The High Court of Madhya Pradesh
W.P. No.13304/2021
(SUBHASH CHANDRA Vs UNION OF INDIA AND OTHERS)

Jabalpur, Dated: 08/02/2022

Shri Akash Choudhary, learned counsel for the petitioner.

Shri Sameer Beohar, learned counsel for the respondents.

1. This petition filed by petitioner invoking writ and supervisory jurisdiction under Articles 226 and 227 of Constitution assails orders dated 28.02.2020 and 13.01.2021, by which O.A. No.1140/2017 and R.A. No.26/2020 respectively were dismissed by Jabalpur Bench of Central Administrative Tribunal (for brevity "CAT").

2. Learned counsel for the rival parties are heard on the question of admission as well as on final disposal.

3. The Original Application was dismissed by the Tribunal on 28.02.2020 vide Annexure P/1 on merits and also on the ground of limitation by holding that the order impugned in O.A. No.442/2010 was passed on 25.06.2010, whereas OA was filed sometime in the year 2017. When petitioner attempted to remind the Tribunal that in view of the chequered history involved (infra) by filing review application R.A. No.26/2020, the same was also dismissed.

4. The cause raised by petitioner herein and before various Courts arose out of grievance against order dated 25.06.2010, by which his candidature for appointment in SC category to the post of Electrical Signal Maintainer Grade-III (Category No.27) was cancelled on the ground that caste certificate furnished by petitioner was not in prescribed proforma and the petitioner in fact belongs to Other Backward Classes.

5. The present case has a chequered history, and therefore, the undisputed skeletal facts attending herein are detailed below chronologically in tabular illustration:-

Date/Year	Events
2011	Petitioner raising the aforesaid grievance filed O.A. No.872/2011 in CAT Allahabad.
18.02.2013	O.A. No.87/2011 is dismissed for want of

	territorial jurisdiction and also on merits.
2013	W.P. No.19347/2013 was filed by petitioner at Allahabad High Court.
10.04.2013	W.P. No.19347/2013 was dismissed by Allahabad High Court on the question of territorial jurisdiction.
In 2013 itself	O.A. No.568/2013 filed in Jabalpur Bench of CAT by petitioner for the same grievance.
19.07.2013	O.A. No.568/2013 was dismissed by CAT Jabalpur on the question of territorial jurisdiction.
03.02.2014	W.P. No.22000/2013 filed before High Court of M.P. against order dated 19.07.2013 was disposed of with liberty to challenge the order of CAT Allahabad.
17.04.2015	Civil Appeal No.3743/2015 (Arising out of S.L.P. (C) No.13778/2014) preferred by petitioner in Supreme Court was allowed to the extent of quashing the findings rendered on merits by CAT Allahabad and High Court of Allahabad, with direction to revive O.A. No.872/2011 before CAT Allahabad.
06.12.2017	O.A. No.872/2011 on it's revival is transferred from CAT Allahabad to CAT Jabalpur and renumbered as O.A. No.1140/2017.
23.01.2019	Final arguments in O.A. No.1140/2017 were heard by CAT Jabalpur.
28.02.2020	Impugned order was passed by CAT Jabalpur dismissing O.A. No.1140/2017 as barred by limitation and also on merits.
13.01.2021	R.A. No.26/2020 preferred by petitioner dismissed by CAT Jabalpur.

6. Learned counsel for petitioner primarily contends that while passing the impugned order, the Tribunal failed to see that cancellation of candidature of petitioner vide order dated 25.06.2019 was exclusively on two grounds mentioned below:-

(i) The caste certificate submitted alongwith the application by petitioner was not in the prescribed format.

(ii) The petitioner belongs to other backward category, and therefore his claim to be appointed against a vacancy reserved for SC is untenable.

7. In the aforesaid background, learned counsel for petitioner

submits that if the caste certificate was not in proper format the petitioner ought to have been afforded opportunity to submit an appropriate caste certificate which can very well be done after the last date of submission of application forms in terms of law laid down by Apex Court in case of ***Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board and another, (2016) 4 SCC 754***.

7.1 Learned counsel for petitioner further submits that as regards the second ground of petitioner being an OBC candidate and not an SC is concerned, the employer had no occasion or jurisdiction to dwell upon this issue as it lies within the exclusive domain of High Power Committee constituted under the executive instructions issued pursuant to the decision of Apex Court in ***Kumari Madhuri Patil and another Vs. Addl. Commissioner, Tribal Development and others, (1994) 6 SCC 241.***

8. Learned counsel for the employer on the other hand submits that claim of petitioner was not only delayed by almost 7 years; but also was considered and decided on merits, and therefore in the limited writ and supervisory jurisdiction of this Court under Articles 226 & 227 of Constitution, no interference is called for.

9. After having heard learned counsel for the rival parties and having perused the factual matrix involved herein, this Court deems it appropriate to remand this matter to the Tribunal for reconsideration on merits for the reasons infra:-

(i) The Tribunal failed to consider the applicability of decision of Apex Court in the case of ***Ram Kumar Gijroya (supra)***, wherein it is laid down that credentials regarding status of caste can very well be furnished even after elapse of the last date for submission of application forms. The relevant portion of the said judgment is reproduced below for ready reference and convenience:-

> ***2.*** *The important question of law to be decided in these appeals is whether a candidate who appears in an examination under the OBC category and submits the certificate after the last date mentioned in the advertisement is eligible for selection to the post under the OBC category or*

not?

14. *The Division Bench of the High Court erred in not considering the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281]. In that case, the learned Single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned Single Judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217: as well as Valsamma Paul v. Cochin University [Valsamma Paul v. Cochin University, (1996) 3 SCC 545. The learned Single Judge in Pushpa (supra) also considered another judgment of the Delhi High Court, in Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092, wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the SC and ST categories could not be rejected simply on account of the late submission of caste certificate.*

18. *In our considered view, the decision rendered in Pushpa (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in Indra Sawhney (supra) and Valsamma Paul (supra), wherein this Court after interpretation of Articles 14, 15, 16 and 39-A of the directive principles of State policy held that the object of providing reservation to the SCs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the directive principles of State policy is to achieve the concept of giving equal opportunity to all sections of the society. The*

Division Bench, thus, erred in reversing the judgment and order passed by the learned Single Judge. Hence, the impugned judgment and order passed by the Division Bench in Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in Indra Sawhney (supra) and Valsamma Paul (supra) . Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24-11-2010 passed by the learned Single Judge in Ram Kumar Gijroya v. Govt. (NCT of Delhi) WP (C) No. 382 of 2009, order dated 24-11-2010 (Del) is hereby restored.

19. *The appeals allowed. No costs.*

(ii) The Tribunal ought to have seen that the employer rejected the candidature of petitioner on the ground of non submission of the caste certificate in the prescribed proforma. If that alone was the deficiency in the candidature of petitioner then employer ought to have afforded opportunity to petitioner to submit the caste certificate in the prescribed proforma. Not having done so, the employer deprived the petitioner of his legitimate right of furnishing certificate regarding caste status even after expiry of last date of submission of application forms pursuant to the advertisement as held by the Apex Court in the case of ***Ram Kumar Gijroya (supra).***

(iii) However the aforesaid decision in the case of ***Ram Kumar Gijroya (supra)*** has since been doubted, and therefore, referred to the Larger Bench in the case of ***Karn Singh Yadav Vs. Govt. of NCT of Delhi and Ors. (SLP No.(Civil)14948 of 2016).*** The Larger Bench is yet to meet and pronounce its verdict, and therefore, the law, as it exists today, as propounded in the case of ***Ram Kumar Gijroya (supra)*** will have to be followed.

(iv) If after giving opportunity to petitioner to produce the caste certificate in the prescribed proforma, the employee would have produced a certificate which did not declare him to be a member of SC category, then the employer was free to proceed in accordance with law.

(v) The employer as well as the Tribunal further erred in holding that the petitioner is an OBC candidate and not SC candidate thereby trespassing into the foreign territory of deciding the caste status of the petitioner, which is exclusively reserved for competent authority or the High Powered Committee constituted pursuant to the decision of Apex Court in the case of ***Madhuri Patil (supra)***.

(vi) The Tribunal further erred in holding in the same breath that the claim is barred by limitation and the same being untenable on merits. It is trite law that if the claim before the adjudicating authority is barred by limitation then the Court/Tribunal ought not to enter into merits of the matter.

(vii) The belated pronouncement of the impugned order by Tribunal cannot further be countenanced in law. The final arguments in O.A. No.1140/2017 were heard and the said OA was reserved for final order on 23.01.2019, but the impugned order was pronounced on 28.02.2020 after a period of 13 months. The need and purpose of delivering judgment at the earliest is statutorily prescribed not only in the CPC, but also in the Central Administrative Tribunal Rules of Practice, 1993 (for brevity "Rules of 1993"). The relevant provisions of CPC and the Rules of 1993 are reproduced below for ready reference and convenience:-

> ***Order XX, Rule 1 of CPC***
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> ***1. Judgment when pronounced.****—[(1)] The Court, after the case has been heard, shall pronounce judgment in an open Court, either at once, or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the Court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders:*
>
> *Provided that where the judgment is not pronounced at once, every endeavour shall be made by the Court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the Court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond sixty days from the*

date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders.]

[(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment,[***]].

(3) The judgment may be pronounced by dictation in open Court to a shorthand writer if the Judge is specially empowered by the High Court in this behalf:

Provided that, where the judgment is pronounced by dictation in open Court, the transcript of the judgment so pronounced shall, after making such correction therein as may be necessary, be signed by the judge, bear the date on which it was pronounced, and form a part of the record.]

Chapter XVII of Rules of 1993

***Rule 105. Pronouncement of order**.—(a) The Bench shall as far as possible pronounce the order immediately after the hearing is concluded.*

(b) When the orders are reserved, the date for pronouncement not later than 3 weeks shall be fixed. The date so fixed shall not be changed except due notice to all parties/counsel.

(c) Reading of the operative portion of the order in the open Court shall be deemed to be pronouncement of the order.

(d) Any order reserved by a Circuit Bench of the Tribunal may be pronounced at the principal place of sitting of the Bench in one of the aforesaid modes as exigencies of the situation require.

***Rule 106. Pronouncement of order by any one Member of the Bench**—(a) Any one Member of the Bench may pronounce the order for and on behalf of the Bench.*

(b) When an order is pronounced under this Rule, the Court officer shall make a note in the order sheet that the order of the Bench consisting of .....was pronounced in open Court by the Bench consisting of.....…

10. The Apex Court has recently come down heavily upon the Courts/Tribunal on noticing the growing tendency of keeping the

cases reserved for a long period of time after finally hearing them. The aforesaid principle of law laid down by the Apex Court in the case of ***Anil Rai Vs. State of Bihar, (2001) 7 SCC 318*** has been subsequently followed recently in ***Balaji Baliram Mupade and another VS. State of Maharashtra and others, 2020 SCC OnLine SC 893.*** The relevant portion of ***Anil Rai (supra)*** is reproduced below for ready reference and convenience:-

> *"4. It has been held time and again that justice should not only be done but should also appear to have been done. Similarly, whereas justice delayed is justice denied, justice withheld is even worst than that. This Court in Madhav Hayawadanrao Hoskot v. State of Maharashtra : 1978 (3) SCC 544, observed that procedure contemplated under Article 21 of the Constitution means "fair and reasonable procedure" which comports with civilised norms like natural justice rooted firm in community consciousness-not primitive processual barbarity nor legislated normative mockery. Right of appeal in a criminal case culminating in conviction was held to be the basis of the civilised jurisprudence. Conferment of right of appeal to meet the requirement of Article 21 of the Constitution cannot be made a fraught (sic fraud) by protracting the pronouncement of judgment for reasons which are not attributable either to the litigant or to the State or to the legal profession. Delay in disposal of an appeal on account of inadequate number of Judges, insufficiency of infrastructure, strike of lawyers and the circumstances attributable to the State is understandable but once the entire process of participation in justice delivery system is over and only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the Constitution under Part-III.*
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> *5. Learned Counsel for the Appellants has referred to the judgments in Surender Nath Sarkar v. Emperor : AIR 1942 Cal 225 ; Jagarnath Singh v. Francis Kharia*

AIR 1948 Pat 414 ; Sohagiya v. Ram Briksh Mahto 1961 BLJR 282, to show that only on the ground of delay in rendering the judgment for the period ranging from six months to ten months, the High Courts had held such judgments bad in law and set them aside. In R.C. Sharma v. Union of India 1976 (3) SCC 574, this Court, after noticing that the Code of Civil Procedure did not provide a time limit in delivery of a judgment held:

Nevertheless, we think that an unreasonable delay between hearing of arguments and delivery of judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between hearing of arguments and delivery of judgment. Justice, as we have often observed, must not only be done but must manifestly appear to be done.

6. In Bhagwandas Fateh Chand Daswani v. H. P. A. International : 2000 (2) SCC 13, this Court observed (at SCC P 14, Para 3) that "a long delay in delivery the judgment gives rise to unnecessary speculation in the minds of parties to a case". The Court in various cases including Hussainara Khatoon (I) v. Home Secretary, State of Bihar : 1980 (1) SCC 81 ; Hussainara Khatoon (IV) v. Home Secretary, State of Bihar 1980 (1) SCC 98 ; A.R. Antulay v. R.S. Nayak *1992 (1) SCC 2259; Kartar Singh v. State of Punjab 1994 (3) SCC 569 ; Raj Deo Sharma v. State of Bihar 1998 (7) SCC 507 ; Raj Deo Sharma II v. State of Bihar 1999 (7) SCC 604 and Akhtari Bi v. State of M.P. 2001 (4) SCC 355, has in unambiguous terms, held that "the right of speedy trial to be part of Article 21 of the Constitution of India."*

7. Adverse effect of the problem of not pronouncing the reserved judgments within a reasonable time was considered by the Arrears Committee constituted by the Government of India on the recommendation of the Chief Justices' Conference. In its report of 1989-90 Chapter VIII, the Committee recommended that reserved judgments should ordinarily be pronounced within a period of six weeks from the date of conclusion of the arguments. If, however, a reserved judgment is not pronounced for a period of three months from the date of the conclusion of the arguments, the Chief Justice was recommended to be authorised to either

post the case for delivering judgment in open court or withdraw the case and post it for disposal before an appropriate Bench.

8. The intention of the Legislature regarding pronouncement of judgments can be inferred from the provisions of the Code of Criminal Procedure. Sub-section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal court of original jurisdiction, shall be pronounced in open court immediately after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words "some subsequent time" mentioned in Section 353 contemplates the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months.

9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Code of Civil Procedure or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eye-brows, some time genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the Rule of Law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of ensuring speedy, untainted and unpolluted justice.

10. Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for present, are as under:

(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in case where the judgment is reserved and is pronounced

later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned.

(ii) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers/ Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that months.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the Chief Justice concerned shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as deems fit in the circumstances."

11. In the conspectus of above discussion, pleadings and submissions, this Court is of the considered view that the Tribunal committed grave error of law in holding that O.A. No.1140/2017 was time barred. The facts available on record are palpable to demonstrate that the petitioner was diligently pursuing the remedy available to him in law right from arising of cause of action since 25.06.2010 when his candidature was rejected.

12. More so, the Tribunal fell in grave error in trespassing into the foreign territory while rendering a finding on caste status of

petitioner by holding the petitioner to belong to OBC community. Venturing into this foreign territory vitiates the impugned orders.

12.1 The employer further committed another illegality in the impugned order dated 25.06.2010 of holding without any basis that the petitioner belongs to OBC category and not SC. It is settled in law that the Tribunal has no jurisdiction to render a finding as regards the caste status of a particular person. This power is exclusively vested in the competent authority under the State Government or in case of doubt with the High Powered Committee constituted pursuant to the verdict of Apex Court in ***Madhuri Patil (supra)***.

13. In the instant case, the employer neither afforded any opportunity to the petitioner to furnish caste certificate in the prescribed proforma nor referred the matter to the High Powered Committee in case there was any doubt in regard to the caste status of petitioner.

14. In view of above, the Tribunal having failed to adjudicate the cause raised by petitioner in accordance with law, this Court is left with no option but to truncate the order of Tribunal and remand the matter for adjudication of O.A. No.1140/2017 in accordance with law.

15. Consequently, the present petition stands **allowed** and impugned order dated 28.02.2020 passed in O.A. No.1140/2017 and order dated 13.01.2021 passed in R.A. No.26/2020 are set aside.

15.1 The Tribunal shall consider and decide the claim of petitioner on merits in accordance with law as expeditiously as possible.

(Sheel Nagu)
Judge

(Sunita Yadav)
Judge

Sateesh