

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(Crl.) No. 667/2021 & Crl.M.A. No. 4883/2021

Judgment reserved on: 06.04.2021

Date of decision : 14.06.2021

DELHI SUBORDINATE SERVICE SELECTION BOARD

..... Petitioner

Through: Ms.Avnish Ahlawat, Standing
Counsel, DSSSB with Ms.Tania
Ahlawat, Mr.N.K.Singh,
Mr.Naresh Kaushik & Ms.Palak
Rohmetra, Advocates.

versus

DR SATYA PRAKASH GAUTAM & ANR. Respondents

Through: R-1 in person.
Mr.R.S.Kundu, ASC for R-2..

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner, the Delhi Subordinate Services Selection Board (hereinafter referred to as 'DSSSB'), vide the present petition seeks the setting aside of the common order dated 17.2.2021 of the learned Additional Sessions Judge-02, Special Court SC/ST (POA) Act, 1989, Shahdara, Karkardooma in Complaint Case No. 13/2018 and Complaint Case No. 16/2019.

2. Vide the impugned order the applications under Section 156(3) Cr.P.C., 1973 of the complainant, i.e., the respondent No.1 arrayed to the present petition, Dr. Satya Prakash Gautam, were allowed and an

FIR was directed to be registered against the offenders for the offences committed under the provisions of the Atrocities Act (an apparent reference to the Scheduled Castes / Scheduled Tribes (Prevention of Atrocities) Act, 1989 and an investigation was directed to be conducted by the Officer empowered under the Act with monthly report to be filed before the Court in view of the Guidelines of the verdict of the Hon'ble Supreme Court in *Sakiri Vasu vs. State of UP*; (2008) 2 SCC 409 with copy of the said order being sent to the DCP concerned for compliance.

3. Vide the observations in paragraph 10 of the said order it had been observed to the effect:

“ 10. The matter is still at pre-cognizance stage and the Board as such has no locus standi to appear or argue. I observe that the question with caste abusive word was set-up in paper by Paper Setter not only once i.e. on 13.10.2018 but again the very next year i.e., in Paper dated 18.08.2019. Prima facie the alleged words in questions papers of 2018 & 2019 as pointed out by complainant disclose commission of various cognizable offences committed by the respondent/DSSSB and an investigation is required into these.”

4. In terms of order dated 6.4.2021 vide which it was considered essential that the trial Court record be requisitioned, the trial Court record has since been received vide a letter dated 17.4.2021 of the Trial Court.

5. Complaint Case No. 13/18 filed by the complainant, i.e., the respondent herein, before the Special Court for the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 was instituted against the petitioner herein, i.e., the DSSSB, through its

Chairman and other unknown persons under Section 190(1)(a) of the Cr.P.C., 1973, read with Section 14 of the SC/ST (POA) Act, 1989 read with Rule 5 of the SC/ST (POA) Rules 1995, submitting to the effect that the complainant thereof being a member of the Scheduled Caste community in his written complaint on 15.10.2018 had drawn the attention of the SHO, Police Station Anand Vihar, DCP East and Shahdara, Lt. Governor, National Commission for Scheduled Castes, Commissioner of Police, Delhi towards the question asked by the DSSSB, i.e., the petitioner herein in the Primary Teacher Examination MKG-XII/TECHPRT-II/IT/01 held on 13.10.2018 wherein a question in IV-Hindi Language and Comprehension was asked about gender of one caste of a schedule caste (Chamar). The question was if:

“पंडित : पंडिताइन, चमार:?”

and the options were

(A) चमाराइन (B) चमारिन् (C) चमारी (D) चमीर”

6. It was further stated in the complaint that when the complainant read the newspaper at his chamber he was shocked on reading the same and got a copy of the question paper from the social media and saw the objectionable question which has sent a shock wave in the community. The complainant submits that he could not express his injuries in words which are humiliating for the entire community.

7. *Inter alia*, the complainant of the Complaint Case No. 13/18 i.e., the respondent No.1 arrayed to the present petition submitted that the DSSSB caused immense damage to the entire Scheduled Caste community specially the females of the Chamar community with a

view to denigrate the prestige and honour of females of the Schedule Caste by asking such an objectionable question. It was further submitted by the complainant that the accused persons like the Chairman of the DSSSB and concerned Examination Committee of the DSSSB, who selected a derogatory and insulting question, of the DSSSB had acted against the peace and tranquility of the society and wanted to create an atmosphere of social disharmony and that the officers like him had been promoting enmity between different groups on the ground of caste and community.

8. The complainant further submits that the complainant was shocked after knowing about such question that was objectionable, derogatory, insulting and humiliating from a Selection Board in a question paper for appointing teachers in the society and that lacs of candidates from the Scheduled Caste category appeared in the said examination and due to this question they had been shocked as their sentiments had been hurt due to which they were distracted from the examination and could not focus and concentrate on the remaining questions as a consequence of which the result of the Scheduled Caste candidates in this examination had been affected. The complainant further submitted that the examination was held for the Primary Teachers vacancy and that the teachers are the future makers of all the children of any country and such a type of Examination Committee which formulated such a question was harmful for the future of the country and that such question shows the willingness of the authorities of the DSSSB, i.e., the Chairman and other responsible persons of the Examination Committee who set the papers not to eradicate casteism

from society. It had been submitted through the complaint No. 13/2018 that despite the complaint sent to the SHO Police Station Anand Vihar, DCP East and Shahdara, Lt.Governor, National Commission for Scheduled Castes as well as the Commissioner of Police, Delhi on 15.10.2018 by the complainant, no FIR had been lodged nor had any action been taken.

9. It was submitted further by the complainant that in terms of Section 14 of the SC/ST (POA) (Amended Act, 2015) (1 of 2016) (w.e.f. 26.01.2016) which reads to the effect:

“14. Special Court and Exclusive Special Court.—(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the

Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.”,

to contend to the effect that it is the Special Court that can exclusively take cognizance of the offence punishable under Section SC/ST (POA) Act, 1989.

10. Vide the complaint bearing No.16/19 filed before the Special Court, Shahdara, the complaint made by the complainant on 19.8.2019 related to the question asked by the DSSSB in Primary Teacher Examination MKG-XXI/TECHMSW/IT/01 held on 18.08.2019 wherein a question in IV-Hindi Language and Comprehension was asked about gender of one caste of a Schedule Caste (Bhangi). The question was,

“भंगी शब्द का अन्य लिंग रूप है

(A) भंगिन (B) भंगी (C) भंगिया (D) भंगिन”

11. As per this complaint when the complainant read the Newspaper at his chamber and learnt of the question as well as got the copy of the question paper from the social media and saw the objectionable question which had sent a shock wave in the community and as a consequence of this question put in the question paper which had been reported in the newspaper, his feelings were injured and humiliated. Through this complaint, the very same complainant as the complainant of Complaint Case No.13/2018, Dr. Satya Prakash

Gautam, had submitted that immense damage had been caused to the entire Scheduled Caste community specially the females of the Bhangi community with a view to denigrate the prestige and honour of the females of the Scheduled Caste by asking such objectionable questions. All other submissions that were made in CT No. 13/18 are indicated to have been reiterated through the complaint in CT No. 16/2019 made by the complainant, which complaint was also under Section 190(1)(a) of the Cr.P.C., 1973, read with Section 14 of the SC/ST (POA) Act, 1989 read with Rule 5 of the SC/ST (POA) Rules 1995 seeking taking of action and cognizance against the Chairman of the DSSSB and the Examination Committee.

12. Vide order dated 22.3.2021 in the present writ petition it was considered essential that the entire document which formed the Objective Type Tier-One Examination of which extracts had been placed on record by the petitioners, i.e., the entire questionnaires of the examination conducted by the petitioner was directed to be placed on record which has since been filed by the petitioner of the petition.

13. The respondent No.2 arrayed in the present writ petition is the State, through its DCP.

14. The respondent, i.e., the DSSSB to the complaint cases No.13/18 and CC No.16/19 through their applications filed for exemption from personal appearance of the Chairman DSSSB along with the detailed submissions had sought to submit that the then incumbent had taken over charge as the Chairman of the DSSSB only on 13.10.2020 and that the Ex-Chairman of the DSSSB, during whose tenure the examination for the post of the Primary Teacher-MCD (Post

Code 01/18 & 16/17 dated 13.10.2018) and for the examination of the Medical Social Worker(Post Code 18/14 dated 18.8.2019), had since relegated the charge w.e.f. 30.7.2020. The DSSSB further submitted that the Board is headed by the Chairman and assisted by the Members, Controller of Examination, Secretary and other Officers and officials for day to day functioning of the Board and is entrusted with the work of impartial, merit-based selection of staff through proper conduct of examination and short listing of candidates provisionally in respect of all posts upto Group 'B' posts of the Government of NCT of Delhi and the Autonomous Organizations/Institutions working under the Government of NCT of Delhi as also the Municipal Authorities in Delhi. The Board further submitted that the task of paper setting, printing, administration of online and offline examinations are being undertaken through the competent agencies but that the Board ensures close scrutiny of these agencies and closely monitors the entire process of the conduct of the exams and had set up exam centres and inspects each exam centre to ensure its suitability from the point of view of convenience of candidates and confidentiality of examinations and that the activities in each centre are monitored through CCTV cameras and that the Board deploys teams of officers headed by IAS/DANICS officers at each centre assisted by senior officers of GNCTD and their selection and deployment is kept confidential and randomized to ensure confidentiality.

15. The DSSSB had further submitted before the Trial Court that it takes the confidentiality of the examination process including the

confidentiality of the identity of the examiners involved, with utmost seriousness and that the Board is also serious about any lapses relating to any untoward actions or inactions on the part of its staff or the agencies engaged by the Board.

16. The DSSSB has submitted that the advertisement for the Primary Teacher (MCD) was issued by the Board vide No.2/17 and 1/18 in respect of post code 16/17 and 1/18 respectively and that the exam was to be held on 30.9.2018, 13.10.2018, 14.10.2018 and 28.10.2018 for a total of 1,38,399 candidates and that only in the examination dated 13.10.2018, the discrepancy had occurred. (an apparent reference to the question in the question paper IV-Hindi Language and Comprehension, of the gender of the Schedule Caste (Chamar), i.e., as referred to herein in paragraph No. 5 above.

17. The DSSSB had further submitted that the advertisement for the Medical Social Worker was issued by the Board in respect of post code 18/14 which was to be held on 18.8.2019. The DSSSB further submitted that as soon as the respective issues had been noticed by the Board, a Committee of Senior Officers from the Secret Cell & Examination Cell was constituted to enquire into the matter. The DSSSB further submitted that it did not have an in-house facility for paper setting and vetting, which are highly secretive processes and that the contents of the paper are not shared and as such sharing is detrimental to the sanctity of the examination process and makes it vulnerable to leakage and the Committee noted that none of the Board staff was privy to the contents of the question paper and the paper was opened for the first time by the candidates at the Examination Centre.

The DSSSB further submitted that based on the report of the Committee, the services of the paper setter involved in setting of the paper have been dis-engaged and that the said paper setters have been black-listed so that their services are not used in future by the Board.

18. The DSSSB further submits that while engaging paper setters, it is now specifically noted in the engagement letter issued to effect:

“ While preparing the question paper, it must be ensured, that the question paper does not have any repeat question of other exams and questions with religious, political or casteist undertones”.

19. The DSSSB had further submitted before the learned Trial Court to the effect that they sensitize all the paper setters on the said aspect and that the Board had initiated immediate action to avoid any such aberrations in the future and has been taking an undertaking from the paper setters also to that effect and that the Board has also sent a detailed enquiry report to the Services Department of Government of NCT of Delhi in relation thereto.

20. The detailed report of the DSSSB is to the effect:

“ A.The matter regarding question of casteist undertone in the question paper for the post of Medical Social Worker Post Code 18/ 14 of off line exam held on 18/08/19, came to Board's knowledge on 20/08/2019. DSSSB got the matter investigated internally and a public notice regretting the "inadvertent error" was immediately issued on the same date (Copy enclosed as Annexure-I)

B A news item was also published in a Delhi edition of newspaper "Dainik Jagran" on 20/08/19, wherein it was reported that a question with casteist undertone had appeared

in offline exam for the post of Medical Social Worker Post Code 18/14 held on 18/08/2019.

C. The said notice was posted on the website of DSSSB in which the following clarification was issued;

"It has been brought to the notice of the DSSSB that in the recent recruitment exam for the post of Medical Social Worker, Post Code 18114, a question with inappropriate wording appeared due to an inadvertent error. In this regard it is clarified that the procedure of paper setting is highly confidential and secretive in nature and the contents of the paper are not shared with the board officials. The contents of the paper are revealed for the very first time before the candidates only. The appearance of any such question which may have unintentionally hurt the sentiment of any section of society is deeply regretted. This question has been deleted for all purposes from the said exam. During the evaluation process this question shall not be evaluated for the purpose of preparation of results.

The Board has taken immediate corrective measures and has disengaged the services and blacklisted the paper setter from future exams of DSSSB. "

D As mentioned in the above notice, services of the paper setter involved in setting up of aforesaid question has been disengaged and blacklisted for purpose of any work relating to paper setting of DSSSB (Copy enclosed as Annexure-II).

E In the present case also, as mentioned in the preceding paras, none of the Board staff including the senior officers, was privy to the contents of the question paper and question paper was opened for the first time by the candidates.

F The Board has taken corrective measures and has disengaged and blacklisted the paper setter. While the incident was

unfortunate, the Board is committed in its endeavor to avoid any such lacunae in future.

G The necessary remedial measures would require time and entail huge costs in terms of infrastructure and engagement/management of manpower.

H Sharing of contents of question paper prior to the examination with Board officials is not at all advisable as it may comprise confidentiality and secrecy of examination process.

I In, view of the above, the Board is left with limited option of sensitizing the paper setters to refrain from, asking questions which may hurt the sentiments of some sections of the society. The same is being emphasized upon so as to avoid the repeat of such incidence in future.”

21. In CT No. 13/2018 it was averred through the reply dated 15.10.2020 of the DSSSB before the learned Trial Court to the effect:

“ a) The matter regarding question of casteist undertone in the question paper for the post of Teacher Primary 1/18 & 16/17 of offline examination held on 13/10/2018, came to the Board's knowledge late in the evening of 14/10/18. DSSSB got the matter investigated internally and a public notice regretting the "inadvertent error" was immediately issued on 14/10/2018 at around 08.00PM.

b) A news was also published in a Delhi edition of newspaper 'The Hindu' dated 15/10/18 and some other newspapers wherein it has been reported that in offline examination held for the post of Primary (Teacher) held on 13/10/2018, casteist slur was used in the Hindi section of the question paper.

c) In this regard, the following clarification was posted on the website and released to the press through DIP:

d) Further, the services of the paper setter involved in setting up of aforesaid question has been disengaged and

it has been decided not to use his/her services in future. Sensitization of other paper setters to these aspects is simultaneously being undertaken to avoid any questions with religious and casteist overtones in future.

e) Presently the Board does not have any inhouse facility for paper setting and vetting as paper setting and printing is a highly secretive and confidential matter, the contents of question paper are not shared with any of the Board staff till the examination is over as it would be detrimental to the sanctity of the exam and would make the examination system extremely vulnerable and fraught with risk of leakage. In fact Board takes all necessary precautions to ensure that contents of question paper are not known to anyone before the conduct of exam. Question papers are opened for the very first time at the examination centers by the candidates only in a sealed packet.

f) In the present case also, as mentioned in the preceding paras, none of the Board staff including the senior officers, was privy to the contents of the question paper and question paper was opened for the first time by the candidate.”

22. The DSSSB had submitted before the Trial Court and has submitted before this Court as well that it is conscious of its responsibility and has taken several corrective measures and that though the incident was unfortunate and regretted, the Board was committed in its endeavour to avoid any such lacunae in future but that the Board is hesitant in sharing the details of the paper setters through the affidavit as it would compromise the confidentiality of its processes and that sharing the contents of the question paper or the

identity of the paper setter prior to the examination with the Board officials is not at all advisable as it may compromise the confidentiality and secrecy of the examination process.

23. The DSSSB has further submitted that it has cooperated in the enquiry conducted by the Inquiry Officer and has provided all documents and explanations needed by the Investigating Officer and has taken care in sensitizing its paper setters to ensure that no questions with casteist undertones find their way into the question paper again and it has also so informed the paper setters whilst engaging them in the communication addressed to them.

24. The petitioner vide the present petition has raised the following questions of law:

“(I) Questions asked to the candidates appearing in the exam for the post of Primary Teacher / Medical Social Worker to give the gender of the word Chamar and Bhangi in the year 2018 & 2019 respectively, whether will it amount to committing atrocities on the members of SC/ STs under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended in 2016?

(II) Whether DSSSB which is an examining body constituted by the Govt. of NCT of Delhi vide Resolution No. F-3(7) 93-5 HI dated 04.10.1996 to conduct exam for Group- B (Non-Gazetted) & Group- C Posts under Govt. of NCT of Delhi / Local Bodies / Autonomous Bodies. Since 1996 the Board is conducting the recruitment for various posts as requisitioned by the user departments, can its officers be held responsible for asking such question by the paper setters i.e. outsourced agency which are sourced from the reference book and not removed from the books be held responsible under the SC/ST (POA) Act?

(III) Whether despite the fact that DSSSB while engaging paper setters directly or, through outsourced agency which prepares the question papers, specifically instructs them that “while

preparing the question paper, it must be ensured that the question paper does not have any repeat question of other exams and questions with religious, political or, casteist undertones”, still be vicariously held responsible under the SC/ST (POA) Act?

In the criminal jurisprudence there is no concept of vicarious liability.

(IV) Whether despite the fact that question as asked for in the grammar section of the question paper is not a deliberate attempt to abuse or, disrespect any community. The words are mentioned in Schedule A of the Constitution (Scheduled Caste) 1950 issued under Article 341 of the Constitution of India and while issuing SC/ST certificates, the caste is also mentioned in the certificates? The words are also mentioned in the different dictionaries and reference books specifically dealing with gender issues. The paper setters have sourced those questions from one of those Grammar books only and can DSSSB officer be held responsible for the same under the SC/ST (POA) Act, 1989?”

25. The petitioner has submitted further to the effect:

(viii) That the selection process starts after DSSSB calls for application for a given post by issuing advertisement in the newspapers. Depending upon the nature of the post written exam / Physical / Skill test are held by the DSSSB. The Board does not have in house facility for paper setting. The academic experts in respective fields are engaged by the Board to set the question paper as per the syllabus provided by the Board for the given exam. However, the contents of the paper are not shared with any officer / staff of the Board till the paper reaches the examination hall. This is to maintain full secrecy and integrity of the examination. There is no interaction between the subject expert and any official of DSSSB in the preparation of the question papers. DSSSB does not have an academic cell / internal committee to moderate or, vet question papers and given the constraint. It relies solely on the wisdom and expertise of the subject experts while simultaneously sensitizing them to

refrain from setting questions with casteist, religious or political overtones. It is a conscious decision not to interfere in the domain of subject experts.

(ix) That the complainant's complaints are misconceived complaints as there is no intention to insult or, intimidate or, humiliate a member of the SC or ST in any place with public view nor, any member of SC/ ST has been abused face to face. A bare perusal of the complaint submitted to the Hon'ble Court under Section 190 (1(a)) Cr.PC along with Section 14 of SC/ST (POA) Act read with Rule 5 of SC/ST (POA) Rules for taking action / cognizance under the Act, the allegations are totally general in nature alleging that use of word Chamar and Bhangi in the question paper has caused damaged to the entire Schedule Caste community specially female. It is also alleged that lakhs and lakhs of candidates from Scheduled Caste appeared in the exam and due to these questions candidates from Scheduled Caste community were shocked and their sentiments has been hurt due to this reason and they distracted in the exam and could not concentrate on remaining question.

(x) That it is submitted that these averments are totally general in nature, and has not affected the performance of the SC Candidates. It is evident from the fact that 714 vacancies were notified in the year 2018 for Primary Teacher in SC category and 1 (one) vacancy was notified in the year 2019 for Medical Social Worker for SC Category and all the vacancies of SC categories stand filled up except horizontal vacancies reserved for visually handicapped where candidates were not available.

(xi) That though the paper setter should have avoided such a question but since these words are not deleted from the list of castes notified by the President of India as Scheduled Caste and the words are in use in some reference books, the questions

probably has been sourced inadvertently from those reference books.

(xii) That it is submitted that in the SC certificates issued by the Competent Authority the caste Chamar and Bhangi was mentioned and later on instead the Caste Jatav was mentioned. When one of the candidate raised an issue the Government of NCT of Delhi realising that any amendment in the Schedule has to be made by the President, withdrew the directions and thereafter since 2015 again in the SC certificates in the column caste the caste Chamar / Bhangi is mentioned. The mere mentioning a caste in a certificate no way is attributable to humiliation to Scheduled Caste Community. Infact it is one of the candidate of SC Community only raised the issue before the CIC that caste chamar should have been mentioned in her certificate instead of Jatav and orders were passed accordingly.

(xiii) That the detail procedure from setting of a question paper to printing and finally reaching the examination hall is as follows:

a) As a matter of fact, officers of the board do not intervene in the preparation of question papers as the same is done by the subject experts. DSSSB does not question the wisdom of the subject experts being their domain. However, the overall control of maintaining secrecy in setting the question papers, conducting the exam, evaluation of answer sheets and preparation of merit list etc. is the job of the officers of DSSSB.

b) The process is so designed that question papers prepared by subject experts are got printed in a secret manner without any officer of the Board being privy to the contents. The printed question papers are received back from the printer in sealed boxes in which the

question papers are kept in sealed packets. This sealed packet is sealed in the plastic envelope which can be used only once. Each question paper in the sealed packet is also sealed individually.

c) These Boxes are received in the Office of DSSSB day before the examination in a truck sealed with one time lock facility i.e. the lock can be opened only by cutting the lock and not by any key etc. Thereafter, the seal of the container / truck is opened by cutting the one time lock through an electric cutter and is kept in the strong room specially prepared for the purpose. The entire process of receiving the truck, opening the lock and keeping the boxes in the strong room is duly video-graphed in presence of a team of officers of the Board. Thereafter, after tallying the figure of the boxes and also ensuring that seal of each box is intact the boxes are kept in the strong room which is duly locked and sealed by the team of officers. The entire process is duly video-graphed.

d) The individual boxes are received in locked and sealed conditions. The keys of all the boxes are received in a separate single box again having the one time lock system of seal on that box. This box is also kept in the strong room along with other boxes. Each box containing the sealed envelope is given code number of the examination centre/hall where the box has to be sent on the day of the examination.

e) In the morning hours on the day of the examination the sealed strong room is opened by a team of officers. Thereafter, the seal of the box containing the keys of the other boxes is opened by cutting one time lock with the electric cutter. Thereafter, the keys of the boxes are segregated box wise and the box containing sealed packets is handed over to the officer of the Govt. of NCT

of Delhi especially designated as Observer cum Co-ordinator for the examination centre to which the box pertains. This entire process is also video-graphed to maintain secrecy and integrity of the examination.

f) On the day of exam the sealed packet containing question paper is opened in the examination hall by the Invigilator just 5 minutes before the actual commencement of the examination and each question paper duly sealed is distributed to the candidates and opened only by the candidates.

g) In other words, the contents of the question papers are not shared with the Board Officials. The objective is to ensure utmost secrecy, fairness and integrity in the conduct of examination. DSSSB conducts the same in a professional and impartial manner. Thus it is evident that the contents of the question paper are out of the bound of the officers of the Board till the individual paper is opened by the candidate in the examination hall himself.

h) The board does not have an in-house facility or academic cell for paper setting and vetting, which are highly secretive processes. Hence the board engages academic experts in respective fields for paper setting. The contents of paper are kept secret from the staff of Board, since such sharing would be detrimental to the sanctity of the examination process and would make it vulnerable to leakage. The Board takes the confidentiality of the examination process including the confidentiality of the identity of the examiners involved, with utmost seriousness. The Board is also serious and sensitive about any lapses relating to any untoward actions or, inactions on part of its staff or, the agencies engaged by the Board.

(xiv) That in the instant case also the above-mentioned procedure was strictly followed. None of the board officers / staff was privy to the content of the question paper, and the paper was opened for the first time by the candidates at the exam Centre.

*(xv) That the paper setters engaged are clearly instructed that-
“while preparing the question paper, it must be ensured that the question paper does not have any question having casteist and religious undertones”.*

(xvi) That as soon as the DSSSB came to know that in the year 2018 as well as in the year 2019 having question to give gender of Chamar and Bhangi respectively which had potential to generate controversy that should be avoided and nipped in bud, the DSSSB immediately deleted the question for all purposes and tendered public notice regretting the event.

(xvii) That since these experts were not the employee of the Government of NCT of Delhi, no departmental action nor any disciplinary proceedings could have been initiated against them by the Board. However, disciplinary action was taken as the services of the paper setters who were involved in setting of the alleged question paper involving casteist question, have been dis-engaged / blacklisted from the panel of DSSSB so as to ensure that his / her services are not used in future examinations to be conducted by the Board. It is submitted that each time the paper setter i.e. academic expert was different so the DSSSB could not have anticipated that mistake will be repeated.

(xviii) That moreover, while engaging paper setters, it is now specifically mentioned in the letter of engagement, as under:-

“While preparing the question paper, it must be ensured, that the question paper does not have any repeat question of other exams and questions with religious, political or casteist undertones”. Further, to sensitize all the paper setters on this aspect, the Board initiated immediate action to avoid any such aberrations in the future.

(xix) That from the above explained process it is clearly seen that there is no internal committee of DSSSB which either sets up the paper, vet or, review / moderate the same after setting up which is solely the domain of academicians / subject experts. Generally, such committees comprise an array of academicians and since DSSSB does not have an academic cell, such committees for vetting / moderation are not constituted in the recruitment examination to maintain complete secrecy and sanctity of the exam. As there is no such examination committee in the DSSSB as alleged by the Complainant, therefore the contention that “examination committee deliberately selected these derogatory and insulted questions for two consecutive years i.e. twice just to denigrate and humiliate the Scheduled Caste community” is misconceived. There was never the intention of the DSSSB to humiliate and insinuate the Scheduled Caste community, However, DSSSB is sensitive to these matters and as soon as the matter came to the notice of the DSSSB it took immediately all steps including issuance of public notice on its website regretting the inadvertent error.

(xx) That the Ld. ASJ E Court Shadara took up the complaint under Section 156(3) Cr. PC and in its order dated 04.09.2020, under a mistaken belief that paper setters are from DSSSB and therefore, wanted to know the name and designation of the paper setters of the DSSSB. The Court sought the appearance of Chairman DSSSB along with his detailed explanation including

the details of the paper setter and the matter was adjourned for 17.10.2020. Copy of the order is annexed here as Annexure E.

(xxi) That the matter was not taken upon 17.10.2020 and then on 23.10.2020 two sealed envelopes mentioning the names of both paper setters were filed on record. The Hon'ble Court asked the DSSSB as to what steps they have taken having come to know of the offences committed as alleged in the complaint against the alleged offenders. The present Chairman explained the steps taken and it was assured to the Hon'ble Court that a detailed report of steps / enquiries initiated / disciplinary action if any taken against the two paper setters who prepared question papers with casteist remarks twice will be filed. The detailed affidavit was filed on 05.11.2020 and matter was listed for hearing on 25.11.2020.

(xxii) That on 17.02.2021 arguments were heard, and the Ld. Court held that complainant belongs to SC Community and falls within the definition of victim. In spite of detailed reports submitted by the DSSSB to the Hon'ble Court and also details of paper setters, the Court without considering the fact that DSSSB does not have either an in house facility of paper setting or, vetting it simply proceeded to decide the matter on the ground that matter is still at pre-cognizance stage and the Board as such has no locus standi to appear or argue, even though it had asked the Chairman DSSSB to appear in the matter and submit a detailed report, which he has submitted. The Hon'ble Court made observation that question with caste abusive word was set up in paper by the paper setters not only once i.e. 13.10.2018 but again the very next year ie. paper dated 18.08.2019. It further held that prima facie the alleged words in the question papers of 2018 and 2019 disclose commission of various cognizable offences committed by the

respondent / DSSSB and an investigation is required into these. The Court allowed the applications and directed registration of an FIRs against the offenders and submit the monthly report.

(xxiii) That the order is being challenged before this Hon'ble Court the same being contrary to the judgement of the Hon'ble Supreme Court and also besides no offence under the SC/ST (POA) Act has been committed by the DSSSB/ paper setters, no FIR can be ordered to be registered against any officials of DSSSB they being public servant without prior sanction of the competent authority. It may also be pointed out that question as asked for in the grammar section of the question paper is to test the ability of examinee to understand word formation according to gender and is not a deliberate attempt to abuse or, disrespect any community. The words are mentioned in Schedule A of the Constitution (Scheduled Caste) 1950 issued under Article 341 of the Constitution of India and while issuing SC/ST certificates, the caste is also mentioned in the certificates. The words are also mentioned in the different dictionaries and reference books specifically dealing with gender issues. The paper setters have sourced those questions from one of those Grammar books only. Copy of the relevant reference books and one such order of CIC specifically directing to mention the caste in the certificates is annexed here as Annexure F Colly & G. Hence in these circumstances, the order dated 17.02.2021 passed by the Ld. Additional Session Judge:02, Spl. Court, SC/ST (POA) Act, 1989, Shadara Karkardooma Court, Delhi in CC No. 13/2018 and CC No. 16/2019 is perverse and illegal and is liable to be set aside and is challenged on the following amongst other grounds.”

26. The petitioner has thus submitted that the Trial Court had failed to appreciate that a bare perusal of the complaint and the words

mentioned in the question papers were the same as used in text books and constitute no offence under the SC/ST (POA) Act, 1989, as they are not used as an abuse to an individual nor disrespect to any community neither was there any intention to do so. Inter alia, the DSSSB had submitted that neither it is the Chairman nor any of the Board Officials who were associated with the setting up and vetting of the question papers and thus there could be no vicarious liability as there was no concept of vicarious liability in criminal jurisprudence.

27. The petitioner, DSSSB, further submitted that the learned Trial had failed to appreciate that there was no internal committee of the DSSSB which either sets up papers or reviews the same after setting up and that such committees are not constituted in the recruitment examination to maintain complete secrecy and sanctity of the same and thus the contention of the complainant that the examination committee had deliberately selected these derogatory and insulted remarks for two consecutive years, i.e., twice just to denigrate and humiliate the Scheduled Caste community was wholly misconceived.

28. The DSSSB has further submitted that the Trial Court had failed to appreciate that in the Scheduled Caste certificates issued by the Competent Authority, the caste Chamar and Bhangi are mentioned and later the caste Jatav was mentioned and when a candidate raised an issue before the Government of NCT of Delhi on it being realized that any amendment to the Schedule had to be made only after Presidential assent, the directions were withdrawn and thereafter since 2015 in the Scheduled Caste certificate again in the column, the caste, the caste Chamar/Bhangi is mentioned. The petitioner thus submits

that mere mentioning a caste in a certificate does not amount to humiliation of the Schedule Caste community and rather it was a candidate of the Schedule Caste community that had raised an issue before the CIC that the caste 'chamar' should have been mentioned in the certificate instead of 'Jatav' and orders were passed accordingly.

29. The petitioner has submitted that the learned Trial Court had failed to appreciate that the question was asked for in the grammar section of the question paper was not a deliberate attempt to abuse or disrespect any community and that the words are mentioned in Schedule A of the Constitution (Scheduled Caste) 1950 issued under Article 341 of the Constitution of India and reiterated that whilst issuing a Scheduled Caste/Scheduled Tribes certificates the caste is also mentioned in the certificates and the words are also mentioned in different dictionaries and reference books specifically dealing with gender issues and that the paper setters have sourced those questions from one of those Grammar books only. Extracts from the grammar books were also placed on record by the petitioner in support of its contention that there was no deliberate humiliation sought to be caused. The extracts that have been placed on record are from:

“शील्स हिन्दी से अंग्रेजी शब्दकोश in which the grammatical query relates to पुल्लिंग से स्त्रीलिंग बनाना with question No.2 being व्यवसाय बताने वाले शब्दों के अंत में ' इन ' प्रत्यय लगाने से स्त्रीलिंग बनते हैं.

पुल्लिंग	स्त्रीलिंग
भंगी	भंगिन
...
चमार	चमारिन्”

30. Reliance was also placed by the petitioner on the reference book of हिन्दी भाषा और व्याकरण in which it was stated as under:

पुल्लिंग	स्त्रीलिंग
गधा	गदही
तोता	तोते।
लड़का	लड़की
बिल्ला	बिल्ली
भतीजा	भतीजी
...
चूहा	चुहिया
दूल्हा	दुल्हिन
धोबी	धोबिन
मोची	मोचिन
तेल	तेलिन
माली	मालिन
भंगी	भंगिन

31. Inter alia, the petitioner submits that the complainant does not fall within the definition of the term ‘victim’ in terms of Section 2(ec) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989, which provides to the effect:

“(ec) "victim" means any individual who falls within the definition of the "Scheduled Castes and Scheduled Tribes" under clause (c) of sub-section (1) of section 2, and who has suffered or experienced physical, mental, psychological, emotional or monetary harm or harm to his property as a result of the commission of any offence under this Act and includes his relatives, legal guardian and legal heirs”;

with it having been submitted by the petitioner that the complainant was himself not a candidate in the examination and thus the provisions of SC/ST (POA) Act would not attract in the matter.

32. The petitioner further submits that in terms of the verdict of the Hon’ble Supreme Court in *Anil Kumar V. M.K.Aiyappa*; CA/1590/2013 and *D.Devraja V. Owais Sabeer Hussain*; SLP(CRL) No. 1882/2018, that without sanction for prosecution, the Court cannot order investigation against a public servant while invoking powers under Section 156(3) of the Cr.P.C.

33. Reliance was also sought to be placed on behalf of the petitioner on observations of this Court in CrI.M.C. no. 4922/2015, *Chairman, UPSC v. GNCTD*; wherein it was observed to the effect:

“There are no allegations of any deliberate act on the part of any specific individual. General allegations levelled against UPSC, an institution created by the Constitution of India, are per se preposterous and do not merit any credence. The officers and officials of UPSC dealing with the subject matter are public servants who have the protection of law under Section 197 Cr.P.C. From this perspective as well, the direction by the impugned order could and should not have been issued [Anil Kumar (supra)]”.

34. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Lalita Kumari V. State of U.P.* (2014) 2 SCC 1 and observations in paragraph 29 to the effect:

“29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same”.

35. Inter alia, the petitioner seeks the invocation of powers of this Court in terms of Section 226 of the Constitution of India and under Section 482 of the Cr.P.C., 1973, to quash the FIR proceedings which are submitted to be an abuse of the process of law.

36. The petitioner further submits that as laid down vide the judgment dated 8.3.2021 in CrI.Appel No. 283 of 2021 by the Hon'ble Supreme Courts, the Trial Courts have the power to not merely decide an acquittal or conviction of the accused person after trial but also have a duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. The petitioner thus submits that the impugned order is ought to be set aside being perverse.

37. Placed on record is the copy of the News report dated 15.10.2018 in the Hindustan Times which is to the effect:

“ ‘Casteist’ question in exam leads to uproar

ACTION SOUGHT A teachers' forum has sought the removal of chairperson of DSSSB, which conducted the exam for recruitment of primary teachers for MCD on Saturday

NEW DELHI: The SC/ST/OBC teachers' forum in the national Capital has demanded the removal of the chairperson of the board that conducts recruitment exams for the Delhi government over a question involving a derogatory term referring to a particular community.

'The Delhi Subordinate Services Selection Board (DSSSB) had allegedly included the controversial question in an exam conducted on Saturday for hiring primary teachers.

According to candidates who wrote the exam, the Hindi section of all the four sets of the question paper had a 'casteist' question. " I was aghast to see the question. Use of such language in an exam for recruiting teachers shows the deeply entrenched casteism among people sitting in the authority," a candidate, who wished to remain anonymous, said.

Another candidate said that by asking such questions, the board has " hurt the sentiments of their community". " We are upset over the insensitivity of the board and we demand an apology from them. It's highly irresponsible of them to use such casteist language in a teachers' recruitment exam," he said.

The DSSSB, however, cited inadvertent error' behind the incident. " it has been brought to the notice of the DSSSB that in the recent recruitment exam for the post of MCD primary teachers, a question having casteist undertone appeared due to an inadvertent error. It is clarified that the procedure of paper setting is highly

confidential and secretive in nature and the contents of the paper are not shared with the board officials. The contents of the paper are revealed for the very first time before the candidates only, “ the board said in a statement.

The members of SC/ST/OBC teachers’ forum on Sunday wrote to the President, the Prime Minister, Union home minister, Delhi education minister and lieutenant governor demanding removal of DSSSB chairperson. “ We demand immediate action against the chairperson and also an assurance that such insensitivity will not be repeated in the future. Otherwise, we will Launch as massive protest, “ said Hansaraj Suman, a member of the forum. The forum has also called an emergency meeting on Tuesday.

He accused the board of deliberately using the remark. “ The board could have used any question from the wide literature available in Hindi language. But they instead put a caste-based question in the paper. It only exposed their mentality,” said Suman.

The board holds teachers’ recruitment exam for government schools in Delhi.

Delhi SC/ST welfare minister Rajendra pal Gautam also condemned the incident and demanded an explanation from the board. “ I will meet the Delhi Chief Secretary on Monday to discuss this issue. The services department is still under the LG of Delhi which is the governing body of DSSSB. The department has to now come clean on what made them agree to induct such a shoddy question,” he said.

The board said they are taking measures to sensitise the paper setters.”

38. Through the written submissions submitted by the petitioner dated 13.4.2021, submissions sought to be made through the petition were reiterated. The petitioner reiterated that it has placed on record in two sealed envelopes the particulars of both the paper setters and the same was recorded in the order dated 25.11.2020 and the matter was adjourned to 12.2.2021 and the learned Trial Court in its order dated 17.2.2021 had referred to the report of the Investigating Officer submitted in September 2019 alleging the attempt being made by the Board in concealing information as to who the question paper setters were despite repeated orders of the Court and that the aspect that the petitioner had placed on record the particulars of both the paper setters was not taken into account by the Trial Court. The petitioner reiterates that in as much as the officers of the DSSSB are public servants and protected from prosecution under Section 197 of the Cr.P.C., 1973, the Court is duty bound to take prior approval from the competent authority if a public servant is accused of an offence which has been committed whilst acting or purporting to act in discharge of his official duties and that all officials of the DSSSB are public servants performing official duties of conducting examinations for various posts in the Government of NCT Delhi and autonomous bodies.

39. The petitioner has placed on record a copy of the order dated 23.10.2020 of the learned Trial Court Ct.16/2019 & 13/2018 wherein it had been observed to the effect that two sealed envelopes

mentioning the particulars of both paper setters had been filed on record.

40. Reliance was thus placed on behalf of the petitioner on the verdicts:

- *D. Devaraj V. Owais Sabeer Hussain*; 2020(7) SCC 695
- *Krishanl Lal Chawla Vs. State of U.P. & Anr.*: 2021 SCC(Online) SC 191
- *Hitesh Verma V. State of Uttarakhand*; 2020 (10) SCC 710
- *Kapil Aggarwal V. Sanjay Sharma*; 2021 SCC (Online) SC 154

41. The petitioner also placed on record a copy of the Schedule Part I of the Constitution Scheduled Caste Orders 1950 (Part III –Rules and Orders under the Constitution) in The Schedule,

PART-I Andhra Pradesh

at Sr. no. 14, Chamar, Mochi, Muchi, Chamar-Ravidas, Chamar-Rohidas are mentioned

Part II- Assam

wherein at serial No.12 Mehtar, Bhangi are mentioned

Part-III Bihar,

at Sr. No. 6 Chamar, Mochi, Chamar-Ravidas, Chamar Ravidas, Chamar-Rohidas, Charmakar, are mentioned

PART-IV Gujarat

At serial No.4 Bhambi, Bhambhi, Asadaru, Asodi, Chamadia, Chamar, Chamar-Ravidas, Chambhar, Chamgar, Haralayya, Harali, Khalpa, Machigar, Mochigar, Masdar, Madig, Mochi (in Dangs district and Umergaon Taluka of Valsad district only), Nalia Telegu Mochi, Kamati Mochi, Ranigar, Rohidas, Rohit Samgar are mentioned

Part V. –Haryana

At serial No. 2 Balmiki, Chura, Bhangi are mentioned and at serial No. 9 Chamar, Jatia Chamar, Rehgar, Raigar, Ramdasi, RAvidasi, Balahi Batoi, Bhatoi, Bhambi, Chamar-Rohids, Jatasv Jatava, Mochi, Ramdasia are mentioned.

Part-VI—Himachal Pradesh

At serial No. 3 Balmiki, Bhangi, Chuhra, Chura are mentioned.

At Serial No. 14 Chamar, Jatia Chamar, Rehgar, Raigar, Ramdasi, Ravidasi, Ramdasia, Mochi are mentioned.

Part-VIA—Jharkhand

At serial No.5 Chamar, Mochi are mentioned

Part-VII—Karnataka

At serial No. 21Bhangi, Mehtar, Olgana Rukhi, Malkana, Halakhor, Lalbegi, Balmiki, Korar, Zadmali are mentioned.

PART VIII. – Kerala

At serial number 15 Chamar, Muchi are mentioned

PART IX.— Madhya Pradesh

At Serial number 11 Bhangi, Mehtar, Balmiki, Lalbegi, Dharkar are mentioned.

At serial number 14 Chamar, Chamari, Bairwa, Bhambhi, Jatav, Mochi, Regar, Nona, Rohidas, Ramnani, Stanami, Suryabanshi, surjaramnami, Ahiwar, Chamar, Mangan, Raidas are mentioned.

PART X.—Maharashtra

At serial number 11.Bhambi, Bhambhi, Asadaru, Asodi, Chamadia, Chamar, Chamari, Chambhar, Chamgar, Haralayya, Harali, Khalpa, Machigar, Mochigar, Madar, Madig, Mochi, Telegu Mochi, Kamati Mochi, Ranigar, Rohidas, Nona, Ramnami, Rohit, Samgar, Samagara, Satnami, Surjyabanshi, Surjaramnami, Charmakar, Pardeshi Chamar are mentioned

At serial number 12.Bhangi, Mehtar, Olgana, Rukhi, Malkana, Halalkhor, Lalbegi, Balmiki, Korar, Zadmali, Hela are mentioned.

PART XI.—Manipur

1. Dhupi, Dhobi 2. Lois 3. Muchi, Ravidas 4. Namasudra 5. Patni 6. Sutradhar

PART XII.—Meghalaya

1. Bansphor 2. Bhuinmali, Mali 3. Brittil Bania, Bania 4. Dhupi, Dhobi 5. Dugla, Dholi 6. Hira 7. Jalkeot 8. Jhalo, Malo, Jhalo-Malo 9. Kaibartta, Jaliya 10. Lalbegi 11. Mahara 12. Mehtar, Bhangi 13. Muchi, Rishi 14. Namasudra 15. Patni 16. Sutradhar.

PART XIII.—[Odisha]

1. *Adi Andhra* 1 [2. *Amant, Amat, Dandachhatra Majhi, Amata, Amath*] 3. *Audhelia* 4. *Badaik* 5. *Bagheti, Baghuti* 6. *Bajikar* 7. *Bari* 2*** 9. *Basor, Burud* 3 [10. *Bauri, Buna Bauri, Dasia Bauri*] 11. *Bauti* 12. *Bavuri* 1 [13. *Bedia, Bejia, Bajia*] 14. *Beldar* 15. *Bhata* 16. *Bhoi* 17. *Chachati* 18. *Chakali* 4[19.***Chamar, Chamara, Chamar-Ravidas, ChamarRohidas, Mochi, Muchi, Satnami***] 20. *Chandala* 21. *Chandhai Maru* 5.*** 23. *Dandasi* 3 [24. *Dewar, Dhibara, Keuta, Kaibarta*] 25. *Dhanwar* 6[26. *Dhoba, Dhobi, Rajak, Rajaka* 27. *Dom, Dombo, Duria Dom, Adhuria Dom, Adhuria Domb*] 28. *Dosadha* 29. *Ganda* 30. *Ghantarghada, Ghantra* 31. *Ghasi, Ghasia* 32. *Ghogia* 33. *Ghusuria* 34. *Godagali* 35. *Godari* 36. *Godra* 37. *Gokha* 38. *Gorait, Korait* 39. *Haddi, Hadi, Hari* 40. *Irika* 1 [41. *Jaggali, Jaggili, Jagli*] 4 [42. *Kandra, Kandara, Kadama, Kuduma, Kodma, Kodama*] 43. *Karua* 6[44. *Katia, Khatia* 45. *Kela, Sapua Kela, Nalua Kela, Sabakhia Kela, Matia Kela, Gaudia Kela* 46. *Khadala , Khadal, Khodal*] 47. *Kodalo, Khodalo* 48. *Kori* 2*** 50. *Kurunga* 51. *Laban* 52. *Laheri* 53. *Madari* 54. *Madiga* 55. *Mahuria* 1 [56. *Mala, Jhala, Malo, Zala, Malha, Jhola*] 57. *Mang* 58. *Mangan* 59. *Mehra, Mahar* 60. *Mehtar, Bhangi* 61. *Mewar* 62. *Mundapotta* 63. *Musahar* 64. *Nagarchi* 65. *Namasudra* 66. *Paidi* 67. *Painda* 68. *Pamidi* 2[69. *Pan, Pano, Buna Pana, Desua Pana, Buna Pano*] 70. *Panchama* 71. *Panika* 72. *Panka* 73. *Pantanti* 74. *Pap* 75. *Pasi* 76. *Patial, Patikar, Patratanti, Patua* 77. *Rajna* 78. *Relli* 79. *Sabakhia* 80. *Samasi* 81. *Sanei* 82. *Sapari* 83. *Sauntia, Santia* 84. *Sidhria* 85. *Sinduria* 1[86. *Siyal, Khajuria*] 87. *Tamadia* 88. *Tamudia* 89. *Tanla* 3* * * 4[91. *Turi, Betra*] 92. *Ujia* 93. *Valamiki, Valmiki* 5[94. *Mangali (in Koraput and Kalahandi districts)* 95. *Mirgan (in Navrangpur districts).*]

PART XIV.—Punjab

1. *Ad Dharmi* 2. ***Balmiki, Chura, Bhangi*** 3. *Bangali* 4. *Barar, Burar, Berar* 1 [5. *Batwal, Barwala*] 6. *Bauria, Bawaria* 7. *Bazigar* 8. *Bhanjra* 6[9.***Chamar, Jatia Chamar, Rehgar, Raigar, Ramdasi, Ravidasi, Ramdasia, Ramdasia Sikh, Ravidasia, Ravidasia Sikh***] 10. *Chanal* 11. *Dagi* 12. *Darain* 13. *Deha, Dhaya, Dhea* 14. *Dhanak* 15. *Dhogri, Dhangri, Siggi* 16.

Dumna, Mahasha, Doom 17. Gagra 18. Gandhila, Gandil Gondola 19. Kabirpanthi, Julaha 20. Khatik 21. Kori, Koli 22. Marija, Marecha 1 [23. Mazhabi, Mazhabi Sikh] 24. Megh 25. Nat 26. Od 27. Pasi 28. Perna 29. Pherera 30. Sanhai 31. Sanhal 32. Sansi, Bhedkut, Manesh 33. Sansoi 34. Sapela 35. Sarera 36. Sikligar 37. Sirkiband. 5 [38. Mochi.] 7 [39. Mahatam, Rai Sikh]

PART XV. — Rajasthan

*1. Adi Dharmi 2. Aheri 3. Badi 4. Bagri, Bagdi 5. Bairwa, Berwa 6. Bajgar 7. Balai 8. Bansphor, Bansphod 9. Baori 10. Bargi, Vargi, Birgi 11. Bawaria 12. Bedia, Beria 13. Bhand 14. **Bhangi, Chura, Mehtar, Olgana, Rukhi, Malkana, Halalkhor, Lalbegi, Balmiki, Valmiki, Korar, Zadmali** 15. Bidakia 16. Bola 17. **Chamar, Bhambhi, Bambhi, Bhambi, Jatia, Jatav, Jatava, Mochi, Raidas, Rohidas, Regar, Raigar, Ramdasia, Asadaru, Asodi, Chamadia, Chambhar, Chamgar, Haralayya, Harali, Khalpa, Machigar, Mochigar, Madar, Madig, Telugu Mochi, Kamati Mochi, Ranigar, Rohit, Samgar** 18. Chandal 19. Dabgar 20. Dhanak, Dhanuk 21. Dhankia 22. Dhobi 23. Dholi 24. Dome, Dom 25. Gandia 26. Garancho, Gancha 27. Garo, Garura, Gurda, Garoda 28. Gavaria 29. Godhi 30. Jingar 31. Kalbelia, Sapera 32. Kamad, Kamadia 33. Kanjar, Kunjar 34. Kapadia Sansi 35. Khangar 36. Khatik 37. Koli, Kori 38. Kooch Band, Kuchband 39. Korla 40. Madari, Bazigar 41. Mahar, Taral, Dhegumegu 42. Mahyavanshi, Dhed, Dheda, Vankar, Maru Vankar 43. Majhabi 44. Mang, Matang, Minimadig 45. Mang Garodi, Mang Garudi 46. Megh, Meghval, Meghwal, Menghvar 47. Mehar 48. Nat, Nut 49. Pasi 50. Rawal 51. Salvi 52. Sansi 53. Santia, Satia 54. Sarbhanga 55. Sargara 56. Singiwala 57. Thori, Nayak 58. Tirgar, Tirbanda 59. Turi.*

PART XVI.—Tamil Nadu

1. Adi Andhra 2. Adi Dravida 3. Adi Karnataka 4. Ajila 5. Arunthathiyar 6. Ayyanavar (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 7. Baira 8. Bakuda 9. Bandi 10. Bellara 11. Bharatar (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 12. Chakkiliyan 13.

Chalavadi 14. Chamar, Muchi 15. Chandala 16. Cheruman 17. Devendrakilathan 18. Dom, Dombara, Paidi, Pano 19. Domban 20. Godagali 21. Godda 22. Gosangi 23. Holeyai 24. Jaggali 25. Jambuvulu 26. Kadaiyan 27. Kakkalan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 28. Kalladi 29. Kanakkan, Padanna (in the Nilgiris district) 30. Karimpalan 31. Kavara (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 32. Koliyan 33. Koosa 34. Kootan, Koodan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 35. Kudumban 36. Kuravan, Sidhanar 37. Madari 38. Madiga 39. Maila 40. Mala 41. Mannan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 42. Mavilan 43. Moger 44. Mundala 45. Nalakeyava 46. Nayadi 47. Padannan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 48. Pagadai 49. Pallan 50. Palluvan 51. Pambada 52. Panan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 53. Panchama 54. Pannadi 55. Panniandi 56. Paraiyan, Parayan, Sambavar 57. Paravan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 58. Pathiyan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 59. Pulayan, Cheramar 60. Puthirai Vannan 61. Raneyar 62. Samagara 63. Samban 64. Sapari 65. Semman 66. Thandan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 67. Thoti 68. Tiruvalluvar 69. Vallon 70. Valluvan 71. Vannan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 72. Vathiriyan 73. Velan 74. Vetan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district) 75. Vettiyan 76. Vettuvan (in Kanyakumari district and Shenkottah taluk of Tirunelveli district)

PART XVII.—Tripura

1. Bagdi 2. Bhuimali 3. Bhunar 1[4. Chamar, Muchi, Chamar – Rohidas, Chamar Ravidas] 5. Dandasi 6. Dhenuar 1[7. Dhoba, Dhobi] 8. Dum 9. Ghasi 10. Gour 11. Gur 1[12. Jalia Kaibarta, Jhalo-Malo] 13. Kahar 14. Kalindi 15. Kan 16. Kanda 17. Kanugh 18. Keot 19. Khadit 20. Kharia 21. Koch 22. Koir 23. Kol 24. Kora 25. Kotal 26. Mahisyadas 27. Mali 28.

Mehtor 29. Musahar 30. Namasudra 31. Patni 32. Sabar. 2 [33. Dhuli, Sabdakar, Badyakar 34. Natta, Nat.]

PART XVIII.—Uttar Pradesh

*1. Agariya 1 [excluding Sonbhadra district] } 2. Badhik 3. Badi
4. Baheliya 5. Baiga 1 [excluding Sonbhadra district] 6.
Baiswar 7. Bajaniya 8. Bajgi 9. Balahar 10. Balai 11. Balmiki
12. Bangali 13. Banmanus 14. Bansphor 15. Barwar 16. Basor
17. Bawariya 18. Beldar 19. Beriya 20. Bhantu 21. Bhuiya 1
[excluding Sonbhadra district] 22. Bhuyiar 23. Boira 24.
Chamar, Dhusia, Jhusia, Jatava 25. Chero 1 [excluding
Sonbhadra and Varanasi districts] 26. Dabgar 27. Dhangar 28.
Dhanuk 29. Dharkar 30. Dhobi 31. Dom 32. Domar 33. Dusadh
34. Gharami 35. Ghasiya 36. Gond 1 [excluding Mehrajganj,
Sidharth Nagar, Basti, Gorakhpur, Deoria, Mau, Azamgarh,
Jonpur, Balia, Gazipur, Varanasi, Mirzapur and Sonbhadra
districts] 37. Gual 38. Habura 39. Hari 40. Hela 41. Kalabaz
42. Kanjar 43. Kapariya 44. Karwal 45. Khairaha 2 [46.
Kharwar(excluding Benbansi) (excluding Deoria, Balia,
Gazipur, Varanasi and Sonbhadra districts)] 47. Khatik 48.
Khorot 49. Kol 50. Kori 51. Korwa 52. Lalbegi 53. Majhwar 54.
Mazhabi 55. Musahar 56. Nat 57. Pankha 1[excluding
Sonbhadra and Mirzapur districts] 58. Parahiya 1[excluding
Sonbhadra district] 59. Pasi,Tarmali 60. Patari 1 [excluding
Sonbhadra district] 61. Rawat 62. Saharya 1 [excluding
Lalitpur district] 63. Sanaurhiya 64. Sansiya 65. Shilpkar 66.
Turaiha.*

PART XIX.—West Bengal

*1. Bagdi, Duley 2. Bahelia 3. Baiti 4. Bantar 5. Bauri 6. Beldar
7. Bhogta 8. Bhumali 9. Bhuiya 10. Bind 11.**Chamar,
Charmakar, Mochi, Muchi, Rabidas, Ruidas, Rishi** 12.
Chaupal 13. Dabgar 14. Damai (Nepali) 15. Dhoba, Dhobi 16.
Doai 17. Dom, Dhangad 18. Dosadh, Dusadh, Dhari, Dharhi
19. Ghasi 20. Gonrhi 21. Halalkhor 1 [22. Hari, Mehtar,
Mehtor, Bhangi, Balmiki] 23. Jalia Kaibartta 24. Jhalo Malo,
Malo 25. Kadar 26. Kami (Nepali) 27. Kandra 28. Kanjar 29.
Kaora 30. Karenga, Koranga 31. Kaur 32. Keot, Keyot 33.
Khaira 34. Khatik 35. Koch 36. Konai 37. Konwar 38. Kotal 39.*

Kurariar 40. Lalbegi 41. Lohar 42. Mahar 43. Mal 44. Mallah 45. Musahar 46. Namasudra 47. Nat 48. Nuniya 49. Paliya 50. Pan, Sawasi 51. Pasi 52. Patni 53. Pod, Poundra 54. Rajbanshi 55. Rajwar 56. Sarki (Nepali) 57. Sunri (excluding Saha) 58. Tiyar 59. Turi. 2 [60. Chain]. 3 [PART XX.—Mizor

[PART XX.—Mizoram

1. Bansphor 2. Bhuinmali or Mali 3. Brittial-Bania or Bania 4. Dhupi or Dhobi 5. Dugla or Dholi 6. Hira 7. Jalkeot 8. Jhalo, Malo or Jhalo-Malo 9. Kaibartta or Jaliya 10. Lalbegi 11. Mahara 12. Mehtar or Bhangi 13. Muchi or Rishi 14. Namasudra 15. Patni 16. Sutradhar.

PART XXII.—Goa

1. Bhangi (Hadi) 2. Chambhar 3. Mahar 4. Mahyavanshi (Vankar) 5. Mang.

PART XXIII.—Chhattisgarh

1. Audhelia 2. Bagri, Bagdi 3. Bahna, Bahana 4. Balahi, Balai 5. Banchada 6. Barahar, Basod 7. Bargunda 8. Basor, Burud, Bansor, Bansodi, Bansphor, Basar 9. Bedia 10. Beldar, Sunkar 11. Bhangi, Mehtar, Balmiki, Lalbegi, Dharkar 12. Bhanumati 13. Chadar 14. Chamar, Chamari, Bairwa, Bhambhi, Jatav, Mochi, Regar, Nona, Rohidas, Ramnami, Satnami, Surjyabanshi, Surjyarnami, Ahirwar, Chamar, Mangan, Raidas 15. Chidar 16. Chikwa, Chikvi 17. Chitar 18. Dahait, Dahayat, Dahat 19. Dewar 20. Dhanuk 21. Dhed, Dher 22. Dohor 23. Dom, Dumar, Dome, Domar, Doris 24. Ganda, Gandi 3[25. Ghasi, Ghasia, Sais, Sahis, Sarathi, SootSarathi, Thanwar] 26. Holiya 27. Kanjar 28. Katia, Patharia 29. Khatik 30. Koli, Kori 31. Khangar, Kanera, Mirdha 32. Kuchbandhia 33. Mahar, Mehra, Mehar 34. Mang, Mang Garodi, Mang Garudi, Dankhani Mang, Mang Mahasi, Madari, Garudi, Radhe Mang 35. Meghwal 36. Moghia 37. Muskhan 38. Nat, Kalbelia, Sapera, Navdigar, Kubutar 39. Pasi 40. Rujjhar 41. Sansi, Sansia 42. Silawat 43. Zamral] 4[44. Turi].

PART XXIV.—Uttarakhand

1. Agaria 2. Badhik 3. Badi 4. Baheliya 5. Baiga 6. Baiswar 7. Bajaniya 8. Bajgi 9. Balhar 10. Balai 11. Balmiki 12. Bangali 13. Banmanus 14. Bansphor 15. Barwar 16. Basor 17. Bawariya 18. Beldar 19. Beriya 20. Bhantu 21. Bhuiya 22.

Bhuyiar 23. Boria 24. Chamar, Dhusia, Jhusia, Jatava 25. Chero 26. Dabgar 27. Dhangar 28. Dhanuk 29. Dharkar 30. Dhobi 31. Dom 32. Domar 33. Dusadh 34. Dharmi 35. Dhariya 36. Gond 37. Gwal 38. Habura 39. Hari 40. Hela 41. Kalabaz 42. Kanjar 43. Kapariya 44. Karwal 45. Khairaha 46. Kharwar (excluding Banvansi) 47. Khatik 48. Kharot 49. Kol 50. Kori 51. Korwa 52. Lalbegi 53. Majhwar 54. Mazhabi 55. Musahar 56. Nat 57. Pankha 58. Parahiya 59. Pasi, Tarmali 60. Patari 61. Sahariya 62. Sanaurhiya 63. Sansiya 64. Shilpkar 65. Turaiha.]

PART-XXV-Telangana

1. Adi Andhra 2. Adi Dravida 3. Anamuk 4. Aray Mala 5. Arundhatiya 6. Arwa Mala 7. Bariki 8. Bavuri 9. Beda (Budga) Jangam 10. Bindla 11. Byagara, Byagari 12. Chachati 13. Chalavadi 14. Chamar, Mochi, Muchi, Chamar-Ravidas, Chamar-Rohidas 15. Chambhar 16. Chandala 17. Dakkal, Dokkalwar 18. Dandasi 19. Dhor 20. Dom, Dombara, Paidi, Pano 21. Ellamalawar, Yellammalawandlu 22. Ghasi, Haddi, Relli, Chanchandi 23. Godari 24. Gosangi 25. Holey 26. Holey Dasari 27. Jaggali 28. Jambuvulu 29. Kolupulvandlu, Pambada, Pambanda, Pambala] 30. Madasi Kuruva, Madari Kuruva 31. Madiga 32. Madiga Dasu, Mashteen 33. Mahar 34. Mala, Mala Ayawaru 35. Mala Dasari 36. Mala Dasu 37. Mala Hannai 38. Malajangam 39. Mala Masti 40. Mala Sale, Nethani 41. Mala Sanyasi 42. Mang 43. Mang Garodi 44. Manne 45. Mashti 46. Matangi 47. Mehtar 48. Mitha Ayyalvar 49. Mundala 50. Paky, Moti, Thoti 51. Pamidi 52. Panchama, Pariah 53. Relli 54. Samagara 55. Samban 56. Sapru 57. Sindhollu, Chindollu 58. Yatala 59. Valluvan.]

42. Reliance, on the other hand, on behalf of the respondent no.1 was placed on the verdicts of the Hon'ble Supreme Court in ***Swaran Singh & Others V. State***: 2008 8 SSC 435, to contend to the effect that even if the names of the Scheduled Castes and Scheduled Tribes include the words Chamar and Bhangi in the Schedule to the Constitution of India, the same has not permitted the calling of a

member of the Schedule Caste as the Chamar/Bhangi with intent to humiliate such person within public view.

43. The observations of the Hon'ble Supreme Court in *Swaran Singh Vs. State* (2008) 8 SCC 435 in paragraphs 19, 20, 21, 22, 23, 24 are categorical to the effect:

19. In this connection it may be noted that in the revenue records in many states in our country one often finds recorded : A son of B, caste lohar (smith), vocation agriculture'; or `C son of D, caste badhai (carpenter), vocation agriculture', or `E son of H, caste kumhar (potter), vocation agriculture', etc. This indicates that the ancestors of these persons were in those professions, but later they became unemployed as British mill industry destroyed their handicraft. Some people think that if the British had not come into India an indigenous mill industry would have developed in India, and India would have become an Industrial State by the 19th Century, like North America or Europe, but it is not necessary to go into this here.

20. The Chamars also suffered terribly during this period. The British industries e.g. Bata almost completely destroyed the vocation of the Chamars, with the result that while they were a relatively respectable section of society before the coming of British rule (because they could earn their livelihood through manufacture of leather goods) subsequently they sank in the social ladder and went down to the lowest strata in society, because they lost their livelihood and became unemployed.

21. Today the word `Chamar' is often used by people belonging to the so-called upper castes or even by OBCs as a word of insult, abuse and derision. Calling a person `Chamar' today is nowadays an abusive language and is highly offensive. In fact, the word `Chamar' when used

today is not normally used to denote a caste but to intentionally insult and humiliate someone.

22. It may be mentioned that when we interpret [section 3\(1\)\(x\)](#) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects & Reasons of the Act. Hence, while interpreting [section 3\(1\)\(x\)](#) of the Act, we have to take into account the popular meaning of the word 'Chamar' which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word 'Chamar' when addressing a member of the Scheduled Caste, even if that person in fact belongs to the 'Chamar' caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity - so many religions, castes, ethnic and lingual groups, etc. - all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence under [section 3\(1\)\(x\)](#) of the Act. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used.”

and to hold thus that whilst interpreting Section 3(1)(x) of the Act we have to take into account the popular meaning of the word Chamar which it has acquired by usage and not the etymological meaning and if we go by the etymological meaning, we may frustrate the very object of the Act and that would not be a correct manner of interpretation and, as observed by the Hon'ble Supreme Court in paragraph 23 of the said verdict, this is the age of democracy and equality and no people or community should be insulted or looked down upon and nobody's feelings should be hurt, which is also the spirit of the Constitution and forms its basis and thus the so called upper castes and OBCs should not use the word Chamar when addressing a member of the Scheduled Caste, even if that person in fact belongs to the Charmar caste because use of such a word would hurt his feelings and in our country with so many religions, castes, ethnic and lingual groups etc and all communities and groups must be treated with respect and no one should be looked down upon as an inferior to keep our country united.

44. To similar effect are the observations of the Hon'ble Supreme Court in *Arumugam Servai V. State of Tamil Nadu*; 2011 (6) SCC 405 in paragraphs 5, 6, 7 and 8 of the said verdict.

45. Submissions were also made on behalf of the respondent no.2 by the Ld. ASC who primarily left the matter to the discretion of the Court, whilst supporting the contention in relation to invocation of Section 197 of the Cr.P.C., 1973 if applicable qua public servants if any involved.

46. On a consideration of the submissions that have been made on behalf of all parties to the petition, this Court is of the considered view that as laid down by the Hon'ble Supreme Court in *Swaran Singh, & Ors. V. State* (supra) and *Arumugam Servai V. State of Tamil Nadu* (supra) the questions that were put in the question papers:

Paper No. MKG-XIII/TECHPRT-II/IT/01 held on 13.10.2018

"73. पंडित : पंडिताइन, चमार:?"

and the options were

(A) चमाराईन (B) चमारिन् (C) चमारी (D) चमीर"

And

Paper No. MKG-XXI/TECHMSW/IT/01 held on 18.08.2019

"66. भंगी शब्द का अन्य लिंग रूप है

(A) भंगिन (B) भंगी (C) भंगिया (D) भंगिन"

undoubtedly prima facie fall within the domain of an intentional insult or intimidation with an intent to prima facie insult members of the SC/ST within public view in as much as the questions were put in the questions papers of the two examinations, i.e., Primary Teacher Examination MKG-XII/TECHPRT-II/IT/01 were held on 13.10.2018 and MKG-XXI/TECHMSW/IT/01 held on 18.08.2019.

47. The factum that both these castes fall within the domain of the Scheduled Castes as in terms of the Constitution Scheduled Castes Order 1950 *per se* does not permit user of the same in question papers by the DSSSB in terms of the spirit of the verdicts of the Hon'ble Supreme Court in *Swaran Singh, & Ors. V. State* (supra) as reiterated

by the Hon'ble Supreme Court in *Arumugam Servai V. State of Tamil Nadu* (supra).

48. As to whether the DSSSB was aware or not of the contents of the question papers set is a matter which can be ascertained only through investigation.

49. The aspect of invocation of Section 197 of the Cr.P.C. 1973 would apparently be considered only after the investigation is completed by the Investigating Agency as to who are the persons involved in the commission of the offences. It is essential to observe that though undoubtedly as recorded in the proceedings dated 23.10.2019 that the sealed covers giving the names of the paper setters have been submitted by the DSSSB, the same *per se* does not spell out the mode of examination of the setting of papers which would have to be investigated.

50. The learned Trial Court vide its impugned order has not specified any offender and has only directed the registration of the FIR against the offenders for offences committed under the provisions of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989 though in paragraph 10 it mentions that the alleged words in question papers of 2018 as pointed out by the complainant disclose the commission of various offences committed by the respondent DSSSB and an investigation is required into these.

51. At this stage, the Court merely stays the operations of the observations in para 10 of the impugned order dated 17.2.2021 wherein it observed to the effect

“discloses commission of various cognizable offences committed by the respondent/DSSSB, i.e., the petitioner herein, and an investigation is required into these” as the same can be ascertained only after the investigation is conducted by the Investigating Agency on registration of the FIR on the basis of the complaint that has been made by the complainant in relation to CT Nos. 13/18 and 16/19, till the conclusion of the investigation.

52. However, the staying of the operation of the impugned order to the extent that it observed in paragraph 10 of commission of offences by the respondent/DSSSB does not amount to an expression on the aspect as to whether or not the DSSSB had committed any offence or not. The contention that the DSSSB would not be vicariously liable qua the two offences alleged to have been committed as detailed in the complaint CT No.13/18 and 16/19 is also an aspect which cannot be ascertained without completion of investigation.

53. Furthermore, the contention of the DSSSB, the petitioner that it leaves the questions to the wisdom of the paper setters for such important exams as it conducts for selection of persons for public service and leaves the question set wholly to the domain and expertise of the paper setters prima facie does not appeal to a prudent person and if a fact, the same can only be determined on investigation conducted qua which thus the investigation needs to be conducted.

54. As regards the contention that the petitioner does not fall within the ambit of Section 2(ec) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. 1989, in as much as the complainant falls within the ambit of the definition of Schedule Castes/Schedule

Tribes, it cannot presently be said that there was no mental or emotional harm caused to him by reading the newspaper reports in relation to the question papers set with prima facie casteist remarks which question papers were put forth in public domain by an instrumentality of the State.

55. In the circumstances, the petition is dismissed except to the extent as directed in paragraphs 50,51 52 and 53 hereinabove.

56. Nothing stated hereinabove, shall not amount to an expression on the merits or demerits of the investigation nor the trials that may take place.

57. The TCRs be returned forthwith to the Ld.Trial Court to proceed in accordance with law.

ANU MALHOTRA, J.

JUNE 14th, 2021/SV