

Subject:

Para
No.

: 26 :

From pre-page.

Article 342 Schedule Tribes (1) The President (may with respect to any State or Union Territory), and where it is a State after consultation with the Governor thereof), by public notification specify the Tribes or Tribal Communities or parts of or Groups with in Tribes or Tribal communities which shall for the purposes of this constitution be deemed to be Schedule Tribes in relation to that State (or Union Territory) as the case may be). Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under Clause (1) any Tribe or Tribal community or part or Group with in any Tribe or Tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

It may be seen from the above that Notwithstanding the provisions contained in Article 16 (4A) relating to the reservation of appointment or posts, the provisions contained in Article 342 of the Constitution enumerated would clearly show that notification of "Schedule Tribe" is State specific and it has to be understood as such.

That being the position, we are of the view that unless a Constitutional Amendment is made to the existing Reservation Policy, no caste or community in these islands even if they are backward in all respect. A&N Admn. can not include in the list of Schedule Tribes or extend the benefits for reservation in employment.

Now, the fact is that MHA has given concurrence to treat the 'Ranchi Tribes' as 'Schedule Tribes' of these Islands and extend all such benefits to them in the light of Apex Courts Judgment order dated 11.2.2005 on the subject under reference. But the letter is silent to what extend the benefit is to be extended. As per MHA's letter, the Law declared by Hon'ble Supreme Court in its Judgment dated 11.2.2005 is equally applicable to all States/Uts. At the same time it has also been confirmed by the Ministry that inclusion of "Ranchi Tribes" in the list of STs of the A&N Islands is not covered with the meaning and scope of the Judgment dated 11.02.2005 of the Hon'ble Supreme Court. If so, its implementation in this Admn. will have a far reaching consequences, i.e. the Schedule Tribes' of various States like Bihar, Orisa, Andhra Pradesh, Tamil Nadu etc. residing in these Islands will definitely come forward for extending such benefits to them, which will create descendment among the original "Tribes" of these Islands.

Leaving all the above points in case the judgment order under reference is to be implemented, then to what extend the benefit(s) are to be extended, whether it is on percentage basis or on the basis of their population/representation in service may be got confirmed from MHA in the first instance. Moreover, the Ranchi Association has already filed a Writ Petition before the Hon'ble High Court sitting at Port Blair on the subject which will come up for hearing on 14.11.2005, before taking a decision all the above point may be looked into seriously in consultation with Law Deptt.

With this, the file is returned pl."

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