

be applied having regard to the ground realities. Learned counsel has further submitted that the Government of India has, from time to time, issued circulars and Government Orders clearly providing that migrant SC persons are eligible for appointment on posts reserved for SC persons in the U.T. of Pondicherry and in absence of any statutory enactment or rules made in exercise of powers conferred under the proviso to Article 309 of the Constitution, these circulars or Government Orders are binding upon the Government of Pondicherry. It has also been contended that in the matter of providing reservation in favour of any backward class of citizens within the meaning of Article 16(4) of the Constitution, it is open to the U.T. of Pondicherry to apply any policy, especially one whereunder migrant SC persons are also given the benefit of reservation and it is not open to the contesting respondents to object to such kind of a reservation policy and claim that the benefit of reservation should be extended only to such SC persons who are mentioned in the schedule appended to the Presidential Order issued in the year 1964. Learned counsel has also submitted that right from inception, the U.T. of Pondicherry has been following a practice whereunder migrant SC persons are held eligible for appointment on reserved posts and this being the consistent and uniform policy of the State, the same cannot be held to be illegal or contrary to any constitutional provisions.

7. Learned counsel for the contesting respondents (applicants in the original application before the Tribunal) have submitted that in view of clear language in Article 341(1) of the Constitution, only such castes which have been mentioned in the schedule appended to the Presidential

Order of 1964, shall be deemed to be Scheduled Castes for the U.T. of Pondicherry and a migrant SC person is not eligible for any reserved posts. Learned counsel has also submitted that the fact that a Union territory is administered by the President through an administrator appointed by him, can make no difference as the posts in question are posts under the Pondicherry government and cannot be deemed to be posts under the Central Government. Learned counsel has also placed strong reliance on the following observation made by the Constitution Bench in the case of *Mam Chandra (supra)* in para 10 of the reports:

"These must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to other community or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled in order to become equal with others. But equally those who go to other areas should also ensure that they make way for the disadvantaged and disabled of that part of the community who suffer from disabilities in those areas. In other words, Scheduled Castes and Scheduled Tribes say of Andhra Pradesh do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other communities..."

Reliance has also been placed on the following observation in *Action Committee case (supra)*:

"The Constitution Bench has, after referring to the debates in the Constituent Assembly relating to these articles, observed that while it is true that a person does not cease to belong to his caste/tribe by migration he has a better and more socially free and liberal atmosphere and if sufficiently long time is spent in socially advanced areas, the inhibitions and handicaps suffered by belonging to a socially disadvantaged community do not truncate his growth and the natural talents of an individual gets full scope to blossom and flourish. Realising that these are problems of social adjustment it was observed that they must be so balanced in the mosaic of the country's integrity that no section or community should cause detriment or discontentment to the other community. Therefore, said the Constitution Bench, the Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection so long as and to the extent they are entitled to in order to becoming equals with others but those who go to other areas should ensure that they make way for the disadvantages and disabled of that part of the community who suffer from disabilities in those areas."

8. Before the Tribunal it was pleaded on behalf of the appellants that the Legislative Assembly of U.T. of Pondicherry has not been vested with powers to make laws in relation to public services of the Union territory and consequently the President of India is the repository of all powers with regard to public services of the Union territory and with regard to the persons appointed in connection with the affairs of the Union territory. The President has delegated to the Lt.

Governor of Pondicherry power to frame rules for regulating the method of recruitment to the civil services and posts in Grade 'A', 'B', 'C' and 'D' under his administrative control in connection with the affairs of the Union territory and also the conditions of service of persons appointed to such services. While making rules for appointment in Grade 'A' and 'B' posts, the Lt. Governor has to act subject to prior consultation with the Union Public Service Commission. The services and posts for U.T. of Pondicherry are treated like Central services and posts, and in the matter of reservation in posts and services for Scheduled Castes, the Government of U.T. of Pondicherry is bound by the policy prescription and the rules and orders of Government of India.

9. The Policy of the Government of India, whereunder all SC/ST candidates get benefit in the matter of appointment and admission in educational institutions controlled/ administered by the Central Government has been reproduced in para 18 of the judgment in *Mam Chandra Shekhar Rao (supra)* and the relevant part thereof reads as under:

"Scheduled Castes and Scheduled Tribes are entitled to derive benefits of the all India Services or admissions in the educational institutions controlled/ administered by the Central Government, irrespective of the State to which they belong. The reservation in force in favour of the Scheduled Castes and Scheduled Tribes in filling vacancies in posts and services under the Government of India are as in the enclosure (Chapter II of the Brochure on the Reservation for Scheduled Castes and Scheduled Tribes in Services issued by the Government of India). The reservations for