prior to the creation of Uttrakhand. (Ref: Para 75 (xi))

In **Deepak Kumar** case, which was decided on 12.9.2012, District Judge and Govt. of NCT were directed by the Delhi High Court to ensure that even when the claims of candidates/petitioner were based on their fathers being SCs notified in States or UTs other than Delhi, the petitioner's cases for appointment to LDC in the office of District and Session Judge Delhi are processed and they are treated as SC/ST candidates, entitled to be considered as such and appropriate orders be made in this regard. (Ref: Para 45, 67)

4. Recommendations :

In view of the above analysis, the following recommendations are made:-

- I. New born States/UT i.e. Chhattisgarh, Jharkhand, Uttrakhand & Chandigarh should accept/ borrow list of "Scheduled Castes" from the mother States in toto and issue caste certificate after due verification as per established procedure. This would be inline with the judgment delivered in the case of Ajay Kumar by the High Court of Uttrakhand at Nanital.
- II. In the case of UTs, the migrant SC/STs from other UTs should be issued caste certificates. This would be inline with in the decision of the Supreme Court in the case of S.Pushpa and decision of Delhi High Court in the case of Deepak Kumar.

- III. Persons who migrate to a new state/UT from other state should be issued caste certificates after they have lived in the new state/UT for a minimum period of 10 years as permanent residents, provided the names of the castes/tribes are common in the schedules of the state of origin as well as of the state/UT to which the person migrates. Ten years period is considered sufficient and necessary for an outsider to become eligible as a bonafide resident because after some time they get identified as untouchables and are treated as such in the new state/UT.
- IV. If some state finds that there is justification for inclusion of some castes/tribes of migrants, which do not find mention in their schedules and there are sufficient number of people, who come on migration, their caste/tribes can be included in the schedule of migrated states after following the general process meant for inclusion of new castes/tribes in the schedule of a state/UT. RGI would be involved in this process as usual
- V. Name of all to whom caste certificates will be issued should be placed on a special site on the internet so that anybody can object to irregularly issued certificates.
- VI. NCT of Delhi has a unique status, where the scope and opportunities for education/employment are quite large resulting in flocking of Scheduled Castes cutting across the state barriers and any move to deprive them of the legitimate claim to avail Constitutional benefits would surely scuttle the process of holistic development of the community in particular and the country in general. Therefore, it is desirable to extend the benefit of

reservation to the Scheduled Castes bonafide residents in NCT of Delhi, while retaining the reservation level of 15% for Scheduled Castes as admissible at the national level. Bonafide residents would include a migrant from other UT or state residing in Delhi for at least 10 years. The 2012 Judgment of Delhi High Court in Deepak Kumar case which favours SC/STs should be implemented immediately.

- VII. The crisis which arose due to the verdict pronounced in Subhash Chandra case by a smaller bench of Hon'ble Supreme Court on 4.8.2009 in WP (Civil) No. 507 of 2006 need to be clarified by the Ministry of Law & Justice and Ministry of Home of Home Affairs in view of the recent judgment dated 17.08.2012 of Hon'ble High Court of Uttarakhand on 13 writ petitions filed by Sh. Ajay Kumar and Others v/s State of Uttarakhand and others for issuance of Caste Certificate for SC/ST/OBCs in Uttarakhand after Uttar Pradesh is bifurcated and State of Uttarakhand and Judgment of High Court of Delhi dt. 12.09.12 in 10 writ petitions of Sh. Deepak Kumar and Others v/s District Session Judge- Delhi and Ors, UOI and Ors, Delhi Jal Board and Anr, so that a considered view is communicated to all the states and the Govt. orders modifying its earlier order dt. 18.11.82 and 6.8.84 are issued by the Home Ministry without any loss of time.
- VIII. It would also be logical to issue caste certificate to those persons who are born in the State/UT to which their parents have migrated and settled. Infact eligibility cannot be determined alone by the date of birth of migrant to a new place but on the basis as to whether the particular caste is enumerated in the Schedule to the

Constitution order or not. Caste certificates should be issued to these people without any delay. It should be ensured that all the castes of the SCs of mother States/UTs should find mention in the SCs list of new born States/UTs. In case there is fresh addition of Scheduled Castes in the mother States/UTs through the prescribed procedure of inclusion, those castes should also be included in the SC's list of new born States/UTs. There should be a single all India SC/ST lists instead of State wise so as to achieve social justice and economic development of all the SCs/STs. The list of certificates so issued should be placed on the special site on the internet so that anybody can object to irregularly issued certificates.

- IX. Relevant provisions of the Constitution need amendment to ensure that benefit of reservation is not denied to the migrant Scheduled Castes persons who are living outside of their original place of nativity., Based on the latest Delhi High Court in Pushpa case which is binding on all the judgments in the cases of (1) Marri (2) Action Committee (3) Bhaijyalal 1965 (4) Chinaiah (5) Milind 2001 (6) Subhash Chandra 2005.
- X. Issue of UID, Ration Card, Driving License, and Voter card Passport should be restricted to only one state so as to give the benefits of migration after continuous stay in one place for one year or more to the migrated SC/ST.
- XI. An SC person who suffers 2000 years of ignominy is always SC anywhere in India because of the stigma of being an untouchable. No body can assure a status of upper caste just because he is not an origin of the State

and UT. A person in India is recognized based only on the verna, gotra, caste etc. even in metro cities. Will there be no casteism based on Beti, Roti, Loti, Sindh Bandh, BetiBandh and will they be treated in society like that of a general caste person? Nobody can guarantee it. They should be issued caste certificate after getting one time confirmation regarding belongingness to that particular caste from the concerned revenue authority of their native district of that State.
