R.D. Kalva Vs Housing Commisioner

Special Civil Application No. 211 and 212 1992

Court: Gujarat High Court

Date of Decision: Aug. 5, 2004

Acts Referred:
Constitution of India, 1950 â€" Article 132, 136, 14, 141, 15(4)#Contract Labour (Regulation and Abolition) Act, 1970 â€" Section 34#Payment of Bonus Act, 1965 â€" Section 37

Citation: (2005) 1 GLR 551

Hon'ble Judges: P.B. Majmudar, J

Bench: Single Bench

Advocate: S.V. Parmar and Preeti S. Parmar, for the Appellant; Y.N. Ravani, for Respondent 1 and 2 and Archana Raval, Assistant Government Pleader, for the Respondent

Judgement

P.B. Majmudar, J.
Since common point is involved in both these petitions, both these petitions are taken up for final hearing, together.

2. The petitioner of each of these petitions has approached this Court by way of the respective Special Civil Applications in the year 1992, as, at

that time, they were apprehending their reversion / termination from the posts which they are holding, i.e. from the posts of Junior Assistant.

3. In the year 1983, the Gujarat Housing Board invited applications for making appointment to the posts of Junior Clerk from candidates belonging

to the reserved category of Scheduled Tribe. Both the petitioners applied for getting appointment to the said posts. Along with the applications,

necessary certificates were also produced for the purpose of showing that the petitioner of each of these petitions belongs to Scheduled Tribe. A

copy of such certificate is also annexed as Annexure "A" in the petitions. The respondent-Board, thereafter, appointed the petitioners by an order

dated 4.10.1983 on the posts of Junior Clerk. After completing the probation period, the petitioners were also given long term appointment by the

Board. The order dated 6.11.1986, giving them such appointment, after completion of probation, is also produced in the compilation at Annexure

''C''.

4. Subsequently, since the Board wanted to fill up the posts of Junior Assistant from the reserved category, the cases of the present petitioners

were taken into consideration for such selection by way of promotion. Both these petitioners were appointed by way of promotion to the posts of

Junior Assistant in the pay scale of Rs.1400-2600. The said appointment was made in view of the backlog prevailing at the relevant time so far as

the Scheduled Tribe employees were concerned. The aforesaid order, by which both these petitioners were appointed by way of promotion to the

aforesaid posts of Junior Assistant, was produced at Annexure ''F'', which is dated 12.4.1990. It is specifically mentioned in the said order that in

order to clear the backlog, the experience criterion was relaxed and, accordingly, both the petitioners were appointed, by way of promotion, to the

aforesaid posts of Junior Assistant in order to clear the backlog prevailing at the relevant time. As per the averments in the petitions, the petitioners

resumed their duty as Junior Assistants in view of the aforesaid promotion order.

It seems that, at the time when the petitioners were promoted, the judgment of this Court in Kumari Manju Singh v. Dean, B.J. Medical College

and others 1986 GLH 483, was holding the field. In the said decision, a learned single Judge of this Court held that a person, who belongs to

Scheduled Caste in another State, wherein he is treated as Scheduled Caste, is entitled to the benefits of Scheduled Caste not only in that State,

but in other parts of India also.

Both the petitioners were accordingly appointed initially in the reserved category on the basis of the certificate produced by them, which is at

Annexure ''A'' page 18, by which status certificates are given to them by the Zonal Director for Scheduled Castes and Scheduled Tribes,

Ahmedabad, and as per the said certificate, the Tribe ''Bhil'' is classified as Scheduled Tribe in Rajasthan as per the Scheduled Castes and

Scheduled Tribes Orders (Amendment) Act, 1976 with effect from 27th July, 1977. However, at the time of filing of these petitions, both these

petitioners apprehended termination of their services / reversion from the aforesaid posts, on the ground that they belonged to the State of

Rajasthan, and, on migration, they may lose the protection of reservation, and hence, they approached this Court by way of these petitions and it is

prayed that they may not be relieved from the post, which they are holding.

Along with the petitions, the petitioners have also annexed the Agenda of the meeting, wherein this subject was taken up for discussion as to

whether the petitioners can be continued in the posts of Junior Assistant, as, they belonged to Rajasthan State and that they cannot be appointed in

Gujarat State on the vacancies earmarked for Scheduled Tribe. In the said Agenda, there is also a reference to the Resolution of the Government

of India, dated 6.8.1984, wherein it is stated that a Scheduled Caste / Scheduled Tribe person, on migration from the State of his origin to another

State, will not lose his status as Scheduled Caste / Scheduled Tribe, but he will be entitled to the concessions / benefits admissible to the Scheduled

Caste / Scheduled Tribe from the State of his origin and not from the State where he has migrated. As stated above, since the petitioners were

apprehending termination of their services from the posts of Junior Clerk or reversion from the posts of Junior Assistant to Junior Clerk, they have

approached this Court by way of these petitions. The apprehension was on the basis of the noting in the Agenda of the meeting, which was in

connection with deciding the appointment of the petitioners.

This Court, initially granted ad interim relief to maintain status quo and while admitting the petitions, granted interim relief to the effect that the order

of status quo shall continue till further orders, with the result that, both these petitioners have continued on the aforesaid posts of Junior Assistant,

by virtue of the interim relief.

5. On behalf of the Gujarat Housing Board, affidavit-in-reply is filed by one J.P. Israni, Administrative Officer. In the reply, it has been pointed out

in paragraph 3 that Non-technical Class III cadre Junior Clerk was to be filled in from Scheduled Tribe candidates from the reserved quota. The

present petitioners were called for interview as Scheduled Tribe candidates for the purpose of appointment in the reserved category, and

consequent on their selection, they were appointed as Junior Clerks on 4.10.1983. It is also pointed out that, in the year 1987, posts of Senior

Clerk were to be filled in and carry forward quota of Scheduled Tribe candidates was to be considered for the vacancies in question. Therefore, in

the meeting of the Board held on 24.4.1987, the petitioners were selected against the vacancies in accordance with the Roster point and they were

promoted as Senior Clerks as Scheduled Tribe candidates, by order dated 17.9.1987.

Thereafter, in January, 1990, three posts of Head Clerk / Junior Assistant fell vacant and the question of filling up the said posts by the Scheduled

Tribe candidates came up for consideration. At that time, since no eligible Scheduled Tribe candidate was available as per the Recruitment

Regulations, it was decided to issue an advertisement, inviting applications for appointment to the post of Head Clerk / Junior Assistant, and both

these petitioners, ultimately, pursuant to their applications, were selected by the Selection Committee, and by relaxing the Regulation regarding

three years'' continuous service in the cadre of Senior Clerk, the petitioners were promoted to the posts of Junior Assistant by order dated

12.4.1990 by giving relaxation in the experience criterion.

It is pointed out by the Board in paragraph 4 of the affidavit-in-reply that, subsequently, one Mr.N.D. Gameti, who was working in the office of

the Executive Engineer, Housing Division-I, Baroda, as a Senior Clerk, made a representation dated 8.7.1991, in which he pointed out that the

petitioners are Scheduled Tribe candidates from outside Gujarat and, therefore, they are not eligible for appointment or promotion in Gujarat

according to Roster and they cannot be given such appointment / promotion. In the affidavit-in-reply, reference is also made to the Circular of the

Government of India dated 6.8.1984, wherein it is stated that a Scheduled Caste / Scheduled Tribe person, on migration from the State of his

origin to another State, will not lose his status as Schedule Caste / Scheduled Tribe, but will be entitled to the concessions / benefits admissible to

the Scheduled Caste / Schedule Tribe from the State of his origin and not from the State where he has migrated. In the reply, it is further stated

that, since the certificates of Scheduled Tribe were issued by the State of Rajasthan, the Board, subsequently, sent information, along with the

details, regarding their appointment and promotion to the Social Welfare Department of the State of Gujarat, by letter dated 5.9.1991, seeking

guidance in this behalf.

The Social Welfare Department, by its letter dated 16.11.1991, has pointed out that, according to the Circulars of the Government of India, Home

Department, dated 29.6.1982 and 6.8.1984, the petitioners cannot get the advantage of appointment to any posts, which are reserved for

Scheduled Tribe candidates in the State of Gujarat, as both of them were from the State of Rajasthan. In the affidavit-in-reply, it is also stated that

the Department pointed out that the appointment of the petitioners to the posts of Head Clerk (Junior Assistant) was contrary to the Rules and,

therefore, the benefits given to them are contrary to Government Circulars and the same should be withdrawn. In view of the aforesaid reply, it is

submitted that there is no substance in the petitions.

6. On behalf of the State of Gujarat, one Narendrakumar Shantilal Raval, Deputy Secretary to the Government of Gujarat, Tribal Development

Department, New Sachivalaya Complex, Gandhinagar, has also filed a reply, wherein it is stated that the petitioners cannot get the benefit of

reservation for employment in the State of Gujarat.

7. Mr.Parmar, learned Advocate for the petitioners, has vehemently submitted that, at the time when the petitioners were appointed as Junior

Clerks, as per the judgment of this Court in 1986 GLH 483 (supra), the petitioners were entitled to get the benefit of such appointment on the

basis of reservation, as, though they belonged to the State of Rajasthan, even on migration, they were entitled to get the benefit of employment in

view of the aforesaid judgment. It is further submitted that, at the time of getting the employment, the petitioners had not suppressed anything from

the Department and, ultimately, they were selected by the Department to the posts of Junior Clerk at the relevant time. It is also submitted that,

now, it is not open for the respondents to take a contrary stand and, since there is no fault on their part in any manner, the petitioners cannot be

made to suffer. Mr.Parmar submitted that, consequent on the change in law in view of the subsequent judgments of the Supreme Court, the

petitioners may not be given benefit of reservation, in future, for further promotional posts, on the ground that they belonged to Scheduled Tribe,

but, at least, so far as the posts, which they are holding, at present, are concerned, since they are holding the said posts in a lawful manner, they

should not be either reverted or their services should not be terminated, even though, in view of the subsequent Supreme Court judgment, the law

has changed.

8. Ms.Archana Raval, learned AGP appearing for the State of Gujarat, as well as Mr.Ravani, learned Advocate appearing for the Housing Board,

on the other hand, submitted that the view taken by this Court is already overruled by the Supreme Court in a subsequent judgment and, therefore,

the petitioners, who belong to the State of Rajasthan, are not entitled to get benefit of Scheduled Tribe status for getting employment / promotion in

the State of Gujarat.

It is submitted by Mr.Ravani that, in view of the representation submitted by one of the employees, ultimately, the Board had resolved to

reconsider the said decision and, at that time, the petitioners have filed these petitions.

During the course of the arguments, Mr.Ravani, learned Advocate for the Board, however, submitted that there may not be any question of

terminating the services of the petitioners from their original posts of Junior Clerk, but, so far as the promotional posts of Junior Assistant are

concerned, the Board will have to decide the said question, after hearing the petitioners, whether the petitioners are required to be reverted from

the said posts in view of the fact that the petitioners are not entitled to get the benefits admissible to the Scheduled Tribes on migration from the

State of Rajasthan to the State of Gujarat.

9. I have heard all the learned Advocates, in detail, on this point.

The question which requires consideration is whether the petitioners are entitled to continue on the promotional posts of Junior Assistant or

whether the Board is required to reconsider the question of promotion in view of the change in law.

It is, no doubt, true, as argued by Mr.Parmar, that so far as the appointments of the petitioners are concerned, on production of necessary

certificates that they belong to Scheduled Tribe category, they have been appointed by the Board to the posts of Junior Clerk at the relevant time.

Not only that, subsequently, they were even confirmed on the posts of Junior Clerk and they were also promoted to the posts of Senior Clerk. In

fact, it is nobody"s case that the petitioners have tried to obtain employment by any misrepresentation. The petitioners were, accordingly,

appointed, after going through the selection process, no doubt, in the reserved category, to the posts of Junior Clerk.

At the time of hearing, since a stand is taken by the learned Advocate for the Board that, it is not going to disturb the original appointments of the

petitioners, by which the petitioners were appointed to the posts of Junior Clerk, it is not necessary to examine that point, in any manner, regarding

the question about termination of services of the petitioners from the posts of Junior Clerk.

Therefore, the main question which requires consideration is : whether, the petitioners are eligible to be continued on the promotional posts of

Junior Assistant or that, in view of the Circular of the Government of India, as well as in view of the subsequent Supreme Court judgments on the

aspect, they are required to be reverted to the original posts, by taking away the benefits of reservation, as they were appointed by way of

selection in the promotional posts of Junior Assistant by availing of the benefits admissible to the Scheduled Tribe candidates?

In this connection, reference is required to be made to the order, dated 12th April, 1990, by which the petitioners were promoted. By a common

order, both these petitioners were promoted to the posts of Junior Assistant in the pay scale of Rs.1400-2600. In the said order, it is specifically

mentioned that the petitioners are promoted in view of the special drive initiated by the Board to clear the backlog of vacancies in the category of

Scheduled Tribe candidates. It is also specifically stated that, the said order is subject to the orders, which may be passed by the Government in

this behalf, in connection with the zone of consideration.

10. Mr.Parmar, learned Advocate for the petitioners, in this behalf, has, mainly, relied upon the decision of a learned single Judge of this Court in

1986 GLH 483, to which a reference is made earlier, wherein this Court has taken a view that Scheduled Caste specified under Article 341, is

deemed to be scheduled caste for the purpose of constitution and, therefore, part of the caste deemed to be scheduled caste in relation to an area

of the State, will be deemed to be scheduled caste for the entire State and other States of India.

It is required to be noted that in Marri Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, it is categorically held that a

person, who is recognized as a member of Scheduled Caste / Scheduled Tribe in his / her original State will be entitled to all the benefits under the

Constitution in that State alone and not in all parts of the country wherever he / she migrates. The Honourable Supreme Court, as a prefatory,

observed as under :-

... ...

The issues involved in this writ petition under Article 32 of the Constitution are of seminal importance for the country and the people. The principles

which should be applicable in governing the problem are indisputable. Their application, however, presents certain amount of anxiety.

... ...

In the said decision, the Honourable Supreme Court categorically held as under :-

... ...

13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where

there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part

should be made nugatory. This is well-settled. See the observations of this Court in Sri Venkataramana Devaru and Others Vs. The State of

Mysore and Others, where Venkatarama Aiyar, J. reiterated that the rule of construction is well-settled and where there are in an enactment two

provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however,

appears to us that the expression "for the purposes of this Constitution" in Articles 341 as well as in Article 342 do imply that the Scheduled

Castes and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such.

Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all--to scheduled

castes or tribes and to non-scheduled castes or tribes. But when a Scheduled Caste or tribe migrates, there is no inhibition in migrating but when he

migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that

State or area or part thereof. If that right is not given in the migrated state it does not interfere with his constitutional right of equality or of migration

or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights

in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in

the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or

denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental

rights of the petitioner under Article 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which

a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted

that the words ""for the purposes of this Constitution"" must be given full effect. There is no dispute about that. The words ""for the purposes of this

Constitution"" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as

these are applicable to him in his area where he migrates or where he goes. The expression ""in relation to that State"" would become nugatory if in

all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with

the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a

boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other

castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different

atmosphere of Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude

the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne

in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra

Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged

castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country

would be in negation to the very purpose and scheme and language of Articles 341 read with Article 15(4) of the Constitution.

xxx xxx xxx

20. Having regard, however, to the purpose and the scheme of the Constitution which would be just and fair to the Scheduled Castes and

Scheduled Tribes, not only of one State of origin but other states also where the Scheduled Castes or tribes migrate in consonance with the rights

of other castes or community, rights should be harmoniously balanced. Reservations should and must be adopted to advance the prospects of

weaker sections of society, but while doing so care should be taken not to exclude the legitimate expectations of the other segments of the

community.

... ...

The above portion in the Apex Court judgment, which is emphasized, i.e., ""...The expression ""in relation to that State"" would become nugatory if in

all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with

the whole purpose of the scheme of reservation ...."" clearly overrules the view taken by a learned single Judge of this Court in 1986 GLH 483

(supra) to the following effect that : ""... In my opinion, therefore, petitioner who, admittedly belongs to scheduled caste recognised in Uttar

Pradesh, is entitled to the benefits available to scheduled caste persons not only in Uttar Pradesh but other parts of India ....

However, while holding that a candidate recognized as a member of ST/SC in his original State on his / her migration to another State, is not

entitled to get benefit of reservation, the Apex Court clarified that it is, however, for the Legislature to make appropriate legislation to effectively

deal with the situation where migration is involuntary, such as due to transfer of place of employment or profession of the candidate''s parent.

While disposing of the writ petition directly filed before the Supreme Court under Article 32 of the Constitution of India, the Apex Court held as

under :

... ...

We, therefore, direct that the petitioner is not entitled to be admitted to the Medical College on the basis that he belonged to the Scheduled Tribes

in Andhra Pradesh but his continuance in the college will depend upon the consideration indicated hereinabove.

... ...

In view of the above judgment of the Honourable Supreme Court in this behalf, the judgment of this Court in 1986 GLH 483 is no longer a good

law.

Mr.Ravani, learned Advocate appearing for the Board, submitted that the Honourable Supreme Court delivered the judgment in Marri Chandra

Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, on 2nd May, 1990 and the petitioners were promoted only about one month

back, i.e. on 12th April, 1990, and even that promotion was subject to Government''s orders to be issued from time to time in connection with the

zone of consideration.

At this stage, reference is also required to be made to the decision of the Apex Court in U.P. Public Service Commission v. Sanjaykumar Singh

AIR 2003 SCW 4049. In the said decision, the Honourable Supreme Court was dealing with the U.P. Public Services Reservation for Scheduled

Castes, Scheduled Tribes and other Backward Classes Act, and the question of entitlement for getting benefit of reservation as Scheduled Tribe

candidate arose for consideration in the said decision. The Honourable Supreme Court held that a candidate belonging to Naga Tribe, a tribe

notified as Scheduled Tribe in the State of Nagaland, on migration to the State of U.P., wherein the said Tribe is not notified as Scheduled Tribe,

cannot claim benefit of reservation in public services in the State of U.P. Allowing the appeal of the U.P. Public Service Commission, the

Honourable Supreme Court held as under :-

... ...

14. The contention of the appellants should therefore be accepted and the appellant (sic) cannot be treated as a Scheduled Tribe candidate so as

to qualify himself to claim reservation against the vacancy reserved for Scheduled Tribe in public services in the State of U.P. The view of the High

Court cannot be sustained as it goes counter to the pronouncements of this Court. Hence it is set aside and the appeals are allowed without cost.

However, in the peculiar circumstances of the case, the ends of justice would be met if the appellants are directed to consider the case of the

respondent in general category and if in comparison with the general category candidates selected, the respondent had secured higher marks /

grading, he should be offered appointment to an appropriate post against one of the existing vacancies.

... ...

In view of the aforesaid judgments of the Apex Court, it cannot be said that the petitioners are entitled to get the benefits of Scheduled Tribe on

their migration from the State of Rajasthan to the State of Gujarat. It is not in dispute that even the benefit of original appointments to the posts of

Junior Clerk were given to the petitioners in view of the reservation as Scheduled Tribe, as well as the subsequent promotion to the posts of Junior

Assistant from the posts of Senior Clerk by relaxing the experience by treating the petitioners as Scheduled Tribe candidates. In view of the

judgments of the Supreme Court on this point, in my view, such benefit cannot be continued in favour of the petitioners.

11. Mr.Parmar, learned Advocate for the petitioners, however, vehemently submitted that, though, as per the law laid down by the Supreme

Court, on migration, a person is not entitled to get benefit of reservation in other State on the basis of certificate which he is holding in his parent

State, yet, at the time when the petitioners were promoted in the year 1990, as per the judgment of this Court, which was holding the field in the

State of Gujarat at the relevant time, the petitioners were rightly promoted by giving them the benefit of Scheduled Tribe. It is submitted that,

subsequently, even if the law is changed, that will not upset the promotion already given by the Department as per the law prevailing at the relevant

time. Mr.Parmar further submitted that the judgment of the Supreme Court cannot be made retrospectively applicable to the petitioners'' case as

the said judgment can apply in future cases or even at the time when future promotions are to be given to the petitioners.

At this stage, it is relevant to refer to the decision relied upon by the learned Advocates appearing on behalf of the Board as well as the State, in

M.A. Murthy Vs. State of Karnataka and Others, for the purpose of substantiating their say that there shall be no prospective overruling unless it is

so indicated in the particular decision. In paragraph 8 of the said decision, the Apex Court has held as under :-

... ...

8. Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to

be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of

pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from from inception. The doctrine of prospective

overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in

I.C. Golak Nath and Others Vs. State of Punjab and Another, In Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others

{1993 (4) SC 727} the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be

resorted to by this Court while superseding law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent

multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the

date of declaration are validated in larger public interest. The law as declared applies to future cases. xxx xxx xxx It is for this Court to indicate as

to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in

the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the

doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enable

an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily

affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and

not the review judgment in Ashok Kumar Sharma"s case No.II. All the more so when the subsequent judgment is by way of Review of the first

judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment

rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned

judgments of the High Court are, therefore, set aside.

... ...

However, Mr.Parmar submitted that, at the relevant time, since the petitioners were promoted as per the prevailing law as per the judgment of the

Gujarat High Court, it is not open for the Board to relieve the petitioners from their existing posts, which they are holding, either by way of

reversion or in any other manner.

In order to substantiate his say, Mr.Parmar has relied upon certain judgments.

Mr.Parmar has relied upon the decision of the Apex Court in Ram Bai Vs. Commissioner of Income Tax, In the aforesaid decision, the Apex

Court was concerned with the reassessment of the income of the assessee. The ITO decided to reopen the assessment on the ground that the

income chargeable to tax had escaped for assessment year 1965-1966. On behalf of the Revenue, an attempt was made to contend that the land

in question did not satisfy the test laid down by the Supreme Court in Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court

of Wards), Paigah, The relevant observations of the Honourable Supreme Court are in paragraph 8, which read as under :-

... ...

By that judgment, this Court reversed the judgment of the Andhra Pradesh High Court in Officer-in-Charge (Court of Wards) v. CWT. The Full

Bench of the High Court had in its judgment held that actual user of the land for agricultural purposes was not necessary for making it an

agricultural land and it was sufficient if the land could have been put to agricultural use. The judgment of this Court was rendered only on 6.8.1976,

long after the reopening of the assessment by the ITO in the present case. Thus, when he invoked Section 147(a) of the Act, the aforesaid

judgment of the Full Bench of the Andhra Pradesh High Court was holding the field. Hence, the ITO could not have applied a test different from

that laid down by the said Full Bench for determining whether the land in question in this case was an agricultural land.

... ...

In the said decision, at the time when the assessment was reopened by the ITO, the judgment of the Full Bench of the Andhra Pradesh High Court

was already holding the field. Considering the facts of that case, the Supreme Court held that the ITO could not reopen such assessment as the

said judgment of the Full Bench at the relevant time was binding. So far as the facts of the present case are concerned, in my view, the said

decision has no application to the facts of the present case. When the law is laid down by the Supreme Court, its effect would be that the said law

is in force from the beginning on the question of interpretation of any particular provision of Constitution or of law. Therefore, the aforesaid

judgment, wherein the Supreme Court was concerned with the reopening of the reassessment, cannot be equated to the facts of the present case,

wherein this Court is required to follow the binding law laid down by the Supreme Court in connection with the benefit of reservation to be given to

persons belonging to Scheduled Tribe category, on migration from one State to another. Under these circumstances, it is not possible to accept the

say of Mr.Parmar that, at the relevant time, when the petitioners were promoted, as per the judgment of this Court, they were rightly promoted

and, therefore, subsequent change in law cannot adversely affect their rights. When the view taken by this Court is overruled by the Supreme

Court, it can be presumed that the law laid down by the Supreme Court was in existence even at the time when the petitioners were promoted.

The judgment of the Supreme Court cannot be equated with any enactment of law by the Legislature, wherein the question of application of such

law, with retrospective effect, is required to be taken into consideration. When the Supreme Court declares the law, that has to be considered as a

law, as it is, from the very inception of a particular statute. The Supreme Court merely interprets a provision of law while delivering the judgment,

as, ultimately, the Supreme Court and the High Courts interpret as to what the law is, at the time of deciding the cases.

Further, in view of the decision of the Apex Court in M.A. Murthy Vs. State of Karnataka and Others, wherein it is held that, normally, the

decision of the Apex Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that

what is enunciated by the Supreme Court is, in fact, the law from very inception, I do not find any substance in the argument of Mr.Parmar to the

effect that the judgment of the Supreme Court cannot be made applicable retrospectively so as to take away the benefit of promotional orders

given to the petitioners by the Board. At the cost of repetition, it is stated that the law declared by the State cannot be equated with any enactment

of law by the Parliament, and when the law is declared by the Supreme Court, its effect is to treat it from the beginning and it is presumed that it is

the law from the very beginning, having a binding effect in the entire country.

Mr.Parmar thereafter referred to the decision of the Supreme Court in Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and

Others, Relying upon the said judgment, Mr.Parmar submitted that the Supreme Court and High Courts are constitutionally independent of each

other, both being courts of record and the High Court is not a court ''subordinate'' to Supreme Court except for purposes of Supreme Court''s

appellate jurisdiction over High Court in terms of Articles 132 to 136 in which context High Court exercises an inferior or subordinate jurisdiction.

The law declared by the High Court at the relevant time was holding the field at the time when the petitioners were promoted and, therefore, the

fact that, subsequently, a different view is taken by the Supreme Court is no ground for deciding the status of the petitioners and whatever

proceedings have been initiated in between at the time when the decision of the High Court was holding the field, the same are required to be

treated as good and valid for all purposes. Mr.Parmar has relied upon paragraphs 8, 12 and 16 of the aforesaid judgment of the Supreme Court to

substantiate his say that the High Court is not a court subordinate to the Supreme Court. Relying upon the said judgment, Mr.Parmar has

vehemently argued that since, at the relevant time, the judgment of the High Court was holding the field, it cannot be said that the Department had

committed any error in promoting the petitioners to the promotional posts of Junior Assistant and the subsequent decision of the Supreme Court

should not come in the way of the petitioners in any manner. I am not in a position to accept such assertion on the part of Mr.Parmar. It is required

to be noted that if the judgment of the High Court is overruled by the Supreme Court, either expressly or impliedly, the effect of the judgment of

the Apex Court is required to be taken into consideration, as stated earlier, from the very inception, i.e., at the time when such action was taken.

The ratio decidendi in the aforesaid case cannot be extended to such an extent that even if the view of the High Court is overruled by the Supreme

Court, then also, for the intervening period, if any decision is taken in view of the judgment of the High Court holding the field at the relevant time,

that decision cannot be changed subsequently. Ultimately, the judgment of the Supreme Court will naturally prevail over the judgment of this High

Court and, ultimately, the law laid down by the Supreme Court is required to be given effect to. The judgment on which strong reliance is placed

by Mr.Parmar in the aforesaid case of Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and Others, is not at all applicable in any

manner so far as the facts of the present case are concerned. The said judgment is on an entirely different aspect altogether and so far as the issue

raised in the present case is concerned, it cannot be said that the point raised in the present petition is, in any way, covered by the aforesaid

judgment of the Supreme Court.

5th August, 2004

At this stage, it is relevant to refer to Article 141 of the Constitution of India, which reads as under :-

... ...

141. Law declared by Supreme Court to be binding on all courts.--The law declared by the Supreme Court shall be binding on all courts within

the territory of India.

... ...

Under Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India

and it is having binding effect for the entire country. As pointed out earlier, when the Supreme Court or the High Court, as the case may be,

pronounces the law, the effect of such decision would be that this is the law from the very beginning and it merely interprets what the law is. So,

even if the judgment of this Court was holding the field at the relevant time, in view of the subsequent judgment of the Supreme Court, it is clear

that as per the law declared by the Supreme Court, it can be considered as the law prevailing at the relevant time when the petitioners were

promoted, and, therefore, they were not eligible to be promoted as they have migrated from the State of Rajasthan and no benefit can be given to

them on the basis of such certificate issued by the State of Rajasthan in view of their migration from the State of Rajasthan to the State of Gujarat.

It may be true that the petitioners were selected by the authority and the petitioners have stated the correct facts at the time of submitting the

applications, but even then, the appointments are contrary to law, especially when, even in the promotional order, it is clearly mentioned that it is ad

hoc and subject to finalization of the zone of consideration and it is always open for the Housing Board to reconsider the aforesaid question of

promotion in the light of the law declared by the Supreme Court.

Mr.Parmar, learned Advocate for the petitioner, placed reliance upon the decision of the Apex Court in Food Corporation of India Vs. State of

Haryana and Another, In the aforesaid case, the State of Haryana tried to impose sales tax on levy transactions undertaken by the Food

Corporation of India. The appellant Food Corporation of India had successfully challenged the imposition of such levy before the High Court as

the High Court had allowed the writ petition on the ground that the said transaction did not amount to either purchase or sale. The High Court

accordingly quashed the assessment orders and demand notices issued by the State. The aforesaid judgment was not challenged by the State of

Haryana and accordingly, the said judgment remained to be the law declared by the High Court so far as the State of Haryana is concerned.

Subsequently, the State of Haryana again issued notice levying sales tax on the turnover involving levy transactions. The said action was challenged

by the appellant of that case, but the petition was dismissed by the Punjab & Haryana High Court on the ground of availability of alternative

remedy. The appellant of that case, thereafter, challenged the said demand notice before the Supreme Court. During the pendency of the aforesaid

matter before the Supreme Court, the State of Haryana issued further demand notices in the year 1986. The said notices were again challenged

before the Punjab & Haryana High Court. The said challenge was upheld by the Punjab & Haryana High Court by quashing the said notices. That

judgment of the High Court was challenged before the Supreme Court by the State. In the said proceedings, the Supreme Court declared the law

to the effect that levy procurement is a sale / purchase and, therefore, falls within the purview of Entry 54 of List II of the Seventh Schedule to the

Constitution and that the States were competent to levy sales / purchase tax on such transactions.

On the basis of the said judgment, the State of Haryana issued fresh notices for the earlier period of assessment year 1975-''76 onwards. The

Apex Court found that the appellant had paid the amount towards tax on levy transactions for the assessment year 1975-''76, but, thereafter, the

State again demanded interest on the delayed payment on the ground that the payment was made at a belated stage for the assessment year 1975-

''76. The levy of interest was challenged again before the High Court, which was rejected by the High Court. The said decision was challenged by

the appellant Food Corporation of India before the Supreme Court. Considering the facts of the aforesaid case, the Supreme Court has found that

so far as the State of Haryana is concerned, during the period between 17.5.1975 and 6.1.1997, the law declared by the High Court was that the

State of Haryana did not have the constitutional authority to impose sales tax on levy transactions. The said declaration of law was not challenged

by the State. Under the said circumstances, it was found by the Supreme Court that until the position of law stood changed, i.e. from 6.1.1997, the

State of Haryana could not have made a demand for the payment of sales tax on levy transactions and that the State of Haryana could have made

such demand only after the judgment of the Supreme Court, which was delivered on 6.1.1997. It has also been found by the Supreme Court that,

it was after the judgment of the Supreme Court, on 28.1.1997, that a demand was made by the State of Haryana in connection with the aforesaid

amount towards the tax on levy transactions. In the aforesaid decision, it is found by the Supreme Court that the interest amount demanded by the

State for the assessment year 1975-76, cannot be sustained.

In the background of the aforesaid factual aspect, the Honorable Supreme Court has held that, at the relevant time, the judgment of the High Court

was holding the field and, therefore, the appellant of that case was not bound to make any payment towards the tax on levy transactions. So far as

the aforesaid judgment is concerned, as stated earlier, the same was in connection with the payment of tax for a particular assessment year, and, at

that time, as per the prevailing law or as per the judgment of the High Court, the State was not entitled to charge any tax on such transaction and

considering the said facts of the case, it was found by the Supreme Court that there was no question of charging any interest on such late payment.

In the instant case, as stated above, the promotions of the petitioners were ad hoc and subject to further declaration of policy in connection with

the zone of consideration. Under the circumstances and especially when even on behalf of the Housing Board, it has been fairly stated by

Mr.Ravani that so far as the original appointment of the petitioners are concerned, the same are not going to be disturbed, as the Board is more

concerned with the promotional orders of the petitioners, in my view, in view of the law declared by the Supreme Court, it is always open for the

Board to reconsider the question of promotion to the posts in question, viz., Junior Assistant, as, it is not in dispute that the promotions were

required to be given from the reserved category and if the petitioners did not get the protection of reservation, naturally, they were not eligible to

continue on the promotional posts on the basis that they belonged to the Scheduled Tribe from the State of Rajasthan. In the light of the Supreme

Court judgment, therefore, the Board is required to give promotions to eligible candidates belonging to the Scheduled Tribe Category, who are,

legitimately, entitled to be promoted. Simply because the petitioners themselves have not played any role in such promotions is no ground to

restrain the Board, if it wants to reconsider the promotions given to the petitioners to the aforesaid posts of Junior Assistant, in view of the

judgment of the Supreme Court, and the said action of the Board cannot be said to be illegal or arbitrary in any manner.

12. The principle laid down by the Supreme Court in the cases of assessment for the purpose of tax, therefore, cannot be, straight away, made

applicable to such type of cases wherein the question of appointment, promotion, etc., is involved. It is also required to be noted that even as per

the relevant Rules, the petitioners were not entitled to be promoted for want of experience, as clearly mentioned in the promotional order.

However, relaxation was given only because the posts were required to be filled in pursuant to the drive for clearance of backlog of Scheduled

Tribe vacancies.

Mr.Parmar thereafter relied upon the decision of the Supreme Court in Dr. J.P. Kulshreshtha and Others Vs. Chancellor, Allahabad University and

Others, By relying upon the said judgment, it is argued by Mr.Parmar that, as the petitioners are functioning without blemish since their promotions

and since the petitioners have gained experience and were qualified to be appointed or promoted to the posts in question, i.e. Junior Assistant,

now their promotions are not required to be disturbed in any manner. However, as discussed earlier, it is open for the Board to reconsider the said

decision in the light of the subsequent declaration of law by the Supreme Court on the said point.

13. Ms.Archana Raval, learned AGP, and Mr.Ravani, learned Advocate for the Board, both have relied upon the decision of the Apex Court in

Sarwan Kumar and Another Vs. Madan Lal Aggarwal, It has been held by the Supreme Court that, when the law declared by the Supreme Court

is not made prospective by the Supreme Court, the High Court cannot declare that it would be prospective.

14. Considering the aforesaid aspect of the matter, in my view, the respondent-Board is entitled to reconsider the question of promotion and to

pass the consequential orders in view of the law declared by the Supreme Court in connection with the question about entitlement of concessions /

benefits admissible to Scheduled Tribe on the basis of the caste certificate in case a person has migrated from one State to another. It is not in

dispute that the petitioners were not holding the Scheduled Tribe certificates issued by the State of Gujarat, and, admittedly, they are holding the

certificates dated 27th June, 1979, to the effect that ""BHIL"" has been classified as Scheduled Caste in the State of Rajasthan. The certificates

issued by the Deputy Director of the Office of the Zonal Director for Scheduled Castes and Scheduled Tribes - ex-Officio Deputy Commissioner

for Scheduled Castes & Scheduled Tribes, having office at Ahmedabad, state that the Tribe ""BHIL"" has been classified as Scheduled Tribe in

Rajasthan. When the facts of the case are absolutely simple and clear, the effect of law declared by the Supreme Court is required to be given

effect to by the Board by taking appropriate decision in connection with the subject matter.

Therefore, considering the aforeaid aspect of the matter, I do not find any substance in the argument of Mr.Parmar to the effect that since the

petitioners have been promoted in an appropriate manner, now, their promotional posts cannot be disturbed by the respondent-Housing Board on

the subsequent law declared by the Supreme Court in this behalf. The said contention is accordingly negatived.

15. It is, however, required to be noted that when the petitioners were appointed, they were selected by the Selection Committee on merits and

their names were forwarded by the Employment Exchange. It is, no doubt, true that both of them were given appointment in the reserved category

on the basis that both of them were belonging to Scheduled Tribe category. After they were confirmed in the posts of Junior Clerk, they were

promoted to the posts of Senior Clerk. However, since their promotions to the posts of Head Clerk / Junior Assistant were admittedly ad hoc and

subject to the orders, which may be passed by the Government in this behalf, in connection with the zone of consideration, ultimately, now, the

Board has decided to reconsider the said decision whether the petitioners can be continued in the promotional posts or not. Considering the

aforesaid facts of the case and in view of the stand taken by the Board before this Court to the effect that the services of the petitioners are not

going to be terminated from their original posts of Junior Clerk, it is held that the original appointments of the petitioners should not be disturbed in

view of the facts and circumstances of the case.

So far as the promotional orders are concerned, since I do not find any substance in the arguments of Mr.Parmar, the said arguments in connection

with promotions are negatived. Mr.Ravani, however, submitted that before passing any consequential orders of reversion, if any, the petitioners

shall be heard by the Board. It is, clarified that in case the petitioners are otherwise eligible to be retained on the said posts as if even by taking

away the benefit of reservation given to them, i.e. by treating as if they belong to the general category, and even in the general category, if they are

entitled to retain the said posts, it is for the Board to consider this aspect and appropriate decision may be taken by the Board, after hearing the

petitioners. It is for the Board to decide whether considering the length of service, the petitioners would be entitled to be promoted to the aforesaid

posts of Junior Assistant in the general quota, even if they are not entitled to the benefit of reservation quota of Scheduled Tribe for the said posts.

For deciding the said question, naturally, the seniority of the petitioners is required to be considered from the date of appointment in the original

posts and for that purpose, it is required to be considered as if they were appointed in general quota and not in the reserved category at the time of

their entry in service.

At this stage, the last submission of Mr.Parmar is also required to be taken into consideration. It is submitted that the petitioners are serving in the

promotional posts since 14 years, as, originally both of them were promoted in the year 1990. However, when the petitions were filed in the year

1992, initially, this Court issued notice and thereafter granted ad interim relief of status quo and while admitting the matter, this Court passed an

order of interim relief and directed continuance of the earlier order of status quo till further orders, and, therefore, the subsequent period cannot

come to the rescue of the petitioners, because, the respondents cannot be blamed in any manner, because, it is not by the fault on the part of the

respondents that by this time the petitioners are serving in the promotional posts for 14 years. Since the petitions are pending in this Court since

1992, the petitioners cannot now be permitted to say that by this time they have continued for 14 years and, therefore, the time consumed in the

court proceedings cannot come to the rescue of the petitioners.

16. Under the circumstances, the petitions are required to be partly allowed by not disturbing the original appointments of the petitioners, and at

the time of deciding the question of reversion, the Department may, in the peculiar circumstances of the case, consider the case of the petitioners in

general category, and in the said general category, if the petitioners are getting their chance, the said question also may be taken into consideration.

17. At the conclusion of the dictation of this judgment, Mr.Parmar, learned Advocate for the petitioners, submitted ""Synopsis of Submissions"",

which reads as under :-

... ...

SYNOPSIS OF SUBMISSIONS

1. When the petitioners were recruited and thereafter promoted as Senior Clerk, Head Clerk and or Junior Assistant, the State Government

Offices and the authorities under the State treated a person holding status certificate of Scheduled Caste and or Scheduled Tribe as entitled to

claim throughout India the benefit of reservation policy. Thus, the petitioners were recruited and promoted following due process of law. The law

laid down by this Hon''ble Court in case of Kumari Manju Singh Vs. Dean B.J. Medical College decided on 13.01.1986, reported in 1986 GLH

483 fortified this practice similar holding of 1986 GLH 802.

2. The Supreme Court decided on 02.05.1990 the W.P. filed under Article 32 of Constitution of India rendering judgment reported in Marri

Chandra Shekhar Rao Vs. Dean, Seth G.S. Medical College and Others, (Marri Chandra Rao Vs. Dean Seth G S Medical College) over riding

1986 GLH 483 and 1986 GLH 802.

The point arises is whether the Supreme Court decision shall have retrospective effect rendering chaos in administration.

The Reply is no for the reasons that :

(a) The High Courts and the Supreme Court both have power to lay down law vide Bengal Iron Corporation and another Vs. Commercial Tax

Officer and others,

(b) It is held by Hon. Supreme Court vide para 8 of decision reported in Tirupati Balaji Developers Pvt. Ltd. and Others Vs. State of Bihar and

Others, Tirupati Balaji Vs. State of Bihar, that ""under the Constitutional Scheme as framed by judiciary the Supreme Court and the High Court

both are courts of records. The High Court is not a court subordinate to the Supreme Court."" It has also observed that powers conferred on High

Court under Article 226 of the Constitution of India.

(c) In case of Ram Bai Vs. Commissioner of Income Tax, it is held vide 4 Head Note (framed on basis of para 8 thereof) that Decision of High

Court even if reversed by Supreme Court held binding on ITO during pre-reversible period.

Similarly once again the Supreme Court has held in case of Food Corporation of India Vs. State of Haryana and Another, vide H N on page 596

and para 10 and 4 thereof that till its reversal by Supreme Court, the decision of High Court held remains effective - Supreme Court''s decision

although would relate back, but actions earlier in contravention of High Court''s decision in past would not be legal.

3. Had there been no decision made by High Court, the position would have been different and the Supreme Court decision would have

retrospective effect.

4. If the law laid down by High Court is denied its efficacy during predecisional period (period prior to judgment delivered by the Supreme Court)

chaos will ensue. Many appointments and promotions throughout India made to status holder employees of other States will have to be declared

null and void because all will have to be treated equally (Article 14 of the Constitution of India.)

... ...

Since the submissions contained in the ""Synopsis of Submissions"" have been exhaustively dealt with and answered in this judgment, now, nothing

more is required to be stated.

However, the following submission contained therein, by placing reliance on the decision of the Supreme Court in Bengal Iron Corporation and

another Vs. Commercial Tax Officer and others, requires to be dealt with by this Court :-

... ...

The point arises is whether the Supreme Court decision shall have retrospective effect rendering chaos in administration. The Reply is no for the

reasons that :

(a) The High Courts and the Supreme Court both have power to lay down law vide Bengal Iron Corporation and another Vs. Commercial Tax

Officer and others,

... ...

... ...

In M.A. Murthy Vs. State of Karnataka and Others, the Apex Court, in terms, held that the law declared by this Court is presumed to be the law

at all times and that there shall be no prospective overruling unless it is so indicated in the particular decision.

So far as the decision in Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, is concerned, the Supreme Court held

therein that the law is what is declared by the Supreme Court and the High Court, but the said observations were made in the context of the

clarifications / Circulars issued by the Central Government and / or State Government and therefore, the Supreme Court held that they represent

merely the understanding of the statutory provisions and they are not binding upon the Courts.

The appellant before the Supreme Court was engaged in the manufacture and sale of products like cast iron pipes, manhole covers, bends etc. For

the assessment year 1989-90, the Commercial Tax Officer, Narayanguda Circle, Hyderabad levied sales tax upon the turnover relating to said

products treating them as ""general goods"". He overruled the petitioner"s contention that the said products are ""declared goods"", liable to tax at the

rate of 4% only. The assessees" appeal preferred before the Appellate Deputy Commissioner was still pending. Evidently because no stay was

granted pending the said appeal, a notice was issued to the appellant calling upon him to pay the tax assessed, against which notice he preferred a

writ petition, being W.P. No. 9315 of 1992, in the High Court of Andhra Pradesh. His main contention in the writ petition was that by virtue of

G.O.Ms. No. 383 Revenue Department dated 17.4.1985, his products are ''declared goods'' and are, therefore, liable to tax only @ 4%. The

Division Bench of the High Court dismissed the writ petition. While dismissing the appeal against the Division Bench judgment of the Andhra

Pradesh High Court, the Honourable Supreme Court held as under :-

... ...

17. A word about the validity of section 42 of the A.P. Act. Section 37 of the Payment of Bonus Act conferred a similar power upon the Central

Government; it further declared that any such order would be final. It was struck down by a Constitution Bench of this Court in Jalan Trading Co.

(Private Ltd.) Vs. Mill Mazdoor Union, as amounting to excessive delegation of legislative power. However. in a subsequent decision in Gammon

India Ltd. and Others Vs. Union of India (UOI) and Others, it has been explained by another Constitution Bench that the decision in Jalan Trading

was influenced by the words occurring at the end of section 37 of the Payment of Bonus Act to the effect that the direction of the Government

issued thereunder was final. Inasmuch as the said words are not there in section 34 of the Contract Labour (Regulation and Abolition) Act, 1970,

it was held, section 34 cannot be said to suffer from the vice of excessive delegation of legislative power. It is meant ""for giving effect to the

provisions of the Act,"" it was held. Sub-section (2) of section 42 of the A.P. Act does no doubt not contain the aforesaid offending words, and

cannot therefore be characterised as invalid. Yet, it must be remembered that the said power can be exercised ""for giving effect to the provisions of

the Act"", and not in derogation thereof. As we shall presently indicate it is necessary to bear this limitation in mind while examining the effect of

G.O.Ms. 383.

18. So far as clarifications / Circulars issued by the Central Government and/or State Government are concerned, they represent merely their

understanding of the statutory provisions. They are not binding upon the Courts. It is true that those clarifications and Circulars were communicated

to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law. There

can be no estoppel against the statute. The understanding of the Government, whether in favour or against the assessee, is nothing more than its

understanding and opinion. It is doubtful whether such clarifications and Circulars bind the quasi-judicial functioning of the authorities under the

Act. While acting in quasi-judicial capacity, they are bound by law and not by any administrative instructions, opinions, clarifications or Circulars.

Law is what is declared by this Court and the High Court- to wit, it is for this Court and the High Court to declare what does a particular provision

of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean.

(See Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another,

19. Now coming to G.O. Ms. 383, it is undoubtedly of a statutory character but, as explained hereinbefore the power u/s 42 cannot be utilised for

altering the provisions of the Act but only for giving effect to the provisions of the Act. Since the goods manufactured by the appellant are different

and distinct goods from cast iron, their sale attracts the levy created by the Act. In such a case, the government cannot say, in exercise of its power

u/s 42 (2) that the levy created by the Act shall not be effective or operative. In other words, the said power cannot be utilised for dispensing with

the levy created by the Act, over a class of goods or a class of persons, as the case may be. For doing that, the power of exemption conferred by

section 9 of the A.P. Act has to be exercised. Though it is not argued before us, we tried to see the possibility but we find it difficult to relate the

order in G.O. Ms. 383 to the power of the Government u/s 9, apart from the fact that the nature and character of the power u/s 42 is different

from the one conferred by Section 9. As exemption u/s 9 has to be granted not only by a notification, it is also required to be published in the

Andhra Pradesh Gazette. It is not suggested, nor is it brought to our notice, that G.O. Ms. 383 was published in the Andhra Pradesh Gazette. This

does not, however, preclude the Government of Andhra Pradesh from exercising the said power of exemption, in accordance with law, if it is so

advised. We need express no opinion on that score.

... ...

It would also not be profitable to extract words or sentences here and there from the judgment of the Supreme Court divorced from the context of

the question under consideration by the Court and to build upon it because the essence of the decision is its ratio decidendi. In Commissioner of

Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., the Apex Court cautioned that the judgment must be read as a whole and the observations

from the judgment have to be considered in the light of the questions which were before the Court. In this context, the relevant observations are in

paragraph 39, which read as under :-

... ...

39. The principle laid down by this Court in Jaganmohan Rao''s case (AIR 1970 SC 300), therefore, is only to the extent that once an assessment

is validly reopened by issuance of notice u/s 22(2) of the 1922 Act (corresponding to Section 148 of the Act) the previous under assessment is set

aside and the ITO has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set

aside is, thus, only the previous under assessment and not the original assessment proceedings. An order made in relation to the escaped turnover

does not affect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character

and identity. It is only in cases of ""underassessment"" based on clauses (a) to (d) of Explanation (I) to Section 147, that the assessment of tax due

has to be recomputed on the entire taxable income. The judgment in Jaganmohan Rao''s case (AIR 1970 SC 300), therefore, cannot be read to

imply as laying down that in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim

credit in respect of items finally concluded in the original assessment. The assessee cannot claim recomputation of the income or redoing of an

assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has

since acquired finality. Of course, in the reassessment proceedings it is open to an assessee to show that the income alleged to have escaped

assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return,

but to read the judgment in Jaganmohan Rao''s case (AIR 1970 SC 300) as if laying down that assessment wipes out the original assessment and

that reassessment is not only confined to ""escaped assessment"" or ""under assessment"" but to the entire assessment for that year and start the

assessment proceedings de novo giving right to an assessee to reagitate matters which he had lost during the original assessment proceeding, which

had acquired finality is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings.

Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither

desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under

consideration and treat it to be the complete ''law'' declared by this court. The judgment must be read as a whole and the observations from the

judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes it colour from the

questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the

true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the

questions under consideration by this court, to support their reasonings. In H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of

Gwalior and Others Vs. Union of India and Another, this Court cautioned :

It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a

full exposition of the law on a question when the question did not even fall to be answered in that judgment.

... ...

Thus, from the aforesaid, it is clear that, divorced from its context, it is not proper to regard a word, a clause or a sentence occurring in a judgment

of the Supreme Court as containing a full exposition of the law. Hence, the argument of Mr.Parmar based on the decision of the Apex Court in

Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, is required to be negatived, in view of the fact that the said decision

was dealing with the respective jurisdictions of the Parliament, Executive and Judiciary, wherein the Apex Court held that the authorities, while

acting in quasi-judicial capacity, are bound by law and not by any administrative instructions, opinions, clarifications or Circulars, and, therefore,

the said decision cited by Mr.Parmar, divorced from its context, has no application to the facts of this case, wherein this Court is required to follow

the binding law laid down by the Supreme Court in connection with the benefit of reservation to be given to the persons belonging to Scheduled

Tribe category on migration from one State to another.

Considering the aforesaid aspect of the matter, the argument of Mr.Parmar is absolutely without any basis and is in complete ignorance of Article

141 of the Constitution of India. Once the Supreme Court decides the matter and declares the law, it is binding on all the courts in India and,

thereafter, it is not open for any party to say that the High Court judgment should still be maintained because the High Court has also constitutional

powers to issue writ under Article 226 of the Constitution of India. There is absolutely no merits in the aforesaid argument and the said argument is,

therefore, negatived.

If the law laid down by the High Court is reversed in an appeal, or even if the view of the High Court is impliedly overruled by the subsequent

Supreme Court judgment, naturally, the law declared by the Supreme Court will hold the field from inception. If the decision of the High Court is

overruled, later on, in an appeal involving identical point, naturally, the law enunciated by the Supreme Court is the law laid down from inception,

unless prospectively made applicable by the Apex Court itself.

In view of the above, there is no substance in the ""Synopsis of Submissions"" submitted by Mr.Parmar, learned Advocate for the petitioners, and,

for the reasons narrated hereinabove, the said Submissions are accordingly negatived.

18. The conclusions reached in this judgment are reproduced, in a nutshell, as under :-

(i) The respondent-Board is entitled to reconsider the question of promotion and to pass the consequential orders in view of the law declared by

the Supreme Court in connection with the question about entitlement of concessions / benefits admissible to Scheduled Tribe on the basis of the

caste certificate in case a person has migrated from one State to another.

(ii) The argument of Mr.Parmar, to the effect that since the petitioners have been promoted in an appropriate manner, now, their promotional posts

cannot be disturbed by the respondent-Housing Board in view of the law declared subsequently by the Supreme Court in this behalf, is negatived.

(iii) In view of the stand taken by the respondent-Board before this Court to the effect that the services of the petitioners are not going to be

terminated from their original posts of Junior Clerk, it is held that the original appointments of the petitioners should not be disturbed in view of the

facts and circumstances of the case.

(iv) Before passing any consequential orders of reversion, if any, the petitioners shall be heard by the Board.

And

(v) It is, clarified that in case the petitioners are otherwise eligible to be retained on the said posts as if even by taking away the benefit of

reservation given to them, i.e. by treating as if they belong to the general category, and even in the general category, if they are entitled to retain the

said posts, it is for the Board to consider this aspect and appropriate decision may be taken by the Board, after hearing the petitioners.

19. For the foregoing reasons, the petitions are partly allowed to the extent indicated above. Rule is accordingly made absolute partly. No costs.