

Reserved On : 21/04/2026

Pronounced On : 17/07/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 21004 of 2016**

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EMPLOYEES' PROVIDENT FUND ORGANIZATION & ORS.

Versus

RANJIT VASANTLAL MAKWANA

=====

Appearance:

MR RAJESH K SAVJANI(2225) for the Petitioner(s) No. 1,2,3

HIMANSHI R BALODI(8919) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA**

and

HONOURABLE MR.JUSTICE J. L. ODEDRA**CAV JUDGMENT****(PER : HONOURABLE MR.JUSTICE N.S.SANJAY GOWDA)**

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I. FACTS LEADING TO THE FILING OF THIS PETITION

1. Shri R.V. Makwana- respondent herein, was appointed as a Lower Division Clerk (LDC) in the Employees Provident Fund Organization, i.e. the petitioner herein, on 7.4.1995.

2. The respondent secured this appointment under the reserved category of Scheduled Caste since he belonged to the Mochi caste and at that point in time, the Mochi caste was specified as Schedule Caste in the State of Gujarat by virtue of the Constitution Castes and Scheduled Tribes Orders (Amendment) Act, 1976.

3. In the year 2002, the Constitution (Scheduled Castes) Orders (Second Amendment) Act, 2002 was enacted by the Parliament, by which, area restrictions in respect of Mochis were introduced. By this amendment, it was only those Mochis who hailed from Dang district and Umbergaon taluka of Valsad district in Gujarat were specified as Scheduled Castes.

4. In other words, as against the earlier position of all Mochis in Gujarat, being specified as Scheduled Caste, the Parliament limited the specification of Mochi caste as Scheduled Caste only to those Mochis who hailed from Dang district and Umbergaon taluka of Valsad district.

5. On 31.12.2003, the respondent was promoted to the post of Enforcement Officer/Accounts Officer on his passing of the Departmental examinations, and this promotion was on the basis that he belonged to the reserved category i.e., he belonged to the Schedule Caste.

6. On 29.11.2012, nine years after he had been promoted, the respondent was reverted to his substantive post of Upper Division Clerk with effect from 29.11.2012. This reversion was on the ground that he could not be specified as a Scheduled Caste by virtue of the 2002 Amendment.

7. The respondent, being aggrieved by this reversion, approached the Central Administrative Tribunal (CAT) by filing O.A.No.498 of 2012.

8. The Tribunal, by the impugned order, took the view that the vacancy to the post to which the respondent herein had been promoted had arisen in 2000, when all

Mochis in Gujarat had been specified as Scheduled Caste, and therefore, the order of promotion granted to him was legal and valid. The Tribunal accordingly allowed the application and restored the promotion of the respondent.

9. As a consequence, the EPFO is before this Court questioning the order of the Tribunal.

II. SUBMISSIONS ON BEHALF OF EPFO-THE PETITIONER:

10. Shri Rajesh K. Savjani, learned counsel appearing for the petitioner- EPFO contended that as on the date the respondent was promoted, i.e., in 2003 he could not be specified as Scheduled Caste because of the 2002 Amendment, which specified only Mochis from a specified area to be Schedule Castes and, therefore, he could not have had the benefit of reservation. He submitted that the classification of vacancy in the year 2000 would be of no consequence and it would only be the date of promotion that would be relevant date for the purpose of considering the reserved category status of a candidate. He submitted that since people hailing from the Mochi caste only from two districts were specified as Scheduled Caste from 17.12.2002, all other Mochis in the State could not claim to be a caste specified in the Scheduled Caste and claim to be entitled to the benefits thereof. He submitted that the reservation that the respondent was

entitled to when his caste was specified, would only ennure to his benefit till the caste remained specified in the Constitution (Scheduled Castes) Order and the moment the caste was excluded from the Presidential Order by the 2022 Order, he would lose all the benefits that accrue to a reserved candidate.

11. Learned Counsel placed reliance on the following citations:

1. Shree Surat Valsad Jilla KMG Parishad v. Union of India [(2007) 5 SCC 360]
2. In the case of Union of India v. Krishna Kumar & Ors [(2019) 4 SCC 319]
3. Bihar Sate Electricity Board & Ors. v. Dharamdeo Das [(2024) SCC Online SC 1768]
4. K. Kirmala & Ors. v. Canara Bank & Anr. [(2024) SCC Online SC 2273]

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

12. Ms. Himanshi Balodi, learned counsel appearing for the respondent, on the other hand, contended that the order of the Tribunal cannot be found fault with since promotion is always considered with reference to the date on which the vacancy arose and not on the date on which the promotion is actually effected. She, therefore, submitted that the order of the CAT considering the date on which the vacancy arose as being the relevant date for granting promotion, was correct and since Mr. Makwana

(respondent herein) belonged to Scheduled Caste on that date, his promotion cannot be found fault with.

13. Learned counsel Ms. Balodi also went on to elaborate and contended that once a caste is specified as a Scheduled Caste in the manner specified in Art 341 of the Constitution, all people born into that caste, at that point in time, are vested with a constitutional right, which confers various benefits of reservation in matters relating to education, employment, etc during the course of their entire life.

14. She submitted that caste is conferred by birth and therefore, any person born into a caste which is specified as Scheduled Caste will carry that benefits throughout his lifetime. She emphasized that the conferment of the status of caste is by virtue of the birth into that caste and it is an involuntary act, which, in turn, is permanent and confers certain constitutional rights. She submitted that this right which vests on a person's birth can neither be altered nor divested because of any future event.

15. It is contended that a person born into a caste has no option but to remain in that caste and he is always identified as a person belonging to that caste during his entire life. She, therefore, submitted that if a person is born into a caste and if that caste is specified as

Scheduled Caste at the time of his birth, that candidate will always have the benefit of being specified as a Scheduled Caste throughout his lifetime and consequentially be entitled to the benefits that accrue by virtue of reservations in employment and education.

16. Learned counsel Ms. Balodi submitted that the exclusion of a caste from the Scheduled Castes in the manner specified under Art 341 would only mean that a person who is born into the caste after the exclusion will not get the benefit of reservation, and this is simply because a person is born into a caste and therefore, the date on which he is born into that caste becomes the only relevant factor for the purpose of considering whether he can be specified as a Scheduled Caste or not.

17. Learned counsel Ms. Balodi also submitted that when the respondent was born into the Mochi caste, constitutionally, he was deemed to be a Scheduled Caste and if such a constitutional status is granted to a person, the same cannot be nullified after a certain period of time merely because that caste is no longer required to be specified as a Scheduled Caste. In short, she submitted that once a person is conferred the status of Scheduled Caste, he would have the benefit of reservations throughout his lifetime, and the benefit of reservation cannot be withdrawn or modified during his lifetime.

IV. QUESTIONS WHICH ARISE FOR CONSIDERATION IN THIS WRIT PETITION:

- A.** What are the rights that accrue to a person who is born into a caste, which at the time of his birth, was specified as a Scheduled Caste under Art 341 of the Constitution of India
- B.** Whether these rights that accrue on him would stand vested with during his entire lifetime or whether it is a temporary right, which could be divested at any time or during his lifetime?
- C.** Whether the order of the Tribunal considering the date on which the vacancy arose as the relevant date for determining the reserved category of Makwana was justified or not?

V. A BRIEF OVERVIEW OF THE CASTE SYSTEM:

18. Historically, people in our Society were categorized into four classes called Varnas, which was based on their respective vocations, probably with a view to maintain social order and harmony. However, over a period of time, these four classes of people have transformed themselves into a hereditary structure i.e., Castes (Jatis). What started off as a group of people, who stood identified by their vocation has morphed itself into a social group of people, the entry to which is only by birth and not by the avocation or the ability of the group of people. In other words, entry into a caste is only by birth and exit is either by excommunication or by conversion

into another religion.

19. A caste, in our country, is purported to be a social grouping. However, Dr. B. R. Ambedkar has described the caste as nothing but graded inequality and he stated that it was not a division of labour, but it was a division of labourers.

20. It cannot be in dispute that though the origin of caste was related to the avocation of the people and all people who had the same avocation were classified as a particular caste, but the people of this caste, over a period of time, sequestered themselves or were more likely bracketed into a distinct group by the other castes/groups in the Society. Thus, this group became a closed group who intertwined amongst themselves and married only within the group. As a consequence, no one else was allowed to enter into it. Simply put, an avocation defined a group, and this group became a caste, which then became a part of a social hierarchy.

21. The entry into this group i.e., into a caste is only by birth. In other words, a person cannot acquire or become a member of the caste voluntarily, even if he has learnt the skills or the trade of the said avocation. The entry into the caste is an involuntary act, which is pre-determined and it is conferred solely on the birth of the person into a

particular caste to which his parents belong. The moment, a person is born into a caste, social boundaries of the caste envelop that person, and he becomes a part of a social group.

22. This social group or groups, over a period of time, have evolved into a hierarchy of superior and inferior castes. The castes in the lower hierarchy have gradually been oppressed and have been treated as an inferior group of people by the caste in the upper hierarchy. The castes in the lower hierarchy has, in fact, been treated in the most inhuman manner possible by the people belonging to the castes in the upper hierarchy with the intention of subduing them or with an intention of retaining their superiority or a mixture of both. This kind of oppression of a person who acquires a lower caste by birth has ultimately led to special provisions being created and formulated to end this oppression, protect them and also to elevate their status in our Society, when our constitution was framed.

23. One thing is certain and that is, the acquisition of caste is by birth, and this caste stands attached to a person till he is alive. The only exception to this caste identity is if that person converts to another religion or is excommunicated by the other members of his caste.

24. It may also be pertinent to state here that the term caste has not been defined in the Constitution or any other statute and the Constitution has been framed keeping in mind caste as an existing reality and would have to be dealt with keeping in mind the constitutional principles. In the case of **Indra Sawhney and Others v. Union of India and others** reported in **1992 Supp(3) SCC 217**, the Apex Court has defined caste thus:

“The above material makes it amply clear that a caste is nothing but a social class - a socially homogeneous class. It is also an occupational grouping, with this difference that its membership is hereditary. One is born into it. Its membership is involuntary. Even if one ceases to follow that occupation, still he remains and continues a member of that group. To repeat, it is a socially and occupationally homogenous class. Endogamy is its main characteristic. Its social status and standing depends upon the nature of the occupation followed by it. Lowlier the occupation, lowlier the social standing of the class in the graded hierarchy.”

25. Thus, viewed in this backdrop, for the purpose of this case, it becomes strikingly clear that the respondent herein was born into the Mochi caste, the acquisition of the caste was a permanent one and he would have to be considered as a Mochi throughout his lifetime.

VI. AN OVERVIEW OF THE CONSTITUTIONAL PROVISIONS RELATING TO SCHEDULED CASTES

VI(a). In PART III

26. Article 15 prohibits the discrimination on the grounds of religion, race, caste, sex or class of birth by the State and forbids any kind of disability, liability, restriction or condition in relation to the access to shops, public restaurants, hotels and places of public entertainment and also from the use of wells, tanks, bathing ghats, roads and places of public resort maintained by the State or with State funds. Thus, the practice of discriminating or excluding people because of their caste is specifically provided in the Constitution, thereby, making the intent of treating every citizen equally.

27. Article 15 (4), however, permits the State from making any special provision for the advancement of any socially or educationally backward classes of citizens or for the Schedule Castes or Schedule Tribes.

28. Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and that there shall be no discriminated or be considered ineligible for employment only because of caste or religion or race.

29. Article 16 (4), however, permits the State from making any provision for reservation of appointments or posts in favour of backward class or classes which in the opinion of the State is inadequately represented in the services under the State.

30. Article 16 (4A) permits the State from making a provision for reservation in matters relating to promotion along with consequential seniority in favour of Scheduled Castes or Scheduled Tribes, which in the opinion of the State are inadequately represented in the services under the State.

31. Article 17 of the Constitution of India abolished untouchability and made enforcement of any disability arising out of untouchability to be an offence punishable in accordance with law. The practice of any form of untouchability was forbidden. Untouchability was, obviously, in relation to the oppressed class, i.e., those classes which were considered to be untouchable and who were to be kept out of society and isolated.

32. Thus, Part III of the Constitution relating to Fundamental Rights specifically prohibits discrimination on the grounds of caste while at the same time they also permit the State to make reservations for the advancement of socially and educationally backward class

or classes and also specifically permits the State to make special provisions not only for reservation of appointments or posts but also to their promotions for the services under the State to any backward class of citizens or for Scheduled Castes or Tribes. The Constitution fundamentally recognizes the prevalence of caste in the Country and also seeks to remedy the ill effects of it by making provisions which permit their upliftment by way of affirmative action.

VI(b). In PART IV i.e., DIRECTIVE PRINCIPLES OF STATE POLICY

33. Art. 46 of the Constitution states, a directive principle, states that the State should promote with special care the educational and economic interests of the weaker sections of the people and in particular of the Scheduled Castes and the Scheduled tribes and it should protect them from social injustice and all forms of exploitation. The State, is therefore required to be guided, by the principle that the weaker sections of the society and more particularly the persons belonging to Scheduled Caste and Scheduled Tribe should be protected from any social injustice and from exploitation, thereby meaning that they required extra attention so as to achieve the objective of the preamble to secure social justice to all.

VI(c). In Part XVI RELATING TO SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES

34. Apart from the above special provisions made in Part III, Part XVI contains special provisions relating to certain classes. The provisions of this Part provide for reservation of seats for Scheduled Caste and Scheduled Tribes in the house of the people and in the Legislative Assemblies of the States (i.e. Article 330 and Article 332).

35. Article 334 of the Constitution begins with a *non-obstante* clause and goes on to declare that the reservation of seats for Scheduled Castes and Scheduled Tribes shall cease to have effect on the expiration of 80 years. This period, at the framing of the Constitution, was 10 years and has been extended by several amendments made by the Parliaments. This would indicate that though the framers intended for the reservation of seats to be only for one decade, the law makers, in their wisdom have been extending the period continuously and this would mean that the lawmakers are clear that the castes specified as scheduled castes have still not progressed enough socially and still require affirmative action to achieve social justice.

36. It would be significant to note that though a time limit for reservations to the scheduled castes and tribes

have been specified in the House of the people and the legislative assemblies in the State i.e., political reservations, there is no such time limit prescribed for reservations in education or in the services under the State. This would indicate that the framers of the Constitution were of the view that the reservations in these sectors would be a necessary feature and cannot be subjected to a time frame.

37. Article 335 of the Constitution stipulates that the claims of the members of the Scheduled Caste and Scheduled Tribes should be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of the State.

38. The proviso to this Article declares that nothing in the Article would prevent the making of any provision in favour of members of the Scheduled Caste and Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation for reservation in matters or promotion to any class or classes of service or posts in connection with the affairs of the Union or of the State.

39. Thus, there are several articles in the Constitution

which provide for reservation in matters of recruitment and promotion for services under the State and there are also provisions for making reservations in the educational field and also to the Legislative bodies. It also provides for the making of laws which lower the standard benchmarks to the scheduled castes in order to give them a nudge to advance themselves. These provisions reflect the clear constitutional mandate for the enhancement of the socially and educationally backward classes and also for the scheduled castes and tribes.

40. Article 338 of the Constitution requires the formation of a National Commission for Scheduled castes which is tasked with duty to safeguard the interests of the Scheduled caste by monitoring and investigating all matter relating to the Scheduled Castes and also dealing with the complainants of deprivation of rights and safeguards provided to them.

VII. SPECIFICATION OF SCHEDULED CASTES UNDER ART. 341

41. Article 341 of the Constitution of India reads as follows:

“(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or

parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

It specifically deals with Scheduled Caste and it states that the President in respect of a State or Union Territory by issuance of public notification specify; (i) castes, (ii) races or tribes and (iii) parts or groups within castes, races or tribes, which would be deemed to be Scheduled Caste for the purposes of the Constitution in relation to the State or the Union Territory, as the case may be. This Article requires the President to consult the Governor, in case of a State, before issuance of the public notification. Thus, the Constitution itself provides for the President, to initially, specify those castes which are to be considered as scheduled castes and tribes and also prescribes a procedure.

42. After the President initially specifies the castes which are to be deemed as Scheduled Castes and Scheduled Tribes, consciously the power to add, modify or exclude castes from the deemed scheduled castes or

tribes is conferred only on the Parliament under Art 341 (2). This article specifically states that it is only as per the procedure prescribed under Art 341 (2) that is to be followed for exercising this power to amend, modify or exclude any case from the list of scheduled caste or tribes.

43. As noticed earlier, reservation to the house of people and the legislative assemblies in states have been subjected to a time limit i.e., political reservations were to be provided only for a short time. Initially, the period for providing reservation was to be 10 years, but the same has been continued for 80 years. This would imply that the Parliament acknowledges that the oppressed classes still required protection and upliftment in order to secure social justice to them.

44. However, there is no such time frame for the reservations in the field of education and for services under the state. This does not mean that the reservations to the specified castes or scheduled tribes was necessarily a permanent feature. The benefit of reservation was sought to be regulated, in future, by empowering the Parliament to include, modify or exclude the castes from the list of scheduled castes which had been specified by the President.

45. Interestingly, the powers to include, modify or exclude a caste from the list of scheduled castes is not conferred to the legislative assemblies of the State but is expressly conferred on the Parliament thereby meaning that the tinkering with the list of specified castes is considered as a national issue and cannot be permitted to be regulated by the States, which may have a partisan approach in this regard.

46. Thus, the Constitution enables only the Parliament to tinker with the inclusion, exclusion or modification of the castes which are deemed to be scheduled castes or scheduled tribes. This procedure highlights the importance that the Constitution attaches to achieving the objective of attaining social justice as proclaimed in the Preamble.

47. A 7 judge bench of the Apex Court in the case of **State of Punjab and others v. Davinder Singh and others** reported in **(2025) 1 SCC 1** has declared that it is only the Parliament which can amend the list specifying the scheduled castes and the States can only sub-classify the scheduled castes for ensuring that the reservations reach all the castes included in the list of scheduled castes.

VIII. CHRONOLOGY OF THE SPECIFICATION OF

**SCHEDULED CASTES BY THE PRESIDENT AND ITS
MODIFICATION OR EXCLUSION BY THE PARLIAMENT
SINCE 1950 IN RELATION TO THE STATE OF
GUJARAT**

48. In exercise of the power conferred under Article 341 (1), the President issued a notification titled Constitution Scheduled Caste Order, 1950 after consulting the Governor (Raj Pramukh at that point in time). Under this Order, the President specified the castes, which are deemed to be scheduled castes and tribes for the State of Bombay. This State of Bombay included the areas which were to be later reorganized and which was to become the state of Gujarat. In other words, the State of Bombay, described in the notification, included the present State of Maharashtra and the present State of Gujarat in its entirety.

49. Part-III of 1950 Order, in relation to State of Bombay, read as follows:

- “1. Throughout the State:-
- 1 Ager
 - 2 Asodi
 - 3 Bakad
 - 4 Bhambi
 - 5 Bhangi
 - 6 Chakrawadya-Dasar
 - 7 Chelvadi
 - 8 Chambhar, or Mochigar, or Samagar
 - 9 Chena-Dasaru
 - 10 Chuhar or Chuhra
 - 11 Dakaleru
 - 12 Dhegu-Megu
 - 13 Dhor
 - 14 Garoda

- 15 Halleer
- 16 Halsar, or Haslar, or Hulsavar
- 17 Holaya, or Garode
- 18 Kolcha, or Kolgha
- 19 Lingader 20 Machigar
- 21 Madig, or Mang
- 22 Mahar
- 23 Mahyavanshi
- 24 Mangarudi
- 25 Meghval, or Menghwar
- 26 Mini Madig
- 27 Mukri
- 28: Nadia
29. Rohit
- 30 Shenva, or Shindhaya
- 31 Shingdav, or Shingadya
- 32 Sochi
- 33 Timali
- 34 Turi
- 35 Vankar
- 36 Vitholia

**2. Throughout the State except in Gujarat division: -
Mochi”**

50. Thus, in the entire State of Bombay, except the Gujarat division, all Mochis were specified as Scheduled Caste. To put it differently, Mochis in the Gujarat division were not specified as Scheduled Caste.

51. The President issued the Scheduled Castes and Scheduled Tribes List (Modification) Order, 1956, pursuant to Section 41 of the States Reorganization Act, 1956 and Section 14 of the Bihar and West Bengal (Transfer of Territories) Act, 1956, which modified the earlier 1950 order.

52. The 1950 Order was modified in the manner

specified in Schedule-I, II, III and IV of the said Order.

53. Schedule-I of this Modification Order substituted Parts-I to XVI of the 1950 Order with Parts- I to XIII. Part-IV of the Schedule related to the State of Bombay and Clause 2 of this Part IV reads as follows:

“2. In the districts of Greater Bombay, West Khandwa, East Khandwa, Dangs, Nasik, Ahmednagar, Poona, Satara North, Satara South, Kolhapur, Sholapur, Thana, Kolkata and Ratnagiri:

Mochi”

54. Thus, geographical restrictions were imposed by this modification of the year 1956 and only Mochis who belonged to the above-mentioned areas were specified as Scheduled Caste. In other words, Mochis, as against the earlier specification of all Mochis in the State of Bombay (except Gujarat Division), Mochis only in the specifically named areas came to be specified as Scheduled States.

55. In the year 1960, the State of Bombay was re-organized and the State of Gujarat and the State of Maharashtra were created. Under this Act, the areas comprised of Dangs and the villages in Umbergaon taluka of Valsad district became part of the State of Gujarat.

56. Section 26 of the Bombay Re-organization Act also

amended the Constitution (Scheduled Castes) Order, 1950 as per Schedule-VII of that Act. By virtue of this Amendment, Part-IV of the 1950 Order was substituted and with reference to the State of Gujarat, in Clause-2, it was specified as follows:

"2. In the district of Dangs and Umbergaon Taluka of Surat district;

Mochi".

57. Thus, on the creation of the State of Gujarat, only Mochis who hailed from the districts of Dangs and Umbergaon taluka of Surat district were specified as Scheduled Caste. To put it differently, all Mochis in the State of Gujarat were not specified as Scheduled Caste and Mochis only from the aforementioned two areas were specified as Scheduled Caste.

58. On 18.9.1976, the Parliament enacted the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976, by which the 1950 Order was amended by Section 3 of the Act and to the extent specified in Schedule I of the said Act. By this, in part 4 of the schedule, pertaining to Gujarat, Mochi caste was specified.

1.	Ager	16.	Lingader
2.	Bakad, Bant	17.	Mahar, Taral, Dhegu Megu
3.	Bawa-Dedh, Dedh-Sadhu	18.	Mahyavansi, Dhed, Dhedh, Vankar, Antyaj Maru Vankar,

4.,	Bhambi, Bhambhi, Asadaru, Asodi, Chamadia, Chamar, Chambhar, Chamgar, Haralayya, Harali, Khalpa, Machigar, Mochigar, Madar, Madig, Mochi , Nalia, Telegu Mochi, Kamati Mochi, Ranigar, Rohidas, Rohit, Samgar	19.	Mang, Matang, Minimadig
5.	Bhangi, Mehtar, Olgana, Rukhi, Malkana, Halalkhor, Lalbegi, Balmiki, Korar, Zadmali	20.	Mang-Garudi
6.	Chalvadi, Channayya	21.	Meghval, Meghwal, Menghvar
7.	Chenna Dasar, Holaya Dasar	22.	Mukri
8.	Dangashia	23.	Nadia, Hadi
9.	Dhor, Kakkayya, Kankayya	24.	Pasi
10.	Garmatang	25.	Senva, Shenva, Chenva, Sedma, Rawat
11	Garoda, Garo	26.	Shemalia
12	Halleer	27.	Thori
13	Halsar, Haslar, Hulasvar, Halasvar	28.	Tirgar, Tirbanda
14.	Holar, Valhar	29.	Turi
15.	Holaya, Holer	30.	Turi Barot, Dedh Barot

59. As there were no geographical limitations imposed to the people belonging to Mochi caste, as had been imposed in the 1950 order and the 1956 order, Mochis all over the State of Gujarat came to be specified as Scheduled Castes.

60. In other words, from 18.9.1976 all the Mochis in the State of Gujarat were specified as Scheduled Castes by way of a Parliamentary law made in pursuance of the powers conferred under Art 341 (2) of the Constitution. The legal inference of this modification made in 1976

would be that the Parliament was of the view that all the Mochis in the State of Gujarat which had been created 16 years ago in 1960, were still socially backward and required to be extended the benefits of reservation.

61. On 17.12.2002, the Parliament enacted the Constitution (Scheduled Castes and Scheduled Tribes) Orders (Second Amendment) Act, 2002. By this amendment, Part IV of Schedule 1 of the 1950 Order, which related to Gujarat, entry was substituted as follows:

*"4. Bhambi, Bhambhi, Asadaru, Asodi, Chamadia, Chamar, Chamar-Ravidas, Chambhar, Chamgar, Haralayya, Harali, Khalpa, Machigar, Mochigar, Madar, Madig, **Mochi** (in Dangs district and Umergaon Taluka of Valsad district only), Nalia, Telugu Mochi, Kamati Mochi, Ranigar, Rohidas, Rohit, Samgar"*

62. As could be seen from the above, by this amendment, geographic restrictions, as was prevailing before 1976, was imposed on Mochis and only those Mochis who hailed from Dang district and Umergaon Taluk of Valsad District were only specified as Scheduled Castes.

63. The legal inference of this modification would be that the Parliament was of the view that people belonging to the Mochis only from certain areas were socially

backward and needed the benefits of reservation to be uplifted. This would mean either of two things. Firstly, that Mochis from other areas of Gujarat had advanced socially and did not require the benefit for their upward social mobility or the removal of geographical restrictions was an error. Irrespective of the reason for the modification, viewed from a legal angle, the fact remains that Mochis all over the State of Gujarat were specified as Scheduled castes for 28 long years i.w., more than a quarter of century.

64. In short, the legal implication of this amendment is that the Parliament was of the view that only Mochis from two specified areas needed the benefit of reservation.

65. Thus, the historical journey of specifying Mochis as Scheduled Castes can be summarised by stating that in 1950 Mochis only from specified areas had been specified as Scheduled castes and this situation prevailed till 1976 and from 1976 to 2002 i.e., for 28 years, Mochis throughout the State of Gujarat, without any geographical restrictions had been specified as Scheduled Castes and from 2002 onwards Mochis only from specified areas have been specified as Scheduled Castes.

IX. EFFECT OF INCLUSION, MODIFICATION OR EXCLUSION OF A CASTE FROM THE LIST OF SPECIFIED CASTES UNDER ART 341

66. What would be the fate of the Mochis who were born between 1976 and 2002 in the State of Gujarat when Mochis had been specified as Scheduled castes would be the question that arises for consideration, more so, because from 2002, Mochis only from specified areas have been specified as Scheduled Castes?

67. What would be the fate of those Mochis who had lawfully take the benefit of reservation by virtue of their caste being specified as Scheduled castes in this period of 26 years i.e., over a quarter of century?

68. Would they lose their right to gain the benefit of reservation, or would they have a vested right to continue to receive the benefit of reservation that had been constitutionally conferred on them?

69. The answer to these questions, in our view, would basically depend on the legal effect of specifying a caste as a Scheduled caste by a Parliamentary law which amended the original list specified by the President in 1950.

70. First of all, the power to include, modify or even exclude a caste from being specified as Scheduled caste is specifically conferred on the Parliament under Art 341 (2). This means that the law recognizes that the exercise

of specifying castes as a Scheduled caste is not a one time event and specifying a caste as a Scheduled Caste need not be permanent and the Parliament, if it so chose, could either add a caste to the specified lists of Scheduled caste or even modify an existing caste and could also altogether remove an entire caste from the list.

71. In the event of adding to the list, it is obvious that from the date the caste is added, all the members of the caste would become entitled to claim the benefits of reservation. This would be basically because the entire caste, at the time of its inclusion in the list, was being considered as socially backward and thereby required the benefit of reservation to move out of their social backwardness.

72. In the event of modifying or excluding a caste from the list of specified scheduled, a vexed question would arise regarding the status of the people who had availed the benefit of reservation in the interregnum. Basically, from the date of modification or exclusion, the members of the castes would lose the right to claim the benefit of reservation because the Parliament did not consider them to be socially backward and they had progressed probably because they had availed the benefits of reservation and the reservation had thus fulfilled its objective.

73. However, whether the people who had availed the benefit of reservation lawfully, when their caste had been specified as a Scheduled caste, would lose the benefit of reservation on the day their caste was excluded from the list of scheduled castes, would be the moot question.

74. In our view, the answer to this query would depend on the manner in which a caste is imposed on an individual and the nature of right that is conferred on a member of the caste, which has been specified as a Scheduled caste and also the right that accrues to a person who has taken the benefit of reservation by virtue of his caste having been specified as a Scheduled caste, even though he had been born prior to the 1976 amendment.

75. As discussed earlier, a man acquires a caste the moment he is born and this is an involuntary act over which he has no control. The acquisition of caste at the time of his birth remains with him for the rest of his life. Thus, caste is an identity which adheres to a man from the time of his birth and endures during his entire life.

76. If a person is born into a caste, which had been specified as a Scheduled caste at the time of his birth, this would mean that his caste was considered as socially backward at that point of time and required the benefits

of reservation. This would also mean that this person would continue to be socially backward during his entire life even though his caste, as a whole, could in future, advanced socially, as a consequence of which, the Parliament could decide to exclude the entire caste from gaining the benefits of reservation.

77. This would also apply to a person, who though born earlier to his caste being specified as a scheduled castes, takes the benefit of reservation by virtue of the fact that his caste was specified as a Scheduled caste after he was born and he had as a consequence availed of the reservation.

78. The exclusion of a caste from the list of scheduled castes can only be prospective and the benefits that had accrued on a person who had been born into the caste when it was included in the list of scheduled castes would continue to adhere to him during his life time. This is fundamentally because caste is acquired by birth and comes to an end only on the death of the person.

79. The very purpose of the President, initially in 1950, to specify a caste to be deemed to be a Scheduled caste is that the President after consultation with the concerned, was satisfied that, a particular caste was oppressed and deserved to be given the benefit of reservation so to

enable that members of the caste to advance in society and thereby uplift their lives socially and economically.

80. The framers of the Constitution were also conscious of the fact that the castes specified as Scheduled castes would not remain backward or oppressed forever and the benefits conferred on them by specifying them as scheduled castes would have lead to an improvement in their social and economical status in society and since the benefit of reservation granted to them had served its purpose, the Parliament was conferred with the power to modify or even exclude that caste from being specified as a Scheduled caste.

81. This would basically mean that the period during which the caste had been specified as Scheduled caste, the members of the caste were considered as oppressed and weak who required the benefit of reservation. This, however, should not mean that the persons who had taken the benefit of reservation will loose the benefit midway on the assumption that the social status of his caste had improved their economical and social status. The caste, on the whole, during the period that it was specified as a scheduled case, could have improved necessitating the withdrawal of the benefit of reservation.

82. However, the fact remains that the person who was

born during the period in which his caste was specified as a Scheduled caste, and a person who availed the benefit of reservation because his caste had been specified as a schedule caste would be a person who was considered as oppressed and backward at the time of birth and at the time his caste was specified as a schedule caste and would therefore be in need of the benefits of reservation throughout his life. This is fundamentally because a caste is thrust upon a person at the time of his birth and would continue till his death and as a consequence any person who is born into a caste, which at that time was specified as a scheduled caste, will have to be considered as a person belonging to a Scheduled caste till his death.

83. It will also have to be noticed that a person who is born into a caste acquires a vested right to gain the benefits of reservation because of the fact that his caste had been specified as a Scheduled caste when he was born. Similarly, when a caste is specified as a Scheduled caste, all the persons who belong to that caste at that point in time also acquire a vested right to be considered as a Scheduled caste. This right, in fact, would be a constitutionally protected right and this constitutional right cannot be divested by a Parliamentary law. It must be borne in mind that once a right vests in a person, a subsequent law cannot divest that right and this principle would apply with greater force when it comes to a right

which is vested constitutionally.

84. This proposition, in our view, would do away with any adverse impact on an individual who was conferred a constitutional right to secure the benefits of reservation for uplifting his life. A contrary view that a person would lose all the benefits of reservation that was initially conferred on him on his caste being excluded from the specification as a scheduled caste, would basically mean that the law seeks to abandon an individual midway and expect him to fend for himself, and that too after promising him a secured and bright future. Such an interpretation of the effect of a Parliamentary law, in essence, would mean that a person who had been granted a constitutional right would lose that constitutional right and be left in the lurch because of a Parliamentary law. This interpretation of a parliamentary law would be constitutionally immoral.

85. In our view, in order to limit the adverse impact of excluding a caste from being specified as a Scheduled caste by a Parliamentary law, it would be appropriate to hold that the persons born into a Scheduled caste, when it had been specified as Scheduled caste or a person who had taken the benefit of reservation because his caste had been specified as a Scheduled caste at that point in time, will be entitled to all the benefits of reservation

during his entire lifetime and would not lose it midway. Consequentially, any person who is born into a caste which was not specified as a scheduled caste at the time of his birth (even though his caste was previously specified as Scheduled caste) will not be entitled to any benefit of reservation.

86. This may result in certain incongruous situation, such as a father would be considered as belonging to a Scheduled caste but his son who was born after the caste was excluded from the list of specified Scheduled caste, would not have the benefits of reservation. However, it has to be kept in mind that the Parliament has been conferred with the power to exclude a caste from the list of scheduled castes taking into consideration the events that have transpired after the inclusion which does not justify the inclusion to be continued. This would mean that the persons have been born into a caste which has progressed and does not need the benefit of reservation. This, in our view, is the only manner to ensure that the benefits of reservation that flow from a caste being specified as a Scheduled caste can be harmonized and any adverse affect is avoided by the exclusion of a caste from the list of scheduled castes.

87. We answer Questions A and B accordingly.

88. In the instant case, since the respondent was born into the Mochi caste which had been specified as a Scheduled caste and had taken the benefit of reservation when his caste had been specified as a scheduled caste, he would be entitled to all the benefits of reservation throughout his lifetime and he cannot be deprived of the benefit of reservation by the exclusion of his caste from the list of Scheduled caste. Consequently, he would be entitled to the benefit of promotions by virtue of being a person belonging to the Scheduled caste throughout his tenure. As a result, the stripping of his promotion granted in 2003 by passing an order of reversion in 2012 cannot be sustained.

89. The reliance placed by the learned counsel appearing for the petitioner on the judgment rendered by the Apex Court in ***Shree Surat Valsad Jilla KMC Parishad vs UOI and ors*** while deciding the challenge to the order of this Court upholding the imposition of geographical area restrictions to the Mochis, to contend that the moment the 2002 amendment, the Mochis who hailed from areas other than Dang district and Umargaon Taluka of Valsad District would lose the benefit of reservation, would not be correct.

90. In the said case, the Apex Court while upholding the 2002 amendment has also stated that in relation to a case

pertaining to a grant of dealership, reserved to the Scheduled caste candidates, as the appellant therein stood excluded from the list of scheduled castes because of the 2002 amendment, he would not be entitled to retain the dealership because only a letter of intent had been issued to him.

91. At the outset, it is to be stated here that the entitlement to a dealership cannot be equated with the reservation accorded to an employment under the services of the state. In the case of employment, a candidate from a Scheduled caste would acquire a vested right, the moment he is born, to claim the benefit and once he claims the benefit of reservation, he also acquires a vested right to be considered as a Scheduled caste throughout his career. In the case of a dealership, there is no question of any vested right, and it is only a benefit which is temporary as the dealership would not be permanent as such benefit was only secured by a Letter of Intent. We are therefore of the view that this judgment would be of no avail.

X. RE: THE REASONING OF THE CAT

92. The Tribunal has taken the view that the respondent's caste had been specified as a Scheduled caste as on the date the vacancy for the promotional post arose and therefore the promotion accorded to him

cannot be found fault with it. In the view that we have taken that the respondent would have the benefit of being considered as a person belonging to a Scheduled caste during his entire lifetime, he would be entitled to the benefits of reservation throughout his career. Consequently, the question of whether reservation is to be taken into consideration on the day that the vacancy arose and not on the day it was granted would be irrelevant and as a result the stripping of the promotion and the reversion of the petitioner cannot be sustained.

93. We answer Question C accordingly.

XI. CONCLUSION

94. Consequently, in the light of the view taken by us, the order of the CAT which ultimately protects the promotion granted to the respondent, for the reasons given by us herein above, deserves to be affirmed and as a result the writ petition filed by the employer is DISMISSED.

Sd/-
(N.S.SANJAY GOWDA,J)

Sd/-
(J. L. ODEDRA, J)

OMKAR