

be applied having regard to the ground realities. Learned counsel has 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, such circulars or Government Orders standing upon the Government of Pondicherry, it has not been contended that in the matter of making reservation in favour of SC persons in the U.T. of Pondicherry, the Government of India or citizens within the U.T. of Pondicherry (since 1949) of the Government of India or the U.T. of Pondicherry can apply any policy of reservation in favour of migrant SC persons and then the benefit of reservation is not open to the non-migrant residents a object to the Government reservation policy and reservation in favour of reservation is not open only to such SC persons as mentioned in the list submitted to the Presidential Commission in the year 1944. Learned counsel has submitted that right of reservation in the U.T. of Pondicherry has been following practice wherever migrant SC persons are held and 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 petitioner 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 in the following observation made by the Constitution Bench in the case of *M. K. Chandra (Supra)* in para 14 of the report:

These must be so balanced in the mosaic of the country that integrity of the country and community should cause detriment or disadvantage to either minority or section. Scheduled Castes and Scheduled Tribes belonging to a particular area of the country must be given protection in the same way as to the extent they are entitled to start 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 or that part of the community who suffer from disabilities in those areas. In these 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 is sufficiently long enough spent in socially advanced areas, the disabilities and handicaps suffered by belonging to a socially backward indigenous community do not impede his growth and the full measure of intellectual and cultural development in the domain. Realising that these are problems of social adjustment it was observed that they must be so handled as the masses of the country, generally, should not be left in a state of social and cultural isolation. Further, and the Constitution Bench, the Scheduled Caste and Scheduled Tribes Reservations Act, particularly in a Government and the Government of India and the Government of the Union Territory of Pondicherry, has not been asked 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.

5. 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 listed in the Schedule and are subject to the following conditions:-

- (a) The posts in the Government of Pondicherry shall be filled by the Government of Pondicherry and the Government of India shall not be entitled to nominate persons to such posts.

[illegible]

Scheduled Castes and Scheduled Tribes are entitled to preferential treatment in the educational institutions controlled and administered by the Government. In exercising the right to which they are entitled, the reservation 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