4. 995) 6 SCC 309, *R. Chandevarappa* v. *State of Karnataka* 264g
5. (1995) 4 SCC 32 : 1995 SCC (L&S) 914 : (1995) 30 ATC 166, *Director of Tribal Welfare, Govt. of A.P.* v. *Laveti Giri* 263f
6. 1995 Supp (2) SCC 549, *Murlidhar Dayandeo Kesekar* v. *Vishvanath Pandu Barde* 264f-g
7. (1994) 6 SCC 241 : 1994 SCC (L&S) 1349 : (1994) 28 ATC 259, *Kumari Madhuri Patil* v. *Addl. Commr., Tribal Development* 263c

The Judgment of the Court was delivered by

H.K. SEMA, J.— The appellant Shri Anjan Kumar is the offshoot of the wedlock between Shri Lakshmi Kant Sahay, District Gaya in the State of Bihar and Smt Angela Tigga who belongs to Scheduled Tribe community of Oraon Tribe, Village Pondi Potkona, Distt./Division Raigarh, State of Madhya Pradesh. By an order dated 7-8-1992 Scheduled Tribe certificate was issued to the appellant by SDM, Gaya on the ground that the mother of the appellant Smt Angela Tigga belongs to Oraon Tribe which is recognised as a Scheduled Tribe in the State of Madhya Pradesh. The appellant appeared for the Civil Service Examination in 1991 conducted by the Union Public Service Commission claiming himself to be a Scheduled Tribe candidate. In the said examination he had passed the written test but could not qualify in the interview. He again appeared in the Civil Service Examination conducted by the Union Public Service Commission in the year 1992 and passed the written examination. In 1993 he was called for interview. The result of the successful candidates was published and he stood at 759th rank in order of merit. He was also allotted Indian Information Service Grade A. However, the appellant did not receive any final posting order, which had resulted in filing many representations to the Union of India. In one of the representations dated 14-9-1994 the appellant also stated that he belongs to Scheduled Tribe category and his sub-caste is Oraon.

2. Having failed to receive any positive response from the respondents, he filed an original application before the Central Administrative Tribunal, Principal Bench, New Delhi being OA No. 2291 of 1994, inter alia, seeking direction to the Union of India to allow the appellant to join training. In response to the notice issued by the Tribunal, the Union of India, by its letter dated 9-11-1994, conveyed to the Tribunal that the appellant has not been brought up in tribal environment and that his father is a non-tribal and, therefore, he cannot be treated as a Scheduled Tribe. Further, the Union of India, as directed by the Tribunal, conducted the enquiry into the question whether the appellant belongs to Scheduled Tribe community and the enquiry was conducted by the Additional District Collector, Jaispurnagar, District Raigarh, Madhya Pradesh and the report was submitted on 26-6-1995. The enquiry report obviously was against the appellant. After examining the enquiry report submitted as aforestated, the Tribunal ultimately dismissed the Original Application No. 2291 of 1994 by order dated 12-12-1995. Aggrieved thereby the appellant filed a writ petition being CWP No. 647 of 1997 before the High Court of Madhya Pradesh at Jabalpur, inter alia, challenging the enquiry report submitted by the enquiry officer on the allegation of violation of the principles of natural justice inasmuch as no opportunity of hearing had been accorded to the appellant. The learned

Single Judge of the High Court after perusing the records and the enquiry report, submitted by the enquiry officer, dismissed the writ petition by order dated 22-1-1999. The appellant thereafter carried an unsuccessful appeal before the Division Bench in LPA No. 138 of 1999, which was dismissed by the LPA Bench on 3-12-1999. Hence, the present appeal by special leave.

3. We have heard the parties at length.

4. The sole question which calls for determination in this appeal is, as to whether the offshoot of the tribal woman married to non-tribal husband could claim status of Scheduled Tribe and on the basis of which the Scheduled Tribe certificate could be given.

5. It is contended by Mr M.N. Krishnamani, learned Senior Counsel that the enquiry officer conducted the enquiry behind the back of the appellant and therefore, the learned Single Judge as well as the Division Bench erred in law dismissing the petition/appeal by placing reliance on the enquiry report and the material collected during the course of the enquiry. He further contended that the marriage of mother of the appellant (Scheduled Tribe) and the father of the appellant (Kayastha) has been approved and accepted by the community of the village and the appellant has been transplanted into the Tribal community and therefore, he was entitled to the Scheduled Tribe certificate which was correctly granted. In this connection, he has referred to a circular dated 4-3-1975 issued by the Government of India, Ministry of Home Affairs on the subject "Status of children belonging to the couple one of whom belongs to Scheduled Castes/Scheduled Tribes". He particularly referred to the portion when a Scheduled Tribe woman marries a non-Scheduled Tribe man, the children from such marriage may be treated as members of the Scheduled Tribe community, if the marriage is accepted by the community and the children are treated as members of their own community. Such circulars issued from time to time, being not law within the meaning of Article 13 of the Constitution, it would be of no assistance to the appellant on the face of the constitutional provisions. Further, the facts of this case are however different with the facts in which the circular was sought to be clarified.

6. Undisputedly, the marriage of the appellant's mother (tribal woman) to one Lakshmi Kant Sahay (Kayastha) was a court marriage performed outside the village. Ordinarily, the court marriage is performed when either of the parents of bride or bridegroom or the community of the village objects to such marriage. In such a situation, the bride or the bridegroom suffers the wrath of the community of the village and runs the risk of being ostracised or excommunicated from the village community. Therefore, there is no question of such marriage being accepted by the village community. The situation will, however, stand on different footing in a case where a tribal man marries a non-tribal woman (Forward Class) then the offshoots of such wedlock would obviously attain the tribal status. However, the woman (if she belongs to a Forward Class) cannot automatically attain the status of tribal unless she has been accepted by the community as one of them, observed all rituals, customs and traditions which have been practised by the tribals from time immemorial and accepted by the community of the village as a member of