REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
(Arising out of Special Leave Petition (Civil) No.18890 of 2021)

AKHILESH PRASAD **…Appellant**

versus

JHARKHAND PUBLIC SERVICE COMMISSION AND ORS. **…Respondents**

J U D G M E N T

Uday Umesh Lalit, J.

1. Leave granted.

2. This appeal challenges the judgment and final order dated 12.05.2021 passed by the Division Bench of High Court[1] in LPA No.609 of 2017.

3. In the Graduate Level (Special) Competitive Examination held in the year 1994 for filling up the posts of Cooperative Development Officers, the then Bihar Public Service Commission vide letter dated 24.07.1995

[1] High Court of Jharkhand at Ranchi.

recommended the name of the appellant, who was at serial No.98 in the merit list, under Scheduled Tribe ('ST', for short) category. The claim that the appellant belonged to ST category (Gond) was supported by a Certificate issued to that effect on 03.06.1995 by the Scrutiny Officer, Sonpur (Saran) which place now falls in the newly carved State of Bihar after reorganization of States. Later, appointment letter dated 10.11.1995 was issued to the selected candidates including the appellant. The appropriate entry in the service book shows the name and category of the appellant as belonging to ST (Gond).

4. The then State of Bihar was bifurcated as a result of Bihar Reorganization Act, 2000 [Act 30 of 2000] ('the Act', for short), which came into force on 15.11.2000. The erstwhile State of Bihar was bifurcated in successor States *viz.* State of Bihar comprising of 38 districts and newly formed State of Jharkhand comprising of 18 districts. Sections 73 and 74 of the Act are as under:-

> "**73.** Other provisions relating to services.—(1) Nothing in section 72 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State: Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Bihar or to the State of Jharkhand under section 72 shall not be varied to his disadvantage except with the previous approval of the Central Government. (2) All services prior to the appointed day rendered by a person— (a) if he is deemed to have been allocated to any State under section 72, shall be deemed to have been

> rendered in connection with the affairs of that State; (b) if he is deemed to have been allocated to the Union in connection with the administration of the Jharkhand shall be deemed to have been rendered in connection with the affairs of the Union, for the purposes of the rules regulating his conditions of service. (3) The provisions of section 72, shall not apply in relation to members of any All-India Service.
>
> **74.** Provisions as to continuance of officers in same post.—Every person who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Bihar in any area which on that day falls within any of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in, that successor State: Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office."

5. After reorganization of the States, the appellant's service was allocated to the successor State of Jharkhand and since then the appellant has been in the service of State of Jharkhand.

6. On 14.08.2008, a letter was issued by the Principal Secretary, Government of Jharkhand to all the Secretaries of departments regarding reservation in promotion in various categories of services under the State of Jharkhand. Paragraphs 1 and 4 of the communication were as under: -

> "Sir, with reference to above subject, I, as directed, have to submit that, certain departments are expecting guidelines/counselling from this department on the following point:
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> > "The benefit of reservation in promotions should only be given to the government servants of Scheduled Caste / Scheduled Tribes if they are permanent residents of Jharkhand State, even if they were appointed in undivided Bihar."

… … …

> 4. In this connection, the State Government, after due deliberations, has decided as under:
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> > "The reserved category of employees, who were appointed in reserved categories prior to constitution of State and were posted in Jharkhand State on the basis of division of cadre and they are permanent residents of Bihar State, will be unaffected and they shall be considered as government employees of reserved category."

7. Advertisement No.9 of 2010 was issued by the Jharkhand Public Service Commission ('the Commission', for short) for filling up the posts of Deputy Collectors through limited departmental examination. Said Advertisement issued on 09.10.2010, however, prescribed that the benefit of reservation would be extended only to those who submit the appropriate caste Certificate from the Sub-Divisional Officer posted in State of Jharkhand. The appellant having offered his candidature for the limited departmental examination, the same was forwarded by the office of the Registrar, Cooperative Societies, Jharkhand to the Commission.

8. In the results of the examination declared on 04.05.2013, the appellant was declared unsuccessful though he had secured 123.68 marks as against the cut-off at 113.70 for ST category.

9. The appellant challenged his non-selection by filing Writ Petition (S) No.3480 of 2013, which was allowed by the Single Judge of the High Court by his judgment and order dated 22.09.2017 with following observations:-

> "**8**. The aforesaid provision makes it abundantly clear that so far as the limited examination of the State of Jharkhand is concerned, the benefit of reservation may be extended to such candidates also, who are born on the reserved category post under the unified State of Bihar. The appointment to the post of Deputy collector may be a fresh appointment, but the process of the said appointment has to be seen. This examination is not a general open competitive examination rather it is open for in service candidates of Government of Jharkhand only. Thus, the persons who are not employed under the State of Jharkhand, are not entitled to appear in the said examination. That means only a Government employee is entitled to appear in the said examination. The said employee, if succeeds in the examination and is appointed on the post of Deputy Collector, his past services with the State are also counted for all purposes. Thus, it is in continuation of his earlier service. In the case in hand, the petitioner was already working in the co-operative Department as a reserved category candidate and thereafter by virtue of his employment in the Cooperative Department under the State of Jharkhand, he qualified to appear in the examination. Admittedly he is a reserved category Scheduled tribe candidate and after bifurcation of the State he was allocated the Jharkhand cadre. He carried his reserved category with him after bifurcation also. Thus, the Resolution number 4722 dated 14.08.2008 applies to the Petitioner. The State acknowledges the petitioner as Scheduled Tribe category while he is working in Co-operative Department under the State, but not treating him as reserved category i.e. scheduled tribe for the purpose of limited examination, is not acceptable to this Court neither his tenable in the eyes of law. The appointed cannot be said to be a fresh appointment. The petitioner, after reorganization of the State, was allocated the Jharkhand State cadre as a Scheduled Tribe candidate. Thus, his status as Scheduled Tribe candidate for the purpose of service has to be maintained. Thus, the claim of the Respondents that the Petitioner cannot be treated as a scheduled tribe candidate is not tenable in the eyes of law. Similar view has been reiterated by this Court in W.P. (s)No.488 of 2013. The reliance has been placed by the Respondents on the judgment delivered by this Court in Division Bench is of no help to them as they were on different ground and the present case is not a case of submission of certificate after the cut-off date.
>
> **9**. As a cumulative effect of the aforesaid rules, guidelines and judicial pronouncements, I hereby direct the respondent - JPSC to consider the

> case of the petitioner for appointment on the post of Deputy Collector, pursuant to the Advertisement No. 09/10, as a Reserved category (scheduled tribe). The respondents are directed to consider the candidature of the petitioner on the post of Deputy Collector, if he is found to be within consideration zone on the basis of marks obtained by him vis-a-vis other candidates of his category within a period of two months from the date of receipt of a copy of this order."
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> **(Emphasis added)**

10. The Commission as well as State of Jharkhand being aggrieved, preferred LPA No.609 of 2017 and LPA No.164 of 2018 respectively challenging the view taken by the Single Judge. It was submitted that as required by condition No.13 of the Advertisement, the caste certificate, as well as the proof of residence had to be obtained from Sub-Divisional Magistrate posted within the jurisdiction of State of Jharkhand, and the appellant having failed to comply with such requirement, he could not be considered as a candidate belonging to the reserved category in State of Jharkhand.

In response, it was submitted on behalf of the appellant that the limited competitive examination could not be construed to be a fresh appointment; rather it was a case of promotion to the higher post and as such the appellant who was already in the service under State of Jharkhand was entitled to offer his candidature as a candidate belonging to ST category.

11. Following questions were framed by the Division Bench of the High Court for its consideration: -

"(i) Whether the appointment through limited competitive examination is a fresh appointment or by way of promotion?

(ii) Whether the provision of Section 73 of the Bihar Reorganization Act, 2000 will be applicable in the process of selection to be made through limited competitive examination after final order passed by the Central Government under Section 72(2) of the Act?

(iii) Whether condition of advertisement can be allowed to be assailed by the candidates who have participated in the process of selection but declared unsuccessful?

(iv) Whether in the matter of fresh appointment, reservation can be said to be a condition of service for making applicable the provision of Section 73 of the Bihar Reorganization Act, 2000?"

12. The Division Bench of the High Court found that 25% of posts to be filled through the limited competitive examination would be by way of fresh appointment and as such, the appellant could not rely upon the provisions of Sections 72 and 73 of the Act. Since the appellant had failed to comply with condition No.13 of the Advertisement and since there was no certificate issued by any of the competent authorities that he belonged to ST (Gond) category in State of Jharkhand, the appellant could not be said to be belonging to the reserved category of STs for the purposes of limited departmental examination.

13. The correctness of the decision is presently under challenge.

14. Mr. Manoj Tandon, learned counsel appearing for the appellant submits *inter alia* that :-

(a) The ST known as Gond in the then undivided State of Bihar, after reorganization is part of the Constitution [Scheduled Tribes] Order, 1950 at Sl. No.10 in respect of newly carved State of Bihar as well as at Sl. No.11 in respect of State of Jharkhand.

(b) The appellant having been in the service of the then undivided State of Bihar and his services having been allocated to State of Jharkhand, is entitled to the benefits and protection under Sections 72 and 73 of the Act.

(c) The status as a person belonging to ST category would entitle him to claim benefit of reservation in promotion even with respect to service under State of Jharkhand after reorganization.

d) The nature of limited departmental examination is nothing but accelerated promotion; in that as against the regular mode of promotion those who are competent and are found meritorious in the limited departmental examination, can be promoted even if they are comparatively juniors.

e) A limited departmental examination can be taken only by those who are presently in service and is not available for any direct recruitment from open market.

f) Reliance is placed on the decision of this Court in ***Pankaj Kumar v. State of Jharkhand***[2].

15. Mr. Arunabh Chowdhury, learned Additional Advocate General appearing for State of Jharkhand and Mr. Himanshu Shekhar, learned Advocate appearing for the Commission have reiterated the submissions which were accepted in the decision under challenge. It is submitted that condition No.13 was an integral part of the process of selection and non-compliance of said condition would disentitle a candidate from claiming status as one belonging to ST in the State. To a pointed query whether the appellant would be entitled to claim that he belonged to said reserved category if a regular promotion was in issue, the learned counsel fairly accepted that he would certainly be so entitled.

16. In ***Pankaj Kumar***,[2] the father of the appellant belonged to District Patna (which, after reorganization, is now part of successor State of Bihar) but resided in Hazaribagh (which is now part of State of Jharkhand) where the appellant was born. The appellant was appointed as Assistant Teacher on 21.12.1999 and after reorganization, his service was allocated to State of Jharkhand. While serving as a teacher, he appeared as a member of SC

[2] 2021 (9) SCALE 576

category in the Combined Civil Services Examination, and though his name appeared at Sl. No.5 against 17 vacancies reserved for SC Category, he was not selected on the ground that he being permanent resident of Patna, he would be treated as a migrant in State of Jharkhand.

In this factual backdrop, the question that arose for consideration was as under:

> "46. The question that emerges for our consideration in the instant appeals is whether a person, who has been a resident of the State of Bihar and where the Constitution (Scheduled Castes)/ (Scheduled Tribes) Order, 1950 identifying castes/ tribes is issued extending the benefit to members of SC/ST throughout the integrated State of Bihar which was later on bifurcated by virtue of a statutory instrument, i.e., the Act, 2000, into two successor States (State of Bihar and State of Jharkhand) with their rights and privileges to the extent being protected by legislative enactment under the provisions of the Act 2000, could still be considered to be a migrant to the successor State of Jharkhand depriving them of their privileges and benefits to which the incumbent or their lineal descendants has availed from the very inception of the Presidential Order 1950 in the integrated State of Bihar."

Thereafter, the effect of Sections 73 and 74 of the Act was considered and it was observed:

> "49. The scheme of the Act 2000 postulates that employees who are working immediately on or before the appointed date, in the State of Bihar, has either domicile of the districts that formed part of State of Jharkhand under Section 3 of the Act or opted or joined being junior in their respective seniority, stands absorbed in the successor State of Jharkhand and by virtue of a statutory instrument, their service conditions stand protected and became entitled to claim privileges and benefits to which the members of scheduled castes/ scheduled tribes/ OBC are entitled for in terms of the Presidential Order 1950 as amended from time to time.
>
> 50. This Court, while examining almost a similar nature of controversy in *Sudhakar Vithal Kumbhare v. State of Maharashtra & Ors.*, 2004 (9) SCC 481 held as under:-

"5. But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and been denied facilities for development and growth in several States. They require protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantaged and developed sections of the community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in Chhindwara region, a part of which, on States' reorganisation, has come to the State of Maharashtra, was entitled to the benefit of reservation. It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in another State whose Governor has not been consulted; but it is another thing to say that when an area is dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to get the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of a Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of the States Reorganization Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the district of Chhindwara and a part of the area of Chandrapur at one point of time belonged to the same region and under the Constitution (Scheduled Tribes) Order, 1950 as it originally stood the tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganisation might have agreed for inclusion of the said tribe Halba/Halbi as a Scheduled tribe in the State of Maharashtra having regard to the said fact in mind."

51. It was a case where the person was a member of Scheduled Tribe known as Halba/Halbi. The tribe had its origin in District Chhindwara region which is a part of State of Madhya Pradesh, a part of the district of Chhindwara place Chandrapur, on States' reorganization, came to the existing State of Maharashtra from the State of Madhya Pradesh, it was not considered a case of migration from State of Madhya Pradesh to State of Maharashtra. But the State of Maharashtra being the existing State and degree of disadvantages of various elements may be different on the objection being raised by the State of Maharashtra City Board where the incumbent was employed, it was left open for examination by the scrutiny committee constituted and established pursuant to a judgment of this Court in Kumari Madhuri Patil and Another vs. Addl. Commissioner, Tribal Development and Others, 1994 (6) SCC 241.

52. There is a fundamental dichotomy in the submissions made by the counsel for the State of Jharkhand that the existing service conditions including benefit of reservation in the promotional cadre post shall not be varied to his disadvantage but he shall be considered to be a migrant to the State of Jharkhand while participating in public employment to compete in open/general category and asked to seek the benefit of reservation in the neighboring State of Bihar, to hold different status in his parent State of Jharkhand after he became a member of service of the State of Jharkhand, serving for sufficient long time on and after the appointed day, i.e. 15th November, 2000 in the State is unsustainable in law and in contravention to the scheme of the Act 2000.

53. It will be highly unfair and pernicious to their interest if the benefits of reservation with privileges and benefits flowing thereof are not being protected in the State of Jharkhand after he is absorbed by virtue to Section 73 of the Act 2000 that clearly postulates not only to protect the existing service conditions but the benefit of reservation and privileges which he was enjoying on or before the appointed day, i.e. 15th November, 2000 in the State of Bihar not to be varied to his disadvantage after he became a member of service in the State of Jharkhand.

54. The collective readings of the provisions of the Act, 2000 makes it apparent that such of the persons whose place of origin/domicile on or before the appointed day was of the State of Bihar now falling within the districts/regions which form a successor State, i.e., State of Jharkhand under Section 3 of the Act, 2000 became ordinary resident of the State of Jharkhand, at the same time, so far as the employees who were in public employment in the State of Bihar on or before the appointed day, i.e. 15th November, 2000 under the Act 2000, apart from those who are domicile of either of the district which became part of the State of Jharkhand, such of the employees who have submitted their option or employees who are junior in the cadre of their seniority as per the policy of the Government of India of which a reference has been made, either voluntarily or

> involuntarily call upon to serve the State of Jharkhand, their existing service conditions shall not be varied to their disadvantage and stands protected by virtue of Section 73 of the Act, 2000.
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> 55. In our considered view, such of the employees who are members of the SC/ST/OBC whose caste/tribe has been notified by an amendment to the Constitution(Scheduled Castes)/(Scheduled Tribes) Order 1950 under Vth and VIth Schedule to Sections 23 and 24 of the Act 2000 or by the separate notification for members of other backward class category, benefit of reservation including privileges and benefits flowing thereof, shall remain protected by virtue of Section 73 of the Act 2000 for all practical purposes which can be claimed (including by their wards) for participation in public employment.
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> 56. It is made clear that person is entitled to claim benefit of reservation in either of the successor State of Bihar or State of Jharkhand, but will not be entitled to claim benefit of reservation simultaneously in both the successor States and those who are members of the reserved category and are resident of the successor State of Bihar, while participating in open selection in State of Jharkhand shall be treated to be migrants and it will be open to participate in general category without claiming the benefit of reservation and vice-versa.
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> 57. We are of the view that the present appellant Pankaj Kumar in Civil Appeal @ SLP (Civil) No.13473 of 2020, being a serving employee in the State of Jharkhand by virtue of Section 73 of the Act 2000, would be entitled to claim the benefit of reservation including the privileges and benefits admissible to the members of Scheduled Caste category in the State of Jharkhand for all practical purposes including participation in open competition seeking public employment."

17. As has been clarified in the decision in ***Pankaj Kumar***[2], such of the employees who opt for service under a successor State after reorganization, their existing service conditions would not be varied to their disadvantage and would stand protected by virtue of Section 73 of the Act. Further, subject to the condition that such person would not be entitled to claim the benefit of reservation simultaneously in both the successor States, such employees would be entitled to claim not only the benefit of reservation in the service

of the successor State to which they had opted and were allocated, but they would also be entitled to participate in any subsequent open competition with the benefit of reservation.

18. It must be stated that the decision in ***Pankaj Kumar***[2] was rendered by this Court on 19.8.2021, while the judgment presently under challenge was delivered by the High Court on 12.5.2021. The High Court thus did not have the benefit of the decision of this Court. The law having been settled in ***Pankaj Kumar***[2], the judgment under appeal has to be read in light of the decision in ***Pankaj Kumar***[2]. It would therefore be immaterial whether or not the nature of limited departmental examination is to be taken as direct recruitment, as found by the Division Bench of the High Court.

19. However, in order to have clarity in the matter, it must be noted that the benefit of reservation was claimed in the limited departmental examination for the purpose of promotion to the next higher level. It must therefore be relevant to consider the nature of such limited departmental examination and what it seeks to achieve as against direct recruitment from the open market, where a person who was not part of the concerned service, gets a chance to offer his candidature and enter the service under a State for the first time. Limited departmental examination affords an opportunity for

persons who are already in service at a lower level to have accelerated promotion depending upon the merit of such candidates. In ***All India Judges' Association & Ors. v. Union of India and Ors.***[3], the issue was considered in paragraphs 27 and 28 as under:

> "**27.** Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those

[3] (2002) 4 SCC 247

> candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.
>
> **28.** As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:
>
> (1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;
>
> (b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and
>
> (c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.
>
> (2) Appropriate rules shall be framed as above by the High Courts as early as possible."
>
> **(Emphasis added)**

20. By very nature, the promotion to the next higher level is from and amongst those who are at a lower level in the service. The avenue of promotion is not available to persons from the open market, which talent is to be garnered through direct recruitment. The promotion as a channel to reach the higher level is only available to the persons already belonging to the service. In normal circumstances, the promotion would go by the concept of merit linked with seniority subject to suitability. In order to encourage meritorious candidates who may be comparatively junior in service, a window of opportunity is opened through limited departmental examination. Those who pass the examination are entitled to have an accelerated

promotion. This process does not change the character of movement to the higher post and it continues to be a promotional channel. The Single Judge of the High Court was therefore right in allowing the writ petition. The underlined portion from the order passed by the Single Judge shows that the matter was considered in the correct perspective. The Division Bench of the High Court was not justified in concluding that limited departmental examination was nothing but direct recruitment from the open market.

21. Before we part, we must deal with some of the observations in ***Pankaj Kumar***[2].

22. In the instant case and in the case of ***Pankaj Kumar,***[2] the appellants belonged to a particular community or tribe which was specified in the erstwhile State of Bihar as Scheduled Castes/ Scheduled Tribes when they entered public service in the erstwhile State of Bihar. The appellants in both the cases were allocated to the service under State of Jharkhand though they belonged to the areas which after re-organization are now part of the successor State of Bihar. By virtue of Sections 73 and 74 of the Act, they could certainly claim benefit in the service under the newly carved State of Jharkhand. On the strength of the view taken in ***Pankaj Kumar***[2], the entitlement in a fresh service in State of Jharkhand as well as in accordance

with the view taken by us in the instant case, the entitlement in the limited departmental examination in State of Jharkhand is definitely made out. The basis for their entitlement is primarily because of Sections 73 and 74 of the Act. It is quite possible that the progeny of such persons may have stayed back or may later decide to go back to their roots, that is to say, to the area which now falls in the newly carved State of Bihar; and since their lineage is from that area and the State, they may contend that they are entitled to benefits of reservation in the newly carved State of Bihar in relation to which State, the community that they belong, is a Scheduled Caste/ Scheduled Tribe. Paragraph 55 of the decision in ***Pankaj Kumar***[2] is capable of being read as conferring entitlement on the wards or the progeny of the appellants in State of Jharkhand alone where in contradistinction to their lineage, they can claim to have connection only through their parent(s) and the effect of the provisions of the Act.

23. It must be stated that the entitlement of the progeny or the wards of the appellant in State of Jharkhand had not strictly arisen for consideration in ***Pankaj Kumar***[2]. In our view, the issue, if any, can and must be gone into in detail in an appropriate case.

24. We, therefore, allow this appeal and set aside the judgment and order passed by the Division Bench of the High Court and restore the judgment and order dated 22nd September 2017 passed by the Single Judge of the High Court. No costs.

…….J.
[Uday Umesh Lalit]

…….J.
[Pamidighantam Sri Narasimha]

New Delhi;
April 26, 2022.

REPORTABLE

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. _____OF 2022
@ SLP (C) 18890 OF 2021

AKHILESH PRASAD **...APPELLANT(S)**

VERSUS

JHARKHAND PUBLIC SERVICE COMMISSION & ORS.
...RESPONDENT(S)

J U D G M E N T

S. RAVINDRA BHAT, J.

1. I have gone through the judgment of Justice U.U. Lalit, and agree with his reasoning and conclusions. In addition, there are some other reasons, which I feel are necessary, and need to be noticed, in the context of this case. I proceed with those reasons, hereafter.

2. The framers of the Constitution were acutely aware of the existing divide within Indian society by reason of caste and other factors. Millennia old layered caste realities which had resulted in generations of exploitation and oppression of sections of society was sought to be undone through the Constitution, which we gave onto ourselves. To achieve this end: of equalizing society, the Indian Constitution makes elaborate provisions – not merely by declaring the right to equality, which is so

essential in every democracy – but in also making provisions ensuring that the erst-while oppressed classes or sections of citizens are given benefits which would ensure their full and effective participation in society and governance. Apart from making special provisions under Articles 15 and 16, the methodology for identification of Scheduled Castes and Scheduled Tribes has been provided for the purpose through Articles 341 and 342 of the Constitution. Furthermore, these provisions also direct that any change or amendment to the Presidential Orders (initially issued in the year 1950) can be only through future Parliamentary enactments and not by any other mode, thereby ensuring that local influences and prejudices within states do not pre-vail. The special protections to Scheduled Castes and Scheduled Tribes is also man-ifest in the protection of the areas in which they inhabit, such as Fifth and Sixth Scheduled Areas.

3. While this is so, it is also a reality that ours is not a nation of indestructible states - it is often described as an indestructible union of destructible states. This means that as and when demands are made by sections of society, which feel the need for separate states due to local aspirations, Parliament, in consultation with the concerned State through their elected assemblies, effects reorganisation of states by law. This reorganisation inevitably has the effect of disrupting pre-existing arrange-ments. In this litigation we are concerned with the disruption caused with respect to the service benefits of existing employees and officials in the erstwhile state of

Bihar, which was bifurcated by the Bihar Reorganisation Act in 2000, and its effect on the respondent.

4. The Constitution uses the expression "in relation to", in both Articles 341 and 342, while prescribing the mode for determination of Scheduled Castes and Scheduled Tribes, for the purposes of the Constitution. Quite naturally, the Constitution makers decided that the State or Union Territory ought to be the unit in relation to which the backwardness of the relative backwardness of communities is to be determined for notifying one or some of them as Scheduled Castes and Scheduled Tribes. In other words, the determination as to whether a community can be notified as a Scheduled Caste or Tribe, has to be with respect to the territory. From the manner in which the Presidential Order (both in respect to Scheduled Castes and Scheduled Tribes, for states and union territories) issued in 1950 has notified communities, it is evident that an elaborate and extensive exercise was undertaken. In some instances, communities or castes have been notified as Scheduled Castes or Scheduled Tribes, only in respect of certain districts in a state or even in relation to certain *taluks* and in all others, it is in relation to entire states.

5. Interestingly, the present case highlights an issue which conflates two issues: on the one hand, the determination of a community as a Scheduled Caste or a Scheduled Tribe in relation to a certain specified area or territory, given that the area or territory has been determined by the Constitution to be a unit of the State or Union territory; the other is the reality of political divisions of states through bifurcation or

reorganisation (as the Parliament has chosen to express it), which has been occasioned a number of times. What then happens in the event of a reorganisation? The members of the caste or community that is designated as Scheduled Caste living within the larger area of the erstwhile united state, would face disruption in the event of bifurcations, at the time of reorganisation. Where reorganization enactments provide that the caste or community concerned would continue to be a notified caste or community in relation to both the states, there would be minimal disruption. However, where a caste or community in an undivided state, upon bifurcations ceases to be notified as a Scheduled Caste in relation to one of the bifurcated states, within which the concerned member of the community lives or works, problems would inevitably arise.

6. As has been pointed out, by the judgment of Justice Lalit, this problem was addressed in *Pankaj Kumar v. State of Jharkhand & Ors.*[1] where the court discussed it in the following terms:

> *"52. There is a fundamental dichotomy in the submissions made by the counsel for the State of Jharkhand that the existing service conditions including benefit of reservation in the promotional cadre post shall not be varied to his disadvantage but he shall be considered to be a migrant to the State of Jharkhand while participating in public employment to compete in open/general category and asked to seek the benefit of reservation in the neighbouring State of Bihar, to hold different status in his parent State of Jharkhand after he became a member of service of the State of Jharkhand, serving for sufficient long time on and after the appointed day, i.e. 15th November, 2000 in the State is unsustainable in law and in contravention to the scheme of the Act 2000.*
>
> *53. It will be highly unfair and pernicious to their interest if the benefits of reservation with privileges and benefits flowing thereof are not being protected in*

[1] 2021 SCCOnline (SC) 616

the State of Jharkhand after he is absorbed by virtue to Section 73 of the Act 2000 that clearly postulates not only to protect the existing service conditions but the benefit of reservation and privileges which he was enjoying on or before the appointed day, i.e. 15th November, 2000 in the State of Bihar not to be varied to his disadvantage after he became a member of service in the State of Jharkhand."

Earlier, this court had to consider this issue in *Sudhakar Vithal Kumbhare v. State of Maharashtra & Ors.*[2] where the problem was flagged, and the solution left to be worked out in the following manner:

"4. It is no doubt true that a Scheduled Tribe notified in one State may not be given the benefits therefore in another State having regard to the plain expression "in relation to that State" in Article 342 of the Constitution. [See Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India & Anr. (1994) Supp (1) SCR 714 and U.P. Public Service Commission, Allahabad v. Sanjay Kumar Singh 2003 (7) SCC 657.

5. But the question which arises for consideration herein appears to have not been raised in any other case. It is not in dispute that the Scheduled Castes and Scheduled Tribes have suffered disadvantages and denied facilities for development and growth in several States. They are required protective preferences, facilities and benefits inter alia in the form of reservation, so as to enable them to compete on equal terms with the more advantageous and developed sections of the community. The question is as to whether the appellant being a Scheduled Tribe known as Halba/Halbi which stands recognized both in the State of Madhya Pradesh as well as in the State of Maharashtra having their origin in the Chhindwara region, a part of which, on States' reorganization has come to State of Maharashtra, was entitled to the benefit of reservation? It is one thing to say that the expression "in relation to that State" occurring in Article 342 of the Constitution of India should be given an effective or proper meaning so as to exclude the possibility that a tribe which has been included as a Scheduled Tribe in one State after consultation with the Governor for the purpose of the Constitution may not get the same benefit in other State whose Governor has not been consulted; but it is another thing to say that when an area dominated by members of the same tribe belonging to the same region which has been bifurcated, the members would not continue to ge the same benefit when the said tribe is recognized in both the States. In other words, the question that is required to be posed and answered would be as to whether the members of the Scheduled Tribe belonging to one region would continue to get the same benefits despite bifurcation thereof in terms of States' Reorganization Act. With a view to find out as to whether any particular area of the country was required to be given protection is a matter which requires detailed investigation having regard to the fact that both Pandhurna in the District of Chhindwara and the

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[2] 2003 Supp (5) SCR 746

> *part of area of Chandrapur at one point of time belonged to the same region and under the Constitutional Scheduled Tribe Order 1950 as it originally stood the Tribe Halba/Halbi of that region may be given the same protection. In a case of this nature the degree of disadvantages of various elements which constitute the input for specification may not be totally different and the State of Maharashtra even after reorganization might have agreed for inclusion of the said Tribe Halba/Halbi as a Scheduled Tribe in the State of Maharashtra having regard to the said fact in mind."*

7. In another decision, *State of Jharkhand v. Bhadey Munda*[3] the argument was that upon reorganization, the chances of promotion in the newly reorganized state were less, and consequently, the official should be protected. This court negatived the argument, holding as follows:

> *"All that was submitted (for the first time and that too orally) is that the reservation percentage as it existed in the State of Bihar for scheduled caste and scheduled tribe candidates had been varied in the State of Jharkhand, thereby reducing the possibility of their promotion".*

This court followed the older decision in *State of Mysore v. G.B. Purohit*[4] which held that changes in chances of promotion do not amount to adverse change in service conditions.

8. In my opinion, given that determination of whether a community or caste has to be notified as Scheduled Caste, or Tribe, is in relation to a state or union territory (i.e., it is primarily people-centric having regard *to the existing geo-political* unit), and when a determination is so made that a particular community belongs to such state, in the event of re-organization, then, Parliament has a duty to provide clarity,

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[3] (2014)10 SCC 398
[4] (1967) 1 SLR 753

by way of express provision. The settled law, in respect of persons going from one state to another is that the status of "belonging to" a caste or tribe in relation to one state would not apply once a member of that community goes to another, (per *Marri Chandra Shekhar Rao v. Dean Seth GS Medical College*[5] and *Action Committee on Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and Anr. v. Union of India & Anr.*[6]*).* In that sense, the choice which an individual - who belonged to the erstwhile unified state - but who has to agree, for whatever reason, to settle in the bifurcated state, in a place or region where he originally did not reside, is *involuntary*. It is precisely to cater to such situations, that a provision was made expressly protecting benefits which such individuals had hitherto been enjoying in the erstwhile unified states, such as Section 73 of the Bihar Re-organization Act, 2000, which *Pankaj Kumar* (supra) dealt with. Such provisions were made in the past, and more recently, as well.[7]

9. Another instance where Parliament has accommodated disruptions which are likely to impact members of Scheduled Caste and Scheduled Tribe communities, is in the event of acquisition of their lands – especially if those are located as described in the Fifth Schedule (to the Constitution of India). The Right to Fair Compensation

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[5] 1990 (2) SCR 843
[6] (1994) Supp (1) SCR 714
[7] Section 115 (7), States Re-organization Act, 1956; Sections 69-70 Madhya Pradesh Re-organization Act, 2000; Sections 74-75 Uttar Pradesh Re-organization Act, 2000; Section 78, Andhra Pradesh Re-organization Act, 2014

and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, by Section 42 provides as follows:

> *"**42. Reservation and other benefits.**–(1) All benefits, including the reservation benefits available to the Scheduled Tribes and the Scheduled Castes in the affected areas shall continue in the resettlement area.*
>
> *(2) Whenever the affected families belonging to the Scheduled Tribes who are residing in the Scheduled Areas referred to in the Fifth Schedule or the tribal areas referred to in the Sixth Schedule to the Constitution are relocated outside those areas, than, all the statutory safeguards, entitlements and benefits being enjoyed by them under this Act shall be extended to the area to which they are resettled regardless of whether the resettlment area is a Scheduled Area referred to in the said Fifth Schedule, or a tribal area referred to in the said Sixth Schedule, or not.*
>
> *(3) Where the community rights have been settled under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007), the same shall be quantified in monetary amount and be paid to the individual concerned who has been displaced due to the acquisition of land in proportion with his share in such community rights."*

10. In my considered opinion, given that states reorganizations occur as a consequence of political demands, or as an articulation of regional aspirations, there is no agency of the individual (i.e., members of Scheduled Caste or Scheduled Tribe communities) in such eventuality. This situation is radically different from one, where a member of such community, voluntarily seeks opportunities outside her or his state- in which case, the rule in *Marri Chandra Shekhar Rao* (supra) would apply. There is, consequently, an obligation on the part of Parliament, to provide clarity about the kind of protection, regarding the status of such individuals forced to chose one among the newly reorganized states, and ensure that they are not worse off as a result of reorganization. A different kind of involuntary movement was also contemplated in *Marri Chandra Shekhar Rao* (supra), where this court had in fact commended Parliament (or the concerned state legislatures) to make provisions for the future

prospects of wards of members of Scheduled Castes or Scheduled Tribes who because of their conditions of public employment, have to go from one state to another. Furthermore, the duty to provide clarity and protection, generally speaking has to be consistent - i.e., in the case of one states' reorganization, the protection should not be greater than in the case of reorganization of another state. That would defeat the command of Articles 14 and 15 (1) (i.e., in the latter case, there can possibly be discrimination on the ground of place of birth). In my opinion, this duty stems from a co-joint reading of Part I (Articles 1 to 4), Articles 14, 15(1), 341, and 342 of the Constitution, and the overarching concern that the individual should not be worse off, due to disruption not of her or his making. The duty of Parliament in such cases, is a Constitutional obligation, to ensure that no one individual or group is disadvantaged.

11. I am in agreement with Justice Lalit, that the observations in *Pankaj Kumar* (supra) which went beyond what was required to be decided, cannot be considered as its *ratio.* There can be myriad situations which may arise directly for decision-such as for instance, where caste A is not designated as a Scheduled Caste in one of the newly reorganized states, where the individual is forced to locate; or where the children of the concerned individual were studying in state A, and the parent was in state B (and continued to be so) and in the former state, the concerned caste is not notified as a scheduled caste-or, even that the children are not treated as "belonging to" that state, etc. Each such situation needs to be examined, having regard to the

legal *regime* in question. So far, the instances of decided cases, have inevitably been in the context of reservations in public employment (Article 16). However, there may arise, possibly, in the future, other kinds of disputes, which this court should be careful not to pre-judge without careful scrutiny.

12. I agree with the observations and conclusions of Justice Lalit, additionally, also for the reasons mentioned above.

.....J.
[S. RAVINDRA BHAT]

New Delhi,
April 26, 2022